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# Presidential Documents

**Title 3—**

## The President

**Presidential Determination No. 2007–23 of June 28, 2007**

## Presidential Determination to Waive Military Coup-Related Provision of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006, as Carried Forward Under the Revised Continuing Appropriations Resolution, 2007, With Respect to Pakistan

**Memorandum for the Secretary of State**

Pursuant to the authority vested in me by the Constitution and laws of the United States, including section 534(j) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (the ''Act'')(Public Law 109–102), as carried forward under the Revised Continuing Appropriations Resolution, 2007 (Public Law 110–5)(the ''Continuing Resolution''), and Public Law 107–57, as amended, I hereby determine and certify, with respect to Pakistan, that a waiver of section 508 of the Act, as carried forward under the Continuing Resolution:

(a) would facilitate the transition to democratic rule in Pakistan; and

(b) is important to United States efforts to respond to, deter, or prevent acts of international terrorism.

Accordingly, I hereby waive, with respect to Pakistan, section 508 of such Act, as carried forward by the Continuing Resolution.

You are authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.

THE WHITE HOUSE,
*Washington, June 28, 2007.*

[FR Doc. 07–3373
Filed 7–09–07; 8:45 am]
Billing code 4710–10

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# Presidential Documents

**Title 3—**

## The President

**Presidential Determination No. 2007–24 of June 28, 2007**

## Presidential Determination Under Section 402(c)(2)(A) of the Trade Act of 1974—Turkmenistan

**Memorandum for the Secretary of State**

Pursuant to section 402(c)(2)(A) of the Trade Act of 1974 (Public Law 93–618), as amended (the ''Act''), I determine that a waiver by Executive Order of the application of subsections (a) and (b) of section 402 of the Act with respect to Turkmenistan will substantially promote the objectives of section 402.

On my behalf, please transmit this determination to the Speaker of the House of Representatives and to the President of the Senate.

You are authorized and directed to publish this determination in the **Federal Register**.

THE WHITE HOUSE,
*Washington, June 28, 2007.*

[FR Doc. 07–3374
Filed 7–09–07; 8:45 am]
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# Rules and Regulations

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

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 925

**[Docket No. AMS–FV–07–0029; FV07–925–2 FR]**

## Grapes Grown in a Designated Area of Southeastern California; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the California Desert Grape Administrative Committee (committee) for the 2007 and subsequent fiscal periods from $0.0175 to $0.0200 per 18-pound lug of grapes handled. The committee locally administers the marketing order, which regulates the handling of grapes grown in a designated area of southeastern California. Assessments upon desert grape handlers are used by the committee to fund reasonable and necessary expenses of the program. The fiscal period began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** July 11, 2007.

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Program Analyst, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or e-mail: *Toni.Sasselli@usda.gov* or *Kurt.Kimmel@usda.gov.*

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

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 925, both as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This rule increases the assessment rate established for the committee for the 2007 and subsequent fiscal periods from $0.0175 to $0.0200 per 18-pound lug of grapes.

The California grape marketing order provides authority for the committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the committee are producers and handlers of California grapes. They are familiar with the committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2005 and subsequent fiscal periods, the committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The committee met on February 6, 2007, and unanimously recommended expenditures of $160,768 and an assessment rate of $0.0200 per 18-pound lug of grapes for the 2007 fiscal period. In comparison, last year's budgeted expenditures were $131,318. The assessment rate of $0.0200 is $0.0025 higher than the rate currently in effect. The increased assessment rate is needed to permit the committee to fund a research project on Vineyard Mealy Bugs and to ensure that an adequate carryover of reserve funds is available for the 2008 fiscal year.

The major expenditures recommended by the committee for the 2007 fiscal period include $18,000 for research, $5,000 for compliance activities, $109,068 for salaries and payroll expenses, and $28,700 for other expenses. In comparison, budgeted expenses for these items in 2006 were $5,000 for compliance activities, $103,668 for salaries and payroll expenses, and $22,650 for other expenses. The committee did not budget for research projects in 2006.

The assessment rate recommended by the committee was derived by subtracting the committee's total available funds from their anticipated 2007 expenses and dividing the remainder by the estimated 2007 shipments. The total anticipated 2007

expenses are $160,768, and the desired ending reserve is $39,432. The available carry-in funds are $70,000, and the anticipated interest income is $200. The 2007 estimated shipments are 6.5 million 18-pound lugs.

Based on this calculation, (($160,768 + $39,432) − ($70,000 + $200)) ÷ 6.5 million = $0.0200, the $0.0200 assessment rate will provide sufficient funds to meet anticipated expenses of $160,768 and will allow for an adequate December 2007 ending reserve of $39,432. Thus, the December 2007 ending reserve will be kept within the maximum permitted by the order, approximately one fiscal period's expenses, as required under 925.41 of the order. It will also be adequate to cover early-season (2008) expenses before assessment income is received.

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

Although this assessment rate will be in effect for an indefinite period, the committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The committee's 2007 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

**Final Regulatory Flexibility Analysis**

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

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

There are approximately 50 producers of grapes in the production area and approximately 20 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts less than $750,000 and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000.

Last year, six of the 20 handlers subject to regulation had annual grape sales of at least $6,500,000. In addition, 10 of the 50 producers had annual sales of at least $750,000. Therefore, a majority of handlers and producers may be classified as small entities.

This rule increases the assessment rate established for the committee and collected from handlers for the 2007 and subsequent fiscal periods from $0.0175 to $0.0200 per 18-pound lug of grapes. The committee unanimously recommended expenditures of $160,768 and an assessment rate of $0.0200 per 18-pound lug of grapes for the 2007 fiscal period. The proposed assessment rate of $0.0200 is $0.0025 higher than the 2006 rate. The number of assessable grapes is estimated at 6.5 million 18-pound lugs. Thus, the $0.0200 rate should provide $130,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the committee's authorized carry-in reserve should be adequate to cover budgeted expenses.

The major expenditures recommended by the committee for the 2007 fiscal period include $18,000 for research, $5,000 for compliance activities, $109,068 for salaries and payroll expenses, and $28,700 for other expenses. In comparison, budgeted expenses for these items in 2006 were $5,000 for compliance activities, $103,668 for salaries and payroll expenses, and $22,650 for other expenses. The committee did not budget for research projects in 2006.

The committee reviewed and unanimously recommended 2007 expenditures of $160,768, which included an increase due to a new research project. Prior to arriving at this budget, the committee considered alternative expenditure and assessment rate levels, but ultimately decided that the recommended levels were reasonable to properly administer the order.

The assessment rate recommended by the committee was derived by the following formula: Anticipated expenses ($160,768) plus desired 2007 ending reserve ($39,432), minus the 2007 beginning reserve ($70,000) and the anticipated interest income ($200), divided by total shipments (6.5 million 18-pound lugs), equals the recommended assessment rate ($0.0200 per 18-pound lug).

This rate will provide sufficient funds in combination with interest and reserve funds to meet the anticipated expenses of $160,768 and result in a December 2007 ending reserve of $39,432, which is acceptable to the committee. Thus, the December 2007 ending reserve will be kept within the maximum permitted by the order, approximately one fiscal period's expense, as required under § 925.41 of the order.

A review of historical information and preliminary information pertaining to the 2007 fiscal period indicates that the on-vine grower price for the season could range between $5.00 and $9.00 per 18-pound lug of grapes. Therefore, the estimated assessment revenue for the 2007 fiscal period as a percentage of total grower revenue could range between 0.2 and 0.4 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order.

In addition, the committee's meeting was widely publicized throughout the grape production area and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the February 6, 2007, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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

A proposed rule concerning this action was published in the **Federal Register** on May 3, 2007 (72 FR 24551). Copies of the proposed rule were provided to all grape handlers, and handlers were invited to submit

comments at a California Desert Grape Administrative Committee meeting on May 9, 2007. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending June 4, 2007, was provided for interested persons to respond to the proposal. No comments were received.

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

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

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2007 fiscal period began on January 1, 2007, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable grapes handled during such period; (2) the industry has been shipping grapes since April 2007; (3) the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (4) handlers are aware of this action which was unanimously recommended by the committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 30-day comment period was provided for in the proposed rule.

**List of Subjects in 7 CFR Part 925**

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

## PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

■ 1. The authority citation for 7 CFR part 925 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 925.215 is revised to read as follows:

**§ 925.215 Assessment rate.**

On and after January 1, 2007, an assessment rate of $0.0200 per 18-pound lug is established for grapes grown in a designated area of southeastern California.

Dated: July 5, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E7–13342 Filed 7–9–07; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. NM359; Special Conditions No. 25–358–SC]**

## Special Conditions: Boeing Model 737 Series Airplanes; Seats With Non-Traditional, Large, Non-Metallic Panels

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for Boeing Model 737 series airplanes. These airplanes will have a novel or unusual design feature(s) associated with seats that include non-traditional, large, non-metallic panels that would affect survivability during a post-crash fire event. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**EFFECTIVE DATE:** The effective date of these special conditions is August 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** Alan Sinclair, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2195; facsimile (425) 227–1232; electronic mail *alan.sinclair@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Future Requests for Installation of Seats With Non-Traditional, Large, Non-Metallic Panels

We anticipate that seats with non-traditional, large, non-metallic panels will be installed in other makes and models of airplanes. We have made the determination to require special conditions for all applications requesting the installation of seats with non-traditional, large, non-metallic panels until the airworthiness requirements can be revised to address this issue. Having the same standards across the range of airplane makes and models will ensure a level playing field for the aviation industry.

### Background

On August 8, 2005, Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124, applied for a design change to Type Certificate No. A16WE for installation of seats that include non-traditional, large, non-metallic panels in Boeing Model 737–700 series airplanes. The Boeing Model 737 series airplanes, currently approved under Type Certificate No. A16WE, are swept-wing, conventional-tail, twin-engine, turbofan-powered, single aisle, medium sized transport category airplanes.

The applicable regulations for airplanes currently approved under Type Certificate No. A16WE do not require seats to meet the more stringent flammability standards required of large, non-metallic panels in the cabin interior. At the time the applicable rules were written, seats were designed with a metal frame covered by fabric, not with large, non-metallic panels. Seats also met the then recently adopted standards for flammability of seat cushions. With the seat design being mostly fabric and metal, the contribution to a fire in the cabin had been minimized and was not considered a threat. For these reasons, seats did not need to be tested to heat release and smoke emission requirements.

Seat designs have now evolved to occasionally include non-traditional, large, non-metallic panels. Taken in total, the surface area of these panels is on the same order as the sidewall and overhead stowage bin interior panels. To provide the level of passenger protection intended by the airworthiness standards, these non-traditional, large, non-metallic panels in the cabin must meet the standards of Title 14 Code of Federal Regulations (CFR), part 25, Appendix F, parts IV and V, heat release and smoke emission requirements.

### Type Certification Basis

Under the provisions of 14 CFR 21.101, Boeing must show that the Model 737 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A16WE, or the applicable

regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A16WE are as follows: Title 14 CFR part 25, as amended by Amendment 25–1 through Amendment 25–15, for the Models 737–200, –200C, –300, –400, and –500. Title 14 CFR part 25, as amended by Amendment 25–1 through Amendment 25–77, for the Models 737–600, –700, and –800, with the exceptions listed: Section 25.853(d)(3), Compartment interiors, at Amendment 25–72; and equivalent safety findings, § 25.853(f), Compartment interiors. Title 141 CFR part 25, as amended by Amendment 25–1 through Amendment 25–91, for the Models 737–700C and –900, with the exceptions listed: Section 25.853(d)(3), Compartment interiors, at Amendment 25–72; and equivalent safety findings, § 25.853(f), Compartment interiors. Title 14 CFR part 25, as amended by Amendment 25–1 through Amendment 25–108, for the models 737–900ER, with the exceptions listed: Section 25.853(d)(3), Compartment interiors, at Amendment 25–72; and equivalent safety findings, Section 25.853(f), Compartment interiors.

In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 737 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 737 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions as defined in § 11.19, under § 11.38, and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

**Novel or Unusual Design Features**

The Boeing Model 737 series airplanes will incorporate the following novel or unusual design features: These models offer interior arrangements that include passenger seats that incorporate non-traditional, large, non-metallic panels in lieu of the traditional metal frame covered by fabric. The flammability properties of these panels have been shown to significantly affect the survivability of the cabin in the case of fire. These seats are considered a novel design for transport category airplanes that include Amendment 25–61 and Amendment 25–66 in the certification basis, and were not considered when those airworthiness standards were established.

The existing regulations do not provide adequate or appropriate safety standards for seat designs that incorporate non-traditional, large, non-metallic panels in their designs. In order to provide a level of safety that is equivalent to that afforded to the balance of the cabin, additional airworthiness standards, in the form of special conditions, are necessary. These special conditions supplement § 25.853. The requirements contained in these special conditions consist of applying the identical test conditions required of all other large panels in the cabin, to seats with non-traditional, large, non-metallic panels.

**Definition of ''Non-Traditional, Large, Non-Metallic Panel''**

A non-traditional, large, non-metallic panel, in this case, is defined as a panel with exposed-surface areas greater than 1.5 square feet installed per seat place. The panel may consist of either a single component or multiple components in a concentrated area. Examples of parts of the seat where these non-traditional panels are installed include, but are not limited to: Seat backs, bottoms and leg/foot rests, kick panels, back shells, credenzas and associated furniture.

Examples of traditional exempted parts of the seat include: Arm caps, armrest close-outs such as end bays and armrest-styled center consoles, food trays, video monitors and shrouds.

**Clarification of ''Exposed''**

''Exposed'' is considered to include those panels directly exposed to the passenger cabin in the traditional sense, plus those panels enveloped such as by a dress cover. Traditional fabrics or leathers currently used on seats are excluded from these special conditions. These materials must still comply with § 25.853(a) and § 25.853(c) if used as a covering for a seat cushion, or § 25.853(a) if installed elsewhere on the seat. Non-traditional, large, non-metallic panels covered with traditional fabrics or leathers will be tested without their coverings or covering attachments.

**Discussion**

In the early 1980s the FAA conducted extensive research on the effects of post-crash flammability in the passenger cabin. As a result of this research and service experience, we adopted new standards for interior surfaces associated with large surface area parts. Specifically, the rules require measurement of heat release and smoke emission (part 25, Appendix F, parts IV and V) for the affected parts. Heat release has been shown to have a direct correlation with post-crash fire survival time. Materials that comply with the standards (i.e., § 25.853 entitled ''Compartment interiors,'' as amended by Amendment 25–61 and Amendment 25–66), extend survival time by approximately 2 minutes, over materials that do not comply.

At the time these standards were written, the potential application of the requirements of heat release and smoke emission to seats was explored. The seat frame itself was not a concern because it was primarily made of aluminum and there were only small amounts of non-metallic materials. It was determined that the overall effect on survivability was negligible, whether or not the food trays met the heat release and smoke requirements. The requirements therefore did not address seats. The preambles to both the Notice of Proposed Rule Making (NPRM), Notice No. 85–10 (50 FR 15038, April16, 1985) and the Final Rule at Amendment 25–61 (51 FR 26206, July 21, 1986), specifically note that seats were excluded ''because the recently-adopted standards for flammability of seat cushions will greatly inhibit involvement of the seats.''

Subsequently, the Final Rule at Amendment 25–83 (60 FR 6615, March 6, 1995) clarified the definition of minimum panel size: ''It is not possible to cite a specific size that will apply in all installations; however, as a general rule, components with exposed-surface areas of one square foot or less may be considered small enough that they do not have to meet the new standards. Components with exposed-surface areas greater than two square feet may be considered large enough that they do have to meet the new standards. Those

with exposed-surface areas greater than one square foot, but less than two square feet, must be considered in conjunction with the areas of the cabin in which they are installed before a determination could be made.''

In the late 1990s, the FAA issued Policy Memorandum 97–112–39, *Guidance for Flammability Testing of Seat/Console Installations*, October 17, 1997 (*http://rgl.faa.gov*). That memo was issued when it became clear that seat designs were evolving to include large non-metallic panels with surface areas that would impact survivability during a cabin fire event, comparable to partitions or galleys. The memo noted that large surface area panels must comply with heat release and smoke emission requirements, even if they were attached to a seat. If the FAA had not issued such policy, seat designs could have been viewed as a loophole to the airworthiness standards that would result in an unacceptable decrease in survivability during a cabin fire event.

In October of 2004, an issue was raised regarding the appropriate flammability standards for passenger seats that incorporated non-traditional, large, non-metallic panels in lieu of the traditional metal covered by fabric. The Seattle Aircraft Certification Office and Transport Standards Staff reviewed this design and determined that it represented the kind and quantity of material that should be required to pass the heat release and smoke emissions requirements. We have determined that special conditions would be promulgated to apply the standards defined in 14 CFR 25.853(d) to seats with large, non-metallic panels in their design.

**Discussion of Comments**

Notice of proposed special conditions No. 25–06–13–SC, pertaining to Boeing Model 737 series airplanes, was published in the **Federal Register** on November 9, 2006. Comments were received from Air Tran, Airbus, B/E Aerospace, Boeing, Delta Engineering, the International Coordinating Council of Aerospace Industries Associations (ICCAIA), KLM, and Weber Aircraft LP.

**Special Conditions Are Not the Appropriate Means To Establish These Requirements**

Airbus, Boeing, Delta Engineering, ICCAIA, and Weber suggested that the proposed special conditions were not the appropriate way to establish these requirements. These commenters suggested that either the seat technical standard order (TSO) be revised to include the requirements, or that formal rulemaking activity take place to amend Title 14 CFR part 25.

The commenters stated that including the requirements in either the seat TSO or an amendment to part 25 would ensure that the requirements were applied equally and consistently throughout the FAA and industry. Airbus stated that if the requirements were located in the seat TSO it would reduce the overall administrative burden by requiring a single showing of compliance for a given seat design that may be installed in different types of airplanes.

*FAA Response:* We believe that including these requirements in the context of special conditions is appropriate. The proliferation of the use of large, non-metallic panels in the construction of seats has created a need to issue special conditions to maintain the current level of safety. Special conditions are the best way of introducing these requirements until we determine it is necessary to amend part 25 through the rulemaking process. Also, seats are not required to follow guidance in a TSO to be eligible for installation on an airplane. Furthermore, the proposed TSO C127b includes these standards as optional criteria.

**Request To Add Airplane Models to the Applicability**

Air Trans, Boeing, Delta Engineering, ICCAIA, and Weber all suggested that the applicability of the proposed special conditions be expanded and not limited to only Boeing Model 737 series airplanes. The commenters noted that other airplane models certified under 14 CFR part 25 include the same design features identified as ''novel or unusual'' on Boeing Model 737 series airplanes.

*FAA Response:* We agree that many other airplane models certified under 14 CFR part 25 include ''novel or unusual'' design features similar to those on Boeing Model 737 series airplanes. We are developing model-specific special conditions for all transport category airplanes operating under part 121 regulations. We will continue to issue special conditions regarding this subject until part 25 is formally amended through the rulemaking process. If part 25 is amended, these requirements will have general applicability instead of model-specific applicability. We are currently using a similar approach for high intensity radiated fields (HIRF) special conditions. The HIRF special conditions will continue to be issued on a model-specific basis until part 25 is amended to include regulations applicable to HIRF.

**Request To Add Airplanes Operating Under Part 129 to the Applicability**

Delta Engineering questioned why the proposed special conditions would be applicable to airplanes operated under 14 CFR part 121 and would not be applicable to airplanes operated under 14 CFR part 129. Delta Engineering provided the example of an airplane with a foreign registration. Per the applicability of the proposed special conditions, the requirements of the proposed special conditions would not be applicable because the airplane would be operated in compliance with part 129 operating rules instead of part 121 operating rules.

*FAA Response:* As discussed previously, our intent in adopting these special conditions is to apply them to airplanes that are already required to comply with the smoke and heat release requirements adopted in Amendment 25–61 and Amendment 25–66. Model 737 airplanes with this amendment in their certification basis * are subject to these special conditions, regardless of the operational regulatory parts under which they are operated. Certain other airplanes operated under part 121 are also subject to these requirements as a result of § 121.312, as amended by Amendment 121–189, even if their certification basis does not include Amendment 25–61. However, airplanes with a certification basis preceding Amendment 25–61 and not subject to § 121.312 are not required to comply either with § 25.853 or with these special conditions.

**Request To Clarify the Effects of the Proposed Special Conditions on the Existing Fleet**

Air Trans and KLM expressed concern that the requirements in the proposed special conditions would be retroactive and affect the existing airplane fleet or follow-on deliveries of airplanes with previously certified interiors.

*FAA Response:* We have added a new special condition 4 in these special conditions to clarify that only airplanes associated with new seat certification programs will be affected by the requirements in these special conditions. Previously certificated interiors on the existing airplane fleet and follow-on deliveries of airplanes with previously certificated interiors will not be affected.

* Model 737–600, –700, –700C, –800, and –900 as of the effective date of these special conditions.

**Request for Justification Regarding Selection of Materials and Quantitative Limits**

Air Tran, B/E Aerospace, and Weber questioned how 1.5 square feet became the maximum area of non-metallic material per seat. B/E stated that the proposed special conditions need further review because the exclusion does not adequately address items traditionally mounted on seat backs. B/E specifically asked if large video monitors would have to comply when installed in seat backs or large, non-metallic panels.

Weber stated that the proposed special conditions include many exclusions based on the size and location of material. Weber also stated that the quantitative limits for these exclusions do not appear to be based on data. Weber suggested that the proposed special conditions be revised to include justification for the quantitative limits. Furthermore, Weber stated that due to the number of passenger places, First Class seats are limited to a much smaller amount of non-compliant material than Tourist Class seats, despite the fact that there are fewer First Class seats per area of the passenger cabin. Larger seats with fewer passenger places should not have lower quantitative limits on non-compliant material.

Weber also stated that, based on observation of airplane cabins and the amount of materials in a seat design, the following statement in the proposed special conditions is incorrect: ''Seat designs have now evolved to occasionally include non-traditional, large, non-metallic panels. Taken in total, the surface area of these panels is on the same order as the sidewall and overhead stowage bin interior panels.''

*FAA Response:* In 1993, the FAA published a report (DODT/FAA/CT–TN93–13) documenting the results of full-scale testing using panels on seats that did, or did not, comply with heat release and smoke emissions requirements. Those test results showed that limited quantities of material on seats that did not meet heat release and smoke emissions requirements did not raise a safety issue. Amendment 25–83 states that, based on this testing, components with exposed-surface areas greater than one square foot, but less than two square feet, must be considered in conjunction with the areas of the cabin in which they are installed before a determination can be made regarding whether or not they have to meet the heat release and smoke density regulations. Based on that information we determined that 1.5 feet of non-metallic material per seat is appropriate.

In response to B/E Aerospace's comment, video monitor installations are not affected by these special conditions. There are existing flammability regulations that cover those installations.

In response to Weber's comment regarding the size limitations, as noted above, we believe that the quantitative limits are justified. These size limitations are consistent with full-scale test data and the design criteria developed at the time Amendment 25–61 was adopted. Also, these size limitations were considered during the rulemaking process for Amendment 25–61.

In response to Weber's comment regarding our statement that the surface areas of some seat installations are equivalent to the amount of material in sidewall and overhead stowage bin interior panels, in our review of applicants' proposed furnishings for passenger cabin installations, we have noticed an increase in the use of large, non-metallic material in proposed seating configurations. Based on those reviews, we believe that our statement is correct.

**Request To Revise the Type Certification Basis Section**

Boeing noted that the amendment levels for some of the airplanes were incorrectly cited in the Type Certification Basis section of the proposed special conditions.

*FAA Response:* We have revised the Type Certification Basis section to incorporate Boeing's recommended changes.

**Request for Clarification of the Testing Method in the ''Clarification of Exposed'' Paragraph**

B/E Aerospace asked if the non-traditional, large, non-metallic panels covered with traditional fabrics or leathers could be tested without the dress cover. Boeing suggested that the words ''or method of covering attachment'' be added in the last sentence of the ''Clarification of Exposed'' paragraph.

*FAA Response:* We agree to revise the last sentence of the ''Clarification of Exposed'' paragraph to address B/E Aerospace's question and incorporate Boeing's suggestion. In these special conditions that sentence now states ''Non-traditional, large, non-metallic panels covered with traditional fabrics or leathers will be tested without their coverings or covering attachments.''

**Request for Clarification Regarding Fabric and Thermoplastic Panels**

Airbus requested that the FAA provide information regarding whether or not fabric covered panels are less threatening than thermoplastic ones. No justification was provided for this request.

*FAA Response:* The standards for using fabric, thermoplastic, and leather have been previously established and are applied separately.

**Request for a Better Description of Traditional and Non-Traditional Areas/Furnishings**

Airbus requested a better description of the console size in the ''Definition of 'Non-Traditional, Large, Non-Metallic Panel' '' paragraph of the proposed special conditions. Airbus noted that in the proposed special conditions ''Center Consoles'' are listed as ''traditional exempted areas.'' Airbus stated that this may be true for small consoles that ''* * * do not protrude the standard seat cushion geometries. However, it is understood that large consoles (which do also divide the forward legroom) are expected to comply with HRR/SD [heat release and smoke density] criteria.'' Airbus suggested that this issue should be clarified because FAA Memorandum 97–112–39, *Guidance for Flammability Testing of Seat/Console Installations,* addresses those larger, separate consoles.

B/E Aerospace stated that the definition of non-traditional areas was not adequate and asked about seat backs, seat bottoms, and kick panels. This commenter also asked if fire blocking material is considered a traditional fabric.

*FAA Response:* We agree and have revised this paragraph to include ''credenzas'' as an additional example of non-traditional areas and ''armrest-styled center consoles'' as an additional example of traditionally exempted areas. In this final special condition the revised sentences appear as follows: ''Examples of nontraditional areas include, but are not limited to: seat backs, bottoms and leg/foot rests, kick panels, back shells, credenzas and associated furniture. Examples of traditional exempted areas include: arm caps, armrest close-outs such as end bays and armrest-styled center consoles, food trays, video monitors and shrouds.''

**Request for Additional Testing by the FAA**

Airbus, Delta Engineering, ICCAIA, and KLM commented that the FAA should conduct additional testing prior

to implementing the proposed special conditions. Airbus and KLM provided similar statements that tests with different amounts of non-traditional, large, non-metallic panels on seats have never been performed to evaluate to what extent the increase in the flammability standard of those seat parts might influence fire safety. ICCAIA stated that the FAA should perform testing to confirm the benefit of issuing the proposed special conditions. ICCAIA noted that seat back shells may be made from parts created from a combination of different materials and sizes. As a result, application of the proposed special conditions would result in multiple tests to determine if the seat back shells were compliant, and the test results would be open to interpretation.

Delta Engineering stated that the proposed special condition does not provide information regarding the smoke density and heat release aspects of traditional seat components and that, through testing, the FAA should establish the safety gains related to having the large composite panel compliant with the existing heat release and smoke density requirements. This commenter also stated that the smoke emissions from the seat cushion foam may negate any safety gain related to having the large composite panel compliant with smoke density requirements. In addition, this commenter also questioned whether the FAA conducted extensive testing to confirm that the regulatory standards now being applied to passenger seats are compatible with the requirements in the proposed special conditions.

*FAA Response:* As stated in the proposed special conditions, the FAA has conducted extensive research on the effects of post-crash flammability in the passenger cabin. As a result of that research, combined with service experience, we adopted new airworthiness standards for interior surfaces associated with large surface area parts. The proliferation of the use of large, non-metallic panels in the construction of seats was not anticipated when those airworthiness standards were issued. This increased use of large, non-metallic panels in seating configurations has created a need to issue special conditions to provide the level of passenger protection intended by those airworthiness standards. Seat cushion standards are a separate consideration and were taken into account when these special conditions were created.

Furthermore, testing is not required to issue special conditions. The basis for issuing special conditions is that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for a ''novel or unusual'' design feature.

**Request for a Cost-Benefit Analysis**

Airbus, B/E Aerospace, ICCAIA, and Weber noted that the proposed special conditions did not include a cost-benefit analysis to support the proposed requirements. Airbus suggested that a cost-benefit analysis should be done through the traditional rulemaking process. ICCAIA stated that the cost-benefit analysis should be conducted because the requirements in the proposed special conditions would be applied to other airplane makes and models. B/E Aerospace and Weber provided similar statements regarding the cost impact to seat manufacturers. Those commenters stated that compliant material is limited and expensive. Weber also stated that significant time and costs would be involved in modifying current designs and developing new materials to comply with the proposed special conditions.

*FAA Response:* When Amendment 25–61 went through the formal rulemaking process a formal economic regulatory analysis was provided. These special conditions effectively serve to maintain the benefits achieved in that amendment by providing an equivalent level of safety for the novel or unusual design feature described earlier. Under Executive Order 12866, these analyses are required only for rules of general applicability. A cost-benefit analysis is not part of the process for proposing special conditions, which apply only to a specified type certificate and are not rules of general applicability.

**Request To Clarify the Effective Date of the Proposed Special Conditions**

Air Trans and Boeing both commented on the effective date of the proposed special conditions. Air Trans stated that the proposed special conditions did not include an effective date. Boeing commented that these proposed special conditions should not be applicable upon publication and should not be applicable to the first delivered Model 737–900ER airplane. Boeing noted that it typically takes at least one year for seat manufacturers to incorporate major design changes, such as those required in the proposed special conditions.

*FAA Response:* In response to Air Trans' statement, under standard practice, the effective date of final special conditions is 30 days after the date of publication in the **Federal Register**. These special conditions follow this practice and will be applicable to all type design changes that include new seat approvals applied for after the effective date of these special conditions.

In response to Boeing's comment, as stated previously, the issue regarding large, non-metallic seats is a long standing one and has generated many discussions between the FAA and the aviation industry. Through the Seattle Aircraft Certification Office the FAA has made Boeing aware of the requirements in these special conditions. Since the time the proposed special conditions were published for public comment, the first Boeing Model 737–900ER airplane was delivered; therefore, these special conditions are not applicable to the approved arrangement on that airplane.

**Request To Extend the Public Comment Period**

Boeing requested that the public comment period for the proposed special conditions be extended from 20 days to 60 days. Boeing stated that the proposed special conditions would require significant design changes to seat components. Airframe and seat manufacturers would need to assess the economic impact of the proposed special conditions and communicate that information to the FAA.

*FAA Response:* The subject of large, non-metallic seat panels is a long standing issue between the FAA and the aviation industry. We have had ongoing discussions with industry representatives in an effort to work out a solution, and the results of these discussions are reflected in these special conditions. We do not agree that an extension to the public comment period is needed or would result in further changes to these special conditions.

Except as noted above, these special conditions are adopted as proposed.

**Applicability**

As discussed above, these special conditions are applicable to Boeing Model 737 series airplanes. Should Boeing apply at a later date for a change to the type certificate to include another model on the same type certificate incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Seats do not have to meet these special conditions when installed in compartments that are not otherwise required to meet the test requirements of Title 14 CFR part 25, Appendix F, parts IV and V. For example, airplanes that do not have § 25.853, Amendment 25–61 or later, in their certification basis and those airplanes that do not need to comply with the requirements of 14 CFR 121.312.

Only airplanes associated with new certification programs applied for after the effective date of these special conditions will be affected by the requirements in these special conditions. The existing airplane fleet and follow-on deliveries of airplanes with previously certified interiors are not affected.

### Conclusion

This action affects only certain novel or unusual design features on Boeing Model 737 series airplanes. It is not a rule of general applicability.

### List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

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

### The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 737 series airplanes.

1. Except as provided in paragraph 3 of these special conditions, compliance with Title 14 CFR part 25, Appendix F, parts IV and V, heat release and smoke emission, is required for seats that corporate non-traditional, large, non-metallic panels that may either be a single component or multiple components in a concentrated area in their design.

2. The applicant may designate up to and including 1.5 square feet of non-traditional, non-metallic panel material per seat place that does not have to comply with special condition Number 1, above. A triple seat assembly may have a total of 4.5 square feet excluded on any portion of the assembly (*e.g.*, outboard seat place 1 square foot, middle 1 square foot, and inboard 2.5 square feet).

3. Seats do not have to meet the test requirements of Title 14 CFR part 25, Appendix F, parts IV and V, when installed in compartments that are not otherwise required to meet these requirements. Examples include:

a. Airplanes with passenger capacities of 19 or less,

b. Airplanes that do not have § 25.853, Amendment 25–61 or later, in their certification basis and are not subject to the requirements of 14 CFR 121.312, and

c. Airplanes exempted from § 25.853, Amendment 25–61 or later.

4. Only airplanes associated with new seat certification programs applied for after the effective date of these special conditions will be affected by the requirements in these special conditions. Previously certificated interiors on the existing airplane fleet and follow-on deliveries of airplanes with previously certificated interiors are not affected.

Issued in Renton, Washington, on June 29, 2007.

**Stephen P. Boyd,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 07–3339 Filed 7–9–07; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

**[Docket No. FAA–2006–25852; Airspace Docket No. 06–AAL–29]**

## 14 CFR Part 71

## Modification to the Norton Sound Low, Woody Island Low, Control 1234L, and Control 1487L Offshore Airspace Areas; Alaska

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects errors in the legal description contained in a Final Rule that was published in the **Federal Register** on Friday, June 8, 2007 (72 FR 31714), Airspace Docket No. 06–AAL–29, FAA Docket No. FAA–2006–25852.

**EFFECTIVE DATE:** 0901 UTC, August 30, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### History

On Friday, June 8, 2007 a final rule for Airspace Docket No. 06–AAL–29, FAA Docket No. FAA–2006–25852, was published in the **Federal Register** (72 FR 31714). This rule modified Class E Offshore Airspace in southwest Alaska. Several errors were discovered in the Control 1234L Offshore Airspace area description. The first requires further controlled airspace described around the Sand Point Airport. The next is a duplication of the Eareckson Air Force Station description, followed by two incorrect designations for West Longitude. This action corrects these errors.

### Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the airspace description of the Class E airspace published in the **Federal Register** on Friday, June 8, 2007 (72 FR 31714), Airspace Docket No. 06–AAL–29, FAA Docket No. FAA–2006–25852, is corrected as follows:

## PART 71—[AMENDED]

**§ 71.1 [Amended]**

■ On page 31716, column 1, correct the legal description for Control 1234L to read as follows:

*Paragraph 6007 Offshore Airspace Areas.*

* * * * *

**Control 1234L**

That airspace extending upward from 2,000 feet above the surface within an area bounded by a line beginning at lat. 58°06′57″ N., long. 160°00′00″ W., then south along long. 160°00′00″ W. until it intersects the Anchorage Air Route Traffic Control Center (ARTCC) boundary; then southwest, northwest, north, and northeast along the Anchorage ARTCC boundary to lat. 62°35′00″ N., long. 175°00′00″ W., to lat. 59°59′57″ N., long. 168°00′08″ W., to lat. 57°45′57″ N., long. 161°46′08″ W., to the point of beginning; and that airspace extending upward from the surface within a 4.6-mile radius of Cold Bay Airport, AK, and within 1.7 miles each side of the 150° bearing from Cold Bay Airport, AK, extending from the 4.6-mile radius to 7.7 miles southeast of Cold Bay Airport, AK, and within 3 miles west and 4 miles east of the 335° bearing from Cold Bay Airport, AK, extending from the 4.6-mile radius to 12.2 miles northwest of Cold Bay Airport, AK and that airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Eareckson Air Station, AK, and within a 7-mile radius of Adak Airport, AK, and within 5.2 miles northwest and 4.2 miles southeast of the 061° bearing from the Mount Moffett NDB, AK, extending from the 7-mile radius of Adak Airport, AK, to 11.5 miles northeast of Adak Airport, AK and within a 6.5-mile radius of King Cove Airport, and that airspace extending 1.2 miles either side of the 103° bearing from King Cove Airport from the 6.5-mile radius out to 8.8 miles; and within a 6.4-mile radius of the Atka Airport, AK, and within a 6.3-mile radius of Nelson Lagoon Airport, AK and within a 6.4-mile radius of Sand Point Airport, AK, and within 3 miles each side of the 172° bearing from the Borland NDB/DME, AK, extending from the 6.4-mile radius of Sand Point Airport, AK, to 13.9 miles south of Sand Point Airport, AK, and within 5 miles either side of the 318° bearing from the Borland NDB/DME, AK,

extending from the 6.4-mile radius of Sand Point Airport, AK, to 17 miles northwest of Sand Point Airport, AK, and within 5 miles either side of the 324° bearing from the Borland NDB/DME, AK, extending from the 6.4-mile of the Sand Point Airport, AK to 17 miles northwest of the Sand Point Airport, AK. Mile radius, and within a 6.6-mile radius of St. George Airport, AK, and within an 8-mile radius of St. Paul Island Airport, AK, and 8 miles west and 6 miles east of the 360° bearing from St. Paul Island Airport, AK, to 14 miles north of St. Paul Island Airport, AK, and within 6 miles west and 8 miles east of the 172° bearing from St. Paul Island Airport, AK to 15 miles south of Paul Island Airport, AK, and within a 6.4-mile radius of Unalaska Airport, AK, and within 2.9 miles each side of the 360° bearing from the Dutch Harbor NDB, AK, extending from the 6.4-mile radius of Unalaska Airport, AK, to 9.5 miles north of Unalaska Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 26.2-mile radius of Eareckson Air Station, AK, within an 11-mile radius of Adak Airport, AK, and within 16 miles of Adak Airport, AK, extending clockwise from the 033° bearing to the 081° bearing from the Mount Moffett NDB, AK, and within a 10-mile radius of Atka Airport, AK, and within a 10.6-mile radius from Cold Bay Airport, AK, and within 9 miles east and 4.3 miles west of the 321° bearing from Cold Bay Airport, AK, extending from the 10.6-mile radius to 20 miles northwest of Cold Bay Airport, AK, and 4 miles each side of the 070° bearing from Cold Bay Airport, AK, extending from the 10.6-mile radius to 13.6 miles northeast of Cold Bay Airport, AK, and west of 160°W. longitude within an 81.2-mile radius of Perryville Airport, AK, and within a 10-mile radius of St. George Airport, AK, and within a 73-mile radius of St. Paul Island Airport, AK, and within a 20-mile radius of Unalaska Airport, AK, extending clockwise from the 305° bearing from the Dutch Harbor NDB, AK, to the 075° bearing from the Dutch Harbor NDB, AK, and west of 160°W. longitude within a 25-mile radius of the Borland NDB/DME, AK, and west of 160°W longitude within a 72.8-mile radius of Chignik Airport, AK.

* * * * *

Issued in Washington, DC, on June 28, 2007.

**Edith V. Parish,**

*Manager, Airspace and Rules Group.*

[FR Doc. E7–13222 Filed 7–9–07; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket FAA No. FAA–2006–24926; Airspace Docket No. 06–ASW–1]**

### Establishment, Modification and Revocation of VOR Federal Airways; East Central United States

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects a final rule published in the **Federal Register** June 15, 2007 (72 FR 33151), Airspace Docket No. 06–ASW–1, FAA Docket No. FAA–2006–24926. In that rule, an error was made in the legal description for VOR Federal Airway V–65. Specifically, the description omitted the words ''Sandusky, OH''. This action corrects that error.

**EFFECTIVE DATE:** 0901 UTC, August 30, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Steve Rohring, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

#### History

On June 15, 2007, a final rule for Airspace Docket No. 06–ASW–1, FAA Docket No. FAA–2006–24926 was published in the **Federal Register** (72 FR 33151), establishing VOR Federal Airway V–65 over the East Central United States. The legal description for V–65 was incorrect in that a reference to the Sandusky, OH, VORTAC was omitted. The correct legal description should contain the words ''Sandusky, OH''. This action corrects that error.

#### Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the legal description as published in the **Federal Register** on June 15, 2007 (72 FR 33151), Airspace Docket No. 06–ASW–1, FAA Docket No. FAA–2006–24926, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

**§ 71.1 [Amended]**

■ On page 33152, correct the legal description for V–65, to read as follows:

*Paragraph 6010 VOR Federal Airways.*

* * * * *

**V–65 [Corrected]**

From DRYER, OH; Sandusky, OH; INT Sandusky 288° and Carleton, MI 157° radials; to Carleton.

* * * * *

Issued in Washington, DC, on July 2, 2007.

**Edith V. Parish,**

*Manager, Airspace and Rules Group.*

[FR Doc. E7–13209 Filed 7–9–07; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM06–7–001; Order No. 686–A]**

### 18 CFR Part 157

### Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates

Issued June 22, 2007.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule; order on rehearing and clarification.

**SUMMARY:** On October 19, 2006, the Commission issued a Final Rule amending its regulations to expand the scope and scale of activities that may be undertaken pursuant to blanket certificate authority and clarifying that existing Commission policies permit natural gas companies to charge different rates to different classes of customers. The revised regulations allow interstate natural gas pipelines to employ the streamlined blanket certificate procedures for larger projects and for a wider variety of types of projects, thereby increasing efficiencies, and decreasing time and costs, associated with the construction and maintenance of the nation's natural gas infrastructure. The Commission grants in part, and denies in part, requests for rehearing and clarification of the Final Rule.

**DATES:** The amendments in this final rule are effective August 9, 2007, except that the amendment to § 157.206 (b)(5)(i) is effective November 7, 2007. Requests for clarification are granted and denied, and requests for rehearing are denied, effective August 9, 2007. The request for rehearing with respect to the measurement of compressor noise is granted, effective November 7, 2007.

**FOR FURTHER INFORMATION CONTACT:** Gordon Wagner, Office of the General

Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *gordon.wagner@ferc.gov*, (202) 502–8947. Michael McGehee, Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *michael.mcgehee@ferc.gov*, (202) 502–8962.

Lonnie Lister, Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *lonnie.lister@ferc.gov*, 202–502–8587.

**SUPPLEMENTARY INFORMATION:** Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Mark Spitzer, Phillip D. Moeller, and John Wellinghoff.

## I. Introduction

1. On October 19, 2006, the Federal Energy Regulatory Commission (Commission) issued a Final Rule in Order No. 686[1] amending Part 157, Subpart F, of its regulations to expand the scope and scale of activities that may be undertaken pursuant to blanket certificate authority by (1) broadening the types of natural gas projects permitted under blanket certificate authority to include certain mainline, storage, and liquefied natural gas (LNG) and synthetic gas pipeline facilities, and (2) increasing the blanket certificate project cost limits from $8,200,000 to $9,600,000 for automatic authorization projects and from $22,700,000 to $27,400,000 for prior notice projects.[2] In addition, Order No. 686 clarified that a company is not necessarily engaged in an unduly discriminatory practice if it charges different customers different rates for the same service when customers commit to service on different dates. The revised blanket certificate regulations became effective on January 2, 2007, and are intended to allow interstate natural gas pipelines to employ the streamlined blanket certificate procedures for larger projects and for a wider variety of types of projects, thereby increasing efficiencies, and decreasing time and costs associated with the construction and maintenance of the nation's natural gas infrastructure.

2. In this order, for the reasons discussed below, the Commission grants and denies requests for clarification and denies requests for rehearing of the Final Rule.

## II. Requests for Rehearing and Clarification

3. NiSource Gas Transmission and Storage Companies (NiSource),[3] the National Fuel Gas Supply Corporation (National Fuel), and INGAA submitted timely requests for rehearing and/or clarification. For the reasons discussed below, requests for clarification are granted and denied, as discussed below. Requests for rehearing are denied, with the exception of INGAA's rehearing request with respect to the measurement of compressor noise, which is granted.

### *A. NiSource*

4. Section 157.208(f)(2) of the blanket certificate regulations permits natural gas companies to alter the maximum allowable operating pressure (MAOP) of supply or delivery laterals, provided companies comply with the prior notice provisions of § 157.205 of those regulations. NiSource proposes that companies be permitted to rely on blanket certificate authority to change the MAOP of facilities that are not supply or delivery laterals.

5. The Final Rule permits companies to construct compression and loop lines to expand mainline capacity under blanket authority. Consistent with this approach, the Commission clarifies that, provided companies meet all applicable blanket certificate regulatory requirements, they can rely on blanket certificate authority to change the MAOP of facilities that are not supply or delivery laterals, such as mainlines.

### *B. National Fuel*

6. The Final Rule extends blanket certificate authority to include certain underground storage field projects. National Fuel supports this inclusion, but seeks assurance that storage remediation and maintenance activities that qualify as auxiliary installations or replacements under § 2.55 of the Commission's regulations can still be undertaken pursuant to § 2.55, and need not now proceed under the automatic or prior notice provisions of the blanket certificate program. National Fuel also seeks clarification that plugging and abandoning storage wells constitutes maintenance, and as such will be eligible to be undertaken pursuant to the automatic authorization provisions of § 157.213(a), and will not be viewed as altering the function of a well, which would require adherence to the prior notice requirements of § 157.205(b).

7. The Final Rule's enlargement of the scope of blanket certificate authority does not constrict the scope of activities that may be performed under § 2.55 of the Commission's regulations. Thus, activities involving storage, mainline, and LNG and synthetic gas pipeline facilities that could have been performed under § 2.55 prior to the expansion of the blanket certificate program may continue to be performed under § 2.55. Further, as before, a company need not obtain a blanket certificate as a prerequisite to act under § 2.55.

8. The Commission clarifies that the reference in new § 157.213(a) to altering ''the function of any well that is drilled into or is active in the management of the storage facility'' is not intended to include *temporarily* plugging a storage field well as part of standard maintenance operations. In contrast, *permanently* plugging a well would not qualify as standard maintenance, but would instead constitute an abandonment, as it would permanently alter the function of the well, and could impact the performance of the storage field. Accordingly, such an action would need to comply with the blanket certificate program's § 157.216 regulatory requirements regarding an abandonment.

9. In addition, the Commission will revise §§ 157.213(b) and (c) to permit companies to employ blanket certificate authority to make modifications to storage facilities to enhance injection and withdrawal capacity. This is consistent with the Commission's previously expressed intent to permit a company to rely on expanded blanket certificate authority ''to re-engineer an existing storage facility to decrease cushion gas, increase working gas, improve injection and withdrawal capabilities, and add more cycles per season,'' provided the company can ''demonstrate, by theoretical or empirical evidence, that a proposed project will improve storage operations without altering an underground storage facility's total inventory, reservoir pressure, or reservoir or buffer boundaries, and will comply with environmental and safety provisions.''[4]

[1] Order No. 686, 71 FR 63680 (October 31, 2006), FERC Stats & Regs ¶ 31,231 (2006); *Notice of Proposed Rulemaking* (*NOPR*) 71 FR 36276 (June 26, 2006), FERC Stats. Regs. ¶ 32,606 (2006). This rulemaking proceeding was initiated in response to a petition submitted under 18 CFR 385.207(a) of the Commission's regulations by the Interstate Natural Gas Association of America (INGAA) jointly with the Natural Gas Supply Association.

[2] These cost limits now stand at $9,900,000 for an automatic authorization project and $28,200,000 for a prior notice project. *See* Natural Gas Pipelines; Project Cost and Annual Limits, 72 FR 5614 (Feb. 7, 2007).

[3] NiSource consists of Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company, Crossroads Pipeline Company, Granite State Gas Transmission, Inc., and Central Kentucky Transmission Company.

[4] 71 FR 36276, 36281 (June 26, 2006), FERC Stats. & Regs. ¶ 32,606 (2006).

*C. INGAA*

1. Compressor Station Noise

10. The blanket certificate program relies on the presumption that any project permitted under blanket certificate authority will not have a significant adverse environmental impact. The Commission ensures that this is the case by restricting blanket certificate authority to certain types of facilities and to individual projects that can comply with a cost cap and the environmental requirements specified in § 157.206(b). Prior to the Final Rule's increase in the per project cost cap and the expansion of blanket certificate authority to cover compressor facilities that alter mainline capacity, blanket certificate authority was restricted to a limited set of compression facilities, *e.g.*, compressors on lateral pipelines, compressors installed temporarily, replacement compressors that could not qualify under § 2.55(b), and compressors needed to restore service lost due to sudden unforeseen damage to a mainline.

11. A compressor project under the blanket certificate program is not subject to the same scrutiny and procedural safeguards that apply to a compressor project subject to case-specific NGA section 7 certificate authority. A case-specific application is subject to a more extensive notification process than a proposed blanket certificate project; indeed, for a project that qualifies for automatic authorization under the blanket certificate regulations, the Commission itself does not receive notice in advance of the project's construction. Thus, in contrast to a request for case-specific certificate authority, for a compressor project subject to blanket certificate authority, the Commission and public do not have the opportunity to assess aspects of a proposal such as what constitutes a noise sensitive area (NSA),[5] the prospective uses of property proximate to a compressor facility, habitat impacts on non-residential areas, whether a particular area has a heightened noise sensitivity that would merit a limit of less than 55 dBA, or the cumulative impacts resulting from modifying or expanding existing compressor facilities.

12. As a result, whereas an individual assessment can be undertaken for each proposed case-specific compressor project in order to establish a noise level appropriate to the particular site, this is not the case for blanket certificate compressor projects. The more cursory standard of review necessary to expedite projects under the blanket certificate program, coupled with the expansion of blanket certificate authority to cover larger and more varied types of compressor facilities, prompted the Commission to impose a stricter standard on the noise produced by blanket certificate compressor facilities. As described in the NOPR and implemented in the Final Rule, the Commission stated that, going forward, all compressor facilities constructed pursuant to blanket certificate authority must meet a standard day-night level ($L_{dn}$) limit of 55 dBA at the boundary of the compressor site. Previously, the Commission had required that compressor facilities installed under blanket certificate authority meet a noise level of 55 dBA at any pre-existing NSA.[6]

13. INGAA requests the Commission revert to this prior noise criterion. INGAA argues that (1) noise attenuation equipment may have an adverse impact on air quality; (2) compressor equipment has been installed based on a 55 dBA noise limit at nearby NSAs, and not on the basis of the noise at the site boundary; (3) companies will be compelled to acquire larger areas of land to push compressor station boundaries out from the noise source to meet the 55 dBA standard, which could damage relationships with nearby landowners and inhibit companies from upgrading facilities at existing stations; and (4) it will be more costly to comply with the new noise standard.

14. The Commission acknowledges that noise attenuation equipment may adversely impact air quality, but notes that depending upon the chosen control technology, such equipment may also improve air emissions. Shifting the location for measuring noise from new facilities should not impact existing facilities, given that ''this new noise measurement criterion only applies to facilities placed in service after the effective date of th[e] rule.'' [7]

15. The Commission anticipated that if a company expected a new project might compel it to acquire land or make costly investments to meet the new blanket certificate program's noise criterion, the company could instead seek case-specific NGA section 7 certificate authorization as an economically preferable alternative. Noise limits for case-specific compressor projects are established after a staff analysis of the properties of each particular project site, and for such projects, the Commission typically has found 55 dBA at existing NSAs to be an acceptable noise level. In view of this, to diminish any disparity in the cost to comply with noise limits for compressor projects proceeding under the blanket certificate program and those authorized on a case-specific basis, the Commission will revise § 157.206(b)(5)(i) by returning to the text of the previous § 157.206(b)(5),[8] which specifies that noise attributable to any new compressor station, compression added to an existing station, or any modification, upgrade or update of an existing station, must not exceed an $L_{dn}$ of 55 dBA at any pre-existing NSA. This revision will establish a noise limit for blanket certificate compressor projects that is consistent with the noise limit typically required for case-specific certificate compressor projects.

2. Notice Period

16. The Final Rule extends the time period allotted for landowner notice for blanket certificate activities from 30 to 45 days for automatic projects and from 45 to 60 days for prior notice projects. INGAA proposes that rather than add 15 days to the notice periods for all blanket certificate projects, the Commission retain the 30- and 45-day notice periods, but allow for a longer notice time on a case-by-case basis as needed. INGAA suggests the Commission delegate authority to the Director of the Office of Energy Projects to extend the notice time for prior notice projects for an additional 15 days, noting that if this proves insufficient, the Commission retains the option of protesting a prior notice project. Alternatively, INGAA proposes that a 60-day prior notice period apply only to those mainline, storage, LNG, and synthetic gas facilities that are newly included under the blanket certificate program by the Final Rule, while the 45-day prior notice period is retained for all other blanket certificate projects, an approach which

[5] In the case of a blanket certificate compressor project, the blanket certificate holder, rather than the Commission, determines what constitutes a potentially affected NSA.

[6] This compressor noise constraint has always been a part of the environmental compliance conditions of the blanket certificate program. *Interstate Pipeline Certificates for Routine Transactions*, Order No. 234, 47 FR 24254 (June 4, 1982), FERC Stats. & Regs. ¶ 30,368 (1982); Order No. 234–A, 47 FR 38871 (Sept. 3, 1982), FERC Stats. & Regs. ¶ 30,389 (1982).

[7] 71 FR 63680 (Oct. 31, 2006), FERC Stats. & Regs. ¶ 31,231, P 57 (2006) (footnote omitted).

[8] To further enhance consistency between compressor projects proceeding under the blanket certificate program and those authorized on a case-specific basis, and to affirm that compressor facilities put in place under companies' expanded blanket certificate authority will not have a significant adverse environmental impact, the Commission is proposing to modify certain notice and environmental compliance requirements in the contemporaneously issued NOPR in Docket No. RM07–17–000. 119 FERC ¶ 61,304 (2007).

''would have the virtue of targeting the additional notice more precisely to the expansion of the blanket coverage.'' [9]

17. The Commission deemed it prudent to provide an additional 15 days for notification to landowners and the public in light of the greater size and types of projects permitted under the revised blanket regulations. In addition, the Commission noted that in the past, on occasion, it had found the shorter time period to be insufficient for a complete assessment of a proposed project. Similarly, on occasion, landowners have made claims that the time provided is inadequate to review a proposal and engage in meaningful negotiations. Finally, the Commission observed that companies, in large part, dictate the schedule of a blanket project by when they choose to initiate the notice process, and commented that a company could compensate for the additional notification time by beginning to contact landowners two weeks earlier.

18. INGAA takes issue with the Commission's expectation that a company can offset the additional 15-day notice period by advancing initial action on a proposed project by 15 days. INGAA claims that a company's decision on when to proceed with a proposal is ''dictated by economic and practical considerations, including scheduling of construction to minimize impact on flowing gas and other customer service requirements, material availability, and logistics to coordinate construction contractors.'' [10] The Commission accepts that numerous factors have a bearing on a company's deciding when to, or whether to, undertake a blanket certificate project; further, the Commission accepts that companies have incomplete control over these varying factors. Nevertheless, although the in-service date of a project may be affected by circumstances beyond a company's direct control, *e.g.*, the availability of construction materials and personnel, the Commission expects a company to be able to anticipate and adapt to such circumstances, and in so doing, to factor in 15 additional days during the planning phase. Accordingly, the Commission continues to believe that the dominant factor in determining when a blanket certificate project can be placed in service is when a company chooses to initiate the blanket certificate process.

19. In response to INGAA's proposal that the Commission adopt a shorter notice period for projects qualifying for automatic authorization, or provide for a sliding scale for notice time as needed, or apply the longer times only to the newly included types of activities, the Commission prefers to retain a uniform notice period applicable to all blanket certificate projects.[11] As noted, the blanket certificate program is intended to enable the industry and the Commission to take advantage of the administrative efficiency inherent in applying a uniform set of regulatory requirements to a restricted set of activities. Within the context of the blanket certificate program, the Commission prefers to retain the simplicity and transparency of a uniform notification time.

3. Laterals Lines

20. The revised regulations extend blanket certificate authority to include pipelines used to transport only revaporized LNG—previously, such facilities were excluded from the blanket certificate program. In the Final Rule, the Commission stated the expanded blanket certificate authority would be inapplicable to facilities that transport revaporized LNG from an LNG import terminal and which are subject to the 180-day mandatory prefiling procedure described in § 157.21 of the Commission's regulations.[12] However, the Commission pointed out that a company could employ blanket certificate authority for facilities that attach directly to an existing LNG terminal, provided the construction and operation of such facilities would not involve modifications to the terminal which would trigger a 180-day mandatory prefiling process.[13]

21. INGAA asks whether ''a lateral directly attached to an LNG terminal can be constructed under automatic authorization pursuant to § 157.208(a), or is required to be a prior notice filing under the new § 157.212.'' [14] The new § 157.212, which extends blanket certificate authority to include laterals directly attached to an LNG terminal, requires prior notice pursuant to § 157.205 for *all* projects undertaken pursuant to the new § 157.212 authority. Projects eligible for automatic authorization pursuant to § 157.208(a) include those facilities defined in §§ 157.202(b)(2)(i), 157.209(a), 157.211(a), and 157.215(a)—none of which describe a lateral directly attached to an LNG terminal.

Among the projects excluded from automatic authorization are those described in § 157.202(b)(2)(ii)(D), and such projects include ''a facility used to receive gas * * * from plants gasifying liquefied natural gas.''

22. As discussed in the NOPR and the Final Rule, the blanket certificate program is not well suited to address the complexity inherent in issues raised by LNG terminals and related facilities. The Commission concluded that:

> LNG plant facilities are not within the class of minor, well-understood, routine activities that the blanket certificate program is intended to embrace; LNG plant facilities necessarily require a review of engineering, environmental, safety, and security issues that the Commission believes only can be properly considered on a case-by-case basis * * * [Thus, b]ecause an LNG terminal and the facilities that attach directly to it are interdependent—inextricably bound in design and operation—a terminal and its takeaway facilities must be evaluated in tandem; both merit a similar degree of regulatory scrutiny.[15]

In view of this, in extending blanket certificate authority, the Commission decided to require prior notice for all projects involving pipelines that will carry exclusively revaporized LNG. The Commission affirms this decision.

4. Abandonment Authority

23. New § 157.210 permits companies to rely on blanket certificate authority to ''acquire, construct, modify, replace, and operate natural gas mainline facilities, including compression and looping''; revised § 157.216(b)(2) provides for the abandonment of such facilities. INGAA asks whether the abandonment provisions of revised § 157.216(b)(2) are limited to those facilities that will be put in place under new § 157.210, or whether the abandonment provisions also apply to mainline facilities that are already in place.

24. The Commission believes the blanket certificate program's §§ 157.216(b), (c), and (d) requirements for the abandonment of mainline, storage, LNG, and synthetic gas facilities, which include obtaining the written consent of any customer that received service through the facility during the previous 12 months, provide adequate safeguards to ensure ''that the

[9] INGAA's Request for Rehearing and Clarification at 12 (Nov. 20, 2006).

[10] *Id.* at 13.

[11] Note that the regulatory requirement for landowner notification, 18 CFR 157.203(d)(1), continues to allow for landowners to waive the remaining time in the prior notice period once notice has been provided.

[12] The Commission explained that ''related jurisdictional natural gas facilities,'' as defined by 18 CFR 153.2(e)(1), are properly reviewed in tandem with LNG terminals in a prefiling pursuant to 18 CFR 157.21; thus, these facilities are excluded from the blanket certificate program.

[13] *See* 71 FR 63680 (Oct. 31, 2006); FERC Stats. & Regs. ¶ 31,231, P 23–24 (2006).

[14] INGAA's Request for Rehearing and Clarification at 14 (Nov. 20, 2006).

[15] 71 FR 36276 at 36279–80 (June 26, 2006); FERC Stats. & Regs. ¶ 32,606 at 32,877, P 29–30 (2006).

present or future public convenience or necessity permit such abandonment,'' as mandated by NGA section 7(b). Consequently, the Commission clarifies that facilities that were constructed under case-specific authorization, but that could now qualify for authorization under the current blanket certificate program criteria, may be abandoned pursuant to the provisions § 157.216(b).[16] Note that in considering whether previously constructed facilities might qualify for authorization under the current blanket certificate program criteria, the facilities must have been installed subsequent to the Commission's implementation of the blanket certificate program and the facilities' original cost must have met the § 157.208 project cost cap in effect at the time of their construction.

5. Annual Report

25. The Final Rule directs companies to include certain additional information in the annual report summarizing the previous year's blanket certificate activities. INGAA notes that the revised reporting requirements of § 157.208(e) apply to ''each facility completed during the calendar year,'' and is concerned that this could require companies to include the additional information specified in the Final Rule in the annual report covering projects commenced or completed in 2006. INGAA complains it would be unreasonable to include such projects, since companies had no notice that the additional information specified in the Final Rule would need to be provided in the annual report covering 2006 projects. INGAA contends that gathering the newly specified information would be impractical, as such information is ''scattered, was never compiled or has not been retained in a form that is easily pulled together for the filing.'' [17] Therefore, INGAA requests the regulations be clarified or revised so as to apply prospectively only to projects begun after the effective date of the rule on January 2, 2007.

26. The Commission observes, as it did in response to comments objecting to the burden of reporting the additional information, that companies are already required to report the information in question. Consequently, setting out the information in an annual report should not constitute any hardship. Nevertheless, the Commission accepts INGAA contention that companies may not have the required information readily available with respect to projects completed or initiated in 2006. Therefore, the Commission clarifies the applicability of the reporting requirement as requested, and specifies that the annual report's inclusion of the information described in § 157.208(e) will apply prospectively to projects begun on or after January 2, 2007, and will not apply retrospectively to projects underway before this date.

27. The Final Rule added § 157.207(c), which stated that the annual report should include information on storage facility remediation and maintenance activities qualifying for automatic authorization under § 157.213(a), but neglected to further describe the information to be included in the annual report. The Commission will correct the oversight here, as well as clarify that all activities undertaken pursuant to the new §§ 157.210, 157.212, and 157.213 are to be included in the annual report described in § 157.207.

28. New § 157.207(c) will be removed, and instead § 157.207(a), which lists activities to be included in the annual report, will be modified to cover activities subject to the expanded blanket certificate authority, and will require that each new facility authorized by §§ 157.208, 157.210, 157.212, or 157.213, companies provide the information specified in § 157.208(e). The reporting requirements for the expanded blanket certificate activities will duplicate those for the existing blanket certificate activities, whereby the annual report includes the information described in § 157.208(e)(1)–(5) for automatic authorization projects and includes the information described in § 157.208(e)(3) for prior notice projects. To accomplish this, § 157.208(e) will be modified to include a reference to facilities completed during the calendar year pursuant to §§ 157.210, 157.212, and 157.213.

*D. Landowner Notification*

29. In response to a query regarding the manner in which notification of a proposed blanket certificate project is to be presented to landowners, the Commission will modify §§ 157.203(d)(1) and (2) to clarify that landowner notification be in writing.

30. New §§ 157.203(d)(1)(iii)(C) and (D) direct a company to instruct landowners that if they are not satisfied, they ''should'' contact the company or Commission Hotline. This instruction will be altered from ''should'' to ''may,'' to stress that such contact is an option, not an obligation, on the part of landowners. To ensure landowners understand how to contact the Commission's Enforcement Hotline, and to ensure that the contact information is up to date, § 157.203(d)(1)(iii)(D) will be modified to direct a company to provide the Commission's Enforcement Hotline at the current telephone number and e-mail address in its notification.

## III. Information Collection Statement

31. The Office of Management and Budget (OMB) regulations require that OMB approve certain information collection requirements imposed by an agency.[18] The Final Rule's revisions to the information collection requirements for blanket certificate projects were approved under OMB Control Nos. 1902–0128 and 1902–0060. While this rule clarifies aspects of the existing information collection requirements for the blanket certificate program, it does not add to these requirements. Accordingly, a copy of this final rule will be sent to OMB for informational purposes only.

## IV. Document Availability

32. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and print the contents of this document via the Internet through FERC's Web site (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426. User assistance is available for FERC's Web site during normal business hours (8:30 a.m. to 5 p.m. Eastern time, Monday to Friday) from FERC's Online Support at 202–502–6652, toll free at 1–866–208–3676, or by e-mail at *ferconlinesupport@ferc.gov*, and from the Public Reference Room at 202–502–8371, TTY at 202–502–8659, or by e-mail at *public.referenceroom@ferc.gov.*

## V. Effective Date [19]

33. The amendments in this final rule are effective August 9, 2007, except that the amendment to § 157.206 (b)(5)(i) is effective November 7, 2007. Requests for clarification are granted and denied, and requests for rehearing are denied, effective August 9, 2007. The request for rehearing with respect to the measurement of compressor noise is granted, effective November 7, 2007.

[16] *See Revision of Existing Regulations Under the Natural Gas Act*, Order No. 603–A, 64 FR 54522 at 54533–34 (Oct. 7, 1999), FERC Stats. & Regs. ¶ 31,081 at 30,936 (1999), in which a similar approach was adopted with respect to automatic abandonments under 19 CFR 157.216(a).

[17] INGAA's Request for Rehearing and Clarification at 16 (Nov. 20, 2006).

[18] 5 CFR 1320.11.

[19] The provisions of 5 U.S.C. 801 regarding Congressional review of rulemaking, do not apply to this order on rehearing, since it clarifies agency procedure and practice.

**List of Subjects in 18 CFR Part 157**

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

**Kimberly D. Bose,**

*Secretary.*

■ In consideration of the foregoing, the Commission amends part 157, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

## PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

■ 1. The authority citation for part 157 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w.

### § 157.203 [Amended]

■ 2. In § 157.203:

■ a. In paragraph (d)(1), immediately after the phrase ''unless the company makes a good faith effort to notify,'' the phrase ''in writing'' is added;

■ b. In paragraph (d)(1)(iii)(C), ''should'' is removed and the word ''may'' is inserted in its place;

■ c. In paragraph (d)(1)(iii)(D), ''should'' is removed and the word ''may'' is inserted in its place;

■ d. In paragraph (d)(1)(iii)(D), immediately before the period that concludes the sentence, the phrase ''at the current telephone number and e-mail address, which is to be provided in the notification'' is added; and

■ e. In paragraph (d)(2), immediately after the phrase ''the company shall make a good faith effort to notify,'' the phrase ''in writing'' is added.

■ 3. In § 157.206, paragraph (b)(5)(i) is revised to read as follows:

### § 157.206 Standard conditions.

* * * * *

(b) * * *

(5)(i) The noise attributable to any new compressor station, compression added to an existing station, or any modification, upgrade or update of an existing station, must not exceed a day-night level ($L_{dn}$) of 55 dBA at any pre-existing noise-sensitive area (such as schools, hospitals, or residences).

* * * * *

■ 4. In § 157.207: Paragraph (c) is removed; paragraphs (d), (e), (f), (g), (h), and (i) are redesignated, respectively, as paragraphs (c), (d), (e), (f), (g), and (h); and paragraph (a) is revised to read as follows:

### § 157.207 General reporting requirements.

* * * * *

(a) For each new facility authorized by §§ 157.208, 157.210, 157.212, or 157.213, the information specified in § 157.208(e);

* * * * *

### § 157.208 [Amended]

■ 5. In § 157.208:

■ a. In paragraph (e), in the first sentence, after the phrase ''pursuant to paragraph (a) of this section,'' the phrase ''and § 157.213(a),'' is added; and

■ b. In paragraph (e), in the second sentence, after the phrase ''pursuant to paragraph (b) of this section,'' the phrase ''and §§ 157.210, 157.212, and 157.213(b),'' is added.

■ 6. In § 157.213, paragraph (b) and the introductory text of paragraph (c) are revised to read as follows:

### § 157.213 Underground storage field facilities.

* * * * *

(b) *Prior Notice.* Subject to the notice requirements of §§ 157.205(b) and 157.208(c), the certificate holder is authorized to acquire, construct, modify, replace, and operate natural gas underground storage facilities, provided the storage facility's certificated physical parameters—including total inventory, reservoir pressure, reservoir and buffer boundaries, and certificated capacity remain unchanged—and provided compliance with environmental and safety provisions is not affected. The cost of a project may not exceed the cost limitation provided in column 2 of Table I in § 157.208(d). the certificate holder must not segment projects in order to meet this cost limitation.

(c) *Contents of request.* In addition to the requirements of §§ 157.206(b) and 157.208(c), requests for activities authorized under paragraph (b) of this section must contain, to the extent necessary to demonstrate that the proposed project will not alter a storage reservoir's total inventory, reservoir pressure, reservoir or buffer boundaries, or certificated capacity:

* * * * *

[FR Doc. E7–12560 Filed 7–9–07; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 520

## Oral Dosage Form New Animal Drugs; Deracoxib

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Novartis Animal Health US, Inc. The supplemental NADA provides for the addition of a 75-milligram size deracoxib tablet which is used for the control of pain and inflammation in dogs.

**DATES:** This rule is effective July 10, 2007.

**FOR FURTHER INFORMATION CONTACT:** Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: *melanie.berson@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** Novartis Animal Health US, Inc., 3200 Northline Ave., suite 300, Greensboro, NC 27408, filed a supplement to NADA 141–203 that provides for the addition of a 75-milligram size of DERAMAXX (deracoxib) Chewable Tablets, used for the control of pain and inflammation in dogs. The supplemental NADA is approved as of June 13, 2007, and the regulations are amended in 21 CFR 520.538 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.''

Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects in 21 CFR Part 520**

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

**§ 520.538 [Amended]**

■ 2. In paragraph (a) of § 520.538, remove ''25 or 100 milligrams'' and in its place add ''25, 75, or 100 milligrams''.

Dated: June 24, 2007.

**Bernadette Dunham,**

*Deputy Director, Center for Veterinary Medicine.*

[FR Doc. E7–13372 Filed 7–9–07; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 558

### New Animal Drugs For Use in Animal Feeds; Ivermectin

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Merial Ltd. The supplemental NADA revises the approved concentration of ivermectin in Type C medicated feed administered as a top dress to adult and breeding swine for the treatment and control of various internal and external parasites.

**DATES:** This rule is effective July 10, 2007.

**FOR FURTHER INFORMATION CONTACT:** Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *joan.gotthardt@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** Merial Ltd., 3239 Satellite Blvd., Bldg. 500, Duluth, GA 30096–4640, filed a supplement to NADA 140–974 that provides for use of IVOMEC (ivermectin) Premix for Swine, a Type A medicated article, for the treatment and control of various internal and external parasites. The supplement revises the approved concentration of ivermectin in Type C medicated feed administered as a top dress to adult and breeding swine. The supplemental NADA is approved as of June 15, 2007, and the regulations in 21 CFR 558.300 are amended to reflect the approval and a current format.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

■ 2. Revise § 558.300 to read as follows:

**§ 558.300 Ivermectin.**

(a) *Specifications*. Type A medicated article containing 2.72 grams ivermectin per pound (g/lb).

(b) *Sponsor*. See No. 050604 in § 510.600(c) of this chapter.

(c) *Related tolerances*. See § 556.344 of this chapter.

(d) *Special considerations*. See § 500.25 of this chapter.

(e) *Conditions of use in swine*. It is used in feed as follows:

| Ivermectin in g/ton of feed | Combination in g/ton of feed | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| (1) 1.8 (to provide 0.1 milligram per kilogram (mg/kg) of body weight per day) | | Weaned, growing-finishing swine: For treatment and control of gastrointestinal roundworms (*Ascaris suum*, adults and fourth-stage larvae; *Ascarops strongylina*, adults; *Hyostrongylus rubidus*, adults and fourth-stage larvae; *Oesophagostomum* spp., adults and fourth-stage larvae); kidneyworms (*Stephanurus dentatus*, adults and fourth-stage larvae); lungworms (*Metastrongylus* spp., adults); threadworms (*Strongyloides ransomi*, adults and somatic larvae); lice (*Haematopinus suis*); and mange mites (*Sarcoptes scabiei* var. *suis*). | Feed as the only feed for 7 consecutive days. Withdraw 5 days before slaughter. | 050604 |
| (2) 1.8 (to provide 0.1 mg/kg of body weight per day) | Bacitracin methylene disalicylate, 10 to 30 | Weaned, growing-finishing swine: As in paragraph (e)(1) of this section; and for increased rate of weight gain and improved feed efficiency. | For use in swine feed only. Feed as the only feed for 7 consecutive days. Withdraw 5 days before slaughter. | 050604 |

| Ivermectin in g/ton of feed | Combination in g/ton of feed | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| (3) 1.8 (to provide 0.1 mg/kg of body weight per day) | Bacitracin methylene disalicylate, 250 | Weaned, growing-finishing swine: As in paragraph (e)(1) of this section; and for control of swine dysentery associated with *Treponema hyodysenteriae* on premises with a history of swine dysentery, but where symptoms have not yet occurred, or following an approved treatment of disease condition. | For use in swine feed only. Feed as the only feed for 7 consecutive days. Withdraw 5 days before slaughter. | 050604 |
| (4) 1.8 (to provide 0.1 mg/kg of body weight per day) | Lincomycin, 20 | Weaned, growing-finishing swine: For treatment and control of gastrointestinal roundworms (*Ascaris suum*, adults and fourth-stage larvae; *Ascarops strongylina*, adults; *Hyostrongylus rubidus*, adults and fourth-stage larvae; *Oesophagostomum* spp., adults and fourth-stage larvae); kidneyworms (*Stephanurus dentatus*, adults and fourth-stage larvae); lungworms (*Metastrongylus* spp., adults); lice (*Haematopinus suis*); and mange mites (*Sarcoptes scabiei* var. *suis*); and for increased rate of weight gain. | Feed as the only feed for 7 consecutive days. Not to be fed to swine that weigh more than 250 lbs. Withdraw 5 days before slaughter. Also see paragraphs (c)(1) and (c)(2) in § 558.325 of this chapter. | 050604 |
| (5) 1.8 (to provide 0.1 mg/kg of body weight per day) | Lincomycin, 40 | Weaned, growing-finishing swine: As in paragraph (e)(4) of this section; and for control of swine dysentery on premises with a history of swine dysentery, but where symptoms have not yet occurred. | Feed as the only feed for 7 consecutive days. Not to be fed to swine that weigh more than 250 lbs. Also see paragraphs (c)(1) and (c)(2) in § 558.325 of this chapter. Withdraw 5 days before slaughter. A separate feed containing 40 g/ton lincomycin may be continued to complete the lincomycin treatment. | 050604 |
| (6) 1.8 (to provide 0.1 mg/kg of body weight per day) | Lincomycin, 100 | Weaned, growing-finishing swine: As in paragraph (e)(4) of this section; and for treatment of swine dysentery. | Feed as the only feed for 7 consecutive days followed by a separate feed containing 100 g/ton lincomycin for an additional 14 days to complete the lincomycin treatment. Withdraw 6 days before slaughter. Not to be fed to swine that weigh more than 250 lbs. Also see paragraphs (c)(1) and (c)(2) in § 558.325 of this chapter. | 050604 |
| (7) 1.8 (to provide 0.1 mg/kg of body weight per day) | Lincomycin, 200 | Weaned, growing-finishing swine: As in paragraph (e)(4) of this section; and for reduction in severity of swine mycoplasmal pneumonia caused by *Mycoplasma hyopneumoniae*. | Feed as the only feed for 7 consecutive days followed by a separate feed containing 200 g/ton lincomycin for an additional 14 days to complete the lincomycin treatment. Withdraw 6 days before slaughter. Not to be fed to swine that weigh more than 250 lbs. Also see paragraphs (c)(1) and (c)(2) in § 558.325 of this chapter. | 050604 |
| (8) 1.8 to 11.8 (to provide 0.1 mg/kg of body weight per day) | | Adult and breeding swine: For treatment and control of gastrointestinal roundworms (*Ascaris suum*, adults and fourth-stage larvae; *Ascarops strongylina*, adults; *Hyostrongylus rubidus*, adults and fourth-stage larvae; *Oesophagostomum* spp., adults and fourth-stage larvae); kidneyworms (*Stephanurus dentatus*, adults and fourth-stage larvae); lungworms (*Metastrongylus* spp., adults); threadworms (*Strongyloides ransomi*, adults and somatic larvae, and prevention of transmission of infective larvae to piglets, via the colostrum or milk, when fed during gestation); lice (*Haematopinus suis*); and mange mites (*Sarcoptes scabiei* var. *suis*). | Feed as the only feed for 7 consecutive days. Withdraw 5 days before slaughter. | 050604 |

| Ivermectin in g/ton of feed | Combination in g/ton of feed | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| (9) 1.8 to 11.8 (to provide 0.1 mg/kg of body weight per day) | Bacitracin methylene disalicylate, 250 | Pregnant sows: As in paragraph (e)(8) of this section; and for control of clostridial enteritis caused by *Clostridium perfringens* in suckling piglets. | Feed as the only feed for 7 consecutive days. Withdraw 5 days before slaughter. Feed bacitracin methylene disalicylate Type C medicated feed to sows from 14 days before through 21 days after farrowing on premises with a history of clostridial scours. | 050604 |
| (10) 18.2 to 120 (to provide 0.1 mg/kg of body weight per day) | | Adult and breeding swine: As in paragraph (e)(8) of this section. | Top dress on daily ration for individual treatment for 7 consecutive days. Withdraw 5 days before slaughter. | 050604 |

Dated: June 27, 2007.

**Bernadette Dunham,**

*Deputy Director, Center for Veterinary Medicine.*

[FR Doc. E7–13369 Filed 7–9–07; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

## 21 CFR Parts 1300 and 1315

**[Docket No. DEA–293I]**

**RIN 1117–AB08**

## Import and Production Quotas for Certain List I Chemicals

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Interim final rule with request for comment.

**SUMMARY:** In March 2006, Congress enacted the Combat Methamphetamine Epidemic Act of 2005, which mandates that DEA establish total annual requirements, import quotas, individual manufacturing quotas, and procurement quotas for three List I chemicals—ephedrine, pseudoephedrine, and phenylpropanolamine. DEA is promulgating this rule to incorporate the statutory provisions and make its regulations consistent with the new requirements.

**DATES:** Effective Date: July 10, 2007. Comment Date: Written comments must be postmarked on or before September 10, 2007.

**ADDRESSES:** To ensure proper handling of comments, please reference ''Docket No. DEA–293'' on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, VA 22301. Comments may be directly sent to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov.* Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept attachments to electronic comments in Microsoft word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying information and confidential business information identified and located as set forth above will be redacted and placed in the agency's public docket file, and, where possible, posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the ''For Additional Information'' paragraph.

**FOR FURTHER INFORMATION CONTACT:** Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 at (202) 307–7183.

**SUPPLEMENTARY INFORMATION:**

### DEA's Legal Authority

DEA implements the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act (CSA) and the Controlled Substances Import and Export Act (21 U.S.C. 801–971), as amended. DEA publishes the implementing regulations for these statutes in Title 21 of the Code of Federal Regulations (CFR), Parts 1300 to 1399. These regulations are designed to ensure that there is a sufficient supply of controlled substances for legitimate medical, scientific, research, and industrial purposes, for lawful exports, and for maintenance of reserve stocks while deterring the diversion of controlled substances to illegal purposes. The CSA mandates that DEA

establish a closed system of control for manufacturing, distributing, and dispensing controlled substances. Any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances must register with DEA (unless exempt) and comply with the applicable requirements for the activity. The CSA as amended also requires DEA to regulate the manufacture, distribution, import, and export of chemicals that may be used to manufacture controlled substances illegally. Listed chemicals that are classified as List I chemicals are important to the manufacture of controlled substances. Those classified as List II chemicals may be used to manufacture controlled substances.

On March 9, 2006, the President signed the Combat Methamphetamine Epidemic Act of 2005 (CMEA), which is Title VII of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Pub. L. 109–177). The Act amends the CSA by adding new provisions related to the importation, production, and sale of ephedrine, pseudoephedrine, and phenylpropanolamine, their salts, optical isomers, and salts of optical isomers, and products that contain any of the three chemicals.

**Ephedrine, Pseudoephedrine, and Phenylpropanolamine**

Ephedrine, pseudoephedrine, and phenylpropanolamine are List I chemicals because each can be the primary ingredient needed to manufacture controlled substances illegally. Ephedrine and pseudoephedrine are primary ingredients important in the illicit manufacture of methamphetamine, a Schedule II controlled substance, and methcathinone, a Schedule I controlled substance; phenylpropanolamine is a primary ingredient important in the illicit manufacture of amphetamine, also a Schedule II controlled substance. Each of the chemicals is also approved as an active pharmaceutical ingredient used in products with legitimate medical purposes. Ephedrine is used in prescription and over-the-counter (OTC) products as a bronchodilator (*e.g.*, for treating asthma). Pseudoephedrine, a decongestant, is a common ingredient in both prescription and OTC cold and allergy medications. Research by the National Association of Chain Drug Stores identified approximately 2,500 OTC products that contain pseudoephedrine. The Food and Drug Administration's National Drug Code (NDC) online directory of prescription drugs lists 158 products that contain ephedrine and about 1,250 that contain pseudoephedrine. In November, 2000, the Food and Drug Administration (FDA) issued a public health advisory concerning phenylpropanolamine and requested that all drug companies discontinue marketing products containing phenylpropanolamine due to risk of hemorrhagic stroke. In response, many companies voluntarily reformulated their products to exclude phenylpropanolamine. Subsequently, on December 22, 2005, FDA published a Notice of Proposed Rulemaking (70 FR 75988) proposing to categorize all OTC nasal decongestants and weight control drug products containing phenylpropanolamine preparations as Category II, nonmonograph, i.e., not generally recognized as being safe for human consumption.

Prior to the enactment of CMEA, ephedrine, pseudoephedrine, and phenylpropanolamine were subject to the same requirements as other List I chemicals as they apply to manufacture, non-retail distribution, import, and export. Any person who manufactured the chemical for distribution, distributed, imported, or exported the chemical was required to register with DEA and maintain records on transactions at or above certain threshold quantities. Bulk manufacturers filed annual reports regarding their manufacturing activities with DEA. Importers and exporters had to notify DEA in advance of importations or exportations unless the transaction was between a regulated person and a regular customer abroad or an importation by a regular importer; in that case, the importers and exporters had to notify DEA no later than the date of the transaction. Sales of OTC drug products containing one of the chemicals were subject to sales thresholds above which retail distributors were required to maintain records, but certain forms (blister packs) were generally not subject to control. Mail order sellers of the OTC drugs filed monthly reports. The manufacture, distribution, import, export, and retail sale of prescription products containing the chemicals were not regulated.

**Combat Methamphetamine Epidemic Act of 2005**

The Combat Methamphetamine Epidemic Act of 2005 (CMEA) amends the CSA to tighten controls on the manufacture, distribution, import, export, and retail sale of three List I chemicals—ephedrine, pseudoephedrine, and phenylpropanolamine, and drug products containing them. CMEA imposes the following changes:

- Sales limits apply to retail sales of OTC products. Regulated sellers are required to store the products behind the counter or in locked cabinets and maintain records on each sale, including verifying the name of the purchaser against an approved form of identification supplied by the purchaser. The exemption for blister packs has been removed. Thus, all products sold at retail (except individual sales transactions consisting of a single package of pseudoephedrine where the package contains not more than 60 milligrams) are regulated under the Controlled Substances Act.
- DEA must establish an assessment of the annual needs for estimated medical, scientific, research, and industrial needs of the United States, for lawful exports, and for reserve stocks, for the three chemicals. That assessment will set an upper limit on the quantity of the chemicals and products containing the chemicals that can be produced in or imported to the United States.
- Bulk manufacturers must obtain a manufacturing quota to produce any of the three chemicals.
- Manufacturers who purchase the bulk chemicals to produce products must obtain a procurement quota.
- Importers must obtain a quota to import the chemicals in bulk or in drug products.
- Importers, exporters, brokers, and traders must provide additional information on the persons to whom they intend to sell the chemicals prior to the sale. They must also provide a return declaration, providing actual information regarding the import, export, or international transaction.

Because the mandated changes affect different business activities, DEA is revising its regulations to implement these mandated changes through a series of rulemakings. This Interim Final Rule addresses the CMEA mandate for establishment of an assessment of annual needs and quotas to limit production and importation to those established needs.

**Establishing Annual Needs**

CMEA amended the CSA to add ephedrine, pseudoephedrine, and phenylpropanolamine to § 826 of the Act, which requires production quotas for controlled substances. The amendment essentially requires that the three chemicals be treated in the same way as Schedule I and II controlled substances. Under the CSA, DEA must limit the quantity of Schedule I and II controlled substances to that which is necessary to meet the estimated medical, scientific, research, and

industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks. DEA establishes the annual needs for each controlled substance, the ''aggregate production quota'', and uses that figure to issue manufacturing and procurement quotas. With very limited exceptions, imports of controlled substances are sold to manufacturers (which include repackagers). Because importers can only distribute controlled substances to DEA registrants and manufacturers can purchase only the amount authorized under their procurement quotas, DEA has not needed to issue import quotas to importers. The closed system of control that the CSA mandates for controlled substances means that DEA can track the importation, manufacture, and distribution of controlled substances.

The circumstances for the manufacturing and distribution of the three List I chemicals are different in a number of ways.

- Most of the bulk ephedrine, pseudoephedrine, and phenylpropanolamine used in the United States is imported. DEA is notified of these imports, but until now DEA has not obtained information on the purchasers of the imported chemicals. (DEA has promulgated separate regulations under CMEA that will require importers of all listed chemicals to indicate their downstream customers (72 FR 17401, April 9, 2007).) Although most imported bulk chemicals will be sold to manufacturers, it is possible that some bulk materials could be sold to distributors or exporters.
- Distributors are required to keep records of transactions involving these chemicals, but do not file reports with DEA on distributions.
- Dosage units of OTC drugs containing the chemicals are imported. Although these may be transferred to repackagers or relabelers (who are registered as manufacturers), some may be imported already packaged for retail sale and transferred to distributors or directly to retailers. Retailers may not be DEA registrants.
- Prescription drugs containing one of the chemicals may be imported. Until now, neither the importation, distribution, nor manufacture of these drugs has been subject to DEA regulations.

To assess the national needs and limit the quantity of the three chemicals to those national needs, DEA must collect information on manufacturing, imports, and exports and set production quotas for manufacturers and import quotas for importers. Because the chemicals are used in approximately 1,400 prescription products, DEA must cover the manufacture and import of these products as well as the more than 2,500 OTC drug products. In another rulemaking, DEA is revising its regulations to require that manufacturers and importers of prescription drug products containing any of the three chemicals must register with DEA. DEA is also revising, in a separate rulemaking, the thresholds applied to ephedrine, pseudoephedrine, and phenylpropanolamine so that all transactions will be regulated.

**Discussion of the Rule**

CMEA amends the CSA by adding ephedrine, pseudoephedrine, and phenylpropanolamine to each of the paragraphs in 21 U.S.C. 826, Production quotas for controlled substances. Section 826 requires DEA to establish total annual needs for each of the three chemicals and to limit manufacturing of the chemicals to the amount needed to provide for medical, scientific, research, and industrial purposes, for lawful exports, and for the maintenance of reserve stocks. In addition, CMEA amends 21 U.S.C. 952 (importation of controlled substances) by adding a new paragraph (d) to cover the importation of the three chemicals; the new paragraph indicates, along with language from the Conference report on CMEA, that Congress expected DEA to establish import quotas for the chemicals:

> Section 715. Restrictions on importation; authority to permit imports for medical, scientific, or other legitimate purposes Section 715 of the conference report is a new provision and extends the Attorney General's existing authority to set import quotas for controlled substances (see 21 U.S.C. Sec. 952) to pseudoephedrine, ephedrine, and phenylpropanolamine. This section allows registered importers to apply for temporary or permanent increases in a quota to meet legitimate needs. The Attorney General is required to act on all such applications within 60 days.

These sections of the CSA are implemented through a new part, 21 CFR part 1315. Most of the requirements for the assessment of annual national needs and for manufacturing and procurement quotas directly parallel the requirements for controlled substance quotas provided in part 1303.

*Production Quotas*

Under part 1315, bulk manufacturers of the three chemicals will be required to obtain annual manufacturing quotas. A separate quota is required for each chemical. A bulk manufacturer must be registered as a manufacturer to handle the chemical for which quota is applied. A bulk manufacturer must complete and file a DEA Form 189 by April 1 of each year for the following calendar year. The applicant must provide the following information on the form:

- For the current and preceding two years, the actual quantity manufactured, actual net disposals, and actual inventory as of December 31.
- For the next year, the desired quota, the name and registration number of each customer and the amount estimated to be sold to each, and any additional factors the applicant finds relevant to fixing the quota.

DEA notes that the above requirements are consistent with existing requirements for controlled substances quotas found in 21 CFR Part 1303.

Each manufacturer that purchases the chemicals in bulk or in dosage forms will be required to obtain a procurement quota to obtain the bulk chemicals or dosage forms. A separate procurement quota is required for each chemical. The applicant must apply using DEA Form 250. The applicant must provide the following information:

- A statement about the purpose(s) of the requested chemical and the quantity which will be used for each purpose during the next calendar year. The applicant should provide information about the quantities used (acquired, distributed, and inventory) for the current and preceding 2 calendar years.
- If the purpose is to manufacture dosage forms, the applicant must state the official name, common or usual name, chemical name, or brand name of that dosage form, and must include the strength.
- The company must state the type of activity intended: product development, repackaging, relabeling, manufacturing OTC finished product, manufacturing prescription finished product.
- If the purpose is to manufacture a controlled substance listed in Schedule I or II or another List I chemical, the applicant must state the quantity of the other substance or chemical that the applicant has applied to manufacture under § 1303.22 and the quantity of the first chemical needed to manufacture a specified unit of the second chemical.

DEA notes that the above requirements are consistent with existing requirements for controlled substances quotas found in 21 CFR Part 1303.

DEA recognizes that applicants may not have complete data on inventories and records for previous years because DEA has not required registrants to keep these records. Most manufacturers of

OTC products should have the information in the records they maintain on regulated transactions. Applicants who manufacture prescription products may not have full records for the initial filings. DEA notes that the provision of incomplete information as part of an application for quota in the initial year of implementation of quotas for ephedrine, pseudoephedrine, and phenylpropanolamine may not, in and of itself, prevent an applicant from obtaining quota. DEA has significant experience regarding the processing of quota applications for which incomplete information is present at the initial establishment of quota (e.g., a new formulation of a controlled substance). DEA will work with quota applicants to obtain information that could be used in the processing of the applicant's initial application.

*Import Quotas*

To track and control the quantity of each of the chemicals and drug products containing the chemicals, DEA must limit imports to a quantity consistent with the national needs. CMEA amended 21 U.S.C. 952(a) to state that ''It shall be unlawful to import * * * ephedrine, pseudoephedrine, and phenylpropanolamine * * * except that such amounts of * * * ephedrine, pseudoephedrine, and phenylpropanolamine as the Attorney General [DEA by delegation] finds necessary to provide for the medical, scientific, or other legitimate purposes * * *.'' Importers will be required to obtain an import quota for each chemical covering both bulk chemicals and dosage forms. Importers will be required to submit an application that includes the following information:

- The type of product (bulk chemical or finished forms to be transferred to a manufacturer or product to be sold for distribution).
- The quantity of each type of product.
- For the previous two years, the name, address, and DEA registration number (if applicable) of each customer and the amount sold; inventory as of December 31 for each form of the product (*i.e.*, bulk chemical, in-process material, or finished dosage form); and acquisitions (imports).

DEA recognizes that importers handling prescription products may not have historical records for their initial filings. If an importer is handling prescription drug products, it is possible that some of its customers may not be DEA registrants. DEA notes that the provision of incomplete information as part of an application for quota in the initial year of implementation of quotas for ephedrine, pseudoephedrine, and phenylpropanolamine may not, in and of itself, prevent an applicant from obtaining quota. DEA has significant experience regarding the processing of quota applications for which incomplete information is present at the initial establishment of quota (*e.g.*, a new formulation of a controlled substance). DEA will work with quota applicants to obtain information that could be used in the processing of the applicant's initial application.

Depending on the activities that a firm engages in, a firm may have to apply for multiple quotas. For example, a firm that imports ephedrine to bulk manufacture pseudoephedrine would need to obtain an import quota and a procurement quota for ephedrine and a manufacturing quota for pseudoephedrine. A manufacturer that imports bulk ephedrine and pseudoephedrine to produce dosage units of drugs containing the chemicals would need to obtain separate import and procurement quotas for each chemical.

DEA will use the information filed in support of the quota applications as one factor in the determination of an initial assessment of annual needs for each of the chemicals to ensure that the United States has sufficient quantities to meet medical, scientific, research, industrial, exportation, and reserve stock needs. DEA will publish its assessment by May 1 and then revise the assessment based on comments and further information before publishing a final assessment for the following year. The assessment establishes a ceiling on domestic manufacturing and importation of these chemicals. DEA may, at its discretion, seek additional information from applicants if needed to determine an appropriate level for the annual assessment ceiling. For example, because repackagers and relabelers handle products that are covered by other procurement or import quotas, DEA may need more details on customers from those seeking procurement quotas to ensure that it is not double counting quantities. This issue may arise particularly in reference to OTC products, where a manufacturer may produce dosage units that are repackaged or relabeled to be sold under multiple store brand labels.

DEA is adopting the same process for manufacturing and procurement quotas for the three chemicals as it currently applies to those quotas for controlled substances. Manufacturers may apply for increases in their manufacturing quotas; DEA may reduce individual manufacturing quotas to prevent the total amount produced from exceeding the assessment of annual needs. Manufacturers may abandon their quota by notifying DEA.

Manufacturers holding a procurement quota may apply for adjustment of the quota by applying to DEA with a statement indicating the need for an adjustment. Any manufacturer who holds a procurement quota must, before giving an order to another manufacturer or importer requiring the distribution of a covered chemical, certify in writing that the quantity being ordered does not exceed the unused portion of the person's procurement quota for the year. The certification must be signed by someone who is authorized to sign a DEA registration application.

As specified in the CMEA amendment to section 952 of the CSA, importers may apply for an increase in their quota and DEA may approve the application if DEA determines that the increase is needed to meet medical, scientific, or other legitimate purposes. For changes in the import quota, DEA will approve or deny the application within 60 days of receiving the application; if DEA does not reach a decision within the 60 days, the application is considered to be approved until DEA notifies the applicant in writing that the approval is terminated.

DEA may hold hearings, at the Administrator's sole discretion, to obtain factual evidence regarding the assessment of national needs. Applicants or quota holders may request hearings on the issuance, adjustment, suspension, or denial of a quota. In hearings on the assessment of national needs, each interested party has the burden of proving any proposition of facts or law that the party asserts. At hearings on the issuance, adjustment, suspension, or denial of a quota, DEA has the burden of proving that the requirements for issuance, adjustment, suspension, or denial of a quota are met.

**Changes in Forms**

DEA is amending DEA Form 189 (application for a manufacturing quota) and DEA Form 250 (application for a procurement quota). DEA Form 189 is being amended to include the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine; adding a field to supply an e-mail address; and adding a field requesting information regarding the authority by which a product may be marketed under the Federal Food, Drug and Cosmetic Act (*e.g.*, NDA number or FDA monograph). DEA is soliciting comments on this provision. DEA included this requirement in the application to assist in making its determination that the

quota would be utilized for ''medical'' purposes. However, DEA notes that there are instances in which applications may not fall within this category (*e.g.*, quota used to support bona fide scientific research, industrial uses and product development efforts). DEA will consider applications for quota to support these activities even though the applicant would not be able to complete this portion of the application.

DEA Form 250 is being amended to include the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine; adding a field to supply an e-mail address; permitting the use of List I Chemical Code Numbers as well as the DEA Drug Code numbers; and adding a field requesting information regarding the authority by which a product may be marketed under the Federal Food, Drug, and Cosmetic Act (*e.g.*, NDA number or FDA monograph). DEA is soliciting comments on this provision. DEA included this requirement in the application to assist in making its determination that the quota would be utilized for ''medical purposes.'' However, DEA notes that there are instances in which applications may not fall within this category (*e.g.*, quota used to support bona fide scientific research, industrial uses and product development efforts). DEA will consider applications for quota to support these activities even though the applicant would not be able to complete this portion of the application.

In addition, DEA has developed a new DEA Form 488 for applying for an import quota.

**Imports for Personal Use**

CMEA amended 21 U.S.C. 844 to make it unlawful for a person to knowingly purchase at retail more than 9 grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base in a scheduled listed chemical product in a 30-day period and further stated that no more than 7.5 grams of the 9 grams of each chemical may be imported by means of shipping through a private or commercial carrier or the Postal Service. Imports for personal use below these quantities are not subject to import quota requirements. Any person who wishes to import more than 7.5 grams of each of the chemicals in a 30-day period would have to register as an importer and obtain an import quota.

**Section-by-Section Description of the Rule**

DEA is amending the definition of ''regulated transaction'', found in 21 CFR § 1300.02, to reference new part 1315.

Subpart A of new part 1315 provides general information about part 1315. Section 1315.01 defines the scope of part 1315.

Section 1315.02 provides definitions. The definition of ''net disposal,'' which is in § 1300.01 and applies to controlled substances, is included here for the three List I chemicals. The final paragraph repeats the statutory provisions that each of the three chemicals includes their salts, optical isomers, and salts of optical isomers.

Section 1315.03 provides the personal use exemption from importer registration, import declaration, and import quotas.

Section 1315.05 specifies the persons to whom the part applies.

Subpart B, Sections 1315.11 and 1315.13 describe the process for determining the assessment of annual needs for each of the three chemicals and adjusting the assessment. The sections parallel §§ 1303.11 and 1303.13.

Subpart C, Sections 1315.21 through 1315.27 cover the requirements for individual manufacturing quotas. The sections are taken from §§ 1303.21 through 1303.27.

Subpart D addresses procurement and import quotas. Section 1315.30 describes what procurement and import quotas authorize and serves as an introduction to the requirements for these quotas.

Section 1315.32 specifies the requirements for obtaining a procurement quota and is based on § 1303.12.

Section 1315.34 covers the requirements for obtaining an import quota. The section specifies the information that an applicant must submit and indicates that DEA may request additional information, if necessary.

Section 1315.36 specifies the procedures for amending an import quota, as provided in 21 U.S.C. § 952(d).

Subpart E, §§ 1315.50 through 1315.62 cover the procedures for hearings on the assessment of annual needs and the issuance, adjustment, suspension, or denial of a quota. These sections are based on §§ 1303.31 through 1303.37.

**Regulatory Certifications**

*Administrative Procedure Act (5 U.S.C. 553)*

The Administrative Procedure Act (APA) generally requires that agencies, prior to issuing a new rule, publish a notice of proposed rulemaking in the **Federal Register**. The APA also provides, however, that agencies may be excepted from this requirement when ''the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B).

With publication of this Interim Final Rule, DEA is invoking this ''good cause'' exception to the APA's notice requirement based on the combination of several extraordinary factors. The Combat Methamphetamine Epidemic Act of 2005 specifically amended 21 U.S.C. 826 to mandate the establishment of production quotas for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. DEA has no discretion in this requirement and is essentially creating the same system of production quotas for these three List I chemicals as is currently established for controlled substances in Schedules I and II. These regulations address the procedures for the implementation of these quotas, and DEA has endeavored to use existing procedures wherever possible for simplicity and ease of implementation.

Further, the CMEA amended 21 U.S.C. 952 to prohibit all importation of ephedrine, pseudoephedrine, and phenylpropanolamine except such amounts as the Attorney General finds to be necessary for medical, scientific, or other legitimate purposes. The Act further amended § 952 regarding import quotas for these three List I chemicals.

In a separate rulemaking, DEA implemented the retail provisions of the CMEA (71 FR 56008, September 26, 2006; corrected at 71 FR 60609, October 13, 2006), which included, among others:

- Sales limits
- Product packaging
- Product placement
- Logbook and verification of purchaser identity

These provisions limit the availability of scheduled listed chemical products at the retail level. While these products will be available for purchase, their diversion to the illicit production of methamphetamine will be more difficult due to the sales limits, logbook requirements, and other provisions. Congress, in crafting CMEA, recognized that limiting of product availability at the retail level could potentially encourage diversion of either drug products or the List I chemicals themselves higher in the supply chain—at the import, manufacture, and distribution levels. To address its

concern about ''what immediately moves in behind,'' (Rep. Souder, February 28, 2006, CR p. 423) Congress included provisions in CMEA to control the import, export, manufacture, and distribution of the three chemicals and products containing them. These provisions also will make it possible for the United States to meet the recommendations of the International Narcotics Control Board, which encouraged its member countries to provide for pre-export notifications and an assessment of legitimate need for these chemicals.

In a separate rulemaking (72 FR 17401, April 9, 2007) DEA implemented the ''spot market'' provisions of the CMEA related to the importation, exportation, and international transactions involving all listed chemicals. The provisions of section 716 of the CMEA implemented by that rulemaking require importers, exporters, brokers, and traders to notify DEA, before the transaction is to take place, of certain information regarding the transferee(s) (downstream customer(s)) and the listed chemicals to be transferred. Such information provides DEA with an opportunity to evaluate the transaction.

DEA must implement the quota provisions of the CMEA on an interim basis to ensure that product upstream from the retail level is not diverted for illicit purposes. It would be contrary to the public interest to allow the diversion of large amounts of ephedrine, pseudoephedrine, and phenylpropanolamine at the wholesale level while implementing controls at the retail level to limit sales of these very products.

The CMEA, as evidenced by the number of rulemakings DEA is issuing to implement it, sets forth a complex array of statutory requirements, with different effective dates, designed to prevent the use of certain List I chemicals in the illicit manufacture of methamphetamine and amphetamine. In addition, the CMEA, which, among other things, essentially reclassifies ephedrine, pseudoephedrine, and phenylpropanolamine as scheduled listed chemicals, imposes new retail restrictions on these products, and mandates new domestic and import quotas, is expansive in its breadth. The broad scope of the new law, as well as the expedited effective dates, is a clear reflection of Congress' concern about the nation's growing methamphetamine epidemic and its desire to act quickly to prevent further illicit use of these chemicals.

The retail and ''spot market'' provisions of the CMEA, which DEA has already implemented through separate rulemakings, limit the sale of ephedrine, pseudoephedrine, and phenylpropanolamine at retail and provide information to DEA regarding downstream customers of United States importers, exporters, brokers and traders. They do not, however, provide controls at the distribution, manufacturing, and importing levels of the distribution chain. To fully implement the CMEA as intended by Congress, and to work to combat the methamphetamine epidemic the United States is currently experiencing, DEA must utilize all tools at its disposal to control the importation, exportation, manufacture, and retail sale of ephedrine, pseudoephedrine, phenylpropanolamine, and products containing those three List I chemicals.

In light of these factors, DEA finds that ''good cause'' exists to issue this interim rule without engaging in traditional notice and comment rulemaking. In so doing, DEA recognizes that exceptions to the APA's notice and comment procedures are to be ''narrowly construed and only reluctantly countenanced.'' *Am. Fed'n of Gov't Employees* v. *Block*, 655 F2d 1153, 1156 (DC Cir. 1981) (quoting *New Jersey Dep't of Envtl. Prot.* v. *EPA*, 626 F.2d 1038, 1045 (DC Cir. 1980)). Based on the totality of the circumstances associated with the CMEA, DEA finds that invocation of the ''good cause'' exception is justified.

Under section 553(d) of the APA, DEA must generally provide a 30-day delayed effective date for final rules. DEA may dispense with the 30-day delayed effective date requirement ''for good cause found and published with the rule.'' DEA believes that good cause exists to make this rule effective upon publication. As DEA noted previously, rulemakings have already been implemented to limit the availability of scheduled listed chemical products at the retail level. The limiting of product availability at the retail level could potentially encourage diversion of either drug products or the List I chemicals themselves higher in the supply chain—at the import, manufacture, and distribution levels. Congress included provisions in CMEA to address this circumstance, and the quota provisions set forth in this rulemaking work toward that goal. DEA must implement the quota provisions of the CMEA upon publication to ensure that product upstream from the retail level is not diverted for illicit purposes.

*Regulatory Flexibility Act*

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)). The RFA applies only to proposed rules that are subject to notice and comment (5 U.S.C. 601(2)). Because this rule is codifying statutory provisions, DEA has determined, as explained above, that public notice and comment are not necessary. Consequently, the RFA does not apply.

DEA has nonetheless considered the impact of the rule on small entities. As discussed below, DEA estimates that about 310 firms in the manufacturing and wholesale sectors will be affected by this rule. About 250 of these may be small entities under the Small Business Administration definitions of small entities. For most of these firms the impact of the rule will be very small; they will be required to file an annual request for import or procurement quotas. DEA estimates that the cost of applying for a quota is about $96 for importers and $113 for manufacturers, which includes data collection and mailing. These costs do not represent a significant economic impact even on the smallest repackagers whose average revenues are above $54,000. The average revenues of the smallest firms in sectors subject to the rule for which the 2002 Economic Census has data are shown in Table 1.

TABLE 1.—AVERAGE REVENUES OF SMALLEST FIRMS BY AFFECTED SECTOR

| Sector | Average revenue of smallest firms |
|---|---|
| Packaging and labeling | $54,271 |
| Drug wholesalers | 127,367 |
| Chemical wholesalers | 718,697 |
| Pharmaceutical manufacturers | 824,268 |

The larger impact of the rule will be in any reduction in sales that results from limits imposed by a firm's quotas. Only one firm manufactures bulk pseudoephedrine in the United States. This firm is owned by an Indian chemical manufacturer and is not a small entity. The rest of the firms affected by the rule can be divided into three sectors:

- Importers and manufacturers of prescription products containing the chemicals.
- Importers and manufacturers of OTC products that are sold primarily through drug stores, grocery stores, discount department stores, superstores, and electronic mail order houses.
- Importers and manufacturers of OTC products that are sold almost exclusively through independent

convenience stores or other small outlets.

The three sectors will be affected differently by the quotas. DEA will provide importers and manufacturers of prescription products with the quantities that they request unless DEA has some reason to believe that the prescription product is being diverted. These firms will not have a significant economic impact from the rule.

Importers and manufacturers of OTC products that are sold through conventional outlets are likely to receive the quotas requested adjusted only to account for general estimates of diversion and declines in demand. At this point, DEA has not estimated the adjustment needed to account for diversion, but expects that it will be small relative to the declines in demand that are resulting from the retail sales restrictions. As DEA has discussed in the retail rule (71 FR 56008, September 26, 2006; corrected at 71 FR 60609, October 13, 2006), most of the firms that manufacture these products for sales in conventional outlets also manufacture the substitutes. DEA does not expect that these firms will see a significant economic impact from the quotas, but is seeking comment on this issue.

DEA anticipates that the third sector will be more severely affected. This sector is comprised of a small number of companies that import or manufacture products in higher dosages than are normally purchased through conventional outlets and sell the product almost exclusively through nonconventional outlets, such as independent convenience stores, liquor stores, etc. Although some products sold mainly in drug stores, grocery stores, and large discount or warehouse stores are stolen or bought for illicit purposes, DEA's experience indicates that products sold almost exclusively through nonconventional outlets are far more likely to be diverted in substantial quantities. In investigations, DEA has found some of these stores selling products in quantities 20 to 40 times what such stores would be expected to sell to meet legitimate needs. Many of these manufacturers have, in the past, marketed products in packages that are no longer legal for retail sales because they contain more than 3.6 grams of the chemical. DEA has issued multiple warning letters to these manufacturers to inform them of the diversion of their products.

An application for a quota from these manufacturers of products sold primarily or exclusively through such outlets or from importers who sell to these manufacturers will be reviewed using the same standards used to review other applications for a quota. However, DEA notes that the agency has published many final orders in the **Federal Register** addressing the distribution of these products sold almost exclusively to nonconventional outlets, and has found that a significant percentage of such products have been diverted. DEA will consider the historical uses of such products when determining whether the quantities requested in a quota application are required to meet the legitimate needs of the market. Consequently, if the manufacturers of these products, and the importers supplying those manufacturers, request quotas that are consistent with a past pattern of known diversion, these firms may not receive quotas in the amounts requested. It is also possible that the number of outlets carrying their products will decline if these stores decide that CMEA requirements for retail sales are too onerous. Some of these firms may experience a significant economic impact, particularly if this product line generated a substantial portion of their sales. Some of these firms appear, based on their web sites, to have added substitutes to their product lines; others appear to have dropped the product line altogether. DEA is seeking comments on this issue.

*Executive Order 12866*

The Deputy Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). It has been determined that this is ''a significant regulatory action.'' Therefore, this action has been reviewed by the Office of Management and Budget.

*Regulated Entities.* The firms subject to this rule are manufacturers and importers. At present, only one firm in the United States manufactures any of these chemicals in bulk and, therefore, only that firm will have to apply for a manufacturing quota. DEA reviewed a list of pseudoephedrine OTC and prescription products and ephedrine prescription products and identified about 240 firms based on their labeler codes. Each of these firms, plus any firms that repackage or relabel, will need to obtain procurement quotas. Based on 2005 DEA data, DEA estimates that about 69 firms with 91 locations are currently registered to import the chemicals; these firms will need to obtain import quotas if they are actually importing the chemicals. Although 91 locations are registered to import these chemicals, import notices indicate that many of these locations do not handle the chemicals. If other firms import prescription drug products that contain the chemicals they will also have to obtain import quotas. Based on these data, DEA estimates that 332 locations may apply for quotas if the demand for the chemicals and drug products remains the same (1 bulk manufacturer, 240 manufacturers, and 91 importers). Table 2 presents the number of potential applicants by sector. Registrants must apply for quotas for each registered location rather than by firm. Consequently, the number of manufacturing locations applying may be higher than listed if the firms handle the product at multiple locations. The importers are, in some cases, also manufacturers so that the total number of affected firms may be reduced. The total number of importer registrants includes firms with multiple registered locations.

TABLE 2.—POTENTIAL QUOTA APPLICANTS BY SECTOR

| Type | Number |
|---|---|
| All Manufacturers | 240 |
| Small Manufacturers | 211 |
| Importer Registered Locations | 91 |
| Small Importer Firms | 42 |

*Costs.* As detailed in the Regulatory Flexibility Act section, there will be some burden associated with applying for quotas. DEA estimates that the total cost of the quota application process will be about $35,880 a year.

As noted above, the larger cost of this rule is likely to be based on the extent to which the quotas constrain the market for OTC products containing ephedrine or pseudoephedrine. DEA assumes that the quotas will not affect the prescription drug market. DEA will establish its assessment of annual national needs for each of the chemicals, which will serve as a ceiling on the quantities for which quotas are granted. In setting an assessment of annual national need, DEA will consider the likelihood that OTC sales of scheduled listed chemical products may be reduced by the new restrictions on retail sales. Domestic demand for these products comes from three sources:

- Legitimate medical, scientific, and industrial needs and maintenance of reserve stocks.
- Exports.
- Illicit use-clandestine methamphetamine/amphetamine laboratories.

To establish the national needs and set individual quotas, DEA must first estimate the reduction in the volume of OTC sales due to the new retail

restrictions and the quantity of the chemicals now being diverted to illicit use. This information is needed so the degree of supply constraint implied by a given assessment can be understood. It will not be possible to make accurate estimates of these amounts until experience with the retail controls provides sufficient data. Similarly, accurate cost estimates cannot be developed until these data are available.

As DEA discussed in its Interim Final Rule on retail sales of scheduled listed chemical products (71 FR 56008, September 26, 2006; corrected at 71 FR 60609, October 13, 2006), DEA has no reliable information on the value of the OTC market for these products. Estimates range from $250 million to $1.5 billion annually prior to the sales restrictions. The effect of State laws restricting sales and of the anticipation of the CMEA restrictions appear to be reducing the market considerably, at least for imports of bulk materials. Data from the U.S. International Trade Commission on the change in the imports from January through August of 2006 over the same period in 2005 are shown in Table 3.

TABLE 3.—CHANGE IN IMPORTS JANUARY–AUGUST 2005 TO JANUARY–AUGUST 2006

| | Percent change in value | Percent change in quantity |
|---|---|---|
| Ephedrine | −44.9 | −64.1 |
| Pseudoephedrine | −66.2 | −70.4 |
| Cough and cold dosage forms | −4.8 | −15.9 |

DEA is requesting comments and data from importers and manufacturers about the change in their markets and its impact.

DEA notes that the figures in Table 3 reflect imports for both prescription and OTC drugs. Because DEA does not anticipate that quotas will have any effect on prescription drugs, it is likely that the decline in the retail market is considerable. However, even the highest estimate of the market pre-restriction indicates that the total cost of quota restrictions will be less than $100 million in any one year, the standard for an economically significant rule. If the highest estimate of the value of the market, $1.5 billion, were to remain unchanged after retail restrictions, quotas would have to restrict that market by 6.67 percent to reach the $100 million a year level. If, as is far more likely, the market is declining significantly absent the quotas, the quotas would have to restrict the market by more than 10 percent to reach the level of economically significant under the Executive Order. At this time, DEA does not believe that the level of diversion is 6.67 percent of sales on a national basis. Therefore, DEA does not consider that this rule will have a significant economic impact. DEA requests comments on this issue.

*Benefits.* Congress, in CMEA, imposed a set of requirements on the manufacture, import, and sale of the three chemicals. These requirements, taken together, are intended to limit production and sales of these chemicals to that needed for legitimate purposes. The reduction in demand for these chemicals that is already occurring will limit the world production and make less available for diversion on the international market. In terms of societal accounting, the principal benefit of quotas that constrain supply will stem from a reduction in diversion to domestic illicit production of methamphetamine and amphetamine. The reduced volume of diversion will cause a reduction in the number of domestic clandestine methamphetamine laboratories and domestic illicit production of methamphetamine. Constrained supply is expected to raise the price of the chemicals in the domestic market and, for the clandestine methamphetamine laboratories, increase the cost and difficulty of obtaining them. The constrained-supply effect will come from the retail restrictions as well as from the quota ceiling; it is difficult to make separate quantitative estimates of the results of these two causes.

Reduction in the number of clandestine methamphetamine laboratories reduces costs to Federal, State, and local governments of raiding these clandestine operations and cleaning up pollution at clandestine methamphetamine laboratory sites. As DEA detailed in its rule on retail sales (specifically 71 FR 56020, September 26, 2006), DEA, the States, and local governments spent more than $17 million in clean up costs in FY 2005. This cost covers only the removal of chemicals that could be reused from clandestine laboratory sites; the cost of cleaning up soil or property contamination is paid by the land owner, but if the owner cannot pay the cost, local governments bear the burden or the contamination remains. The costs also do not cover the time State and local governments spend investigating, arresting, and trying clandestine laboratory operators or the social costs related to children and others exposed to hazardous chemicals at these laboratories.

*Paperwork Reduction Act*

DEA is revising two information collections currently approved under the Paperwork Reduction Act of 1998, and establishing a new information collection to address new mandates established by the CMEA. The two information collections being revised are OMB approval number 1117–0006: ''Application for Individual Manufacturing Quota for a Basic Class of Controlled Substance and for Ephedrine, Pseudoephedrine, and Phenylpropanolamine'' (DEA Form 189), and OMB approval number 1117–0008: ''Application for Procurement Quota for Controlled Substances and Ephedrine, Pseudoephedrine, and Phenylpropanolamine'' (DEA Form 250). DEA is revising these collections by slightly revising the forms and increasing the estimated annual number of respondents and responses. Those changes have been discussed above, and are necessary for DEA to implement the provisions of the Combat Methamphetamine Epidemic Act of 2005. DEA is also establishing a new information collection: ''Application for Import Quota for Ephedrine, Pseudoephedrine, and Phenylpropanolamine'' (DEA Form 488).

The Department of Justice, Drug Enforcement Administration, has submitted the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with review procedures of the Paperwork Reduction Act of 1995. The proposed information collections are published to obtain comments from the public and affected agencies.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions from the public and affected agencies concerning the collections of information are encouraged. Your comments on the information collection-related aspects of this rule should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Overview of information collection OMB 1117–0006:*

(1) *Type of Information Collection:* revision of an existing collection.

(2) *Title of the Form/Collection:* Application for Individual Manufacturing Quota for a Basic Class of Controlled Substance and for Ephedrine, Pseudoephedrine, and Phenylpropanolamine.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

*Form Number:* DEA Form 189.

Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* business or other for-profit.

*Other:* none.

*Abstract:* 21 U.S.C. 826 and 21 CFR 1303.22 and 1315.22 require that any person who is registered to manufacture any basic class of controlled substances listed in Schedule I or II and who desires to manufacture a quantity of such class, or who desires to manufacture using the List I chemicals ephedrine, pseudoephedrine, or phenylpropanolamine, must apply on DEA Form 189 for a manufacturing quota for such quantity of such class or List I chemical.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Only one firm currently manufactures these chemicals in the United States so only one additional firm will need to file this form. DEA estimates that each form takes 0.5 hours (30 minutes) to complete. Therefore, the burden increase for this one firm associated with this rulemaking is 0.5 hours annually.

(6) *An estimate of the total public burden (in hours) associated with the collection:*

One individual respondent will spend 0.5 hours (30 minutes) annually completing this form for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. This results in an annual public burden of 0.5 hours.

This form is already used to collect information regarding controlled substances quotas. For that aspect of this collection, 36 respondents submit 297 responses annually, for a public burden of 148.5 hours annually. DEA notes that the controlled substances aspect of this collection is not being adjusted or revised.

Therefore, in total, 37 firms take 0.5 hours (30 minutes) each to complete the form. This results in a total public burden of 149 hours annually.

*Overview of information collection OMB 1117–0008:*

(1) *Type of Information Collection:* revision of an existing collection.

(2) *Title of the Form/Collection:* Application for Procurement Quota for Controlled Substances and Ephedrine, Pseudoephedrine, and Phenylpropanolamine.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

*Form Number:* DEA Form 250, Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* business or other for-profit.

*Other:* none.

*Abstract:* 21 U.S.C. 826 and 21 CFR 1303.12 and 1315.32 require that U.S. companies who desire to use any basic class of controlled substances listed in Schedule I or II or the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine for purposes of manufacturing during the next calendar year shall apply on DEA Form 250 for procurement quota for such class or List I chemical.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that each form takes 1 hour to complete. DEA estimates that 240 individual respondents will respond to this form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 240 individual respondents will spend one hour annually completing this form for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. This results in an annual public burden of 240 hours.

This form is already used to collect information regarding controlled substances quotas. For that aspect of this collection, 255 respondents submit 1,106 responses annually, for a public burden of 1,106 hours annually. DEA notes that the controlled substances aspect of this collection is not being adjusted or revised.

Therefore, the total public burden for this collection is 1,346 hours annually.

*Overview of new information collection:*

(1) *Type of Information Collection:* new collection.

(2) *Title of the Form/Collection:* Application for Import Quota for Ephedrine, Pseudoephedrine, and Phenylpropanolamine.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

*Form Number:* DEA Form 488, Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* business or other for-profit.

*Other:* none.

*Abstract:* 21 U.S.C. 952 and 21 CFR 1315.34 require that persons who desire to import the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine during the next calendar year shall apply on DEA Form 488 for import quota for such List I chemicals.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that 91 individual respondents will apply for import quotas. DEA estimates that each response will take one hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* DEA estimates that this collection will involve 91 annual public burden hours.

If additional information is required, contact: Lynn Bryant, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

*Executive Order 12988*

This regulation meets the applicable standards set forth in §§ 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

*Executive Order 13132*

This rulemaking does not preempt or modify any provision of State law; nor

does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

*Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Congressional Review Act*

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**List of Subjects**

*21 CFR Part 1300*

Chemicals, Drug traffic control.

*21 CFR Part 1315*

Administrative practice and procedure, Chemicals, Drug traffic control, Imports, Reporting and recordkeeping requirements.

■ For the reasons set out above, 21 CFR Chapter II is amended as follows:

## PART 1300—DEFINITIONS

■ 1. The authority citation for part 1300 continues to read as follows:

**Authority:** 21 U.S.C. 802, 871(b), 951, 958(f).

■ 2. Section 1300.02 is amended by revising paragraph (b)(28)(i)(B) to read as follows:

### § 1300.02 Definitions related to listed chemicals.

* * * * *

(b) * * *

(28) * * *

(i) * * *

(B) A delivery of a listed chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier, or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman, except that if the carriage or storage is in connection with the distribution, importation, or exportation of a listed chemical to a third person, this paragraph does not relieve a distributor, importer, or exporter from compliance with parts 1309, 1310, 1313, and 1315 of this chapter;

* * * * *

■ 3. Part 1315 is added to read as follows:

## PART 1315—IMPORTATION AND PRODUCTION QUOTAS FOR EPHEDRINE, PSEUDOEPHEDRINE, AND PHENYLPROPANOLAMINE

**Subpart A—General Information**

Sec.
1315.01 Scope.
1315.02 Definitions.
1315.03 Personal use exemption.
1315.05 Applicability.

**Subpart B—Assessment of Annual Needs**

1315.11 Assessment of annual needs.
1315.13 Adjustments of assessment of annual needs.

**Subpart C—Individual Manufacturing Quotas**

1315.21 Individual manufacturing quotas.
1315.22 Procedure for applying for individual manufacturing quotas.
1315.23 Procedure for fixing individual manufacturing quotas.
1315.24 Inventory allowance.
1315.25 Increase in individual manufacturing quotas.
1315.26 Reduction in individual manufacturing quotas.
1315.27 Abandonment of quota.

**Subpart D—Procurement and Import Quotas**

1315.30 Procurement and import quotas.
1315.32 Obtaining a procurement quota.
1315.34 Obtaining an import quota.
1315.36 Amending an import quota.

**Subpart E—Hearings**

1315.50 Hearings generally.
1315.52 Purpose of hearing.
1315.54 Waiver or modification of rules.
1315.56 Request for hearing or appearance; waiver.
1315.58 Burden of proof.
1315.60 Time and place of hearing.
1315.62 Final order.

**Authority:** 21 U.S.C. 802, 821, 826, 871(b), 952.

## Subpart A—General Information

### § 1315.01 Scope.

This part specifies procedures governing the establishment of an assessment of annual needs, procurement and manufacturing quotas pursuant to section 306 of the Act (21 U.S.C. 826), and import quotas pursuant to section 1002 of the Act (21 U.S.C. 952) for ephedrine, pseudoephedrine, and phenylpropanolamine.

### § 1315.02 Definitions.

(a) Except as specified in paragraphs (b) and (c) of this section, any term contained in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.

(b) The term *net disposal* means, for a stated period, the sum of paragraphs (b)(1) through (b)(3) of this section minus the sum of paragraphs (b)(4) and (b)(5) of this section:

(1) The quantity of ephedrine, pseudoephedrine, or phenylpropanolamine distributed by the registrant to another person.

(2) The quantity of that chemical used by the registrant in the production of (or converted by the registrant into) another chemical or product.

(3) The quantity of that chemical otherwise disposed of by the registrant.

(4) The quantity of that chemical returned to the registrant by any purchaser.

(5) The quantity of that chemical distributed by the registrant to a registered manufacturer of that chemical for purposes other than use in the production of, or conversion into, another chemical or in the manufacture of dosage forms of that chemical.

(c) Ephedrine, pseudoephedrine, and phenylpropanolamine include their salts, optical isomers, and salts of optical isomers.

### § 1315.03 Personal use exemption.

A person need not register as an importer, file an import declaration, and obtain an import quota if both of the following conditions are met:

(a) The person purchases scheduled listed chemical products at retail and imports them for personal use, by means of shipping through any private or commercial carrier or the Postal Service.

(b) In any 30-day period, the person imports no more than 7.5 grams of ephedrine base, 7.5 grams of pseudoephedrine base, and 7.5 grams of phenylpropanolamine base in scheduled listed chemical products.

### § 1315.05 Applicability.

This part applies to all of the following:

(a) Persons registered to manufacture (including repackaging or relabeling) or to import ephedrine, pseudoephedrine, or phenylpropanolamine as bulk chemicals.

(b) Persons registered to manufacture (including repackaging or relabeling) or

to import prescription and over-the-counter drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine that may be lawfully marketed and distributed in the United States under the Federal Food, Drug, and Cosmetic Act.

## Subpart B—Assessment of Annual Needs

### § 1315.11 Assessment of annual needs.

(a) The Administrator shall determine the total quantity of ephedrine, pseudoephedrine, and phenylpropanolamine, including drug products containing ephedrine, pseudoephedrine, and phenylpropanolamine, necessary to be manufactured and imported during the following calendar year to provide for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks.

(b) In making his determinations, the Administrator shall consider the following factors:

(1) Total net disposal of the chemical by all manufacturers and importers during the current and 2 preceding years;

(2) Trends in the national rate of net disposal of each chemical;

(3) Total actual (or estimated) inventories of the chemical and of all substances manufactured from the chemical, and trends in inventory accumulation;

(4) Projected demand for each chemical as indicated by procurement and import quotas requested pursuant to § 1315.32; and

(5) Other factors affecting medical, scientific, research, and industrial needs in the United States, lawful export requirements, and the establishment and maintenance of reserve stocks, as the Administrator finds relevant, including changes in the currently accepted medical use in treatment with the chemicals or the substances which are manufactured from them, the economic and physical availability of raw materials for use in manufacturing and for inventory purposes, yield and stability problems, potential disruptions to production (including possible labor strikes), and recent unforeseen emergencies such as floods and fires.

(c) The Administrator shall, on or before May 1 of each year, publish in the **Federal Register**, general notice of an assessment of annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine determined by him under this section. A notice of the publication shall be mailed simultaneously to each person registered to manufacture or import the chemical.

(d) The Administrator shall permit any interested person to file written comments on or objections to the proposed assessment of annual needs and shall designate in the notice the time during which the filings may be made.

(e) The Administrator may, but is not required to, hold a public hearing on one or more issues raised by the comments and objections filed with him. In the event the Administrator decides to hold such a hearing, he shall publish a notice of the hearing in the **Federal Register**. The notice shall summarize the issues to be heard and set the time for the hearing, which shall not be less than 30 days after the date of publication of the notice.

(f) After consideration of any comments or objections, or after a hearing if one is ordered by the Administrator, the Administrator shall issue and publish in the **Federal Register** the final order determining the assessment of annual needs for the chemicals. The order shall include the findings of fact and conclusions of law upon which the order is based. The order shall specify the date on which it shall take effect. A notice of the publication shall be mailed simultaneously to each person registered as a manufacturer or importer of the chemical.

### § 1315.13 Adjustments of the assessment of annual needs.

(a) The Administrator may at any time increase or reduce the assessment of annual needs for ephedrine, pseudoephedrine, or phenylpropanolamine that has been previously fixed pursuant to § 1315.11.

(b) In determining to adjust the assessment of annual needs, the Administrator shall consider the following factors:

(1) Changes in the demand for that chemical, changes in the national rate of net disposal of the chemical, and changes in the rate of net disposal of the chemical by registrants holding individual manufacturing or import quotas for that chemical;

(2) Whether any increased demand for that chemical, the national and/or changes in individual rates of net disposal of that chemical are temporary, short term, or long term;

(3) Whether any increased demand for that chemical can be met through existing inventories, increased individual manufacturing quotas, or increased importation, without increasing the assessment of annual needs, taking into account production delays and the probability that other individual manufacturing quotas may be suspended pursuant to § 1315.24(b);

(4) Whether any decreased demand for that chemical will result in excessive inventory accumulation by all persons registered to handle that chemical (including manufacturers, distributors, importers, and exporters), notwithstanding the possibility that individual manufacturing quotas may be suspended pursuant to § 1315.24(b) or abandoned pursuant to § 1315.27;

(5) Other factors affecting medical, scientific, research, industrial, and importation needs in the United States, lawful export requirements, and reserve stocks, as the Administrator finds relevant, including changes in the currently accepted medical use in treatment with the chemical or the substances that are manufactured from it, the economic and physical availability of raw materials for use in manufacturing and for inventory purposes, yield and stability problems, potential disruptions to production (including possible labor strikes), and recent unforeseen emergencies such as floods and fires.

(c) In the event that the Administrator determines to increase or reduce the assessment of annual needs for a chemical, the Administrator shall publish in the **Federal Register** general notice of an adjustment in the assessment of annual needs for that chemical as determined under this section. A notice of the publication shall be mailed simultaneously to each person registered as a manufacturer or importer of the chemical.

(d) The Administrator shall permit any interested person to file written comments on or objections to the proposal and shall designate in the notice the time during which such filings may be made.

(e) The Administrator may, but is not required to, hold a public hearing on one or more issues raised by the comments and objections filed with him. In the event the Administrator decides to hold such a hearing, he shall publish a notice of the hearing in the **Federal Register**. The notice shall summarize the issues to be heard and set the time for the hearing, which shall not be less than 10 days after the date of publication of the notice.

(f) After consideration of any comments or objections, or after a hearing if one is ordered by the Administrator, the Administrator shall issue and publish in the **Federal Register** the final order determining the assessment of annual needs for the chemical. The order shall include the

findings of fact and conclusions of law upon which the order is based. The order shall specify the date on which it shall take effect. A notice of the publication shall be mailed simultaneously to each person registered as a manufacturer or importer of the chemical.

## Subpart C—Individual Manufacturing Quotas

### § 1315.21 Individual manufacturing quotas.

The Administrator shall, on or before July 1 of each year, fix for and issue to each person registered to manufacture in bulk ephedrine, pseudoephedrine, or phenylpropanolamine who applies for a manufacturing quota an individual manufacturing quota authorizing that person to manufacture during the next calendar year a quantity of that chemical. Any manufacturing quota fixed and issued by the Administrator is subject to his authority to reduce or limit it at a later date pursuant to § 1315.26 and to his authority to revoke or suspend it at any time pursuant to §§ 1301.36, 1309.43, 1309.44, or 1309.45 of this chapter.

### § 1315.22 Procedure for applying for individual manufacturing quotas.

Any person who is registered to manufacture ephedrine, pseudoephedrine, or phenylpropanolamine and who desires to manufacture a quantity of the chemical must apply on DEA Form 189 for a manufacturing quota for the quantity of the chemical. Copies of DEA Form 189 may be obtained from the Office of Diversion Control Web site, and must be filed (on or before April 1 of the year preceding the calendar year for which the manufacturing quota is being applied) with the Drug & Chemical Evaluation Section, Drug Enforcement Administration, Department of Justice, Washington, DC 20537. A separate application must be made for each chemical desired to be manufactured. The applicant must state the following:

(a) The name and DEA Chemical Code Number, as set forth in part 1310 of this chapter, of the chemical.

(b) For the chemical in each of the current and preceding 2 calendar years,

(1) The authorized individual manufacturing quota, if any;

(2) The actual or estimated quantity manufactured;

(3) The actual or estimated net disposal;

(4) The actual or estimated inventory allowance pursuant to § 1315.24; and

(5) The actual or estimated inventory as of December 31.

(c) For the chemical in the next calendar year,

(1) The desired individual manufacturing quota; and

(2) Any additional factors that the applicant finds relevant to the fixing of the individual manufacturing quota, including any of the following:

(i) The trend of (and recent changes in) the applicant's and the national rates of net disposal.

(ii) The applicant's production cycle and current inventory position.

(iii) The economic and physical availability of raw materials for use in manufacturing and for inventory purposes.

(iv) Yield and stability problems.

(v) Potential disruptions to production (including possible labor strikes).

(vi) Recent unforeseen emergencies such as floods and fires.

### § 1315.23 Procedure for fixing individual manufacturing quotas.

(a) In fixing individual manufacturing quotas for ephedrine, pseudoephedrine, and phenylpropanolamine, the Administrator shall allocate to each applicant who is currently manufacturing the chemical a quota equal to 100 percent of the estimated net disposal of that applicant for the next calendar year, adjusted—

(1) By the amount necessary to increase or reduce the estimated inventory of the applicant on December 31 of the current year to his estimated inventory allowance for the next calendar year, pursuant to § 1315.24, and

(2) By any other factors which the Administrator deems relevant to the fixing of the individual manufacturing quota of the applicant, including:

(i) The trend of (and recent changes in) the applicant's and the national rates of net disposal,

(ii) The applicant's production cycle and current inventory position,

(iii) The economic and physical availability of raw materials for use in manufacturing and for inventory purposes,

(iv) Yield and stability problems,

(v) Potential disruptions to production (including possible labor strikes), and

(vi) Recent unforeseen emergencies such as floods and fires.

(b) In fixing individual manufacturing quotas for a chemical, the Administrator shall allocate to each applicant who is not currently manufacturing the chemical a quota equal to 100 percent of the reasonably estimated net disposal of that applicant for the next calendar year, as determined by the Administrator, adjusted—

(1) By the amount necessary to provide the applicant his estimated inventory allowance for the next calendar year, pursuant to § 1315.24; and

(2) By any other factors which the Administrator deems relevant to the fixing of the individual manufacturing quota of the applicant, including any of the following:

(i) The trend of (and recent changes in) the national rate of net disposal.

(ii) The applicant's production cycle and current inventory position.

(iii) The economic and physical availability of raw materials for use in manufacturing and for inventory purposes.

(iv) Yield and stability problems.

(v) Potential disruptions to production (including possible labor strikes).

(vi) Recent unforeseen emergencies such as floods and fires.

(c) On or before March 1 of each year the Administrator shall adjust the individual manufacturing quota allocated for that year to each applicant in paragraph (a) of this section by the amount necessary to increase or reduce the actual inventory of the applicant to December 31 of the preceding year to his estimated inventory allowance for the current calendar year, pursuant to § 1315.24.

### § 1315.24 Inventory allowance.

(a) For the purpose of determining individual manufacturing quotas pursuant to § 1315.23, each registered manufacturer shall be allowed as a part of the quota an amount sufficient to maintain an inventory equal to either of the following:

(1) For current manufacturers, 50 percent of his average estimated net disposal for the current calendar year and the last preceding calendar year; or

(2) For new manufacturers, 50 percent of his reasonably estimated net disposal for the next calendar year as determined by the Administrator.

(b) During each calendar year each registered manufacturer shall be allowed to maintain an inventory of a chemical not exceeding 65 percent of his estimated net disposal of that chemical for that year, as determined at the time his quota for that year was determined. At any time the inventory of a chemical held by a manufacturer exceeds 65 percent of his estimated net disposal, his quota for that chemical is automatically suspended and shall remain suspended until his inventory is less than 60 percent of his estimated net disposal. The Administrator may, upon application and for good cause shown, permit a manufacturer whose quota is,

or is likely to be, suspended under this paragraph to continue manufacturing and to accumulate an inventory in excess of 65 percent of his estimated net disposal, upon such conditions and within such limitations as the Administrator may find necessary or desirable.

(c) If, during a calendar year, a registrant has manufactured the entire quantity of a chemical allocated to him under an individual manufacturing quota, and his inventory of that chemical is less than 40 percent of his estimated net disposal of that chemical for that year, the Administrator may, upon application pursuant to § 1315.25, increase the quota of such registrant sufficiently to allow restoration of the inventory to 50 percent of the estimated net disposal for that year.

**§ 1315.25 Increase in individual manufacturing quotas.**

(a) Any registrant who holds an individual manufacturing quota for a chemical may file with the Administrator an application on DEA Form 189 for an increase in the registrant's quota to meet the registrant's estimated net disposal, inventory, and other requirements during the remainder of that calendar year.

(b) The Administrator, in passing upon a registrant's application for an increase in the individual manufacturing quota, shall take into consideration any occurrences since the filing of the registrant's initial quota application that may require an increased manufacturing rate by the registrant during the balance of the calendar year. In passing upon the application the Administrator may also take into consideration the amount, if any, by which his determination of the total quantity for the chemical to be manufactured under § 1315.11 exceeds the aggregate of all the individual manufacturing quotas for the chemical, and the equitable distribution of such excess among other registrants.

**§ 1315.26 Reduction in individual manufacturing quotas.**

The Administrator may at any time reduce an individual manufacturing quota for a chemical that he has previously fixed to prevent the aggregate of the individual manufacturing quotas and import quotas outstanding or to be granted from exceeding the assessment of annual needs that has been established for that chemical pursuant to § 1315.11, as adjusted pursuant to § 1315.13. If a quota assigned to a new manufacturer pursuant to § 1315.23(b), or if a quota assigned to any manufacturer is increased pursuant to § 1315.24(c), or if an import quota issued to an importer pursuant to § 1315.34, causes the total quantity of a chemical to be manufactured and imported during the year to exceed the assessment of annual needs that has been established for that chemical pursuant to § 1315.11, as adjusted pursuant to § 1315.13, the Administrator may proportionately reduce the individual manufacturing quotas and import quotas of all other registrants to keep the assessment of annual needs within the limits originally established, or, alternatively, the Administrator may reduce the individual manufacturing quota of any registrant whose quota is suspended pursuant to § 1315.24(b) or §§ 1301.36, 1309.43, 1309.44, or 1309.45 of this chapter or is abandoned pursuant to § 1315.27.

**§ 1315.27 Abandonment of quota.**

Any manufacturer assigned an individual manufacturing quota for a chemical pursuant to § 1315.23 may at any time abandon his right to manufacture all or any part of the quota by filing with the Drug & Chemical Evaluation Section a written notice of the abandonment, stating the name and DEA Chemical Code Number, as set forth in part 1310 of this chapter, of the chemical and the amount which he has chosen not to manufacture. The Administrator may, in his discretion, allocate the amount among the other manufacturers in proportion to their respective quotas.

## Subpart D—Procurement and Import Quotas

**§ 1315.30 Procurement and import quotas.**

(a) To determine the estimated needs for, and to insure an adequate and uninterrupted supply of, ephedrine, pseudoephedrine, and phenylpropanolamine the Administrator shall issue procurement and import quotas.

(b) A procurement quota authorizes a registered manufacturer to procure and use quantities of each chemical for the following purposes:

(1) Manufacturing the bulk chemical into dosage forms.

(2) Manufacturing the bulk chemical into other substances.

(3) Repackaging or relabeling the chemical or dosage forms.

(c) An import quota authorizes a registered importer to import quantities of the chemical for the following purposes:

(1) Distribution of the chemical to a registered manufacturer that has a procurement quota for the chemical.

(2) Other distribution of the chemical consistent with the legitimate medical and scientific needs of the United States.

**§ 1315.32 Obtaining a procurement quota.**

(a) Any person who is registered to manufacture ephedrine, pseudoephedrine, or phenylpropanolamine, or whose requirement of registration is waived pursuant to § 1309.24 of this chapter, and who desires to use during the next calendar year any ephedrine, pseudoephedrine, or phenylpropanolamine for purposes of manufacturing (including repackaging or relabeling), must apply on DEA Form 250 for a procurement quota for the chemical. A separate application must be made for each chemical desired to be procured or used.

(b) The applicant must state separately all of the following:

(1) Each purpose for which the chemical is desired.

(2) The quantity desired for each purpose during the next calendar year.

(3) The quantities used and estimated to be used, if any, for that purpose during the current and preceding 2 calendar years.

(c) If the purpose is to manufacture the chemical into dosage form, the applicant must state the official name, common or usual name, chemical name, or brand name of that form. If the dosage form produced is a controlled substance listed in any schedule, the applicant must also state the schedule number and National Drug Code Number, of the substance.

(d) If the purpose is to manufacture another chemical, the applicant must state the official name, common or usual name, chemical name, or brand name of the substance and the DEA Chemical Code Number, as set forth in part 1310 of this chapter.

(e) DEA Form 250 must be filed on or before April 1 of the year preceding the calendar year for which the procurement quota is being applied. Copies of DEA Form 250 may be obtained from the Office of Diversion Control Web site, and must be filed with the Drug & Chemical Evaluation Section, Drug Enforcement Administration, Department of Justice, Washington, DC 20537.

(f) The Administrator shall, on or before July 1 of the year preceding the calendar year during which the quota shall be effective, issue to each qualified applicant a procurement quota authorizing him to procure and use:

(1) All quantities of the chemical necessary to manufacture products that the applicant is authorized to manufacture pursuant to § 1315.23; and

(2) Such other quantities of the chemical as the applicant has applied to procure and use and are consistent with his past use, his estimated needs, and the total quantity of the chemical that will be produced.

(g) Any person to whom a procurement quota has been issued may at any time request an adjustment in the quota by applying to the Administrator with a statement showing the need for the adjustment. The application must be filed with the Drug & Chemical Evaluation Section, Drug Enforcement Administration, Department of Justice, Washington, DC 20537. The Administrator shall increase or decrease the procurement quota of the person if and to the extent that he finds, after considering the factors enumerated in paragraph (f) of this section and any occurrences since the issuance of the procurement quota, that the need justifies an adjustment.

(h) Any person to whom a procurement quota has been issued, authorizing that person to procure and use a quantity of ephedrine, pseudoephedrine, or phenylpropanolamine during the current calendar year, must, at or before the time of placing an order with another manufacturer or importer requiring the distribution of a quantity of the chemical, certify in writing to the other registrant that the quantity of ephedrine, pseudoephedrine, or phenylpropanolamine ordered does not exceed the person's unused and available procurement quota of the chemical for the current calendar year. The written certification must be executed by a person authorized to sign the registration application pursuant to § 1301.13 or § 1309.32(g) of this chapter. Registrants must not fill an order from persons required to apply for a procurement quota under paragraph (b) of this section unless the order is accompanied by a certification as required under this section.

(i) The certification required by paragraph (h) of this section must contain all of the following:

(1) The date of the certification.

(2) The name and address of the registrant to whom the certification is directed.

(3) A reference to the purchase order number to which the certification applies.

(4) The name of the person giving the order to which the certification applies.

(5) The name of the chemical to which the certification applies.

(6) A statement that the quantity (expressed in grams) of the chemical to which the certification applies does not exceed the unused and available procurement quota of the chemical, issued to the person giving the order, for the current calendar year.

(7) The signature of the individual authorized to sign a certification as provided in paragraph (h) of this section.

**§ 1315.34 Obtaining an import quota.**

(a) Any person who is registered to import ephedrine, pseudoephedrine, or phenylpropanolamine, or whose requirement of registration is waived pursuant to § 1309.24(c) of this chapter, and who desires to import during the next calendar year any ephedrine, pseudoephedrine, or phenylpropanolamine or drug products containing these chemicals, must apply on DEA Form 488 for an import quota for the chemical. A separate application must be made for each chemical desired to be imported.

(b) The applicant must provide the following information in the application:

(1) The applicant's name and DEA registration number.

(2) The name and address of a contact person and contact information (telephone number, fax number, e-mail address).

(3) Name of the chemical and DEA Chemical Code number.

(4) Type of product (bulk or finished dosage forms).

(5) For finished dosage forms, the official name, common or usual name, chemical name, or brand name, NDC number, and the authority to market the drug product under the Federal Food, Drug and Cosmetic Act of each form to be imported.

(6) The amount requested expressed in terms of base.

(7) For the current and preceding two calendar years, expressed in terms of base:

(i) Distribution/Sales—name, address, and registration number (if applicable) of each customer and the amount sold.

(ii) Inventory as of December 31 (each form—bulk, in-process, finished dosage form).

(iii) Acquisition—imports.

(c) For each form of the chemical (bulk or dosage unit), the applicant must state the quantity desired for import during the next calendar year.

(d) DEA Form 488 must be filed on or before April 1 of the year preceding the calendar year for which the import quota is being applied. Copies of DEA Form 488 may be obtained from the Office of Diversion Control Web site, and must be filed with the Drug & Chemical Evaluation Section, Drug Enforcement Administration, Department of Justice, Washington, DC 20537.

(e) The Administrator may at his discretion request additional information from an applicant.

(f) On or before July 1 of the year preceding the calendar year during which the quota shall be effective, the Administrator shall issue to each qualified applicant an import quota authorizing him to import:

(1) All quantities of the chemical necessary to manufacture products that registered manufacturers are authorized to manufacture pursuant to § 1315.23; and

(2) Such other quantities of the chemical that the applicant has applied to import and that are consistent with his past imports, the estimated medical, scientific, and industrial needs of the United States, the establishment and maintenance of reserve stocks, and the total quantity of the chemical that will be produced.

**§ 1315.36 Amending an import quota.**

(a) An import quota authorizes the registered importer to import up to the set quantity of ephedrine, pseudoephedrine, or phenylpropanolamine and distribute the chemical or drug products on the DEA Form 488. An importer must apply to change the quantity to be imported.

(b) Any person to whom an import quota has been issued may at any time request an increase in the quota quantity by applying to the Administrator with a statement showing the need for the adjustment. The application must be filed with the Drug & Chemical Evaluation Section, Drug Enforcement Administration, Department of Justice, Washington, DC 20537. The Administrator may increase the import quota of the person if and to the extent that he determines that the approval is necessary to provide for medical, scientific, or other legitimate purposes regarding the chemical. The Administrator shall specify a period of time for which the approval is in effect or shall provide that the approval is in effect until the Administrator notifies the applicant in writing that the approval is terminated.

(c) With respect to the application under paragraph (b) of this section, the Administrator shall approve or deny the application within 60 days of receiving the application. If the Administrator does not approve or deny the application within 60 days of receiving it, the application is deemed to be approved and the approval remains in effect until the Administrator notifies the applicant in writing that the approval is terminated.

## Subpart E—Hearings

### § 1315.50 Hearings generally.

The procedures for the hearing related to assessment of annual needs or to the issuance, adjustment, suspension, or denial of a manufacturing, procurement, or import quota are governed generally by the adjudication procedures set forth in the Administrative Procedure Act (5 U.S.C. 551–559) and specifically by section 1002 of the Act (21 U.S.C. 952), by §§ 1315.52 through 1315.62 of this part, and by the procedures for administrative hearings under the Act set forth in §§ 1316.41 through 1316.67 of this chapter.

### § 1315.52 Purpose of hearing.

(a) The Administrator may, in his sole discretion, hold a hearing for the purpose of receiving factual evidence regarding any one or more issues (to be specified by him) involved in the determination or adjustment of any assessment of national needs.

(b) If requested by a person applying for or holding a procurement, import, or individual manufacturing quota, the Administrator shall hold a hearing for the purpose of receiving factual evidence regarding the issues involved in the issuance, adjustment, suspension, or denial of the quota to the person, but the Administrator need not hold a hearing on suspension of a quota under § 1301.36 or § 1309.43 of this chapter separate from a hearing on the suspension of registration under that section.

(c) Extensive argument should not be offered into evidence, but rather presented in opening or closing statements of counsel or in memoranda or proposed findings of fact and conclusions of law.

### § 1315.54 Waiver or modification of rules.

The Administrator or the presiding officer (with respect to matters pending before him) may modify or waive any rule in this part by notice in advance of the hearing, if he determines that no party in the hearing will be unduly prejudiced and the ends of justice will thereby be served. Such notice of modification or waiver shall be made a part of the record of the hearing.

### § 1315.56 Request for hearing or appearance; waiver.

(a) Any applicant or registrant entitled to a hearing under § 1315.52 and who desires a hearing on the issuance, adjustment, suspension or denial of a procurement, import, or individual manufacturing quota must, within 30 days after the date of receipt of the issuance, adjustment, suspension or denial of the application, file with the Administrator a written request for a hearing in the form prescribed in § 1316.47 of this chapter.

(b) Any interested person who desires a hearing on the determination of an assessment of annual needs must, within the time prescribed in § 1315.11(c), file with the Administrator a written request for a hearing in the form prescribed in § 1316.47 of this chapter, including in the request a statement of the grounds for the hearing.

(c) Any interested person who desires to participate in a hearing on the determination or adjustment of an assessment of annual needs, which hearing is ordered by the Administrator under § 1315.11(c) or § 1315.13(c), may do so by filing with the Administrator, within 30 days of the date of publication of notice of the hearing in the **Federal Register**, a written notice of his intention to participate in the hearing in the form prescribed in § 1316.48 of this chapter.

(d) Any person entitled to a hearing under § 1315.52 or entitled to participate in a hearing under paragraph (c) of this section may, within the period permitted for filing a request for a hearing or notice of appearance, file with the Administrator a waiver of an opportunity for a hearing, together with a written statement regarding his position on the matters of fact and law involved in such hearing. The statement, if admissible, shall be made a part of the record and shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted.

(e) If any person entitled to a hearing under § 1315.52 or entitled to participate in a hearing under paragraph (c) of this section fails to file a request for a hearing or notice of appearance or if he so files and fails to appear at the hearing, he shall be deemed to have waived his opportunity for the hearing unless he shows good cause for such failure.

(f) If all persons entitled to a hearing or to participate in a hearing waive or are deemed to waive their opportunity for the hearing or to participate in the hearing, the Administrator may cancel the hearing, if scheduled, and issue his final order under § 1315.62 without a hearing.

### § 1315.58 Burden of proof.

(a) At any hearing regarding the determination or adjustment of an assessment of annual needs each interested person participating in the hearing shall have the burden of proving any propositions of fact or law asserted by him in the hearing.

(b) At any hearing regarding the issuance, adjustment, suspension, or denial of a procurement, import, or individual manufacturing quota, the Administration shall have the burden of proving that the requirements of this part for such issuance, adjustment, suspension, or denial are satisfied.

### § 1315.60 Time and place of hearing.

(a) If any applicant or registrant requests a hearing on the issuance, adjustment, suspension, or denial of his procurement, import, or individual manufacturing quota under § 1315.54, the Administrator shall hold a hearing.

(b) Notice of the hearing shall be given to the applicant or registrant of the time and place at least 30 days prior to the hearing, unless the applicant or registrant waives such notice and requests the hearing be held at an earlier time, in which case the Administrator shall fix a date for such hearing as early as reasonably possible.

(c) The hearing shall commence at the place and time designated in the notice given under paragraph (b) of this section or in the notice of hearing published in the **Federal Register** pursuant to § 1315.11(c) or § 1315.13(c), but thereafter it may be moved to a different place and may be continued from day to day or recessed to a later day without notice other than announcement by the presiding officer at the hearing.

### § 1315.62 Final order.

As soon as practicable after the presiding officer has certified the record to the Administrator, the Administrator shall issue his order on the determination or adjustment of the assessment of annual needs or on the issuance, adjustment, suspension, or denial of the procurement, import, or individual manufacturing quota, as the case may be. The order shall include the findings of fact and conclusions of law upon which the order is based. The order shall specify the date on which it shall take effect. The Administrator shall serve one copy of his order upon each party in the hearing.

Dated: June 19, 2007.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. E7–13377 Filed 7–9–07; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

**[CGD09–07–065]**

### Special Local Regulations: Captain of the Port Detroit Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of Enforcement of final rule.

**SUMMARY:** The Coast Guard is implementing special local regulations for annual Marine Events in the Captain of the Port Detroit Zone during June and July, 2007. This action is necessary to provide for the safety of life and property on navigable waters during these events. These special local regulations will restrict vessel traffic from a portion of the Captain of the Port Detroit Zone.

**DATES:** Effective from 12:01 a.m. on June 1, 2007 to 11:59 p.m. on July 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** LT Jeff Ahlgren, Waterways Management, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit MI, 48207; (313)568–9580.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will be enforcing the permanent special local regulations in 33 CFR 100.901 (published July 13, 1989, in the **Federal Register**, 54 FR 29547, as amended), for marine events in the Captain of the Port Detroit Zone during June and July, 2007. The following special local regulations will be enforced for marine events occurring in June and July, 2007:

(1) *International Bay City River Roar*, Bay City, MI. Location: That portion of the Saginaw River from the Liberty Bridge on the north to the Veteran's Memorial Bridge on the south, near Bay City, MI on June 22–24, 2007 from 8 a.m. to 6 p.m. each day. If an additional day is needed for this event due to inclement weather, the special local regulations will also be enforced on June 25, 2007 from 8 a.m. to 6 p.m.

(2) *International Freedom Festival Tug Across the River*, Detroit, MI. Location: That portion of the Detroit River bounded on the south by the International boundary, on the west by 083° 03′W, on the east by 083° 02′W, and on the North by the U.S. shoreline on July 15, 2007 from 12:30 p.m. to 2:30 p.m.

(3) *Bay City Fireworks Display*, Bay City, MI. Location: Saginaw River, from the Veteran's Memorial Bridge to approximately 1,000 yards south to the River Walk Pier, near Bay City, MI on July 1–3, 2007 from 10 p.m. to 11 p.m. each night. If an additional day is needed for this event due to inclement weather, the special local regulations will also be enforced on July 4, 2007 from 10 p.m. to 11 p.m.

(4) *Detroit APBA Gold Cup Race*, Detroit, MI. Location: Detroit River, between Belle Isle and the U.S. shoreline, near Detroit, MI. Bound on the west by the Belle Isle Bridge and on the east by a north-south line drawn through the Waterworks Intake Crib Light (LLNR 1022) on July 13–15, 2007 from 7 a.m. to 7 p.m. each day.

In order to ensure the safety of spectators and transiting vessels, these special local regulations found at 33 CFR 100.901 (a)–(e) will be enforced for the duration of the events. In the event that these special local regulations affect shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the regulated area. Requests must be made in advance and approved by the Captain of Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Sector Detroit on channel 16, VHF-FM. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

This notice is issued under authority of 33 CFR 100.901 and 5 U.S.C. 552(a).

Dated: June 20, 2007.

**P.W. Brennan,**

*Captain, U.S. Coast Guard, Captain of the Port Detroit.*

[FR Doc. E7–13367 Filed 7–9–07; 8:45 am]

**BILLING CODE 4910–15–P**

## POSTAL SERVICE

### 39 CFR Part 20

### International Product Change

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service ™ is issuing a final rule revising requirements contained in the International Mail Manual (IMM) concerning the contents of notifications of International Customized Mail (ICU) agreements.

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

**FOR FURTHER INFORMATION CONTACT:** Margaret M. Falwell, 703–292–3576; or James Crawford, 703–292–3614.

**SUPPLEMENTARY INFORMATION:** International Customized Mail (ICM) agreements are specialized, mailer-specific, agreements entered into by the Postal Service which provide discounted rates from the base rates for existing categories and services of international mail. Postal Service regulations published at IMM 297 require that routine notices be published within prescribed periods identifying the salient terms of each ICM. In particular, information required to be published about each ICM include extensive information about each ICM. In particular, information required to be published about each ICM include extensive information about each ICM, including the term, type of mail involved, destination country or countries, description of services provided by the Postal Service, minimum volume commitments for each service, brief descriptions of any work-sharing performed by the mailer, and the agreed-upon rate for each service at the volume level committed by the mailer.

The underlying rationale for this final rule is based on recently enacted amendments to the Postal Service's organic statute. On December 20, 2006, the Postal Accountability and Enhancement Act (PAEA), Pub. L. No. 109–435, became law. The PAEA fundamentally changes the Postal Service's business model by converting former requirements to operate on a break-even basis to a more commercial, profit-making business model. The PAEA further gives the Postal Service considerable flexibility in pricing competitive services. In addition, the PAEA makes various commercial laws, such as antitrust, Federal Trade Commission unfair competition law, and private sector customs requirements, as well as an assumed federal income tax applicable to the Postal Service's competitive services.

Under the PAEA, bulk international mail, which includes bulk mailings entered in combination with an ICM, could reasonably be classified as falling within the ''competitive'' category of mail, for which there are abundant, alternative providers. Thus, competitive services should observe commercial business practices. In general, private businesses do not publicize information about recently executed customer agreements; rather, such instruments are regarded as closely held commercial information. Consequently, in accordance with industry practice, continued publication of comprehensive information about the terms of ICMs would be inconsistent with their competitive status.

Hence, the Postal Service is publishing this final rule to provide an appropriate level of information about

each ICM in view of their commercial sensitivity.

We adopt the following changes to the *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

**List of Subjects in 39 CFR Part 20**

Foreign relations, International postal services.

## PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR Part 20 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

■ 2. Revise International Mail Manual as follows:

* * * * *

**2 Conditions for Mailing**

* * * * *

**290 Commercial Services**

* * * * *

**297 International Customized Mail**

* * * * *

**297.4 Postal Bulletin Notifications**

*[Revise 297.4 as follows]*

Within 30 days of entering into an ICM service agreement, the Postal Service will publish the name of the customer in the Postal Bulletin.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 07–3332 Filed 7–9–07; 8:45 am]

BILLING CODE 7710–12–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 42 CFR Part 83

**RIN 0920–AA13**

## Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under the Energy Employees Occupational Illness Compensation Program Act of 2000; Amendments

**AGENCY:** Department of Health and Human Services.

**ACTION:** Final Rule.

**SUMMARY:** The Department of Health and Human Services is amending its procedures for designating classes of employees to be added to the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA). The final rule adds and revises deadlines for evaluating petitions for cohort status, clarifies when time periods commence and how they toll, and provides information relevant to these deadlines on the content of petition evaluation reports.

**DATES:** This Final Rule is effective July 10, 2007.

**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 513–533–6825 (this is not a toll free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

**SUPPLEMENTARY INFORMATION:**

### I. Purpose of Rulemaking

On October 28, 2004, the President signed the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. 108–375 (codified as amended in scattered sections of 42 U.S.C.). Division C, Subtitle E, of this Act includes amendments to the Energy Employees Occupational Illness Compensation Program Act of 2000 (''EEOICPA''), 42 U.S.C. 7384–7385. Several of these amendments, under § 3166(b), established new statutory requirements under 42 U.S.C. 7384q and 7384l(14)(C)(ii) that pertain to the Department of Health and Human Services (''HHS'') procedures established under 42 CFR part 83: ''Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000.'' These new requirements included the following: (1) Following the receipt of a petition for designation as members of the Special Exposure Cohort (''the Cohort''), the National Institute for Occupational Safety and Health (NIOSH) must submit ''a recommendation'' on that petition, including all documentation, to the Advisory Board on Radiation and Worker Health (''the Board'') within 180 days; (2) following the receipt by the Secretary of HHS (''the Secretary'') of a recommendation by the Board that the Secretary determine in the affirmative that a class meets the statutory criteria for addition to the Cohort, the Secretary must submit to Congress a determination as to whether or not the class meets these statutory criteria within 30 days; (3) if the Secretary does not submit this determination to Congress within 30 days, then on the 31st day it shall be deemed that the Secretary has submitted a report to Congress that designates, as an addition to the Cohort, the class recommended by the Board for addition to the Cohort and that provides the criteria used to support the designation; and (4) the period Congress shall have to review a report submitted by the Secretary to designate a class as an addition to the Cohort is reduced from 180 days to 30 days.

The purpose of the new requirements was to expedite the evaluation and decision process for adding classes of employees to the Cohort.

On December 22, 2005, HHS issued an *Interim Final Rule* (IFR) incorporating changes to ensure the new statutory requirements are met and requesting public comment (70 FR 75950). The public comment period for this rulemaking was initially to close on February 21, 2006. Upon a request from the Board for additional time to comment, the comment period was extended for 30 days and closed on March 23, 2006, after a total of 90 days.

As discussed below, HHS has incorporated additional changes in this Final Rule in response to comments from the Board and from the public. These changes also bring the Final Rule into alignment with the Congressional recommendations specified in the Conference Report associated with the new statutory deadlines (H. Rep. 108–767).

### II. Summary of Public Comments

The public comment period for the IFR extended from December 22, 2005 through March 23, 2006. HHS received comments from seven parties in addition to the consensus comments of the Board. These include four individuals, one U.S. Senator, one labor organization, and one advocacy group. The comments are summarized and responded to below, together with explanations of changes HHS has incorporated into this Final Rule.

#### *A. 180-Day Deadline for NIOSH Recommendations*

Several commenters, including the Board, recommended that HHS reiterate in the final rule NIOSH's 180-day statutory deadline to evaluate a petition and submit recommendations to the Board. One commenter also wanted the rule to specify what actions HHS would take if NIOSH failed to meet that deadline. In contrast, another commenter recommended against including any of the statutory deadlines in the rule because of concern that hastening the evaluation and recommendation process could prevent

the full and fair consideration of petitions.

Commenters also raised concerns about various aspects of the IFR's petition qualification and review process. Several commenters were concerned that the rule did not include within the 180-day statutory deadline NIOSH's process for identifying deficiencies in petitions. They said the FY05 Defense Act Conference Report (H.Rep. 108–767) indicated that Congress intended for the qualification process to be included within the 180-day period, citing the following from the Report:

> During the 180 day period when NIOSH is preparing the petition for review by the Advisory Board, NIOSH should identify all deficiencies in the petition * * *

Most commenters, including the Board, also recommended that HHS reinstate the 30-day period for petitioners to request a review of NIOSH's proposed finding that a petition is deficient and does not qualify for consideration. Finally, one commenter recommended that HHS clarify in the rule that NIOSH will provide a recommendation for *each* class of employees the petition covers.

In response to those comments, HHS has made several changes in the final rule. First, HHS has added a reference to the 180-day deadline for NIOSH to evaluate petitions and submit recommendations to the Board (§ 83.13 (e)). The provisions in the IFR were designed to ensure that NIOSH would meet the deadline. Referencing the 180-day deadline in the final rule identifies the goal that the earlier changes are intended to achieve.

Second, HHS has revised the rule so the process of determining whether petitions are qualified is included in the 180-day period (§§ 83.5(k) and 83.11). HHS agrees with the commenters that Congress intended to include that process in the 180-day period, and the change brings the final rule into alignment with the Conference Report.

As the commenters pointed out, the IFR did not include this process in the 180-day period. In the preamble to the IFR, HHS said it was necessary to exclude the process from the deadline to ensure that NIOSH had adequate time to evaluate petitions and make recommendations within the deadline. According to NIOSH, sometimes it can take months to assist and consult with petitioners to help them remedy petition deficiencies, which could significantly impact NIOSH's ability to do a comprehensive evaluation before the deadline ended. Thus, in the IFR HHS distinguished between ''submissions'' (*i.e.*, petitions that were not yet determined to meet the requirements of §§ 83.7–83.9) and ''petitions'' (*i.e.*, petitions that have been determined to meet the requirements) (§ 83.5(k)). The 180-day period started tolling only when NIOSH received a ''petition'' (§ 83.5(k)). In the final rule, HHS has deleted § 83.5(k) and removed the distinction between submissions and petitions in § 83.11.

Third, HHS has reinstated the 30-day period for petitioners to request a review of NIOSH's proposed finding that a petition is deficient (§ 83.11). In the IFR, HHS had reduced the request period to 7 days to increase the feasibility of NIOSH meeting the 180-day deadline. To ensure that the additional time for requesting review does not prevent NIOSH from meeting the deadline, HHS is adopting the recommendation of one commenter that the clock on the 180 days start when petitioners seek and are granted a review on whether their petition satisfies all requirements. Accordingly, HHS has added new paragraph (e) to § 83.13 specifying that the 180-day period shall not include any days during which (1) the petitioner is revising the petition to remedy deficiencies NIOSH identified, (2) the petitioner requests a review of NIOSH's proposed finding that the petition does not meet all relevant requirements, or (3) the three-person HHS panel (as authorized by § 83.11(d)) is reviewing the petitioner's request.

Finally, HHS has revised § 83.13(d)(4) to clarify that NIOSH evaluation report findings to the Board must specify whether it is ''feasible'' to estimate radiation doses with sufficient accuracy ''for each class defined in the report.'' HHS is adding this specification because NIOSH sometimes finds a Cohort petition covers more than one class of employees even though it is submitted on behalf of a single class. For example, in some cases, NIOSH will find differences in radiation exposures and record availability for different employee groups at the same facility. Consequently, NIOSH evaluation reports may need to define more than one class of employees in the petition and provide separate findings concerning each class. In light of NIOSH's 180-day deadline, HHS has also added language to paragraph (d)(4) indicating that NIOSH's evaluation report must include a feasibility finding about whether radiation doses for each class of employees can be estimated with sufficient accuracy.

HHS did not adopt every recommendation commenters made. HHS has not incorporated recommendations that NIOSH inform petitioners of all deficiencies within the first 30 days (H. Rep. 108–767). HHS believes the recommendation is not necessary. The changes in the final rule specifying that the 180-day period begins when NIOSH receives a petition gives the Agency more than adequate incentive to identify very quickly whether the petition qualifies for consideration or has deficiencies.

Also, HHS has not adopted the recommendation to add requirements to the final rule specifying the actions HHS would take if NIOSH failed to meet the 180-day deadline. HHS fully understands the EEOICPA statutory amendments stressing the importance of evaluating petitions in a timely manner. Although there may be complex circumstances of radiation exposure or records availability or exceptional instances when it may be challenging to complete a comprehensive evaluation covering all of the classes of employees included in petition within 180 days, HHS will make every effort to meet the deadline. The NIOSH Web page at *http:www.cdc.gov/NIOSH/ocas* will continuously track the progress of each active petition for the interested public.

*B. Resubmission of Petitions Based on New Information*

Two commenters indicated confusion concerning whether a petitioner could submit a petition on behalf of a class of employees subsequent to NIOSH finding that a prior petition covering the class did not meet the petition requirements. The commenters believed that § 83.11(f) only permitted NIOSH, upon its own discretion, to consider a petition for a class of employees for which a prior petition had already been found to not meet petition requirements.

Nothing in the rule would prevent a petitioner from submitting a subsequent petition based on new information. Such a petition would be evaluated by NIOSH as a new petition. HHS has amended § 83.11, adding paragraph (g), to clarify that petitioners may submit an additional petition for a class of employees, based on new information, subsequent to NIOSH finding that a petition does not meet the petition requirements specified in §§ 83.7—83.9.

The existing paragraph (f) of § 83.11 has a different purpose. It is intended to allow NIOSH to reconsider a petition that it found to not meet petition requirements, based on new information NIOSH might obtain from any source, irrespective of any further action of the petitioner.

*C. Deadline for the Chair of the Board To Submit the Cohort Petition Recommendations of the Board*

One commenter recommended that HHS regulate the current policy of the Board that requires the Chair to submit recommendations of the Board on the outcome of Cohort petitions to the Secretary within 21 days of the Board's consensus formulation and approval of the recommendations.

HHS has not incorporated this Board policy into the rule. Doing so would violate the Administrative Procedure Act (''APA'') rulemaking procedures specified in 5 U.S.C. 553 for the development of regulations. The APA requires that the regulating agency both provide the public with the opportunity for notice and comment and consider submitted comments prior to promulgation of a final rule. The change proposed by the commenter is not a reasonably foreseeable outcome of the changes discussed in the IFR and making such a change would not offer the public adequate notice of the change.

Furthermore, HHS does not consider it necessary or appropriate to regulate this currently self-imposed policy of the Board. It is within the Board's prerogative, with the guidance of the Designated Federal Official, to set and manage its own deadlines.

*D. Review of Proposed and Final Decisions of HHS on the Outcome of Cohort Petitions*

One commenter recommended HHS reinstate the opportunity for petitioners to seek reviews of the proposed decisions on the outcome of petitions, issued by the Director of NIOSH under § 83.16(a), prior to the issuance of final decisions by the Secretary of HHS.

As discussed in the preamble of the IFR (70 FR 75950, December 22, 2005), it is not possible for petitioners to seek and HHS to provide an administrative review of the proposed decision, and for the Secretary to issue a final decision, all within the 30-day Congressional report deadline. For this reason, the administrative review opportunity of petitioners was preserved but moved in the sequence of HHS actions to follow, rather than precede, the Secretary's final decision.

Another commenter questioned whether the Secretary has discretion in responding to an HHS administrative review of a final decision and whether petitioners must seek such an administrative review as a prerequisite to obtaining a judicial review of a final decision of the Secretary issued under § 83.17.

Under § 83.18(c), the Secretary retains the discretion to decide the outcome of a petition, after obtaining and considering the information provided by the HHS administrative review. The authority to decide the outcome of petitions was statutorily assigned to the President (42 U.S.C. 7384q) and delegated to the Secretary by Executive Order 13179.

The Secretary's decision to add or deny adding a class to the Cohort is final unless he revises the decision pursuant to an administrative review under § 83.18 or Congress takes other action. This administrative review is optional; neither EEOICPA nor this regulation requires it as a prerequisite to judicial review.

*E. Protection of the Personal Information of the Petitioner*

One commenter recommended requiring that NIOSH disclose the identities and contact information of petitioners. The commenter reasoned that since the petitioner is acting on behalf of a class of employees, the petitioner should not have the right to privacy.

The IFR did not propose imposing such a requirement on NIOSH or petitioners in this Final Rule. Instead, HHS would first have to provide public notice, the opportunity for public comment, and consideration of comments submitted, as required for rulemaking under the APA.

Moreover, the recommendation to require petitioners or NIOSH to disclose the identity and contact information of the petitioners is contrary to the customary protection afforded by the Federal government to members of the public under the Privacy Act (5 U.S.C. 552a). In particular, 5 U.S.C. 552a(b) bars agencies (subject to certain exceptions not applicable here) from disclosing records such as those at issue in the recommendation, where petitioner information is ''contained in a system of records'' that allows retrieval of such records by unique person-specific identifiers, ''to any person, or to another agency'' without the individual's written request or prior written consent.

In addition, there does not appear to be a substantial justification or benefit to requiring the disclosure of the identity and contact information of the petitioner. A petitioner should not have to choose between acting on his or her own behalf, as a member or a survivor of a member of the class of employees represented in the petition, and his or her right to privacy. It is true that the class of employees includes other individuals who would also benefit from an affirmative decision on the petition by the Secretary, but any other member of the class of employees covered by the petition can obtain the same rights as the petitioner by submitting a valid petition, meeting the requirements specified under §§ 83.7–83.9, on behalf of the same class of employees.

*F. Authority and Deadline for the Secretary To Decide on Petitions*

Two commenters appeared to have misunderstood the statutory requirement that the President render a decision regarding the addition of a class of employees to the Cohort within 30 days of the Board having recommended its addition (*see* 42 U.S.C. 7384q(c)(2)(A)–(B)) to newly authorize the President's involvement in these decisions. One commenter recommended that the President not be given the role of making such decisions, and the second commenter recommended that the President not be provided 30 days to make such decisions, as the commenter believed this would prolong the decision-making process.

Since EEOICPA was originally enacted in 2000, the President has been solely authorized in the statute to decide whether or not to designate classes of employees for addition to the Cohort. The President delegated this authority to the Secretary, who has implemented this authority ever since. The only change made by the statutory requirement discussed above is to impose a 30-day deadline on the President to make such decisions in certain cases. As discussed in the IFR, this 30-day deadline applies to the Secretary's decisions, since the President delegated this decision-making authority to the Secretary. The deadline does not prolong the decision-making process since, prior to this statutory requirement, the Secretary was not under *any* deadline to make such decisions.

*G. Non-Regulatory Comments*

HHS received several comments that do not pertain to the IFR. These included a comment to add a class of employees from the Hanford facility to the Cohort, a personal perspective on the history of the management of the U.S. nuclear weapons program, concerns about the involvement of the Office of Management and Budget (''OMB'') in the program, and a speculation that adding classes of employees to the Cohort would be cost-saving compared to the conduct of dose reconstructions.

The Board recommended NIOSH provide petitioners with guidance in the form of a timeline for the petition process, to ensure petitioners understand the expected duration of the entire process and its elements, from the submission of a petition to the point at which final decisions on a petition become effective. NIOSH will provide each petitioner with such guidance, together with other introductory materials provided to petitioners upon the receipt by NIOSH of a petition.

One commenter suggested all cancers be added to the list of 22 ''specified cancers'' covered for members of the Cohort. The list of specified cancers covered for members of the Cohort is established statutorily under EEOICPA and not governed by this rulemaking. EEOICPA states:

The term ''specified cancer'' means any of the following:

(A) A specified disease, as that term is defined in section 4(b)(2) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note).

(B) Bone cancer.

(C) Renal cancers.

(D) Leukemia (other than chronic lymphocytic leukemia), if initial occupational exposure occurred before 21 years of age and onset occurred more than two years after initial occupational exposure. 42 U.S.C. 7384l(17)

## III. Regulatory Assessment Requirements

### *A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the agency must determine whether a regulatory action is ''significant'' and therefore subject to review by OMB and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the executive order.

This rule is being treated as a ''significant regulatory action'' within the meaning of the executive order because it meets the criterion of Section 3(f)(4) in that it raises novel or legal policy issues arising out of the legal mandate established by EEOICPA. It amends current procedures by which the Secretary considers petitions to add classes of employees to the Cohort to comport with new statutory deadlines (*see* 42 U.S.C. 7384q(c)(2)(A) and 42 U.S.C. 7384l(14)(C)(ii)). The revisions, however, neither affect the financial cost to the federal government of responding to these petitions nor the scientific and policy bases for making decisions on such petitions.

The rule carefully explains the manner in which the procedures are consistent with the mandates of 42 U.S.C. 7384q and 7384l(14)(C)(ii) and implements the detailed requirements of these sections. The rule does not interfere with State, local, and tribal governments in the exercise of their governmental functions.

The rule is not considered economically significant, as defined in § 3(f)(1) of Executive Order 12866. As discussed above, it does not affect the financial cost to the federal government of responding to these petitions nor does it affect the scientific and policy bases for making decisions on such petitions. Furthermore, it has a subordinate role in the adjudication of claims under EEOICPA, serving as one element of an adjudication process administered by the Department of Labor (''DOL'') under 20 CFR parts 1 and 30. DOL has determined that its rule fulfills the requirements of Executive Order 12866 and provides estimates of the aggregate cost of benefits and administrative expenses of implementing EEOICPA under its rule (*see* 71 FR 78520, December 29, 2006). OMB has reviewed this rule for consistency with the President's priorities and the principles set forth in Executive Order 12866.

### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et. seq.*, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations. HHS certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. The rule affects only HHS, DOL, the Department of Energy, and certain individuals covered by EEOICPA. Therefore, a regulatory flexibility analysis as provided for under RFA is not required.

### *C. What Are the Paperwork and Other Information Collection Requirements (Subject to the Paperwork Reduction Act) Imposed Under This Rule?*

The Paperwork Reduction Act (''PRA'') 44 U.S.C. 3501 *et seq.*, requires an agency to invite public comment on and to obtain OMB approval of any regulation that requires ten or more people to report information to the agency or to keep certain records. The Special Exposure Cohort rule, 42 CFR part 83, which requires the collection of information from petitioners, is covered by the PRA and has received OMB clearance (OMB control #0920–0639). However, this rulemaking, which makes limited changes to 42 CFR part 83, does not contain any information collection requirements. Thus, HHS has determined that the PRA does not apply to this rulemaking.

### *D. Small Business Regulatory Enforcement Fairness Act*

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), HHS will report to Congress promulgation of this rule prior to its taking effect. The report will state that HHS has concluded that this rule is not a ''major rule'' because it is not likely to result in an annual effect on the economy of $100 million or more. However, this rule has a subordinate role in the adjudication of claims under EEOICPA, serving as one element of an adjudication process administered by DOL under 20 CFR parts 1 and 30. DOL has determined that its rule is a ''major rule'' because it will likely result in an annual effect on the economy of $100 million or more.

### *E. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of federal regulatory actions on State, local, and tribal governments and the private sector ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' For purposes of the Unfunded Mandates Reform Act, this rule does not include any federal mandate that may result in increased annual expenditures in excess of $100 million by state, local or tribal governments in the aggregate, or by the private sector.

### *F. Executive Order 12988 (Civil Justice)*

This rule has been drafted and reviewed in accordance with Executive

Order 12988 on Civil Justice Reform and will not unduly burden the federal court system. HHS adverse decisions may be reviewed in United States District Courts pursuant to the APA. HHS has attempted to minimize that burden by providing petitioners an opportunity to seek administrative review of adverse decisions. HHS has provided a clear legal standard it will apply in considering petitions. This rule has been reviewed carefully to eliminate drafting errors and ambiguities.

*G. Executive Order 13132 (Federalism)*

HHS has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule 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.''

*H. Executive Order 13045 (Protection of Children From Environmental, Health Risks and Safety Risks)*

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this rule on children. HHS has determined that the rule would have no effect on children.

*I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)*

In accordance with Executive Order 13211, HHS has evaluated the effects of this rule on energy supply, distribution or use, and has determined that the rule will not have a significant adverse effect on them.

*J. Effective Date*

The Secretary has determined, pursuant to 5 U.S.C. 553(d)(3), that there is good cause for this rule to be effective immediately to eliminate legal inconsistencies between new statutory requirements under 42 U.S.C. 7384*l* and 7384q and regulatory requirements under 42 CFR part 83 and to make the implementation of the new statutory requirements feasible.

**List of Subjects in 42 CFR Part 83**

Government employees, Occupational safety and health, Nuclear materials, Radiation protection, Radioactive materials, Workers' compensation.

**Text of the Rule**

■ For the reasons discussed in the preamble, the interim rule amending 42 CFR part 83, published on December 22, 2005 (70 FR 75950), is confirmed as final with the folling changes:

## PART 83—[AMENDED]

■ 1. The authority citation for part 83 continues to read as follows:

**Authority:** 42 U.S.C. 7384q; E.O. 13179, 65 FR 77487, 3 CFR, 2000 Comp., p. 321.

## Subpart B—Definitions

### § 83.5 [Amended]

■ 2. Amend § 83.5 by removing paragraph (k) and redesignating paragraphs (l) through (p) as paragraphs (k) through (o), respectively.

## Subpart C—Procedures for Adding Classes of Employees to the Cohort

■ 3. Amend § 83.11 as follows:
■ A. By revising the section heading.
■ B. By replacing the term ''submission'' with the term ''petition'' in paragraphs (a) through (d) and (f).
■ C. By replacing the phrases ''7 calendar days'' and ''7 day period'' with ''30 calendar days'' and ''30-day period'', respectively, in paragraph (c).
■ D. By replacing ''8 calendar days'' with ''31 calendar days'' in paragraph (e).
■ E. By adding a new paragraph (g) to read as follows:

### § 83.11 What happens to petitions that do not satisfy all relevant requirements under §§ 83.7 through 83.9?

* * * * *

(g) A petitioner whose petition has been found not to satisfy the requirements for a petition under either paragraph (d) or (e) of this section may submit to NIOSH a new petition for the identical class of employees at any time thereafter on the basis of new information not provided to NIOSH in the original petition. In such a case, the petitioner is required to fully re-address all the requirements of §§ 83.7–83.9 in the petition.

■ 4. Amend § 83.13 by revising paragraph (d)(4) and adding paragraph (e) to read as follows:

### § 83.13 How will NIOSH evaluate petitions, other than petitions by claimants covered under § 83.14?

* * * * *

(d)(4) A summary of the findings concerning the adequacy of existing records and information for reconstructing doses for individual members of the class under the methods of 42 CFR part 82 specifying, for each class defined in the report, whether NIOSH finds that it is feasible to estimate the radiation doses of members of the class with sufficient accuracy, and a description of the evaluation methods and information upon which these findings are based; and

* * * * *

(e) The NIOSH report under paragraph (d) of this section shall be completed within 180 calendar days of the receipt of the petition by NIOSH. The procedure for computing this time period is specified in § 83.5(c). In addition, the computing of 180 calendar days shall not include any days during which the petitioner may be revising the petition to remedy deficiencies identified by NIOSH under § 83.11(a) or (b), nor shall it include any days during which the petitioner may request a review of a proposed finding under § 83.11(c) or during the conduct of such a review under § 83.11(d).

Dated: March 16, 2007.

**Michael O. Leavitt,**

*Secretary, Department of Health and Human Services.*

**Editorial Note:** This document was received in the Office of the Federal Register on July 3, 2007.

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 16

**RIN 1018–AT29**

## Injurious Wildlife Species; Silver Carp (Hypophthalmichthys molitrix) and Largescale Silver Carp (Hypophthalmichthys harmandi)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or we) adds all forms of live silver carp (*Hypophthalmichthys molitrix*), gametes, viable eggs, and hybrids; and all forms of live largescale silver carp (*Hypophthalmichthys harmandi*), gametes, viable eggs, and hybrids to the list of injurious fish, mollusks, and crustaceans under the Lacey Act. The best available information indicates that this action is necessary to protect the interests of human beings, and wildlife and wildlife resources, from the purposeful or accidental introduction, and subsequent establishment, of silver carp and largescale silver carp populations in ecosystems of the United States. Live silver carp and largescale silver carp, gametes, viable eggs, and hybrids can be

imported only by permit for scientific, medical, educational, or zoological purposes, or without a permit by Federal agencies solely for their own use; permits will also be required for the interstate transportation of live silver or largescale silver carp, gametes, viable eggs, or hybrids currently within the United States. Interstate transportation permits may be issued for scientific, medical, educational, or zoological purposes.

**DATES:** This rule is effective August 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** Kari Duncan, Chief, Branch of Invasive Species at (703) 358–2464 or *kari_duncan@fws.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

In October 2002, the U.S. Fish and Wildlife Service (Service or we) received a petition signed by 25 members of Congress representing the Great Lakes region to add silver, bighead, and black carp to the list of injurious wildlife under the Lacey Act (18 U.S.C. 42). A follow-up letter to the original petition had seven additional Legislator signatures that supported the petition.

## Summary of Previous Actions

The Service published a **Federal Register** notice of inquiry on silver carp (68 FR 43482–43483, July 23, 2003), and provided a 60-day public comment period. We received 31 comments in total, but 12 of these did not address the issues raised in the notice of inquiry. We considered the information provided in the 19 relevant comments.

Most of the comments supported the addition of silver carp to the list of injurious wildlife, but provided no additional information. One commenter noted that silver carp have no commercial value, but was concerned that listing would hinder control and management. One commenter asked us to delay listing until a risk assessment could be completed. Biological synopses and risk assessments were completed for silver and largescale silver carp. A proposed rule to add all forms of live silver and largescale silver carp to the list of injurious fishes under the Lacey Act was published on September 5, 2006 (71 FR 52305); the comment period on the proposed rule closed on November 6, 2006. We received 97 comments on the proposed rule. In total, the Service received 116 pertinent letters during the public comment periods. Most of the 116 letters received urged the Service to list silver and largescale silver carp as injurious wildlife, but provided no additional information. Similar comments were grouped into issues; these issues and our responses to each are presented below.

## Comments Received on the Proposed Rule

*Issue:* One commenter stated that there is currently no market for silver carp; very few silver carp are in culture (for maintenance of stocks) or use. However, there is great potential for silver carp use in aquaculture within Arkansas and Mississippi by utilizing an enclosed system that would prevent escape of silver carp. The potential for silver carp use in the United States has not been fully realized.

*Response:* This rule will prohibit the importation and interstate transport of live silver carp, gametes, viable eggs, and hybrids, which will in no way affect the use of silver carp in States where they already exist.

*Issue:* One aquaculture industry group stated that there is no meaningful role of silver carp in cleaning ponds and tanks for southern U.S. aquaculture producers and that there would be little or no economic impact associated with this rule. However, they also noted that the natural invasion of silver carp will continue into waters of other States, whether the proposed rule is enacted or not. The comment stated that, given the existing conditions and circumstances of silver carp, listing these species will do little or nothing to address the problems stated in the proposed rule. Listing would not address the real problem of preventing the spread of naturally occurring populations; States already have the authority to address these problems, so Federal intervention does not seem necessary.

*Response:* The Service agrees that this rulemaking will not address the ecological impacts of silver carp already in the environment. This rulemaking is intended to prevent or delay the introduction of silver carp into waterbodies where they do not currently exist, which will help protect native species. Many States have requested Federal intervention because the States only have authority to regulate possession within State boundaries.

*Issue:* A few commenters stated that they did not understand why nine questions were included in the proposed rule. These commenters believe that asking those questions has delayed the rulemaking. In addition, they expressed concern with the length of time it takes to add species to the list of injurious wildlife.

*Response:* Nine questions were included in the proposed rule in order to ascertain if there were any additional data pertinent to the analyses required by various laws and executive orders relating to the Federal rulemaking process. Inclusion of these nine questions has in no way delayed the process of adding silver and largescale silver carp to the list of injurious wildlife.

*Issue:* One commenter stated that the proposed rule contained repetition of unnecessary facts and that many assumptions were made without scientific research.

*Response:* The Service has reviewed the proposed rule to reduce repetition in the final rule. Research has been conducted on silver carp impacts and due to the similarities between silver carp and largescale silver carp, we feel that reasonable extrapolations of potential impacts have been made.

*Issue:* A few commenters stated that penalties for injurious wildlife should be increased.

*Response:* Penalties for violations of the Lacey Act are set by Congress.

## Peer Review

We asked scientists who have knowledge of fisheries biology or invasive species to provide peer review of the proposed rule during the public comment period. The peer reviewers had a few technical comments and suggestions; however, all concluded that the data and analyses used in the proposed rule were appropriate and the conclusions drawn were clear and concise. Additionally, peer reviewers provided additional documentation of potential impacts to native species. This information has been incorporated into the final rule.

## Description of the Final Rule

The regulations contained in 50 CFR part 16 implement the Lacey Act (18 U.S.C. 42) as amended. Under the terms of the injurious wildlife provisions of the Lacey Act, the Secretary of the Interior is authorized to prohibit the importation and interstate transportation of species designated by the Secretary as injurious. Injurious wildlife are those species, offspring, and eggs that are injurious to wildlife or wildlife resources, to human beings, or to the interests of forestry, horticulture, or agriculture of the United States. Wild mammals, wild birds, fish, mollusks, crustaceans, amphibians, and reptiles are the only organisms that can be added to the injurious wildlife list. The lists of injurious wildlife are at 50 CFR 16.11–16.15.

By adding all forms of live silver carp and largescale silver carp, including hybrids, to the list of injurious wildlife,

their importation into, or transportation between, States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States by any means whatsoever is prohibited, except by permit for zoological, educational, medical, or scientific purposes (in accordance with permit regulations at 50 CFR 16.22), or by Federal agencies without a permit solely for their own use. Federal agencies who wish to import silver carp or largescale silver carp for their own use must file a written declaration with the District Director of Customs and the U.S. Fish and Wildlife Service Inspector at the port of entry. No live silver carp or largescale silver carp, progeny thereof, viable eggs, or hybrids imported or transported under permit may be sold, donated, traded, loaned, or transferred to any other person or institution unless such person or institution has a permit issued by the U.S. Fish and Wildlife Service. The interstate transportation of any live silver carp or largescale silver carp, gametes, viable eggs, or hybrids currently held in the United States for any purpose is prohibited without a permit. Any regulation pertaining to the possession or use of silver carp and largescale silver carp within States continues to be the responsibility of each State.

**Biology**

The commonly named silver carp belongs to the family Cyprinidae, with the species name of *Hypophthalmichthys molitrix.* Silver carp are native to Asia (China and Eastern Siberia), from about 54 °N southward to 21 °N. Silver carp are primarily phytoplanktivores, but are highly opportunistic, eating phytoplankton, zooplankton, bacteria, and detritus. Silver carp are well established throughout much of the Mississippi River Basin, and its range is expanding in that basin.

The commonly named largescale silver carp (or southern silver carp or Vietnamese carp) also belongs to the family Cyprinidae, with the species name of *Hypophthalmichthys harmandi.* Largescale silver carp are native to fresh waters of northern Hainan Island, China, and the Red (Hong Ha) River of northern Vietnam from subtropical to tropical (21–22 °N). The species does not occur naturally on the Chinese mainland. Largescale silver carp feed on phytoplankton and prefer slow-moving, plankton-rich open waters. There is no indication that this species has been imported into or introduced into the open waters of United States.

For additional information on the biology, use, history and pathways of introduction into the United States for silver and largescale silver carp, please refer to the proposed rule published in the **Federal Register** on September 5, 2006 (71 FR 52305).

**Factors That Contribute to Injuriousness for Silver Carp**

*Introduction and Spread*

The major pathway for introduction of silver carp in the United States was importation for biological control of plankton in aquaculture ponds and sewage lagoons. The pathway that led to the presence of this species in open waters of the United States was likely escape from these facilities. Subsequent escapes and the mixture of silver carp with other species that were stocked likely contributed to the expansion of the species' range, along with natural reproduction.

Other probable pathways that may aid the spread of existing populations of silver carp include connected waterways, contamination of pond-grown baitfishes with silver carp, ballast water release, release or escape from livehaulers that support commercial fisheries, or spread by commercial fishers themselves.

Silver carp are difficult to handle and transport because of their propensity to jump when disturbed. As a result, there has been very little culture of silver carp in the United States since 1985, and they are not being cultured commercially at this time. However, should culture of silver carp resume, a potential pathway for introduction would be escape or release from a facility or during the transport and sale of live fish in retail markets.

Silver carp are likely to be spread when juveniles are collected by cast net for use as live baitfish. Silver carp juveniles are very similar in appearance to shad, and anglers sometimes catch young silver carp and use them as live bait. Release of live bait has been identified as a source for more than 100 introductions of fishes beyond their natural range in the United States. Although adult and market-sized silver carp are fragile and do not survive collection and transport well, fingerling silver carp are less susceptible to mortality due to handling stress.

Silver carp, caught as bycatch, may be sold as fillets or to live fish markets. Another potential pathway for further introductions is the intentional release of silver carp through animal rights activism or prayer release (the ceremonial release of a fish in honor of the one that will be eaten).

Silver carp have survived, have become established in river systems, and have been reproducing in natural waters of the United States since at least 1995. Because silver carp can occupy lakes, there is serious concern that this species will further expand its range beyond riverine environments and into lake environments including the Great Lakes. If introduced, it is highly likely that silver carp will establish reproducing populations in other major river systems, such as the Potomac/Chesapeake, Columbia, and Sacramento/San Joaquin Delta. In their native range, juveniles and adults are also found in lakes, reservoirs, and canals where they grow well, but probably cannot spawn and recruit without access to an appropriate riverine habitat.

*Hybrids*

Hybridization of silver carp with native fishes is not known to be possible, but silver carp are known to hybridize and produce viable offspring with both bighead carp (*H. nobilis*), a nonnative species also present in the Mississippi River basin, and largescale silver carp, a species not yet known to be in the United States. Bighead carp × silver carp and the reciprocal cross are fertile. Bighead carp × silver carp are common in parts of the United States. The presence of large numbers of wild-spawned hybrids implies that bighead and silver carp often spawn in the same place at the same time in United States waters. Silver carp × bighead hybrids adversely impact food availability for native species due to the size they attain and the amount of food they eat. Hybrids with largescale silver carp would likely adversely affect food availability for native species as well.

Hybridization may also be possible with grass carp, but hybridization with common carp (*Cyprinus carpio*) is unlikely because the spawning locations and behaviors of the two genera are so different.

*Potential Effects on Native Species*

Silver carps' food consumption rate is high, but widely variable. Fry at the smallest size class consumed up to 140% of their body weight daily; 63 mg fingerlings consumed just more than 30% and 70–166 mg fingerlings consumed 63% of their body weight. Adult silver carp have been shown to consume 8.8 kilograms (kg) of food per year, with 90% of the consumption occurring during the three warmest months of the year.

Silver carp are quite tolerant of broad water temperatures from 4 °C to 40 °C. Silver carp can grow quickly (20 to 30

kg in 5 to 8 years), and large adults can reach over 1.2 meters in length and 50 kg in weight. Silver carp are difficult to age, but have been reported to live 15–20+ years.

The reproductive potential of silver carp is high and increases with body size. It has been estimated that silver carp weighing 3.18 to 12.1 kg can produce 145,000–5,400,000 eggs. Silver carp mature anywhere from 3–8 years, and males usually mature one year earlier than females. The same female may spawn twice during one growing season. Silver carp exhibit a prolonged spawning period, into late summer or early fall, in the United States.

Due to the large size, fast growth rate, high food consumption rate and high reproductive potential of silver carp, competition for food and habitat with native planktivorous fishes and with post-larvae and early juveniles of most native fishes is likely high. Since nearly all larvae and juvenile fishes are planktivorous and based on other demonstrated impacts, it is highly likely that silver carp are adversely affecting many native fishes in the Mississippi River Basin, particularly in waters where food may become limited, though long-term studies have not yet been conducted. Affected native species include paddlefish (*Polyodon spathula*), bigmouth buffalo (*Ictiobus cyprinellus*), gizzard shad (*Dorosoma cepedianum*), emerald shiner (*Notropis atherinoides*), and threadfin shad (*Dorosoma petenens*). It is highly likely silver carp would adversely affect fishes in the Great Lakes basin or other watersheds, if they establish.

Paddlefish, native to the Mississippi River Basin and Gulf of Mexico river drainages from east Texas to Alabama, is a large river fish that has declined in abundance in recent years because of overharvest and habitat alteration. Like the silver carp, paddlefish uses plankton as its primary food source, so silver carp or hybrids would directly compete with paddlefish for food throughout most of the paddlefish's range. Other fishes, such as buffalos or shads, use both plankton and aquatic invertebrates as food. While these fishes are currently more common than paddlefish, they may be at risk if silver carp, silver × largescale silver carp hybrids, or silver × bighead hybrids establish and reduce plankton. Gizzard shad are a primary forage base for predacious fishes and important to the ecology of Midwestern rivers; thus, the likely competition with silver carp in these waters is cause for concern.

Because silver carp are likely to negatively affect important planktivorous forage fishes such as the gizzard shad and emerald shiner, scientists have indicated that fishes and birds that prey on these species would likely also be negatively affected. Adult silver carp are too large to be preyed on by almost any native predator. Young silver carp have likely been incorporated into the diets of piscivorous birds and fishes to some degree, but the extent of this predation is not known. Ecosystem balance is likely to be modified if silver carp populations become large enough to dominate other planktivorous fish species. The most likely negative effect would be an alteration of fish community structure through competition for food.

Silver carp have been shown to have major effects on nutrient cycling and have had adverse effects on primary productivity, which could alter food webs and ultimately alter nutrient and energy cycling in aquatic communities. There is evidence of nutrient overloading in waters where silver carp have been introduced. Excrement from silver carp has been found to increase levels of certain nutrients, some which cannot be consumed by other animals in the digested form or may be harmful, which has led to a net decrease in food resources available in several studies. Recent studies on the effects of silver carp on toxin-producing blue-green algae indicate that certain species of blue-green algae are often controlled by silver carp, but that other species are often enhanced, particularly those like *Microcystis aeruginosa* that have a mucosal covering that inhibits digestion by silver carp. These organisms can pass alive through the digestive tract and, in the process, acquire nutrients that can later be used for growth and cell division. Additionally, *M. aeruginosa* has been shown to produce more toxins in the presence of filter feeding fishes, especially silver carp. Once established, these fish are likely to cause shifts in the food web and compete with other zooplanktivorous fishes and fish larvae for food. Changes in the community structure towards smaller size plankton may have negative effects on fishes native to the United States that subsist on larger zooplankton.

Adverse effects of silver carp on some threatened and endangered freshwater mussels and fishes are likely to be moderate to high. There are currently 116 fishes and 70 mussels on the Federal List of Endangered and Threatened Wildlife. Because silver carp have the same habitat requirements as approximately 40 fishes and 25 mussels currently on the endangered or threatened species list, these listed species will likely be impacted by competition for food and habitat by the introduction and establishment of silver carp.

Habitat requirements, springs and small streams, of the remaining listed fishes and mussels would probably preclude any detectable effects as it is unlikely that silver carp could survive in such small bodies of water.

Adverse effects of established populations of silver carp on endangered and threatened fishes would most likely be through direct competition for food resources, particularly phytoplankton and, to a lesser extent, zooplankton, in the water column during the larval stage. Potential for direct predation and injury of drifting fertilized eggs and larvae of native fishes also exists. The fact that silver carp can become extremely abundant and reach a very large size (> 1 m in length) in rivers, lakes, and reservoirs increases the probability of a negative impact on aquatic ecosystems they invade as high densities of silver carp decrease food availability for native species. Mussels are also filter feeders but live partly or totally buried in the substrate; their association with the benthic environment means that they would be less likely to be affected by filter-feeding silver carp. Nevertheless, changes in the fish community structure caused by silver carp are likely to have adverse effects on abundance and availability of host fishes required for mussel reproduction, which may result in a decline of native mussels.

*Habitat Degradation*

There is low risk of silver carp causing direct habitat degradation or destruction, although the presence of silver carp is sometimes associated with decreased water clarity, which may also impact benthic chemistry and community structure. The effect of these fishes on nutrients, sediment re-suspension (which can stimulate plankton growth), and decreasing dissolved oxygen varies. Excrement from silver carp, which can equal their body weight in 10 days, has organically enriched lake bottoms and altered the benthic macroinvertebrate community structure.

However, due to the impacts listed above, it is highly likely that silver carp would have adverse effects on designated critical habitats of threatened and endangered species. There are currently 60 species of fishes and 18 mussels with designated critical habitat. Of those, at least 26 inhabit lakes or reaches of streams large enough to support silver carp. Therefore, dense populations of silver carp are likely to affect the critical habitats upon which

the threatened and endangered species depend.

*Potential Pathogens*

Many species of parasites and bacterial diseases occur in silver carp. The only viral disease agent of silver carp found in the literature is *Rhabdovirus carpio*, the causative agent for spring viraemia of carp (SVC), a systemic, acute, and highly contagious infection that is known to cause mortality in native fishes. Silver carp are susceptible to many diseases caused by parasitic protozoans and trematodes, and several crustacean parasites, such as anchor worm (*Lernaea bhadraensis*), have also been reported from silver carp.

Although there have been studies of disease-causing agents of silver carp, none have investigated the transfer of these pathogens from silver carp to native fishes of the United States. However, two parasites known to infect silver carp are a threat to native North American fishes, including cyprinids: The gill-damaging *Lernaea cyprinacea*, known as anchorworm (this parasite is also known to affect salmonids and eels), and *Bothriocephalus acheilognathi*, known as Asian carp tapeworm. The Asian carp tapeworm, initially introduced into U.S. waters from grass carp, has infected native threatened and endangered fishes (including the yaqui chub (*Gila purpurea*), beautiful shiner, (*Cyprinella formosa*), yaqui topminnow (*Poeciliopsis occidentalis sonoriensis*), colorado pikeminnow (*Ptychocheilus lucius*), and humpback chub (*G. cypha*)) and fishes of concern such as the roundtail chub (*G. robusta*), a candidate for Federal listing as a threatened or endangered fish and listed as endangered by Colorado, in five States. When infected baitfish were released into Lake Mead, the tapeworm was spread to two endangered fishes, virgin spinedace (*Lepidomeda mollispinis*) and woundfin minnow (*Plagopterus argentissimus*) in Utah and Nevada. Approximately 90% of large juvenile and adult humpback chubs in the Little Colorado River are infected with this cestode. The Asian carp tapeworm has been reported from more than 40 other cyprinid fishes and fishes of other orders. Silver carp are hosts of this parasite, but suffer minimal adverse effects from it. As hosts of this tapeworm, silver carp have the potential to spread it to native fishes, beyond the five States where it has already been found (Arizona, Colorado, Nevada, New Mexico, and Utah). This is a parasite that erodes mucus membranes and intestinal tissues, often leading to death of the host. The most probable pathway of introduction was by the release of infected baitfishes. As the introduced range of silver carp grows in U.S. waters, silver carp will likely spread the parasite and a number of native fishes, particularly, but not limited to, cyprinids, percids, and centrarchids, will likely become hosts of the Asian carp tapeworm.

Some disease-causing agents harbored by silver carp pose health risks to humans. The psychotropic pathogen *Listeria monocytogenes* has been found in market and fish farm samples of silver carp. *Clostridium botulinum* was found in 1.1% of fresh and smoked samples of silver carp from the Mazandaran Province in Iran. The toxigenic fungi *Aspergillus flavus*, *Alternaria*, *Penicillium*, and *Fusarium* were found from silver carp and from pond water in which they were raised at a fish farm in northern Iran. In addition, live *Salmonella* spp. can be found in silver carp for at least 14 days after transfer to clean water, and silver carp, therefore, should be considered as a potential carrier for *Salmonella* (*S. typhimumium*).

*Impacts to Humans*

Silver carp in the United States cause substantial impacts to the health and welfare of human beings who use waterways infested with silver carp. There are numerous reports of injuries to humans and damage to boats and boating equipment because of the jumping habits of silver carp in the vicinity of moving motorized watercraft. Some reported injuries include cuts from fins, black eyes, broken bones, back injuries, and concussions. Silver carp also cause property damage including broken radios, depth finders, fishing equipment, and antennae. Some vessels have been retrofitted with a Plexiglas pilot's cab as protection against jumping silver carp.

**Factors That Reduce or Remove Injuriousness for Silver Carp**

*Detection and Response*

If silver carp were introduced or spread into new U.S. waters, it is unlikely that the introduction would be discovered until the numbers were high enough to impact wildlife and wildlife resources. Widespread surveys of waterways are not conducted to establish species' presence lists. Delay in discovery would limit the ability and effectiveness to rapidly respond to the introduction and prevent establishment of new populations. It is unlikely that silver carp could be eradicated from U.S. waterways unless they are found in unconnected waterbodies.

*Potential Control*

The ability to control spread of established populations depends on their access to open waterways and riverine habitat to spawn. Barriers may help control the spread of silver carp from the Mississippi River basin into the Great Lakes or other waterbodies, but barriers could also negatively affect migratory native fishes. There are still several pathways by which silver carp from established populations in the Mississippi River Basin might be moved to new waterbodies, such as the Potomac River or Columbia River, and become established.

Due to the extensive established range of silver carp in the Mississippi River Basin, conventional control methods are not feasible to reduce established populations. Massive fishing efforts utilizing netting and electrofishing may be effective in reducing populations, but many non-target fish species would also be killed. Justifying the expense of such efforts would require a large commercial demand, which does not currently exist, nor is likely given the jumping behavior of silver carp that makes fishing difficult. Selective removal of silver carp is possible given their location in the water column, but water trawling could also remove other non-target fish such as paddlefish.

The large and growing range of silver carp in U.S. waterways makes chemical control of established populations highly unlikely, both physically and fiscally. Use of chemical treatments, such as rotenone, would be expensive, only locally effective, and would negatively affect all fishes and invertebrates, not just the target carp. At present, there is no method known to substantially reduce established populations of silver carp. Eradication is not possible with presently available technology.

*Recovery of Disturbed Sites*

Because the ability to eradicate this species is low, there is little likelihood for rehabilitation or recovery of ecosystems disturbed by this species. Additionally infested waterways allow connections to unpopulated sites. Utilizing sterile silver carp would do little to reduce or remove injuriousness as the present range of establishment in the Mississippi River Basin is too extensive for this option to reduce current silver carp populations in this area. The use of daughterless fish technology (introducing sterile males to produce unviable eggs) may reduce populations, but this would take many

years before it would reduce numbers of fish where they currently exist. Research is being conducted on the use of pheromones to control carp, but it is years from demonstrating effectiveness in natural waters and mass production. These technologies might be useful to prevent establishment of silver carp in new areas.

*Potential Pathogens*

Silver carp are host to many parasites and bacterial diseases that are or could be a threat to native North American fishes. If silver carp transfer pathogens to native fish, the ability and effectiveness to control these transfers would be very low because silver carp and native fishes share the same habitat.

*Potential Ecological Benefits for Introduction*

The ability of silver carp to effectively filter particles and reliance on phytoplankton for much of its diet led to research into their effectiveness as a biological control agent for phytoplankton in wastewater systems and other ponds. There is conflicting data concerning the benefit of using silver carp to control excess nutrients. Regardless of their effect on increasing or decreasing phytoplankton and zooplankton abundance, studies have consistently shown that filter feeding by silver carp shifts the species composition of these communities to smaller species. Silver carp have been observed to cause nuisance algal blooms through a trophic cascade. Scientists believe that the removal of larger zooplankton and phytoplankton by foraging silver carp may result in stimulating growth of smaller species.

Conclusion

In summary, the Service finds all forms of live silver carp, including gametes, viable eggs and hybrids, to be injurious to wildlife and wildlife resources of the United States and to the interests of human beings because:

- Silver carp are highly likely to spread from their current established range to new waterbodies in the United States;
- Silver carp are highly likely to compete with native species, including threatened and endangered species, for food and habitat;
- Silver carp have the potential to carry pathogens and transfer them to native fish;
- Silver carp are likely to develop dense populations that will likely affect critical habitat for threatened and endangered species and could further imperil other native fishes and mussels;
- Silver carp are negatively impacting humans;
- It would be difficult to eradicate or reduce large populations of silver carp, or recover ecosystems disturbed by the species; and
- There are no potential ecological benefits for U.S. waters from the introduction of silver carp.

**Factors That Contribute to Injuriousness for Largescale Silver Carp**

*Potential Introduction and Spread*

To our knowledge, the largescale silver carp has not been imported into the United States. Within its native range, largescale silver carp occur in subtropical to tropical climates, which exist in parts of the United States. Therefore, should pure largescale silver carp be introduced to U.S. waters, its potential range would likely include subtropical waters such as those present in southern Florida, southern Texas, and Hawaii.

The growth rate of largescale silver carp is greater than that of silver carp. The reproductive capability is expected to be similar to that of silver carp, though largescale silver carp reach sexual maturity at a younger age than silver carp so they will spawn earlier.

In culture situations, silver carp has hybridized with largescale silver carp. The hybrids did not grow as quickly as largescale silver carp but exceeded the growth rate of silver carp. Largescale silver carp × silver carp hybrids were introduced in Kazakhstan where they became established. The climate of Kazakhstan is temperate; thus, largescale silver carp × silver carp hybrids are more cold-tolerant than pure largescale silver carp. The faster growth rate of these hybrids than pure silver carp and the increased palatability of largescale silver carp compared to silver carp may conceivably stimulate interest in culturing either the hybrids or pure largescale silver carp in the United States. Because hybrids can tolerate temperate climates, they have the potential to be cultured in many southern States and would have a wider potential range where they could establish in the United States.

Escape from containment, as has happened with silver carp, would provide a pathway for release of largescale silver carp into natural waters of the United States. Should this fish or its hybrids be released into natural waters, connected waterways would become a secondary pathway for spread. Because of the morphological similarity between this species and silver carp, stock contamination of silver carp by largescale silver carp is possible if imported from regions with populations of *H. harmandi*. Another possible introduction pathway, should largescale silver carp or their hybrids be imported for culture, would be sale of live individuals in food fish markets.

Likelihood of spread of largescale silver carp, should they be introduced, would be high in subtropical and tropical river systems of the United States. Hybrid largescale silver carp × silver carp, however, would have high potential to live in much of the temperate United States. Because largescale silver carp can occupy and reproduce in reservoirs, they could also live in lakes. The same is likely true for hybrids. Young largescale silver carp or any hybrids captured by anglers for use as live bait would be a pathway that could lead to numerous future introductions of these species.

*Hybrids*

Hybridization with native fishes is not believed to be possible, but largescale silver carp are known to hybridize and to produce viable offspring with silver carp and possibly bighead carp, both of which are present in U.S. waters. Largescale silver × silver carp hybrids are tolerant of a temperate climate (ca. 42–46° N). (45° N is a latitude that parallels the border between New York State and Ontario, Canada). Therefore, these hybrids would likely be capable of surviving and probably establishing throughout much of the United States where suitable waters exist. Largescale silver carp grow faster than silver carp but hybrids do not grow as quickly as pure largescale silver carp. It is highly likely that any largescale silver carp hybrids would directly compete with native species for food and habitat.

*Potential Effects on Native Species*

Largescale silver carp consume primarily planktonic food sources. It is unknown if largescale silver carp feed more heavily on phytoplankton than zooplankton, but their hybrids with silver carp would likely show a preference for phytoplankton. Some adults may weigh 20–30 kg. The rapid growth and high fat content of this fish has made it the most cultured species for food in Vietnam. Largescale silver carp and hybrids are highly likely to compete for food with other planktivorous native fishes and with post-larvae and early juveniles of most native fishes should they become established in the United States.

Fishes most likely to be affected are those species whose diet is predominantly plankton including paddlefish (*Polyodon spathula*), native

to the Mississippi River Basin and Gulf of Mexico river drainages from east Texas to Alabama, buffalos (*Ictiobus* spp.), or shads (*Dorosoma* spp.). Given that these fish may already be competing with bighead and silver carps in some areas, the presence of largescale silver carp would increase food competition and increase the likelihood of negative impacts to native species.

Potential for direct predation and injury of drifting fertilized eggs and larvae of fishes exists. Mussels are also filter feeders but live partly or totally buried in the substrate; they would be less likely to be affected by water column filter-feeding largescale silver carp. Nevertheless, changes in the fish community structure caused by largescale silver carp would likely have adverse effects on abundance and availability of host fishes required for mussel reproduction.

There are other possible, but less likely, effects that may cascade through any aquatic ecosystem with an established population of largescale silver carp. Nutrient levels are a concern because there is evidence of overloading of nutrients in waters into which silver carp have been introduced, and the same may apply to largescale silver carp or their hybrids.

Competition for habitat between largescale silver carp and native species is likely high, especially in large rivers, lakes, and reservoirs. Because they are planktivorous, the potential of largescale silver and any hybrids to cause habitat degradation or destruction is low as is direct predation on native mammals, birds, amphibians, reptiles, mollusks or other live, non-aquatic animals.

Additional adverse impacts on native wildlife, wildlife resources, and ecosystem balance are likely few, except for fishes. Ecosystem balance would likely be modified if populations of largescale silver carp or any hybrids become large enough to dominate planktivorous fish species.

Because largescale silver carp may survive and become established and compete with native fishes, there is no acceptable escape or release threshold for largescale silver carp or their hybrids.

Adverse effects of largescale silver carp on selected threatened and endangered freshwater mussels and fishes would be expected to be moderate to high. There are currently 116 fishes and 70 mussels on the Federal List of Endangered and Threatened Wildlife. Because largescale silver carp have the same habitat requirements as approximately 40 fishes and 25 mussels currently on the endangered or threatened species list, these listed species in tropical or subtropical areas will likely be impacted by the introductions of largescale silver carp through competition for food and habitat. However, the habitat requirements, springs and small streams, of the remaining listed fishes and mussels would probably preclude any detectable effects as it is unlikely that largescale silver carp or their hybrids would survive in such small bodies of water.

It is likely that largescale silver carp and highly likely that their hybrids with silver carp would have adverse effects on designated critical habitats of threatened and endangered species. There are currently 60 species of fishes and 18 mussels with designated critical habitat. At least 26 fishes and mussels with critical habitat inhabit lakes or reaches of streams large enough to support hybrids of largescale silver carp and silver carp. Largescale silver carp and their hybrids have the potential to alter food webs and ultimately alter nutrient and energy cycling in aquatic communities. The most likely effect would be an alteration of fish community structure through competition for food. Fishes and mussels that are determined to be candidates for listing under the Endangered Species Act would likewise be at risk.

Native species may be placed in danger of extinction as a result of the introduction or establishment of largescale silver carp if pure stock became established in subtropical or tropical waters in the United States. However, there is a higher risk for negative impacts to native fishes from largescale silver carp hybrids. Large populations of largescale silver carp or hybrids would likely alter native fish community structures, ultimately resulting in decline of native mussels since many rely on native host fishes for reproduction. The fact that largescale silver carp have the potential to become abundant and reach a very large size (> 1 m in length) in rivers, lakes, and reservoirs increases the probability of a negative impact on aquatic ecosystems should largescale silver carp be introduced and become established.

*Potential Pathogens*

The potential for largescale silver carp to transfer pathogens is largely unknown. No detailed studies of disease-causing agents of largescale silver carp have been found, but at least three trematode parasites (*Dactylogyrus harmandi*, *D. hypophthalmichthys*, *D. chenthushenae*) are known to infect largescale silver carp. Bighead, silver, grass, and black carps are known to host the Asian carp tapeworm (*Bothriocephalus acheilognathi*), but it is unknown whether largescale silver × silver carp host this species. Since largescale silver carp are very similar to silver carp, they likely can host the Asian carp tapeworm and infected fish, if introduced to U.S. waters, could spread it to native fishes.

*Potential Impacts to Humans*

The potential impact on the health and welfare of humans from largescale silver carp or any hybrids is unknown. Because largescale silver carp remain deep in the water column during daylight hours and swim toward the surface at night to feed on plankton, they may be less prone to jumping than silver carp in response to sounds of boat engines during daytime. However, if largescale silver × carp hybrids display the jumping behavior of pure silver carp, their potential to injure humans could be considerable.

**Factors That Reduce or Remove Injuriousness for Largescale Silver Carp**

*Detection and Response*

If largescale silver carp were introduced into U.S. waters, it is unlikely that the introduction would be discovered until the numbers were high enough to impact wildlife and wildlife resources. Widespread surveys of waterways are not conducted to establish species' presence lists. Delay in discovery would limit the ability and effectiveness to rapidly respond to the introduction and prevent establishment.

*Potential Control*

If largescale silver carp were to escape and become established in natural waters, management of established populations would be highly unlikely both physically and fiscally. Some control might be possible with massive fishing efforts using nets, but this is unlikely to stem range expansion. There would have to be substantial commercial demand to justify the expense of such efforts.

Chemicals or selective removal may be used to manage populations in localized areas. However, selective removal of largescale silver carp would be difficult because they remain in deeper waters during daylight hours when such removal efforts would probably occur. Pheromones may be a viable option to limit spread; this possibility is under investigation for silver carp, and may have applicability to largescale silver carp.

However, research into this control method is in early stages.

Because no evidence exists that largescale silver carp have been imported or released into U.S. waters, triploidy or induced sterility could potentially reduce injuriousness. However, these processes are costly, time-consuming, and not 100% effective so there is potential for triploid largescale silver carp to cause harm if they were released.

It would be difficult to control the spread of largescale silver carp to new locations except, perhaps, by use of electric, acoustic, physical and other types of barriers. At present, there is no method known to substantially reduce populations of introduced fishes in U.S. waterways. It is highly unlikely that largescale silver carp could be eradicated from U.S. waterways, should they be introduced, unless they are found in unconnected waterbodies.

*Recovery of Disturbed Sites*

Although there is no evidence that this species has been introduced or targeted for introduction into the United States, the lack of available methods to detect, eradicate or control introduced populations indicates that should largescale silver carp be introduced, rehabilitation or recovery of ecosystems disturbed by this species would be highly unlikely.

*Potential Pathogens*

The potential for largescale silver carp or any hybrids to infect native fishes with pathogens is largely unknown. Should such transfers prove viable, the ability and effectiveness to control the spread of pathogens to native fishes would be low.

*Potential Ecological Benefits for Introduction*

There are no potential ecological benefits for introduction of largescale silver carp or any hybrids in natural waters of the United States.

Conclusion

In summary, the Service finds all forms of live largescale silver carp, including gametes, viable eggs and hybrids, to be injurious to the wildlife and wildlife resources of the United States and to the interests of human beings because:

- Largescale silver carp are likely to escape or be released into the wild if imported into the United States;
- Largescale silver carp are highly likely to survive, become established, and spread in tropical or subtropical areas of the United States if they escape or are released;
- Largescale silver carp would likely carry pathogens that could be transferred to native fish;
- Largescale silver carp and hybrids are likely to compete with native species, including threatened and endangered species, for food and habitat;
- Largescale silver carp could develop dense populations that would likely affect critical habitat for threatened and endangered species and are highly likely to negatively impact native fishes and mussels;
- Largescale silver carp have been shown to hybridize with silver carp, a nonnative species already established in the United States, and would likely have a larger range than pure largescale silver carp;
- Largescale silver carp hybrids with silver carp may display jumping behavior that could injure humans;
- If largescale silver carp were introduced into the United States, it would be extremely difficult to prevent their spread and to control populations in natural waters;
- It would be difficult to eradicate or reduce large populations of largescale silver carp and to recover ecosystems disturbed by the species; and
- There are no potential ecological benefits from the introduction of largescale silver carp for U.S. waters.

**Required Determinations**

*Paperwork Reduction Act (44 U.S.C. 3501 et seq.)*

This rule contains potential information collection activity for FWS Form 3–200–42, Import/Acquisition/Transport of Injurious Wildlife. Completion of this form would be necessary to apply for a permit to import, or transport across State lines, any live silver or largescale silver carp, gametes, viable eggs, or hybrids for scientific, medical, educational, or zoological purposes. The Service already has approval from the Office of Management and Budget (OMB) to collect information for this special use permit under OMB control number 1018–0093. This approval expires July 31, 2007. The Service 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.

*Regulatory Planning and Review*

(a) In accordance with the criteria in Executive Order 12866, OMB has designated this rule as a significant regulatory action.

This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. A brief assessment to clarify the costs and benefits associated with this rule follows.

Costs Incurred

Silver Carp

We expect this rule to have minimal costs. Silver carp are not cultured in the United States, nor do we believe that they are imported or exported. Currently, there are some commercial fisheries for silver carp in the Mississippi, Missouri, and Illinois rivers. Usually, commercial fishermen are catching silver carp as bycatch, which can account for up to 50 percent of the catch. Silver carp are not favorable because of their jumping habits and because they are less desirable by the consumer. In Missouri, many of the fishermen do not primarily target Asian carp (bighead and silver carp) because the price received is low ($0.10-$0.15 per pound). Instead, they fish for bighead and silver carp when other species or opportunities are unavailable. Many fishermen do not distinguish between bighead carp and silver carp.

Data for the silver carp fishery are limited. According to public comments received, small commercial fisheries for silver carp exist in Illinois, Iowa, and Kentucky. Table 1 shows commercial fishery landings and value in Iowa and Illinois in 2003. Compared to the total commercial harvest and value, Asian carp represented 11 percent of landings and 6 percent of value in 2003. Because Illinois does not distinguish between bighead carp and silver carp in its annual report, we are unable to determine the magnitude of silver carp landings for the entire area. For Iowa, silver carp represented less than 1 percent of total landings. In 2005, silver carp represented less than 1 percent of commercial landings in Kentucky and less than one-tenth of commercial landings in Louisiana (public comments, J. Gassett 25 Oct 2006 and J. Roussel 6 Nov 2006).

The majority of the silver carp catch is sold as round weight. In Illinois, fishermen can sell silver carp as long as they are not transported live once the fish are taken off the water. No impacts are expected to the silver carp market because they are not delivered live.

TABLE 1.—2003 COMMERCIAL FISHERY LANDINGS AND VALUE IN IOWA AND ILLINOIS

| | Illinois [1] | Iowa [2,3] | Total |
|---|---|---|---|
| Total Commercial Harvest (lbs) | 6,385,473 | 2,242,997 | 8,628,470 |
| Asian Carp* | 900,497 | 15,774 | 916,271 |
| Silver Carp | | 3,828 | 3,828 |
| Total Commercial Value ($) | $1,334,467 | $496,765 | $1,831,232 |
| Asian Carp* | $99,055 | $1,735 | $100,790 |
| Silver Carp | | $421 | $421 |

* Asian carp includes bighead carp and silver carp. The value for Asian carp and silver carp in Iowa is based on the average $0.11/lb received, which is the same as Illinois.
[1] Illinois Department of Natural Resources. 2005. 2003 Commercial Catch Report. Brighton, Illinois.
[2] Personal communication, Gene Jones, Iowa Department of Natural Resources.
[3] Iowa Department of Natural Resources. 2003. Fisheries Management Section 2003 Completion Reports. Des Moines, Iowa.

The market for live silver carp in U.S. markets is unknown and no public comments received reported a U.S. market for live silver carp. It is possible that silver carp are inadvertently shipped along with live bighead carp. However, most live haulers will not haul live silver carp because the fish do not transport well. Furthermore, the consumer prefers bighead carp to silver carp. Because only sales of live silver carp would be regulated by this rulemaking, we do not expect any impacts to commercial fishermen unless they are transporting live silver carp across State lines for processing. While the exact impact is unknown, we expect it to be minimal.

Largescale Silver Carp

There is no known use for largescale silver carp in the United States or import or export of the species into or from the United States. We do not know of any future plans to use largescale silver carp in the United States. During the public comment period, no comments reported largescale silver carp being used. Therefore, we do not expect the rule to add largescale silver carp to the list of injurious wildlife to have any costs.

Benefits Accrued

Silver Carp

Within several waters of the Midwest, silver carp comprise a percentage of the commercial catch as bycatch (non-target species). This may be negatively impacting revenue for commercial fishermen because silver carp are not as valuable as the native species that are targeted.

Furthermore, it is possible that silver carp populations will be delayed or not become established in new watersheds (Columbia Basin, Chesapeake Basin, and Sacramento-San Joaquin Delta) with similar attributes as the Mississippi River Basin as a result of this rulemaking. Silver carp are likely to compete with native fish for food, causing declines in native fishes in the United States, particularly those that rely heavily on plankton as a food resource.

Thus, this rule will protect native fish, and the recreational and commercial fisheries associated with native fish. In terms of recreational fisheries, benefits would accrue due to (1) consumer surplus generated from fishing native fish and (2) fishing-related expenditures such as food, lodging, and equipment. In terms of commercial fisheries, benefits would accrue due to the revenue from fishing native fish, which are more valuable than silver carp. The timeline for when these benefits would accrue depends on the potential spread and impacts of silver carp. The extent of benefits to recreational and commercial fisheries is unknown.

Largescale Silver Carp

There have been no reports that largescale silver carp are in the United States. However, native fish populations are likely to decline if largescale silver carp were to establish populations in the United States. With this rule, we reduce the risk of the introduction and establishment of largescale silver carp (or any hybrids) in U.S. watersheds. Thus, this rule protects native fish and the recreational and commercial fisheries associated with native fish. In terms of recreational fisheries, benefits would accrue due to the continued (1) consumer surplus generated from fishing native fish and (2) fishing-related expenditures such as food, lodging, and equipment. In terms of commercial fisheries, benefits would accrue due to the continued revenue from fishing native fish. The extent of benefits to recreational and commercial fisheries is unknown because it depends on the introduction and subsequent establishment of largescale silver carp populations in the United States.

(b) This rule will not create inconsistencies with other Federal agencies' actions. This rule pertains only to regulations promulgated by the Service under the Lacey Act. No other agencies are involved in these regulations.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule does not affect entitlement programs. This rule is aimed at regulating the importation and movement of nonindigenous species that cause or have the potential to cause significant economic and other impacts on natural resources that are the trust responsibility of the Federal Government.

(d) OMB has determined that this rule raises novel legal or policy issues.

*Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 et seq.). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

This rulemaking may impact a small number of fishermen selling live silver carp. The number of fishermen targeting silver carp is unknown. Because the

market for live silver carp is also unknown, we are unable to estimate the degree of impact of this rulemaking. We expect this rulemaking to have a minimal effect on commercial fishermen selling live silver carp because many live haulers do not transport live silver carp. We do not expect this rulemaking to affect aquaculture because silver carp, largescale silver carp, or any hybrids are not being cultured in the United States at this time.

Many small businesses within the retail trade industry (such as hotels, gas stations, taxidermy shops, bait and tackle shops, etc.) may benefit from continued recreational fishing without impacts from silver carp, largescale silver carp, or any hybrids. Furthermore, small businesses associated with commercial fishing (fishermen, wholesalers, and retailers) will also benefit from continued commercial fishing without impacts from silver carp, largescale silver carp, or any hybrids. We do not know the extent to which these small businesses will continue to benefit. However, we expect this benefit to be distributed across various watersheds, and so we do not expect that the rule will have a significant economic effect (benefit) on a substantial number of small entities in any region or nationally.

Therefore, we certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). An initial or final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. For the reason described below, no individual small industry within the United States will be significantly affected if silver carp or largescale silver carp importation is prohibited.

*Small Business Regulatory Enforcement Fairness Act*

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. Silver carp is in limited commercial trade in the United States and primarily as fillets; the largescale silver carp is not known to be imported or present in the United States. Silver carp are likely to negatively affect many native fishery resources if they continue to spread in the United States. The largescale silver carp could devastate many native fishery resources if it is introduced to U.S. waterways. This rulemaking will protect the environment from the introduction and spread of nonnative species and will indirectly work to sustain the economic benefits enjoyed by numerous small establishments connected with recreational and commercial fishing.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), this rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule would not prohibit intrastate transport or any use of silver carp or largescale silver carp within State boundaries. Any regulations concerning the use of silver carp or largescale silver carp within individual States will be the responsibility of each State. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required.

*Takings*

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule would not impose significant requirements or limitations on private property use.

*Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule would not have substantial direct effects on States, in the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, we determine that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

*Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order. The rule has been reviewed to eliminate drafting errors and ambiguity, was written to minimize litigation, provides a clear legal standard for affected conduct rather than a general standard, and promotes simplification and burden reduction.

*National Environmental Policy Act*

We have prepared environmental assessments (EAs) in conjunction with this rulemaking, and have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA of 1969 (42 U.S.C. 4321 et seq.)). No comments on the draft environmental assessments were received. For copies of the final EAs, contact the individual identified above in the section **FOR FURTHER INFORMATION CONTACT**, or access the documents at *http://www.fws.gov/contaminants/ANS/ANSInjurious.cfm.*

Adding silver carp and largescale silver carp to the list of injurious wildlife is intended to prevent their further introduction and establishment into natural waters of the United States in order to protect native fishes, the survival and welfare of wildlife and wildlife resources, and the health and welfare of humans. Not listing silver carp as injurious may allow for an expansion to States where they are not already found, thus increasing the risk of their escape and establishment in new areas due to accidental release and, perhaps, intentional release. Their establishment is negatively impacting native fish, wildlife, and humans. Silver carp are established throughout much of the Mississippi River Basin. Releases of silver carp into natural waters of the United States are likely to occur again, and the species is likely to become established in additional U.S. waterways, threatening native fish populations, wildlife, and wildlife resources dependent on phytoplankton, zooplankton, bacteria, and detritus, and impacting human health.

Largescale silver carp are not known to be in the United States, but if introduced to natural waters, they would likely impact the welfare and survival of native fish and wildlife, as well as the health and welfare of humans. In addition, largescale silver carp are visually similar to silver carp and can readily hybridize with silver carp, so they would be difficult to distinguish from silver carp.

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects. This rule involves the importation and interstate movement of all forms of live silver carp, largescale silver carp, gametes, viable eggs, and hybrids. We are unaware of trade in these species by Tribes.

*Effects on Energy*

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action, and no Statement of Energy Effects is required.

**References Cited**

A complete list of all references used in this rulemaking is available upon request from the Branch of Invasive Species (see the **FOR FURTHER INFORMATION CONTACT** section).

**List of Subjects in 50 CFR Part 16**

Fish, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ For the reasons discussed in the preamble, the U.S. Fish and Wildlife Service amends part 16, subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below.

## PART 16—[AMENDED]

■ 1. The authority citation for part 16 continues to read as follows:

**Authority:** 18 U.S.C. 42.

■ 2. Amend § 16.13 as follows:

■ a. By removing the word ''and'' at the end of paragraph (a)(2)(iii);

■ b. By removing the period at the end of paragraph (a)(2)(iv)(BB) and adding in its place ''; and'' ; and

■ c. By adding a new paragraph (a)(2)(v) to read as set forth below.

**§ 16.13 Importation of live or dead fish, mollusks, and crustaceans, or their eggs.**

(a) * * *

(2) * * *

(v) Any live fish, gametes, viable eggs, or hybrids of the species silver carp, *Hypophthalmichthys molitrix,* and largescale silver carp, *Hypophthalmichthys harmandi.*

* * * * *

Dated: May 18, 2007.

**Todd Willens,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E7–13371 Filed 7–9–07; 8:45 am]

BILLING CODE 4310–55–P

# Proposed Rules

Federal Register
Vol. 72, No. 131
Tuesday, July 10, 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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

**[Docket No. PRM–50–85]**

### Eric Epstein, Three Mile Island Alert, Inc.; Receipt of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; notice of receipt.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated April 11, 2007, which was filed with the Commission by Eric Epstein. The petition was docketed by the NRC on April 17, 2007, and has been assigned Docket No. PRM–50–85. The petitioner requests that the NRC amend its regulations regarding emergency preparedness to require that all host school pick-up centers be at a minimum distance of five to ten miles beyond the radiation plume exposure boundary zone to ensure that all school children are protected in the event of a radiological emergency.

**DATES:** Submit comments by September 24, 2007. 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:** You may submit comments by any one of the following methods. Please include PRM–50–85 in the subject line of your comments. Comments on petitions 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 any information in your submission that you do not want to be publicly disclosed.

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

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*. Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays (telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michael T. Lesar, Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7163 or Toll Free: 800–368–5642.

**SUPPLEMENTARY INFORMATION:**

#### The Petitioner

The petitioner is Eric Epstein, Chairman of Three Mile Island Alert, Inc. The petitioner states that Three Mile Island Alert, Inc., was founded in 1977 and is a safe-energy organization based in Harrisburg, Pennsylvania. Three Mile Island Alert, Inc., monitors Peach Bottom, Susquehanna, and Three Mile Island nuclear generating stations.

#### The Proposed Amendments

The petitioner believes that current NRC, Department of Homeland Security (DHS), and Federal Emergency Management Agency (FEMA) emergency planning requirements fail to meet the safety needs of all school children. Further, the petitioner believes that the current planning requirements of these agencies do not establish a reasonable standard for offsite relocation distances that adequately protects the public's health and safety.

The petitioner seeks to clarify NRC, DHS, and FEMA relocation requirements and requests that NRC promulgate and codify relevant regulations pertaining to radiological emergency readiness planning. The petitioner requests that NRC mandate that all host school pick-up centers be at a minimum distance of five to ten miles beyond the radiation plume exposure boundary zone, and has attached several exhibits to the petition to support this proposal. The support material includes information from the West Shore School District; maps and news articles; data from NRC's NUREG–0654, FEMA–REP–1; and other statements and exhibits.

#### Conclusion

The petitioner states that there is a regulatory gap, and an absence of minimum distance requirements, for host school pick-up centers in relation to radiation plume exposure boundary lines. The petitioner believes that allowing host school pick-up centers to be just outside of the 10-mile radiation plume exposure boundary zone fails to meet the safety needs of school children. The petitioner also believes that the proposed change in current regulations is necessary in order to ensure that all school children are properly protected in the event of a radiological emergency. Accordingly, the petitioner requests that the NRC amend its regulations related to

emergency preparedness as described previously in the section titled, ''The Proposed Amendments.''

Dated at Rockville, Maryland, this 3rd day of July, 2007.

For the Nuclear Regulatory Commission.

**Annette Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. E7–13316 Filed 7–9–07; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

## 10 CFR Part 71

## Regulations for the Safe Transport of Radioactive Material; Solicitation of Issue Proposals

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Solicitation of Proposed Issues or Identified Problems with the International Atomic Energy Agency Regulations.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) and the U.S. Department of Transportation (DOT) are jointly seeking proposed issues or identified problems with the International Atomic Energy Agency (IAEA) Regulations for the Safe Transport of Radioactive Material (referred to as TS–R–1). Proposed issues or identified problems that are submitted by the United States and other IAEA member states and International Organizations might necessitate subsequent domestic compatibility rulemakings by both NRC and DOT.

**DATES:** Proposed issues or identified problems will be accepted until August 15, 2007. Proposals received after this date will be considered if it is practical to do so, however we are only able to assure consideration for proposals received on or before this date.

**ADDRESSES:** Comments may be submitted either electronically or via U.S. mail.

Mail proposed issues or identified problems to Michael T. Lesar, Chief, Rulemaking, Directives and Editing Branch, Mail Stop T6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Deliver proposals to 11555 Rockville Pike, Rockville, Maryland, 20852, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Submit proposals by electronic mail to: *nrcrep@nrc.gov.*

Copies of proposal documents received may be reviewed at the NRC's Public Document Room, One White Flint North, Public File Area 01–F21, 11555 Rockville Pike (First Floor), Rockville, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Michele M. Sampson, Office of Nuclear Material Safety and Safeguards, USNRC, Washington, DC 20555–0001, telephone: (301) 492–3292; e-mail: *mxs14@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

The IAEA periodically revises its Regulations for the Safe Transport of Radioactive Material (TS–R–1) to reflect new information and accumulated experience. The DOT is the U.S. competent authority before the IAEA for radioactive material transportation matters. The NRC provides technical support to the DOT in this regard, particularly with regard to Type B and fissile transportation packages.

The IAEA recently initiated the review cycle for a potential 2011 edition of TS–R–1. The IAEA's review process calls for Member States and International Organizations to provide proposals for review of issues or identified problems with the regulations to the IAEA by August 31, 2007. To assure opportunity for public involvement in the international regulatory development process, the DOT and the NRC are soliciting proposals for issues or identified problems with the IAEA international transportation standard, TS–R–1, at this time.

A specific area of interest are proposals related to the IAEA package surface contamination limits in TS–R–1. In 2000, an IAEA Coordinated Research Project (CRP) to review contamination control methods and develop a non-fixed contamination dose model for packages was initiated. The results of the CRP were published as IAEA–TECDOC–1449, *Radiological aspects of non-fixed contamination of packages and conveyances,* June 2005 (available at *www.iaea.org*). The CRP concluded that the current limits for non-fixed contamination on packages were developed using very conservative assumptions. Potential alternative methods of specifying contamination limits could include a radionuclide specific approach. We are seeking input regarding the usefulness, feasibility or practicality of implementing dose-based package surface contamination limits, and the issues or identified problems pertinent to incorporation of new non-fixed contamination limits into TS–R–1.

The focus of this solicitation is to identify issues or problems with the current 2005 edition of TS–R–1. While it is helpful to identify potential changes or solutions to resolve the identified issues or problems, it is not required to provide a proposed change to accompany each identified issue or problem. This information will assist the DOT and the NRC in having a full range of views as the agencies develop the proposed issues the U.S. will submit to the IAEA.

### II. Public Participation

Proposed issues or identified problems should cite the publication date and page number of this **Federal Register** document. Proposals must be submitted in writing (electronic file on disk in WordPerfect format preferred) and should include:

- Name;
- Address;
- Telephone No.;
- E-mail address;
- Principal objective of issue or identified problem (*e.g.*, Required to provide adequate protection to health and safety of public and occupational workers, needed to define or redefine level of protection to health and safety of public and occupational workers, required for consistency within the Transport Regulations, required as a result of advances in technology, needed to improve implementation of the Transport Regulations);
- Topic of issue or identified problem—Describe or frame the issue or the identified problem by reference to or using the table of contents of TS–R–1 (2005 Edition) and the Advisory Material for the IAEA Regulations for the Safe Transport of Radioactive Material (TS–G–1.1 (ST–2));
- Justification for proposed change—Provide a clear statement of the main objectives of the proposed change and the solution ''path'' (*e.g.*, change to regulations, additional guidance, a research project);
- An assessment of the benefits and impacts of the proposed change—Including changes in public and occupational exposure, changes in accident risk, and effects on health, safety or the natural environment. The affected parties should be identified.
- Paragraphs affected and proposed text change to regulatory text in TS–R–1;
- Paragraphs affected and proposed text change to IAEA advisory material in TS–G–1.1;
- A listing of any applicable reference documents;
- Description of issue or identified problem to be addressed;
- Summary of proposed solution to the issue or identified problem; and
- Expected cost of implementation (negligible, low, medium or high).

The DOT and the NRC will review the proposed issues, identified problems,

rationales and, if included, changes and proposed solutions. Based in part on the information received, the U.S. will develop proposed issues or identified problems to be submitted to the IAEA by August 31, 2007.

Proposed issues and identified problems from all Member States and International Organizations will be considered at an IAEA Transport Safety Standards Committee (TRANSSC) Meeting to be convened by IAEA on October 1–5, 2007, in Vienna, Austria. Prior to that meeting, the DOT and the NRC will consider holding a public meeting to discuss the U.S. proposed changes submitted to the IAEA.

Dated at Rockville, Maryland, this 29th day of June 2007.

For the Nuclear Regulatory Commission.

**Kevin Williams,**

*Chief, Rules, Inspections, and Operations Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E7–13318 Filed 7–9–07; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–28663; Directorate Identifier 2006–NM–223–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A300–600 Series Airplanes; and Model A310 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

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

* * * * *

* * * the FAA set-up in January 1999 an Ageing Transport Systems Rulemaking Advisory Committee (ATSRAC) to investigate the potential safety issues in aging aircraft as a result of wear and degradation in their operating systems.

Under this plan, all Holders of type Certificates aircraft are required to conduct a design review, to preclude the occurrence of potential unsafe conditions as the aircraft aged.

* * * * *

The unsafe condition is degradation of the fuel system, which could result in loss of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by August 9, 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.
- *eFederal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

### Examining the AD Docket

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

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

**SUPPLEMENTARY INFORMATION:**

### Streamlined Issuance of AD

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

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

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. 2007–28663; Directorate Identifier 2006–NM–223–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2006–0285R1, dated November 13, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

* * * the FAA issued in July 1996 an Aging Non-structural Systems plan to address the White House Commission on Aviation Safety and Security (WHCSS) report.

To help fulfill the actions specified in this Aging Systems plan, the FAA set-up in January 1999 an Ageing Transport Systems Rulemaking Advisory Committee (ATSRAC) to investigate the potential safety issues in aging aircraft as a result of wear and degradation in their operating systems.

Under this plan, all Holders of type Certificates aircraft are required to conduct a design review, to preclude the occurrence of potential unsafe conditions as the aircraft aged.

Further to AIRBUS investigations on this subject, corrected measures intended to improve the design of A310 and A300–600 fleet against potential unsafe conditions as the aircraft aged, are rendered mandatory by this AD.

The unsafe condition is degradation of the fuel system, which could result in

loss of the airplane. The corrective actions include:

- Modify emergency power electrical routing.
- Inspect certain wire routes and do necessary corrective action (repair chafed or burned wiring, damaged clamps, and introduce self-vulcanising silicone tape for wrapping the cable bundle at each clamping position).
- Secure electrical routing.
- Relocate temperature sensors and modify wires.

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

**Relevant Service Information**

Airbus has issued the following Service Bulletins:

- A300–24–6045, Revision 05, dated June 9, 2006.
- A300–24–6069, Revision 01, dated April 27, 2006.
- A310–24–2056, Revision 02, dated June 9, 2006.
- A310–24–2079, Revision 01, dated April 27, 2006.
- A310–29–2036, Revision 03, dated June 9, 2006.
- A310–36–2010, Revision 03, dated May 24, 2006.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information 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 This AD and the MCAI or Service Information**

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

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

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 193 products of U.S. registry. We estimate that it would take about 267 work hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $17,637 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD to be $7,526,421, or $38,997 per product.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Airbus:** Docket No. FAA–2007–28663; Directorate Identifier 2006–NM–223–AD.

**Comments Due Date**

(a) We must receive comments by August 9, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Airbus Model A300–600 series airplanes; and Model A310 series airplanes; certificated in any category; all certified models, all serial numbers.

**Subjects**

(d) Electrical Power, Hydraulic Power, and Pneumatic.

**Reason**

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

* * * the FAA issued in July 1996 an Aging Non-structural Systems plan to address the White House Commission an Aviation Safety and Security (WHCSS) report.

To help fulfill the actions specified in this Aging Systems plan, the FAA set-up in January 1999 an Ageing Transport Systems Rulemaking Advisory Committee (ATSRAC) to investigate the potential safety issues in aging aircraft as a result of wear and degradation in their operating systems.

Under this plan, all Holders of type Certificates aircraft are required to conduct a design review, to preclude the occurrence of potential unsafe conditions as the aircraft aged.

Further to AIRBUS investigations on this subject, corrected measures intended to

improve the design of A310 and A300–600 fleet against potential unsafe conditions as the aircraft aged, are rendered mandatory by this AD.

The unsafe condition is degradation of the fuel system, which could result in loss of the airplane. The corrective actions include: Modify emergency power electrical routing; inspect certain wire routes and do necessary corrective action (repair chafed or burned wiring, damaged clamps, and introduce self-vulcanising silicone tape for wrapping the cable bundle at each clamping position); secure electrical routing; and relocate temperature sensors and modify wires.

**Actions and Compliance**

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

(1) For Model A310 series airplanes, having received Airbus Modification 05911 and/or Airbus Modification 05910, or having received application of Airbus Service Bulletin A310–24–2014 or A310–24–2099 in service; and Model A300–600 series airplanes having received in production Airbus Modification 06213, or having received application of Airbus Service Bulletin A300–24–6008 (Airbus Modification 06214) in service; except airplanes on which Airbus Modification 10510 has been embodied in production or airplanes on which Airbus Service Bulletin A310–24–2056, dated June 8, 1993; Revision 1, dated November 28, 1994; or Revision 02, dated June 9, 2006; or Airbus Service Bulletin A300–24–6045, dated June 8, 1993; Revision 1, dated June 2, 1994; Revision 2, dated August 11, 1994; Revision 3, dated November 28, 1994; Revision 4, dated May 5, 1995; or Revision 05, dated June 9, 2006; has been embodied in service: Within 36 months after the effective date of this AD, modify the emergency power electrical routing under floor at pressure seal interface plates between FR (frame) 52 and FR53, in accordance with the instructions given in Airbus Service Bulletin A310–24–2056, Revision 02, dated June 9, 2006; or A300–24–6045, Revision 05, dated June 9, 2006; as applicable.

(2) For Model A310 series airplanes, manufacturing serial number (MSN) 0162 up to 0706 included, and Model A300–600 series airplanes, MSN 0252 up to 0794 included; except airplanes on which the one-time detailed visual inspection in accordance with Airbus Service Bulletin A310–24–2079, dated March 28, 2000; or Revision 01, dated April 27, 2006; or Airbus Service Bulletin A300–24–6069, dated March 28, 2000; or Revision 01, dated April 27, 2006; has been performed in service: Within 36 months after the effective date of this AD, perform a one-time detailed visual inspection of the electrical routes 1P and 2P between the rear panel 120VU (volt unit) and the circuit breaker panel 800VU located in the forward compartment and in case of finding, before further flight, repair chafed or burned wiring, damaged clamps and introduce self-vulcanising silicone tape for wrapping the cable bundle of each clamping position, in accordance with the instructions given in Airbus Service Bulletin A310–24–2079, Revision 01, dated April 27, 2006, or Airbus Service Bulletin A300–24–6069, Revision 01, dated April 27, 2006; as applicable.

(3) For Model A310 series airplanes, equipped with Eaton (formerly Vickers) electrical pumps, except airplanes on which Airbus Modification 10017 has been embodied in production or airplanes on which Airbus Service Bulletin A310–29–2036, dated August 10, 1992; Revision 1, dated December 16, 1992; Revision 2, dated September 20, 1993; or Revision 03, dated June 9, 2006; have been embodied in service: Within 36 months after the effective date of this AD, secure the electrical routing 1P, 2P, and the hydraulic line running to pump 11GE, in the hydraulic bay at FR54 by changing the routes and by adding a spacer and a clamp to prevent any chafing between them, in accordance with the instructions given in Airbus Service Bulletin A310–29–2036, Revision 03, dated June 9, 2006.

(4) For Model A310 series airplanes, except airplanes on which Airbus Modification 06447 has been embodied in production or airplanes on which Airbus Service Bulletin A310–36–2010, Revision 2, dated September 26, 1989; or Revision 03, dated May 24, 2006; have been embodied in service: Within 36 months after the effective date of this AD, relocate the temperature sensors and modify the associated wires in accordance with the instructions of Airbus Service Bulletin A310–36–2010, Revision 03, dated May 24, 2006.

(5) Actions done before the effective date of this AD in accordance with any applicable service bulletin in Table 1 of this AD are acceptable for compliance with the corresponding provisions of paragraph (f) of this AD.

TABLE 1.—ACCEPTABLE EARLIER REVISIONS OF SERVICE BULLETINS

| Airbus Service Bulletin | Revision level | Date |
|---|---|---|
| A300–24–6045 | Original | June 8, 1993. |
| | 1 | June 2, 1994. |
| | 2 | August 11, 1994. |
| | 3 | November 28, 1994. |
| | 4 | May 5, 1995. |
| A300–24–6069 | Original | March 28, 2000. |
| A310–24–2056 | Original | June 8, 1993. |
| | 1 | November 28, 1994. |
| A310–24–2079 | Original | March 28, 2000. |
| A310–29–2036 | 1 | December 16, 1992. |
| | 2 | September 20, 1993. |
| A310–36–2010 | 2 | September 26, 1989. |

**FAA AD Differences**

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

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, ATTN: Tom Stafford, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–1622; 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**

(h) Refer to MCAI EASA Airworthiness Directive 2006–0285R1, dated November 13, 2006, and the Airbus Service Bulletins in Table 2 of this AD for related information:

TABLE 2.—AIRBUS SERVICE BULLETINS

| Service Bulletin | Revision level | Date |
|---|---|---|
| A300–24–6045 | Revision 05 | June 9, 2006. |
| A300–24–6069 | Revision 01 | April 27, 2006. |
| A310–24–2056 | Revision 02 | June 9, 2006. |
| A310–24–2079 | Revision 01 | April 27, 2006. |
| A310–29–2036 | Revision 03 | June 9, 2006. |
| A310–36–2010 | Revision 03 | May 24, 2006. |

Issued in Renton, Washington, on June 26, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–13352 Filed 7–9–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–28664; Directorate Identifier 2007–NM–007–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 777–200, –200LR, –300, and –300ER Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 777–200, –200LR, –300, and –300ER series airplanes. This proposed AD would require a one-time inspection to determine the material of the forward and aft gray water drain masts. For airplanes having composite gray water drain masts, this proposed AD would also require installation of a copper bonding jumper between a ground and the clamp on the tube of the forward and aft gray water composite drain masts. This proposed AD results from a report of charred insulation blankets and burned wires around the forward gray water composite drain mast found during an inspection of the forward cargo compartment on a Model 767–300F airplane. We are proposing this AD to prevent a fire near a composite drain mast and possible disruption of the electrical power system due to a lightning strike on a composite drain mast, which could result in the loss of several functions essential for safe flight.

**DATES:** We must receive comments on this proposed AD by August 24, 2007.

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

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

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

**FOR FURTHER INFORMATION CONTACT:** Dave Webber, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6451; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–28664; Directorate Identifier 2007–NM–007–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

### Examining the Docket

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

### Discussion

We have received a report indicating that, during an inspection of the forward cargo compartment on a Model 767–300F airplane, an operator found charred insulation blankets and burned wires around the forward gray water composite drain mast. Additional charring on the insulation blankets was noticed several feet away along the routing of the drain mast's ground wire and power wires. Analysis of the damaged parts revealed that a lightning strike on the composite drain mast caused the damage to the wires and insulation blankets. This condition, if not corrected, could cause disruption of electrical power and fire and heat damage to equipment in the event of a lightning strike on the composite drain mast, which could result in the potential loss of several functions essential for safe flight.

A design review of the gray water composite drain mast installation on Model 737NG, 757, 767, and 777

airplanes revealed that the installation of a heavier bonding jumper is necessary to provide adequate lightning protection to the gray water composite drain mast installation. The subject area on Model 777 airplanes is almost identical to that on the affected Model 767–300F airplane. Therefore, Model 777 airplanes might be subject to the unsafe condition revealed on the Model 767–300F airplane. We are currently considering additional rulemaking to address the identified unsafe condition on Model 737NG, 757, and 767 airplanes.

**Relevant Service Information**

We have reviewed Boeing Special Attention Service Bulletin 777–30–0014, dated July 24, 2006. The service bulletin describes procedures for installing a 135-ampere copper bonding jumper between a ground and the clamp on the tube of the forward and aft gray water composite drain masts.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

**FAA's Determination and Requirements of the Proposed AD**

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and the Referenced Service Bulletin.''

**Difference Between the Proposed AD and the Referenced Service Bulletin**

Operators should note that, although Model 777–200LR series airplanes are not included in the effectivity of Boeing Special Attention Service Bulletin 777–30–0014, dated July 24, 2006, this proposed AD is applicable to those airplanes. This difference has been coordinated with Boeing.

**Costs of Compliance**

There are about 164 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| Inspection to determine gray water drain mast material. | 1 | $80 | None | $80 | 20 | $1,600. |
| Installation of bonding jumper. | 4 | 80 | Between $132 and $274, depending on kit and number of kits needed (1 or 2). | Between $452 and $594. | Up to 20 | Between $9,040 and $11,880. |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Boeing:** Docket No. FAA–2007–28664; Directorate Identifier 2007–NM–007–AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by August 24, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to all Boeing Model 777–200, –200LR, –300, and –300ER series airplanes, certificated in any category.

**Unsafe Condition**

(d) This AD results from a report of charred insulation blankets and burned wires around the forward gray water composite drain mast found during an inspection of the forward cargo compartment on a Model 767–300F airplane. We are issuing this AD to prevent a fire near a composite drain mast and

possible disruption of the electrical power system due to a lightning strike on a composite drain mast, which could result in the loss of several functions essential for safe flight.

**Compliance**

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

**Inspection To Determine Material of Gray Water Drain Mast**

(f) Within 60 months after the effective date of this AD, inspect the forward and aft gray water drain masts to determine whether the drain mast is made of aluminum or composite material. A review of airplane maintenance records is acceptable in lieu of this inspection if the material of the forward and aft gray water drain masts can be conclusively determined from that review.

(1) For any aluminum gray water drain mast identified during the inspection or records check required by paragraph (f) of this AD, no further action is required by this AD for that drain mast only.

(2) For any composite gray water drain mast identified during the inspection or records check required by paragraph (f) of this AD, do the actions specified in paragraph (g) of this AD.

**Installation of Bonding Jumper**

(g) For any composite gray water drain mast identified during the inspection or records check required by paragraph (f) of this AD: Within 60 months after the effective date of this AD, install a 135-ampere copper bonding jumper between a ground and the clamp on the tube of the gray water composite drain mast, in accordance with the Accomplishment instructions of Boeing Special Attention Service Bulletin 777–30–0014, dated July 24, 2006.

**Installation of Bonding Jumper Not Necessary for Aluminum Drain Masts**

(h) For airplanes on which the forward composite drain mast has been replaced with an aluminum drain mast per Boeing Service Bulletin 777–38–0026: Installation of the bonding jumper specified in paragraph (g) of this AD is not required for the forward gray water drain mast, as specified in Part 1 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–30–0014, dated July 24, 2006.

**Alternative Methods of Compliance (AMOCs)**

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

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

Issued in Renton, Washington, on June 26, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–13353 Filed 7–9–07; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–28665; Directorate Identifier 2007–NM–081–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

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

Three cases of outer deflector panel found detached or broken during ground inspection have been reported to Airbus. * * * [A]n operator has also reported a missing portion of hinge on one panel. * * * Mishandling or failure of the small portion of hinge located inboard of the affected deflector panel is suspected to be the main cause of the deflector damage. This can cause misalignment of the deflector panel followed by hinge pin migration and possible further damages to the deflector on flap retraction. If not corrected, such situation could lead to the loss of deflector panel and injured people on the ground.

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

**DATES:** We must receive comments on this proposed AD by August 9, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *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 Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

**SUPPLEMENTARY INFORMATION:**

**Streamlined Issuance of AD**

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

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

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–28665; Directorate Identifier 2007–NM–081–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the

closing date and may amend this proposed AD based on those comments.

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

**Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0062, dated March 7, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Three cases of outer deflector panel found detached or broken during ground inspection have been reported by operators to Airbus. The affected deflector panel is the most outboard of the two outer deflectors. In addition, an operator has also reported a missing portion of hinge on one panel. The missing portion of hinge is held to the structure through one Camloc fastener.
>
> Mishandling or failure of the small portion of hinge located inboard of the affected deflector panel is suspected to be the main cause of the deflector damage.
>
> This can cause misalignment of the deflector panel followed by hinge pin migration and possible further damages to the deflector on flap retraction. If not corrected, such situation could lead to the loss of deflector panel and injured people on the ground.
>
> The aim of this Airworthiness Directive (AD) is to mandate the one time inspection to detect and prevent damage to inner and outer shroud box deflectors.

The corrective action includes repairing any discrepancy, or removing the affected deflector door according to the Configuration Deviation List (CDL). You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

Airbus has issued the following service information. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

- Airbus Service Bulletin A300–57–0247, including Appendix 01, dated November 7, 2006.
- Airbus Service Bulletin A300–57–6104, including Appendix 01, dated November 7, 2006.
- Airbus A300 Airplane Flight Manual (AFM), Appendix—Configuration Deviation List, Page 6.03.27, dated February 1, 1993.
- Airbus A300–600 AFM, Appendix—Configuration Deviation List, Page 6.03.27, dated May 1, 1992.

**FAA's Determination and Requirements of This Proposed AD**

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

**Differences Between This AD and the MCAI or Service Information**

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

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

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 167 products of U.S. registry. We also estimate that it would take about 16 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $213,760, or $1,280 per product.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Airbus:** Docket No. FAA–2007–28665; Directorate Identifier 2007–NM–081–AD.

**Comments Due Date**

(a) We must receive comments by August 9, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Airbus Model A300 and A300–600 series airplanes, all certified models, all serial numbers, certificated in any category; except Airbus Model A300–600 series airplanes from Manufacturer's Serial Number 0872 onward, which received

application of Airbus modifications 13245 and 13282 during production.

**Subject**

(d) Wings.

**Reason**

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

Three cases of outer deflector panel found detached or broken during ground inspection have been reported by operators to Airbus. The affected deflector panel is the most outboard of the two outer deflectors. In addition, an operator has also reported a missing portion of hinge on one panel. The missing portion of hinge is held to the structure through one Camloc fastener.

Mishandling or failure of the small portion of hinge located inboard of the affected deflector panel is suspected to be the main cause of the deflector damage.

This can cause misalignment of the deflector panel followed by hinge pin migration and possible further damages to the deflector on flap retraction.

If not corrected, such situation could lead to the loss of deflector panel and injured people on the ground.

The aim of this Airworthiness Directive (AD) is to mandate the one time inspection to detect and prevent damage to inner and outer shroud box deflectors.

The corrective action includes repairing any discrepancy, or removing the affected deflector door according to the Configuration Deviation List (CDL).

**Actions and Compliance**

(f) Within 18 months after the effective date of this AD, unless already done, do a detailed visual inspection of the inner and outer shroud box flap deflectors in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–0247, including Appendix 01, dated November 7, 2006; or Airbus Service Bulletin A300–57–6104, including Appendix 01, dated November 7, 2006; as applicable.

(1) If any discrepancy or damage is found, before next flight do the action in paragraph (f)(1)(i) or (f)(1)(ii) of this AD.

(i) Repair the affected flap deflector in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–0247, including Appendix 01, dated November 7, 2006; or Airbus Service Bulletin A300–57–6104, including Appendix 01, dated November 7, 2006; as applicable.

(ii) Remove the affected deflector door as described in Airbus A300 Airplane Flight Manual (AFM), Appendix—Configuration Deviation List, Page 6.03.27, dated February 1, 1993; or Airbus A300–600 AFM, Appendix—Configuration Deviation List, Page 6.03.27, dated May 1, 1992; as applicable. The removed door may be reinstalled once it has been repaired in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–0247, including Appendix 01, dated November 7, 2006; or Airbus Service Bulletin A300–57–6104, including Appendix 01, dated November 7, 2006; as applicable.

(2) Report to Airbus the results of the inspection done in accordance with paragraph (f) of this AD, using the inspection report included in Appendix 01 of the applicable service bulletin specified in paragraph (f) of this AD.

**FAA AD Differences**

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

**Other FAA AD Provisions**

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

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

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

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

**Related Information**

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2007–0062, dated March 7, 2007, and the service information identified in Table 1 of this AD, for related information.

TABLE 1.—AIRBUS SERVICE INFORMATION

| Service information | Date |
|---|---|
| Airbus Service Bulletin A300–57–0247, including Appendix 01 | November 7, 2006. |
| Airbus Service Bulletin A300–57–6104, including Appendix 01 | November 7, 2006. |
| Airbus A300 Airplane Flight Manual, Appendix—Configuration Deviation List, Page 6.03.27 | February 1, 1993. |
| Airbus A300–600 Airplane Flight Manual, Appendix—Configuration Deviation List, Page 6.03.27 | May 1, 1992. |

Issued in Renton, Washington, on June 26, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–13354 Filed 7–9–07; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–28661; Directorate Identifier 2007–NM–013AD]**

**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:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. This proposed AD would require installation of an automatic shutoff system for the center tank fuel boost pumps, installation of a placard in the airplane flight deck if necessary, and concurrent modification of the P5–2 fuel control module assembly. This proposed AD would also require revisions to the Limitations and Normal Procedures sections of the airplane flight manual to advise the flightcrew of certain operating restrictions for airplanes equipped with an automated center tank fuel pump shutoff control. This proposed AD would also require a

revision to the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness to incorporate AWL No. 28–AWL–19 and No. 28–AWL–23. This proposed AD would also require installation of two secondary override fuel pump control relays to each existing primary override fuel pump control relay for the center fuel tank fuel boost pumps. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent center tank fuel pump operation with continuous low pressure, which could lead to friction sparks or overheating in the fuel pump inlet or could create a potential ignition source inside the center fuel tank; these conditions, in combination with flammable fuel vapors, could result in a center fuel tank explosion and consequent loss of the airplane.

**DATES:** We must receive comments on this proposed AD by August 24, 2007.

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

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

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

**FOR FURTHER INFORMATION CONTACT:** Kathrine Rask, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Ave SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–28661; Directorate Identifier 2007–NM–013–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

## Examining the Docket

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

## Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Boeing has found that certain failures will result in the center tank fuel pumps continuing to run after the tank has been depleted. Depending on the failure, pump low pressure may not be annunciated, or power may not be removed from the pump when the pump has been commanded ''OFF.'' Operation of the center tank fuel pump with continuous low pressure could lead to friction sparks or overheating in the fuel boost pump inlet. This condition, if not corrected, could result in a fuel tank explosion and consequent loss of the airplane.

## Other Relevant Rulemaking

On April 18, 2001, we issued AD 2001–08–24, amendment 39–12201 (66 FR 20733, April 25, 2001), applicable to all Boeing Model 737 airplanes. That AD requires revising the airplane flight manual (AFM) to prohibit extended dry operation of the center tank fuel pumps (with no fuel passing through the pumps). Accomplishing the actions

specified in paragraphs (g), (h), (i), (j), and (k) of this proposed AD would terminate the AFM revision required by paragraph (a) of AD 2001–08–24 for Model 737–600, –700, –700C, –800, and –900 series airplanes that have the automatic shutoff system installed.

On September 24, 2002, we issued AD 2002–19–52, amendment 39–12900 (67 FR 61253, September 30, 2002), applicable to all Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, Model 747 airplanes, and Model 757 airplanes. That AD requires revising the AFM to advise the flightcrew of certain operating restrictions for maintaining minimum fuel levels, prohibits use of the horizontal stabilizer tank on certain airplanes, and prohibits the installation of certain fuel pumps. That AD requires concurrent removal of the currently required AFM revisions and insertion of new AFM revisions, requires installation of placards to alert the flightcrew to the operating restrictions, and prohibits installation of any un-inspected pumps. That AD permits the AFM revision and placard to be removed under certain conditions. Installation of a placard in accordance with paragraph (e) of AD 2002–19–52, amendment 39–12900, is acceptable for compliance with paragraph (h) of this AD.

On November 23, 2002, we issued emergency AD 2002–24–51, amendment 39–12992, applicable to all Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, Model 747 airplanes, and Model 757 airplanes. (We issued a **Federal Register** version of AD 2002–24–51 on December 23, 2002 (68 FR 10, January 2, 2003).) That AD requires revising the AFM to require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks and, for certain airplanes, to prohibit the use of the horizontal stabilizer fuel tank and certain center auxiliary fuel tanks. Accomplishing the actions specified in paragraphs (g), (h), (i), (j), and (k) of this proposed AD would terminate the AFM revision specified in paragraph (b) of AD 2002–24–51 for Model 737–600, –700, –700C, –800, and –900 series airplanes that have the automatic shutoff system installed.

**Relevant Service Information**

We have reviewed Boeing Alert Service Bulletin 737–28A1206, dated January 11, 2006. This service bulletin describes procedures for installing an automatic shutoff system for the center tank fuel boost pumps. Installation of the automatic shutoff system includes the following actions:

- In the J4 junction box, changing wiring and connector termination positions and installing relays, transformers, markers, and wires to a certain wire bundle.
- In the J20 junction box, changing wiring and installing relays, markers, and wires to a certain wire bundle.
- At the P5 overhead panel in the flight compartment, replacing the P5–2 fuel control module with a reworked P5–2 fuel control module.
- In the flight compartment, installing the P61–8 fuel test panel and installing circuit breakers and markers in the P6–3 circuit breaker panel.
- Adding wiring to certain wire bundles in the P6 circuit breaker panel, between the flight and electronics compartment, in the J4 and J20 junction boxes, in the E2–1 and E4–2 electronics shelves in the electrical compartment, between the E2–1 electronics shelf and the P5–2 fuel control panel, between the E4–2 electronics shelf and the P5–2 fuel control panel, between the E2–1 electronics shelf and the J20 junction box, and between the E4–2 electronics shelf and the J4 junction box.

We have also reviewed Boeing Alert Service Bulletin 737–28A1248, dated December 21, 2006. This service bulletin describes procedures for installing two secondary override fuel pump control relays to each existing primary override fuel pump control relay for the center fuel tank fuel boost pumps. The installation includes installing a new overlay marker and Brady label, changing and adding certain wires, and connecting the new relays to the power distribution panel.

We have also reviewed Revision December 2005 and Revision May 2006 of Section 9 of the Boeing 737–600/700/700C/700IGW/800/900 Maintenance Planning Data (MPD) Document, D626A001–CMR (hereafter referred to as ''the MPD''). Subsection F, ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEM AWLs,'' of the MPD describes new airworthiness limitations (AWLs) for fuel tank systems. The AWLs include:

- AWL inspections, which are periodic inspections of certain features for latent failures that could contribute to an ignition source.
- Critical design configuration control limitations (CDCCLs), which are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

Subsection F of the MPD, Revision December 2005, adds new fuel system AWL No. 28–AWL–19, which is a repetitive inspection of the automatic shutoff system for the center tank fuel boost pumps to verify functional integrity. Subsection F of the MPD, Revision May 2006, adds new fuel system AWL No. 28–AWL–23, which is a repetitive inspection of the power failed on protection system for the center tank fuel boost pumps to verify functional integrity.

Boeing Alert Service Bulletin 737–28A1206 recommends concurrent accomplishment of Boeing Component Service Bulletin 233A3202–28–03, dated January 12, 2006. Boeing Component Service Bulletin 233A3202–28–03 describes procedures for replacing the left and right center boost pump switches of the P5–2 fuel control module assembly with new switches and changing the wiring of the P5–2 fuel control module assembly.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

**FAA's Determination and Requirements of the Proposed AD**

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require the following actions:

- Installation of an automatic shutoff system for the center tank fuel boost pumps.
- Installation of a placard in the airplane flight deck, if necessary. (Placards are necessary only for ''mixed fleet operation,'' which means that some airplanes in an operator's fleet are equipped with automatic shutoff systems while other airplanes are not.)
- Concurrent modification of the P5–2 fuel control module assembly.
- Revisions to the Limitations and Normal Procedures sections of the AFM to advise the flightcrew of certain operating restrictions for airplanes equipped with an automated center tank fuel pump shutoff control.
- Revision to the AWLs section of the Instructions for Continued Airworthiness to incorporate AWL No. 28–AWL–19, which would require repetitive inspections of the automatic shutoff system for the center tank fuel boost pumps to verify functional integrity.

• Installation of two secondary override fuel pump control relays to each existing primary override fuel pump control relay for the center fuel tank fuel boost pumps.

• Revision to the AWLs section of the Instructions for Continued Airworthiness to incorporate AWL No. 28–AWL–23, which would require repetitive inspections of the power failed on protection system for the center tank fuel boost pumps to verify functional integrity.

This proposed AD would also allow accomplishing the revision to the AWLs section of the Instructions for Continued Airworthiness in accordance with later revisions of the MPD as an acceptable method of compliance if they are approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

## Costs of Compliance

There are about 2,109 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs, at an average labor rate of $80 per work hour, for U.S. operators to comply with this proposed AD. The estimated cost of parts for installing an automatic shutoff system depends on the configuration of an airplane.

ESTIMATED COSTS

| Action | Work hours | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|
| Installation of the automatic shutoff system | 89 | $23,072 to $34,559 | $30,192 to $41,679 | 616 | $18,598,272 to $25,674,264. |
| Placard installation, if necessary | 1 | $10 | $90 | 616 | $55,440. |
| Concurrent modification of fuel control module assembly. | 9 | $3,815 | $4,535 | 616 | $2,793,560. |
| AFM revision | 1 | None | $80 | 616 | $49,280. |
| AWL revision to add 28–AWL–19 | 1 | None | $80 | 616 | $49,280. |
| Installation of secondary pump control relays. | 65 | $2,964 | $8,164 | 726 | $5,927,064. |
| AWL revision to add 28–AWL–23 | 1 | None | $80 | 726 | $58,080. |

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Boeing:** Docket No. FAA–2007–28661; Directorate Identifier 2007–NM–013–AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by August 24, 2007.

**Affected ADs**

(b) Accomplishing certain paragraphs of this AD terminates certain requirements of AD 2001–08–24, amendment 39–12201, and terminates certain requirements of AD 2002–24–51, amendment 39–12992.

**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 Alert Service Bulletin 737–28A1248, dated December 21, 2006.

**Note 1:** This AD requires revisions to certain operator maintenance documents to include new inspections of the automatic shutoff system for the center tank fuel boost pumps. Compliance with these inspections is required by 14 CFR 43.16 and 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (p) of this AD. The request should include a description of changes to the required inspections that will ensure acceptable maintenance of the automatic shutoff system.

**Unsafe Condition**

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent center tank

fuel pump operation with continuous low pressure, which could lead to friction sparks or overheating in the fuel pump inlet or could create a potential ignition source inside the center fuel tank; these conditions, in combination with flammable fuel vapors, could result in a center fuel tank explosion and consequent loss of the airplane.

**Compliance**

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

**Service Information References**

(f) The term ''Revision December 2005 of the MPD,'' as used in this AD, means the Boeing 737–600/700/700C/700IGW/800/900 Maintenance Planning Data (MPD) Document, D626A001–CMR, Section 9, Revision December 2005. The term ''Revision May 2006 of the MPD,'' as used in this AD, means the Boeing 737–600/700/700C/700IGW/800/900 MPD Document, D626A001–CMR, Section 9, Revision May 2006. The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For installation of an automatic shutoff system required by paragraph (g) of this AD: Boeing Alert Service Bulletin 737–28A1206, dated January 11, 2006;

(2) For modification of the fuel control module assembly required by paragraph (i) of this AD: Boeing Component Service Bulletin 233A3202–28–03, dated January 12, 2006; and

(3) For installation of the secondary override pump control relays required by paragraph (l) of this AD: Boeing Alert Service Bulletin 737–28A1248, dated December 21, 2006.

**Installation of Automatic Shutoff System for the Center Tank Fuel Boost Pumps**

(g) For the airplanes identified in paragraph 1.A.1. of Boeing Alert Service Bulletin 737–28A1206, dated January 11, 2006: Within 36 months after the effective date of this AD, install an automatic shutoff system for the center tank fuel boost pumps, by accomplishing all of the actions specified in the applicable service bulletin. If a placard has been previously installed on the airplane in accordance with paragraph (h) of this AD, the placard may be removed from the flight deck of only that airplane after the automatic shutoff system has been installed. Installing automatic shutoff systems on all airplanes in an operator's fleet, in accordance with this paragraph, terminates the placard installation required by paragraph (h) of this AD, for all airplanes in an operator's fleet.

**Placard Installation for Mixed Fleet Operation**

(h) For the airplanes identified in paragraph 1.A.1. of Boeing Alert Service Bulletin 737–28A1206, dated January 11, 2006: Concurrently with installing an automatic shutoff system on any airplane in an operator's fleet, as required by paragraph (g) of this AD, install a placard adjacent to the pilot's primary flight display on all airplanes in the operator's fleet not equipped with an automatic shutoff system for the center tank fuel boost pumps. The placard must read as follows (unless alternative placard wording is approved by an appropriate FAA Principal Operations Inspector):

''AD 2002–24–51 fuel usage restrictions required.''

Installation of a placard in accordance with paragraph (e) of AD 2002–19–52, amendment 39–12900, is acceptable for compliance with the requirements of this paragraph. Installing an automatic shutoff system on an airplane, in accordance with paragraph (g) of this AD, terminates the placard installation required by this paragraph, for only that airplane. Installing automatic shutoff systems on all airplanes in an operator's fleet, in accordance with paragraph (g) of this AD, terminates the placard installation required by this paragraph, for all airplanes in an operator's fleet. If automatic shutoff systems are installed concurrently on all airplanes in an operator's fleet in accordance with paragraph (g) of this AD, or if operation according to the fuel usage restrictions of AD 2002–24–51 is maintained until automatic shutoff systems are installed on all airplanes in an operator's fleet, the placard installation specified in this paragraph is not required.

**Concurrent Modification of P5–2 Fuel Control Module Assembly**

(i) For the airplanes identified in paragraph 1.A.1. of Boeing Alert Service Bulletin 737–28A1206, dated January 11, 2006, equipped with any fuel control module assembly identified in paragraph 1.A.1. of Boeing Component Service Bulletin 233A3202–28–03, dated January 12, 2006: Before or concurrently with accomplishing the actions required by paragraph (g) of this AD, replace the left and right center boost pump switches of the P5–2 fuel control module assembly with new switches and change the wiring of the P5–2 fuel control module assembly, by accomplishing all the applicable actions specified in the applicable service bulletin.

**Airplane Flight Manual (AFM) Revision**

(j) For the airplanes identified in paragraph 1.A.1. of Boeing Alert Service Bulletin 737–28A1206, dated January 11, 2006: Concurrently with accomplishing the actions required by paragraph (g) of this AD, do the actions specified in paragraphs (j)(1) and (j)(2) of this AD.

(1) Revise Section 1 of the Limitations section of the Boeing 737–600/–700/–700C/–800/–900 AFM to include the following statement. This may be done by inserting a copy of this AD in the AFM.

''Intentional dry running of a center tank fuel pump (low pressure light illuminated) is prohibited.''

**Note 2:** When a statement identical to that in paragraph (j)(1) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

(2) Revise Section 3 of the Normal Procedures section of the Boeing 737–600/–700/–700C/–800/–900 AFM to include the following statements. This may be done by inserting a copy of this AD in the AFM.

*''Center Tank Fuel Pumps*

*Alternative Method of Compliance (AMOC) to AD 2001–08–24 and AD 2002–24–51 for Aircraft with the Automated Center Tank Fuel Pump Shutoff*

Center tank fuel pumps must not be ''ON'' unless personnel are available in the flight deck to monitor low pressure lights.

For ground operation, center tank fuel pump switches must not be positioned ''ON'' unless the center tank fuel quantity exceeds 1000 pounds (453 kilograms), except when defueling or transferring fuel. Upon positioning the center tank fuel pump switches ''ON'' verify momentary illumination of each center tank fuel pump low pressure light.

For ground and flight operations, the corresponding center tank fuel pump switch must be positioned ''OFF'' when a center tank fuel pump low pressure light illuminates [1]. Both center tank fuel pump switches must be positioned ''OFF'' when the first center tank fuel pump low pressure light illuminates if the center tank is empty.

[1] When established in a level flight attitude, both center tank pump switches should be positioned ''ON'' again if the center tank contains usable fuel.

*Defueling and Fuel Transfer*

When transferring fuel or defueling center or main tanks, the fuel pump low pressure lights must be monitored and the fuel pumps positioned to ''OFF'' at the first indication of the fuel pump low pressure [1].

Defueling the main tanks with passengers on board is prohibited if the main tank fuel pumps are powered [2].

Defueling the main tanks with passengers on board is prohibited if the center tank fuel pumps are powered and the auto-shutoff system is inhibited [2].

[1] Prior to transferring fuel or defueling, conduct a lamp test of the respective fuel pump low pressure lights.

[2] Fuel may be transferred from tank to tank or the aircraft may be defueled with passengers on board, provided fuel quantity in the tank from which fuel is being taken is maintained at or above 2000 pounds (900 kilograms).''

**Note 3:** When statements identical to those in paragraph (j)(2) of this AD have been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

**Airworthiness Limitations (AWLs) Revision for AWL No. 28–AWL–19**

(k) For the airplanes identified in paragraph 1.A.1. of Boeing Alert Service Bulletin 737–28A1206, dated January 11, 2006: Concurrently with installing an automatic shutoff system in accordance with paragraph (g) of this AD, revise the AWLs section of the Instructions for Continued Airworthiness by incorporating AWL No. 28–AWL–19 of Subsection F of Revision December 2005 of the MPD into the MPD. Accomplishing the revision in accordance with a later revision of the MPD is an acceptable method of compliance if the revision is approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

**Installation of Secondary Override Pump Control Relays**

(l) For the airplanes identified in paragraph 1.A.1. of Boeing Alert Service Bulletin 737–28A1248, dated December 21, 2006: Within 60 months after the effective date of this AD, install two secondary override fuel pump control relays to each existing primary override fuel pump control relay for the center fuel tank fuel boost pumps, in accordance with the applicable service bulletin.

**AWLs Revision for AWL No. 28–AWL–23**

(m) For the airplanes identified in paragraph 1.A.1. of Boeing Alert Service Bulletin 737–28A1248, dated December 21, 2006: Concurrently with installing the secondary override pump control relays in accordance with paragraph (l) of this AD, revise the AWLs section of the Instructions for Continued Airworthiness by incorporating AWL No. 28–AWL–23 of Subsection F of Revision May 2006 of the MPD into the MPD. Accomplishing the revision in accordance with a later revision of the MPD is an acceptable method of compliance if the revision is approved by the Manager, Seattle ACO.

**Terminating Action for AD 2001–08–24**

(n) Accomplishing the actions required by paragraphs (g), (h), (i), (j), and (k) of this AD terminates the requirements of paragraph (a) of AD 2001–08–24 for Model 737–600, –700, –700C, –800, and –900 series airplanes that have the automatic shutoff system installed. After accomplishing the actions required by paragraphs (g), (h), (i), (j), and (k) of this AD, the AFM limitation required by paragraph (a) of AD 2001–08–24 may be removed from the AFM for those airplanes.

**Terminating Action for AD 2002–24–51**

(o) Accomplishing the actions required by paragraphs (g), (h), (i), (j), and (k) of this AD terminates the requirements of paragraph (b) of AD 2002–24–51 for Model 737–600, –700, –700C, –800, and –900 series airplanes that have the automatic shutoff system installed. After accomplishing the actions required by paragraphs (g), (h), (i), (j), and (k) of this AD, the AFM limitations required by paragraph (b) of AD 2002–24–51 may be removed from the AFM for those airplanes.

**Alternative Methods of Compliance (AMOCs)**

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

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

Issued in Renton, Washington, on June 26, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–13326 Filed 7–9–07; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–28662; Directorate Identifier 2007–NM–014–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800 and –900 Series Airplanes; and Model 757–200, –200PF, –200CB, and –300 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing airplanes, identified above. This proposed AD would require inspecting to determine if certain motor-operated shutoff valve actuators for the fuel tanks are installed, and related investigative and corrective actions if necessary. This proposed AD would also require revising the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness to incorporate AWL No. 28–AWL–21, No. 28–AWL–22, and No. 28–AWL–24 (for Model 737–600, –700, –700C, –800 and –900 series airplanes), and No. 28–AWL–23, No. 28–AWL–24, and No. 28–AWL–25 (for Model 757–200, –200PF, –200CB, and –300). This proposed AD results from a design review of the fuel tank systems. We are proposing this AD to prevent electrical energy from lightning, hot shorts, or fault current from entering the fuel tank through the actuator shaft, which could result in fuel tank explosions and consequent loss of the airplane.

**DATES:** We must receive comments on this proposed AD by August 24, 2007.

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

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

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

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–28662; Directorate Identifier 2007–NM–014–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

### Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Operations office

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

## Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Boeing has found that, under specific conditions, it was possible for electrical current to flow through certain motor operated shutoff valve actuators in the fuel tank. Boeing has developed a new valve actuator to replace those actuators. A motor-operated shutoff valve actuator that does not have sufficient protection against electrical energy from lightning, hot shorts, and fault current, could allow electrical energy to enter the fuel tank through the actuator drive shaft, which could result in fuel tank explosions and consequent loss of the airplane.

## Relevant Service Information

We have reviewed Boeing Alert Service Bulletins 737–28A1207, dated February 15, 2007, and 757–28A0088, dated January 25, 2007. Boeing Alert Service Bulletin 757–28A0088 describes procedures for inspecting to determine the part number (P/N) of motor-operated valve (MOV) actuators for the fuel tanks; Boeing Alert Service Bulletin 737–28A1207 also specifies removing MOV actuators having a certain P/N. The service bulletins specify that no more work is necessary if the P/N is acceptable.

For Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes, the affected MOVs are at 3 locations: The left engine fuel shutoff (spar) valve, the right engine fuel shutoff (spar) valve, and the fuel crossfeed valve. For Boeing Model 757–200, –200PF, –200CB, and –300 series airplanes, the affected MOVs are at 6 locations for airplanes in the single crossfeed configuration, or at 7 locations for airplanes in the dual crossfeed configuration.

If the P/N is not acceptable, the service bulletins specify related investigative and corrective actions as follows:

For all airplanes: Reworking the index plate; reworking the adapter plate if necessary; installing the adapter/shaft plate with sealant; installing the index plate with sealant; installing a new MOV actuator on the index plate with sealant; installing bonding jumpers with sealant. For Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes the actions also include installing shield ground terminals using sealed fay surface bonding for the main tank fuel quantity indicating system (FQIS). All of these actions include steps that specify measuring the electrical bonding resistance between various components and reworking the bonding if necessary.

We have also reviewed Subsection F, ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEM AWLs,'' of Boeing 737–600/700/700C/700IGW/800/900 Maintenance Planning Data (MPD) Document D626A001–CMR, Section 9, Revision May 2006; and Subsection G, ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEM AWLs,'' of Boeing 757 MPD Document D622N001, Section 9, Revision October 2006 (hereafter referred to as Revisions May 2006 and October 2006 of the MPDs). These sections of the MPDs describe the critical design configuration control limitations (CDCCL) and inspections applicable to the MOV installation. CDCCLs are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

Subsection F of Revision May 2006 of the Boeing 737–600/700/700C/700IGW/800/900 MPD adds new fuel system AWLs 28–AWL–21 (lightning and fault current protection—MOV actuator), No. 28–AWL–22 (repair of the MOV actuator), and 28–AWL–24 (lightning and fault current protection—MOV actuator).

Subsection G of Revision October 2006 of the Boeing 757 MPD adds new fuel system AWLs No. 28–AWL–23 (lightning and fault current protection—MOV actuator), No. 28–AWL–24 (repair of the MOV actuator), and No. 28–AWL–25 (lightning and fault current protection—MOV actuator).

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

## FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require the following actions:

- Inspecting to determine if certain motor-operated shutoff valve actuators for the fuel tanks are installed, and

related investigative and corrective actions if necessary.

• Revising the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness to incorporate AWL No. 28–AWL–21, No. 28–AWL–22, and No. 28–AWL–24 (for 737–600, –700, –700C, –800 and –900 series airplanes).

• Revising the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness to incorporate AWL No. 28–AWL–23, No. 28–AWL–24, and No. 28–AWL–25 (for Model 757–200, –200PF, –200CB, and –300).

This proposed AD would also allow accomplishing the revision to the AWLs section of the Instructions for Continued Airworthiness in accordance with later revisions of the MPD as an acceptable method of compliance if they are approved by the Manager, Seattle Aircraft Certification Office, FAA.

## Costs of Compliance

There are about 2,916 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 1,406 airplanes of U.S. registry. The average labor rate is $80 per work hour.

ESTIMATED COSTS

| Action | Work hours | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|
| Inspection for MOV actuators | 1 | $80 | 1,406 | $112,480 |
| AWL revisions | 3 | 240 | 1,406 | 337,440 |

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Boeing:** Docket No. FAA–2007–28662; Directorate Identifier 2007-NM–014-AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by August 24, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes; and Boeing Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletins 737–28A1207, dated February 15, 2007, and 757–28A0088, dated January 25, 2007.

**Note 1:** This AD requires revisions to certain operator maintenance documents to include new inspections and maintenance actions. Compliance with these limitations is required by 14 CFR 43.16 and 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these limitations, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 43.16 and 91.403(c), the operator must request approval for revision to the airworthiness limitations (AWLs) in the Boeing 737–600/700/700C/700IGW/800/900 Maintenance Planning Data (MPD) Document D626A001–CMR and the Boeing 757 MPD Document D622N001–9, as applicable, according to paragraph (h) of this AD.

**Unsafe Condition**

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent electrical energy from lightning, hot shorts, or fault current from entering the fuel tank through the actuator shaft, which could result in fuel tank explosions and consequent loss of the airplane.

**Compliance**

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

**Service Bulletin Reference**

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Model 737–600, –700, –700C, –800 and –900 series airplanes: Boeing Alert Service Bulletin 737–28A1207, dated February 15, 2007; and

(2) For Model 757–200, –200PF, –200CB, and –300 series airplanes: Boeing Alert Service Bulletin 757–28A0088, dated January 25, 2007.

**Inspection and Related Investigative/ Corrective Actions**

(g) Within 60 months after the effective date of this AD: Inspect the applicable motor-operated valves (MOVs) to determine whether an MOV with the affected part number (P/N) identified in the Accomplishment Instructions of the applicable service bulletin is installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the P/N of the part can be conclusively determined from that review. Do all applicable related investigative and corrective actions before further flight. Do all actions in accordance with the Accomplishment Instructions of the applicable service bulletin.

**Revision of AWLs Section**

(h) Concurrently with the actions in paragraph (g) of this AD: Revise the AWLs section of the Instructions for Continued Airworthiness by incorporating the information in paragraphs (h)(1) and (h)(2) of this AD, as applicable. Accomplishing the revision in accordance with a later revision of the MPD is an acceptable method of compliance if the revision is approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

(1) Section F., ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEM AWLs,'' of Boeing 737–600/700/700C/700IGW/800/900 Maintenance Planning Data (MPD) Document D626A001–CMR, Section 9, Revision May 2006, into the MPD to incorporate AWL No. 28–AWL–21, No. 28–AWL–22, and No. 28–AWL–24.

(2) Section G., ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEM AWLs,'' of Boeing 757 MPD Document D622N001, Section 9, Revision October 2006, into the MPD to incorporate AWL No. 28–AWL–23, No. 28–AWL–24, and No. 28–AWL–25.

**Alternative Methods of Compliance (AMOCs)**

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

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

Issued in Renton, Washington, on June 26, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–13366 Filed 7–9–07; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2007–28554; Airspace Docket No. 07–ASO–13]**

## Proposed Establishment of Class E Airspace; Winfield, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Class E5 airspace at Winfield, FL. An Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Interstate-10 Rest Stop Heliport, Winfield, FL. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

**DATES:** Comments must be received on or before August 9, 2007.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2007–28554; Airspace Docket No. 07–ASO–13, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room C210, 1701 Columbia Avenue, College Park, Georgia 30337.

**FOR FURTHER INFORMATION CONTACT:** Mark D. Ward, Manager, System Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronaturical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–28554; Airspace Docket No. 07–ASO–13.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to Part 71 of the Federal

Aviation Regulations (14 CFR Part 71) to establish Class E5 airspace at Winfield, FL. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (Air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

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

### § 71.1 [AMENDED]

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

*Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.*

* * * * *

**ASO FL E5 Winfield, FL [NEW]**

Point In space Coordinates
(Lat. 30°16′15″ N, long. 82°46′20″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the point in space (lat. 30°16′15″ N, long. 82°46′20″ W) serving Interstate - 10 Rest Stop Heliport.

* * * * *

Issued in College Park, Georgia, on June 26, 2007.

**Kathy Kutch,**

*Acting Group Manager, System Support, Eastern Service Center.*

[FR Doc. 07–3341 Filed 7–9–07; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2007–28102; Airspace Docket No. 07–ASO–8]**

## Proposed Establishment of Class E Airspace; Live Oak, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Class E5 airspace at Live Oak, FL. An Area Navigation (RNAV) Global Positioning System (GPA) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Suwannee Hospital Emergency Heliport, Live Oak, FL. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

**DATES:** Comments must be received on or before August 9, 2007.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2007–28102; Airspace Docket No. 07–ASO–8, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room C210, 1701 Columbia Avenue, College Park, Georgia 30337.

**FOR FURTHER INFORMATION CONTACT:** Mark D. Ward, Manager, System Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–28102; Airspace Docket No. 07–ASO–8.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web

page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E5 airspace at Live Oak, FL. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (Air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

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

**§ 71.1 [Amended]**

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

*Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.*

* * * * *

**ASO FL E5 Live Oak, FL [NEW]**

Point In Space Coordinates
(Lat. 30°16′51″ N, long. 83°00′15″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the point in space (Lat. 30°16′51″ N, 83°00′15″ W) serving Suwannee Hospital Emergency Heliport.

* * * * *

Issued in College Part, Georgia, on June 26, 2007.

**Kathy Kutch,**

*Acting Group Manager, System Support, Eastern Service Center.*

[FR Doc. 07–3342 Filed 7–9–07; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2007–28548; Airspace Docket No. 07–ASO–14]**

## Proposed Amendment of Class E Airspace; Gainesville, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend Class E5 airspace at Gainesville, FL. An Area Navigation (RNAV) Global Positioning System (GPA) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Shands Hospital, Gainesville, FL. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

**DATES:** Comments must be received on or before August 9, 2007.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2007–28548; Airspace Docket No. 07–ASO–14, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room C210, 1701 Columbia Avenue, College Park, Georgia 30337.

**FOR FURTHER INFORMATION CONTACT:** Mark D. Ward, Manager, System Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–28548; Airspace Docket No. 07–ASO–14.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this

notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E5 airspace at Gainesville, FL. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (Air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

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

**§ 71.1 [Amended]**

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

*Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.*

* * * * *

**ASO FL E5 Gainesville, FL [REVISED]**

Gainesville Regional Airport, FL
(Lat 29°41′24″ N. long 82°16′18″ W)
Shands Hospital Point In Space Coordinates
(Lat 29°39′08″ N. long 82°21′08″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Gainesville Regional Airport and that airspace within a 6-mile radius of the point in space (Lat 29°39′08″ N. long 82°21′08″ W) serving Shands Hospital.

* * * * *

Issued in College Park, Georgia, on June 26, 2007.

**Kathy Kutch,**

*Acting Group Manager, System Support, Eastern Service Center.*

[FR Doc. 07–3343 Filed 7–9–07; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2007–28549; Airspace Docket No. 07–ASO–15]**

### Proposed Establishment of Class E Airspace; Lady Lake, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Class E5 airspace at Lady Lake, FL. An Area Navigation (RNAV) Global Positioning System (GPA) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Lady Lake Hospital, Lady Lake, FL. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

**DATES:** Comments must be received on or before August 9, 2007.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2007–28549; Airspace Docket No. 07–ASO–15, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room C210, 1701 Columbia Avenue, College Park, Georgia 30337.

**FOR FURTHER INFORMATION CONTACT:** Mark D. Ward, Manager, System Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–28549; Airspace Docket No. 07–ASO–15.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Part 71 of the Federal aviation Regulations (14 CFR Part 71) to establish Class E5 airspace at Lady Lake, FL. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (Air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

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

**§ 71.1 [AMENDED]**

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

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 feet or More Above the Surface of the Earth.*

* * * * *

**ASO FL E5 Lady Lake, FL [NEW]**

Lady Lake Hospital Point In Space Coordinates
(Lat. 28°57′36″ N, long. 81°57′50″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the point in space (lat. 28°57′36″ N, long. 81°57′50″ W) serving Lady Lake Hospital.

* * * * *

Issued in College Park, Georgia, on June 26, 2007.

**Kathy Kutch,**

*Acting Group Manager, System Support, Eastern Service Center.*

[FR Doc. 07–3344 Filed 7–9–07; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 14 CFR Part 250

**[OST Docket No. OST–01–9325]**

**RIN 2105–AD63**

## Oversales and Denied Boarding Compensation

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT).

**ACTION:** Advance notice of proposed rulemaking (ANPRM).

**SUMMARY:** The Department of Transportation (DOT or Department) is seeking comment on whether it should amend its rules relating to oversales and denied boarding compensation to cover flights operated with aircraft seating 30 through 60 passengers, which are currently exempt from the rule, to increase the maximum required compensation, and to make other changes. Such changes in the rule, if undertaken, would be intended to maintain consumer protection commensurate with developments in the aviation industry.

**DATES:** Comments are requested by September 10, 2007. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may submit comments identified by the docket number OST–01–9325 by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

- *Fax:* (202) 493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, 1200 New Jersey Ave. SE., Room W12–140, Washington, DC 20590.
- *Hand Delivery:* To the Docket Management System; Room W12–140 (ground level), 1200 New Jersey Ave. SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

*Instructions:* You must include the agency name and docket number OST–01–9325 or the Regulatory Identification Number (RIN) for this rulemaking at the beginning of your comment. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided.

*Docket:* You may view the public docket through the Internet at *http://dms.dot.gov* or in person at the Docket Management System office at the above address.

The Department of Transportation is in the process of moving to a new building. It is anticipated that the Docket Office will move to its new location before the end of the comment period. We do not yet have the complete address for the Docket Office in the Department's new building. The Department will publish a **Federal Register** notice when this information becomes available. The address change will not affect electronic submissions, and mail submissions will be forwarded to the new address.

**FOR FURTHER INFORMATION CONTACT:** Tim Kelly, Aviation Consumer Protection Division, Office of the General Counsel, Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, 202–366–5952 (voice), 202–366–5944 (fax), *tim.kelly@dot.gov* (e-mail).

**SUPPLEMENTARY INFORMATION:**

## Background

Part 250 establishes minimum standards for the treatment of airline passengers holding confirmed reservations who are involuntarily denied boarding (''bumped'') from their flight because it has been oversold. In most cases, bumped passengers are entitled to compensation. Part 250 contains limits on the amount of compensation that is required to be provided to passengers who are bumped involuntarily. The rule does not apply to flights operated with aircraft with a design capacity of 60 or fewer passenger seats.

In adopting the current rules, the Civil Aeronautics Board (the Department's predecessor in aviation economic regulation) recognized the inherent unfairness in carriers selling ''confirmed'' ticketed reservations for a flight yet selling more of those reservations for the flight than they have seats. Therefore, the CAB sought to reduce the number of passengers involuntarily denied boarding to the smallest practicable number without prohibiting deliberate overbooking or interfering unnecessarily with the carriers' reservations practices. Air travelers receive some benefit from controlled overbooking because it allows flexibility in making and canceling reservations as well as buying and refunding tickets. Overbooking makes possible a system of confirmed reservations that can almost always be honored. It allows airlines to fill more seats, reducing the pressure for higher fares, and makes it easier for people to obtain reservations on the flights of their choice. On the other hand, overbooking is the major cause of oversales, and the people who are inconvenienced are not those who do not show up for their flights, but passengers who have conformed to all carrier rules. The current rule allocates the risk of being denied boarding among travelers by requiring airlines to solicit volunteers and use a boarding priority procedure that is not unjustly discriminatory.

In 1981, the CAB amended the oversales rule to exclude from the rule all operations using aircraft with 60 or fewer passenger seats. (ER–1237, 46 FR 42442, August 21, 1981.) At the time of that proceeding, the impact of the rule on carriers operating small aircraft was found to be significant. If a passenger was denied boarding on a typical small aircraft short-haul flight and subsequently missed a connection to a long-haul flight, the short-haul carrier usually had to compensate the passenger in an amount equal to twice the value of the passenger's remaining ticket coupons to his or her destination, subject to a maximum limitation. For example, if the short-haul fare was $50 and the connecting long-haul fare was $500, the first carrier often had to pay the passenger denied boarding compensation in an amount far greater than $50, depending on whether alternate transportation could be arranged to arrive within a short time, despite the minimal fare that the first carrier received for its flight. The problem was exacerbated by the fact that most commuter airline flights at the time were on small turboprop and piston engine aircraft which were affected by weight limitations in high temperature/humidity conditions to a greater extent than jets and, therefore, might require bumping even when the carrier did not book beyond the seating capacity of the aircraft.

Part 250 has tended to reduce passenger inconvenience and financial loss occasioned by overbooking without imposing heavy burdens on the airlines or significant costs on the traveling public. In focusing only on the treatment of passengers whose boarding is involuntarily denied, we have avoided regulating carriers' reservations practices. Overall, it appears that the rule has served a useful purpose; however, in light of recommendations from various sources, including Congress and major airlines themselves, we are seeking comment on whether certain aspects of the rule may be outdated and should be revised. In view of the passage of time since the rule was last revised and changes in commercial air travel over that time, we are in this advanced notice of proposed rulemaking seeking comment on whether we should increase the compensation maximums and extend the rule to cover a larger range of aircraft. The Department is also seeking comment on certain other changes of lesser impact that are under consideration.

### *The Current Denied Boarding Compensation Rule*

The purpose of the Department's denied boarding compensation rule is to balance the rights of passengers holding reservations with the desirability of allowing air carriers to minimize the adverse economic effects of ''no-shows'' (passengers with reservations who cancel or change their flights at the last minute). The rule sets up a two-part system. The first encourages passengers to voluntarily relinquish their confirmed reservations in exchange for compensation agreed to between the passenger and the airline. The second requires that, where there is an insufficient number of volunteers, passengers who are bumped involuntarily be given compensation in an amount specified in the rule. In addition, the Department requires carriers to give passengers notice of those procedures through signs, and written notices provided with tickets and at airports, and to report the number of passengers denied boarding to the Department on a quarterly basis.

The Civil Aeronautics Board (CAB) first required payments to bumped passengers 45 years ago. In Order No. E–17914, dated January 8, 1962, the CAB conditioned its approval of ''no-show penalties'' for confirmed passengers on a requirement that bumped passengers be compensated. An oversales rule was adopted in 1967 as 14 CFR Part 250

(ER–503, 32 FR 11939, August 18, 1967) and revised substantially in 1978 and 1982 after comprehensive rulemaking proceedings (ER–1050, 43 FR 24277, June 5, 1978 and ER–1306, 47 FR 52980, November 24, 1982, respectively). The key features of the current requirements are as follows:

(1) In the event of an oversold flight, the airline must first seek volunteers who are willing to relinquish their seats in return for compensation offered by the airline.

(2) If there are not enough volunteers, the airline must use non-discriminatory procedures ('boarding priorities') in deciding who is to be bumped involuntarily.

(3) Most passengers who are involuntarily bumped are eligible for denied boarding compensation, with the amount depending on the price of each passenger's ticket and the length of his or her delay. If the airline can arrange alternate transportation that is scheduled to arrive at the passenger's destination within 2 hours of the planned arrival time of the oversold flight (4 hours on international flights), the compensation equals 100% of the passenger's one-way fare to his or her next stopover or final destination, with a $200 maximum. If the airline cannot meet the 2 (or 4) hour deadline, the compensation rate doubles to 200% of the passenger's one-way fare, with a $400 maximum. This compensation is in addition to the value of the passenger's ticket, which the passenger can use for alternate transportation or have refunded if not used.

(4) There are several exceptions to the compensation requirement. Compensation is not required if the passenger does not comply fully with the carrier's contract of carriage or tariff provisions regarding ticketing, reconfirmation, check-in, and acceptability for transportation; if an aircraft of lesser capacity has been substituted for operational or safety reasons; if the passenger is offered accommodations in a section of the aircraft other than that specified on the ticket, at no extra charge (a passenger seated in a section for which a lower fare is charged is entitled to an appropriate refund); or if the carrier arranges comparable transportation, at no extra cost to the passenger, that is planned to arrive at the passenger's next stopover or final destination not later than 1 hour after the planned arrival time of the passenger's original flight.

(5) A passenger who is denied boarding involuntarily may refuse to accept the denied boarding compensation specified in the rule and seek monetary or other compensation through negotiations with the carrier or by private legal action.

(6) Carriers must post counter signs and include notices with tickets to alert travelers of their overbooking practices and the consumer protections of the rule. In addition, they must provide a detailed written notice explaining their oversales practices and boarding priority rules to each passenger involuntarily denied boarding, and to any other person requesting a copy.

(7) Every carrier must report, on a quarterly basis, data on the number of denied boardings on flights that are subject to Part 250.

**Issues**

*The Maximum Amount of Denied Boarding Compensation*

It has been over 20 years since the rule was last revised, and the existing $200 and $400 limits on the amount of required denied boarding compensation for passengers involuntarily denied boarding have not been raised since 1978. The Department has received recommendations from various sources that it reexamine its oversales rule and, in particular, the maximum amounts of compensation set forth in the rule. In this regard, in a sense-of-the-Senate amendment to the Department of Transportation and Related Agencies Appropriations Act of 2000, Public Law 106–69, the Senate noted its sense that the Department should amend its denied boarding rule to double the applicable compensation amounts. Congress has also proposed legislation to require the Department to review the rule's maximum amounts of compensation. (See S.319, reported in the Senate April 26, 2001.) In addition, in his February 12, 2000, Final Report on Airline Customer Service Commitments, the Department's Inspector General (IG) recommended, among other things, that the airlines petition the Department to increase the amount of denied boarding compensation payable to involuntarily bumped passengers. In response thereto, and citing the length of time since the maximum amounts of denied boarding compensation were last revised, the Air Transport Association (the trade association of the larger U.S. airlines) filed a petition with the Department on April 3, 2001, requesting that a rulemaking be instituted to examine those amounts.[1] (Docket OST–01–9325). Most recently, the IG on November 20, 2006, issued his ''Report on the Follow-up Review Performed of U.S. Airlines in Implementing Selected Provisions of the Airline Customer Service Commitment'' in which the IG recommended that we determine whether the maximum DBC amount needs to be increased and whether the oversale rule needs to be extended to cover aircraft with 31 through 60 seats.

The CAB's decision in 1978 to double the maximum amount of denied boarding compensation to $400 was based on its determination that the previous maximum was inadequate to redress the inconvenience to bumped passengers and that the increase would provide a greater incentive to carriers to reduce the number of persons involuntarily bumped from their flights. Following promulgation of the rule in 1978 requiring the solicitation of volunteers and doubling the compensation maximum, the overall industry rate of involuntary denied boardings per 10,000 enplanements in fact declined for many years. Until the most recently published report, the rate was slightly below the level of involuntary bumping reported 10 years ago. In this regard, 55,828 passengers were involuntarily bumped from their flights in 2006 on the 18 largest U.S. airlines (carriers whose denied boarding rate is tracked in the Department's monthly Air Travel Consumer Report[2]). Additional passengers were bumped by other airlines, whose denied boarding rate is not tracked in this report but whose bumped passengers are subject to the maximum compensation rates in the DOT rule. The annual rate of involuntary denied boardings per 10,000 enplanements in 2006 for the carriers tracked in the report is the highest since 2000, and that trend continues in the rate for the first quarter of 2007. Involuntary denied boarding rates from the Air Travel Consumer Report for the past ten years appear below:

| Year | Invol. DB's per 10,000 passengers |
|---|---|
| 1997 | 1.06 |
| 1998 | 0.87 |
| 1999 | 0.88 |
| 2000 | 1.04 |

[1] It is important to note that the maximum involuntary denied boarding amounts set forth in Part 250 are amounts below which carriers cannot set their maximum compensation. Airlines have been and continue to be free, as a competitive tool, to set their maximum compensation levels at amounts greater than that provided in the Department's rule. We are not aware of any carrier that has elected to do so.

[2] This report tracks the denied boarding rate of air carriers that each account for at least 1% of domestic scheduled-service passenger revenues for the previous year. Consequently, the list of carriers whose performance is tracked in this report can change from year to year.

| Year | Invol. DB's per 10,000 passengers |
|---|---|
| 2001 | 0.82 |
| 2002 | 0.72 |
| 2003 | 0.86 |
| 2004 | 0.86 |
| 2005 | 0.89 |
| 2006 | 1.01 |
| 1st qtr. 2007 | 1.45 |

Likely contributing to this upward trend is the fact that flights are fuller: from 1978 to 2006 the system-wide load factor (percentage of seats filled) for U.S. airlines increased from 61.5% to 79.2%, with most of this increase taking place since 1994.

With respect to the denied boarding compensation limits, inflation has eroded the $200 and $400 limits that were established in 1978. Using the Consumer Price Index for All Urban Consumers (CPI–U, the basis for the inflation adjustor in the Department's domestic baggage liability rule, 14 CFR 254.6), $400 in 1978 is worth $128 as of February 2007. (See the Bureau of Labor Statistics Inflation Calculator at *http://www.bls.gov/cpi/home.htm*.) Stated another way, in order to have the same purchasing power today as in 1978, the $400 limit would need to be $1,248 in February 2007.

At the same time, however, air fares have not risen to the same extent as the CPI–U. While historical comparisons of air fares are problematic, one frequently-used index for changes in air fares is passenger yield. Yield is passenger revenue divided by revenue passenger miles—the revenue collected by airlines for carrying one passenger for one mile. According to the Air Transport Association, system-wide nominal yield (*i.e.*, not adjusted for inflation) for all reporting U.S. air carriers was 8.29 cents per revenue passenger mile in 1978 and 12.00 cents per revenue passenger mile in 2005 (latest available data at this writing)—an increase of 44.8%.

Applying the CPI–U calculation to the current $200 and $400 DBC limits that were established in 1978 would produce updated limits of $624 and $1,248 respectively. However, applying the 44.8% increase in passenger yield to the current $200 and $400 limits would produce updated limits of $290 and $580 respectively. The $200 and $400 figures in Part 250 are merely limits on the amount of denied boarding compensation; the actual compensation rate is 100% or 200% of the passenger's fare (depending on how long he or she was delayed by the bumping). The Department requests comment on whether the maximums in the rule should be increased so that that a higher percentage of denied boarding compensation payments are not affected.

Consequently, we are seeking comment on five options with respect to the limits on the amount of denied boarding compensation, as well as any other suggested changes:

(1) Increase the $200/$400 limits to approximately $624 and $1,248 respectively, based on the increase in the CPI as described above;

(2) Increase the $200/$400 limits to approximately $290 and $580 respectively, based on the increase in passenger yield as described above;

(3) Double the maximum amounts of denied boarding compensation from $200 to $400 and from $400 to $800;

(4) Eliminate the limits on compensation altogether, while retaining the 100% and 200% calculations;

(5) Take no action, *i.e.* leave the current $200/$400 limits in place.

We also seek comment on whether we should amend the rule to include a provision for periodic adjustments to the denied boarding compensation maximums, as is required by our baggage liability rule (14 CFR Part 254). As in the case of the baggage rule, the Department could review the CPI–U every two years, and adjust the maximum amounts accordingly. The new maximum DBC amounts could be rounded to the nearest $50, for simplicity. Any increase would be announced by publishing a notice in the **Federal Register**. (Since this would be merely a mathematical computation, the Department would not need to first publish a proposed rule to effectuate an increase.) The new maximum compensation amounts and revised notice requirements under the rule would be effective a specified amount of time after publication in the **Federal Register** (*e.g.*, perhaps 90 days). We request comment on this approach.

It is important to note that none of these proposals would necessarily require carriers to offer more compensation to the great majority of passengers affected by overbooking because most such situations are handled through voluntary compensation, typically at the departure gate. Nor would they affect the significant proportion of involuntarily bumped passengers—possibly the majority—with fares low enough that the formula for involuntary denied boarding compensation would not reach the proposed new limits. Finally, even with respect to involuntarily bumped passengers whose denied boarding compensation might increase with higher maximums, many such passengers accept a voucher for future travel on that airline (usually in a face amount greater than the legally required denied boarding compensation) in lieu of a check. Carriers make such offers because vouchers do not have the same value as cash compensation given high rates of non-use and inventory-management restrictions.

As indicated earlier, in 2006 over 55,000 passengers were denied boarding involuntarily by the 18 carriers that are tracked in the Department's Air Travel Consumer Report (*i.e.*, the 18 largest U.S. air carriers). We assume that an increase in the regulatory maximums would result in an increase in amounts paid to such passengers but request comment on the likely financial impact, including both the direct impact (increased cash compensation), and the indirect impact resulting from either lower overbooking rates or higher voluntary compensation levels.

*The Small-Aircraft Exclusion*

The Oversales rule originally issued by the CAB did not contain an exclusion for small aircraft. In 1981 that agency amended Part 250 to exclude operations with aircraft seating 60 or fewer passengers The CAB determined that without this exclusion the denied boarding rule imposed a proportionately greater financial and operational burden on these small-aircraft operators than on carriers operating larger aircraft. In addition, because of the lower revenues generated by these small aircraft, the financial burden of denied boarding compensation placed certificated carriers operating aircraft with 60 or fewer seats at a competitive disadvantage relative to commuter carriers (non-certificated) operating similar equipment and on similar routes which were not subject to Part 250. The number of flights that was excluded by the amendment was small and most such flights were operated by small carriers that operated small aircraft exclusively. Part 250 currently applies to certificated U.S. carriers and foreign carriers holding a permit, or exemption authority, issued by the Department, only with respect to operations performed with aircraft seating more than 60 passengers.

While largely exempt from the denied boarding rule, the regional airline industry has experienced tremendous growth. According to the Regional Airline Association,[3] passenger enplanements on regional carriers have increased more than 100% since 1995, and regional airlines now carry one out of every five domestic air travelers in

[3] See *http://www.raa.org*.

the United States. RAA states that Revenue Passenger Miles on regional carriers have increased forty fold since 1978 and increased 17 percent from 2004 to 2005 alone. Regional jets have fueled much of the recent growth. According to RAA, from 1989 to 2004 the number of turbofan aircraft (regional jets) in the regional-airline fleet increased from 54 to 1,628 and regional jets now make up 59% of the regional-carrier fleet. Although many regional jets have more than 60 passenger seats and thus are subject to Part 250, the ubiquitous 50-seat regional jet models have driven much of the growth of the regional-carrier sector. Moreover, most regional jets are operated by regional carriers affiliated with a major carrier via a code-share agreement and/or an equity stake in the regional carrier. RAA asserts that 99% of regional airline passengers traveled on code-sharing regional airlines in 2005.

DOT statistics demonstrate the growth in traffic on flights operated by aircraft with 31 through 60 seats. From the 4th quarter of 2002 (earliest available consistent data) to the 4th quarter of 2005, the number of U.S.-carrier flights using such aircraft increased by 22% while the number of flights using aircraft seating more than 60 passengers declined by 0.8%. During the same period, the number of passengers carried on flights using aircraft with 31 through 60 seats increased by 40.8% while the number of passengers carried on flights using aircraft seating more than 60 passengers increased by only 8.3%.[4]

The increased use of jet aircraft in the 30-to-60 seat sector accompanied by the increase in the ''branding'' of those operations with the codes and livery of major carriers has blurred the distinction between small-aircraft and large-aircraft service in the minds of many passengers. There would seem to be little, if any, difference to a consumer bumped from a small aircraft or a large aircraft—the effect is the same. The Department therefore is seeking comment on whether we should extend the consumer protections of Part 250 to these flights (including flights of non-certificated commuter air carriers) and thus scale back the small-aircraft exception that was added to the rule in 1981. Specifically, the Department seeks comment on whether it should reduce the seating-capacity exception for small aircraft from ''60 seats or less'' to ''less than 30 seats'' and add commuter carriers to the list of carriers to which Part 250 applies. Since the Department is aware that many regional carriers already voluntarily provide DBC to passengers bumped from their 30-to-60-seat aircraft, commenters are specifically asked to include in their presentations data regarding oversales and denied boarding compensation in operations with aircraft having 30 through 60 seats by both certificated and non-certificated carriers, to the extent it is available.

*Application of the Denied Boarding Compensation Rule*

Boarding priority rules determine the order in which various categories of passengers will be involuntarily bumped when a flight is oversold. Part 250 states that boarding priority rules must not provide any undue or unreasonable preference. The IG in his 2000 report identified possible ambiguities in the Department's requirements regarding boarding priority rules, and he recommended that we provide examples of what we consider to be an undue or unreasonable preference. The IG was also concerned that the amounts of compensation provided passengers who are involuntarily bumped was in some cases less than the face value of vouchers given to passengers who volunteer to give up their seats. He therefore recommended, in addition to raising the maximum compensation amounts for involuntarily bumped passengers, as discussed above, that we require carriers to disclose orally to passengers, at the time the airline makes an offer to volunteers, what the airline is obligated to pay passengers who are involuntarily bumped.

Boarding Priorities

Our boarding priority requirement was designed to give carriers the maximum flexibility to set their own procedures at the gate, while affording consumers protection against unfair and unreasonable practices. Thus, the rule (1) Requires that airlines establish their own boarding priority rules and criteria for oversale situations consistent with Part 250's requirement to minimize involuntary bumpings and (2) states that those boarding priority rules and criteria ''shall not make, give, or cause any undue or unreasonable preference or advantage to any particular person or subject any particular person to any unjust or unreasonable prejudice or disadvantage in any respect whatsoever.'' (14 CFR 250.3(a)).

Although we are not aware of any problems resulting from this rule as written, we agree that guidance regarding this provision would be useful to the industry and public alike. Accordingly we seek comment on whether the Department should list in the rule, as examples of permissible boarding priority criteria, the following:

- A passenger's time of check in (first-come, first-served);
- Whether a passenger has a seat assignment before reaching the departure gate for carriers that assign seats;
- A passenger's fare;
- A passenger's frequent flyer status; and
- Special priorities for passengers with disabilities, within the meaning of 14 CFR Part 382, or for unaccompanied minors.

We wish to make clear that the five examples proposed here are illustrative only, and not exclusive. We do not intend by these examples, if incorporated into Part 250, to foreclose the use by carriers of other boarding priorities that do not give a passenger undue preference or unjustly prejudice any passenger.

Notice to Volunteers

Accurately notifying passengers of their rights in an oversale situation is important, so that they can make an informed decision. Part 250 already contains requirements designed to accomplish that objective and to protect passengers from being involuntarily bumped if they have not been accorded adequate notice. Section 250.2b(b) prohibits a carrier from denying boarding involuntarily to any passenger who was earlier asked to volunteer without having been informed about the danger of being denied boarding involuntarily and the amount of compensation that would apply if that occurred. While this provision would appear to provide adequate incentive for airlines to provide complete notice to passengers who are asked to volunteer, and to protect those passengers not provided such notice, we see some merit in making this notice requirement more direct. Accordingly, we seek comment on whether we should amend section 250.2b to affirmatively require that, no later than the time a carrier asks a passenger to volunteer, it inform that person whether he or she is in danger of being involuntarily bumped and, if so, the compensation the carrier is obligated to pay.

*Reporting*

Section 250.10 of the current rule requires all carriers that are subject to Part 250 to file a quarterly report (Form 251) on oversale activity. Due to staffing limitations, for many years the only carriers whose oversale data have been routinely reviewed, entered into an automated system, or published by the

[4] DOT Form 41, schedule T–100.

Department are the airlines that are subject to the on-time performance reporting requirement. Those are the U.S. carriers that each account for at least 1 percent of total domestic scheduled-service passenger revenues—currently 18 airlines (see 14 CFR 234). The Department's monthly Air Travel Consumer Report provides data for these airlines in four areas: on-time performance, baggage mishandling, oversales, and consumer complaints. The oversale data for that report are derived from the Form 251 reports mandated by Part 250. The data in the Form 251 reports filed by the other carriers is not keypunched, summarized, published, or routinely reviewed.

The Department seeks comment on whether it should revise section 250.10 to relieve all carriers of this reporting requirement except for the airlines whose data is being used, *i.e.*, U.S. carriers that are required to report on-time performance under Part 234. Those airlines account for the vast majority of domestic traffic and bumpings, so the Department will still receive adequate information and the public will continue to have access to published data for the same category of carriers as before. Such action would be consistent with the Paperwork Reduction Act and the Regulatory Flexibility Act. It would also result in consistent carrier reporting requirements for all four sections of the Air Travel Consumer Report.

**Regulatory Notices**

*A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

This action has been determined to be significant under Executive Order 12866 and the Department of Transportation Regulatory Policies and Procedures. It has been reviewed by the Office of Management and Budget under that Order. A preliminary discussion of possible costs and benefits of the proposed rule is presented above.

*B. Executive Order 13132 (Federalism)*

This Advance Notice of Proposed Rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This notice does not propose any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

*C. Executive Order 13084*

This notice has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because none of the options on which we are seeking comment would significantly or uniquely affect the communities of the Indian tribal governments and would not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

*D. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. Certain options on which we are seeking comment may impose new requirements on certain small air carriers, but few of them are small businesses as defined by the Small Business Administration and the Department believes that the economic impact would not be significant. All air carriers have control over the extent to which the rule impacts them since they control their own overbooking rates. Carriers can mitigate the cost of denied boarding compensation by obtaining volunteers who are willing to give up their seat for less compensation than what the rule mandates for passengers who are bumped involuntarily, and by offering travel vouchers in lieu of cash compensation. The vast majority of the traffic that would be covered by the oversales rule for the first time as a result of the options on which we seek comment is carried by airlines that are owned by or affiliated with a major carrier or its parent company. As noted below, one of the options on which we are seeking comment relieves an existing reporting requirement for all but the largest carriers. The monetary costs of most of these options result in a corresponding dollar-for-dollar monetary benefit for members of the public who are bumped from their confirmed flights and for small businesses that employ some of them. The options provide an economic incentive for carriers to use more efficient overbooking rates that result in fewer bumpings while still allowing the carriers to fill seats that would go unsold as the result of ''no-show'' passengers. Therefore, the options on which we are seeking comment are not expected to have a significant economic impact on a substantial number of small entities.

*E. Paperwork Reduction Act*

The options on which we are seeking comment impose no new information reporting or record keeping necessitating clearance by the Office of Management and Budget. They relieve a reporting requirement for many carriers that are currently subject to that requirement. One required handout that airlines distribute to bumped passengers would require minor revisions.

*F. Unfunded Mandates Reform Act*

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this notice.

Issued this 3rd day of July, 2007, at Washington, DC.

**Andrew B. Steinberg,**

*Assistant Secretary for Aviation and International Affairs.*

[FR Doc. E7–13365 Filed 7–9–07; 8:45 am]

BILLING CODE 4910–9X–P

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404, 405 and 416

**[Docket No. SSA 2007–0032]**

**RIN 0960–AG47**

## Amendments to the Quick Disability Determination Process

**AGENCY:** Social Security Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** We propose to amend our regulations to extend the quick disability determination process (QDD), which is operating now in the Boston region, to all of the State disability determination services. We also propose to remove from the QDD process the existing requirements that each State disability determination service maintain a separate QDD unit and that each case referred under QDD be adjudicated within 20 days. These proposed actions stem from our continuing effort to improve our disability adjudication process.

**DATES:** To be sure that we consider your comments, we must receive them no later than August 9, 2007.

**ADDRESSES:** You may give us your comments by: Internet through the Federal eRulemaking Portal at *http://www.regulations.gov*; e-mail to *regulations@ssa.gov*; telefax to (410) 966–2830; or letter to the Commissioner

of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on the Federal eRulemaking Portal, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

**FOR FURTHER INFORMATION CONTACT:** Vince Sabatino, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–8331 for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

**SUPPLEMENTARY INFORMATION:**

## Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

## Quick Disability Determinations

We are dedicated to providing high-quality service to the American public. When we announced changes in March 2006 to our administrative review process for initial disability claims, we explained that we expected that the changes would improve disability service. Our commitment to continuous improvement in the way we process disability claims did not end with the publication of those rules as we continually explore ways to improve service to some of the most vulnerable in our society. We nevertheless face significant challenges now and in the foreseeable future in our ability to provide the level of service that disability benefit claimants deserve because of the increased complexity of and growth in claims for those benefits. Consequently, we are proposing modifications to our administrative review process that will further help us provide accurate and timely service to claimants for Social Security disability benefits and supplemental security income payments based on disability or blindness.

In early spring 2006, we published a final rule in which we laid out changes to the administrative review process for initial disability claims. We expected that the changes would ''improve the accuracy, consistency, and timeliness of decision-making throughout the disability determination process.'' 71 FR 16424 (March 31, 2006). We planned a gradual roll-out of the changes so that we could test them and their effect on the disability process overall. As we explained then, ''Gradual implementation will allow us to monitor the effects that our changes are having on the entire disability determination process * * *. We will carefully monitor the implementation process in the Boston region and quickly address any problems that may arise.'' 71 FR at 16440–41. Having thoroughly reviewed the initial determination level of that process, we have concluded that we need to modify some of the changes made last spring.

The changes in the March 2006 final rule included establishing, in the Boston region, an initial-determination-level process to identify and accelerate the adjudication of the claims of persons who have a ''high degree of probability'' of being disabled, where there was an expectation that the claimant's ''allegations will be easily and quickly verified * * *.'' 20 CFR 405.101–.110 (2006). We refer to this as the Quick Disability Determination (QDD) process. Under QDD, a predictive model analyzes specific elements of data within the electronic claims file to identify claims where there is a high potential that the claimant is disabled and where evidence of the claimant's allegations can be quickly and easily obtained. Those claims are then sent to a separate QDD unit in the State agency, where experienced disability examiners review the claims on an expedited basis. The QDD process in essence is a workload triaging tool that helps identify, in an automated fashion, claims where the disability should be easy to verify.

This process has been working quite well. Because our experience with QDD has been very favorable, has proven to be of significant benefit to those claimants who have been affected by it, has been well-received by the State agencies in the Boston region, and has shown that there are no significant administrative costs associated with it, we propose to accelerate our implementation of the QDD process and extend QDD to all States.

Nevertheless, in order to improve the efficiencies that we have seen by using the QDD process, we propose to modify those aspects of the QDD process that have served as a barrier to the type of outstanding public service that we strive to provide. These proposed modifications would give State agencies greater flexibility in managing their QDD workloads. Specifically, we propose to eliminate the requirement that QDD claims be adjudicated within 20 days of receipt in the State agency and remove the performance standard and sanction provisions related to that 20-day adjudication requirement. We also propose to eliminate the requirement that separate QDD units be established within the State agencies.

The QDD rules published in 2006 required the State agency to adjudicate any claim referred to it under QDD within 20 days of the date the claim was received in the QDD unit; any QDD claim not decided within this time frame had to be returned by the QDD unit for regular processing in the State agency. We propose to eliminate this 20-day requirement for three reasons. First, the early information concerning processing times for QDD claims is quite promising. The average QDD processing time for the Boston region State agencies has been approximately 12 days. For a large majority of the cases, they have processed claims selected for QDD in 9 days or less, and only a small minority of the claims exceeded the 20-day threshold. Given this experience, we are confident that the State agencies will continue to process the vast majority of QDD claims within 20 days. Eliminating the 20-day requirement will give the State agencies more flexibility in managing this workload.

Second, even where the processing time goes beyond 20 days, we believe disability claimants would be better served and the State agencies' resources would be better utilized by allowing the QDD examiner to complete the work on the claim, rather than requiring the examiner to return the claim for regular processing in the State agency.

Third, we are concerned that the need to obtain evidence within the 20-day period may unduly burden the medical and other providers who submit that evidence to us, and we have reports of some resistance from health care providers stemming from efforts to satisfy the 20-day deadline. In turn, delays in obtaining the evidence might cause an increasing number of otherwise suitable claims to be removed from the QDD process because of the 20-day rule.

Though we are proposing to eliminate the 20-day adjudication requirement to give State agencies greater flexibility, we still believe that State agencies should strive to adjudicate any claim referred under QDD within 20 days. We would continue to monitor the performance of State agencies with these claims and would consider broadly or selectively reinstituting a formal time deadline if warranted.

Our second proposed change to the QDD rules would remove the

requirement that State agencies create separate QDD units to handle the QDD claims we refer. Our intent when we created that requirement was to ensure that QDD claims were processed by individuals with the knowledge, training, and experience to effectively carry out the QDD function and to ensure that they could be held accountable for performing this important task. 71 FR at 16429. At the same time, we recognized the State agencies' need for flexibility in handling their workloads. 71 FR at 16429. Now that we have some experience with the QDD process, we believe the requirement of a separate QDD unit in each DDS is not necessary. Particularly in smaller States, we believe the requirement of a separate QDD unit may unnecessarily restrict the flexibility the State agency needs to best address its workloads. Therefore, we propose to eliminate the requirement that State agencies create a separate QDD unit. We would retain the existing requirement that all QDD claims be handled by designated disability examiners who have the knowledge, training, and experience to effectively carry out the QDD process. We believe this is sufficient to afford QDD cases the proper level of attention and accountability.

In light of these considerations, we propose to amend our regulations to require all State agencies that perform disability determinations for us to handle claims we refer to them under QDD and to remove from the QDD rules the 20-day performance standard and the separate unit requirements discussed above. In addition, because we are proposing to accelerate our nationwide roll-out of the QDD process independent of the other changes in the March 2006 final rules, we would move the substantive QDD rules from part 405 of our regulations to part 404, subpart Q, and part 416, subpart J, which contain the provisions covering the State agency determination process.

We recognize that State agencies newly affected by this proposed roll-out of the QDD process will need a reasonable time to establish QDD procedures. Therefore, if these rules are adopted as final regulations, we plan to allow the State agencies outside of the Boston region a reasonable period of time within which to implement the QDD process. We would welcome comments from affected State agencies as to the amount of lead time they believe they would need to implement the revised QDD process we now propose.

**Notices of Initial Determinations**

In this rule we also propose to revise the provisions in parts 404, 405 and 416 of our regulations that describe the contents of the notices we send to inform claimants of our initial determinations on our claims. The current regulatory provisions, while not substantively inconsistent with one another, are phrased differently. In order to avoid any unintended suggestion that we apply different standards when drafting the notices to which these various sections apply, we propose to revise the language to be consistent in all three sections. We wish to emphasize that we are not in any way proposing to change the substance of what must be in our notices of initial determination, but rather are simply adopting more uniform language based on the statutory requirements in sections 205(b)(1), 205(s) and 1631(c)(1)(A) of the Social Security Act (Act).

**Clarity of These Rules**

Executive Order 12866, as amended, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

**Regulatory Procedures**

*Executive Order 12866, as Amended*

We have consulted with the Office of Management and Budget (OMB) and determined that this proposed rule meets the criteria for a significant regulatory action under Executive Order 12866, as amended. Thus, it was reviewed by OMB.

*Regulatory Flexibility Act*

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities as it affects only States and individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

*Paperwork Reduction Act*

This proposed rule will impose no additional reporting or recordkeeping requirements requiring OMB clearance.

*Federalism Impact and Unfunded Mandates Impact*

We have reviewed this proposed rule under the threshold criteria of Executive Order 13132 and the Unfunded Mandates Reform Act and have determined that it does not have substantial direct effects on the States, on the relationship between the national government and the States, on the distribution of power and responsibilities among the various levels of government, or on imposing any costs on State, local, or tribal governments. This proposed rule does not affect the roles of the State, local, or tribal governments. However, the rule takes administrative notice of existing statutes governing the roles and relationships of the State agencies and SSA with respect to disability determinations under the Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

**List of Subjects**

*20 CFR Part 404*

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

*20 CFR Part 405*

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Public assistance programs, Reporting and recordkeeping requirements; Social Security; Supplemental Security Income (SSI).

*20 CFR Part 416*

Administrative practice and procedure; Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Dated: June 25, 2007.

**Michael J. Astrue,**

*Commissioner of Social Security.*

For the reasons set out in the preamble, we propose to amend subparts J, P and Q of part 404, subparts

A, B and I of part 405, and subparts I, J and N of part 416 as set forth below:

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950– )

### Subpart J—[Amended]

1. The authority citation for subpart J of part 404 continues to read as follows:

**Authority:** Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

2. Amend § 404.903 by revising paragraphs (x) and (y) to read as follows:

#### § 404.903 Administrative actions that are not initial determinations.

* * * * *

(x) Determining whether to select your claim for the quick disability determination process under § 404.1619;

(y) The removal of your claim from the quick disability determination process under § 404.1619;

* * * * *

3. Revise § 404.904 to read as follows:

#### § 404.904 Notice of the initial determination.

We will mail a written notice of our initial determination to you at your last known address. The written notice will explain in simple and clear language what we have determined and the reasons for and the effect of our determination. If our determination involves a determination of disability that is in whole or in part unfavorable to you, our written notice also will contain in understandable language a statement of the case setting forth the evidence on which our determination is based. The notice also will inform you of your right to reconsideration. We will not mail a notice if the beneficiary's entitlement to benefits has ended because of his or her death.

### Subpart P—[Amended]

4. The authority citation for subpart P continues to read as follows:

**Authority:** Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

5. Amend § 404.1503 by removing the last sentence in paragraph (a).

### Subpart Q—[Amended]

6. The authority citation for subpart Q continues to read as follows:

**Authority:** Secs. 205(a), 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 421, and 902(a)(5)).

7. Amend § 404.1602 by adding a definition for ''Quick disability determination,'' to read as follows:

#### § 404.1602 Definitions.

* * * * *

*Quick disability determination* means an initial determination on a claim that we have identified as one that reflects a high degree of probability that you will be found disabled and where we expect that your allegations will be easily and quickly verified.

* * * * *

8. Amend § 404.1603 by revising paragraph (c)(2) to read as follows:

#### § 404.1603 Basic responsibilities for us and the State.

* * * * *

(c) * * *

(2) Provide an organizational structure, adequate facilities, qualified personnel, medical consultant services, designated quick disability determination examiners (§§ 404.1619 and 404.1620(c)), and a quality assurance function (§§ 404.1620 through 404.1624);

* * * * *

9. Add a new § 404.1619 under the new undesignated center heading QUICK DISABILITY DETERMINATIONS to read as follows:

#### § 404.1619 Quick disability determination process.

(a) If we identify a claim as one involving a high degree of probability that the individual is disabled, and we expect that the individual's allegations will be easily and quickly verified, we will refer the claim to the State agency for consideration under the quick disability determination process pursuant to this section and § 404.1620(c).

(b) If we refer a claim to the State agency for a quick disability determination, a designated quick disability determination examiner must:

(1) Have a medical or psychological consultant verify that the medical evidence in the file is sufficient to determine that, as of the alleged onset date, the individual's physical or mental impairment(s) meets the standards we establish for making quick disability determinations;

(2) Make quick disability determinations based only on the medical and nonmedical evidence in the files; and

(3) Subject to the provisions in paragraph (c) of this section, make the quick disability determination by applying the rules in subpart P of this part.

(c) If the quick disability determination examiner cannot make a determination that is fully favorable to the individual or if there is an unresolved disagreement between the disability examiner and the medical or psychological consultant, the State agency will adjudicate the claim using the regularly applicable procedures in this subpart.

10. Amend § 404.1620 by adding a new paragraph (c) to read as follows:

#### § 404.1620 General administrative requirements.

* * * * *

(c) Each State agency will designate experienced disability examiners to handle claims we refer to it under § 404.1619(a).

## PART 405—ADMINISTRATIVE REVIEW PROCESS FOR ADJUDICATING INITIAL DISABILITY CLAIMS

11. The authority citation for part 405 continues to read as follows:

**Authority:** Secs. 201(j), 205(a)–(b), (d)–(h), and (s), 221, 223(a)–(b), 702(a)(5), 1601, 1602, 1631, and 1633 of the Social Security Act (42 U.S.C. 401(j), 405(a)–(b), (d)–(h), and (s), 421, 423(a)–(b), 902(a)(5), 1381, 1381a, 1383, and 1383b).

### Subpart A—[Amended]

#### § 405.5 [Amended]

12. Amend § 405.5 by removing the definitions of the terms ''Quick disability determination'' and ''Quick Disability Determination Unit.''

13. Amend the appendix to subpart A by removing paragraph (d).

### Subpart B—[Amended]

14. Amend § 405.101 by removing from the first sentence the phrase ''unless it makes a quick disability determination under §§ 405.105–.110'' and the commas that immediately precede and follow that phrase.

#### §§ 405.105 and 405.110 [Removed]

15. Remove and reserve §§ 405.105 and 405.110.

16. Revise § 405.115 to read as follows:

#### § 405.115 Notice of the initial determination.

We will mail a written notice of our initial determination to you at your last known address. The written notice will

explain in simple and clear language what we have determined and the reasons for and the effect of our determination. If our determination involves a determination of disability that is in whole or in part unfavorable to you, our written notice also will contain in understandable language a statement of the case setting forth the evidence on which our determination is based. The notice also will inform you of your right to review by a Federal reviewing official and explain your right to representation. We will not mail a notice if the beneficiary's entitlement to benefits has ended because of his or her death.

## Subpart I—[Removed]

17. Remove and reserve subpart I, consisting of §§ 405.801 through 405.850.

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

## Subpart I—[Amended]

18. The authority citation for subpart I is revised to read as follows:

**Authority:** Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

19. Amend § 416.903 by removing the last sentence in paragraph (a).

## Subpart J—[Amended]

20. The authority citation for subpart J continues to read as follows:

**Authority:** Secs. 702(a)(5), 1614, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382c, 1383, and 1383b).

21. Amend § 416.1002 by adding a definition for ''Quick disability determination,'' to read as follows:

### § 416.1002 Definitions.

* * * * *

*Quick disability determination* means an initial determination on a claim that we have identified as one that reflects a high degree of probability that you will be found disabled and where we expect that your allegations will be easily and quickly verified.

* * * * *

22. Amend § 416.1003 by revising paragraph (c)(2) to read as follows:

### § 416.1003 Basic responsibilities for us and the State.

* * * * *

(c) * * *

(2) Provide an organizational structure, adequate facilities, qualified personnel, medical consultant services, designated quick disability determination examiners (§§ 416.1019 and 416.1020(c)), and a quality assurance function (§§ 416.1020 through 416.1024);

* * * * *

23. Add a new § 416.1019 under the new undesignated center heading QUICK DISABILITY DETERMINATIONS to read as follows:

### § 416.1019 Quick disability determination process.

(a) If we identify a claim as one involving a high degree of probability that the individual is disabled, and we expect that the individual's allegations will be easily and quickly verified, we will refer the claim to the State agency for consideration under the quick disability determination process pursuant to this section and § 416.1020(c).

(b) If we refer a claim to the State agency for a quick disability determination, a designated quick disability determination examiner must:

(1) Have a medical or psychological consultant verify that the medical evidence in the file is sufficient to determine that, as of the alleged onset date, the individual's physical or mental impairment(s) meets the standards we establish for making quick disability determinations;

(2) Make quick disability determinations based only on the medical and nonmedical evidence in the files; and

(3) Subject to the provisions in paragraph (c) of this section, make the quick disability determination by applying the rules in subpart I of this part.

(c) If the quick disability determination examiner cannot make a determination that is fully favorable to the individual or if there is an unresolved disagreement between the disability examiner and the medical or psychological consultant, the State agency will adjudicate the claim using the regularly applicable procedures in this subpart.

24. Amend § 416.1020 by adding a new paragraph (c) to read as follows:

### § 416.1020 General administrative requirements.

* * * * *

(c) Each State agency will designate experienced disability examiners to handle claims we refer to it under § 416.1019(a).

## Subpart N—[Amended]

25. The authority citation for subpart N continues to read as follows:

**Authority:** Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

26. Amend § 416.1403 by revising paragraphs (a)(22) and (a)(23) to read as follows:

### § 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(22) Determining whether to select your claim for the quick disability determination process under § 416.1019;

(23) The removal of your claim from the quick disability determination process under § 416.1019;

* * * * *

27. Amend § 416.1404 by revising paragraph (a), removing existing paragraph (b) and redesignating existing paragraph (c) as paragraph (b), to read as follows:

### § 416.1404 Notice of the initial determination.

(a) We will mail a written notice of our initial determination to you at your last known address. The written notice will explain in simple and clear language what we have determined and the reasons for and the effect of our determination. If our determination involves a determination of disability that is in whole or in part unfavorable to you, our written notice also will contain in understandable language a statement of the case setting forth the evidence on which our determination is based. The notice also will inform you of your right reconsideration. We will not mail a notice if the beneficiary's entitlement to benefits has ended because of his or her death.

* * * * *

[FR Doc. E7–13288 Filed 7–9–07; 8:45 am]

BILLING CODE 4191–02–P

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Part 203

**[Docket No. FR–5087–N–02]**

**RIN 2502–AI52**

## Standards for Mortgagor's Investment in Mortgaged Property: Extension of Public Comment Period

**AGENCY:** Office of the Assistant Secretary for Housing'Federal Housing Commissioner, HUD.

**ACTION:** Notice: Extension of Public Comment Period.

**SUMMARY:** This notice extends the public comment period for an additional 30-day period for HUD's proposed rule on Standards for Mortgagor's Investment in Mortgaged Property, published on May 11, 2007.

**DATES:** The comment period for the proposed rule published a 72 FR 27048, May 11, 2007, is extended until August 10, 2007.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title.

*Comment by Mail.* Please note that due to security measures at all federal agencies, submission of comments by mail often results in delayed delivery.

*Electronic Submission of Comments.* HUD now accepts comments electronically. Interested persons may now submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available for public viewing. Commenters should follow the instructions provided at *www.regulations.gov* to submit comments electronically.

*No Facsimile Comments.* Facsimile (Fax) comments are not acceptable. In all cases, communications must refer to the docket number and title.

*Public Inspection of Public Comments.* All comments and communications submitted will be available, without revision, for inspection and downloading at *www.regulations.gov.* Comments are also available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the Office of Regulations. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the comments by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** James Beavers, Acting Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

## Background

HUD published a proposed rule entitled ''Standards for Mortgagor's Investment in Mortgaged Property'' on May 11, 2007 (72 FR 27048). Through this rule, HUD proposes to codify in regulation specific standards governing a mortgagor's investment in property for which the mortgage is insured by the Federal Housing Administration (FHA). Specifically, this proposed rule would codify HUD's longstanding practice, authorized by statute, of allowing a mortgagor's investment to be derived from gifts by family members and certain organizations.

The standards would address a situation in which the mortgagor's investment is derived from a gift, loan, or other payment that is provided by any donor, including an individual or an organization, and would also specify prohibited sources for a mortgagor's investment. The proposed rule would establish that a prohibited source of downpayment assistance is a payment that consists, in whole or in part, of funds provided by any of the following parties before, during, or after closing of the property sale: (1) The seller, or any other person or entity that financially benefits from the transaction; or (2) any third party or entity that is reimbursed directly or indirectly by any of the parties listed in clause (1).

## Extension of Public Comment Period

HUD's May 11, 2007, proposed rule provides for the public comment period to end on July 10, 2007. Due to significant interest in this rule, HUD is extending the public comment period, for an additional 30-day period, to August 10, 2007.

Dated: July 5, 2007.

**Brian D. Montgomery,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 07–3357 Filed 7–6–07; 11:24 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Part 1910

**[Docket No. OSHA–2007–0024]**

**RIN 1218–AC 23**

## Regulatory Flexibility Act Review of the Methylene Chloride Standard

**AGENCY:** Occupational Safety and Health Administration, Labor.

**ACTION:** Request for comments.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) is conducting a review of its Methylene Chloride Standard under Section 610 of the Regulatory Flexibility Act and Section 5 of Executive Order 12866 on Regulatory Planning and Review. In 1997, OSHA promulgated the Standard to protect workers from occupational exposure to methylene chloride. The purpose of this review is to determine whether there are ways to modify this Standard to reduce regulatory burden on small business and to improve its effectiveness. Written comments on these and other relevant issues are welcomed.

**DATES:** Written comments to OSHA must be sent or postmarked by October 9, 2007.

**ADDRESSES:** You may submit comments by any of the following methods:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions on-line for making electronic submissions.

Fax: If your submissions, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger and courier service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2007–0024, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., Eastern Time.

*Instructions:* All submissions must include the Agency name and the OSHA docket number for this rulemaking, (OSHA–2007–0024). Submissions are placed in the public docket without change and may be available online at

*http://www.regulations.gov*. Therefore, do not include private materials such as social security numbers.

*Docket:* To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

**FOR FURTHER INFORMATION CONTACT:**

Joanna Dizikes Friedrich, Directorate of Evaluation and Analysis, Occupational Safety and Health Administration, Room N3641, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 693–1939, Fax (202) 693–1641.

**SUPPLEMENTARY INFORMATION:**

## Background

OSHA adopted the first Methylene Chloride (MC) Standard in 1971 pursuant to Section 6(a) of the OSHA Act, 29 U.S.C. 655, from an existing Walsh-Healy Federal Standard. The original MC Standard was intended to protect workers from injury to the neurological system and from irritation. It required employers to ensure that employee exposure did not exceed 500 parts per million (ppm) as an 8-hour time weighted average (TWA), 1,000 ppm as a ceiling concentration, and 2,000 ppm as a maximum peak for a person not to exceed five minutes in any two hours (29 CFR 2920.1000, Table Z–2). In February 1985, the National Toxicology Program reported the results of animal testing studies indicating that MC is a potential cancer causing agent. In July 1985, several unions petitioned OSHA to reduce worker exposure to MC. In response, OSHA agreed to commence development of a permanent standard, issuing an Advanced Notice of Proposed Rulemaking on November 24, 1986 (51 FR 42257).

Based on its review of human and animal data, OSHA determined that the existing permissible exposure limit (PEL) for MC did not adequately protect employee health, and on November 7, 1991, OSHA issued a Notice of Proposed Rulemaking (NPRM) to address the significant risk of MC induced health effects (56 FR 57036). OSHA also presented the proposal to the Advisory Committee on Construction Safety and Health (ACCSH). Based on input from ACCSH, OSHA issued a supplemental notice (57 FR 36964, August 17, 1992) which raised the MC use, exposure, and control issues specific to the construction industry. OSHA conducted informal public hearings in 1992, reopened the record in 1994 for comments to address engineering controls and carcinogenicity issues, and reopened the record again in 1995 to request public input on the Halogenated Solvents Industry Alliance studies addressing the use of animal data to estimate human cancer risk from MC.

On January 10, 1997, OSHA promulgated the Methylene Chloride (MC) Standard as 29 CFR 1910.1052 (62 FR 1494). OSHA concluded that MC exposure created a significant risk of cancer and that 25 ppm was the lowest feasible level. There is extensive discussion of these issues and risk assessment issues in the final preamble.

The Standard covers occupational exposures to MC in all workplaces in general industry, shipyard employment, and construction. Employers are required to ensure that no employee is exposed to an airborne concentration of MC in excess of 25 ppm as an 8-hour TWA, or short-term exposure limit (STEL) in excess of 125 ppm during a sampling period of 15 minutes. The action level for a concentration of airborne MC is 12.5 ppm calculated as an 8-hour TWA. Reaching or exceeding the action level signals that the employer must begin compliance activities, such as exposure monitoring and medical surveillance.

The Standard also requires the establishment of a regulated area and procedures for determining employee exposure to MC. The employer is required to notify employees of monitoring results and to allow employees or their designated representative to observe monitoring. Employers also must establish a medical surveillance program for employees exposed to MC. The Standard provides specific requirements depending on the nature of the exposure and health status of the employee. If a medical professional determines that exposure to MC may aggravate or contribute to an employee's existing skin, heart, liver, or neurological disease, the Standard provides for temporary medical removal and protection of benefits during removal.

The Standard provides that employers must control exposures to MC to the PEL or below using engineering controls and work practices as the primary methods, unless the employer can demonstrate that these controls are infeasible. In these cases, respirators are permitted in combination with engineering controls and work practices. The Standard also provides minimum requirements for respiratory protection. However, air filtration respirators are not very effective for MC. Finally, the Standard includes requirements for protective clothing and equipment, maintaining records of exposure measurements and medical surveillance, providing information and training to employees, and providing facilities for washing MC off of persons or clothing.

The Standard had phased-in start-up dates commencing on April 10, 1997. In response to petitions, OSHA delayed until August 31, 1998 the requirement to use respirators to achieve the PEL and to December 10, 1998 the requirement to achieve the PEL and STEL through engineering controls.

Methylene chloride is a powerful solvent with a number of uses. Major uses include metal degreasing and aircraft paint removal. It is used to strip finishes from furniture prior to refinishing, a use carried out by very small businesses. MC is used in the manufacturing of some plastics, adhesives, inks, and ink solvents. It also is used as the expansion agent in the manufacture of flexible polyurethane foam, and to manufacture polycarbonates. Another major, but diminishing, use is in the manufacture of film base. Other uses of MC are as an aerosol in spray cans, as a cleaning agent for semiconductors, and in the manufacture of some pesticides and pharmaceuticals.

## Regulatory Review

OSHA is reviewing the MC Standard under Section 610 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Section 5 of Executive Order 12866 (58 FR 51735, Oct 4, 1993).

The purpose of a review under Section 610 of the Regulatory Flexibility Act:

''(S)hall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant impact of the rules upon a substantial number of such small entities.''

''[T]he agency shall consider the following factors:

(1) The continued need for the rule;

(2) The nature of complaints or comments received concerning the rule from the public;

(3) The complexity of the rule;

(4) The extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with state and local governmental rules; and

(5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.''

The review requirements of Section 5 of Executive Order 12866 require agencies:

''To reduce the regulatory burden on the American people, their families, their communities, their state, local and tribal governments, and their industries; to determine whether regulations promulgated by the [Agency] have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive Order, within applicable law; and to otherwise improve the effectiveness of existing regulations.''

**Requests for Comments**

An important step in the review process involves the gathering and analysis of information from affected persons about their experience with the rule and any material changes in circumstances since issuance of the rule. This notice requests written comments on the continuing need for the MC Standard, its small business impacts, its effectiveness in protecting workers and all other issues raised by Section 610 of the Act and Section 5 of the Executive Order. It would be particularly helpful for commenters to suggest how the applicability or requirements could be changed or tailored to reduce the burden on employers while maintaining employee protection. Comments concerning the following subjects also would assist the Agency in determining whether to retain the Standard unchanged, to initiate rulemaking for purposes of revision or rescission, and/or to develop improved compliance assistance.

*New Developments and Compliance*

1. Do any provisions of the MC Standard at 29 CFR 1910.1052, such as medical surveillance or respiratory protection, need to be updated as a result of recent technological or scientific developments?

2. In cases where firms fail to comply with the MC Standard, is non-compliance more commonly the result of (1) a lack of information (e.g. about the dangers or the requirements), (2) inadequate supervision, (3) cost pressures, or (4) other factors? How could OSHA encourage improved compliance?

3. Are OSHA's MC requirements known to all firms that use MC, including small firms and firms that use MC only occasionally? How could awareness be increased for such firms?

4. Have better respirator filters been developed for MC? Are there actions OSHA or NIOSH could take to encourage the development of better filters?

5. Have safer alternatives been developed for high exposure uses such as foam blowing?

6. Have small furniture refinishers implemented the low cost engineering controls developed by NIOSH? Are there ways OSHA could improve outreach to these small businesses?

7. Have new studies been completed since 1996 on the health effects of MC?

*Costs and Impacts*

8. How many employees are exposed to MC, generally, or in your business; what are current exposures, and how much have they been reduced since 1996? Please provide data.

9. Does any part of the MC Standard impose an unnecessary or disproportionate burden to small businesses, or to industry in general? How might OSHA modify the MC requirements to reduce costs without jeopardizing protections to workers?

10. How much does it cost annually to comply with specific provisions of the MC Standard (e.g., exposure monitoring, medical surveillance, etc.)? Provide data if possible.

11. How have changes in technology, the economy, or other factors affected the amount of MC used, the use of substitutes, and compliance costs associated with the MC Standard since 1997?

*Clarity/Duplication*

12. Are any provisions of the MC Standard unclear, needlessly complex, or duplicative?

13. Have standards relating to MC issued by OSHA, EPA, other Federal agencies, or States caused overlap problems. If so, how could these issues be addressed to reduce the burden on industry without reducing worker protection?

Comments must be submitted by October 9, 2007. Comments should be submitted to the addresses and in the manner specified at the beginning of the notice.

**Authority:** This document was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under Section 610 of the Regulatory Flexibility Act (5 U.S.C. 610) and Section 5 of Executive Order 12866 (58 FR 51735, October 4 1993).

Signed at Washington, DC on July 2, 2007.

**Edwin G. Foulke, Jr.,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. E7–13208 Filed 7–9–07; 8:45 am]

BILLING CODE 4510–26–P

# Notices

Federal Register

Vol. 72, No. 131

Tuesday, July 10, 2007

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

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

July 3, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### Food Safety and Inspection Service

*Title:* Listeria Control for Ready-to-Eat Products.

*OMB Control Number:* 0583–0132.

*Summary of Collection:* The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq*). These statutes mandate that FSIS protect the public by verifying that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS is requiring that official establishments that produce certain ready-to-eat (RTE) meat and poultry products to take measures to prevent product adulteration by the pathogenic environmental contaminant *Listeria monocytogenes.* The regulations (9 CFR 430.4) particularly affect establishments that produce RTE meat and poultry products that are exposed to the environment after lethality treatments and that support the growth of *Listeria monocytogenes.* Establishments must employ one of four distinct methods found in the regulations.

*Need and Use of the Information:* FSIS will information from establishment's information on the production volume of RTE products affected by the regulations and the control measures used by the establishments. The establishment must also provide an estimate of production volume by product type and regulatory control method used for the upcoming year.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 3,590.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 30,173.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E7–13317 Filed 7–9–07; 8:45 am]

BILLING CODE 3410–DM–P

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

July 3, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### Animal Plant and Health Inspection Service

*Title:* Health Certificate/Export Certificate—Animal Products.

*OMB Control Number:* 0579–0256.

*Summary of Collection:* The export of agricultural commodities, including

animals and animal products, is a major business in the United States and contributes to a favorable balance of trade. To facilitate the export of U.S. animals and products, the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), Veterinary Services maintains information regarding the import health requirements of other countries for animals and animal products exported from the United States. Many countries that import animal products from the United States require a certification from APHIS that the United States is free of certain diseases. These countries may also require that our certification statement contain additional declarations regarding the U.S. animal products being exported. Form VS–16–4, Health Certificate-Export Certificate—Animal Products, is used to meet theses requirements. Regulations pertaining to export certification of animals and animal products are contained in 9 CFR parts 91.

*Need and Use of the Information:* Form VS 16–4 serves as the official certification that the United States is free of rinderpest, foot-and-mouth disease, classical swine fever, swine vesicular disease, African swine fever, bovine fever, bovine spongiform encephalopathy, and contagious bovine pleuropneuomia. APHIS will collect the exporter's name, address, the name and address of the consignee, the quantity, unit of measure, type of product being exported, the exporter's identification, and type of conveyance (ship, train, truck) that will transport the products. Without the information, many countries would not accept animal products from the United States, creating a serious trade imbalance and adversely affecting U.S. exporters.

*Description of Respondents:* Business or other-for-profit.

*Number of Respondents:* 33,000.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 66,000.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E7–13319 Filed 7–9–07; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

July 3, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Forest Service**

*Title:* Outreach/Ethnicity Questionnaires.

*OMB Control Number:* 0596–NEW.

*Summary of Collection*: Title VI of the Civil Rights Act prohibits discrimination based on race, color, or national origin in federally assisted or direct programs of the Federal Government. Section 703 in Title VII of the Civil Rights Act prohibits discrimination in employment based on race, color, religion, sex, or national origin in actions affecting employees or applicants for employment. The Forest Service requires outreach and recruitment of diverse candidates as a strategy to create a diverse and multicultural workforce within the agency. The Forest Service will do two questionnaires collecting information regarding ethnicity and race, which program the respondent is currently participating, and information from students attending local college and university career fairs about the effectiveness of information provided by personnel regarding career opportunities in the Forest Service.

*Need and Use of the Information:* The information will be used to evaluate effectiveness of the Civil Rights Outreach Programs conducted by the Northern Research Station, as well as the Forest Service's Youth Conservation Corps, Hosted programs, Job Corps, and Volunteer programs. This information will assist in the compilation of the Senior Youth and Volunteer Programs Report shared with Congress and other Federal agencies.

*Description of Respondents:* Individuals or households.

*Number of Respondents:* 77,500.

*Frequency of Reponses:* Reporting: Yearly.

*Total Burden Hours:* 6,458.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E7–13320 Filed 7–9–07; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Child and Adult Care Food Program: National Average Payment Rates, Day Care Home Food Service Payment Rates, and Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes for the Period July 1, 2007–June 30, 2008

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces the annual adjustments to the national average payment rates for meals and supplements served in child care centers, outside-school-hours care centers, at-risk afterschool care centers, and adult day care centers; the food service payment rates for meals and supplements served in day care homes; and the administrative reimbursement rates for sponsoring organizations of day care homes, to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are made on an annual basis each July, as required by the statutes and regulations governing the Child and Adult Care Food Program (CACFP).

**DATES:** These rates are effective from July 1, 2007 through June 30, 2008.

**FOR FURTHER INFORMATION CONTACT:** Keith Churchill, Section Chief, Child and Adult Care and Summer Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 305–2590.

**SUPPLEMENTARY INFORMATION**

## Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the CACFP (7 CFR Part 226).

## Background

Pursuant to sections 4, 11 and 17 of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1753, 1759a and 1766), section 4 of the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1773) and §§ 226.4, 226.12 and 226.13 of the regulations governing the CACFP (7 CFR Part 226), notice is hereby given of the new payment rates for institutions participating in CACFP. These rates shall be in effect during the period July 1, 2007 through June 30, 2008.

As provided for under the NSLA and the CNA, all rates in the CACFP must be revised annually on July 1 to reflect changes in the Consumer Price Index (CPI) for the most recent 12-month period. In accordance with this mandate, the Department last published the adjusted national average payment rates for centers, the food service payment rates for day care homes, and the administrative reimbursement rates for sponsors of day care homes on July 11, 2006, at 71 FR 39050 (for the period July 1, 2006–June 30, 2007).

BILLING CODE 3410–30–P

***CHILD AND ADULT CARE FOOD PROGRAM (CACFP)***
***Per Meal Rates in Whole or Fractions of U.S. Dollars***
***Effective from July 1, 2007 - June 30, 2008***

| CENTERS | | BREAKFAST | LUNCH AND SUPPER[1] | SUPPLEMENT |
|---|---|---|---|---|
| CONTIGUOUS STATES | PAID | 0.24 | 0.23 | 0.06 |
| | REDUCED PRICE | 1.05 | 2.07 | 0.34 |
| | FREE | 1.35 | 2.47 | 0.68 |
| ALASKA | PAID | 0.36 | 0.38 | 0.10 |
| | REDUCED PRICE | 1.85 | 3.61 | 0.55 |
| | FREE | 2.15 | 4.01 | 1.10 |
| HAWAII | PAID | 0.27 | 0.27 | 0.07 |
| | REDUCED PRICE | 1.27 | 2.49 | 0.39 |
| | FREE | 1.57 | 2.89 | 0.79 |

| DAY CARE HOMES | BREAKFAST | | LUNCH AND SUPPER | | SUPPLEMENT | |
|---|---|---|---|---|---|---|
| | TIER I | TIER II | TIER I | TIER II | TIER I | TIER II |
| CONTIGUOUS STATES | 1.11 | 0.41 | 2.06 | 1.24 | 0.61 | 0.17 |
| ALASKA | 1.76 | 0.63 | 3.34 | 2.02 | 0.99 | 0.27 |
| HAWAII | 1.29 | 0.47 | 2.41 | 1.45 | 0.72 | 0.19 |

| ADMINISTRATIVE REIMBURSEMENT RATES FOR SPONSORING ORGANIZATIONS OF DAY CARE HOMES PER HOME/PER MONTH RATES IN U.S. DOLLARS | Initial 50 | Next 150 | Next 800 | Each Additional |
|---|---|---|---|---|
| CONTIGUOUS STATES | 97 | 74 | 58 | 51 |
| ALASKA | 158 | 120 | 94 | 83 |
| HAWAII | 114 | 87 | 68 | 60 |

[1]These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. A notice announcing the value of commodities and cash-in-lieu of commodities is published separately in the *Federal Register*.

BILLING CODE 3410–30–C

The changes in the national average payment rates for centers reflect a 3.27 percent increase during the 12-month period, May 2006 to May 2007, (from 198.7 in May 2006 to 205.2 in May 2007) in the food away from home series of the CPI for All Urban Consumers.

The changes in the food service payment rates for day care homes reflect a 4.37 percent increase during the 12-month period, May 2006 to May 2007, (from 191.9 in May 2006 to 200.3 in May 2007) in the food at home series of the CPI for All Urban Consumers.

The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 2.66 percent increase during the 12-month period, May 2006 to May 2007, (from 202.5 in May 2006 to 207.9 in May 2007) in the series for all items of the CPI for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating in the program is based on the rates contained in this notice.

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, and final rule-related notice published at 48 FR 29114, June 24, 1983.)

This notice has been determined to be not significant and was reviewed by the Office Management and Budget in conformance with Executive Order 12866.

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3518).

**Authority:** Sections 4(b)(2), 11a, 17(c) and 17(f)(3)(B) of the Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1753(b)(2), 1759a, 1766(f)(3)(B)) and section 4(b)(1)(B) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773(b)(1)(B)).

Dated: July 3, 2007.

**Roberto Salazar,**

*Administrator.*

[FR Doc. 07–3366 Filed 7–9–07; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### National School Lunch, Special Milk, and School Breakfast Programs, National Average Payments/Maximum Reimbursement Rates

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This Notice announces the annual adjustments to the ''national average payments,'' the amount of money the Federal Government provides States for lunches, afterschool snacks and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; to the ''maximum reimbursement rates,'' the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the National School Lunch Program; and to the rate of reimbursement for a half-pint of milk served to non-needy children in a school or institution which participates in the Special Milk Program for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the National School Lunch and School Breakfast Programs reflect changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for the Special Milk Program reflects changes in the Producer Price Index for Fluid Milk Products.

**DATES:** These rates are effective from July 1, 2007 through June 30, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Wagoner, Section Chief, School Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 640, Alexandria, VA 22302 or phone (703) 305–2590.

**SUPPLEMENTARY INFORMATION:**

## Background

*Special Milk Program for Children*—Pursuant to section 3 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to non-needy children in a school or institution that participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fluid Milk Products, published by the Bureau of Labor Statistics of the Department of Labor.

For the period July 1, 2007 through June 30, 2008, the rate of reimbursement for a half-pint of milk served to a non-needy child in a school or institution which participates in the Special Milk Program is 17 cents. This reflects an increase of 16.84 percent in the Producer Price Index for Fluid Milk Products from May 2006 to May 2007 (from a level of 159.1 in May 2006 to 185.9 in May 2007).

As a reminder, schools or institutions with pricing programs that elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

*National School Lunch and School Breakfast Programs*—Pursuant to sections 11 and 17A of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a and 1766a), and section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors and to the maximum Federal reimbursement rates for lunches and afterschool snacks served to children participating in the National School Lunch Program and breakfasts served to children participating in the School Breakfast Program. Adjustments are prescribed each July 1, based on changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the national average payment rates for schools and residential child care institutions for the period July 1, 2007 through June 30, 2008 reflect a 3.27 percent increase in the Consumer Price Index for All Urban Consumers during the 12-month period May 2006 to May 2007 (from a level of 198.7 in May 2006 to 205.2 in May 2007). Adjustments to the national average payment rates for all lunches served under the National School Lunch Program, breakfasts served under the School Breakfast Program, and afterschool snacks served under the National School Lunch Program are rounded down to the nearest whole cent.

*Lunch Payment Levels*—Section 4 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. The Richard B. Russell National School Lunch Act provides two different section 4 payment levels for lunches served under the National School Lunch Program. The lower

payment level applies to lunches served by school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment level applies to lunches served by school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price.

To supplement these section 4 payments, section 11 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759(a)) provides special cash assistance payments to aid schools in providing free and reduced price lunches. The section 11 National Average Payment Factor for each reduced price lunch served is set at 40 cents less than the factor for each free lunch.

As authorized under sections 8 and 11 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1757 and 1759a), maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates are to ensure equitable disbursement of Federal funds to school food authorities.

*Afterschool Snack Payments in Afterschool Care Programs*—Section 17A of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766a) establishes National Average Payments for free, reduced price and paid afterschool snacks as part of the National School Lunch Program.

*Breakfast Payment Factors*—Section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) establishes National Average Payment Factors for free, reduced price and paid breakfasts served under the School Breakfast Program and additional payments for free and reduced price breakfasts served in schools determined to be in ''severe need'' because they serve a high percentage of needy children.

**Revised Payments**

The following specific section 4, section 11 and section 17A National Average Payment Factors and maximum reimbursement rates for lunch, the afterschool snack rates, and the breakfast rates are in effect from July 1, 2007 through June 30, 2008. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The District of Columbia, Virgin Islands, Puerto Rico and Guam use the figures specified for the contiguous States.

**National School Lunch Program Payments**

*Section 4 National Average Payment Factors*—In school food authorities which served less than 60 percent free and reduced price lunches in School Year 2005–06, the payments for meals served are: *Contiguous States*—paid rate—23 cents, free and reduced price rate—23 cents, maximum rate—31 cents; *Alaska*—paid rate—38 cents, free and reduced price rate—38 cents, maximum rate—48 cents; *Hawaii*—paid rate—27 cents, free and reduced price rate—27 cents, maximum rate—35 cents.

In school food authorities which served 60 percent or more free and reduced price lunches in School Year 2005–06, payments are: *Contiguous States*—paid rate—25 cents, free and reduced price rate—25 cents, maximum rate—31 cents; *Alaska*—paid rate—40 cents, free and reduced price rate—40 cents, maximum rate—48 cents; *Hawaii*—paid rate—29 cents, free and reduced price rate—29 cents, maximum rate—35 cents.

*Section 11 National Average Payment Factors—Contiguous States*—free lunch—224 cents, reduced price lunch—184 cents; *Alaska*—free lunch—363 cents, reduced price lunch—323 cents; *Hawaii*—free lunch—262 cents, reduced price lunch—222 cents.

*Afterschool Snacks in Afterschool Care Programs*—The payments are: *Contiguous States*—free snack—68 cents, reduced price snack—34 cents, paid snack—06 cents; *Alaska*—free snack—110 cents, reduced price snack—55 cents, paid snack—10 cents; *Hawaii*—free snack—79 cents, reduced price snack—39 cents, paid snack—07 cents.

**School Breakfast Program Payments**

For schools ''not in severe need'' the payments are: *Contiguous States*—free breakfast—135 cents, reduced price breakfast—105 cents, paid breakfast—24 cents; Alaska—free breakfast—215 cents, reduced price breakfast—185 cents, paid breakfast—36 cents; *Hawaii*—free breakfast—157 cents, reduced price breakfast—127 cents, paid breakfast—27 cents.

For schools in ''severe need'' the payments are: *Contiguous States*—free breakfast—161 cents, reduced price breakfast—131 cents, paid breakfast—24 cents; *Alaska*—free breakfast—257 cents, reduced price breakfast—227 cents, paid breakfast—36 cents; *Hawaii*—free breakfast—187 cents, reduced price breakfast—157 cents, paid breakfast—27 cents.

**Payment Chart**

The following chart illustrates the lunch National Average Payment Factors with the sections 4 and 11 already combined to indicate the per lunch amount; The maximum lunch reimbursement rates; the reimbursement rates for afterschool snacks served in afterschool care programs; the breakfast National Average Payment Factors including ''severe need'' schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the District of Columbia, Virgin Islands, Puerto Rico and Guam are those specified for the contiguous States.

BILLING CODE 3410–30–P

***SCHOOL PROGRAMS***
***MEAL, SNACK AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES***
*Expressed in Dollars or Fractions Thereof*
*Effective from July 1, 2007 - June 30, 2008*

| NATIONAL SCHOOL LUNCH PROGRAM* | | LESS THAN 60% | 60% OR MORE | MAXIMUM RATE |
|---|---|---|---|---|
| CONTIGUOUS STATES | PAID | 0.23 | 0.25 | 0.31 |
| | REDUCED PRICE | 2.07 | 2.09 | 2.24 |
| | FREE | 2.47 | 2.49 | 2.64 |
| ALASKA | PAID | 0.38 | 0.40 | 0.48 |
| | REDUCED PRICE | 3.61 | 3.63 | 3.86 |
| | FREE | 4.01 | 4.03 | 4.26 |
| HAWAII | PAID | 0.27 | 0.29 | 0.35 |
| | REDUCED PRICE | 2.49 | 2.51 | 2.68 |
| | FREE | 2.89 | 2.91 | 3.08 |

| SCHOOL BREAKFAST PROGRAM | | NON-SEVERE NEED | SEVERE NEED |
|---|---|---|---|
| CONTIGUOUS STATES | PAID | 0.24 | 0.24 |
| | REDUCED PRICE | 1.05 | 1.31 |
| | FREE | 1.35 | 1.61 |
| ALASKA | PAID | 0.36 | 0.36 |
| | REDUCED PRICE | 1.85 | 2.27 |
| | FREE | 2.15 | 2.57 |
| HAWAII | PAID | 0.27 | 0.27 |
| | REDUCED PRICE | 1.27 | 1.57 |
| | FREE | 1.57 | 1.87 |

| SPECIAL MILK PROGRAM | ALL MILK | PAID MILK | FREE MILK |
|---|---|---|---|
| PRICING PROGRAMS WITHOUT FREE OPTION | 0.17 | N/A | N/A |
| PRICING PROGRAMS WITH FREE OPTION | N/A | 0.17 | Average Cost Per 1/2 Pint of Milk |
| NONPRICING PROGRAMS | 0.17 | N/A | N/A |

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice has been determined to be not significant and was reviewed by the Office Management and Budget in conformance with Executive Order 12866.

National School Lunch, School Breakfast and Special Milk Programs are listed in the Catalog of Federal Domestic Assistance under No. 10.555, No. 10.553 and No. 10.556, respectively, and are

subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

| AFTERSCHOOL SNACKS SERVED IN AFTERSCHOOL CARE PROGRAMS | | |
|---|---|---|
| CONTIGUOUS STATES | PAID<br>REDUCED PRICE<br>FREE | 0.06<br>0.34<br>0.68 |
| ALASKA | PAID<br>REDUCED PRICE<br>FREE | 0.10<br>0.55<br>1.10 |
| HAWAII | PAID<br>REDUCED PRICE<br>FREE | 0.07<br>0.39<br>0.79 |
| *Payment listed for Free and Reduced Price Lunches include both section 4 and section 11 funds | | |

**Authority:** Sections 4, 8, 11 and 17A of the Richard B. Russell National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759a, 1766a) and sections 3 and 4(b) of the Child Nutrition Act, as amended, (42 U.S.C. 1772 and 42 U.S.C. 1773(b)).

Dated: July 3, 2007.

**Roberto Salazar,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 07–3365 Filed 7–9–07; 8:45 am]

BILLING CODE 3410–30–C

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Ravalli County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Meeting.

**SUMMARY:** The Ravalli County Resource Advisory Committee will be meeting about scheduling presentations on 2007 projects which will be submitted and hold a short public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

**DATES:** The meeting will be held on July 24, 2007, 6:30 p.m.

**ADDRESSES:** The meeting will be held at the Bitterroot National Forest Supervisors Office, 1801 North First, Hamilton, Montana. Send written comments to Daniel G. Ritter, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *dritter@fs.fed.us.*

**FOR FURTHER INFORMATION CONTACT:** Daniel G. Ritter, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: July 3, 2007.

**Barry Paulson,**

*Acting Forest Supervisor.*

[FR Doc. 07–3327 Filed 7–9–07; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Information Collection Activity; Comment Request

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service, an agency delivering the United States Department of Agriculture's (USDA) Rural Development Utilities Programs, hereinafter referred to as Rural Development and/or the Agency, invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

**DATES:** Comments on this notice must be received by September 10, 2007.

**FOR FURTHER INFORMATION CONTACT:** Michele L. Brooks, Acting Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Ave., SW., STOP 1522, Room 5159 South Building, Washington, DC 20250–1522. Telephone: (202)720–0784 Fax: (202)720–8435.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) 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; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele L. Brooks, Acting Director, Program Development and Regulatory

Analysis, USDA Rural Development, 1400 Independence Ave., SW., STOP 1522, Room 5159 South Building, Washington, DC 20250–1522. Telephone: (202)690–1078, Fax: (202)720–8435.

*Title:* 7 CFR Part 1744, Subpart b, ''Lien Accommodations and Subordination Policy''.

*OMB Control Number:* 0572–0126.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* Recent changes in the telecommunications industry, including deregulation and technological developments, have caused borrowers and other organizations providing telecommunications services of Rural Development, to consider undertaking projects that provide new telecommunications services and other telecommunications services not ordinarily financed by the Agency. To facilitate the financing of those projects and services, this program helps to facilitate funding from non-Agency sources in order to meet the growing capital needs of rural Local Exchange Carriers (LECs).

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 1 hour per response.

*Respondents:* Business or other for-profit and non-profit institutions.

*Estimated Number of Respondents:* 30.

*Estimated Number of Responses per Respondent:* 2.

*Estimated Total Annual Burden on Respondents:* 23.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853, Fax: (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 29, 2007.

**James M. Andrew,**

*Administrator, Rural Utilities Service.*

[FR Doc. E7–13298 Filed 7–9–07; 8:45 am]

**BILLING CODE 3410–15–P**

## BROADCASTING BOARD OF GOVERNORS

### Sunshine Act Meeting

**DATE AND TIME:** Wednesday, July 11, 2007, 9 a.m.–3:30 p.m.

**PLACE:** Cohen Building, Room 3321, 330 Independence Ave., SW, Washington, DC 20237.

**CLOSED MEETING:** The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b. (c)(2) and (6))

**FOR FURTHER INFORMATION CONTACT:** Persons interested in obtaining more information should contact Carol Booker at (202) 203–4545.

Dated: July 6, 2007.

**Janice H. Brambilla,**

*Executive Director.*

[FR Doc. 07–3379 Filed 7–6–07; 1:43 pm]

**BILLING CODE 8230–01–M**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on July 31, 2007, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

*Agenda*

*Public Session*

1. Welcome and Introductions.
2. Remarks from Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business.

*Closed Session*

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3).

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Yvette Springer at *Yspringer@bis.doc.gov.*

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on June 25, 2007 pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 section 10(d)), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Yvette Springer on (202) 482–2813.

Dated: July 3, 2007.

**Yvette Springer,**

*Committee Liaison Officer.*

[FR Doc. 07–3324 Filed 7–9–07; 8:45 am]

**BILLING CODE 3510–JT–M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XB03**

### Magnuson-Stevens Fishery Conservation and Management Reauthorization Act Provisions; Recovery Plan for Klamath River Coho

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

**ACTION:** Notice of Availability.

**SUMMARY:** NMFS announces the completion of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) Klamath River Coho Salmon Recovery Plan (recovery plan). This document fulfills the requirement that a recovery plan for

Klamath River coho salmon be completed and made available to the public by the Secretary of Commerce (Secretary) within 6 months of the enactment of the MSRA on January 12, 2007.

**ADDRESSES:** Persons wishing to obtain a copy of the Recovery Plan can do so by any of the following methods:

- E-mail: *KlamathCohoRecoveryPlan.SWR @noaa.gov.* Include ''Request for Klamath River Coho Recovery Plan'' in the subject line of the message.
- Southwest Region website portal: *http://swr.nmfs.noaa.gov/klamath/index.htm*
- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

**FOR FURTHER INFORMATION CONTACT:** Irma Lagomarsino, Protected Resources Division, NMFS, at 707–825–5160.

**SUPPLEMENTARY INFORMATION:** On January 12, 2007, the MSRA was signed into law. The MSRA contains several new requirements related to salmon in the Klamath River Basin, including an obligation for the Secretary to complete a recovery plan for Klamath River coho salmon and make it available to the public within 6 months of the MSRA being implemented. The MSRA recovery plan was developed to satisfy that obligation and should not be confused with the recovery plan that NMFS is currently developing for the federally-listed Southern Oregon/Northern California Coast coho evolutionary significant unit under the Endangered Species Act.

Given the statutory deadline, NMFS compiled and synthesized the best available information on coho salmon in the Klamath River in a cohesive framework to develop the MSRA recovery plan. This plan draws heavily on existing recovery and restoration plans developed with substantial stakeholder participation. The MSRA recovery plan presents long-range guidance for various agencies, organizations and individuals to use as they consider taking actions or pursuing projects that may affect Klamath River coho salmon.

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

Dated: July 3, 2007.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. E7–13361 Filed 7–9–07; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XB27**

### Marine Mammals; File No. 373–1868

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

**ACTION:** Notice; receipt of applications for amendment.

**SUMMARY:** Notice is hereby given that Point Reyes Bird Observatory, 3820 Cypress Drive #11, Petaluma, California 94954, has requested an amendment to scientific research Permit No. 373–1868.

**DATES:** Written, telefaxed, or e-mail comments must be received on or before August 9, 2007.

**ADDRESSES:** The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 373–1868–01.

**FOR FURTHER INFORMATION CONTACT:** Jaclyn Daly or Amy Sloan, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** The subject amendment to Permit No. 373–1868, issued on April 4, 2007 (72 FR 17875), is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant has requested an amendment for authorization to harass up to 20 Steller sea lions (*Eumetopias jubatus*), annually, during research activities on California sea lions (*Zalophus californianus*) and northern elephant seals (*Mirounga angustirostris*) in California. The permit would expire on April 15, 2012.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 3, 2007.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E7–13363 Filed 7–9–07; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[XRIN: 0648–XB30]**

### BSAI Crab Economic Data Collection Program; Public Meetings

**AGENCY:** Alaska Fishery Science Center (AFSC), National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Alaska Fishery Science Center, Economic and Social Science Research Program will hold public meetings in Kodiak, AK and Seattle, WA to review the BSAI Crab Economic Data Collection Program.

**DATES:** The meetings will be held on July 25, 2007 in Kodiak and August 2, 2007 in Seattle. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** Alaska Fishery Science Center, 7600 Sand Point Way NE, Bldg 4, Seattle, WA 98155. See **SUPPLEMENTARY INFORMATION** for specific locations of meetings/hearing.

**FOR FURTHER INFORMATION CONTACT:** Dr. Brian Garber-Yonts, AFSC, (206) 526–6301.

**SUPPLEMENTARY INFORMATION:** These meetings are part of a process to respond to issues raised by the North Pacific Fisheries Management Council

concerning the BSAI Crab Economic Data Report (EDR) data. The specific topics to be addressed at the meeting will be:

1. Data quality - ensuring that the questions are consistently interpreted across both industry who respond to the survey and analysts using the data.

2. Confidentiality - ensuring that any use or reporting of the data protects confidentiality interests of industry who have responded to the survey.

The Kodiak meeting will be held from 7 p.m. to 9 p.m. at Fisherman's Hall, 403 Marine Way W, Kodiak, AK.

The Seattle meeting will be held from 9 a.m. to 4 p.m. at Leif Erickson Hall, 2245 NW 57th St., Seattle, WA. The morning session will focus on crab processing data elements in the EDRs and the afternoon session will focus on crab harvesting data elements. Both meetings are open to the public.

A discussion paper reviewing the data quality and confidentiality topics was presented at the NPFMC meetings in March, 2007 and can be downloaded at *http://www.fakr.noaa.gov/npfmc/summary__reports/DATA032007.pdf*. A revised draft of the paper will be reviewed at the meetings. To receive an advance copy of the revised discussion paper, please contact Dr. Brian Garber-Yonts at (206) 526–6301 or by email at *brian.garber-yonts@noaa.gov*.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dr. Brian Garber-Yonts, AFSC, (206) 526–6301 at least 7 working days prior to the meeting date.

Dated: July 5, 2007.

**Tracey L. Thompson,**

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

[FR Doc. E7–13323 Filed 7–9–07; 8:45 am]

BILLING CODE 3510–22–S

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Amendment of Limitation of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary ATPDEA Countries from Regional Country Fabric

July 5, 2007.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Amending the 12-Month Cap on Duty and Quota Free Benefits

**EFFECTIVE DATE:** July 10, 2007.

**FOR FURTHER INFORMATION CONTACT:** Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Authority: Section 3103 of the Trade Act of 2002; Title VII of the Tax Relief and Health Care Act of 2006 (TRHCA 2006); H.R. 1830 110. Cong. (2007); (H.R. 1830); Presidential Proclamation 7616 of October 31, 2002 (67 FR 67283).

Section 3103 of the Trade Act of 2002 amended the Andean Trade Preference Act (ATPA) to provide for duty and quota-free treatment for certain textile and apparel articles imported from designated Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary countries. Section 204(b)(3)(B)(iii) of the amended ATPA provides duty- and quota-free treatment for certain apparel articles assembled in ATPDEA beneficiary countries from regional fabric and components, subject to quantitative limitation. More specifically, this provision applies to apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed or from components knit-to-shape, in one or more ATPDEA beneficiary countries, from yarns wholly formed in the United States or one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 and 5603 of the Harmonized Tariff Schedule (HTS) and are formed in one or more ATPDEA beneficiary countries). Such apparel articles may also contain certain other eligible fabrics, fabric components, or components knit-to-shape.

The TRHCA of 2006 extended the expiration of the ATPA to June 30, 2007. See Section 7002(a) of the TRHCA 2006. H.R. 1830 further extended the expiration of the ATPA to February 29, 2008. See Section 1 of H.R. 1830. The purpose of this notice is to extend the period of the quantitative limitation for preferential tariff treatment under the regional fabric provision for imports of qualifying apparel articles for a full 12-month period, through September 30, 2007. See Amendment of Limitation of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary ATPDEA Countries from Regional Country Fabric, published in the **Federal Register** on January 22, 2007. (72 FR 2661)

For the period beginning on October 1, 2006 and extending through September 30, 2007, the aggregate quantity of imports eligible for preferential treatment under the regional fabric provision is 1,164,288,418 square meters equivalent. Apparel articles entered in excess of this quantity will be subject to otherwise applicable tariffs.

This quantity is calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

**Janet Heinzen,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. E7–13380 Filed 7–9–07; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal Nos. 07–27]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 07–27 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 3, 2007.

**C.R. Choate,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

JUN 2 0 2007

**In reply refer to:**
**I-07/005726**

**The Honorable Nancy Pelosi**
**Speaker of the House of Representatives**
**Washington, DC 20515-6501**

**Dear Madam Speaker:**

**Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-27, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Brazil for defense articles and services estimated to cost $300 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.**

**Sincerely,**

Richard J. Millies
Deputy Director

**Enclosures:**
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

**Transmittal No. 07-27**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act, as amended**

(i) **Prospective Purchaser:** Brazil

(ii) **Total Estimated Value:**

| | |
|---|---|
| Major Defense Equipment* | $200 million |
| Other | $100 million |
| TOTAL | $300 million |

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 6 UH-60L BLACK HAWK helicopters with 12 T-700-GE-701C engines, 2 spare T-700-GE-701C engines, warranty, external hoist kits, spare and repair parts, tools and support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services and other related elements of logistics support.

(iv) **Military Department:** Army (UUB)

(v) **Prior Related Cases, if any:** FMS case UTZ - $183 million - 27Dec04

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** JUL 2 0 2007

* as defined in Section 47(6) of the Arms Export Control Act.

## POLICY JUSTIFICATION

### Brazil – UH-60L BLACK HAWK Helicopters

**The Government of Brazil has requested a possible sale of 6 UH-60L BLACK HAWK helicopters with 12 T-700-GE-701C engines, 2 spare T-700-GE-701C engines, warranty, external hoist kits, spare and repair parts, tools and support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services and other related elements of logistics support. The estimated cost is $300 million.**

**This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be, an important force for political stability and economic progress in South America.**

**Brazil needs these aircraft to fulfill its strategic commitments for search and rescue and self-defense within the region without being dependent upon assistance from other countries. This procurement will upgrade its air mobility capability and provide for the defense of vital installations and close air support for ground forces. Brazil will have no difficulty absorbing these helicopters into its armed forces.**

**The proposed sale of this equipment and support will not affect the basic military balance in the region.**

**The principal contractors will be: Sikorsky Aircraft (United Technologies) Corporation of Stratford, Connecticut and General Electric Engines of Lynn, Massachusetts. There are no known offset agreements proposed in connection with this potential sale.**

**Implementation of this proposed sale may require the assignment of two contractor representatives to Brazil for a period of up to two years.**

**There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.**

**Transmittal No. 07-27**

**Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act**

**Annex**
**Item No. vii**

**(vii) Sensitivity of Technology:**

**1. The UH-60L BLACK HAWK weapon system contains communications and identification equipment, navigation equipment, displays and sensors. The aircraft itself does not contain sensitive technology. The highest level of classified information required to be released for training, operation, and maintenance of the BLACK HAWK helicopter is Confidential. The highest level that could be revealed through reverse engineering or testing of the end item is Confidential.**

**2. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.**

[FR Doc. 07–3335 Filed 7–9–07; 8:45 am]
BILLING CODE 5001–06–C

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Availability of Draft Supplemental Environmental Impact Statement for Atlantic Coast of Maryland Shoreline Protection Project—General Reevaluation Study: Borrow Sources for 2010–2044, Worcester County, MD

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the requirements of the National Environmental Policy Act (NEPA), the Baltimore District, U.S. Army Corps of Engineers (USACE), has prepared a Draft Supplemental Environmental Impact Statement (SEIS) for the Atlantic Coast of Maryland Shoreline Protection Project (Atlantic Coast Project) evaluating new borrow sources to provide sand for routine periodic beach nourishment of Ocean City, MD for the years 2010–2044. Existing borrow sources in state waters are anticipated to be exhausted in about 2010. Between 6,800,000 and 15,000,000 cubic yards of sand would be needed through 2044, depending on future storm frequency and intensity. Three offshore shoals in Federal waters are proposed as sand sources: Weaver, Isle of Wight, and ''A.'' Sand may also be dredged from Shoal ''B,'' also known as Bass Grounds or First Lump, in the future, but only if its value as a fishing ground declines substantially. Guidelines to minimize long-term impacts to the offshore shoals were formulated in coordination with resource agency personnel and academic experts. Dredging would be conducted in accordance with these guidelines. Specific dredging plans would be developed in coordination with resource agencies prior to each beach nourishment cycle. We are making the Draft SEIS available to the public for a 45-day review and comment period.

**DATES:** Comments need to be received on or before August 28th, 2007, to ensure consideration in final plan development. A public meeting will be held for the Draft SEIS Document at Ocean City Town Hall, 301 Baltimore Avenue, on July 25th, 2007. A presentation will be given at 7 PM; displays will be available for viewing and staff on hand to answer questions beginning at 6 PM.

**ADDRESSES:** Send written comments concerning this proposed project to U.S. Army Corps of Engineers, Baltimore District, Attn: Mr. Christopher Spaur, CENAB–PL–P, P.O. Box 1715, Baltimore, MD 21203–1715. Submit electronic comments to *christopher.c.spaur@usace.army.mil*. See **SUPPLEMENTARY INFORMATION** section for additional information about sending written comments and filing electronic comments.

**FOR FURTHER INFORMATION CONTACT:** Mr. Christopher Spaur, (410) 962–6134 or (800) 295–1610.

**SUPPLEMENTARY INFORMATION:** The Atlantic Coast Project is designed to provide coastal flood and erosion protection to Ocean City, MD against a 100-year storm on the Atlantic Ocean. The Atlantic Coast of Maryland and Assateague Island Virginia Feasibility Report and Final Environmental Impact Statement for the project was finalized in August 1980. Subsequent environmental documents were prepared for the project in 1989 (Atlantic Coast of Maryland Hurricane Protection Project Final General Design Memorandum, Book 1 Main Report and Environmental Assessment) and 1993 (Environmental Assessment for the Use of Borrow Area No. 9 as Part of the Periodic Renourishment and Maintenance of the Atlantic Coast of

Maryland Shoreline Protection Project). The project was completed in 1994. Periodic nourishment and maintenance of the beach are required to maintain the design level of protection. Since 1998, a period of few severe storms, approximately 800,000 cubic yards of sand have been placed on Ocean City beach every four years. Identified sand sources in state waters are forecast to be exhausted after about 2010.

This SEIS documents findings of investigations conducted from 2001 through 2006 to select new borrow sources for the Atlantic Coast Project through the remainder of the project's 50 year economic life. Studies to develop the borrow plan were conducted by the USACE, in partnership with the Maryland Department of Natural Resources (DNR), Ocean City, and Minerals Management Service (MMS). DNR is the cost-sharing non-Federal sponsor of the study with USACE; MMS is a cooperating agency. A Notice of Intent (NOI) to prepare a General Reevaluation Report and Supplemental Environmental Impact Statement was published in the **Federal Register** on October 21, 2003 (68 FR 60095). Coordination with resource agency personnel, academic experts, and fishermen was undertaken during plan formulation.

Offshore shoals are the most appropriate sand sources for the project since these contain large quantities of suitable sand that can be cost-effectively obtained. Offshore shoal borrow sources in Federal waters that could provide up to 15,000,000 cubic yards of sand through 2044 were sought and identified. Three offshore shoals were selected and proposed as sand sources based on engineering, environmental, and economic screening criteria: Weaver, Isle of Wight, and ''A.'' Sand at Shoal ''B,'' also known as Bass Grounds or First Lump is engineeringly and economically suitable, however that shoal is currently an important fishing ground. Accordingly, Shoal ''B'' would not be utilized unless future reevaluation finds that its relative value as a fishing ground has declined substantially. Sub-areas on each shoal were delineated based on suitability of sand for beach nourishment purposes.

Dredging guidelines to minimize long-term impacts to the offshore shoals were formulated. No more than about 5% of the total volume of any shoal would be dredged. Dredging on any given shoal would avoid the crest, be conducted uniformly over a wide area, go no deeper than ambient seafloor depths, and preferentially dredge on the up and downdrift ends of the shoal if suitable sand is present there.

This SEIS documents the National Environmental Policy Act (NEPA) compliance for the proposed new offshore shoal borrow sources and supplements previous environmental documents. Printed and electronic copies of the Draft SEIS can be obtained from Christopher Spaur; copies will also be available at the public meeting. You may view the Draft SEIS and related information on the worldwide web at: *http://www.nab.usace.army.mil/PN/CivilWorks.htm.*

Please include your name and address with your comments. Electronic comments on the Draft SEIS must be contained in the body of the message; do not send attached files. Please include your name and address in your message. After the public comment period ends, USACE will consider all comments received. The Draft SEIS will be revised as appropriate and a Final SEIS will be issued.

The Draft SEIS has been prepared in accordance with (1) The National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), and (3) USACE regulations for implementing NEPA (ER–200–2–2).

**Christopher C. Spaur,**

*Ecologist, Planning Division, Baltimore District, U.S. Army Corps of Engineers.*

[FR Doc. 07–3287 Filed 7–9–07; 8:45 am]

BILLING CODE 3710–41–M

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before August 8, 2007.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

**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.

Dated: July 2, 2007.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

### Institute of Education Sciences

*Type of Review:* Revision

*Title:* Evaluation of Reading Comprehension Interventions

*Frequency:* Annually

*Affected Public:* Individuals or household.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 340.

*Burden Hours:* 5,144.

*Abstract:* This submission is a request for a revision of OMB clearance for the Evaluation of Reading Comprehension Interventions sponsored by the U.S. Department of Education's Institute of Education Sciences. Many of the nation's children struggle with comprehending complex texts and other reading materials that are used in the upper elementary grades. This is especially true of children from disadvantaged backgrounds. The interventions being evaluated are

designed to teach reading comprehension strategies to fifth-grade students in the content areas of science and social studies. The revision being requested is for use of data collection forms (teacher survey and school records collection) for the second year of a two-year evaluation of reading comprehension interventions.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov.,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3396. 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. E7–13287 Filed 7–9–07; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before August 9, 2007.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *http://oira_submission@omb.eop.gov.* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. '' Persons submitting comments electronically should not submit paper copies.

**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.

Dated: July 3, 2007.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

### Federal Student Aid

*Type of Review:* Revision.

*Title:* William D. Ford Federal Direct Loan Program Repayment Plan Selection Form.

*Frequency:* On occasion.

*Affected Public:* Individuals or household.

*Reporting and Recordkeeping Hour Burden:*

Responses: 331,000.

Burden Hours: 109,230.

*Abstract:* Borrowers who receive loans through the William D. Ford Federal Direct Loan Program may use this form to select an initial repayment plan or to change repayment plans.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov.*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3404. 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. E7–13346 Filed 7–9–07; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before August 9, 2007.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

**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.

Dated: July 5, 2007.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

**Institute of Education Sciences**

*Type of Review:* New.

*Title:* Assessing the Impact of Collaborative Strategic Reading on Fifth Graders' Comprehension and Vocabulary Skills.

*Frequency:* On Occasion; Biennially.

*Affected Public:* Not-for-profit institutions; Individuals or household.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 83.

*Burden Hours:* 69.

*Abstract:* The current OMB package requests clearance for the instruments to be used in the Assessing the Impact of Collaborative Strategic Reading on Fifth Graders' Comprehension and Vocabulary Skills Study (CSR study). The CSR study is a project designed to test an innovative model of reading instruction in the fifth grade, especially for ELL students. The data collection instruments will measure the background characteristics of the sample, fidelity of the intervention's implementation, and outcomes of the intervention.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3311. 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. E7–13347 Filed 7–9–07; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before August 9, 2007.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. '' Persons submitting comments electronically should not submit paper copies.

**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.

Dated: July 5, 2007.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

**Institute of Education Sciences**

*Type of Review:* New.

*Title:* An Evaluation of the Thinking Reader Software Intervention.

*Frequency:* On occasion.

*Affected Public:* Individuals or household.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 75.

*Burden Hours:* 59.

*Abstract:* The evaluation of the Thinking Reader software intervention is to be carried out by the Northeast and Islands Regional Education Laboratory. This randomized controlled field trial involves 50 English/Language Arts teachers and 25 schools in Connecticut. Targeted outcomes are students' reading comprehension, reading vocabulary, use of reading comprehension strategies, and motivation to read.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3330. 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. E7–13348 Filed 7–9–07; 8:45 am]

**BILLING CODE 4000–01–P**

## ELECTION ASSISTANCE COMMISSION

### Sunshine Act Meetings

**AGENCY:** United States Election Assistance Commission.

**ACTION:** Notice of Public Teleconference Meetings for the Working Subcommittees of the Technical Guidelines Development Committee.

**DATES AND TIMES:** Tuesday, July 10, 2007 at 10:30 a.m. ET; Thursday, July 12, 2007 at 11 a.m. ET; Friday, July 13, 2007 at 11 a.m. ET; Tuesday, July 17, 2007 at 10:30 a.m. ET; Thursday, July 19, 2007 at 11 a.m. ET; Friday, July 20, 2007 at 11 a.m. ET; Tuesday, July 24, 2007 at 10:30 a.m. ET; Thursday, July 26, 2007 at 11 a.m. ET; Friday, July 27, 2007 at 11 a.m. ET; Tuesday, July 31, 2007 at 10:30 a.m. ET.

**STATUS:** Audio recordings of working subcommittee teleconferences are available upon conclusion of each meeting at: *http://vote.nist.gov/subcomm_mtgs.htm.* Agendas for each teleconference will be posted approximately one week in advance of each meeting at the above Web site.

**SUMMARY:** The Technical Guidelines Development Committee (the ''Development Committee'') was established to act in the public interest to assist the Executive Director of the U.S. Election Assistance Commission (EAC) in the development of voluntary voting system guidelines. The Committee held their first plenary meeting on July 9, 2004. At this meeting, the Development Committee agreed to a resolution forming three working groups: (1) Human Factors & Privacy; (2) Security & Transparency; and (3) Core Requirements & Testing to gather and analyze information on relevant issues. These working subcommittees propose resolutions to the TGDC on best practices, specifications and standards. Specifically, NIST staff and Committee members will meet via the above scheduled teleconferences to review and discuss progress on tasks defined in resolutions passed at Development Committee plenary meetings. The resolutions define technical work tasks for NIST that will assist the Committee in developing recommendations for voluntary voting system guidelines. The Committee met in its ninth plenary session on May 21–22, 2007. Documents and transcriptions of Committee proceedings are available at: *http://vote.nist.gov/PublicHearingsandMeetings.html.*

**PURPOSE:** At the direction of the Committee and with technical support from NIST staff, the three working subcommittees gather and analyze information relevant to requirement recommendations for the next iteration of the voluntary voting system guidelines. The Human Factors and Privacy Subcommittee considers usability, accessibility, and privacy functions of voting systems and the environment of the polling place. The Security and Transparency Subcommittee considers the security of computers, computer networks and computer data storage used in voting systems. The Core Requirements and Testing Subcommittee considers precise and testable specifications for voting systems. The subcommittees' recommendations are then presented to the Development Committee as a whole at public plenary sessions.

**SUPPLEMENTARY INFORMATION:** The Technical Guidelines Development Committee (the ''Development Committee'') was established pursuant to 42 U.S.C. 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The information gathered and analyzed by the working subcommittees during their teleconference meetings will be reviewed at future Development Committee plenary meetings.

**FOR FURTHER INFORMATION CONTACT:** Allan Eustis 301–975–5099. If a member of the public would like to submit written comments concerning the Committee's affairs at any time before or after subcommittee teleconference meetings, written comments should be addressed to the contact person indicated above, or to *voting@nist.gov.*

**Rosemary E. Rodriguez,**

*Vice-Chair, U.S. Election Assistance Commission.*

[FR Doc. 07–3381 Filed 7–6–07; 3:32 pm]

**BILLING CODE 6820–KF–M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP07–498–000]**

### Central Kentucky Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 29, 2007.

Take notice that on June 27, 2007, Central Kentucky Transmission Company (Central Kentucky) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of August 1, 2007:

First Revised Sheet No. 10
Original Sheet No. 10A
First Revised Sheet No. 355

Central Kentucky states it is submitting the revised tariff sheets to permit shippers to combine into a single service agreement, multiple service agreements under the FTS Rate Schedule, but with different terms of service for purposes of nominating service on its system.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–13303 Filed 7–9–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP07–497–000]**

### Central Kentucky Transmission Company; Notice of Proposed Changes of FERC Gas Tariff

June 29, 2007.

Take notice that on June 27, 2007, Central Kentucky Transmission Company (Central Kentucky) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of August 1, 2007:

First Revised Sheet No. 10
Original Sheet No. 10A
First Revised Sheet No. 355

Central Kentucky states it is submitting the revised tariff sheets to permit shippers to combine into a single service agreement, multiple service agreements under the FTS Rate Schedule, but with different terms of service for purposes of nominating service on its system.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–13304 Filed 7–9–07; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP07–340–001]**

### Columbia Gas Transmission Corporation; Notice of Compliance Filing

June 29, 2007.

Take notice that on June 26, 2007, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 Sixth Revised Sheet No. 390, with an effective date of January 1, 2008.

Columbia states that the filing is being made in compliance with the Commission's Order in this docket issued June 11, 2007.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–13301 Filed 7–9–07; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP07–174–001]**

### Columbia Gulf Transmission Company; Notice of Compliance Filing

June 29, 2007.

Take notice that on June 26, 2007, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of January 1, 2008:

Ninth Revised Sheet No. 216
First Revised Sheet No. 216A
First Revised Sheet No. 216B
First Revised Sheet No. 216C
Sixth Revised Sheet No. 217
Sixth Revised Sheet No. 218
First Revised Sheet No. 219

Columbia Gulf states that the filing is being made in compliance with the Commission's Order in this docket issued June 11, 2007.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–13306 Filed 7–9–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP07–496–000]**

### El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 29, 2007.

Take notice that on June 27, 2007, El Paso Natural Gas Company (EPNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets and a Rate Schedule PAL agreement (PAL) with Salt River Project Agricultural Improvement and Power District to become effective August 1, 2007:

Seventeenth Revised Sheet No. 2
Eighth Revised Sheet No. 2A

EPNG states the Rate Schedule PAL Agreement is being submitted for the Commission's information and review and has been listed on the tendered tariff sheet as a non-conforming agreement.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–13305 Filed 7–9–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. QF07–116–000]**

### State University of New York, Old Westbury; Notice of Self-Certification of Qualifying Status of a Cogeneration Facility

June 29, 2007.

Take notice that on March 15, 2007, the State University of New York (SUNY), 223 Store Hill Road, Old Westbury, New York 11568 filed with the Federal Energy Regulatory Commission a notice of self-certification of a facility as a qualifying cogeneration facility pursuant to 18 CFR 292.207(a) of the Commission's regulations.

Description of facility:

(A) The cogeneration facility produces electricity and high temperature hot water (250 °F to 350 °F),

(B) the energy source used is natural gas,

(C) the power production equipment is a GE Jenbacher Model JMS 612 GS NL Gaseous Generator Set. It uses a Stamford HVS 1804R2 generator with a gross rated capacity of 1778 kW and net capacity of 1723 kW at unity power factor,

(D) the cogeneration facility is located on the SUNY Old Westbury campus, in the boiler room.

The cogeneration facility expects to interconnect to the Long Island Power Authority (LIPA) and LIPA will provide standby, back-up and maintenance power.

A notice of self-certification does not institute a proceeding regarding qualifying facility status; a notice of self-certification provides notice that the entity making filing has determined the Facility meets the applicable criteria to be a qualifying facility. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii).

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–13302 Filed 7–9–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP07–443–000]**

### Iroquois Gas Transmission System, L.P.; Notice of Technical Conference

June 29, 2007.

The Commission's June 27, 2007 Order in the above-captioned proceeding,[1] directed that a technical conference be held to discuss Iroquois Gas Transmission System, L.P.'s proposed gas quality and interchangeability standards.

Take notice that a technical conference will be held on Wednesday, July 11, 2007 at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FERC conferences are accessible under section 508 of the Rehabilitation

[1] Iroquois Gas Transmission System, L.P., 119 FERC ¶ 61,325 (2007).

Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

All interested parties and staff are permitted to attend. For further information please contact Katie Williams at (202) 502–8246 or e-mail *kathleen.williams@ferc.gov.*

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–13307 Filed 7–9–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Western Area Power Administration

### White Wind Farm Project (DOE/ EIS–0376)

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Record of decision.

**SUMMARY:** White Wind Farm, LLC (Applicant), a wholly-owned subsidiary of Navitas Energy, Inc., has applied to the U.S. Department of Energy (DOE), Western Area Power Administration (Western), to interconnect its proposed White Wind Farm Project (Project) to Western's transmission system at the existing White Substation, near Brookings, South Dakota. The project would involve building up to 103 2-megawatt (MW) wind turbine generators (WTG or Turbine) with a net capacity of up to 200 MW. Western considered the environmental impacts of the Project and has decided to grant the Applicant's request to interconnect to the White Substation. Taking into consideration the mitigation measures the Applicant has incorporated into the Project, Western expects no significant long-term or short-term impacts to resources from construction, operation, and maintenance of the proposed Project.

**FOR FURTHER INFORMATION CONTACT:** Ms. Catherine Cunningham, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228, telephone (720) 962–7000, e-mail *cunningh@wapa.gov*. For information about DOE's National Environmental Policy Act (NEPA) process, contact Ms. Carol M. Borgstrom, Director, NEPA Policy and Compliance, GC–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

**SUPPLEMENTARY INFORMATION:** The Applicant's objective for the proposed Project is to develop a technically feasible and economically viable, wind-powered, electrical generation resource. The Applicant has identified the Project Area, near the White Substation, as suitable to meet the required criteria for developing a large, utility-scale wind energy project and has applied to Western for interconnection there. The White Substation is located near Brookings, South Dakota. The Project Area encompasses approximately 28 square miles (17,920 acres). It is bisected by a 345-kilovolt (kV) transmission line owned by Western. The location and land availability would enable the economic viability of the proposed Project. The Applicant expects the proposed Project to meet a portion of the projected regional demand for electricity produced from wind resources.

The Federal action associated with the proposed Project is approval or denial of the Applicant's interconnection request. Western needs to respond to the interconnection request, provide transmission service under its Notice of Final Open Access Transmission Service Tariff, protect transmission system reliability and service to its customers, ensure compliance with applicable environmental laws, and consider the Applicant's objective.

A Notice of Intent to prepare an environmental impact statement (EIS) was published in the **Federal Register** on February 18, 2005. Western held a scoping meeting to solicit public comments on the proposed Project in Hendricks, Minnesota, on March 1, 2005. In addition, the Applicant has been communicating and meeting with area landowners throughout development of the proposed Project, as part of lease negotiations. On August 18, 2006, the U.S. Environmental Protection Agency published a notice in the **Federal Register**, announcing the availability of the Draft EIS. Western held an Open House and Public Hearing on September 14, 2006, to solicit public comments on the Draft EIS. For both the initial scoping meeting and subsequent Open House/Public Hearing, Western provided notice of the meetings to Federal, State, and local agencies, Tribes, and the public, with print media, local newspapers announcements, and direct mailings. Western accepted public comments on the Draft EIS August 18 through October 2, 2006. The Notice of Availability of the Final EIS was published in the **Federal Register** on April 13, 2007.

Western decided to grant the Applicant's request to interconnect to its transmission system at the White Substation. This decision is based on a review of the potential environmental impacts of the Project. Western considered proposed mitigation measures as part of the proposed Project to determine impacts.

**Alternatives**

Western analyzed the Proposed Action and No Action alternatives in the EIS. Western considered alternative sites for the Project but dismissed them from consideration, as no viable alternative locations were identified. Therefore, Western limited its analysis to the proposal the Applicant submitted for approval.

*Proposed Action*

Under the Proposed Action, the Applicant would construct up to 103 2–MW WTGs with a net capacity of 200 MW. The Applicant would also construct underground and overhead electrical collector lines; a new Project substation; a line interconnecting its Project substation to Western's White Substation; and associated facilities. The Applicant proposes to construct or improve approximately 22 miles of roads for access to the WTGs and electrical collector lines.

The Project would temporarily disturb approximately 626 acres of land during construction of the proposed Project. It would permanently disturb about 93 acres for installation of Project components (access roads, turbine and crane pads, overhead poles, and new substation). The disturbed areas would be dispersed throughout the Project Area.

The Applicant would mount each WTG on a single steel self-supporting tower, approximately 255 feet high. The towers would be approximately 16 feet in diameter at the base and secured to concrete foundations. The housing, mounted at the top of each tower, would enclose the electric generator, a voltage step-up transformer, and a gearbox. Each WTG rotor would have three blades made of laminated glass and carbon fiber. The full WTG height at its tallest point would be approximately 400 feet from the ground to the tip of the turbine blade. The Applicant would paint the towers a flat neutral color to blend into the natural environment.

The Applicant proposes to construct the new Project substation adjacent to Western's existing White Substation. The substation would have a footprint of no more than 1 acre. The Applicant would construct the substation on private land immediately north of White Substation.

The network of underground and overhead 34.5-kV collector lines would interconnect the WTGs. Approximately 45 miles of underground 34.5-kV sub-

transmission collection line and approximately nine miles of overhead 34.5-kV collector line would be needed. The Applicant would bury the underground electric collection line at least four feet below grade. The underground collection line would link each turbine to the next one or to the overhead lines, which would in turn, connect to the substation. The Applicant would construct the overhead lines within public road rights-of-way. The overhead lines would be supported on wooden single-pole structures, approximately 25 to 30 feet tall and spaced approximately 150 feet apart along road rights of way.

A temporary staging area would be developed on approximately eight acres of tilled farmland. While the location of the staging area is not final, the Applicant expects that it would be located near the proposed Project substation. This staging area would be used by the Applicant for construction safety meetings, office trailers, parking for equipment and vehicles, and staging for some project components.

To accommodate interconnection of the proposed Project to Western's substation, the Applicant would construct a 345-kV overhead connection line from the proposed Project substation to the White Substation. The new overhead line would terminate on a steel structure inside the White Substation. Western would install a sulfur hexafluoride (SF6), gas-insulated power circuit breaker; two high-voltage disconnect switches; and other miscellaneous equipment at the White Substation. Western would monitor the use, storage, and replacement of SF6 to minimize releases to the environment.

The Applicant anticipates an 8-month construction schedule. This schedule is subject to negotiations with regulatory agencies and utilities and may change. With the exception of the overhead lines within public road right of way, the Applicant would construct the proposed Project on privately-owned lands, according to landowner agreements and in compliance with county, State, and Federal requirements. The Applicant has obtained all necessary leases from private landowners to construct and operate the proposed Project up to 20 years. The Applicant would have the option to renew leases at the end of the 20-year agreements. Depending on wind turbine technology and market conditions at the end of the lease period, the Applicant may decommission the project or update it with more efficient components and renew lease agreements.

Following construction, the Applicant would reclaim areas not maintained as permanent facilities to their prior land use. The Applicant would reseed disturbed vegetation in non-agricultural areas in accordance with landowner agreements or local county extension service protocols.

During operation and maintenance, the Applicant would continuously monitor the WTGs for any abnormalities. If required, maintenance staff would be dispatched to repair WTGs. The Applicant would conduct routine maintenance of the WTGs every six months. Maintenance activities include lubrication and inspection of WTG components and fasteners. The WTGs have a design life of 20 years. Occasionally, a crane may be necessary to remove and replace turbine components. In this event, the Applicant would conduct all construction activity within previously disturbed areas.

During operation of the proposed Project substation, authorized personnel would conduct periodic inspections and service and repair equipment as needed. Substation equipment would include a step-up transformer, $SF_6$ circuit breakers, switchgears, and other electrical equipment. Project personnel would monitor the use, storage, and replacement of $SF_6$ to minimize releases to the environment.

Within 120 days of the completion of Project construction, the Applicant would submit a Decommissioning Plan to the Brookings County Planning and Zoning Department. The Decommissioning Plan would outline the manner in which decommissioning activities would be conducted. Upon termination of operations, and if the WTGs are not updated, the Applicant would be obligated to dismantle and remove all Project components. Unless written approval is given by the affected landowner, all Project components would be removed to a depth of 48 inches below grade and the soil would be restored to a condition reasonably similar to the condition of the surrounding soil.

Western completed wetland surveys to determine the presence of jurisdictional and non-jurisdictional wetlands in the Project Area. The U.S. Army Corps of Engineers has determined that the majority of streams and wetlands in the Project Area are jurisdictional waters of the United States. The Applicant's final site design would avoid all wetlands, both jurisdictional and non-jurisdictional. The Applicant would apply for appropriate permits for utility line activities, including access roads administered under section 404 of the Clean Water Act. These would contain general and permit-specific mitigation conditions for areas where the proposed access roads and utility lines would impact jurisdictional waters of the United States. The Applicant would employ directional boring techniques where underground collector systems would require a stream or wetland crossing. The use of directional boring would reduce erosion and/or sedimentation impacts. The Applicant would use Best Management Practices such as installing silt fencing to ensure that sediment or fill material does not impact adjacent waterways.

*No Action Alternative*

Under the No Action Alternative, Western would not grant the Applicant's request to interconnect to Western's transmission system, and the Applicant would not build the Project. Without the Project, existing environmental conditions would remain unchanged.

*Environmentally Preferred Alternative*

Western evaluated the alternatives to determine which is environmentally preferred, as required under 40 CFR 1505.2(b). The No Action Alternative is the environmentally preferred alternative, because no new disturbance would result. No impacts to environmental or social resources would occur. The No Action Alternative would not, however, meet the Applicant's objective.

**Mitigation Measures**

The Applicant has committed to minimize potential short-term and long-term environmental and social impacts of the Proposed Action through project design, which includes implementation of mitigation measures. These measures are consolidated in Appendix B of the Final EIS.

The Applicant, in consultation with Western, developed a monitoring plan to collect data on avian collisions with WTGs. Western and the Applicant would continue to coordinate with the U.S. Fish and Wildlife Service (USFWS) to ensure adequacy of the plan. Through such monitoring, the Applicant and Western would be able to identify and implement reasonable operational changes or additional mitigation measures to further reduce avian and bat mortality. Western and the Applicant are working with the USFWS to identify thresholds for making appropriate changes. Surveys associated with the monitoring plan include 1 year prior to construction to establish baseline data and 2 years following operational start-up. The Applicant would develop additional mitigation

measures in consultation with the appropriate regulatory agency, if needed.

Western will develop a Mitigation Action Plan (MAP) to provide additional information on how mitigation measures, associated with the proposed Project, would be implemented. The MAP would be developed and made available prior to any project activities directed by this Record of Decision (ROD) that are subject to a mitigation commitment.

**Consultation**

Western is the lead Federal agency for compliance with Section 106 of the National Historic Preservation Act (NHPA) and Tribal consultation for all components of the Project. The Applicant would avoid all archaeological and traditional cultural properties determined significant in consultation with the South Dakota State Historic Preservation Officer (SHPO) and interested Tribes. Western prepared a Programmatic Agreement (PA) in coordination with the South Dakota SHPO. The PA was executed on December 18, 2006. It establishes the Area of Potential Effect for the proposed Project, proposes a treatment plan for identified resources, describes procedures for unanticipated discoveries, sets forth procedures for Tribal consultation, and suggests general mitigation measures. The PA ensures that there would be no ''unmitigatable'' adverse effects on historic properties as defined under the NHPA. The Applicant would avoid areas containing identified resources.

Western is also the lead for compliance with Section 7 of the Endangered Species Act. Western prepared a biological assessment and submitted it to the USFWS. Western determined that the project may affect but is not likely to adversely affect the western prairie fringed orchid, the Topeka shiner, and the bald eagle and is not likely to affect the Dakota skipper. The USFWS responded with a letter of concurrence on May 30, 2006, and an e-mail on May 31, 2007. Western reviewed additional literature and conducted field reconnaissance to supplement this analysis. Western may conduct further field studies prior to construction as a component of the Applicant's monitoring study. Western will continue to consult informally with the USFWS.

**Floodplain Statement of Findings**

Western prepared a floodplain assessment in the EIS according to 10 CFR part 1022. The assessment can be found in the Draft EIS along with project maps. The Federal Emergency Management Agency has not updated the Flood Insurance Rate Maps for this portion of South Dakota to reflect 500-year floodplains. One-hundred-year floodplains occur along Deer Creek and along several unnamed streams in the Project Area. The floodplains are generally confined to the streambed and immediately adjacent, low-lying areas. The floodplains associated with the ephemeral streams generally range from 200 to 500 feet in width. The Deer Creek floodplain ranges from approximately 400 to 1,500 feet in width. On-site or off-site flooding would not result from construction and operation of the proposed Project. The Applicant would not construct WTGs in floodplains. Implementation of county-approved design standards for areas of concentrated flow would ensure that on-site or off-site flooding does not occur.

**Decision**

Western decided to grant the Applicant's request to interconnect with Western's transmission system at the White Substation. The Proposed Action would meet the Applicant's objectives for the Project. Construction, operation, and maintenance of the proposed Project would not result in significant, short-or long-term environmental impacts. The Applicant would employ all practical means to avoid or minimize environmental harm as a result of the proposed Project.

This ROD meets the requirements of NEPA as well as the Council on Environmental Quality and DOE's NEPA implementing regulations. Additional analyses may affect this decision and result in subsequent analysis or decisions. Western will notify the public of any additional activities necessary to meet Western's NEPA and other public involvement requirements.

Dated: June 22, 2007.

**Timothy J. Meeks,**

*Administrator.*

[FR Doc. E7–13328 Filed 7–9–07; 8:45 am]

BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8337–7]**

## Coastal Elevations and Sea Level Rise Advisory Committee Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** Under the Federal Advisory Committee Act (Pub. L. 92–463), EPA gives notice of a public meeting of the Coastal Elevations and Sea Level Rise Advisory Committee (CESLAC).

**DATE AND TIME:** The meeting will be held on Friday, July 27, 2007, from 12:30 p.m. until 3:30 p.m.

**ADDRESSES:** The meeting will take place via teleconference. Interested parties can access the teleconference as follows. First, dial the following toll free number: (866) 299–3188. Second, enter the following conference code: 2023439719#. The leader will begin the conference call.

**FOR FURTHER INFORMATION CONTACT:** Jack Fitzgerald, Designated Federal Officer, Climate Change Division, Mail Code 6207J, Office of Atmospheric Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; e-mail address: *Fitzgerald.jack@epa.gov*, telephone number (202) 343–9336, fax: (202) 343–2337.

**SUPPLEMENTARY INFORMATION:** The purpose of CESLAC is to provide advice on the conduct of a study titled Coastal Elevations and Sensitivity to Sea Level Rise which is being conducted as part of the U.S. Climate Change Science Program (CCSP). The study pays particular attention to the coastal area of the U.S. from the state of New York through North Carolina. A copy of the study prospectus is available at: *http://www.climatescience.gov/Library/sap/sap4–1/default.php.* A copy of the Committee Charter is available at *http://www.fido.gov/facadatabase/.* This is the third meeting of CESLAC. The meeting will focus on consideration of a draft of the study. Draft materials that will be considered in the meeting can be found at: *http://www.environmentalinformation.net/CESLAC/* as of Friday, July 13, 2007. If a printed copy of the material is needed, please contact Ms. Beth Scherer by: (1) E-mail at *BScherer@stratusconsulting.com*; (2) phone at (202) 466–3731, ext. 20; (3) mail at Stratus Consulting, 1920 L St., NW., Suite 420, Washington, DC 20036. Based on the extent of public participation in the first two meetings of CESLAC, thirty minutes of this third meeting will be allocated for statements by members of the public. Individuals who are interested in making statements should inform Jack Fitzgerald of their interest by Tuesday, July 24, and provide a copy of their statements for the record. Individuals will be scheduled in the order that their statements of intent to present are received. A minimum of three minutes

will be provided for each statement. The maximum amount of time will depend on the number of statements to be made. All statements, regardless of whether there is sufficient time to present them orally, will be included in the record and considered by the committee.

**List of Subjects**

Environmental protection.

Dated: July 3, 2007.

**Jack Fitzgerald,**

*Designated Federal Officer.*

[FR Doc. E7–13340 Filed 7–9–07; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–ORD–2007–0243; FRL–8337–9]**

## Board of Scientific Counselors, Ecological Research Program Mid-Cycle Review Meeting—Summer 2007

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of one meeting of the Board of Scientific Counselors (BOSC) Eco Mid-Cycle Subcommittee.

**DATES:** The meeting (a teleconference call) will be held on Monday, July 30, 2007, from 10 a.m. to 12 p.m. All times noted are eastern time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to 1 business day before the meeting.

**ADDRESSES:** Participation in the conference call will be by teleconference only—a meeting room will not be used. Members of the public may obtain the call-in number and access code for the call from Heather Drumm, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–0243, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2007–0243.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2007–0243.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, Ecological Mid-Cycle Subcommittee Meeting—Spring 2007 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA–HQ–ORD–2007–0243.
- *Hand Delivery or Courier:* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2007–0243. Note: this is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0243. 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 information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the 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 Board of Scientific Counselors, Ecological Mid-Cycle Subcommittee Meeting—Spring 2007 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

**FOR FURTHER INFORMATION CONTACT:** The Designated Federal Officer via mail at: Heather Drumm, Mail Drop 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1300 Pennsylvania Ave., NW., Washington, DC 20460; via phone/voice mail at: (202) 564–8239; via fax at: (202) 565–2911; or via e-mail at: *drumm.heather@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meeting may contact Heather Drumm, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the meeting include, but are not limited to, finalizing the subcommittee's draft report and discussing the rating component for the Eco research program. The meeting is open to the public.

*Information on Services for Individuals With Disabilities:* For information on access or services for individuals with disabilities, please contact Heather Drumm at (202) 564–8239 or *drumm.heather@epa.gov.* To request accommodation of a disability, please contact Heather Drumm, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: July 3, 2007.

**Mary Ellen Radzikowski,**

*Acting Director, Office of Science Policy.*

[FR Doc. E7–13337 Filed 7–9–07; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8338–3]**

### SES Performance Review Board; Membership

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the membership of the EPA Performance Review Board

**FOR FURTHER INFORMATION CONTACT:** Arnold E. Layne, Director, Executive Resources Division, 3606A, Office of Human Resources, Office of Administration and Resources Management, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–3944.

**SUPPLEMENTARY INFORMATION:** Section 4314 (c)(1) through (5) of Title 5, U.S.C., requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. This board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointment authority relative to the performance of the senior executive.

Members of the EPA Performance Review Board are:

Kenneth T. Venuto (Chair), Director, Office of Human Resources, Office of Administration and Resources Management,
George W. Alapas, Deputy Director for Management, National Center for Environmental Assessment, Office of Research and Development,
Kerrigan G. Clough, Deputy Regional Administrator, Region 8,
Howard F. Corcoran, Director, Office of Grants and Debarment, Office of Administration and Resources Management,
Alexander Cristofaro, Director, Office of Regulatory Policy and Management, Office of the Administrator,
Joan Fidler, Director, Office of Western Hemisphere and Bilateral Affairs, Office of International Affairs,
Nanci E. Gelb, Deputy Director, Office of Ground Water and Drinking Water, Office of Water,
Robin L. Gonzalez, Director, National Technology Services Division-RTP, Office of Environmental Information,
Gregory A. Green, Deputy Director, Office of Air Quality Planning and Standards, RTP, Office of Air and Radiation,
Sally C. Gutierrez, Director, National Risk Management Research Laboratory, Cincinnati, Office of Research and Development,
Karen D. Higgenbotham (Ex-Officio), Director, Office of Civil Rights, Office of the Administrator,
James J. Jones, Principal Deputy Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances,
Nancy J. Marvel, Regional Counsel, Region 9, Office of Enforcement and Compliance Assurance,
Kathleen S. O'Brien, Deputy Director, Office of Planning, Analysis, and Accountability, Office of the Chief Financial Officer,
James T. Owens III, Director, Office of Administration and Resources Management, Region 1
George Pavlou, Director, Emergency and Remedial Response Division, Region 2
Stephen G. Pressman, Associate General Counsel (Civil Rights), Office of General Counsel,
Cecilia M. Tapia, Director, Superfund Division, Region 7,
James Woolford, Director, Office of Superfund Remediation and Technology Innovation, Office of Solid Waste and Emergency Response,
Arnold E. Layne (Executive Secretary), Director, Executive Resources Division, Office of Human Resources, Office of Administration and Resources Management.

Dated: June 28, 2007.

**Sherry A. Kaschak,**

*Acting Assistant Administrator for Administration and Resources Management.*

[FR Doc. E7–13335 Filed 7–9–07; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8338–1]**

### Notice of Proposed Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), notice is hereby given of a proposed administrative cost recovery settlement under section 122(h)(1) of CERCLA concerning the Imel Battery and Lead Site in Fort Wayne, Indiana which was signed by the EPA Superfund Division Director, Region 5, on April 13, 2007. The settlement resolves EPA's claim for past costs under section 107(a) of CERCLA against Agnes Imel and Tyrone Sanders, the two current owners of the Site (Settling Parties).

EPA has determined that the Settling parties are financially able to pay a portion of EPA's past costs if Settling Parties sell certain real property at the Site. The settlement requires the Settling Parties to use their best efforts to sell the real property at the Site and to pay to the Hazardous Substances Superfund a percentage of the proceeds from the sale of the real estate minus reasonable closing costs. The payments are due within 30 days of the transfers. If both properties sell for approximately their fair market value, the Settling Parties' payments to the Hazardous Substances Superfund will be approximately $70,000.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Superfund Records Center, located at 77 West Jackson Boulevard, Seventh Floor, Chicago, Illinois.

**DATES:** Comments must be submitted on or before August 9, 2007.

**ADDRESSES:** The proposed settlement and additional background information relating to the settlement are available for public inspection at the Superfund Records Center, located at 77 West Jackson Boulevard, Seventh Floor, Chicago, Illinois. A copy of the proposed settlement may be obtained from the Superfund Records Center, located at 77 West Jackson Boulevard, Seventh Floor, Chicago, Illinois. Comments should reference the Imel Battery and Lead Site and EPA Docket No. VW–07–C872 and should be addressed to Randa Bishlawi, Associate Regional Counsel, 77 West Jackson Boulevard (C–14J), Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Randa Bishlawi, Associate Regional Counsel, 77 West Jackson Boulevard (C–14J), Chicago, Illinois 60604.

Dated: June 29, 2007.

**Richard C. Karl,**

*Director, Superfund Divison, Region 5.*

[FR Doc. E7–13341 Filed 7–9–07; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2007–0490; FRL–8139–7]**

## TSCA Section 21 Petition on Nonylphenol and Nonylphenol Ethoxylates; Notice of Receipt

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces that EPA has received a petition under section 21 of the Toxic Substances Control Act (TSCA) and requests comments on issues raised by the petition. The petition was received from the Sierra Club, the Environmental Law & Policy Center, the Pacific Coast Federation of Fishermen's Association, the Washington Toxics Coalition, Physicians for Social Responsibility, and UNITE HERE on June 6, 2007. The petitioners are concerned about the risks to human health and the environment from exposure to the chemical substances nonylphenol (NP) and nonylphenol ethoxylates (NPE) and are petitioning EPA to exercise its authority under TSCA section 4 to require manufacturers and importers to conduct specific health and safety studies, and under TSCA section 6(a) to require labeling on all products containing NP and NPE and to limit the use of NP and NPE in certain circumstances. EPA must either grant or deny a TSCA section 21 petition within 90 days of receipt of the petition and will, therefore, respond to this petition by September 4, 2007.

**DATES:** Comments must be received on or before July 25, 2007.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2007–0490, by one of the following methods:

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

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2007–0490. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPPT–2007–0490. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

*Docket*: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact*: Colby Linter, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

*For technical information contact*: Mary Dominiak or John Schaeffer, Chemical Control Division (7405M), Office Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8104 or (202) 564–8167; e-mail address: *dominiak.mary@epa.gov* or *schaeffer.john @epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you manufacture, import, or distribute in commerce NP or NPE. Potentially affected entities may include, but are not limited to:

• Chemical manufacturers (including importers) (NAICS codes 325, 32411, e.g. chemical manufacturing and petroleum refineries) of one or more of the subject chemicals.

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

this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

**II. Background**

*A. What is a TSCA Section 21 Petition?*

TSCA section 21 allows citizens to petition EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under TSCA sections 4, 6, or 8 or of an order under TSCA sections 5(e) or 6(b)(2). A TSCA section 21 petition must set forth facts that the petitioner believes establish the need for the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, EPA must promptly commence an appropriate proceeding. If EPA denies the petition, EPA must publish its reasons for the denial in the **Federal Register**. Within 60 days of denial, or expiration of the 90–day period if no action is taken, the petitioner may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking proceeding.

*B. What Action is Requested Under this TSCA Section 21 Petition?*

On June 6, 2007, the Sierra Club, the Environmental Law & Policy Center, the Pacific Coast Federation of Fishermen's Association, the Washington Toxics Coalition, Physicians for Social Responsibility, and UNITE HERE petitioned EPA to take action under TSCA sections 4 and 6(a). The petitioners requested that EPA exercise its authority under TSCA section 4 to require manufacturers and importers to conduct specific health and safety studies and under TSCA section 6(a) to require labeling on all products containing NP and NPE and to limit the use of NP and NPE in certain circumstances.

Specifically, the petition requested that EPA require testing under TSCA section 4 for:

- ''filling the gaps for chronic toxicity of NPE oligomers;''
- ''filling the gaps regarding the additive toxicity of NP and NPE oligomers to [aquatic] species;''
- ''research on individual endocrine disruption impacts and on the relationship between individual endocrine disruption impacts and pollution-level impacts;''
- ''testing for vitellogen gene expression;''
- ''testing related to levels of NP and NPE in humans and estrogenic effects in humans;''
- ''testing for health impacts on workers handling the chemicals at industrial laundries;'' and
- ''testing for determine[ing] exposure to NPE in residential indoor air.''

The petition also requested that EPA take action under TSCA section 6(a) to:

- ''require labeling on all products containing the chemical;''
- ''restrict the use of the chemicals where the user cannot verify that the chemical will receive proper treatment from an activated sludge treatment process designed to nitrify;''
- ''ban the use of the chemicals in industrial and consumer detergents;'' and
- ''require pollution prevention planning by facilities that use 2000 kg or more of NP or NPEs.''

*C. EPA Seeks Public Comment*

Under TSCA section 21, which is applicable to requests for rulemaking proceedings under TSCA sections 4 and 6(a), EPA must either grant or deny a petition within 90 days. Because EPA must respond to the requests for action under TSCA sections 4 and 6(a) by September 4, 2007, EPA will allow the public until July 25, 2007 to reply with any additional information relevant to the issues identified in the petition, a copy of which can be obtained from the public docket (see **ADDRESSES**).

In assessing the usability of any data or information that may be submitted, EPA plans to follow the guidelines in EPA's ''A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information'' (EPA 100/B–03/001), referred to as the ''Assessment Factors Document.'' The ''Assessment Factors Document'' published in the **Federal Register** of July 1, 2003 (68 FR 39086) (FRL–7520–2) and is available on-line at: *http://www.epa.gov/fedrgstr/EPA-GENERAL/2003/July/Day-01/g16328.htm*. That document is also available on-line at: *http://www.epa.gov/osa/spc/assess.htm*.

**List of Subjects**

Environmental protection, Hazardous substances.

Dated: July 2, 2007.

**James B. Gulliford,**

*Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

[FR Doc. E7–13336 Filed 7–9–07; 8:45 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8338–2]**

## Extension of Public Notice Comment Period for the Re-proposal of the Reissuance of Two General NPDES Permits (GPs), One for Aquaculture Facilities in Idaho Subject to Wasteload Allocations Under Selected Total Maximum Daily Loads (Permit Number IDG–13–0000) and One for Fish Processors Associated With Aquaculture Facilities in Idaho (Permit Number IDG–13–2000)

**AGENCY:** Environmental Protection Agency.

**ACTION:** Extension of Public Comment Period on two draft general NPDES

permits for Idaho aquaculture facilities and associated fish processors.

**SUMMARY:** On June 7, 2007, EPA Region 10 re-proposed to reissue two general permits to cover aquaculture facilities and associated fish processors in Idaho (72 FR 31574). In response to a request from the regulated community, EPA is extending the end of public comment period from July 9, 2007, to July 23, 2007.

**DATES:** The end of the public comment period in now extended to July 23, 2007. Comments must be received or postmarked by that date.

*Public Comment:* Interested persons may submit written comments on the draft permits to the attention of Sharon Wilson at the address below. All comments should include the name, address, e-mail address (if applicable), and telephone number of commenter and a concise statement of comment and the relevant facts upon which it is based. Comments of either support or concern, which are directed at specific, cited permit requirements, are appreciated. After the expiration date of the public notice on July 23, 2007, the Director of the EPA Region 10 Office of Water and Watersheds will make a final determination with respect to issuance of the general permits. Response to comments from both the 2006 and 2007 public comment periods will be published with the final permits. The requirements proposed in the draft general permits or modified as a result of comments will become final at least 30 days after publication of the final permits in the **Federal Register**.

**ADDRESSES:** Comments on the proposed general permits should be sent to Sharon Wilson, USEPA Region 10, 1200 6th Avenue, OWW–130, Seattle, Washington 98101 or by e-mail to *wilson.sharon@epa.gov.*

**FOR FURTHER INFORMATION, CONTACT:** Carla Fromm at 208–378–5755 or *fromm.carla@epa.gov* or Sharon Wilson at 206–553–0325 or *wilson.sharon@epa.gov.* The supplemental fact sheet for this public comment period, as well as the draft permits and fact sheet for the 2006 public comment period, may be found on the Region 10 Web site at: *http://yosemite.epa.gov/R10/WATER.NSF/NPDES+Permits/General+NPDES+Permits#Aquaculture.* They are also available upon request from Audrey Washington at (206) 553–0523 or at *washington.audrey@epa.gov.* For information on physical locations in Idaho and Seattle where the documents may be viewed, see the June 7, 2007, notice at 71 FR 31574.

Dated: July 2, 2007.

**Michael F. Gearheard,**

*Director, Office of Water and Watersheds, U.S. Environmental Protection Agency.*

[FR Doc. E7–13343 Filed 7–9–07; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8337–8]**

### Public Water Supply Supervision Program; Program Revision for the State of Alaska

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of tentative approval.

**SUMMARY:** Notice is hereby given that the State of Alaska has revised its approved State Public Water Supply Supervision (PWSS) Primacy Program. The state has revised its PWSS program with respect to administrative penalty authority and has adopted a revised definition of public water system. It has also adopted regulations for variances and exemptions, the Consumer Confidence Report, the Interim Enhanced Surface Water Treatment Rule, the Stage 1 Disinfectants and Disinfection Byproducts Rule, the Lead and Copper Rule Minor Revisions, the Public Notification Rule, the Radionuclides Rule, the Filter Backwash Recycling Rule, the Long Term 1 Enhanced Surface Water Treatment Rule, and the Arsenic Rule. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these State program revisions. By approving these rules, EPA does not intend to affect the rights of Federally recognized Indian tribes within ''Indian country'' as defined by 18 U.S.C. 1151, nor does it intend to limit existing rights of the State of Alaska.

All interested parties may request a public hearing. A request for a public hearing must be submitted by August 9, 2007, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by August 9, 2007, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective on August 9, 2007. Any request for a public hearing shall include the following information:

(1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

**ADDRESSES:** All documents relating to this determination are available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, at the following offices: Alaska Department of Environmental Conservation (ADEC), 410 Willoughby, Suite 303, Juneau, Alaska 99801; ADEC South Central Regional Office, 555 Cordova Street, Anchorage, Alaska 99501; ADEC Northern Regional Office, 610 University Avenue Fairbanks, Alaska 99709–3643; and between the hours of 9 a.m.—noon and 1—2:30 p.m., Monday through Friday at: U.S. Environmental Protection Agency, Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101.

**FOR FURTHER INFORMATION CONTACT:** Wendy Marshall, EPA Region 10, Drinking Water Unit, at the Seattle address given above; telephone (206) 553–1890, e-mail *marshall.wendy@epa.gov.*

**Authority:** Section 1420 of the Safe Drinking Water Act, as amended (1996), and 40 CFR Part 142 of the National Primary Drinking Water Regulations.

Dated: June 25, 2007.

**Elin D. Miller,**

*Regional Administrator. Region 10.*

[FR Doc. E7–13338 Filed 7–9–07; 8:45 am]

BILLING CODE 6560–50–P

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### Aeronautics Science and Technology Subcommittee Committee on Technology; National Science and Technology Council

**ACTION:** Notice of Meeting—Public Consultation on the National Aeronautics Research and Development Plan and Related Infrastructure Plan.

**SUMMARY:** The Aeronautics Science and Technology Subcommittee (ASTS) of the National Science and Technology Council's (NSTC) Committee on Technology will hold a public meeting to discuss development of the National

Aeronautics Research and Development (R&D) Plan and the related Aeronautics Research, Development, Test and Evaluation (RDT&E) Infrastructure Plan. Executive Order (E.O.) 13419—National Aeronautics Research and Development—signed December 20, 2006, calls for the development of these Plans within one year. The Plans are to be guided by the National Aeronautics R&D Policy that was developed by the NSTC and endorsed by E.O. 13419.

**DATES AND ADDRESSES:** The meeting will be held on Monday, July 30, 2007, from 1:30 p.m. to 4 p.m. in the NASA Ames Conference Center, Building 3, 500 Severyns Road, NASA Ames Research Center, Moffett Field, CA 94035. Please enter through the NASA Research Park Gate located on Moffett Blvd./NASA Parkway and follow the signs to the NASA Ames Conference Center. Participants will need to show valid, government-issued, photo identification and state that they are going to the NASA Ames Conference Center. Driving directions and additional information about the NASA Ames Conference Center can be found at: *http://naccenter.arc.nasa.gov/*. Doors will open at 12:30 p.m. Registration is required because seating is limited and will be on a first come, first served basis.

*Registration Requests:* Registration requests (including your name, address, and phone number) should be submitted to Jon Montgomery, Office of Aerospace and Automotive Industries, Room 4020, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482–3353, or email your request to *Jon.Montgomery@mail.doc.gov*. Registration requests should be submitted no later than 3 p.m. (EST) on Wednesday, July 25, 2007.

**SUPPLEMENTARY INFORMATION:**

E.O. 13419 and the National Aeronautics R&D Policy call for executive departments and agencies conducting aeronautics R&D to engage industry, academia and other non-Federal stakeholders in support of government planning and performance of aeronautics R&D. At this meeting, ASTS members will discuss the structure and content of the National Aeronautics R&D Plan and related Aeronautics RDT&E Infrastructure Plan. The main purpose of the meeting is to obtain facts and information from individuals on the national aeronautics R&D goals and objectives related to: mobility; national defense; aviation safety; aviation security; energy and the environment; and, aeronautics research, development, test and evaluation infrastructure.

Additional information and links to E.O. 13419 and the National Aeronautics R&D Policy are available by visiting the Office of Science and Technology Policy's NSTC Web site at: *http://www.ostp.gov/nstc/aeroplans* or by calling 202–456–6046.

**M. David Hodge,**

*Operations Manager, OSTP.*

[FR Doc. E7–13374 Filed 7–9–07; 8:45 am]

BILLING CODE 3170–W7–P

## FARM CREDIT ADMINISTRATION

### Sunshine Act; Farm Credit Administration Board; Regular Meeting

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 12, 2007, from 9 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

**Open Session**

*A. Approval of Minutes*

- June 14, 2007 (Open and Closed).

*B. New Business*

1. Regulations

- Annual Report to Shareholders—12 CFR Part 620—Proposed Rule.

2. Other

- Consolidation of Farm Credit Services of Grand Forks, ACA with AgCountry Farm Credit Services, ACA.

3. Reports

- OE Quarterly Report.

**Closed Session***

- OE Supervisory and Oversight Activities.

Dated: July 6, 2007.

**Roland E. Smith,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 07–3380 Filed 7–6–07; 1:45 pm]

BILLING CODE 6705–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 6, 2007.

**A. Federal Reserve Bank of Atlanta** (David Tatum, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

*1. Tennessee Bancshares, Inc.*; to become a bank holding company by acquiring 100 percent of the voting shares of the Bank of Tullahoma, both of Tullahoma, Tennessee.

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

**B. Federal Reserve Bank of Chicago** (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

*1. Abby Bancorp, Inc.*; to become a bank holding company by acquiring 100 percent of the voting shares of Abbybank, both of Abbotsford, Wisconsin.

**C. Federal Reserve Bank of St. Louis** (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

*1. Central Bancompany, Inc.*, Jefferson City, Missouri; to acquire 100 percent of the voting shares of Metcalf Bancshares, Inc., and thereby indirectly acquire voting shares of Metcalf Bank, both of Overland Park, Kansas.

Board of Governors of the Federal Reserve System, July 5, 2007.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E7–13314 Filed 7–9–07; 8:45 am]

BILLING CODE 6210–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP); Provider and Public Health Input for Vaccine Policy Decisions, Potential Extramural Project (PEP), 2007–R–04

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

*Time and Date:* 12 p.m.–1:30 p.m., July 18, 2007 (Closed).

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters To Be Discussed:* The meeting will include the review, discussion, and evaluation of applications received in response to PEP 2007–R–04, ''Provider and Public Health Input for Vaccine Policy Decisions.''

Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting. This panel will reconvene to review applications that were not submitted for inclusion in the review process. The date for these panels had to be moved to a time when all panel members were available and with enough time to conduct secondary review and make appropriate funding decisions before the end of the fiscal year.

*For Further Information Contact:* Christine J. Morrison, PhD, Scientific Review Administrator, Office of the Chief Science Officer, CDC, 1600 Clifton Road, NE., Mailstop D–72, Atlanta, GA 30333, Telephone (404) 639–3098.

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.

**Edward Schultz,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E7–13327 Filed 7–9–07; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): The Sexual Networks of African American STI Repeaters; An Elaboration of Risk, Potential Extramural Project (PEP) 2007–R–01 and Dynamic Mathematical Modeling of Sexual Transmission of C. Trachomatis Transmission in the United States, Evaluating Impact on Prevention Strategies on Chlamydial Incidence, Prevalence and Sequelae, PEP 2007–R–02

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

*Time and Date:* 10 a.m.–12 p.m., July 16, 2007 (Closed).

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters To Be Discussed:* The meeting will include the review, discussion, and evaluation of ''The Sexual Networks of African American STI Repeaters, an Elaboration of Risk,'' PEP 2007–R–01, and ''Dynamic Mathematical Modeling of Sexual Transmission of C. Trachomatis Transmission in the United States, Evaluating Impact on Prevention Strategies on Chlamydial Incidence, Prevalence and Sequelae,'' PEP 2007–R–02.

Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting. This panel will reconvene to review applications that were not submitted for inclusion in the review process. The date for these panels had to be moved to a time when all panel members were available and with enough time to conduct secondary review and make appropriate funding decisions before the end of the fiscal year.

*For Further Information Contact:* Susan Goodman, D.D.S., Scientific Review Administrator, Office of the Chief Science Officer, CDC, 1600 Clifton Road, NE., Mailstop D74, Atlanta, GA 30333, Telephone 404–639–4940.

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.

**Edward Schultz,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E7–13329 Filed 7–9–07; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Supporting Healthy Marriage (SHM) Project: Control Services Survey.

*OMB No.:* New collection.

*Description:* The Administration for Children and Families (ACF), U.S. Department of Health and Human Services, is conducting a demonstration and evaluation called the Supporting Healthy Marriage (SHM) Project. Supporting Healthy Marriage is designed to inform program operators and policymakers of the most effective ways to help low-income married couples strengthen and maintain healthy marriages. In particular, the project will measure the effectiveness of marriage education programs by randomly assigning eligible volunteer couples to SHM program groups and control groups.

In order to conduct a strong test of the SHM program, the researchers must understand whether marriage education services similar to SHM are readily accessible to control group members elsewhere in the communities where SHM is offered. To measure the difference between services received by the program group and control group, the evaluator will administer a brief survey to participants in each SHM demonstration pilot site. The purpose of this survey is to identify the kinds of services that participants have received

over the last six months, either from the SHM program or from other agencies in the community. This survey will allow the research team to determine whether there is a sufficient differential between the services received by the participants in the program group and those in the control group to constitute a strong test of the SHM intervention.

*Respondents:* Low-income married couples with children.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| SHM Control Services Survey | 808 | 1 | .17 hrs | 137.4 |
| Estimated Total Annual Burden Hours: | | | | 137.4 |

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: July 5, 2007.

**Brendan C. Kelly,**

*OPRE Reports Clearance Officer.*

[FR Doc. 07–3337 Filed 7–9–07; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meetings:

*Name:* National Advisory Council on Migrant Health.

*Dates and Times:* July 30, 2007, 8:30 a.m. to 2 p.m. July 30, 2007, 3 p.m. to 7 p.m. (site visit). July 31, 2007, 8:30 a.m. to 5 p.m.

*Place:* Four Points Hotel by Sheraton, 3200 Boardwalk, Ann Arbor, Michigan 48108, Telephone: (734) 996–0600, Fax: (734) 996–8136.

*Status:* The meeting will be open to the public.

*Purpose:* The purpose of the meeting is to discuss services and issues related to the health of migrant and seasonal farmworkers and their families and formulate recommendations to the Secretary of Health and Human Services. There will also be a site visit to a local migrant seasonal farmworker site.

*Agenda:* The agenda includes an overview of the Council's general business activities. The Council will also hear presentations from experts on farmworker issues, including the status of farmworkers health at the local and national level.

In addition, the Council will be going on a site visit to speak to farmworkers at their worksite. The site visit is scheduled for July 30, 2007, from 3 p.m. to 7 p.m. at Potato Farm, Inc., 4800 Esch Road, Manchester, Michigan 48158; telephone (734) 428–8900, fax 734–428–7123.

Agenda items are subject to change as priorities indicate.

*For Further Information Contact:* Anyone requiring information regarding the Council should contact Gladys Cate, Office of Minority and Special Populations, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, Maryland 20857; telephone (301) 594–0367.

Dated: July 3, 2007.

**Alexandra Huttinger,**

*Acting Director, Division of Policy Review and Coordination.*

[FR Doc. E7–13345 Filed 7–9–07; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Review of Career Development/Research Award Applications.

*Date:* July 31, 2007.

*Time:* 1 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3200, Bethesda, MD 20817 (Telephone Conference Call).

*Contact Person:* Annie Walker-Abbey, PhD., Scientific Review Administrator, Scientific Review Program, NIH/NIAID/DEA/DHHS 6700B Rockledge Drive, RM 3266, MSC–7616, Bethesda, MD 20892–7617, 301–451–2671.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 2, 2007.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–3317 Filed 7–9–07; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel; Institutional National Research Service Award.

*Date:* July 31, 2007.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of General Medical Sciences, 45 Natcher Building, 45 Center Drive, Room 3AN18, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Brian R. Pike, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–3907, *pikbr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 2, 2007.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–3318 Filed 7–9–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; Anorexia Nervosa.

*Date:* July 30, 2007.

*Time:* 10 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* David I. Sommers, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; ITMA/ITSP Conflicts.

*Date:* August 1, 2007.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Christopher S. Sarampote, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892, 301–443–1959, *csarampo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 2, 2007.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–3319 Filed 7–9–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; early HIV Infection.

*Date:* August 9, 2007.

*Time:* 12 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3256, Bethesda, MD 20817 (Telephone Conference Call).

*Contact Person:* Ileana M. Ponce-Gonzalez, MD, MPH, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–3679, *ipgonzalez@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 2, 2007.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–3320 Filed 7–9–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Mentored Training Grant Applications.

*Date:* July 30, 2007.

*Time:* 2:30 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* John F. Connaughton, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 916, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughton@extra.niddk.nih.gov*.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Collaborative Interdisc. Res. Program in Diabetes, Endocrinology and Metabolic Diseases.

*Date:* July 31, 2007.

*Time:* 8:30 p.m. to 12:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *Is38oz@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 2, 2007.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–3321 Filed 7–09–07; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2006–24196]**

### Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Navigation and Vessel Inspection Circular (NVIC)

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Coast Guard announces the availability of a Navigation and Vessel Inspection Circular (NVIC) 03–07 ''Guidance for the Implementation of the Transportation Worker Identification Credential Program in the Maritime Sector''.

**DATES:** NVIC 03–07 is available at the locations noted in this notice beginning on July 6, 2007.

**ADDRESSES:** Information referenced in this notice, including NVIC 03–07 may be found in Coast Guard docket number USCG–2006–24196 and is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, the NVIC, or the TWIC final regulations, call LCDR Jonathan Maiorine, Commandant (CG–3PCP–2), United States Coast Guard, telephone 1–877–687–2243. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

**SUPPLEMENTARY INFORMATION:**

### Navigation and Vessel Inspection Circular (NVIC) 03–07

On January 25, 2007, the Coast Guard and Transportation Security Administration (TSA) issued a joint final rule ''Transportation Worker Identification Credential Implementation in the Maritime Sector; Hazardous Material Endorsement for a Commercial Driver's License,'' referred to as the TWIC final rule. *See* 72 FR 3492. That rule, which became effective in major part on March 26, 2007, made significant changes to 33 CFR Chapter I Subchapter H, 46 CFR Chapter I Subchapter B, and 49 CFR Chapter XII Subchapter D. The final rule implements requirements under the Maritime Transportation Security Act of 2002, as amended by the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), which requires, among other things, 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).

The Coast Guard has prepared NVIC 03–07, ''Guidance for the Implementation of the Transportation Worker Identification Credential Program in the Maritime Sector,'' to provide guidance to transportation workers, owners and operators, and merchant mariners on implementation of the new requirements. The information in this NVIC details the enrollment and issuance process, provides guidance for successful execution of compliance requirements, provides clarification of the regulations found in 33 CFR Parts 101 to 106 and 49 CFR Parts 1515, 1540, 1570 and 1572, and includes a more detailed discussion of the actions required by those regulations, with examples, to increase understanding and promote nationwide consistency. These guidelines are intended to help industry comply with the new regulations and the Coast Guard Captains of the Port (COTP) implement the TWIC Program.

### Availability

NVIC 03–07 is available in the docket for this notice at those places indicated under **ADDRESSES** above. It is also available at the following Web sites: Homeport (*http://homeport.uscg.mil*) and the U.S. Coast Guard NVIC index (*http://www.uscg.mil/hq/g-m/nvic/index00.htm*).

Dated: July 3, 2007.

**J.G. Lantz,**

*Acting Assistant Commandant for Prevention.*

[FR Doc. E7–13368 Filed 7–9–07; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1709–DR]**

### Texas; 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 Texas (FEMA–1709–DR), dated June 29, 2007, and related determinations.

*Effective Date:* June 29, 2007.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated June 29, 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 Texas resulting

from severe storms, tornadoes, and flooding during the period June 16–18, 2007, 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 Texas.

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 Individual Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. If Public Assistance is later warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kenneth Clark, 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 Texas to have been affected adversely by this declared major disaster:

Cooke, Coryell, Denton, Grayson, Lampasas, and Tarrant Counties for Individual Assistance.

All counties within the State of Texas 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, 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,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E7–13321 Filed 7–9–07; 8:45 am]

**BILLING CODE 9110–10–P**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Construction of a Single-Family-Home Subdivision

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice: receipt of application for an incidental take permit; request for comments.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce the availability of an incidental take permit (ITP) application and Habitat Conservation Plan (HCP). Eber Cove, LLC (applicant) requests an incidental take permit (ITP) for a duration of 5 years pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The applicant anticipates taking approximately 1.55 acre (ac) of Florida scrub-jay (*Alphelocoma coerulescens*)—occupied habitat incidental to constructing a single-family-home subdivision in Brevard County, Florida (project). The applicant's HCP describes the mitigation and minimization measures the applicant proposes to address the effects of the project to the scrub-jay.

**DATES:** We must receive any written comments on the ITP application and HCP on or before August 9, 2007.

**ADDRESSES:** If you wish to review the application and HCP, you may write the Field Supervisor at our Jacksonville Field Office, 6620 Southpoint Drive South, Suite 310, Jacksonville, FL 32216, or make an appointment to visit during normal business hours. If you wish to comment, you may mail or hand deliver comments to the Jacksonville Field Office, or you may e-mail comments to *erin_gawera@fws.gov*. For more information on reviewing documents and public comments and submitting comments, see **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Erin Gawera, Fish and Wildlife Biologist, Jacksonville Field Office (see **ADDRESSES**); telephone: 904/232–2580, ext. 121.

**SUPPLEMENTARY INFORMATION:**

### Public Review and Comment

Please reference permit number TE151089–0 for Eber Cove, LLC, in all requests or comments. Please include your name and return address in your e-mail message. If you do not receive a confirmation from us that we have received your e-mail message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. 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. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### Background

The Florida scrub-jay (scrub-jay) is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak-dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation, which have adversely affected the distribution and numbers of scrub-jays.

The total estimated population is between 7,000 and 11,000 individuals. The decline in the number and distribution of scrub-jays in east-central Florida has been exacerbated by tremendous urban growth in the past 50 years. Much of the historic commercial and residential development has occurred on the dry soils which previously supported scrub-jay habitat. Much of this area of Florida was settled early because few wetlands restricted urban and agricultural development. Due to the effects of urban and agricultural development over the past 100 years, much of the remaining scrub-jay habitat is now relatively small and isolated. What remains is largely degraded due to the exclusion of fire, which is needed to maintain xeric uplands in conditions suitable for scrub-jays.

## Applicant's Proposal

The applicant is requesting take of approximately 1.55 ac of occupied scrub-jay habitat incidental to the construction of a single-family-home subdivision. The project is located within Section 17, Township 28 South, Range 37 East, Melbourne, Brevard County, Florida, south of Eber Rd, west of the Eber Rd-Dairy Rd interchange.

Development of the project, including infrastructure and landscaping, precludes retention of scrub-jay habitat on site. Therefore, the applicant proposes to mitigate for the loss of 1.55 ac of occupied scrub-jay habitat by donating $31,043 to the Florida Scrub-jay Fund administered by The Nature Conservancy. Funds in this account are earmarked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and/or management.

We have determined that the applicant's proposal, including the proposed mitigation and minimization measures, would have minor or negligible effects on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and qualifies for categorical exclusions under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. A low-effect HCP is one involving (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

We will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the application meets those requirements, we will issue the ITP for incidental take of the Florida scrub-jay. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITP.

**Authority:** We provide this notice under Section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

Dated: June 10, 2007.

**David L. Hankla,**

*Field Supervisor, Jacksonville Field Office.*

[FR Doc. E7–13351 Filed 7–9–07; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Application From the Duckwater Shoshone Tribe, Nye County, Nevada for an Enhancement of Survival Permit for the Railroad Valley Springfish

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability, receipt of application

**SUMMARY:** The Duckwater Shoshone Tribe (Applicant) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The permit application includes a proposed Safe Harbor Agreement (SHA) between the Applicant and the Service. The SHA provides for voluntary habitat restoration, maintenance, and enhancement activities to implement the reintroduction and long-term recovery of Railroad Valley Springfish (*Crenichthys nevadae*) within Nye County, Nevada. The proposed duration of both the SHA and permit is 25 years.

The Service has made a preliminary determination that the proposed SHA and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). The basis for this determination is contained in an Environmental Action Statement and low-effect screening form, which are also is available for public review.

**DATES:** Written comments must be received by 5 p.m. on August 9, 2007.

**ADDRESSES:** Comments should be addressed to Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, Nevada, 89502, facsimile number (775) 861–6301 (see **SUPPLEMENTARY INFORMATION**, Public Review and Comment).

**FOR FURTHER INFORMATION CONTACT:** Bridget Nielsen, Conservation Partnerships Coordinator for the Nevada Fish and Wildlife Office, at the above address or by calling (775) 861–6300.

**SUPPLEMENTARY INFORMATION:**

## Background

The primary objective of this SHA is to encourage the reintroduction activities and voluntary maintenance of previously implemented habitat restoration activities, to benefit the Railroad Valley springfish by relieving the Applicant, who enters into the provisions of the Safe Harbor Agreement with the Service, from any additional Section 9 liability under the Endangered Species Act beyond that which exists at the time the Safe Harbor Agreement is signed (''regulatory baseline''). A SHA encourages landowners and tribes to conduct voluntary conservation activities and assures them that they will not be subjected to increased listed species restrictions should their beneficial stewardship efforts result in increased listed species populations. Application requirements and issuance criteria for enhancement of survival permits through SHAs are found in 50 CFR 17.22 and 17.32(c). As long as the Applicant allows the agreed upon conservation measures to be completed on their property and maintain their baseline responsibilities, they may make any other lawful use of the property during the permit term, even if such use results in the take of individual Railroad Valley springfish or harm to their habitat.

The Duckwater Shoshone Tribe, located within Nye County, Nevada has suitable aquatic habitat for the reintroduction and long-term recovery of the Railroad Valley springfish which may be enrolled under the SHA. The Safe Harbor Agreement will include: (1) A map of the property and its legal location; (2) a description of the existing biological community including nonnative aquatic species and sensitive or protected species if any; (3) the portion of the property to be enrolled and its acreage; (4) a description of the habitat types that occur on the portion of the property to be enrolled including an accurate description of ponds or other aquatic habitats and their characteristics; and (5) current land-use practices and existing development, and the characteristics of water supplies to aquatic habitats.

The Applicant is committed to the long-term recovery of the Railroad Valley springfish and in so doing; an elevated baseline was negotiated for Big Warm Spring. In order to meet recovery objectives, at least 21,000 adult Railroad Valley springfish must be present within the 6 springs identified for recovery, with each population containing at least 1,000 adults and documented annual reproduction and recruitment for 5 consecutive years. Considering Big Warm Spring is currently not populated with of Railroad Valley springfish, the regulatory baseline would be zero however, the

Applicant voluntary offered to maintain an elevated baseline of a minimum of 3,000 Railroad Valley springfish in order to achieve the recovery goals stated in the Service's Railroad Valley Springfish Recovery Plan.

The Applicant, as the Permittee, will be responsible for annual monitoring and reporting related to implementation of the SHA and fulfillment of its provisions. The Service will also assist the Applicant with monitoring and training of tribal staff in order to achieve annual monitoring and reporting goals as part of the partnership. As specified in the SHA, the Applicant will issue yearly reports to the Service related to implementation of the program.

The SHA will cover conservation activities to create, maintain, restore, or enhance habitat and reintroduce a self-sustaining population of Railroad Valley springfish while achieving species' recovery goals. Management activities that are undertaken through this SHA will result in the reintroduction and re-establishment of a self-sustaining population of Railroad Valley springfish within designated critical habitat at Big Warm Spring. The overall goal of this SHA is to systematically achieve recovery goals and conservation measures for the Railroad Valley springfish while ensuring that tribal economic, agricultural and cultural interests are preserved and protected.

Given the probable species response time of Railroad Valley springfish to the planned conservation measures the Service estimates it will take 2 years of implementing the SHA to fully reach a net conservation benefit. Although some level of benefits will likely occur within a shorter time period.

After maintenance of the restored/created/enhanced habitat and reintroduction of Railroad Valley springfish habitat on the property for the agreed-upon term, the Applicant may then conduct otherwise lawful activities on their property that result in the direct take of Railroad Valley springfish. However, the restrictions on returning a property to the elevated baseline condition include: (1) The Applicant must demonstrate that elevated baseline conditions were maintained and the conservation measures necessary for achieving a net conservation benefit were carried out; (2) the Service will be notified a minimum of 30 days prior to the activity and given the opportunity to capture, rescue, and/or relocate any Railroad Valley springfish; and (3) return to elevated baseline conditions must be completed within the 25-year term of the permit issued to the Applicant.

The Service has made a preliminary determination that approval of this SHA qualifies as a categorical exclusion under the NEPA, as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1) based on the following criteria: (1) Implementation of the SHA would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the SHA would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the SHA, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. This is more fully explained in our Environmental Action Statement.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

**Public Review and Comments**

Individuals wishing copies of the permit application, the Environmental Action Statement, or copies of the full text of the SHA, including a map of the proposed permit area, references, and legal descriptions of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section. Documents will also be available for public inspection, by appointment, during normal business hours at this office (see **ADDRESSES**).

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6). All comments received on the permit application and SHA, including names and addresses, will become part of the administrative record and may be released to the public. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

**Decision**

We will evaluate the permit application, the SHA, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act and NEPA regulations. If the requirements are met, the Service will sign the proposed SHA and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to the Applicant for take of the Railroad Valley springfish incidental to otherwise lawful activities of the project. The Service will not make a final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

Dated: July 3, 2007.

**Robert D. Williams,**

*Field Supervisor, Nevada Fish and Wildlife Office, Reno, Nevada.*

[FR Doc. E7–13356 Filed 7–9–07; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Nevada Department of Wildlife, Lincoln County, Nevada, Enhancement of Survival Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability and receipt of application; request for comments.

**SUMMARY:** In response to an application from the Nevada Department of Wildlife (Applicant), we, the Fish and Wildlife Service (Service), are considering issuance of an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA). The permit application includes a proposed programmatic Safe Harbor Agreement (SHA) between the applicant and the Service. The proposed SHA provides for voluntary habitat restoration, maintenance, enhancement, or creation activities to enhance the reintroduction and recovery of White River springfish (*Crenichtheys baileyi baileyi*), Hiko White River springfish (*Crenichtheys baileyi grandis*), Pahranagat roundtail chub (*Gila robusta jordani*) and southwestern willow flycatcher (*Empidonax trailii extimus*), within the Pahranagat Valley, Nevada. The proposed duration of both the SHA and permit is 50 years.

We have made a preliminary determination that the proposed SHA and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). The basis for our determination is contained in an environmental action statement, which also is available for

public review. We are requesting comments on this application.

**DATES:** We must receive written comments by 5 p.m. on August 9, 2007.

**ADDRESSES:** Please address comments to Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502; facsimile number (775) 861–6301.

**FOR FURTHER INFORMATION CONTACT:** Heather Martinez, Fish and Wildlife Biologist for the Southern Nevada Fish and Wildlife Office, at 4701 N. Torrey Pines Dr., Las Vegas, NV, 89130; telephone (702) 515–5230.

**SUPPLEMENTARY INFORMATION:**

## Document Availability

Individuals wishing copies of the permit application or the environmental action statement, or copies of the full text of the proposed SHA, including a map of the proposed permit area, references, and legal descriptions of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section. Documents also will be available for public inspection, by appointment, during normal business hours at this office (see **ADDRESSES**).

We specifically request information, views, and opinions from the public on the proposed Federal action of issuing a permit, including the identification of any aspects of the human environment not already analyzed in our environmental action statement. Further, we specifically solicit information regarding the adequacy of the SHA as measured against our permit issuance criteria found in 50 CFR 17.22(c).

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that will be able to do so.

## Background

The primary objective of this proposed SHA is to encourage voluntary habitat restoration, maintenance or enhancement activities to benefit White River springfish, Hiko White River springfish, Pahranagat roundtail chub, and southwestern willow flycatcher by relieving a landowner who enters into the provisions of a cooperative agreement with the Applicant from any additional Section 9 liability under the Endangered Species Act (16 U.S.C. 1531 *et seq.*) beyond that which exists at the time the cooperative agreement is signed and certificate of inclusion issued (''regulatory baseline''). A SHA encourages landowners to conduct voluntary conservation activities and assures them that they will not be subjected to increased listed species restrictions should their beneficial stewardship efforts result in increased listed species populations. Application requirements and issuance criteria for enhancement of survival permits and SHAs are found in 50 CFR 17.22(c) and 17.32(c). As long as enrolled landowners allow the agreed-upon conservation measures to be completed on their property and agree to maintain their baseline responsibilities, they may make any other lawful use of the property during the term of the cooperative agreement, even if such use results in the take of individual White River springfish, Hiko White River springfish, Pahranagat roundtail chub, southwestern willow flycatcher or harm to these species' habitats, as long as it does not cause conditions to fall below baseline.

As proposed in the SHA, landowners within the Pahranagat Valley that have suitable habitat for any of these four species may be enrolled by the applicant under the SHA. Landowners, as cooperators, would receive a certificate of inclusion when they sign a cooperative agreement. The cooperative agreement would include: (1) A map of the property and its legal location; (2) delineation of the portion of the property to be enrolled and its stream mileage/feet; (3) the property's baseline and biological assessment, which would include a description of the habitat types that occur on the portion of the property to be enrolled, including an accurate description of riparian and aquatic habitats and a thorough stream analysis (with photos) of the enrolled stream miles/feet; (4) current land-use practices and existing development, and the characteristics of water supplies to aquatic habitats; (5) a description of the specific conservation measures to be completed; and (6) the responsibilities of the cooperator and the applicant.

The applicant, as the permittee, will be responsible for annual monitoring and reporting related to implementation of the SHA and cooperative agreements and fulfillment of their provisions. As specified in the SHA, the Applicant will issue yearly reports to the Service related to implementation of the program.

Each cooperative agreement would cover conservation activities to create, maintain, restore, or enhance habitat for the White River spring fish, Hiko White River springfish, Pahranagat roundtail chub, and/or the southwestern willow flycatcher and achieve species' recovery goals. These actions, where appropriate, could include (but are not limited to): (1) Restoration of wetland and riparian habitats and stream form and function; (2) establishment of wetland and riparian buffers; (3) repair or installation of improved irrigation systems that improve water quality and quantity for habitat; (4) development and implementation of monitoring plans as well as facilitation of the implementation of other objectives recommended by the recovery plan for these species. The overall goal of cooperative agreements entered into under the proposed SHA is to produce conservation measures that are mutually beneficial to the cooperators and the long-term existence of these four species.

Based upon the probable species' response time, we estimate it will take 3 years of implementing the planned conservation measures to fully reach a net conservation benefit for White River springfish and Hiko White River springfish, 5 years for Pahranagat roundtail chub and 10 years for southwestern willow flycatcher; some level of benefit would likely occur within a shorter time period. Most cooperative agreements under the proposed SHA are expected to have at least 10 years' duration.

After maintenance of the restored/created/enhanced habitat for these species on the property for the agreed-upon term, cooperators may then conduct otherwise lawful activities on their property that result in the partial or total elimination of the habitat improvements and the taking of these four species. However, the restrictions on returning a property to its original baseline condition are: (1) The cooperator must demonstrate that baseline conditions were maintained during the term of the cooperative agreement and the conservation measures necessary for achieving a net conservation benefit were carried out; (2) we and the applicant will be notified a minimum of 30 days prior to the activity and given the opportunity to capture, rescue, and/or relocate any of the four species; and (3) return to baseline conditions must be completed within the term of the certificate of inclusion issued to the applicant. Cooperative agreements could be extended if the applicant's permit is renewed and that renewal allows for such an extension.

We have made a preliminary determination that approval of the proposed SHA qualifies for a categorical exclusion under NEPA, as provided by the Department of Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1) based on the following criteria: (1) Implementation of the SHA would result in minor or negligible effects on other environmental values or resources; (2) implementation of the SHA would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the SHA, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. This is more fully explained in our environmental action statement.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

**Decision**

We provide this notice pursuant to section 10(c) of the ESA and pursuant to implementing regulations for NEPA (40 CFR 1506.6). We will evaluate the permit application, the proposed SHA, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the ESA and NEPA regulations. If the requirements are met, we will sign the proposed SHA and issue an enhancement of survival permit under section 10(a)(1)(A) of the ESA to the Applicant for take of White River springfish, Hiko White River springfish, Pahranagat roundtail chub and southwestern willow flycatcher incidental to otherwise lawful activities of the project. We will not make a final decision until after the end of the 30–day comment period and will fully consider all comments received during the comment period.

Dated: June 3, 2007.

**Robert D. Williams,**

*Field Supervisor, Nevada Fish and Wildlife Office, Reno, Nevada.*

[FR Doc. E7–13375 Filed 7–9–07; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[AA–6663–C, AA–6663–D, AA–6663–E, AA–6663–H, AA–6663–J, AA–6663–A2; AK–964–1410–KC–P]**

## Alaska Native Claims Selection

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of decision approving lands for conveyance.

**SUMMARY:** As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Ekwok Natives Limited. The lands are in the vicinity of Ekwok, Alaska, and are located in:

**Seward Meridian, Alaska**

T. 10 S., R. 49 W.,
Secs. 14, 23, and 34.
Containing 1,886.03 acres.

T. 11 S., R. 49 W.,
Sec. 3.
Containing 640 acres.

T. 9 S., R. 50 W.,
Secs. 12, 21, and 28.
Containing 1,920 acres.

T. 10 S., R. 50 W.,
Sec. 29.
Containing 306.27 acres.

T. 9 S., R. 51 W.,
Secs. 6 and 7.
Containing 1,147.60 acres.
Aggregating 5,899.90 acres.

The subsurface estate in these lands will be conveyed to Bristol Bay Native Corporation when the surface estate is conveyed to Ekwok Natives Limited. Notice of the decision will also be published four times in the Anchorage Daily News.

**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 August 9, 2007 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

**ADDRESSES:** A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

**FOR FURTHER INFORMATION, CONTACT:** The Bureau of Land Management by phone at 907–271–5960, or by e-mail at: *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

**Michael Bilancione,**

*Land Law Examiner, Branch of Adjudication II.*

[FR Doc. E7–13325 Filed 7–9–07; 8:45 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[UT–040–07–1430–ES; UTU–82068, UTU–82980]**

## Notice of Realty Action:

Recreation and Public Purposes Act Classification of Public Lands in Iron County, UT; Correction

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action; correction.

**SUMMARY:** The Bureau of Land Management published a document in the **Federal Register** of June 25, 2007, concerning a Recreation and Public Purposes Act classification of public lands located in Iron County, Utah. The document contained an inaccurate legal description for Township 38 South, Range 12 West contained in the **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Robert C. Wilson, Realty Specialist at (435) 865–3005 or via e-mail at: *rob_wilson@blm.gov.*

**SUPPLEMENTARY INFORMATION:**

**Corrections**

1. Correct the section to be ''3'' from ''34''.

T. 38 S., R12 W.
Sec. 3, lot 12, containing 2.47 acres. Correction.

2. Correct the section to be ''3'' from ''34''.

T. 38 S., R12 W.
Sec. 3, lot 13, (portion), containing 7.53 acres. Correction.

Dated: July 3, 2007.

**Randy Trujillo,**

*Associate Field Office Manager (UT–040).*

[FR Doc. E7–13370 Filed 7–9–07; 8:45 am]

BILLING CODE 4310–DQ–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ID–957–1420–BJ]**

### Idaho: Filing of Plats of Survey

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Filing of Plats of Surveys.

**SUMMARY:** The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

**SUPPLEMENTARY INFORMATION:** These surveys were executed at the request of the Bureau of Land Management to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of portions of the west boundary, subdivisional lines, and the 1960–1968 fixed and limiting boundaries in sections 6, 7, 17, 18 and 20, and Tract 40, and the subdivision of sections 6, 7, 17 and 18, the survey of the 1993–2003 meanders of the Snake River in sections 6, 7, 17, 18 and 20, the survey of the 1993–2003 meanders of certain islands in the Snake River, and the metes-and-bounds survey of the centerline of an existing flood control levee in the SE¼ of the SW¼ of section 6, T. 4 N., R. 40 E., Boise Meridian, Idaho, was accepted June 6, 2007.

The plat representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, and the subdivision of section 24, T. 16 S., R. 9 E., Boise Meridian, Idaho, was accepted June 29, 2007.

This survey was executed at the request of the Bureau of Indian Affairs to meet certain administrative and management purposes. The lands surveyed are:

This supplemental plat was prepared to amend lotting in section 24, T. 3 S., R. 34 E., Boise Meridian, Idaho, was accepted April 3, 2007.

These surveys were executed at the request of the USDA Forest Service to meet certain administrative and management purposes. The lands surveyed are:

This supplemental plat, showing amended lotting created by the segregation of Mineral Survey No. 1659 in section 15, T. 41 N., R. 2 W., Boise Meridian, Idaho, was accepted April 20, 2007.

This supplemental plat, was prepared to show new lots to the centerline of State Highway No. 6, of sections 12, 13, and 14, T. 43 N., R. 3 W., Boise Meridian, Idaho, was accepted April 26, 2007.

**SUMMARY:** The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, 30 days from the date of publication in the **Federal Register**. This survey was executed at the request of the Bureau of Indian Affairs to meet certain administrative and management purposes:

The plat representing the dependent resurvey of the south boundary, portions of the east and west boundaries, subdivisional lines, and meanders of the Snake River and islands in the Snake River, and the subdivision of sections 32 and 36, and the survey of portions of the south and west boundaries, subdivisional lines, the 2005–2006 meanders of the Snake River and islands in the Snake River, and the North Boundary of the Fort Hall Indian Reservation, T. 4 S., R. 33 E., Boise Meridian, Idaho, was accepted May 16, 2007.

Dated: July 3, 2007.

**Stanley G. French,**

*Chief Cadastral Surveyor for Idaho.*

[FR Doc. E7–13344 Filed 7–9–07; 8:45 am]

**BILLING CODE 4310–GG–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 332–485]**

### Canned Peaches, Pears, and Fruit Mixtures: Conditions of Competition Between U.S. and Principal Foreign Supplier Industries

**AGENCY:** United States International Trade Commission.

**ACTION:** Cancellation of public hearing.

**SUMMARY:** On July 2, 2007, the only scheduled witness for the hearing in investigation No. 332–485, Canned Peaches, Pears, and Fruit Mixtures: Conditions of Competition between U.S. and Principal Foreign Supplier Industries, scheduled for July 12, 2007, withdrew his request to appear. Therefore, the public hearing in this investigation has been canceled.

*Background:* The Commission published notice of institution of the investigation and hearing in the **Federal Register** on February 13, 2007 (72 FR 6744). The notice asked that persons interested in appearing at the hearing file their requests by the close of June 28, 2007, and stated that the hearing would be canceled if no requests were received by that date. One request was received by the June 28 deadline, but it was subsequently withdrawn on July 2, 2007. Accordingly, the Commission has canceled the hearing. All other information about the investigation, including a description of the subject matter to be addressed, contact information, and procedures relating to written submissions, remains the same as in the original notice. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

By order of the Commission.

Issued: July 3, 2007.

**William R. Bishop,**

*Acting Secretary to the Commission.*

[FR Doc. E7–13276 Filed 7–9–07; 8:45 am]

**BILLING CODE 7020–02–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice: (07–051)]**

### Notice of Information Collection Under OMB Review

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of information collection under OMB review.

**SUMMARY:** The National Aeronautics and Space Administration, 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)).

**DATES:** All comments should be submitted within 30 calendar days from the date of this publication.

**ADDRESSES:** All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE0000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

The NASA Explorer Schools (NES) seeks a clearance to collect data from educators to determine eligibility and selection of schools to participate in their three year project. To lessen the impact on educators who will complete the project application, the application period must be open during the times when they are less likely to be needed in the classroom (e.g., summer break) and can obtain any required school board approvals.

## II. Method of Collection

NASA will utilize a Web-based online form to collect this information.

## III. Data

*Title:* NASA Explorer Schools Project Application.

*OMB Number:* 2700–0130.

*Type of review:* Regular.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 130.

*Estimated Time Per Response:* 1 hour.

*Estimated Total Annual Burden Hours:* 130.

*Estimated Total Annual Cost:* $0.

## IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

**Gary Cox,**

*Acting Deputy Chief Information Officer.*

[FR Doc. E7–13281 Filed 7–9–07; 8:45 am]

**BILLING CODE 7510–13–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–255]**

## Entergy Nuclear Operations, Inc.; Notice of Consideration of Issuance of Amendment to Renewed Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Renewed Facility Operating License No. DPR–20 issued to Entergy Nuclear Operations, Inc. (the licensee) for operation of the Palisades Nuclear Plant (PNP) located in Van Buren County, Michigan.

The proposed amendment would revise Technical Specification (TS) 3.5.5, ''Trisodium Phosphate,'' and the associated surveillance requirements by replacing the containment sump buffering agent, trisodium phosphate (TSP), with sodium tetraborate decahydrate (STB). In particular, the proposed amendment would revise the TS Limiting Condition for Operation (LCO) 3.5.5, with a new weight requirement for STB.

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; or (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 proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed amendment does not involve a significant increase in the probability of an accident previously evaluated because the containment buffering agent is not an initiator of any analyzed accident. The proposed change does not impact any failure modes that could lead to an accident.

The proposed amendment does not involve a significant increase in the consequences of an accident previously evaluated. The buffering agent in containment is designed to buffer the acids expected to be produced after a loss of coolant accident (LOCA) and is credited in the radiological analysis for iodine retention. The proposed change of replacing TSP with STB in containment results in the radiological consequences remaining under 10 CFR 100 limits and General Design Criterion (GDC) −19 limits.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. STB is a passive component that is proposed to be used at PNP as a buffering agent to increase the pH of the initially acidic post-LOCA containment water to a more neutral pH.

Changing the proposed buffering agent from TSP to STB does not constitute an accident initiator or create a new or different kind of accident previously analyzed. The proposed amendment does not involve operation of any required systems, structures or components (SSCs) in a manner or configuration different from those previously recognized or evaluated. No new failure mechanisms will be introduced by the changes being requested.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed amendment does not involve a significant reduction in a margin of safety. The proposed amendment of changing the buffering agent from TSP to STB results in equivalent control of maintaining sump pH at 7.0 or greater, thereby controlling containment atmosphere iodine and ensuring the radiological consequences of a MHA [Maximum Hypothetical Accident] are within regulatory limits. The use of STB also reduces the present potential for exacerbating sump screen blockage due to a potential chemical interaction between TSP and certain calcium sources used in containment to form calcium phosphate. This proposed amendment removes this phosphate source from containment, thereby reducing the amount of precipitate that may be formed in a postulated LOCA. The buffer change would minimize the potential chemical effects and should enhance the ability of the emergency core cooling system to perform the post-accident mitigating functions.

Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

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.

Non-timely 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(a)(1)(i)–(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 Mr. William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, NY 10601, the attorney for the licensee.

For further details with respect to this action, see the application for amendment dated June 29, 2007, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public 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/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 3rd day of July 2007.

For the Nuclear Regulatory Commission.

**Peter S. Tam,**

*Senior Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E7–13360 Filed 7–9–07; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–250]**

### Florida Power and Light Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Florida Power and Light Company (the licensee) to withdraw its May 17, 2007, application for proposed amendment to Facility Operating License No. DPR–31 for the Turkey Point Plant, Unit 3, located in Dade County, Florida.

The proposed amendment would have revised the Technical Specifications to allow the use of an alternate method of determining rod position for control rods M–6 and G–5 with inoperable Analog Rod Position Indicators. The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 24, 2007 (72 FR 29186). However, by letter dated June 13, 2007, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 17, 2007, and the licensee's letter dated June 13, 2007, which withdrew the application for license amendment. 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 O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm.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, or 301–415–4737 or by e-mail to: *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 29th day of June 2007.

For the Nuclear Regulatory Commission.

**Brenda Mozafari,**

*Senior Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E7–13357 Filed 7–9–07; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–498 and 50–499]**

### STP Nuclear Operating Company; South Texas Project, Units 1 and 2; Notice of Consideration of Approval of Application Regarding Proposed Indirect Transfer of Control of Facility Operating Licenses, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission, NRC) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of control of Facility Operating Licenses, numbered NPF–76 and NPF–80, for the South Texas Project (STP), Units 1 and 2, respectively, to the extent owned by NRG South Texas LP (NRG South Texas).[1]

STP Nuclear Operating Company (STPNOC), acting on behalf of itself and NRG South Texas and its corporate parent, NRG Energy Inc. (NRG Energy), requests that the NRC consent to the indirect transfer of control of STP, Units 1 and 2, licenses to the extent owned by NRG South Texas. NRG South Texas owns 44 percent of STP, Units 1 and 2. NRG Energy plans to reorganize its corporate structure by creating a new publicly-held holding company (NRG HoldCo) that will become the parent company for NRG Energy and its subsidiaries. NRG Energy is seeking NRC consent to the indirect transfer of control of its licenses that result from the establishment of NRG HoldCo. In addition to its 44 percent undivided ownership interest in STP, Units 1 and 2, NRG South Texas holds a corresponding interest in STPNOC, a not-for-profit Texas corporation, which is the licensed operator of STP, Units 1 and 2. Thus, the indirect transfer of control of NRG South Texas also results in the indirect transfer of this interest in STPNOC. STPNOC states that this is not a controlling interest in STPNOC and, therefore, there will be no indirect transfer of STPNOC's licenses to operate on behalf of the owners. The applicant indicates that if the NRC concludes that indirect transfer of control of NRG South Texas' interest in STPNOC requires prior NRC consent, it requests such consent.

According to an application for approval filed by STPNOC, in connection with the NRG Energy plans to reorganize its corporate structure by operating a new publicly-held holding

[1] On June 29, 2007, the NRC granted an amendment request changing the name of one of the licensees from Texas Genco, LP, to NRG South Texas LP.

company that will become the parent company for NRG Energy and its subsidiaries, the current licensee will continue to operate the facility and hold the licenses.

No physical changes to STP, Units 1 and 2, facilities or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed restructuring will not affect the qualifications of the licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

Requests for a hearing and petitions for leave to intervene should be served upon counsel for counsel for STPNOC and NRG Energy, Mr. John E. Matthews at Morgan, Lewis & Bockius, LLP, 1111 Pennsylvania Avenue, NW., Washington, DC 20004 (tel: 202–739–5524, fax: 202–793–3001; e-mail: *jmatthews@morganlewis.com;* the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated May 3, 2007, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically 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/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, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 3rd day of July 2007.

For The Nuclear Regulatory Commission.

**Mohan C. Thadani,**

*Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E7–13358 Filed 7–9–07; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

## DEPARTMENT OF ENERGY

### Notice of Public Meeting

**AGENCIES:** U.S. Nuclear Regulatory Commission (NRC) and U.S. Department of Energy (DOE).

**ACTION:** Notice of Public Meeting.

**SUMMARY:** The NRC and DOE announce their intent to conduct a public meeting to: (1) Discuss progress they have made since November 2006 concerning Section 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005; (2) provide information regarding the content and outcome of interactions held to date; (3) address progress in exchanging information on generic technical issues concerning DOE's performance assessments; and (4) provide information on monitoring plans and related activities. The meeting date, time, and location are listed below:

*Date:* Friday, July 20, 2007.

*Time:* 10 a.m. to 12 p.m.

*Address:* Meeting Room—Renoir Room, L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024, Phone: 202–484–1000.

*Agenda:*

10–10:15 Introductions.

10:15–10:30 Opening Remarks.

10:30–11:15 Discussion of current status of NDAA Implementation and other issues.

11:15–12 Public Comment.

### Background

On October 28, 2004, the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA) was signed by the President. Section 3116 of the NDAA allows the DOE to determine that the term ''high-level radioactive waste'' (HLW) does not include certain waste stemming from reprocessing of spent nuclear fuel. The NDAA is applicable only in the states of South Carolina and Idaho and does not apply to waste transported out of these states. The NDAA requires that: (1) DOE consult with NRC concerning DOE's waste determinations in South Carolina and Idaho, and (2) NRC, in coordination with the State, monitor such disposal

actions taken by DOE for the purpose of assessing compliance with performance objectives in 10 CFR Part 61, Subpart C. If the NRC determines that any such disposal actions taken by DOE are not in compliance with those performance objectives, the NDAA requires NRC to inform DOE, the affected State, and congressional committees.

On November 16, 2006, NRC and DOE conducted a public meeting to discuss interactions during the review of non-HLW determinations prepared under the NDAA. During that meeting, NRC and DOE committed to conduct a future meeting to discuss the progress that has been made since the November 2006 public meeting. During the upcoming public meeting cited in this Notice, NRC and DOE will: (1) Discuss the progress they have made since November 2006; (2) provide information regarding the content and outcome of interactions held to date; (3) address progress in exchanging information concerning generic technical issues related to DOE's performance assessments; and (4) provide information on monitoring plans and related activities.

As noted on the agenda, time will be set aside during this meeting for observers who wish to make comments. After the meeting, a publicly available summary of this meeting will be made available on the NRC's Agency-wide Documents Access and Management System (ADAMS) at *www.nrc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For questions related to this meeting, please contact Jennifer Davis of the NRC at (301) 415–7264 or (*bjd1@nrc.gov*), or Martin Letourneau of DOE's Office of Compliance at (301) 903–3532 or *martin.letourneau@em.doe.gov.*

Dated at Rockville, Maryland, this 3rd day of July 2007.

For the U.S. Nuclear Regulatory Commission.

**Larry W. Camper,**

*Director, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.*

Dated at Washington, DC, this 3rd day of July 2007.

For the U.S. Department of Energy.

**Karen Guevara,**

*Director, Office of Environmental Management, Office of Compliance.*

[FR Doc. 07–3358 Filed 7–9–07; 8:45 am]

BILLING CODE 7590–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56002; File No. SR–Amex–2007–55]**

## Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Options SROT Fee Rebate Program

July 2, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2007, 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. On June 7, 2007, the Amex submitted Amendment No. 1 to the proposed rule change.[3] Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Amex under Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish fee rebates applicable to supplemental registered options traders (''SROTs'') that receive directed orders.

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.amex.com.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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. Amex has substantially prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to provide options transaction fee rebates to SROTs that provide liquidity to the Exchange and receive electronic directed customer orders (the ''SROT Fee Rebate Program''). This SROT Fee Rebate Program will provide fee rebates to SROTs that provide order flow to the Exchange from their own firm's orders.[6]

This proposal would allow the Exchange to provide SROTs with options transaction fee rebates for the number of options contracts that are electronically directed to them and executed on the Exchange. The following rebate schedule is proposed:

| Monthly directed order volume (in contracts) | Rebate per contract | Total rebate per volume tier |
|---|---|---|
| 0–1,000,000 | $.05 | $50,000 |
| 1,000,001–2,000,000 | .10 | 100,000 |
| 2,000,001–3,000,000 | .125 | 125,000 |

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 clarifies that the SROT fee rebate program is a separate program from the options marketing fee program.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] The Exchange anticipates shortly filing a proposed rule change with the Commission to implement a Directed Order Flow Program. Generally, for purposes of the Directed Order Flow Program, a directed order is deemed to be an electronic customer order from an order flow provider that is directed to a specific specialist, registered options trader (''ROT''), SROT or remote registered options trader (''RROT''). Once the Directed Order Flow Program is implemented, in addition to SROTs, the Exchange intends to expand this proposed SROT Fee Rebate Program to any specialist, ROT, and/or RROT that participates in the Exchange's Directed Order Program.

| Monthly directed order volume (in contracts) | Rebate per contract | Total rebate per volume tier |
|---|---|---|
| 3,000,001 and up | .15 | 150,000 |

Rebates would be capped at 100% of options transaction fee charges so that once an SROT's options transaction charges reach zero, the Exchange would not pay out any additional credits.

The Exchange notes that SROTs are entitled to the options transaction fee rebate, which is separate and apart from the Payment for Order Flow arrangements, which SROTs may negotiate with any firm from which they receive the guaranteed SROT allocation (*i.e.*, affiliated SROTs).[7] The proposed options transaction fee rebate, which is provided to SROTs will not come from the marketing fees collected on SROT transactions.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[9] in general, and Section 6(b)(4) of the Act[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and issuers and other persons using Exchange facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

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 been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and Rule 19b–4(f)(2)[12] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of 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.[13]

**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–Amex–2007–55 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–Amex–2007–55. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–55 and should be submitted on or before July 31, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–13312 Filed 7–9–07; 8:45 am]

BILLING CODE 8010–01–P

[7] Under the current plan, the Exchange charges an equity options marketing fee of $0.75 per contract (and $1.00 for SPY Options) solely to customer orders that are from payment accepting firms with whom an SROT receives the guaranteed SROT allocation, pursuant to 935–ANTE(a)(7). As noted in the Options Fee Schedule, the $0.35 options marketing fee applies to those series of Equity Options, Exchange Traded Fund Share Options, and Trust Issued Receipt Options that quote and trade in one cent increments under the penny pilot program.

[8] *See* Amendment No. 1, *supra* note 3.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 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 June 7, 2007, the date on which the Exchange filed Amendment No. 1.

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55999; File No. SR–BSE–2007–27]**

## Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Extend a Pilot Program That Allows for No Minimum Size Order Requirement for the Price Improvement Period Process on the Boston Options Exchange

July 2, 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 June 26, 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 has designated the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. On June 27, 2007, BSE filed Amendment No. 1 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend the rules of the Boston Options Exchange (''BOX'') to extend the BOX pilot program that permits BOX to have no minimum size requirement for orders entered into the Price Improvement Period (''PIP'') process (''PIP Pilot Program''). The text of the proposed rule change is available on BSE's Web site at: *http://www.bostonoptions.com,* at BSE'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 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

The purpose of the proposed rule change is to extend a Pilot Program under the Rules of the BOX for an additional year. The Pilot Program allows BOX to have no minimum size requirement for orders entered into the PIP process.[6] The proposed rule change retains the text of Supplementary Material .01 to Section 18 of Chapter V of the BOX Rules and seeks to extend the operation of the PIP Pilot Program until July 18, 2008.

The Exchange notes that the PIP Pilot Program provides small customer orders with benefits not available under the rules of other exchanges. One of the important factors of the PIP Pilot Program is that it guarantees members the right to trade with their customer orders that are less than 50 contracts. In particular, any order entered into the PIP is guaranteed an execution at the end of the auction at a price at least a penny better than the national best bid or offer.

In further support of this proposed rule change, and as required by the Original PIP Pilot Program Approval Order, the Exchange represents that it has been submitting to the Commission a monthly PIP Pilot Program Report, offering detailed data from and analysis of the PIP Pilot Program.

2. Statutory Basis

The Exchange believes that the data demonstrates that there is sufficient investor interest and demand to extend the Pilot Program for another year. The Exchange represents that the proposed rule change is designed to provide investors with real and significant price improvement regardless of the size of the order. Accordingly, the Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[7] in general, and Section 6(b)(5) of the Act,[8] in particular, in that it is designed to provide price improvement to any order, which is consistent with the public interest and protection of investors from a best execution standpoint. Additionally, the Exchange believes that price improvement to any size order creates competition for the best execution of all orders, without unduly burdening competition.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

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)[9] of the Act and Rule 19b–4(f)(6) thereunder.[10] As required under Rule 19b–4(f)(6)(iii),[11] the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The BSE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[14] which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the PIP Pilot Program to continue without interruption through July 18, 2008.[15] Accordingly, the Commission designates the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] In Amendment No. 1, BSE requested a waiver of the 30-day operative delay.

[6] The Pilot Program is currently set to expire on July 18, 2007. *See* Securities Exchange Act Release No. 54066 (June 29, 2006), 71 FR 38434 (July 6, 2006) (SR–BSE–2006–24); *See also* Securities Exchange Act Release Nos. 52149 (July 28, 2005), 70 FR 44704 (August 3, 2005) (SR–BSE–2005–22); and 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR–BSE–2002–15) (''Original PIP Pilot Program Approval Order'').

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *Id.*

[15] 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).

rule change 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.[16]

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BSE–2007–27 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2007–27. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2007–27 and should be submitted on or before July 31, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–13309 Filed 7–9–07; 8:45 am]

BILLING CODE 8010–01–P

[16] The effective date of the original proposed rule is June 26, 2007. The effective date of Amendment No. 1 is June 27, 2007. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 27, 2007, the date on which the BSE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[17] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55976; File No. SR–CBOE–2003–41]**

## Self-Regulatory Organizations; Chicago Board Options Exchange Incorporated; Order Granting Approval of Proposed Rule Change as Modified by Amendment No. 4 To List and Trade Options on Corporate Debt Securities

June 28, 2007.

## I. Introduction

On September 22, 2003, the Chicago Board Options Exchange Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade options on corporate debt securities (''CDSOs''). On March 1, 2003, CBOE filed Amendment No. 1 to the proposed rule change. CBOE filed Amendment No. 2 to the proposed rule change on August 24, 2005. CBOE filed Amendment No. 3 to the proposed rule change on May 26, 2006. On June 13, 2006, the proposed rule change, as amended by Amendment Nos. 1, 2, and 3, was published in the **Federal Register**.[3] CBOE filed Amendment No. 4 on July 14, 2006.[4] The Commission received one comment letter on the proposal.[5] On October 31, 2006, CBOE filed a response to the comment.[6] This order approves the proposed rule change, as amended.

## II. Description of the Proposed Rule Change

*(a) Background*

Over-the-counter (''OTC'') transactions in corporate debt securities are publicly reported through the NASD's Trade Reporting and Compliance Engine (''TRACE'') system. CBOE believes that the enhanced transparency created by TRACE has given rise to an OTC market in CDSOs, and that an exchange-traded alternative for such products may provide a useful risk management and trading vehicle for member firms and their customers.

CBOE believes that exchange-listed CDSOs would have three important advantages over similar options traded in the OTC market. First, as a result of greater standardization of contract terms, exchange-listed contracts should develop more liquidity. Second, counterparty credit risk would be mitigated because the contracts would be issued and guaranteed by The Options Clearing Corporation (''OCC''). Finally, the quotation and last-sale data provided by CBOE and its members would lead to more transparent markets. CBOE believes that offering CDSOs would create competition with the OTC market and expand the universe of listed products available to interested market participants.

*(b) Listing Standards*

The Exchange has proposed CBOE Rules 5.3.10 and 5.4.14 for the initial listing and continued maintenance standards, respectively, for CDSOs. The Exchange proposes that for initial listing, a CDSO must satisfy the following criteria:

- The original public sale of a corporate debt security on which options transactions will be effected on the Exchange shall be at least a $250,000,000 principal amount.
- Trading volume (in all markets in which the underlying corporate debt security is traded) has been at least $100,000,000 in notional value over the preceding six months.
- The corporate debt security has a minimum aggregate par value or ''float'' of $200,000,000.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53935 (June 2, 2006), 71 FR 34174.

[4] In Amendment No. 4, CBOE made minor technical changes to the proposed rule text.

[5] *See* Letter from Mary C.M. Kuan, Vice President and Assistant General Counsel, The Bond Market Association (''TBMA''), to Nancy M. Morris, Secretary, Commission, dated August 25, 2006 (''TBMA Letter'').

[6] *See* Letter from Angelo Evangelou, Assistant Secretary, CBOE, to Ronesha Butler, Special Counsel, Commission, dated October 25, 2006 (''Response'').

• The corporate debt security has at least 320 holders.

• The issuer of the corporate debt security or the issuer's parent, if the issuer is a wholly-owned subsidiary, has at least one class of common or preferred equity securities registered under Section 12(b) of the Act.

• The equity securities issued by the corporate debt security issuer are ''covered securities'' as defined under Section 18(b)(1)(A) of the Securities Act of 1933 (''1933 Act'').

• The corporate debt security on which options transactions will be effected on the Exchange has a credit rating issued by Moody's Investors Service that is Caa or higher and a credit rating issued by Standard and Poor's that is CC or higher.

• The issuer of the corporate debt security has registered the offer and sale of such securities under the 1933 Act.

• The transfer agent of the corporate debt security is registered under Section 17A of the Act.

• The trust indenture for the corporate debt security is qualified under the Trust Indenture Act of 1939.

*(c) Settlement*

CDSOs will be physically settled, European-style options that may be exercised only on the last day of expiration. Trading in CDSOs ordinarily will cease on the business day (usually a Friday) preceding the expiration date and the trading hours will be 8:30 a.m. to 3:02 p.m. Chicago time. The expiration date will be the Saturday immediately following the third Friday of the expiration month. CBOE Rule 28.7 provides that there will be up to five expiration months, none further out than 15 months, but the Exchange can list additional options expiration further out than 15 months where a reasonably active secondary market exists.

The settlement process for CDSOs will be the same as the settlement process for equity options under CBOE rules, with the exception of the delivery process.[7] Payment of a CDSO's exercise price will be accompanied by payment of accrued interest on the underlying corporate debt security from, but not including, the last interest payment date to, and including, the exercise settlement date, as specified in OCC rules. The Exchange will notify OCC of the accrued interest calculation methodology that applies to each corporate debt security prior to the listing of the particular CDSO.

*(d) Minimum Price Variation and Strike Price Intervals*

The option premium will be quoted in points where each point equals $1,000. The minimum tick will be 0.05 ($50.00). Series with strike prices in, at, and out of the money initially will be listed (up to ten per month initially). In addition, CBOE proposes to limit the strike price intervals that can be used for CDSOs, which will be fixed at a percentage of principal amounts (based on a par quote basis of $100) as follows:

• 0.5% ($0.50) or greater, provided that the series to be listed is no more than 5% above or below the current market price of a corporate debt security reported on TRACE during TRACE system hours or effected on or through the facilities of a national securities exchange, as applicable, on the day prior to the day the series is first listed for trading;

• 1.0% ($1.00) or greater, provided that the series to be listed is no more than 10% above or below the current market price of a corporate debt security reported on TRACE during TRACE system hours or effected on or through the facilities of a national securities exchange, as applicable, on the day prior to the day the series is first listed for trading; and

• 2.5% ($2.50) or greater, provided that the series to be listed is greater than 10% above or below the current market price of a corporate debt security reported on TRACE during TRACE system hours or effected on or through facilities of a national securities exchange, as applicable, on the day prior to the day the series is first listed for trading.

These increments are designed to allow the Exchange flexibility to list options with strike increments at appropriate levels, while diminishing any potential adverse effect on the Exchange's quote capacity thresholds. CBOE believes that the operational capacity used to accommodate the trading of CDSOs on the Exchange will have a negligible effect on the total capacity used by the Exchange to trade its products on a daily basis. The Exchange has represented that it will delist a CDSO series for which there is no open interest.

*(e) Position Limits*

CBOE proposes to establish tiered position limits for CDSOs based on a policy to limit positions in such options to a quantity that, if exercised, would not exceed 10% of the total float of the underlying bond. CBOE believes the 10% level is sufficient to inhibit market manipulation or to mitigate other possible disruptions in the market. CBOE's lowest position limit for equity options is 13,500 contracts, which, if exercised, would represent approximately 19.28% of the minimum float of an equity security eligible to underlie a CBOE equity option (seven million shares).[8] Moreover, CBOE's 13,500 equity option contract limit applies to those options having an underlying security that does not meet the requirements for a higher option contract limit. CBOE believes the 10% position limit for CDSOs, which is significantly less than that for equity options, is sufficiently high to account for the differences in liquidity between the equity and debt markets and would consist of the following tiers:

| Float of underlying debt issue | Position limit for CDSO (contracts) |
|---|---|
| $200,000,000–$499,999,000 .... | 200 |
| 500,000,000–749,999,000 ..... | 500 |
| 750,000,000–999,999,000 ..... | 750 |
| 1,000,000,000–2,499,999,000 .. | 1,000 |
| 2,500,000,000 and greater ..... | 2,500 |

If a person holds more than 10% of a particular corporate debt security, the amount held by such person would not be included in the ''total float'' for purposes of determining the applicable position (and exercise) limits.[9]

*(f) Margin*

The margin (both initial and maintenance) for writing uncovered puts or calls will be as follows:

• An option writer will be required to deposit and maintain 100% of the current market value of the option plus 10% of the aggregate contract value minus the amount, if any, by which the option is out of the money, subject to a minimum for calls equal to 100% of the current market value of the option plus 5% of the aggregate contract value for any options on corporate debt securities that are rated investment-grade.[10]

• For options on non-investment-grade[11] corporate debt securities, the margin requirement will be 100% of the

[7] If the outstanding debt issuance amount of an underlying corporate debt security is insufficient to satisfy the delivery requirements under CBOE Rule 11.3, OCC rules provide for special settlement exercise procedures.

[8] *See* CBOE Rule 4.11 (Position Limits).

[9] For example, if a person holds 14% of the total outstanding issuance of a corporate debt security, the applicable position (and exercise) limits would be based only on the remaining 86% of the issuance that is not held by such person.

[10] The definition of an investment-grade corporate debt security is set forth in CBOE Rule 12.3(a)(15). The definition mirrors the definition set forth in NASD rules pertaining to TRACE.

[11] The definition of a non-investment-grade corporate debt security is set forth in CBOE Rule 12.3(a)(16). The definition mirrors the definition set forth in the NASD rules pertaining to TRACE.

current market value of the option plus 15% of the aggregate contract value minus the amount, if any, by which the option is out of the money, subject to a minimum for calls equal to 100% of the current market value of the option plus 10% of the aggregate contract value.

• Writers of options on convertible corporate debt securities will be required to deposit and maintain 100% of the current market value of the option plus 20% of the aggregate contract value minus the amount, if any, by which the option is out of the money, subject to a minimum for calls equal to 100% of the current market value of the option plus 10% of the aggregate contract value.

• In the case of puts for each of investment-grade, non-investment-grade, and convertible corporate debt securities, the minimum margin required will be 100% of the current market value of the option plus 5%, 10%, and 10%, respectively, of the put exercise price.

This methodology incorporates the same formula that the Exchange applies to all other option classes in Chapter 12 of CBOE rules, but with percentages that consider the specific market factors pertaining to the debt rating and type of corporate debt security. For example, the Exchange requires a deposit of 100% of the current market value of the option plus a 20% initial/maintenance margin and a 10% minimum margin. The Exchange would apply these initial/maintenance margin and minimum margin requirements if a convertible debt security underlies a CDSO. If an investment-grade corporate debt security underlies an option, the Exchange would impose a 10% initial/maintenance margin and a 5% minimum margin on the CDSO position because an investment-grade corporate debt security generally experiences lower price movements and lower volatility levels than stocks. CBOE proposes a 15% initial/maintenance margin and a 5% minimum margin for CDSOs based on non-investment-grade corporate debt securities because these securities exhibit more price movements than investment-grade corporate debt securities. The Exchange believes that these margin levels are consistent with the Commission's Net Capital Rule [12] for the underlying corporate debt securities.

*(g) Surveillance*

CBOE will implement a surveillance plan to monitor trading in CDSOs. The surveillance plan will include, but not be limited to, monitoring for insider trading, mini-manipulation, manipulation, frontrunning, and capping and pegging. The Exchange will also monitor the media for rating downgrades and other corporate actions to ensure the Exchange's maintenance standards are fulfilled, and monitor for any corporate actions that may influence the pricing of corporate debt securities and options thereon.

*(h) Information Bulletin*

CBOE will issue a circular to its members before the initiation of trading in CDSOs that will describe the special characteristics of CDSOs. This circular will highlight the exercise methodology of the series, explain the cash adjustment procedures, identify the new symbols for the CDSO series, and identify the initial expiration months and strike prices available for trading.

*(i) Trading Halts*

The Exchange proposes CBOE Rule 28.10 which would allow floor officials to consider the following factors, in addition to those set forth in CBOE Rule 6.3, in determining whether to halt trading in a CDSO:

• Whether TRACE is inoperative; and

• whether the issuer or trustee, as applicable under the agreements governing the underlying corporate debt security, provides notification to holders of the corporate debt security that the corporate debt security is to be redeemed in whole or part.

**III. Summary of Comments and CBOE Response**

The Commission received one comment on the proposal. The commenter, TBMA, generally supported the proposed rule change, but suggested modifying it in certain respects. TBMA noted that the initial principal amount for bonds underlying an option is typically $500 million in the OTC market, and suggested that CBOE raise its threshold. CBOE responded that the $250 million issue threshold gave the Exchange the flexibility to list options on smaller issues that CBOE believed were actively traded.

Furthermore, TBMA believed that the float and trading volume requirements may not be sufficiently high. TBMA also requested additional information on how the initial and ongoing trading volume and float would be determined by the Exchange. CBOE responded that the float and trading volume requirements for its CDSOs should not be significantly higher than for equities. Setting the listing criteria too high for CDSOs could prevent the listing of options on corporate debt securities where options could be listed on equities of the same issuer. CBOE also stated that it will determine the initial $200 million float by looking at public information submitted by investors who are required to report their holdings.

TBMA claimed that differences exist between CBOE's proposed margin requirements and other self-regulatory organizations (''SROs''). Specifically, TBMA notes the differences in the definition of ''investment grade'' and the range of products eligible for portfolio margining. CBOE, however, believed that its proposed margin levels are appropriate. CBOE asserted that the definition of investment grade is consistent with the definition of that term as used by other SROs, and that CBOE's definition is more comprehensive. With respect to the range of equity products available for portfolio margining, CBOE stated that it supports the inclusion of fixed income products within the portfolio margining regime and expects that CDSOs will be incorporated at a later stage. CBOE noted that it would consider amending its margin rules at that time.

TBMA requested information on how CBOE would exclude 10% holders in determining the total float amount. CBOE stated that the Exchange anticipates using Bloomberg's ''HDS'' function to obtain this information in a timely manner. CBOE added that the Exchange intends to implement monitoring procedures to identify corporate actions on an ongoing basis.

TBMA claimed that the expiration date of CBOE's CDSOs differed from the general practice of OTC options on corporate bonds, which typically expire on the 20th of the relevant month. TBMA believed that this difference could affect how CBOE's options were used to hedge OTC options. CBOE stated that final trading on third Fridays allows settlement on Saturdays and allows dovetailing of processing of equity and bond options. CBOE noted that, while the 20th of the month may be the standard settlement date for credit index derivatives, it is not clear that this settlement date has been adopted for the less active market for CDSOs. CBOE added that it would nevertheless consider amending its rule to adopt this standard at a later time.

TBMA suggested that CBOE work with the OCC to revise the Options Disclosure Document (''ODD'') to accommodate CDSOs, and that the ODD be made available for review and comment before approval of the proposal. In order to accommodate the listing and trading of CDSOs, CBOE expects that the OCC would amend its By-Laws and Rules to reflect CDSOs, which would be subject to public

[12] 17 CFR 240.15c3–1.

comment.[13] In addition, the Exchange believes that the OCC would seek to revise the ODD to incorporate CDSOs.[14] Further, CBOE clarified that the Exchange is working with OCC to develop procedures to address actions including full and partial redemptions, conversions to equities, bankruptcies, conversion to new series, and other actions. According to CBOE, the OCC intends to use a major data vendor to determine the market value of the underlying corporate debt securities of CDSOs. The data vendor will view TRACE and several other price reporting services to derive a composite price for each underlying security on a daily basis.

## IV. Discussion and Commission's Findings

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 believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[16] which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the listing rules proposed by CBOE for CDSOs are reasonable and consistent with the Act. The Commission notes that, for a CDSO to be listed, the underlying corporate debt security must, among other things, have substantial trading volume, initial principal amount, and outstanding float; the issuer of the corporate debt security must have at least one class of equity security registered under Section 12(b) of the Act; and such equity securities must satisfy the requirements for options trading on CBOE. These requirements are reasonably designed to facilitate investors' access to information that may be necessary to price a CDSO appropriately.

The Commission believes that the proposed position limits and margin rules for CDSOs are reasonable and consistent with the Act. The proposed position limits reasonably balance the promotion of a free and open market for these securities with minimization of incentives for market manipulation and insider trading. The proposed margin rules are reasonably designed to deter a member or its customer from assuming an imprudent position in CDSOs.

In support of the proposed rule change, the Exchange has made the following representations:

1. The Exchange has sufficient operational capacity to accommodate the listing and trading of CDSOs.
2. The Exchange's surveillance procedures are adequate to properly monitor the trading of the CDSOs.
3. The Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the CDSOs.
4. The Exchange will delist CDSO series for which there is no open interest.

This approval order is conditioned on the Exchange's adherence to these representations.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–CBOE–2003–41), as modified by Amendment No. 4, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–13275 Filed 7–9–07; 8:45 am]

**BILLING CODE 8010–01–P**

[13] Telephone conversation between Jennifer L. Klebes, Senior Attorney, CBOE and Marc McKayle, Special Counsel, Division of Market Regulation, Commission, on June 28, 2007.

[14] *See also* Exchange Act Rule 9b–1(b)(2)(i) which requires the relevant option market to file material changes to the ODD with the Commission, if the ODD without such changes would become inaccurate, incomplete, or misleading.

[15] 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).

[16] 15 U.S.C. 78s(b)(5).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56000; File No. SR–CBOE–2007–73]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change To Assess, on a Retroactive Basis, Certain CBOE and CBSX Market Data Fees

July 2, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule to assess, retroactive to April 1, 2007, fees relating to CBOE and CBOE Stock Exchange (''CBSX'') market data that were implemented on June 1, 2007. The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and *www.cboe.org/legal.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On June 1, 2007, the Exchange implemented new fees relating to TickerXpress (''TX''), which is an Exchange service that supplies market data to Exchange market-makers trading on the Hybrid Trading System.[3] Specifically, the Exchange increased the monthly fee for enhanced TX market data from $200 per month to $300 per month and adopted a fee of $100 per TX user per month for use of TX software for the use and display of market data. The Exchange proposes to assess these fees for the period April 1, 2007 through

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55882 (June 8, 2007), 72 FR 32931 (June 14, 2007) (File No. SR–CBOE–2007–54).

May 31, 2007, to help compensate the Exchange for its increased costs in providing the TX data and to help offset the license fees paid by the Exchange to its third-party provider for making the TX software available to users during this time period.

On June 1, 2007, the Exchange adopted a monthly fee to recoup the fees CBSX pays a third-party market data vendor and other parties to help establish facilities at CBSX through which the third-party market data vendor can provide CBSX participants with certain market data.[4] The fee is equal to $19,400 divided by the number of CBSX participants receiving the market data. The Exchange proposes to assess this fee for the period April 1, 2007 through May 31, 2007, to recoup the fees CBSX paid during this time period for providing the infrastructure to make the market data available to CBSX participants.

2. Statutory Basis

CBOE believes the proposed rule change is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(4) of the Act[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

*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*

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**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2007–73 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–73. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–73 and should be submitted on or before July 31, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–13310 Filed 7–9–07; 8:45 am]

BILLING CODE 8010–01–P

[4] *See id.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56005; File No. SR–ISE–2007–49]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to Fee Changes on a Retroactive Basis

July 3, 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 June 15, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by ISE. 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**

ISE is proposing to amend its Schedule of Fees to: (1) Increase the per contract surcharge from $0.10 per contract to $0.15 per contract for options on the Russell 1000® Index (''RUI''), the Russell 2000® Index (''RUT''), and the Mini Russell 2000 Index (''RMN''); and (2) refund surcharge fees collected for transactions in options on the iShares Russell 2000® Index Fund (''IWM''), the iShares Russell 2000® Value Index Fund (''IWN''), the iShares Russell 2000® Growth Index Fund (''IWO''), the iShares Russell 1000® Value Index Fund (''IWD'') and the iShares Russell 1000® Index Fund (''IWB''), in both cases for the period commencing January 1, 2007 and ending June 15, 2007 (the ''Retroactive Period''). The Exchange proposes the surcharge increase to become effective retroactively, as of January 1, 2007.[3] The text of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On June 15, 2007, the Exchange filed a proposed rule change as immediately effective under Section

Continued

proposed rule change is available at ISE, *http://www.iseoptions.com*, and the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to: (1) Increase the per contract surcharge from $0.10 per contract to $0.15 per contract in connection with the listing and trading of options on RUI, RUT, and RMN; and (2) refund surcharge fees collected for transactions in connection with the listing and trading in options on IWM, IWN, IWO, IWD and IWB during the Retroactive Period. The Exchange proposes the surcharge increase to become effective retroactively, as of January 1, 2007.

The Exchange's Schedule of Fees currently has in place a surcharge fee item that calls for a $0.10 per contract fee in connection with the listing and trading of options on RUI, RUT and RMN.[4] The Exchange revised its license agreement with the Frank Russell Company (''Russell''), effective January 1, 2007. Pursuant to the revised agreement, the Exchange pays Russell $0.15 per contract to trade options on RUI, RUT and RMN. The Exchange thus proposes to increase the surcharge fee for options on RUI, RUT and RMN from $0.10 per contract to $0.15 per contract retroactive to January 1, 2007 and collect from members the applicable fees due to the Exchange for the Retroactive Period. The Exchange believes that charging the participants that trade these instruments is the most equitable means of recovering the increased costs of the license. However, because competitive pressures in the industry have resulted in the waiver of transaction fees for Public Customers, the Exchange proposes to exclude Public Customer Orders[5] from this surcharge fee. Accordingly, this surcharge fee will only be charged to Exchange members with respect to non-Public Customer Orders (*e.g.*, ISE Market Maker, non-ISE Market Maker, and Firm Proprietary orders) and shall apply to certain Linkage Orders under a pilot program that is set to expire on July 31, 2007.[6]

Additionally, the Exchange had previously adopted a $0.10 per contract surcharge in connection with the listing and trading of options on IWM, IWN, IWO, IWD,[7] and IWB.[8] However, pursuant to the revised license agreement with Russell, the Exchange, as of January 1, 2007, no longer pays a license fee to Russell in connection with the listing and trading of options on IWM, IWN, IWO, IWD and IWB. As a result, the Exchange now proposes to refund to members the surcharge fee it has collected during the Retroactive Period.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)[9] that an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

### *B. Self–Regulatory Organization's Statement on Burden on Competition*

ISE 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*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or interested parties.

## 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–ISE–2007–49 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–ISE–2007–49. 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

19(b)(3)(A) of the Exchange Act that: (1) Removes the surcharge fee for IWM, IWN, IWO, IWD and IWB from its Schedule of Fees and (2) raises the surcharge fee from $.10 per contract to $.15 per contract for options on RUI, RUT and RMN. *See* Securities Exchange Act Release No. 55975 (June 28, 2007) (SR–ISE–2007–48). Because ISE seeks to apply changes to its Schedule of Fees on a retroactive basis, the Exchange is submitting this proposal for notice and comment.

[4] *See* Securities Exchange Act Release No. 51858 (June 16, 2005), 70 FR 36218 (June 22, 2005) (SR–ISE–2005–26).

[5] Public Customer Order is defined in Exchange Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(38) as a person that is not a broker or dealer in securities.

[6] Linkage Orders are defined in ISE Rule 1900(10). Under a pilot program that is set to expire on July 31, 2007, these fees will also be charged to Principal Acting as Agent Orders and Principal Orders (as defined in ISE Rule 1900(10)(i)–(ii)). *See* Securities Exchange Act Release No. 54204 (July 25, 2006), 71 FR 43548 (August 1, 2006) (SR–ISE–2006–38).

[7] *See* Securities Exchange Act Release No. 47075 (December 20, 2002), 67 FR 79673 (December 30, 2002) (SR–ISE–2002–29).

[8] *See* Securities Exchange Act Release No. 47564 (March 24, 2003), 68 FR 15256 (March 28, 2003) (SR–ISE–2003–13).

[9] 15 U.S.C. 78f(b)(4).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of ISE. 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–ISE–2007–49 and should be submitted on or before July 31, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–13308 Filed 7–9–07; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56001; File No. SR–NYSEArca–2007–34]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Trading a Class of Options Without Designating a Lead Market Maker

July 2, 2007.

On April 3, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] the proposed rule change to allow an options issue to trade without designating a Lead Market Maker (''LMM''). On May 2, 2007, NYSE Arca filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on May 29, 2007.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change as modified by Amendment No. 1.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] which requires that the rules of the an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange proposes to trade options classes without designating an LMM, yet still meet the requirements of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'').[6] Because the Exchange believes that certain highly liquid, highly active options classes have sufficient participation by OTP Holders[7] and do not need an LMM to foster liquidity, the Exchange proposes to remove from NYSE Arca Rule 6.35 the requirement that an LMM be assigned to every option class.[8]

The Exchange also proposes other rule changes to accommodate the requirements of the Linkage Plan. Pursuant to the Linkage Plan, a Principal Acting as Agent (''P/A'') Order may be routed to another exchange only through the principal account of a market maker that is authorized to represent customer orders, ''reflecting the terms of a related unexecuted Customer order for which the Market Maker is acting as agent.''[9] On NYSE Arca, the LMM currently is the responsible Market Maker for outbound P/A Orders sent through the Intermarket Options Linkage (''Linkage''). The Exchange now proposes to allow for the designation of a Market Maker, assigned on a rotating basis, as the responsible Intermarket Linkage Market Maker (''IMM'')[10] for outbound P/A Orders.

Currently, Market Makers on the Exchange other than LMMs are not permitted under the Exchange's current rules to act as an agent on behalf of an order submitted to the Exchange.[11] Therefore, the Exchange proposes to amend NYSE Arca Rule 6.38(a) to provide an exception for a Market Maker acting as an IMM for the purpose of settling P/A Orders sent to another exchange pursuant to NYSE Arca Rules 6.92 and 6.93. To enable the IMM to carry out its agency responsibilities with regard to P/A Orders submitted through the Linkage, the IMM would be required to submit prior written instructions to the Exchange for the routing of any P/A Orders through the Linkage. Although the Exchange intends to rely solely on the use of its outbound routing broker to access the quotes of other exchanges when the Exchange is not disseminating the national best bid or offer, there may be instances when the Exchange's routing broker is not available because of system malfunctions. Therefore, the Exchange proposes that designated IMMs be responsible for outbound P/A Orders sent through the Linkage.

The Exchange also proposes to amend NYSE Arca Rule 6.93 to clarify that the Exchange will be responsible for the receipt, processing, and execution of inbound Linkage orders received from other exchanges. Linkage orders sent to NYSE Arca are routed directly to the trading system for immediate automatic execution. Any remaining unexecuted order or portion of an order would be immediately returned by the Exchange to the originating away market.

The Commission believes that the proposed rule change is reasonably designed in that it permits the Exchange to not utilize an LMM in option classes where the Exchange does not believe an LMM is required and promotes the

[10] 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. 55789 (May 21, 2007), 72 FR 29568.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] On July 28, 2000, the Commission approved the Options Intermarket Linkage (''Linkage'') proposed by American Stock Exchange LLC, Chicago Board Options Exchange, Incorporated, and International Securities Exchange, LLC. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Philadelphia Stock Exchange, Inc., Pacific Exchange, Inc. (n/k/a NYSE Arca), and Boston Stock Exchange, Inc. joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[7] *See* NYSE Arca Rule 1.1(q) for the definition of ''OTP Holder.''

[8] In not designating an LMM in certain option issues, orders would be processed in price/time priority, meaning any market participant, regardless of status, may gain priority by improving the market.

[9] *See* Section 2(16)(a) of the Linkage Plan.

[10] The IMM would be selected from the pool of all Market Makers who have been appointed in the particular class. Market Makers requesting appointment to an options class would need to agree to participate in the rotation of IMM assignment.

[11] *See* NYSE Arca Rule 6.38(b)(1), which provides that Market Makers other than LMMs are restricted from acting as a principal and an agent in the same issue on the same business day. *See also* NYSE Arca Rule 6.38(b)(5), which provides Market Makers are restricted from acting as a floor broker in options covering the same underlying security to which its primary appointment extends.

principle of price/time priority on the Exchange. Further, the Commission believes that designating IMMs for the purpose of sending P/A Orders to away markets is not inconsistent with the Linkage Plan, because, among other things, the proposal will facilitate the sending of P/A Orders to other exchanges through Linkage in accordance with the requirements of the Linkage Plan's definition of P/A Orders. In addition, the Commission also believes the proposal clarifies the Exchange's role in the processing of orders it receives through Linkage.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSEArca–2007–34), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–13311 Filed 7–9–07; 8:45 am]

**BILLING CODE 8010–01–P**

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #10917 and #10918]**

### Iowa Disaster #IA–00009

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of IOWA dated 06/28/2007.

*Incident:* Severe Storms and Tornadoes.

*Incident Period:* 06/01/2007 and continuing.

**DATES:** *Effective Date:* 06/28/2007.

*Physical Loan Application Deadline Date:* 08/27/2007.

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/28/2008.

**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:*

Louisa, Muscatine.

*Contiguous Counties:*

Iowa: Cedar, Des Moines, Henry, Johnson, Scott, Washington.

Illinois: Mercer, Rock Island.

The Interest Rates are:

| | Percent |
|---|---|
| Homeowners With Credit Available Elsewhere | 5.750 |
| Homeowners Without Credit Available Elsewhere | 2.875 |
| 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 10917 B and for economic injury is 10918 0.

The States which received an EIDL Declaration # are Iowa and Illinois.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: June 28, 2007.

**Steven C. Preston,**

*Administrator.*

[FR Doc. E7–13284 Filed 7–9–07; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #10915 and #10916]**

### Mississippi Disaster #MS–00011

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Mississippi dated 06/28/2007.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 06/19/2007.

**DATES:** *Effective Date:* 06/28/2007.

*Physical Loan Application Deadline Date:* 08/27/2007.

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/28/2008.

**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 County:*

Tallahatchie.

*Contiguous Counties:* Mississippi: Coahoma, Grenada, Leflore, Panola, Quitman, Sunflower, Yalobusha.

The Interest Rates are:

| | Percent |
|---|---|
| Homeowners With Credit Available Elsewhere | 5.750 |
| Homeowners Without Credit Available Elsewhere | 2.875 |
| 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 10915 B and for economic injury is 10916 0.

The State which received an EIDL Declaration # is Mississippi.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: June 28, 2007.

**Steven Preston,**

*Administrator.*

[FR Doc. E7–13286 Filed 7–9–07; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[ Disaster Declaration #10919 and #10920]**

### Texas Disaster #TX–00254

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–1709–DR), dated 06/29/2007.

*Incident:* Severe Storms, Tornadoes, and Flooding.

*Incident Period:* 06/16/2007 through 06/18/2007.

**EFFECTIVE DATE:** 06/29/2007.

*Physical Loan Application Deadline Date:* 08/28/2007.

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/31/2008.

**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 06/29/2007, 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 (Physical Damage and Economic Injury Loans):

Cooke, Coryell, Denton, Grayson, Lampasas, Tarrant.

Contiguous Counties (Economic Injury Loans Only):

Texas: Bell, Bosque, Burnet, Collin, Dallas, Ellis, Fannin, Hamilton, Johnson, Mclennan, Mills, Montague, Parker, San Saba, Wise.

Oklahoma: Bryan, Love, Marshall.

The Interest Rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners With Credit Available Elsewhere | 5.750 |
| Homeowners Without Credit Available Elsewhere | 2.875 |
| Businesses With Credit Available Elsewhere | 8.000 |
| Other (Including Non-Profit Organizations) With Credit Available Elsewhere | 5.250 |
| Businesses And Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |
| For Economic Injury: | |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 10919B and for economic injury is 109200.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Roger B. Garland,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E7–13285 Filed 7–9–07; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

**[Public Notice 5861]**

### International Security Advisory Board (ISAB) Meeting Notice—Cancellation of July 12 Meeting

The closed meeting of the International Security Advisory Board (ISAB) originally scheduled for July 12, 2007, and published as Public Notice 5759 in the **Federal Register** of June 14, 2007 (Volume 72, Number 114, Pages 32939–32940), has been cancelled.

For more information, contact Brandy Buttrick, Deputy Executive Director of the International Security Advisory Board, Department of State, Washington, DC 20520, telephone: (202) 647–9336.

Date: July 3, 2007.

**George W. Look,**

*Executive Director, International, Security Advisory Board, Department of State.*

[FR Doc. E7–13334 Filed 7–9–07; 8:45 am]

BILLING CODE 4710–25–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Monthly Notice of PFC Approvals and Disapprovals. In June 2007, there were six applications approved. This notice also includes information on nine applications, two approved in December 2006, three approved in January 2007, one approved in February 2007, and the remaining three approved in May 2007, inadvertently left off the December 2006, January 2007, February 2007, and May 2007 notices, respectively. Additionally, 19 approved amendments to previously approved applications are listed.

**SUMMARY:** The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of 158.29.

**PFC Applications Approved**

*Public Agency:* County and City of Spokane, Spokane, Washington.

*Application Number:* 06–06–C–00–GEG.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $24,754,062.

*Earliest Charge Effective Date:* December 1, 2007.

*Estimated Charge Expiration Date:* April 1, 2012.

*Class of Air Carriers Not Required To Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Security enhancements

Snow removal equipment

*Brief Description of Project Partially Approved for Collection and Use:* Planning and design for runway 3 extension.

*Determination:* Partially approved. The purpose and need for the final length has not been determined. The approved amount is limited to that amount that will fund the environmental planning and partial design needed in support of the environmental analysis.

*Brief Description of Project Approved for Collection:* Construction of runway 3 extension.

*Brief Description of Withdrawn Project:* Airport layout plan update.

*Date of Withdrawal:* August 23, 2006.

*Decision Date:* December 4, 2006.

**FOR FURTHER INFORMATION CONTACT:** Warren Ferrell, Northwest Mountain Region Airports Division, (425) 227–2612.

*Public Agency:* Wichita Airport Authority, Wichita, Kansas.

*Application Number:* 07–05–C–00–ICT.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $3,918,050.

*Earliest Charge Effective Date:* July 1, 2007.

*Estimated Charge Expiration Date:* October 1, 2008.

*Class of Air Carriers Not Required To Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Taxiway N construction

Taxiway M construction

Taxiways L and H construction

Runway and taxiway shoulders/ blast pad rehabilitation

Airfield deicing vehicle

Three airfield plow trucks with sanders

Two dump trucks with snow plows

Safety building/ airport security

*Brief Description of Disapproved Project:* Airfield paint truck.

*Determination:* This truck is for routine maintenance activities and does not meet the requirements of 158.15(b).

*Decision Date:* December 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Lorna Sandridge, Central Region Airports Division, (816) 329–2641.

*Public Agency:* County and City of Twin Falls, Twin Falls, Idaho.

*Application Number:* 07–03–C–00–TWF.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $560,416.

*Earliest Charge Effective Date:* July 1, 2007.

*Estimated Charge Expiration Date:* October 1, 2011.

*Class of Air Carriers Not Required To Collect PFC's:* Air taxi/commercial operators utilizing aircraft having a seating capacity of less than 20 passengers.

*Determination:* Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Joslin Field–Magic Valley Regional Airport.

*Brief Description of Projects Approved for Collection and Use:*

Runway 7/25 pavement rehabilitation
Taxilane reconstruction
Update airport master plan study
Taxiway and taxilane rehabilitation
Acquire snow plow and snow removal equipment
Construct snow removal equipment storage building
Security enhancements
Taxilane reconstruction
Construction of taxilanes 10, 11, and 12
Taxiway Delta extension
Acquire sweeper, snow plow, and snow blower
Apron rehabilitation
Access road rehabilitation
Runway 12 safety area

*Decision Date:* January 8, 2007

**FOR FURTHER INFORMATION CONTACT:** Trang Tran, Seattle Airports District Office, (425) 227–1662.

*Public Agency:* City of Manchester, New Hampshire.

*Application Number:* 06–11–C–00–MHT.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $17,257,727.

*Earliest Charge Effective Date:* January 1, 2020.

*Estimated Charge Expiration Date:* December 1, 2021.

*Class of Air Carriers Not Required To Collect PFC's:* On demand air taxi/commercial operators.

*Determination:* Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Manchester Airport.

*Brief Description of Projects Approved for Collection and Use:*

Reconstruction of a portion of runway 6/24 and improvements to the safety area
Reconstruction of a portion of taxiway E
Construction of a stub taxiway at taxiway T
Demolition of air traffic control tower
PFC application development

*Brief Description of Projects Approved for Collection:*

Glycol collection system
Extension of runway 24 safety area

*Decision Date:* January 17, 2007.

**FOR FURTHER INFORMATION CONTACT:** Priscilla Scott, New England Region Airports Division, (781) 238–7614.

*Public Agency:* City of Abilene, Texas.

*Application Number:* 07–02–C–00–ABI.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $2,519,008.

*Earliest Charge Effective Date:* July 1, 2008.

*Estimated Charge Expiration Date:* August 1, 2015.

*Class of Air Carriers Not Required To Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Rehabilitate air carrier apron
Acquire snow removal equipment and interactive aircraft rescue and firefighting training system
Rehabilitate taxiways C and D lighting system
Improve runway 17L runway safety area
Security fence upgrades and installation of computer controlled access system
Drainage improvements
Extend taxiway D, phase I and phase II
Terminal building improvements, phase IV
Rehabilitate runway 17L/35R lighting system
Pavement maintenance management plan
Airport entrance road improvements
PFC application and administration costs

*Decision Date:* January 18, 2007.

**FOR FURTHER INFORMATION CONTACT:** Marcelino Sanchez, Texas Airports District Office, (817) 222–5652.

*Public Agency:* Meridian Airport Authority, Meridian, Mississippi.

*Application Number:* 07–09–C–00–MEI.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $61,057.

*Earliest Charge Effective Date:* April 1, 2009.

*Estimated Charge Expiration Date:* October 1, 2009.

*Class of Air Carriers Not Required To Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Rehabilitate guidance signs
Wildlife assessment
Security equipment
Rehabilitate automatic gate
Install emergency generators
Taxiway A relocation design

*Decision Date:* February 13, 2007.

**FOR FURTHER INFORMATION CONTACT:** Barbara Simmons, Jackson Airports District Office, (601) 664–9881.

*Public Agency:* City of Brownsville, Texas.

*Application Number:* 07–03–C–00–BRO.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $470,349.

*Earliest Charge Effective Date:* June 1, 2008.

*Estimated Charge Expiration Date:* October 1, 2009.

*Class of Air Carriers Not Required To Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Planning studies
Terminal building loading bridge
Acquire safety equipment
Runway 17 rehabilitation
Runway 13L/31R rehabilitation
Security system upgrade
Airfield sweeper
Apron expansion
Land acquisition
PFC application and administration fees

*Decision Date:* May 7, 2007.

**FOR FURTHER INFORMATION CONTACT:** Rodney Clark, Texas Airports District Office, (817) 222–5659.

*Public Agency:* Tri-Cities Airport Commission, Blountville, Tennessee.

*Application Number:* 07–03–C–00–TRI.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $1,264,140.

*Earliest Charge Effective Date:* March 1, 2012.

*Estimated Charge Expiration Date:* October 1, 2014.

*Class of Air Carriers Not Required To Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Baggage claim system
Master plan update
Administrative fees

*Decision Date:* May 30, 2007.

**FOR FURTHER INFORMATION CONTACT:** Michael Thompson, Memphis Airports District Office, (901) 322–8188.

*Public Agency:* City of Orlando, Florida.

*Application Number:* 07–11–C–00–MCO.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $48,580,000.

*Earliest Charge Effective Date:* November 1, 2018.

*Estimated Charge Expiration Date:* June 1, 2019.

*Class of Air Carriers Not Required To Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Airside terminals 1 and 4, Federal Inspection Services passenger capacity enhancements
East/west security checkpoints
Automated people mover automatic train operation controls rehabilitation
Baggage systems rehabilitation
Terminal infrastructure improvements
Common use terminal equipment/common use self service improvements
Airfield capacity improvements

*Decision Date:* May 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Susan Moore, Orlando Airports District Office, (407) 812–6331, extension 120.

*Public Agency:* City of San Jose, California.

*Application Number:* 06–15–C–00–SJC.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $495,095,000.

*Earliest Charge Effective Date:* October 1, 2014.

*Estimated Charge Expiration Date:* December 1, 2026.

*Class of Air Carriers Not Required To Collect PFC's:* Nonscheduled/on demand air carriers filing FAA Form 1800–31.

*Determination:* Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Norman Y. Mineta San Jose International Airport.

*Brief Description of Project Approved for Collection and Use:* Terminal B—north concourse.

*Decision Date:* June 13, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ron Biaoco, San Francisco Airports District Office, (650) 876–2778, extension 626.

*Public Agency:* County of Pitken, Aspen, Colorado.

*Application Number:* 07–06–C–00–ASE.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $2,078,000.

*Earliest Charge Effective Date:* November 1, 2009.

*Estimated Charge Expiration Date:* August 1, 2010.

*Class of Air Carriers Not Required To Collect PFC's:* Air taxi/commercial operators filing FAA Form 1800–31.

*Determination:* Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Aspen-Pitkin County/Sardy Field.

*Brief Description of Projects Approved for Collection and Use:*

Acquire aircraft rescue and firefighting vehicle
Terminal area planning study
Airport utility master plan
PFC application and administration fees

*Decision Date:* June 15, 2007.

**FOR FURTHER INFORMATION CONTACT:** Chris Schaffer, Denver Airports District Office, (303) 342–1258.

*Public Agency:* Springfield Airport Authority, Springfield, Illinois.

*Application Number:* 07–11–C–00–SPI.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $447,000.

*Earliest Charge Effective Date:* September 1, 2007.

*Estimated Charge Expiration Date:* May 1, 2009.

*Class of Air Carriers Not Required To Collect PFC's:* On demand air taxis.

*Determination:* Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Abraham Lincoln Capital Airport.

*Brief Description of Projects Approved for Collection and Use:*

Replace baggage claim equipment
Upgrade security system preliminary phase
Upgrade security system design phase
Replace emergency generator
Renovate checkpoint office (old entrance)

*Decision Date:* June 15, 2007.

**FOR FURTHER INFORMATION CONTACT:** Chad Oliver, Chicago Airports District Office, (847) 294–7199.

*Public Agency:* Evansville-Vanderburgh Airport Authority, Evansville, Indiana.

*Application Number:* 07–01–C–00–EVV.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $1,270,789.

*Earliest Charge Effective Date:* August 1, 2007.

*Estimated Charge Expiration Date:* November 1, 2008.

*Class of Air Carriers Not Required To Collect PFC's:* Air taxi operators filing FAA Form 1800–31.

*Determination:* Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Evansville Regional Airport.

*Brief Description of Projects Approved for Collection and Use:*

Construct power vault
Runway lighting modifications
Apron lighting modifications
Old terminal demolition
Plans and specifications to convert runway 9/27 to a taxiway
Partial overlay of runway 4/22
Expansion of general aviation apron
Design and construct airport guidance signs
Overlay runway 4/22
General aviation apron overlay
Environmental assessment for the runway 18/36 extension
Design and relocation of taxiway C
Design and perimeter fencing replacement
Construct perimeter fence
Preliminary engineering studies to rehabilitate runway 18/36
Purchase replacement aircraft rescue and firefighting vehicle
Rehabilitate runway 18/36
Rehabilitate runway 9/27
Rehabilitate runway 4/22 and taxiway H
Design rehabilitation of runway 4/22 and taxiway H
Rehabilitate runway 4/22, phase 2
Runway 4/22 and taxiway H edge lighting
Partial overlay of taxiway A

Property acquisition and demolition
Property acquisition—parcels 127, 129, 131, and 139
Airport layout plan update—property map
Improve security fence
Runway 18/36 extension, phase 1
Runway 4/22 perimeter road replacement
Runway 18/36 extension, phase 2
Runway 18/36 extension, phase 2B
Construct perimeter road
Runway 18/36 extension, phase 3
Runway 18/36 extension, phase 3B
Runway 18/36 extension, phase 4
Airport master plan update
Construct taxiway A2
Rehabilitate taxiway lighting
Install precision approach path indicator on runway 18/36
Rehabilitate runway 4/22 intersections
Runway 18/36 extension land acquisition
Purchase aircraft rescue and firefighting vehicle
Realign and rehabilitate taxiway C
Video security system

*Decision Date:* June 18, 2007.

**FOR FURTHER INFORMATION CONTACT:** Sandy Lyman, Chicago Airports District Office, (847) 294–7525.

*Public Agency:* City of Redding, California.

*Application Number:* 07–03–C–00–RDD.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $809,295.

*Earliest Charge Effective Date:* August 1, 2007.

*Estimated Charge Expiration Date:* September 1, 2010.

*Class of Air Carriers Not Required To Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Install security fencing
Rehabilitate general aviation apron, phases II and III, and construct fire protection waterline
Design and construct aircraft rescue and firefighting building, phases II, III, and IV
Design and rehabilitate taxiways A and B including medium intensity taxiway lighting
Terminal building rehabilitation (design), phases I and II
Land acquisition for approach protection and environmental assessment (148 acres and parcel 47)
Acquire handicap passenger ramp
PFC application costs
Emergency communication system upgrade
Acquire new sweeper and truck
Design and construct T-hangar taxilane and west taxilane
Municipal Boulevard extension (access road)

*Brief Description of Disapproved Project:* Maintenance/storage building.

*Determination:* This project is not eligible in accordance with paragraph 547(e) of FAA Order 5100.38C, Airport Improvement Program Handbook (June 28, 2005). Therefore, this project does not meet the requirements of 158.15(b).

*Decision Date:* June 27, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ron Biaoco, San Francisco Airports District Office, (650) 876–2778, extension 626.

*Public Agency:* Waterloo Airport Commission, Waterloo, Iowa.

*Application Number:* 07–07–C–00–ALO.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $356,706.

*Earliest Charge Effective Date:* March 1, 2008.

*Estimated Charge Expiration Date:* March 1, 2011.

*Class of Air Carriers Not Required To Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Runway 12/30 rehabilitation and edge lighting
Taxiway A reconstruction
Rehabilitation of general aviation apron and taxilane
Obstruction survey
Master plan update
Replace snow removal equipment
PFC administration costs

*Decision Date:* June 27, 2007.

**FOR FURTHER INFORMATION CONTACT:** Lorna Sandridge, Central Region Airports Division, (816) 329–2641.

AMENDMENTS TO PFC APPROVALS

| Amendment No., city, state | Amendment approved date | Original approved net PFC revenue | Amended approved net PFC revenue | Original estimated charge exp. date | Amended estimated charge exp. date |
|---|---|---|---|---|---|
| 92–01–C–07–HSV Huntsville, AL | 05/29/07 | $15,363,674 | $15,362,369 | 01/01/03 | 01/01/03 |
| 93–02–U–01–HSV Huntsville, AL | 05/29/07 | NA | NA | 01/01/03 | 01/01/03 |
| 92–01–C–08–HSV Huntsville, AL | 05/29/07 | 15,362,369 | 15,352,369 | 01/01/03 | 01/01/03 |
| 96–01–1–03–TVC Traverse City, MI | 05/29/07 | 14,354,594 | 3,637,041 | 01/01/17 | 10/01/03 |
| 01–02–C–01–TVC Traverse City, MI | 05/29/07 | 420,019 | 434,239 | 01/01/18 | 01/01/18 |
| 01–02–C–02–TVC Traverse City, MI | 05/29/07 | 434,239 | 434,239 | 01/01/18 | 01/01/18 |
| 02–07–C–01–MFR Medford, OR | 06/04/07 | 816,000 | 873,613 | 07/01/03 | 06/01/04 |
| 02–08–C–01–MFR Medford, OR | 06/04/07 | 105,000 | 95,448 | 07/01/04 | 09/01/04 |
| 01–07–C–05–CVG Covington, KY | 06/13/07 | 39,517,000 | 39,590,000 | 02/01/04 | 02/01/04 |
| 05–09–C–04–CVG Covington, KY | 06/13/07 | 43,794,000 | 47,705,000 | 12/01/13 | 03/01/14 |
| 06–10–C–02–CVG Covington, KY | 06/13/07 | 33,010,000 | 45,107,000 | 09/01/14 | 07/01/15 |
| 04–06–C–01–GFK Grand Forks, ND | 06/14/07 | 1,842,016 | 1,506,569 | 04/01/08 | 10/01/08 |
| 99–03–C–03–JAN Jackson, MS | 06/15/07 | 11,925,562 | 12,467,652 | 01/01/06 | 01/01/06 |
| 96–02–C–03–IND Indianapolis, IN | 06/18/07 | 11,869,241 | 12,263,017 | 10/01/01 | 10/01/01 |
| 95–01–C–02–SPW Spencer, IA | 06/19/07 | 111,500 | 77,638 | 03/01/06 | 03/01/06 |
| *01–01–C–02–SAT San Antonio, TX | 06/26/07 | 116,417,900 | 238,029,391 | 11/01/12 | 01/01/13 |
| 05–04–C–01–SAT San Antonio, TX | 06/26/07 | 50,682,244 | 118,303,705 | 04/01/16 | 03/01/18 |
| 01–04–C–02–ALO Waterloo, IA | 06/27/07 | 34,700 | 0 | 07/01/04 | 06/01/04 |
| 06–03–C–01–MYR Myrtle Beach, SC | 06/27/07 | 111,182,626 | 0 | 11/01/29 | 08/01/07 |

**Note:** The amendment denoted by an asterisk (*) includes a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For San Antonio, TX, this change is effective on October 1, 2007.

Issued in Washington, DC on July 3, 2007.

**Joe Hebert,**

*Manager, Financial Analysis and Passenger Facility Charge Branch.*

[FR Doc. 07–3340 Filed 7–9–07; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2006–26602]**

### Notice of Request for Information (RFI): Renew Approval of an Information Collection; OMB Control No. 2126–0011 (Commercial Driver Licensing and Test Standards)

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice; request for information.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval and invites public comment. The FMCSA requests approval to revise an ICR entitled, *''Commercial Driver Licensing and Test Standards.''* This information collection is needed to ensure that drivers, motor carriers and the States are complying with notification and recordkeeping requirements for information related to testing, licensing, violations, convictions and disqualifications and that the information is accurate, complete and transmitted and recorded within certain time periods as required by the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), as amended.

**DATES:** We must receive your comments on or before September 10, 2007.

**ADDRESSES:** You may submit comments by any of the following methods. Please identify your comments by the FMCSA Docket Number FMCSA–2006–26602.

- *Web site: http://dms.dot.gov.* Follow instructions for submitting comments to the Docket.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington DC 20590 between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.
- *Docket:* For access to the Docket Management System (DMS) to read background documents or comments received, go to *http://dms.dot.gov* at any time or to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington DC 20590 between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The DMS is available electronically 24 hours each day, 365 days each year. If you want notification of receipt of your comments, please include a self-addressed, stamped envelope, or postcard or print the acknowledgement page that appears after submitting comments on-line.
- *Privacy Act:* Anyone 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** on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Redmond, Office of Safety Programs, Commercial Driver's License Division (MC-ESL), Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Telephone: 202–366–5014; e-mail: *robert.redmond@dot.gov.* Office hours are from 9 a.m. to 5:30 p.m., e.t., Monday through Friday, except Federal Holidays.

**SUPPLEMENTARY INFORMATION:**

### Background

The licensed drivers in the United States deserve reasonable assurance that their fellow motorists are properly qualified to drive the vehicles they operate. Before the Commercial Motor Vehicle Safety Act of 1986 (CMVSA or the Act at Attachment A) Public Law 99–570, Title XII, 100 Stat. 3207–170) was signed by the President on October 27, 1986, 18 States and the District of Columbia authorized any person licensed to drive an automobile to also legally drive a large truck or bus. No special training or special license was required to drive these vehicles, even though it was widely recognized that operation of certain types of vehicles called for special skills, knowledge and training. Even in the 32 States that had a classified driver licensing system in place, only 12 of these States required an applicant to take a skills test in a representative vehicle. Equally serious was the problem of drivers possessing multiple driver licenses that enabled these commercial motor vehicle (CMV) drivers to avoid license suspension for traffic law convictions. By spreading their convictions among several States, CMV drivers could avoid punishment for their infringements, and stay behind the wheel.

The CMVSA addressed these problems. Section 12002 of the Act makes it illegal for a CMV operator to have more than one driver's license. Section 12003 requires the CMV driver conducting operations in commerce to notify both the designated State of licensure official and the driver's employer of any convictions of State or local laws relating to traffic control (except parking tickets). This section also requires each person who applies for employment as a CMV operator to notify prospective employers of all previous employment as a CMV operator for at least the previous ten years.

In section 12005 of the Act, the Secretary of Transportation (Secretary) is required to develop minimum Federal standards for testing and licensing of operators of CMVs.

Section 12007 of the Act also directs the Secretary, in cooperation with the States, to develop a clearinghouse to aid the States in implementing the one driver, one license, and one driving record requirement. This clearinghouse is known as the commercial driver's license information system (CDLIS).

The CMVSA further requires each person who has a CDL suspended, revoked or canceled by a State, or who is disqualified from operating a CMV for any period, to notify his or her employer of such actions. Drivers of CMVs must notify their employers within 1 business day of being notified of the license suspension, revocation, and cancellation, or of the lost right to operate or disqualification. These requirements are reflected in 49 CFR part 383, titled *''Commercial Driver's License Standards; Requirements and Penalties.''*

Specifically, section 383.21 prohibits a person from having more than one license; section 383.31 requires notification of convictions for driver violations; section 383.33 requires notification of driver's license suspensions; section 383.35 requires notification of previous employment; and section 383.37 outlines employer responsibilities. Section 383.111 requires the passing of a knowledge test by the driver and section 383.113 requires the passing of a skills test by

the driver; section 383.115 contains the requirement for the double/triple trailer endorsement, section 383.117 contains the requirement for the passenger endorsement, section 383.119 contains the requirement for the tank vehicle endorsement and section 383.121 contains the requirement for the hazardous materials endorsement.

Section 12011 of the CMVSA states that the Secretary shall withhold a portion of the Federal-aid highway funds apportioned to a State if the State does not substantially comply with the requirements in section 12009(a) of the Act. The information gathered during State compliance reviews is used to determine whether States are complying with these requirements.

A final rule was published on July 31, 2002 (67 FR 49742) implementing 15 of the 16 CDL related provisions of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106–159, 113 Stat. 1748 (Dec. 9, 1999)) (Attachment B) that were designed to enhance the safety of drivers on our nation's highways by ensuring that only safe drivers operate CMVs. These new requirements are contained in 49 CFR part 383 and include: five new major and serious disqualifying offenses (section 383.51): Non-CMV disqualifying offenses by a CDL holder (section 383.51); disqualification of drivers determined to be an imminent hazard (section 383.52); a new school bus endorsement (section 383.123); a prohibition on issuing a hardship license to operate a CMV while under suspension (section 384.210); a prohibition on masking convictions (section 384.226); and various requirements for transmitting, posting and retaining driver convictions and disqualification records.

An interim final rule (IFR) was published on May 5, 2003 (68 FR 23844)as a companion rule to the Transportation Security Administration's (TSA's) May 5, 2003 IFR implementing section 1012 of the USA PATRIOT Act (Public Law 107–56) (Attachment C) on security threat assessments for drivers applying for or renewing a CDL with a hazardous materials endorsement. While TSA set the requirements in their rule; FMCSA has the responsibility as part of the CDL testing and issuance process to ensure that States are in compliance with the TSA requirements.

This information collection supports the DOT Strategic Goal of Safety by requiring that drivers of CMVs are properly licensed according to all applicable Federal requirements.

The 10-year employment history information supplied by the CDL holder to the employer upon application for employment (49 CFR 383.35) is used to assist the employer in meeting his/her responsibilities to ensure that the applicant does not have a history of high safety risk behavior.

State officials use the information collected on the license application form (49 CFR 383.71), the medical certificate information that is posted to the driving record (proposed) and the conviction and disqualification data posted to the driving record (49 CFR 383.73) to prevent unqualified and/or disqualified CDL holders from operating CMVs on the nation's highways. State officials are also required to administer knowledge and skills tests to CDL driver applicants (49 CFR 384.202). The driver applicant is required to correctly answer at least 80 percent of the questions on each knowledge test in order to achieve a passing score on that test. To achieve a passing score on the skills test, the driver applicant must demonstrate that he/she can successfully perform all of the skills listed in the regulations. During State CDL compliance reviews, FMCSA officials review this information to ensure that the provisions of the regulations are being carried out. Without the aforementioned requirements, there would be no uniform control over driver licensing practices to prevent unqualified and/or disqualified drivers from being issued a CDL and to prevent unsafe drivers from spreading their convictions among several licenses in several States and remaining behind the wheel of a CMV. Failure to collect this information would render the regulations unenforceable.

Information submitted by the States will be used by the FMCSA to determine if individual States are in ''substantial compliance'' with section 12009(a) of the CMVSA. The FMCSA reviews information submitted by the States and conducts such reviews, audits, and investigations of each State once every three years or as it deems necessary to make compliance determinations for all States and the District of Columbia. If this information were not available, the FMCSA would have no means of independently verifying State compliance.

This request for renewed approval includes three additional information collection items: (1) ''State completing documents for a State-CDL compliance review [49 CFR 384],'' (2) ''CDL Knowledge and Skills Tests Recordkeeping [49 CFR 384.202]'' and (3) driver renewals under ''Driver Completion of the CDL Application [49 CFR 383.71].''

*Title:* Commercial Driver Licensing and Test Standards.

*OMB Number:* 2126–0011.

*Type of Request:* Revision of a currently-approved information collection.

*Respondents:* Drivers with a commercial driver's license (CDL) and State driver licensing agencies.

*Estimated Number of Respondents:* 8,332,800 driver respondents and 7,870,400 State respondents.

*Estimated Time per Response:* 5.15 minutes per response.

*Expiration Date:* April 30, 2007.

*Frequency of Response:* Variable.

*Estimated Total Annual Burden:* 1,391,456 hours.

**The Information Collection is Comprised of Seven Components**

(1) *Notification of Convictions/Disqualifications:* There are approximately 11.52 million active commercial driver's license (CDL) driver records. Each driver averages 1 conviction every 3 years. The estimated number of annual responses = 3,840,000 (11.52 million CDL drivers/3 = 3,840,000). It takes approximately 10 minutes to notify a motor carrier concerning convictions. The notification requirement has an estimated annual burden of 640,000 burden hours (3,840,000 convictions × 10/60 hours = 640,000 hours);

(2) *Providing Previous Employment History:* The estimated annual turnover rate of drivers is approximately 14 percent (%.) There are an estimated 1,612,800 annual responses to this requirement (11.52 million CDL drivers × .14 annual turnover rate = 1,612,800). It takes approximately 15 minutes to complete this requirement. The employment history requirement has an estimated annual burden of 403,200 hours (1,612,800 annual responses × 15/60 hours = 403,200 hours);

(3) *State Certification of Compliance:* There are 51 responses (50 States and the District of Columbia) to this requirement and it takes approximately 32 hours to complete each response. The compliance certification requirement has an estimated annual burden of 1,632 hours (51 responses × 32 hours = 1,632 hours);

(4) *State Compliance Review Documentation:* A State CDL compliance review is conducted approximately every 3.4 years. There are 15 responses (51 States/3.4 years = 15 States/year). It takes approximately 160 hours to complete each response. The State compliance review documentation requirement has an estimated annual burden of 2,400 hours (15 States × 160 hours = 2,400 hours).

(5) C*DLIS Recordkeeping:* Fifty (50) States and the District of Columbia are required to enter data into the commercial driver's license information system (CDLIS) about operators of CMVs and to perform record checks before issuing, renewing, upgrading or transferring a CDL.

There are approximately 576,000 new drivers a year (11.52 million drivers × .05 = 576,000 new drivers). We estimate that the average amount of time for each CDLIS inquiry performed by a State to add a new driver is 2 minutes. The new driver requirement has an estimated annual burden of 19,200 hours (576,000 transactions × 2/60 = 19,200 hours).

There are 230,400 drivers a year who change their State of domicile (11.52 million drivers × .02 = 230,400 drivers). We estimate that the average amount of time for each CDLIS inquiry performed by a State to change a driver's State of domicile is 2 minutes. The change State of domicile requirement has an estimated annual burden of 7,680 hours (230,400 transactions × 2/60 hours = 7,680 hours).

Approximately 25 percent of convictions result in a disqualification. There are 4,800,000 driver convictions and disqualifications (3,840,000 convictions × 1.25 = 4,800,000). We estimate that the average amount of time for each transaction performed by a State is 2 minutes. The driver conviction/disqualification transaction requirement has an estimated annual burden of 160,000 hours (4,800,000 transactions × 2/60 hours = 160,000 hours).

Approximately 33 percent of active CDL drivers have a hazardous materials endorsement. The average renewal period is approximately 5 years. There are 760,320 drivers a year applying for or renewing a hazardous materials endorsement to their CDL (11.52 million active CDL drivers × .33/5 years = 760,320 drivers). We estimate that the average amount of time for each citizenship/resident alien status check performed by a State is 2 minutes. The citizenship/resident alien status check transaction requirement has an estimated annual burden of 25,344 hours (760,320 transactions × 2/60 hours = 25,344 hours).

The total burden hours for these combined collection of information activities is 212,224 hours (19,200 hours + 7,680 hours + 160,000 hours + 25,344 hours = 212,224 hours).

(6) *CDL Application Form:* There are approximately 576,000 new CDL applicants a year. It takes approximately 1 minute to complete the CDL application. The new applicant CDL application requirement has an estimated annual burden of 9,600 hours (576,000 applications × 1/60 hours = 9,600 hours).

The average CDL renewal period is approximately 5 years. Therefore, 2,304,000 drivers renew their CDL a year (11.52 million active CDL drivers/ 5 years = 2,304,000 drivers). It takes approximately 1 minute for renewal drivers to complete the CDL application. The renewal driver CDL application requirement has an estimated annual burden of 38,400 hours (2,304,000 × 1/ 60 hours = 38,400 hours).

The total burden hours for these combined collection of information activities is 48,000 hours (9,600 hours + 38,400 hours = 48,000 hours).

(7) *Knowledge and Skills Test Recordkeeping:* There are approximately 576,000 new CDL applicants a year. It takes approximately 2 minute to record the results of knowledge tests and 5 minutes for the skills tests. Approximately 25 percent of the applicants fail the knowledge and skills tests.

The knowledge test recordkeeping requirement has an estimated annual burden of 24,000 hours (576,000 applicants × 2 /60 hours × 1.25 = 24,000 hours).

The skills test recordkeeping requirement has an estimated annual burden of 60,000 hours (576,000 applicants × 5/60 hours × 1.25 = 60,000).

The total burden hours are 84,000 hours for these combined activities (24,000 + 60,000 = 84,000).

*Definitions:* Under 49 CFR 383.5, a CMV is defined as a motor vehicle or combination of motor vehicles which: (a) Has a gross combination weight rating of 11,794 or more kilograms (kg) (26,001 or more pounds (lbs) inclusive of a towed unit with a gross vehicle weight rating (GVWR) of more than 4,536 kg (10,000 lbs)); (b) has a GVWR of 11,794 or more kg (26,001 or more lbs); (c) is designed to transport 16 or more passengers, including the driver; or (d) is of any size and is used to transport hazardous materials as hazardous materials are defined in 49 CFR 383.5.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA's performance; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: June 29, 2007.

**D. Marlene Thomas,**

*Associate Administrator for Administration.*

[FR Doc. E7–13376 Filed 7–9–07; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 23, 2007. No comments were received.

**DATES:** Comments must be submitted on or before August 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** Rodney McFadden, Maritime Administration, 1200 New Jersey Ave., SE., Washington, DC 20590. Telephone: 202–366–2647, FAX: 202–366–7403 or e-mail: *rodney.mcfadden @dot.gov.* Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:** Maritime Administration (MARAD).

*Title:* Elements of Request for Course Approval.

*OMB Control Number:* 2133–0535.

*Type of Request:* Extension of currently approved collection.

*Affected Public:* Respondents are public and private maritime security course training providers.

*Forms:* None.

*Abstract:* Under this voluntary collection, public and private maritime security training course providers may choose to provide the Maritime Administration (MARAD) with information concerning the content and operation of their courses. MARAD will use this information to evaluate whether the course meets the training standards and curriculum promulgated under Section 109 of the Maritime

Transportation Security Act of 2002 (MTSA) (Pub. L. 107–295). Courses found to meet these standards will receive a course approval.

*Annual Estimated Burden Hours:* 3,000 hours.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

*Comments Are Invited On:* 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

(Authority: 49 CFR 1.66)

Issued in Washington, DC on July 3, 2007.

**Daron T. Threet**

*Secretary, Maritime Administration.*

[FR Doc. E7–13349 Filed 7–9–07; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2007–28659]**

### 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 ADELAIDE.

**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–2007–28659 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 August 9, 2007.

**ADDRESSES:** Comments should refer to docket number MARAD–2007–28659. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel ADELAIDE is:

Intended Use: ''Day sails, sailing classes.''

Geographic Region: ''Maine, Massachusetts, New York, 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: July 2, 2007.

By order of the Maritime Administrator.

**Daron T. Threet,**

*Secretary, Maritime Administration.*

[FR Doc. E7–13350 Filed 7–9–07; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2007–28505]**

### Pipeline Safety: Requests for Waivers of Compliance (Special Permits)

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal pipeline safety laws allow a pipeline operator to request PHMSA to waive compliance with any part of the Federal pipeline safety regulations. We are publishing this notice to provide a list of requests we have received from pipeline operators seeking relief from compliance with certain pipeline safety regulations. This notice seeks public comment on these requests, including comments on any environmental impacts. In addition, this notice reminds the public that we have changed what we call a decision granting such a request to a special permit. At the conclusion of the comment period, PHMSA will evaluate each request individually to determine whether to grant a special permit or deny the request.

**DATES:** Submit any comments regarding any of these requests for special permit by August 9, 2007.

**ADDRESSES:** Comments should reference the docket number for the request and may be submitted in the following ways:

- *DOT Web Site: http://dms.dot.gov.* To submit comments on the DOT electronic docket site, click ''Comment/Submissions,'' click ''Continue,'' fill in the requested information, click ''Continue,'' enter your comment, then click ''Submit.''
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* DOT Docket Management System; U.S. Department

of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *E-Gov Web Site: http://www.Regulations.gov*. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

*Instructions:* You should identify the docket number for the request you are commenting on at the beginning of your comments. If you submit your comments by mail, you should submit two copies. If you wish to receive confirmation that PHMSA received your comments, you should include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov*, and may access all comments received by DOT at *http://dms.dot.gov* by performing a simple search for the docket number.

**Note:** All comments will be posted without changes or edits to *http://dms.dot.gov* including any personal information provided.

*Privacy Act Statement:* Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Wayne Lemoi by telephone at (404) 832–1160; or, e-mail at *wayne.lemoi@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

### Change in Nomenclature

The PHMSA changed the name of a decision we make granting a request for waiver of compliance from ''decision granting waiver'' to ''special permit'' to reflect that granting the request will not reduce safety. We commonly add safety conditions to decisions granting waivers to ensure that waiving compliance with an existing pipeline safety standard is consistent with pipeline safety. The change was simply a name change for a decision granting waiver under 49 U.S.C. 60118(c)(1).

### Comments Invited on Requests for Waiver

The PHMSA has filed in DOT's Docket Management System (DMS) requests for waiver we have received from pipeline operators seeking relief from compliance with certain pipeline safety regulations. Each request has been assigned a separate docket number in the DMS. We invite interested persons to participate by reviewing these requests and by submitting written comments, data or other views. Please include any comments on environmental impacts granting the requests may have.

Before acting on any request, PHMSA will evaluate all comments received on or before the comment closing date. We will consider comments received after this date if it is possible to do so without incurring additional expense or delay. We may grant or deny these requests based on the comments we receive.

The PHMSA has received the following requests for waivers of compliance with pipeline safety regulations.

| Docket No. | Requester | Regulation(s) | Nature of waiver |
|---|---|---|---|
| PHMSA–2007–28019 | TPM, Inc | 49 CFR 195.410 | To authorize the operator to mark the pipeline using the words ''Chemical Pipeline'' in lieu of ''Anhydrous Ammonia Pipeline.'' |
| PHMSA–2007–28276 | Golden Pass LNG Terminal, L.L.C | 49 CFR 193.2301 | To authorize the use of automatic ultrasonic testing to inspect liquefied natural gas tank welds. |
| PHMSA–2007–28458 | Dominion Transmission, Inc | 49 CFR 192.611 | To authorize operation of 6,354 ft of a gas transmission pipeline located one mile east of the Groveport Compressor Station in Fairfield County, Ohio without reducing operating pressure as a result of a change from a Class 2 to a Class 3 location. |

**Authority:** 49 U.S.C. 60118(c)(1) and 49 CFR 1.53.

Issued in Washington, DC on July 3, 2007.

**Jeffrey D. Wiese,**

*Acting Associate Administrator for Pipeline Safety.*

[FR Doc. E7–13379 Filed 7–9–07; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund

### Proposed Collection; Comment Request

**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 Community Development Financial Institutions Fund (the ''Fund''), within the Department of the Treasury, is soliciting comments concerning the Native American CDFI Assistance (NACA) Program Application.

**DATES:** Written comments should be received on or before September 10, 2007 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Linda G. Davenport, Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, Facsimile Number (202) 622–7754.

**FOR FURTHER INFORMATION CONTACT:** A copy of the draft NACA Program Application or requests for additional information may be obtained by contacting: Ruth Jaure, Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; or by phone to (202) 622–8662.

**SUPPLEMENTARY INFORMATION:**

*Title:* Native American CDFI Assistance (NACA) Program Application.

*OMB Number:* 1559–0025.

*Abstract:* The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*) (the ''Act'') authorizes the Community Development Financial

Institutions Fund (the ''Fund'') of the U.S. Department of the Treasury to promote economic revitalization and community development through investment in and assistance to Fund-certified community development financial institutions (''CDFIs'') through the CDFI Program. The Revised Continuing Appropriations Resolution, 2007 (Pub. L. 110–5) authorizes the Fund to provide financial assistance and technical assistance to benefit Native American Communities, with such benefit being provided primarily through qualified community development lender organizations with experience and expertise in community development banking and lending in Indian country, Native American organizations, Tribes and tribal organizations and other suitable providers.

Through the NACA Program, the Fund provides (i) FA and/or TA awards to Native CDFIs and entities that can be certified as Native CDFIs at time of award; and (ii) TA awards to entities that propose to become Native CDFIs within two years and ''Sponsoring Entities'' (e.g., Native American organizations, Tribes, Tribal organizations) that propose to create separate legal entities that will become Native CDFIs within three years.

*Type of Review:* Revision.

*Affected Public:* Not-for-profit institutions; state, local or tribal government and tribal entities; and businesses or other for-profit institutions.

*Estimated Number of Respondents:* 40.

*Estimated Annual Time per Respondent:* 65 hours.

*Estimated Total Annual Burden Hours:* 2,600 hours.

*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 Fund, including whether the information shall have practical utility; (b) the accuracy of the Fund'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.

**Authority:** Pub. L. No. 107–73; Pub. L. No. 110–5.

Dated: June 29, 2007.

**Kimberly A. Reed,**

*Director, Community Development Financial Institutions Fund.*

[FR Doc. E7–13331 Filed 7–9–07; 8:45 am]

**BILLING CODE 4810–70–P**

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning a proposed information collection titled, ''Survey of Minority Owned National Banks.'' The OCC is also giving notice that it has submitted the proposed information collection to OMB for review.

**DATES:** Comments must be submitted on or before August 9, 2007.

**ADDRESSES:** Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–NEW, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–NEW, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** You may request additional information or a copy of the collection and supporting documentation submitted to OMB by contacting: Mary Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:**

Title: Survey of Minority Owned National Banks.

*OMB Control No.:* New collection.

*Type of Review:* Regular review.

*Description:* The OCC is committed to assessing its efforts to provide supervisory support, technical assistance, education, and outreach to the Minority Owned National Banks (MONBs) under its supervision. To perform this assessment, it is necessary to obtain, from the individual MONBs, feedback on the effectiveness of OCC's current efforts and suggestions for enhancing its supervisory efforts and assistance going forward. The OCC will use the information it gathers to assess the needs of MONBs, and OCC's current efforts to meet those needs. The OCC will also use the information to focus and enhance its supervisory, technical assistance, education and outreach activities with respect to MONBs.

*Affected Public:* Businesses or other for-profit.

*Burden Estimates:*

*Estimated Number of Respondents:* 40.

*Estimated Number of Responses:* 40.

*Estimated Annual Burden:* 80 hours.

*Frequency of Response:* On occasion.

*Comments:* The OCC issued a 60-day Federal Register Notice on April 19, 2007 (72 FR 19761). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 2, 2007.

**Karen Solomon,**

*Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.*

[FR Doc. E7–13283 Filed 7–9–07; 8:45 am]

**BILLING CODE 4810–33–P**

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

**[Docket No. OCC–2007–0005]**

## FEDERAL RESERVE SYSTEM

**[Docket No. OP–1278]**

## FEDERAL DEPOSIT INSURANCE CORPORATION

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

**[No. 2007–31]**

## NATIONAL CREDIT UNION ADMINISTRATION

### Statement on Subprime Mortgage Lending

**AGENCIES:** Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); and National Credit Union Administration (NCUA) (collectively, the Agencies).

**ACTION:** Final guidance—Statement on Subprime Mortgage Lending.

**SUMMARY:** The Agencies are issuing a final interagency Statement on Subprime Mortgage Lending. This guidance has been developed to clarify how institutions can offer certain adjustable rate mortgage (ARM) products in a safe and sound manner, and in a way that clearly discloses the risks that borrowers may assume.

**EFFECTIVE DATE:** July 10, 2007.

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Michael Bylsma, Director, Community and Consumer Law Division, (202) 874–5750 or Stephen Jackson, Director, Retail Credit Risk, (202) 874–5170.

*Board:* Division of Banking Supervision and Regulation: Brian P. Valenti, Supervisory Financial Analyst, (202) 452–3575, Virginia M. Gibbs, Senior Supervisory Financial Analyst, (202) 452–2521, or Sabeth I. Siddique, Assistant Director, (202) 452–3861; Division of Consumer and Community Affairs: Kathleen C. Ryan, Counsel, (202) 452–3667, or Jamie Z. Goodson, Attorney, (202) 452–3667; or Legal Division: Kara L. Handzlik, Attorney (202) 452–3852. Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Users of Telecommunication Device for Deaf only, call (202) 263–4869.

*FDIC:* Beverlea S. Gardner, Examination Specialist, (202) 898–3640, Division of Supervision and Consumer Protection; Richard B. Foley, Counsel (202) 898–3784; Mira N. Marshall, Acting Chief Community Reinvestment Act and Fair Lending, (202) 898–3912; April A. Breslaw, Acting Associate Director, Compliance Policy & Exam Support Branch, Division of Supervision and Consumer Protection, (202) 898–6609.

*OTS:* Tammy L. Stacy, Director of Consumer Regulation, Compliance and Consumer Protection Division, (202) 906–6437; Glenn Gimble, Senior Project Manager, Compliance and Consumer Protection Division, (202) 906–7158; William J. Magrini, Senior Project Manager, Credit Risk, (202) 906–5744; or Teresa Luther, Economist, Credit Risk, (202) 906–6798.

*NCUA:* Cory W. Phariss, Program Officer, Examination and Insurance, (703) 518–6618.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Agencies developed this Statement on Subprime Mortgage Lending to address emerging risks associated with certain subprime mortgage products and lending practices. In particular, the Agencies are concerned about the growing use of ARM products [1] that provide low initial payments based on a fixed introductory rate that expires after a short period, and then adjusts to a variable rate plus a margin for the remaining term of the loan. These products could result in payment shock to the borrower. The Agencies are concerned that these products, typically offered to subprime borrowers, present heightened risks to lenders and borrowers. Often, these products have additional characteristics that increase risk. These include qualifying borrowers based on limited or no documentation of income or imposing substantial prepayment penalties or prepayment penalty periods that extend beyond the initial fixed interest rate period. In addition, borrowers may not be adequately informed of product features and risks, including their responsibility to pay taxes and insurance, which might be separate from their mortgage payments.

These products originally were extended to customers primarily as a temporary credit accommodation in anticipation of early sale of the property or in expectation of future earnings growth. However, these loans have more recently been offered to subprime borrowers as ''credit repair'' or ''affordability'' products. The Agencies are concerned that many subprime borrowers may not have sufficient financial capacity to service a higher debt load, especially if they were qualified based on a low introductory payment. The Agencies are also concerned that subprime borrowers may not fully understand the risks and consequences of obtaining this type of ARM loan. Borrowers who obtain these loans may face unaffordable monthly payments after the initial rate adjustment, difficulty in paying real estate taxes and insurance that were not escrowed, or expensive refinancing fees, any of which could cause borrowers to default and potentially lose their homes.

In response to these concerns, the Agencies published for comment the Proposed Statement on Subprime Mortgage Lending (proposed statement), 72 FR 10533 (March 8, 2007). The proposed statement provided guidance on the criteria and factors, including payment shock, that an institution should assess in determining a borrower's ability to repay the loan. The proposed statement also provided guidance intended to protect consumers from unfair, deceptive, and other predatory practices, and to ensure that consumers are provided with clear and balanced information about the risks and features of these loans. Finally, the proposed statement addressed the need for strong controls to adequately manage the risks associated with these products.

The Agencies requested comment on all aspects of the proposed statement, and specifically requested comment about whether: (1) These products always present inappropriate risks to institutions and consumers, or the extent to which they may be appropriate under some circumstances; (2) the proposed statement would unduly restrict the ability of existing subprime borrowers to refinance their loans, and whether other forms of credit are available that would not present the risk of payment shock; (3) the principles of the proposed statement should be applied beyond the subprime ARM market; and (4) limitations on the use of

[1] For example, ARMs known as ''2/28'' loans feature a fixed rate for two years and then adjust to a variable rate for the remaining 28 years. The spread between the initial fixed interest rate and the fully indexed interest rate in effect at loan origination typically ranges from 300 to 600 basis points.

prepayment penalties would help meet borrower needs.

The Agencies collectively received 137 unique comments on the proposed statement. Comments were received from financial institutions, industry-related trade associations (industry groups), consumer and community groups, government officials, and members of the public.

## II. Overview of Public Comments

The commenters were generally supportive of the Agencies' efforts to provide guidance in this area. However, many financial institution commenters expressed concern that certain aspects of the proposed statement were too prescriptive or could unduly restrict subprime borrowers' access to credit. Many consumer and community group commenters stated that the proposed statement did not go far enough in addressing their concerns about these products.

Financial institutions and industry groups stated that they supported prudent underwriting, but opposed a strict requirement that ARM loans subject to the proposed statement be underwritten at a fully indexed rate with a fully amortizing repayment schedule. They also stated that these loan products are not always inappropriate, particularly because they can be a useful credit repair vehicle or a means to establish a favorable credit history. Many of these commenters expressed concern that the proposed statement would unduly restrict credit to subprime borrowers. They also requested that the proposed statement be modified to allow lenders flexibility in helping existing subprime borrowers refinance out of ARM loans that will reset to a monthly payment that they cannot afford.

The majority of financial institutions and industry group commenters opposed the application of the proposed statement outside the subprime market. A number of these commenters requested clarification of the scope of the proposed statement and the definition of ''subprime.''

Some industry group commenters also expressed concern that consumer disclosure requirements would put federally-regulated institutions at a disadvantage and cause consumer information overload. They also requested that any changes to consumer disclosure requirements be part of a comprehensive reform of existing disclosure regulations.

Consumer and community group commenters generally supported the proposed statement. Many of these commenters expressed their concern that the products covered by the proposed statement present inappropriate risks for subprime borrowers. Many of these commenters supported extending the scope of the proposed statement to other mortgage products. These commenters supported the proposed underwriting criteria, though a number of them suggested stricter underwriting criteria. They also supported further limiting or prohibiting the use of reduced documentation and stated income loans, suggesting that such a reduction would be in the best interests of consumers.

Both industry group and consumer and community group commenters expressed concern that the proposed statement will not apply to all lenders. Industry group commenters indicated this would put federally-regulated financial institutions at a competitive disadvantage. Consumer and community group commenters encouraged the Agencies to continue to work with state regulators to extend the principles of the proposed statement to non-federally supervised institutions. Since the time that the Agencies announced the proposed statement, the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) issued a press release confirming their intent to ''develop a parallel statement for state supervisors to use with state-supervised entities.'' [2]

## III. Agencies' Action on Final Joint Guidance

The Agencies are issuing the Statement on Subprime Mortgage Lending (Statement) with some changes to respond to the comments received and to provide additional clarity. The Statement applies to all banks and their subsidiaries, bank holding companies and their nonbank subsidiaries, savings associations and their subsidiaries, savings and loan holding companies and their subsidiaries, and credit unions. Significant comments on specific provisions of the proposed statement, the Agencies' responses, and changes to the proposed statement are discussed below.

### *Scope of Guidance*

A number of financial institution and industry group commenters and two credit reporting companies requested that the definition of ''subprime'' be clarified. A financial institution and an industry group commenter requested a bright-line test to determine if a borrower falls into the subprime category.

The Agencies considered commenters' requests that a definition of ''subprime'' be included in the Statement. The Agencies determined, however, that the reference to the subprime borrower characteristics from the 2001 Expanded Guidance for Subprime Lending Programs (Expanded Guidance) provides appropriate information for purposes of this Statement. The Expanded Guidance provides a range of credit risk characteristics that are associated with subprime borrowers, noting that the characteristics are illustrative and are not meant to define specific parameters for all subprime borrowers.[3] Because the term ''subprime'' is not consistently defined in the marketplace or among individual institutions, the Agencies believe that incorporating the subprime borrower credit risk characteristics from the Expanded Guidance provides sufficient clarity.

A number of commenters also requested clarification as to whether the proposed statement applies to all products with the features described. In addition, the Agencies specifically requested comment regarding whether the proposed statement's principles should be applied beyond the subprime ARM market. All consumer and community groups and some of the financial institutions who addressed this question supported application of the proposed statement beyond the subprime market. However, most financial institution and industry group commenters opposed application of the proposed statement beyond the subprime market. These commenters stated that the issues the proposed statement was designed to address are confined to the subprime market and expansion of the proposed statement to other markets would unnecessarily limit the options available to other borrowers.

As with the proposed statement, the Statement retains a focus on subprime borrowers, due to concern that these consumers may not fully understand the risks and consequences of these loans and may not have the financial capacity to deal with increased obligations. The Agencies did revise the language to indicate that the proposed statement applies to certain ARM products that have one or more characteristics that can cause payment shock, as defined in the proposed statement. While the Statement has retained its focus on

[2] Media Release, CSBS & AARMR, ''CSBS and AARMR Support Interagency Statement on Subprime Lending'' (March 2, 2007), available at *http://www.csbs.org/AM/Template.cfm?Section=Search&template=/CM/HTMLDisplay.cfm&ContentID=10295.*

[3] Federally insured credit unions should refer to LCU 04–CU–13—Specialized Lending Activities.

subprime borrowers, the Agencies note that institutions generally should look to the principles of this Statement when such ARM products are offered to non-subprime borrowers.

*Risk Management Practices*

Predatory Lending Considerations

Some financial institution and industry group commenters raised concerns that the proposed statement implied that subprime lending is ''per se'' predatory. The Statement clarifies that subprime lending is not synonymous with predatory lending, and that there is no presumption that the loans to which the Statement applies are predatory.

Qualifying Standards

The proposed statement provided that subprime ARMs should be underwritten at the fully indexed rate with a fully amortizing repayment schedule. Many consumer and community groups supported the proposed statement's underwriting standards. Other consumer and community groups thought that the proposed qualifying standards did not go far enough, and suggested that these loans should be underwritten on the basis of the maximum possible monthly payment. The majority of industry group commenters who addressed this issue opposed the proposed underwriting standard as overly prescriptive. Some commenters also requested that the Statement define ''fully indexed rate with a fully amortizing repayment schedule.'' All of the commenters that addressed the issue favored including a reasonable estimate of property taxes and insurance in an assessment of borrowers' debt-to-income ratios.

The Agencies continue to believe that institutions should maintain qualification standards that include a credible analysis of a borrower's capacity to repay the loan according to its terms. This analysis should consider both principal and interest obligations at the fully indexed rate with a fully amortizing repayment schedule, plus a reasonable estimate for real estate taxes and insurance, whether or not escrowed. Qualifying consumers based on a low introductory payment does not provide a realistic assessment of a borrower's ability to repay the loan according to its terms. Therefore, the proposed general guideline of qualifying borrowers at the fully indexed rate, assuming a fully amortizing payment, remains unchanged in the final Statement. The Agencies did, however, provide additional information regarding the terms ''fully indexed rate'' and ''fully amortizing payment schedule'' to clarify expectations regarding how institutions should assess borrowers' repayment capacity.

Reduced Documentation or Stated Income Loans

Several commenters raised concerns about reduced documentation or stated income loans. The majority of commenters who addressed this issue supported the proposed statement's position that institutions should be able to readily document income for many borrowers and that reduced documentation should be accepted only if mitigating factors are present. A few financial institution and industry group commenters urged the Agencies to allow lenders some flexibility in deciding when these loans are appropriate for borrowers whose income is derived from sources that are difficult to verify. On the other hand, some consumer and community group commenters stated that borrowers are not always given the option to document income and thereby pay a lower interest rate. They also indicated that stated income loans may be a vehicle for fraud in that borrower income may be inflated to qualify for a loan.

The Agencies believe that verifying income is critical to conducting a credible analysis of borrowers' repayment capacity, particularly in connection with loans to subprime borrowers. Therefore, the final Statement provides that stated income and reduced documentation should be accepted only if there are mitigating factors that clearly minimize the need for verification of repayment capacity. The Statement provides some examples of mitigating factors, and sets forth an expectation that reliance on mitigating factors should be documented. The Agencies note that for many borrowers, institutions should be able to readily document income using recent W–2 statements, pay stubs, and/or tax returns.

*Workout Arrangements*

The Agencies specifically requested comment on whether the proposed statement would unduly restrict the ability of existing subprime borrowers to refinance out of certain ARMs to avoid payment shock. The Agencies also asked about the availability to these borrowers of other mortgage products that do not present the risk of payment shock. The majority of financial institution and industry group commenters who responded to this specific question believed that the proposed statement would unduly restrict existing subprime borrowers' ability to refinance. However, most consumer and community groups who addressed the issue expressed the view that allowing existing borrowers to refinance into another unaffordable ARM was not an acceptable solution to the problem and, therefore, that eliminating this option would not be an undue restriction on credit. Some commenters mentioned that certain government-sponsored entities and lenders have already committed to revise their lending program criteria and/or create new programs that potentially may provide alternative mortgage products for refinancing existing subprime loans.

To address these issues, the Agencies incorporated a section on workout arrangements in the final text that references the principles of the April 2007 interagency Statement on Working with Borrowers. The Agencies believe prudent workout arrangements that are consistent with safe and sound lending practices are generally in the long-term best interest of both the financial institution and the borrower.

*Consumer Protection Principles*

Prepayment Penalties

The Agencies specifically requested comment regarding whether prepayment penalties should be limited to the initial fixed-rate period; how this practice, if adopted, would assist consumers and affect institutions; and whether an institution's providing a window of 90 days prior to the reset date to refinance without a prepayment penalty would help meet borrower needs. The overwhelming majority of commenters who addressed this question agreed that prepayment penalties should be limited to the initial fixed-rate period, and several commenters proposed a complete prohibition of prepayment penalties. Commenters suggested different time frames for expiration of the prepayment penalty period, ranging from 30 to 90 days prior to the reset date. Several industry group commenters, however, opposed such a limitation. They stated that prepayment fees are a legitimate means for lenders and investors to be compensated for origination costs when borrowers prepay prior to the interest rate reset. Further, these commenters noted that most lenders do not offer mortgage products that have prepayment penalty periods that extend beyond the fixed interest rate period and that borrowers should be allowed time to exit the loan prior to the reset date.

In light of the comments received, the Agencies revised the Statement to state

that the period during which prepayment penalties apply should not exceed the initial reset period, and that institutions generally should provide borrowers with a reasonable period of time (typically, at least 60 days prior to the reset date) to refinance their loans without penalty. There is no supervisory expectation for institutions to waive contractual terms with regard to prepayment penalties on existing loans.[4]

Consumer Disclosure Issues

Many financial institution and industry group commenters suggested that the Agencies' consumer protection goals would be better accomplished through amendments to generally applicable regulations, such as Regulation Z (Truth in Lending)[5] or Regulation X (Real Estate Settlement Procedures).[6] Some financial institution and consumer and community group commenters questioned the value of additional disclosures and expressed concern that the proposed statement would contribute to consumer information overload. A few commenters stated that the proposed statement would add burdensome new disclosure requirements and would result in the provision of confusing information to consumers.

Some industry group commenters asked the Agencies to provide uniform disclosures for these products, or to publish illustrations of the consumer information contemplated by the proposed statement similar to those previously proposed by the Agencies in connection with nontraditional mortgage products.[7] Several commenters also requested that any disclosures include the maximum possible monthly payment under the terms of the loan.

The Agencies have determined that, given the growth in the market for the products covered by the Statement and the heightened legal, compliance, and reputation risks associated with these products, guidelines are needed now to ensure that consumers will receive the information they need about the material features of these loans. In addition, while the Agencies are sensitive to commenters' concerns regarding disclosure burden, we do not anticipate that the information outlined in the Statement will result in additional lengthy disclosures. Rather, the Agencies contemplate that the information can be provided in a brief narrative format and through the use of examples based on hypothetical loan transactions. In response to requests by commenters, the Agencies are working on and expect to publish for comment proposed illustrations of the type of consumer information contemplated in the Statement.

The Agencies disagree with the commenters who expressed concern that the proposed statement appears to establish a suitability standard under which lenders would be required to assist borrowers in choosing products that are appropriate to their needs and circumstances. These commenters argued that lenders are not in a position to determine which products are most suitable for borrowers, and that this decision should be left to borrowers themselves. It is not the Agencies' intent to impose such a standard, nor is there any language in the Statement that does so.

*Control Systems*

While some commenters who addressed the control systems portion of the proposed statement supported the Agencies' proposal, some industry group commenters expressed concern that these provisions were neither realistic nor practical. A few industry group commenters requested clarification of the scope of a financial institution's responsibilities with regard to third parties. Some consumer and community group commenters requested uniform regulation of and increased enforcement against third parties.

The Agencies have carefully considered these comments, but have not revised this portion of the proposed statement. The Agencies do not expect institutions to assume an unwarranted level of responsibility for the actions of third parties. Moreover, the control systems discussed in the Statement are consistent with the Agencies' current supervisory authority and policies.

*Supervisory Review*

The Agencies received no comments on the supervisory review portion of the proposed statement. However, minor changes have been made to clarify the circumstances under which the Agencies will take action against institutions in connection with the products addressed in the Statement.

## IV. Text of Final Joint Guidance

The final interagency Statement on Subprime Mortgage Lending appears below.

*Statement on Subprime Mortgage Lending*

The Agencies[8] developed this Statement on Subprime Mortgage Lending (Subprime Statement) to address emerging issues and questions relating to certain subprime[9] mortgage lending practices. The Agencies are concerned borrowers may not fully understand the risks and consequences of obtaining products that can cause payment shock.[10] In particular, the Agencies are concerned with certain adjustable-rate mortgage (ARM) products typically offered to subprime borrowers that have one or more of the following characteristics:

- Low initial payments based on a fixed introductory rate that expires after a short period and then adjusts to a variable index rate plus a margin for the remaining term of the loan;[11]
- Very high or no limits on how much the payment amount or the interest rate may increase (''payment or rate caps'') on reset dates;
- Limited or no documentation of borrowers' income;
- Product features likely to result in frequent refinancing to maintain an affordable monthly payment; and/or
- Substantial prepayment penalties and/or prepayment penalties that extend beyond the initial fixed interest rate period.

Products with one or more of these features present substantial risks to both consumers and lenders. These risks are increased if borrowers are not adequately informed of the product features and risks, including their responsibility for paying real estate taxes and insurance, which may be separate from their monthly mortgage payments. The consequences to borrowers could include: being unable

[4] Federal credit unions are prohibited from charging prepayment penalties. 12 CFR 701.21.

[5] 12 CFR part 226 (2006).

[6] 24 CFR part 3500 (2005).

[7] 71 FR 58673 (October 4, 2006).

[8] The Agencies consist of the Board of Governors of the Federal Reserve System (the Board), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS).

[9] The term ''subprime'' is described in the 2001 Expanded Guidance for Subprime Lending Programs. Federally insured credit unions should refer to LCU 04–CU–13—Specialized Lending Activities.

[10] Payment shock refers to a significant increase in the amount of the monthly payment that generally occurs as the interest rate adjusts to a fully indexed basis. Products with a wide spread between the initial interest rate and the fully indexed rate that do not have payment caps or periodic interest rate caps, or that contain very high caps, can produce significant payment shock.

[11] For example, ARMs known as ''2/28'' loans feature a fixed rate for two years and then adjust to a variable rate for the remaining 28 years. The spread between the initial fixed interest rate and the fully indexed interest rate in effect at loan origination typically ranges from 300 to 600 basis points.

to afford the monthly payments after the initial rate adjustment because of payment shock; experiencing difficulty in paying real estate taxes and insurance that were not escrowed; incurring expensive refinancing fees, frequently due to closing costs and prepayment penalties, especially if the prepayment penalty period extends beyond the rate adjustment date; and losing their homes. Consequences to lenders may include unwarranted levels of credit, legal, compliance, reputation, and liquidity risks due to the elevated risks inherent in these products.

The Agencies note that many of these concerns are addressed in existing interagency guidance. The most prominent are the 1993 Interagency Guidelines for Real Estate Lending (Real Estate Guidelines), the 1999 Interagency Guidance on Subprime Lending, and the 2001 Expanded Guidance for Subprime Lending Programs (Expanded Subprime Guidance).[12]

While the 2006 Interagency Guidance on Nontraditional Mortgage Product Risks (NTM Guidance) may not explicitly pertain to products with the characteristics addressed in this Statement, it outlines prudent underwriting and consumer protection principles that institutions also should consider with regard to subprime mortgage lending. This Statement reiterates many of the principles addressed in existing guidance relating to prudent risk management practices and consumer protection laws.[13]

*Risk Management Practices*

Predatory Lending Considerations

Subprime lending is not synonymous with predatory lending, and loans with the features described above are not necessarily predatory in nature. However, institutions should ensure that they do not engage in the types of predatory lending practices discussed in the Expanded Subprime Guidance.[14] Typically, predatory lending involves at least one of the following elements:

- Making loans based predominantly on the foreclosure or liquidation value of a borrower's collateral rather than on the borrower's ability to repay the mortgage according to its terms;
- Inducing a borrower to repeatedly refinance a loan in order to charge high points and fees each time the loan is refinanced (''loan flipping''); or
- Engaging in fraud or deception to conceal the true nature of the mortgage loan obligation, or ancillary products, from an unsuspecting or unsophisticated borrower.

Institutions offering mortgage loans such as these face an elevated risk that their conduct will violate Section 5 of the Federal Trade Commission Act (FTC Act), which prohibits unfair or deceptive acts or practices.[15]

Underwriting Standards

Institutions should refer to the Real Estate Guidelines, which provide underwriting standards for all real estate loans.[16] The Real Estate Guidelines state that prudently underwritten real estate loans should reflect all relevant credit factors, including the capacity of the borrower to adequately service the debt.[17] The 2006 NTM Guidance details similar criteria for qualifying borrowers for products that may result in payment shock.

Prudent qualifying standards recognize the potential effect of payment shock in evaluating a borrower's ability to service debt. An institution's analysis of a borrower's repayment capacity should include an evaluation of the borrower's ability to repay the debt by its final maturity at the fully indexed rate,[18] assuming a fully amortizing repayment schedule.[19]

One widely accepted approach in the mortgage industry is to quantify a borrower's repayment capacity by a debt-to-income (DTI) ratio. An institution's DTI analysis should include, among other things, an assessment of a borrower's total monthly housing-related payments (*e.g.*, principal, interest, taxes, and insurance, or what is commonly known as PITI) as a percentage of gross monthly income.

This assessment is particularly important if the institution relies upon reduced documentation or allows other forms of risk layering. Risk-layering features in a subprime mortgage loan may significantly increase the risks to both the institution and the borrower. Therefore, an institution should have clear policies governing the use of risk-layering features, such as reduced documentation loans or simultaneous second lien mortgages. When risk-layering features are combined with a mortgage loan, an institution should demonstrate the existence of effective mitigating factors that support the underwriting decision and the borrower's repayment capacity.

Recognizing that loans to subprime borrowers present elevated credit risk, institutions should verify and document the borrower's income (both source and amount), assets and liabilities. Stated income and reduced documentation loans to subprime borrowers should be accepted only if there are mitigating factors that clearly minimize the need for direct verification of repayment capacity. Reliance on such factors also should be documented. Typically, mitigating factors arise when a borrower with favorable payment performance seeks to refinance an existing mortgage with a new loan of a similar size and with similar terms, and the borrower's financial condition has not deteriorated. Other mitigating factors might include situations where a borrower has substantial liquid reserves or assets that

[12] Federally insured credit unions should refer to LCU 04–CU–13—Specialized Lending Activities. National banks also should refer to 12 CFR 34.3(b) and (c), as well as 12 CFR part 30, Appendix C.

[13] As with the Interagency Guidance on Nontraditional Mortgage Product Risks, 71 FR 58609 (October 4, 2006), this Statement applies to all banks and their subsidiaries, bank holding companies and their nonbank subsidiaries, savings associations and their subsidiaries, savings and loan holding companies and their subsidiaries, and credit unions.

[14] Federal credit unions should refer to 12 CFR 740.2 and 12 CFR 706 for information on prohibited practices.

[15] The OCC, the Board, the OTS, and the FDIC enforce this provision under section 8 of the Federal Deposit Insurance Act. The OCC, Board, and FDIC also have issued supervisory guidance to the institutions under their respective jurisdictions concerning unfair or deceptive acts or practices. See OCC Advisory Letter 2002–3—Guidance on Unfair or Deceptive Acts or Practices, March 22, 2002, and 12 CFR part 30, Appendix C; Joint Board and FDIC Guidance on Unfair or Deceptive Acts or Practices by State-Chartered Banks, March 11, 2004. The OTS also has issued a regulation that prohibits savings associations from using advertisements or other representations that are inaccurate or misrepresent the services or contracts offered (12 CFR 563.27). The NCUA prohibits federally insured credit unions from using any advertising or promotional material that is inaccurate, misleading, or deceptive in any way concerning its products, services, or financial condition (12 CFR 740.2).

[16] Refer to 12 CFR part 34, subpart D (OCC); 12 CFR part 208, subpart C (Board); 12 CFR part 365 (FDIC); 12 CFR 560.100 and 12 CFR 560.101 (OTS); and 12 CFR 701.21 (NCUA).

[17] OTS Examination Handbook Section 212, 1–4 Family Residential Mortgage Lending, also discusses borrower qualification standards. Federally insured credit unions should refer to LCU 04–CU–13—Specialized Lending Activities.

[18] The fully indexed rate equals the index rate prevailing at origination plus the margin to be added to it after the expiration of an introductory interest rate. For example, assume that a loan with an initial fixed rate of 7% will reset to the six-month London Interbank Offered Rate (LIBOR) plus a margin of 6%. If the six-month LIBOR rate equals 5.5%, lenders should qualify the borrower at 11.5% (5.5% + 6%), regardless of any interest rate caps that limit how quickly the fully indexed rate may be reached.

[19] The fully amortizing payment schedule should be based on the term of the loan. For example, the amortizing payment for a ''2/28'' loan would be calculated based on a 30-year amortization schedule. For balloon mortgages that contain a borrower option for an extended amortization period, the fully amortizing payment schedule can be based on the full term the borrower may choose.

demonstrate repayment capacity and can be verified and documented by the lender. However, a higher interest rate is not considered an acceptable mitigating factor.

*Workout Arrangements*

As discussed in the April 2007 interagency Statement on Working with Borrowers, the Agencies encourage financial institutions to work constructively with residential borrowers who are in default or whose default is reasonably foreseeable. Prudent workout arrangements that are consistent with safe and sound lending practices are generally in the long-term best interest of both the financial institution and the borrower.

Financial institutions should follow prudent underwriting practices in determining whether to consider a loan modification or a workout arrangement.[20] Such arrangements can vary widely based on the borrower's financial capacity. For example, an institution might consider modifying loan terms, including converting loans with variable rates into fixed-rate products to provide financially stressed borrowers with predictable payment requirements.

The Agencies will not criticize financial institutions that pursue reasonable workout arrangements with borrowers. Further, existing supervisory guidance and applicable accounting standards do not require institutions to immediately foreclose on the collateral underlying a loan when the borrower exhibits repayment difficulties. Institutions should identify and report credit risk, maintain an adequate allowance for loan losses, and recognize credit losses in a timely manner.

*Consumer Protection Principles*

Fundamental consumer protection principles relevant to the underwriting and marketing of mortgage loans include:

- Approving loans based on the borrower's ability to repay the loan according to its terms; and
- Providing information that enables consumers to understand material terms, costs, and risks of loan products at a time that will help the consumer select a product.

Communications with consumers, including advertisements, oral statements, and promotional materials, should provide clear and balanced information about the relative benefits and risks of the products. This information should be provided in a timely manner to assist consumers in the product selection process, not just upon submission of an application or at consummation of the loan. Institutions should not use such communications to steer consumers to these products to the exclusion of other products offered by the institution for which the consumer may qualify.

Information provided to consumers should clearly explain the risk of payment shock and the ramifications of prepayment penalties, balloon payments, and the lack of escrow for taxes and insurance, as necessary. The applicability of prepayment penalties should not exceed the initial reset period. In general, borrowers should be provided a reasonable period of time (typically at least 60 days prior to the reset date) to refinance without penalty.[21]

Similarly, if borrowers do not understand that their monthly mortgage payments do not include taxes and insurance, and they have not budgeted for these essential homeownership expenses, they may be faced with the need for significant additional funds on short notice.[22] Therefore, mortgage product descriptions and advertisements should provide clear, detailed information about the costs, terms, features, and risks of the loan to the borrower. Consumers should be informed of:

- *Payment Shock.* Potential payment increases, including how the new payment will be calculated when the introductory fixed rate expires.[23]
- *Prepayment Penalties.* The existence of any prepayment penalty, how it will be calculated, and when it may be imposed.[24]
- *Balloon Payments.* The existence of any balloon payment.
- *Cost of Reduced Documentation Loans.* Whether there is a pricing premium attached to a reduced documentation or stated income loan program.
- *Responsibility for Taxes and Insurance.* The requirement to make payments for real estate taxes and insurance in addition to their loan payments, if not escrowed, and the fact that taxes and insurance costs can be substantial.

*Control Systems*

Institutions should develop strong control systems to monitor whether actual practices are consistent with their policies and procedures. Systems should address compliance and consumer information concerns, as well as safety and soundness, and encompass both institution personnel and applicable third parties, such as mortgage brokers or correspondents.

Important controls include establishing appropriate criteria for hiring and training loan personnel, entering into and maintaining relationships with third parties, and conducting initial and ongoing due diligence on third parties. Institutions also should design compensation programs that avoid providing incentives for originations inconsistent with sound underwriting and consumer protection principles, and that do not result in the steering of consumers to these products to the exclusion of other products for which the consumer may qualify.

Institutions should have procedures and systems in place to monitor compliance with applicable laws and regulations, third-party agreements and internal policies. An institution's controls also should include appropriate corrective actions in the event of failure to comply with applicable laws, regulations, third-party agreements or internal policies. In addition, institutions should initiate procedures to review consumer complaints to identify potential compliance problems or other negative trends.

*Supervisory Review*

The Agencies will continue to carefully review risk management and consumer compliance processes, policies, and procedures. The Agencies will take action against institutions that exhibit predatory lending practices, violate consumer protection laws or fair lending laws, engage in unfair or deceptive acts or practices, or otherwise engage in unsafe or unsound lending practices.

[20] Institutions may need to account for workout arrangements as troubled debt restructurings and should follow generally accepted accounting principles in accounting for these transactions.

[21] Federal credit unions are prohibited from charging prepayment penalties. 12 CFR 701.21.

[22] Institutions generally can address these concerns most directly by requiring borrowers to escrow funds for real estate taxes and insurance.

[23] To illustrate: a borrower earning $42,000 per year obtains a $200,000 ''2/28'' mortgage loan. The loan's two-year introductory fixed interest rate of 7% requires a principal and interest payment of $1,331. Escrowing $200 per month for taxes and insurance results in a total monthly payment of $1,531 ($1,331 + $200), representing a 44% DTI ratio. A fully indexed interest rate of 11.5% (based on a six-month LIBOR index rate of 5.5% plus a 6% margin) would cause the borrower's principal and interest payment to increase to $1,956. The adjusted total monthly payment of $2,156 ($1,956 + $200 for taxes and insurance) represents a 41% increase in the payment amount and results in a 62% DTI ratio.

[24] See footnote 21.

Dated: June 28, 2007.

**John C. Dugan,**

*Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System, June 28, 2007.

**Jennifer J. Johnson,**

*Secretary of the Board.*

Dated at Washington, DC, the 27th day of June, 2007.

By order of the Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

Dated: June 28, 2007.

By the Office of Thrift Supervision.

**John Reich,**

*Director.*

Dated: June 28, 2007.

By the National Credit Union Administration.

**JoAnn M. Johnson,**

*Chairman.*

[FR Doc. 07–3316 Filed 7–9–07; 8:45 am]

**BILLING CODE 4810–33–P (20%); 6210–01–P (20%); 6714–01–P (20%); 6720–01–P (20%) 7535–01–P (20%)**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the resolution for transactions involving registered securities.

**DATES:** Written comments should be received on or before September 11, 2007, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, A4–A, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

**SUPPLEMENTARY INFORMATION:**

*Title:* Resolution for Transactions Involving Registered Securities.

*OMB Number:* 1535–0117.

*Form Number:* PD F 1010.

*Abstract:* The information is requested to establish the official's authority to act on behalf of the organization.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Business or other for profit.

*Estimated Number of Respondents:* 500.

*Estimated Time Per Respondent:* 10 minutes.

*Estimated Total Annual Burden Hours:* 85.

*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.

Dated: July 3, 2007.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. E7–13373 Filed 7–9–07; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0698]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 9, 2007.

**ADDRESSES:** Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0698'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Records Management Service (005G2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–7870 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0698.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Educational Assistance to Supplement Tuition Assistance; 38 CFR 21.1030(c), 21.7140(c)(5).

*OMB Control Number:* 2900–0698.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Claimants who wish to receive educational assistance administered by VA to supplement tuition assistance administered by the Department of Defense must apply to VA. VA will use the data collected to determine the claimant's eligibility to receive educational assistance to supplement the tuition assistance he or she has received and the amount payable.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 18, 2007, at page 19587.

*Affected Public:* Not-for-profit institutions.

*Estimated Annual Burden:* 3,000 hours.

*Frequency of Response:* On occasion.

*Estimated Average Burden per Respondent:* 12 minutes.

*Estimated Annual Responses:* 15,000.

Dated: June 26, 2007.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E7–13280 Filed 7–9–07; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0697]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 9, 2007.

**ADDRESSES:** Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0697'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Records Management Service (005G2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–7870 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0697.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Approval of a Licensing or Certification and Organization Entity: 38 CFR 21.4268.

*OMB Control Number:* 2900–0697.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* The data collected will be used to determine whether licensing and certification tests, and the organizations offering them, should be approved for VA training under education programs VA administers.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 9, 2007, at pages 17626–17627.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 3,000 hours.

*Frequency of Response:* On occasion.

*Estimated Average Burden per Respondent:* 3 hours.

*Estimated Annual Responses:* 1,000.

Dated: June 26, 2007.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E7–13290 Filed 7–9–07; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0051]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 –21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 9, 2007.

**ADDRESSES:** Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0051'' in any correspondence.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Records Management Service (005G2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–7870 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0051.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Quarterly Report of State Approving Agency Activities.

*OMB Control Number:* 2900–0051.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* VA reimburses State Approving Agencies (SAAs) for necessary salary, fringe and travel expenses incurred in the approval and supervision of education and training programs. SAAs are required to report their activities to VA quarterly and provide notices regarding which courses, training programs and tests were approved, disapproved or suspended.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 9, 2007, at page 17626.

*Affected Public:* Federal Government, and State, Local or Tribal Government.

*Estimated Annual Burden:* 37,647 hours.

*Estimated Average Burden Per Respondent:* 1 hour.

*Frequency of Response:* Quarterly.

*Estimated Number of Respondents:* 59.

*Estimated Number of Responses:* 3,637.

Dated: June 26, 2007.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E7–13291 Filed 7–9–07; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0695]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and

Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 9, 2007.

**ADDRESSES:** Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0695'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Records Management Service (005G2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–7870 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0695.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Reimbursement of Licensing or Certification Test Fees, 38 CFR 21.1030(b), 21–7140(c)(4), VA Form 22–0803.

*OMB Control Number:* 2900–0695.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Claimants complete VA Form 22–0803 to request reimbursement of licensing or certification fees paid.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 9, 2007, at pages 17628–17629.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 1,590 hours.

*Frequency of Response:* On occasion.

*Estimated Average Burden per Respondent:* 15 minutes.

*Estimated Annual Responses:* 6,361.

Dated: June 26, 2007.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E7–13292 Filed 7–9–07; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0005]**

## Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a claimant's eligibility for dependency and indemnity compensation, death compensation, and/or accrued benefits.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before September 10, 2007.

**ADDRESSES:** Submit written comments on the collection of information through *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0005'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Application for Dependency and Indemnity Compensation by Parent(s), (Including Accrued Benefits and Death Compensation, When Applicable), VA Form 21–535.

*OMB Control Number:* 2900–0005.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Surviving parent(s) of veterans whose death was service connected complete VA Form 21–535 to apply for dependency and indemnity compensation, death compensation, and/or accrued benefits. The information collected is used to determine the claimant's eligibility for death benefits sought.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 4,320 hours.

*Estimated Average Burden per Respondent:* 1 hour 12 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 3,600.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E7–13293 Filed 7–9–07; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0696]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and

Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 9, 2007.

**ADDRESSES:** Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0696'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Records Management Service (005G2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–7870 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0696.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Availability of Educational, Licensing, and Certifications Records; 38 CFR 21.4209.

*OMB Control Number:* 2900–0696.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* CFR 21.4209 requires educational institutions and licensing and certification organizations to make their records available to government representatives. VA will use the data collected to ensure that benefits paid under the education programs are correct.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 18, 2007, at pages 19587–19588.

*Affected Public:* Not-for-profit institutions.

*Estimated Annual Burden:* 6,000 hours.

*Frequency of Response:* On occasion.

*Estimated Average Burden per Respondent:* 5 hours.

*Estimated Annual Responses:* 3,000.

Dated: June 26, 2007.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E7–13294 Filed 7–9–07; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0317]**

### Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to complete a claimant's application.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before September 10, 2007.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0317'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Request for Identifying Information Re: Veteran's Loan Records, VA Form Letter 26–626.

*OMB Control Number:* 2900–0317.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 26–626 is used to notify a correspondent that additional information is needed to determine if a veteran's loan guaranty benefits are involved and if so, to obtain the necessary information to identify and associate the correspondence with the correct veteran's loan application or record. If such information is not received within one year from the date of such notification, benefits will not be paid or furnished by reason of an incomplete application.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 200 hours.

*Estimated Average Burden per Respondent:* 5 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 2,400.

Dated: June 26, 2007.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E7–13296 Filed 7–9–07; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on July 18–19, 2007. On July 18 the meeting will be held in the Simmons Biomedical Research Bldg (NIB), Room 11.120, University of Texas Southwestern School of Medicine, 5323 Harry Hines Boulevard., Dallas, Texas. The session will convene at 8 a.m. and adjourn at 5:30 p.m. On July 19 the meeting will be held at Hilton Anatole, 2201 Stemmons Freeway, Dallas, Texas.

The session will convene at 8 a.m. and adjourn at 2 p.m. All Sessions will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Gulf War.

The Committee will review VA program activities related to Gulf War veterans' illnesses and updates on relevant scientific research published since the last Committee meeting. Additionally, there will be presentations and discussion of the Gulf War Illnesses Research Program at the University of Texas Southwestern School of Medicine, chronic multisymptom illnesses, mechanisms potentially underlying chronic symptoms affecting Gulf War veterans, and discussion of Committee business and activities.

The meeting will include time reserved for public comments. A sign-up sheet for five-minute comments will be available at the meeting. Individuals who speak are invited to submit a 1–2 page summary of their comments at the time of the meeting for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Dr. Lea Steele, RAC-Gulf War Veterans' Illnesses (T–GW), U.S. Department of Veterans Affairs, 2200 SW. Gage Boulevard., Topeka, KS 66622.

Any member of the public seeking additional information should contact Dr. William Goldberg, Designated Federal Officer, at (202) 254–0294, or Dr. Steele, Scientific Director, at (785) 350–3111, ext. 54617.

Dated: June 28, 2007.

By direction of the Secretary.

**E. Philip Riggin,**

*Committee Management Officer.*

[FR Doc. 07–3323 Filed 7–9–07; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Tuesday,
July 10, 2007

# Part II

# Environmental Protection Agency

## 40 CFR Part 59

## Consumer and Commercial Products: Control Techniques Guidelines in Lieu of Regulations for Paper, Film, and Foil Coatings; Metal Furniture Coatings; and Large Appliance Coatings; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 59**

**[EPA–HQ–OAR–2007–0454; FRL–8336–7]**

**RIN 2060–A014**

## Consumer and Commercial Products: Control Techniques Guidelines in Lieu of Regulations for Paper, Film, and Foil Coatings; Metal Furniture Coatings; and Large Appliance Coatings

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to section 183(e)(3)(C) of the Clean Air Act, EPA proposes to determine that control techniques guidelines will be substantially as effective as national regulations in reducing emissions of volatile organic compounds in ozone national ambient air quality standard nonattainment areas from the following three product categories: Paper, film, and foil coatings; metal furniture coatings; and large appliance coatings. Based on this determination, EPA may issue Control Techniques Guidelines in lieu of national regulations for these product categories. EPA has prepared draft Control Techniques Guidelines for the control of volatile organic compound emissions from each of the product categories covered by this proposed determination. Once finalized, these Control Techniques Guidelines will provide guidance to the States concerning EPA's recommendations for reasonably available control technology-level controls for these product categories. EPA further proposes to take final action to list the three Group III consumer and commercial product categories addressed in this notice pursuant to Clean Air Act section 183(e).

**DATES:** *Comments:* Written comments on the proposed determination must be received by August 9, 2007, unless a public hearing is requested by July 20, 2007. If a hearing is requested on the proposed determination, written comments must be received by August 24, 2007. We are also soliciting written comments on the draft CTGs and those comments must be submitted within the comment period for the proposed determination.

*Public Hearing.* If anyone contacts EPA requesting to speak at a public hearing concerning the proposed determination by July 20, 2007, we will hold a public hearing on July 25, 2007. The substance of any such hearing will be limited solely to EPA's proposed determination under Clean Air Act (CAA or the Act) section 183(e)(3)(C) that the Control Techniques Guidelines (CTGs) for the three Group III product categories will be substantially as effective as regulations in reducing volatile organic compound (VOC) emissions in ozone nonattainment areas. Accordingly, if a commenter has no objection to EPA's proposed determination under CAA section 183(e)(3)(C), but has comments on the substance of a draft CTG, the commenter should submit those comments in writing.

**ADDRESSES:** Submit your comments, identified by applicable docket ID number, 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-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Comments concerning the Proposed Determination should be sent to: Consumer and Commercial Products, Group III—Determination to Issue Control Techniques Guidelines in Lieu of Regulations, Docket No. EPA–HQ–OAR–2007–0454. Comments concerning any draft CTG should be sent to the applicable docket, as noted below: Consumer and Commercial Products—Paper, Film, and Foil Coatings, Docket No. EPA–HQ–OAR–2007–0336; Consumer and Commercial Products—Metal Furniture Coatings, Docket No. EPA–HQ–OAR–2007–0334; or Consumer and Commercial Products—Large Appliance Coatings, Docket No. EPA–HQ–OAR–2007–0329, Environmental Protection Agency, EPA Docket Center, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to the applicable docket. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *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.

*Public Hearing:* If a public hearing is held, it will be held at 10 a.m. on July 25, 2007 at Building C on the EPA campus in Research Triangle Park, NC, or at an alternate site nearby. Persons interested in presenting oral testimony must contact Ms. Dorothy Apple, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, North Carolina 27711, telephone number: (919) 541–4487, fax number (919) 541–3470, e-mail address: *apple.dorothy@epa.gov*, no later than July 20, 2007. Persons interested in attending the public hearing must also call Ms. Apple to verify the time, date, and location of the hearing. If no one contacts Ms. Apple by July 20, 2007 with a request to present oral testimony at the hearing, we will cancel the hearing.

*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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal

holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the CAA section 183(e) consumer and commercial products program, contact Mr. Bruce Moore, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5460, fax number (919) 541–3470, e-mail address: *moore.bruce@epa.gov*. For further information on technical issues concerning the proposed determination and draft CTG for paper, film, and foil coatings, contact: Ms. Kim Teal, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5580, e-mail address: *teal.kim@epa.gov*. For further information on technical issues concerning the proposed determination and draft CTG for metal furniture coatings, contact: Ms. Martha Smith, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, North Carolina 27711, telephone number: (919) 541–2421, e-mail address: *smith.martha@epa.gov*. For further information on technical issues concerning the proposed determination and draft CTG for large appliance coatings, contact: Mr. Lynn Dail, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, North Carolina 27711, telephone number: (919) 541–2363, e-mail address: *dail.lynn@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

*Entities Potentially Affected by this Action.* The entities potentially affected by this action include industrial facilities that use the respective consumer and commercial products covered in this action as follows:

| Category | NAICS code [a] | Examples of affected entities |
|---|---|---|
| Paper, film, and foil coatings | 322221, 322222, 322223, 322224, 322225, 322226, 322229, 325992, 326111, 326112, 326113, 32613, 32791, 339944. | Facilities that apply coatings to packaging paper, paper bags, laminated aluminum foil, coated paperboard, photographic film, abrasives, carbon paper, and other coated paper, film and foil products. |
| Metal furniture coatings | 337124, 337214, 337127, 337215, 337127, 332951, 332116, 332612, 337215, 335121, 335122, 339111, 339114, 337127, 81142. | Facilities that apply protective, decorative, or functional material to metal furniture components or products. |
| Large appliance coatings | 335221, 335222, 335224, 335228, 333312, 333319. | Facilities that apply coatings to household and commercial cooking equipment, refrigerators, laundry equipment, laundry dry-cleaning and pressing equipment. |
| Federal Government | | Not affected. |
| State/local/tribal government | | State, local and tribal regulatory agencies. |

[a] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility would be affected by this action, you should examine the applicable industry description in sections II.A, III.A, and IV.A of this notice. If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate EPA contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

*Preparation of Comments.* Do not submit information containing CBI to EPA through *www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, Attention: Docket ID EPA–HQ–OAR–2007–0454, 0336, 0334, or 0329 (as applicable). Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

*World Wide Web (WWW).* In addition to being available in the docket, an electronic copy of this proposed action will also be available on the World Wide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of the proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

*Organization of this Document.* The information presented in this notice is organized as follows:

I. Background Information and Proposed Determination
A. The Ozone Problem
B. Statutory and Regulatory Background
C. Significance of CTGs
D. General Considerations in Determining Whether a CTG Will Be Substantially as Effective as a Regulation
E. Proposed Determination
F. Availability of Documents
II. Paper, Film and Foil Coatings
A. Industry Characterization
B. Recommended Control Techniques
C. Impacts of Recommended Control Techniques
D. Considerations in Determining Whether a CTG Will Be Substantially as Effective as a Regulation
III. Metal Furniture Coatings
A. Industry Characterization
B. Recommended Control Techniques
C. Impacts of Recommended Control Techniques
D. Considerations in Determining Whether a CTG Will Be Substantially as Effective as a Regulation
IV. Large Appliance Coatings
A. Industry Characterization
B. Recommended Control Techniques

C. Impacts of Recommended Control Techniques
D. Considerations in Determining Whether a CTG Will Be Substantially as Effective as a Regulation
V. Statutory and Executive Order (EO) Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order: 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

## I. Background Information and Proposed Determination

### *A. The Ozone Problem*

Ground-level ozone, a major component of smog, is formed in the atmosphere by reactions of VOC and oxides of nitrogen in the presence of sunlight. The formation of ground-level ozone is a complex process that is affected by many variables.

Exposure to ground-level ozone is associated with a wide variety of human health effects, as well as agricultural crop loss, and damage to forests and ecosystems. Controlled human exposure studies show that acute health effects are induced by short-term (1 to 2 hour) exposures (observed at concentrations as low as 0.12 parts per million (ppm)), generally while individuals are engaged in moderate or heavy exertion, and by prolonged (6 to 8 hour) exposures to ozone (observed at concentrations as low as 0.08 ppm and possibly lower), typically while individuals are engaged in moderate exertion. Transient effects from acute exposures include pulmonary inflammation, respiratory symptoms, effects on exercise performance, and increased airway responsiveness. Epidemiological studies have shown associations between ambient ozone levels and increased susceptibility to respiratory infection, increased hospital admissions and emergency room visits. Groups at increased risk of experiencing elevated exposures include active children, outdoor workers, and others who regularly engage in outdoor activities. Those most susceptible to the effects of ozone include those with preexisting respiratory disease, children, and older adults. The literature suggests the possibility that long-term exposures to ozone may cause chronic health effects (*e.g.*, structural damage to lung tissue and accelerated decline in baseline lung function).

### *B. Statutory and Regulatory Background*

Under section 183(e) of the CAA, EPA conducted a study of VOC emissions from the use of consumer and commercial products to assess their potential to contribute to levels of ozone that violate the National Ambient Air Quality Standards (NAAQS) for ozone, and to establish criteria for regulating VOC emissions from these products. Section 183(e) of the CAA directs EPA to list for regulation those categories of products that account for at least 80 percent of the VOC emissions, on a reactivity-adjusted basis, from consumer and commercial products in areas that violate the NAAQS for ozone (*i.e.*, ozone nonattainment areas), and to divide the list of categories to be regulated into four groups. EPA published the initial list in the **Federal Register** on March 23, 1995 (60 FR 15264). In that notice, EPA stated that it may amend the list of products for regulation, and the groups of product categories, in order to achieve an effective regulatory program in accordance with the Agency's discretion under CAA section 183(e).

EPA has revised the list several times. See 70 FR 69759 (Nov. 17, 2005); 64 FR 13422 (Mar. 18, 1999). Most recently, in May 2006, EPA revised the list to add one product category, portable fuel containers, and to remove one product category, petroleum dry cleaning solvents. See 71 FR 28320 (May 16, 2006). As a result of these revisions, Group III of the list comprises five product categories: Portable fuel containers; aerosol spray paints; paper, film, and foil coatings; metal furniture coatings; and large appliance coatings. The portable fuel containers [2] and aerosol spray paints categories are addressed in separate rulemaking actions [3]; the remaining three categories are the subject of this action.

Any regulations issued under section CAA 183(e) must be based on ''best available controls'' (BAC). CAA section 183(e)(1)(A) defines BAC as ''the degree of emissions reduction that the Administrator determines, on the basis of technological and economic feasibility, health, environmental, and energy impacts, is achievable through the application of the most effective equipment, measures, processes, methods, systems or techniques, including chemical reformulation, product or feedstock substitution, repackaging, and directions for use, consumption, storage, or disposal.'' CAA section 183(e) also provides EPA with authority to use any system or systems of regulation that EPA determines is the most appropriate for the product category. Under these provisions, EPA has previously issued ''national'' regulations for architectural and industrial maintenance coatings, autobody refinishing coatings, consumer products, and portable fuel containers.[4]

CAA section 183(e)(3)(C) further provides that EPA may issue a CTG in lieu of a national regulation for a product category where EPA determines that the CTG will be ''substantially as effective as regulations'' in reducing emissions of VOC in ozone nonattainment areas. The statute does not specify how EPA is to make this determination, but does provide a fundamental distinction between national regulations and CTGs.

Specifically, for national regulations, CAA section 183(e) defines regulated entities as:

> (i) * * * manufacturers, processors, wholesale distributors, or importers of consumer or commercial products for sale or distribution in interstate commerce in the United States; or (ii) manufacturers, processors, wholesale distributors, or importers that supply the entities listed under clause (i) with such products for sale or distribution in interstate commerce in the United States.

Thus, under CAA section 183(e), a regulation for consumer or commercial products is limited to measures applicable to manufacturers, processors, distributors, or importers of the solvents, materials, or products supplied to the consumer or industry. CAA section 183(e) does not authorize EPA to issue national regulations that would directly regulate end-users of these products. By contrast, CTGs are guidance documents that recommend reasonably available control technology (RACT) measures that States can adopt and apply to the end users of products. This dichotomy (*i.e.*, that EPA cannot directly regulate end-users under CAA section 183(e), but can address end-users through a CTG) created by

[2] EPA promulgated a national regulation for VOC emissions from portable fuel containers on February 26, 2007 (72 FR 8428). National VOC emission standards for aerosol coatings currently are under development.

[3] Pursuant to the court's order in *Sierra Club* v. *EPA,* 1:01–cv–01597–PLF (D.C. Cir., March 31, 2006), EPA must take final action on the product categories in Group III by September 30, 2007.

[4] See 63 FR 48792, 48819, and 48848 (September 11, 1998); and 72 FR 8428 (February 26, 2007).

Congress is relevant to EPA's evaluation of the relative merits of a national regulation versus a CTG.

*C. Significance of CTGs*

CAA section 172(c)(1) provides that state implementation plans (SIPs) for nonattainment areas must include ''reasonably available control measures'' (RACM), including RACT, for sources of emissions. Section 182(b)(2) provides that States must revise their ozone SIPs to include RACT for each category of VOC sources covered by any CTG document issued after November 15, 1990, and prior to the date of attainment. Those ozone nonattainment areas that are subject to CAA section 172(c)(1) and submit an attainment demonstration seeking more than 5 years from the date of designation to attain must also meet the requirements of CAA section 182(b)(2) and revise their ozone SIPs in response to any CTG issued after November 15, 1990, and prior to the date of attainment. Other ozone nonattainment areas subject to CAA section 172(c)(1) may take action in response to this guidance, as necessary to attain.

EPA defines RACT as ''the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility, 44 FR 53761 (Sept. 17, 1979).'' In subsequent notices, EPA has addressed how states can meet the RACT requirements of the Act. Significantly, RACT for a particular industry is determined on a case-by-case basis, considering issues of technological and economic feasibility.

EPA provides States with guidance concerning what types of controls could constitute RACT for a given source category through issuance of a CTG. The recommendations in the CTG are based on available data and information and may not apply to a particular situation based upon the circumstances. States can follow the CTG and adopt State regulations to implement the recommendations contained therein, or they can adopt alternative approaches. In either event, States must submit their RACT rules to EPA for review and approval as part of the SIP process. EPA will evaluate the rules and determine, through notice and comment rulemaking in the SIP process, whether they meet the RACT requirements of the Act and EPA's regulations. To the extent a State adopts any of the recommendations in a CTG into its State RACT rules, interested parties can raise questions and objections about the substance of the guidance and the appropriateness of the application of the guidance to a particular situation during the development of the State rules and EPA's SIP approval process.

We encourage States in developing their RACT rules to consider carefully the facts and circumstances of the particular sources in their States because, as noted above, RACT is determined on a case-by-case basis, considering issues of technological and economic feasibility. For example, a state may decide not to require 90 percent control efficiency at facilities that are already well controlled, if the additional emission reductions would not be cost-effective. States may also want to consider reactivity-based approaches, as appropriate, in developing their RACT regulations.[5] Finally, if States consider requiring more stringent VOC content limits than those recommended in the draft CTGs, states may also wish to consider averaging, as appropriate. In general, the RACT requirement is applied on a short-term basis up to 24 hours.[6] However, EPA guidance permits averaging times longer than 24 hours under certain conditions.[7] The EPA's ''Economic Incentive Policy''[8] provides guidance on use of long-term averages with regard to RACT and generally provides for averaging times of no greater than 30 days. Thus, if the appropriate conditions are present, States may consider the use of averaging in conjunction with more stringent limits. Because of the nature of averaging, however, we would expect that any State RACT Rules that allow for averaging also include appropriate recordkeeping and reporting requirements.

By this action, we are making available draft CTGs that cover three product categories in Group III of the CAA section 183(e) list. These CTGs are guidance to the States and provide recommendations only. A State can develop its own strategy for what constitutes RACT for these three product categories, and EPA will review that strategy in the context of the SIP process and determine whether it meets the RACT requirements of the Act and its implementing regulations.

Finally, CAA section 182(b)(2) provides that a CTG issued after 1990 specify the date by which a State must submit a SIP revision in response to the CTG. In the draft CTGs at issue here, EPA provides that States should submit their SIP revisions within 1 year of the date that the CTGs are finalized.

*D. General Considerations in Determining Whether a CTG Will Be Substantially as Effective as a Regulation*

CAA Section 183(e)(3)(C) authorizes EPA to issue a CTG in lieu of a regulation for a category of consumer and commercial products if a CTG ''will be substantially as effective as regulations in reducing VOC emissions'' in ozone nonattainment areas. The statute does not specify how EPA is to make this determination.

On July 13, 1999 (64 FR 37773), EPA issued a final determination pursuant to CAA section 183(e)(3)(C), concluding that CTGs for wood furniture coatings, aerospace coatings, and shipbuilding and repair coatings were substantially as effective as national regulations in reducing emissions of VOC from these products in areas that violate the NAAQS for ozone. On October 5, 2006 (71 FR 58745), EPA issued a similar final determination for flexible packaging printing materials, lithographic printing materials, letterpress printing materials, industrial cleaning solvents, and flat wood paneling coatings. Recognizing that the statute does not specify any criteria for making a determination under CAA section 183(e)(3)(C), EPA, in 1999 and 2006, considered several relevant factors, including: (1) The product's distribution and place of use; (2) the most effective entity to target to control emissions—in other words, whether it is more effective to achieve VOC reductions at the point of manufacture of the product or at the point of use of the product; (3) consistency with other VOC control strategies; and (4) estimates of likely VOC emission reductions in ozone nonattainment areas which would result from the regulation or CTG. EPA believes that these factors are useful for evaluating whether the rule or CTG approach would be best from the perspective of implementation and enforcement of an effective strategy to achieve the intended VOC emission reductions. As we consider other product categories in the current and

[5] ''Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans,'' 70 FR 54046 (September 13, 2005).

[6] See, *e.g.*, 52 FR at 45108, col. 2, ''Compliance Periods'' (November 24, 1987). ''VOC rules should describe explicitly the compliance timeframe associated with each emission limit (*e.g.*, instantaneous or daily). However, where the rules are silent on compliance time, EPA will interpret it as instantaneous.''

[7] Memorandum from John O'Connor, Acting Director of the Office of Air Quality Planning and Standards, January 20, 1984, ''Averaging Times for Compliance with VOC Emission Limits—SIP Revision Policy.''

[8] ''Improving Air Quality with Economic Incentive Programs, January 2001,'' available at *http://www.epa.gov/region07/programs/artd/air/policy/search.htm.*

future phases of regulation under CAA section 183(e), there may be other factors that are relevant to the CAA section 183(e)(3)(C) determination for given product categories. EPA believes that in making these determinations, no single factor is dispositive. On the contrary, for each product category, we must weigh the factors and make our determination based on the unique set of facts and circumstances associated with that product category. For purposes of making the determination, EPA analyzed the components of the draft CTGs for the product categories at issue and compared the draft CTGs to the types of controls and emission strategies possible through a regulation. As we explained in 1999, it would be unreasonable for EPA, in effect, to have to complete both the full rulemaking and full CTG development processes before being able to make a determination under CAA section 183(e)(3)(C) validly. EPA believes that it is possible for the Agency to make a determination between what a rule might reasonably be expected to achieve versus what a CTG might reasonably be expected to achieve, without having to complete the entire rulemaking and CTG processes. To conclude otherwise would result in unnecessary wasting of limited time and resources by the Agency and the stakeholders participating in the processes. Moreover, such an approach would be directly contrary to CAA section 183(e)(3)(C), which authorizes EPA to issue a CTG in lieu of a regulation if it determines that the CTG ''will be substantially as effective as'' a regulation in reducing VOC emissions in ozone nonattainment areas.

With regard to the three product categories at issue here, EPA notes that it does not have reliable quantitative data that would enable it to conduct a ton-by-ton comparison of the likely emission reductions associated with a national regulation versus a CTG. Although we conducted such a comparative analysis in 1999 for the product categories of wood furniture coatings, aerospace coatings and shipbuilding and repair coatings, (64 FR 37773, July 13, 1999), such analysis is not necessary for evaluating likely VOC emission reductions, particularly, where, as in our Group II action (71 FR 58745, October 5, 2006) and here, a CTG can achieve significant emission reductions from end-users of the consumer and/or commercial products at issue, which cannot be achieved through regulation under CAA section 183(e). In addition, for the reasons described below, a regulation governing the manufacturers and suppliers of these products would be unlikely to achieve the objective of reducing VOC emissions from these products in ozone nonattainment areas.

*E. Proposed Determination*

Based on the factors identified above and the facts and circumstances associated with each of the Group III product categories, EPA proposes to determine that CTGs for paper, film, and foil coatings; metal furniture coatings; and large appliance coatings will be substantially as effective as national regulations in reducing VOC emissions from facilities located in ozone nonattainment areas.

In each of the three product category sections below, we provide a general description of the industry, identify the sources of VOC emissions associated with the industry, summarize the recommended control techniques in the draft CTG and describe the impacts of those techniques, and discuss the considerations supporting our proposed determination under CAA section 183(e)(3)(C) that a CTG will be substantially as effective as a regulation in reducing VOC emissions in ozone nonattainment areas from the product category at issue.

The specific subsections below that address our proposed determination for each product category are organized into two parts, each of which addresses two of the factors relevant to the CAA section 183(e)(1)(C) determination. The first part addresses whether it is more effective to target the point of manufacture of the product or the point of use for purposes of reducing VOC emissions and discusses whether our proposed approach is consistent with existing Federal, State and local VOC reduction strategies. The second part addresses the product's distribution and place of use and discusses the likely VOC emission reductions associated with a CTG, as compared to a regulation.

Finally, we propose to find that these three product categories are appropriate for inclusion on the CAA section 183(e) list in accordance with the factors and criteria that EPA used to develop the original list. See Consumer and Commercial Products: Schedule for Regulation, 60 FR 15264 (Mar. 23, 1995).

*F. Availability of Documents*

EPA has prepared draft CTG documents covering the three consumer and commercial products source categories addressed in this action. Each of the draft CTGs addresses, among other things, RACT recommendations, cost impacts, and existing Federal, state and local VOC control strategies. These draft CTGs are available for public comment and are contained in the respective dockets listed in the **ADDRESSES** section of this notice.

## II. Paper, Film, and Foil Coatings

*A. Industry Characterization*

1. Source Category Description

This category of consumer and commercial products includes the coatings that are applied to paper, film, and foil in manufacturing products for the following industry sectors: Pressure sensitive tapes and labels, photographic film; industrial and decorative laminates; and flexible packaging.[9] The category also includes coatings applied during miscellaneous paper, film, and foil surface coating operations for several products including: corrugated and solid fiber boxes; die-cut paper, paperboard, and cardboard; converted paper and paperboard, not elsewhere classified; folding paperboard boxes, including sanitary boxes; manifold business forms and related products; plastic aseptic packaging; and carbon paper and inked ribbons. Paper, film, and foil surface coating can be described as a web coating process, which is a process that applies a continuous layer of coating material across the entire width or any portion of the width of a web substrate for any of the following reasons: (1) To provide a covering, finish, or functional or protective layer to a substrate; (2) to saturate a substrate for lamination; or (3) to provide adhesion between two substrates for lamination. The web coating operations and emission control techniques do not vary significantly among the sectors of the paper, film, and foil industry.

2. Processes, Sources of VOC Emissions, and Controls

The coatings and cleaning materials[10] used in paper, film, and foil surface

[9] Coating performed on or in-line with any offset lithographic, screen, letterpress, flexographic, rotogravure, or digital printing press is not part of the paper, film and foil coating category. The application of inks, coatings and adhesives on or in-line with rotogravure or flexographic printing presses used in the production of flexible packaging is addressed in the CTG for Flexible Package Printing (EPA 453/R–06–003, September 2006). The application of inks, coatings and adhesives on or in-line with publication rotogravure printing presses is addressed in the CTG for Graphic Arts: Rotogravure and Flexography (EPA 450/2–78–033). The application of inks, coatings and adhesives on or in-line with offset lithographic or letterpress printing presses is addressed in the CTG for Offset Lithographic Printing and Letterpress Printing (EPA 453/R–06–002, September 2006).

[10] In a previous notice, EPA identified specific categories, including paper, film, and foil coating, the cleaning operations of which would not be

coating operations are sources of VOC emissions. The coating line is the main source of VOC emissions. The remaining emissions are principally from cleaning operations. VOC emissions from surface preparation, solvent handling and storage, and waste/wastewater operations are small. The following discussion describes the sources of VOC from the coatings and cleaning materials.

The VOC in coatings are emitted from the coating line. In general, a coating line consists of a series of one or more unwind/feed stations; one or more coating applicators; one or more flash-off areas (the area between two consecutive coating applicators or between a coating applicator and a drying oven); one or more drying ovens; and one or more rewind/cutting stations. The majority, usually greater than 90 percent, of the VOC in the coatings volatilizes in the drying ovens. A smaller amount of VOC in the coatings volatilizes at the coating applicator and flash-off area. The amount of VOC emitted from coatings varies depending on the type of coatings being used. The types of coatings used in the paper, film, and foil surface coating industry include solvent-borne and waterborne coatings, as well as radiation-cure coatings, hot-melt adhesives and other 100 percent solids coatings.

Solvent-borne coatings are widely used in the paper, film, and foil surface coating industry. Solvent-borne coating formulations typically range from 40 to 80 percent solvents by weight, as supplied by the manufacturer. The solvent-borne coatings may be diluted by the users with additional solvents prior to being used. The primary solvents in solvent-borne coatings include methanol, methyl ethyl ketone, toluene, and xylene. A significant part of the volatiles in waterborne coating is water, although some VOC-containing solvents may be used at up to 30 percent of the volatiles. Most coating equipment used for solvent-borne coatings can also be used for waterborne coatings.

Radiation cure coatings, hot-melt adhesives and other 100 percent solids coatings such as wax coatings, wax laminations, extrusion coatings, extrusion laminations, and cold seal coatings typically contain no solvent. Accordingly, these coatings emit very little VOC. More information on coatings is provided in the draft CTG.

Common techniques to reduce emissions from paper, film, and foil coatings include the use of low-VOC content coatings and the operation of add-on control systems where low-VOC content coatings cannot be used due to performance requirements calling for higher VOC coatings. An add-on control system consists of a capture system and a control device. The majority of VOC emissions from paper, film and foil coating occur in the drying oven. These emissions can be ducted from the drying oven directly to a control device. The drying oven is therefore typically the principal element of the capture system. In addition, hoods, floor sweeps or enclosures can be used to collect VOC emissions that occur in the coating application and flash-off areas, and route them to a control device.

The most common add-on controls in use at paper, film, and foil surface coating facilities are thermal oxidizers and carbon adsorbers, both of which achieve greater than 90 percent control.

The design of the capture system and the choice of the control device can greatly contribute to the overall VOC control efficiency, which is a combination of both capture and control efficiency. Please see the draft CTG for further detailed descriptions of add-on controls and capture systems that we reviewed in developing the draft CTG.

As previously mentioned, another source of VOC emissions from paper, film, and foil surface coating operations is cleaning materials. Cleaning materials are used for several purposes, including washing equipment, removing residues from coating applicators, and cleaning spray guns. These materials are typically mixtures of organic solvents and represent less than 2 percent of the VOC emissions from paper, film, and foil surface coating operations. Work practices are widely used throughout the paper, film, and foil surface coating industry as a means of reducing VOC emissions from the cleaning materials during cleaning operations. These measures include covering cleaning material mixing tanks; storing cleaning solvents and solvent-soaked rags and wipes in closed containers; and cleaning spray guns in an enclosed system. Another means of reducing VOC emission from paper, film, and foil cleaning materials is the use of low-VOC content or low vapor pressure cleaning materials. Within the industry, there are controlled cleaning operations where cleaning is automated, enclosed and vented to a control device. Use of recycled solvents for cleaning is also typical in the industry.

3. Existing Federal, State and Local VOC Control Strategies

There are three previous EPA actions that affect paper, film, and foil surface coating operations. In 1977, EPA issued a CTG document entitled ''Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks'' (EPA–450/2–77–008) (1977 CTG). The 1977 CTG provided RACT recommendations for controlling VOC emissions from paper coating and fabric [11] coating operations. The 1977 CTG recommended RACT for paper coating as 0.35 kilogram/liter (kg/l) (2.9 pound/gallon (lb/gal)) of coating, excluding water and exempt compounds, as applied. These recommended limits were based on the use of conventional solvent-borne coatings and oxidation of the dryer oven exhaust which achieved an overall VOC control efficiency of 81 percent. These recommended limits were expressed in terms of a compliant coating's VOC content to encourage the development and use of low-VOC content coatings. Equivalent solids-based limits were presented in ''A Guideline for Surface Coating Calculations'' (EPA–340/1–86–016). For paper coating, the equivalent limit was 0.58 kg/l (4.8 lb/gal) of solids. These equivalent limits were calculated using an assumed VOC density of 0.88 kg/l (7.36 lb/gal). This assumed VOC density is the same as that used in calculating the limits recommended in the 1977 CTG.

In 1983, EPA promulgated new source performance standards (NSPS) for pressure sensitive tape and label surface coating operations (40 CFR part 60 subpart RR).[12] The 1983 NSPS differs from the 1977 CTG in that it only applies to pressure sensitive tape and label surface coating lines. The 1983 NSPS emission limits do not apply to pressure sensitive tape and label surface coating operations that input 45 megagrams/year (Mg/yr) (50 tons per year (tpy)) or less VOC into the coating process (other requirements such as recordkeeping and reporting do apply). The 1983 NSPS requires a 90 percent reduction of VOC emission. Alternatively it establishes an emission limit of 0.20 kg VOC/kg (0.20 lb VOC/lb) solids applied based on VOC emission reduction of 90 percent.

covered by EPA's 2006 CTG for industrial cleaning solvents (71 FR 44522, 44540 (2006)). In the notice, EPA expressed its intention to address cleaning operations associated with these categories in the CTGs for these specified categories if the Agency determines that a CTG is appropriate for the respective categories.

[11] Fabric coating operations for use in pressure sensitive tape and abrasive materials are included under paper, film, and foil surface coating.

[12] The 1983 NSPS applies to sources that commenced construction, reconstruction, or modification after December 30, 1980.

In 2002, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP): Paper and Other Web Coating (POWC), 40 CFR part 63 subpart JJJJ, which applies to paper, film, and foil surface coating as well as other coating operations. The 2002 NESHAP addresses organic hazardous air pollutant (HAP) emissions, including VOC HAP emissions, from all web coating lines at a paper, film, and foil surface coating facility.

The 2002 NESHAP has different emission limitations for sources that commenced construction or reconstruction on or before September 13, 2000 (existing sources), and sources that commenced construction or reconstruction after September 13, 2000 (new sources). The 2002 NESHAP emission limits for existing sources and new sources are based on overall HAP control efficiencies of 95 percent and 98 percent, respectively (65 FR 55334).

The 1977 CTG, the 1983 NSPS, and the 2002 NESHAP are further discussed in the current draft CTG document.

In addition to the EPA actions mentioned above, at least 44 State and several local jurisdictions have regulations that affect VOC emissions from paper, film, and foil surface coating. Fourteen local jurisdictions in California have generic surface coating rules. These generic surface coating rules regulate all machinery with the potential to emit organic compounds.

All 44 of the States and 6 of the California jurisdictions have regulations that address all or part of the paper, film, and foil surface coating industry. The regulations in these State and local jurisdictions cover the coating lines. Generally, these regulations establish emission limits and allow compliance with the limits to be demonstrated by using low-VOC content coatings or add-on control systems in conjunction with higher-VOC content coatings.

Almost all of the jurisdictions that specifically address all or part of the paper, film, and foil surface coating industry have adopted the recommended VOC emission limits in the 1977 CTG. However, there are fourteen jurisdictions that have more stringent requirements than the 1977 CTG. These jurisdictions allow compliance either using compliant coatings, or by using an add-on control system. Seven jurisdictions have VOC emission limits that are more stringent than the 1977 CTG, five in California and two in Illinois. The California jurisdictions limit VOC emissions to 265 g/l (2.2 lb/gal) of coating, excluding water and exempt compounds, as applied. The two jurisdictions in Illinois limit VOC emissions to 0.28 kg/l (2.3 lb/gal) of coating, excluding water and exempt compounds, as applied. As an alternative to the VOC emission limits the California and Illinois jurisdictions allow facilities to install capture systems and control devices to reduce VOC emissions from these coating operations. The required overall emission reduction, including capture and control efficiency, ranges from 55 percent to 90 percent. Specifically, the San Diego County Air Pollution Control District (San Diego) and the Ventura County Air Pollution Control District (Ventura) both require an overall control efficiency of 90 percent. Finally, there are seven jurisdictions that have VOC emission limits that are the same as the 1977 CTG. However, these jurisdictions require 95 percent emission reduction as an alternative to the VOC emission limit. The 95 percent overall control efficiency is the most stringent and likely can only be met with a permanent total enclosure that achieves 100 percent capture efficiency. A detailed summary of the State and local regulations is presented in the draft CTG.

Several jurisdictions in California have requirements to regulate the VOC content of cleaning materials used in the paper, film and foil surface coating industry. These regulations are aimed at reducing VOC emissions from cleaning materials by combining work practice standards with limits on the VOC content or composite vapor pressure of the solvent being used. In some cases, the jurisdictions allow the use of add-on controls as an alternative to the VOC content/vapor pressure limits. The different air pollution control authorities in California have established similar work practice standards. However, the cleaning material VOC content/vapor pressure limits vary by jurisdiction, as do the overall control efficiency required when add-on controls are used as an alternative.

There are 10 States that have cleaning material regulations that apply to paper, film, and foil surface coating operations. Of these, 9 States do not limit the VOC content/vapor pressure of cleaning materials. Instead, they have established equipment standards, work practices, and/or recordkeeping requirements. There is one State that requires work practices as well as limiting the vapor pressure of the cleaning materials. The cleaning material regulations are summarized in detail in the draft CTG.

*B. Recommended Control Techniques*

The draft CTG recommends certain control techniques for reducing VOC emissions from paper, film, and foil coatings and cleaning materials. As explained in the draft CTG, we are recommending these control options for facilities whose paper, film, and foil surface coating operations emit 6.8 kg VOC/day (15 lb VOC/day or 3 tons VOC/year) or more before the consideration of control. We do not recommend these control approaches for facilities that emit below this level because of the very small VOC emission reductions that can be achieved. The recommended threshold level is equivalent to the evaporation of approximately 2 gallons of solvent per day. Such a level is considered to be an incidental level of solvent usage that could be expected even in facilities that use very low-VOC content coatings, such as ultraviolet (UV) cure coatings. Furthermore, based on the 2002 NEI data and the 2004 ozone nonattainment designations, facilities emitting below the recommended threshold level collectively emit less than 2 percent of the total reported VOC emissions from paper, film, and foil coating facilities in ozone nonattainment areas. For these reasons, we did not extend our recommendations in the draft CTG to these low emitting facilities. For purposes of determining whether a facility meets the above recommended threshold, aggregate emissions from all paper, film, and foil surface coating operations and related cleaning activities at a given facility are included. This recommended threshold is also consistent with our recommendations in many previous CTGs.

We nevertheless solicit comment on the above proposed applicability threshold of the coating and cleaning recommendations in the draft CTG for paper, film, and foil coating facilities. We specifically solicit comment on whether there are small operations emitting at or immediately above the proposed threshold and how many of these facilities exist. If information is provided during the comment period indicating that there are many small operations emitting at and/or immediately above the proposed threshold, we may consider modifying the recommended threshold. We specifically solicit comment on whether a slightly higher threshold of 12.3 kg VOC/day (27 lb VOC/day or 5 tons VOC/year) would be more appropriate for this category, and we solicit data and analyses supporting such a threshold.

Coating performed on or in-line with any offset lithographic, screen, letterpress, flexographic, rotogravure, or digital printing press is not subject to the recommendations in the draft CTG. Printing, coating and laminating

performed on or in-line with such presses is addressed in other CTGs.

1. Coatings

Coatings are defined in the draft CTG as material applied onto or impregnated into a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, solvent-borne coatings, waterborne coatings, adhesives, wax coatings, wax laminations, extrusion coatings, extrusion laminations, 100 percent solid adhesives, UV cured coatings, electron beam cured coatings, hot melt coatings, and cold seal coatings. Materials used to form unsupported substrates, such as calendaring of vinyl, blown film, cast film, extruded film, and co-extruded film, are not considered coatings.

In the draft CTG, we recommend an overall VOC control efficiency of 90 percent for each paper, film, and foil surface coating line.[13] This emission reduction is based on the San Diego and Ventura levels of control, as well as the 1983 NSPS. As an alternative, we recommend VOC content based emission limits that are equivalent to 90 percent overall control. Specifically, we recommend the ''as-applied'' VOC limits of 0.40 kg VOC/kg (0.40 lb VOC/lb) solids applied and 0.08 kg VOC/kg (0.08 lb VOC/lb) coating for this product category except for pressure sensitive tape and label surface coating lines. The derivation of these limits is discussed in detail in the draft CTG.

For pressure sensitive tape and label surface coating lines, we recommend 0.20 kg VOC/kg (0.20 lb VOC/lb) solids applied, which is based on 90 percent control efficiency. We also recommend an equivalent value of 0.067 kg VOC/kg (0.067 lb VOC/lb) coating. The development of the recommended limitations is presented in more detail in the draft CTG.

2. Cleaning Materials

The draft CTG recommends work practices to reduce VOC emissions from cleaning materials used in paper, film, and foil surface coating operations. Specifically, we recommend the following work practices: (1) Store all VOC-containing cleaning materials and used shop towels in closed containers; (2) ensure that mixing and storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials; (3) minimize spills of VOC-containing cleaning materials; (4) convey VOC-containing cleaning materials from one location to another in closed containers or pipes; and (5) minimize VOC emissions from cleaning of storage, mixing, and conveying equipment.

*C. Impacts of Recommended Control Techniques*

Based on the 2002 NEI database, we estimate that there are a total of 474 paper, film, and foil surface coating facilities located in ozone nonattainment areas (using April 2004 designations). As previously mentioned, we are recommending the control options described in this draft CTG apply to facilities in ozone nonattainment areas that emit 6.8 kg/day (15 lb/day) or more of VOC. Based on VOC emissions data in the 2002 NEI database, 251 of the facilities in ozone nonattainment areas emit VOC at or above this level.

Although there is limited cost information available, we believe that the cost estimates and other related studies developed for the 2002 NESHAP are appropriate for estimating the cost impact of our recommendations in the draft CTG for the following reasons. The recommended level of control in the draft CTG covers the same processes as the 2002 NESHAP (*i.e.*, all coating applicators and any associated drying/curing equipment between the unwind/feed station and the rewind/cutting station). In addition, the annual costs estimates developed for the 2002 NESHAP were based on the use of thermal oxidizers to control HAP emissions and these oxidizers achieve the same level of control for VOC. Finally, both the 2002 NESHAP emission limits and the limits recommended in the draft CTG can be met by the same options (*i.e.*, use of low-VOC content coatings or add-on control systems when high-VOC content coatings are used).

According to studies performed for the development of the 2002 NESHAP, 47 percent of the existing facilities would be subject to the 2002 NESHAP. To estimate the costs associated with the add-on control recommendation in the draft CTG, we assumed that all facilities subject to the NESHAP (*i.e.*, 47 percent of the facilities in the 2002 NEI database (119 facilities)) are currently in compliance with the NESHAP. We assume that facilities already in compliance with the 2002 NESHAP would not be required to upgrade or install capture and/or thermal oxidizers to achieve the emission reduction recommended in the draft CTG and therefore would have no additional annual costs associated with the draft CTG.

We estimated that the nationwide emission reduction would be 20,000 Mg/yr (22,000 tpy) and nationwide total annual costs were $26 million per year, resulting in cost effectiveness of $1,320 per Mg ($1,200 per ton). These costs represent worst-case costs, using thermal oxidizers. Other control options (*i.e.*, carbon adsorbers or solvent recovery systems) can be expected to have lower costs.

We believe that our work practice recommendations in the draft CTG will result in a net cost savings. Implementing work practices reduce the amount cleaning materials used by reducing the amount that evaporates and is wasted.

*D. Considerations in Determining Whether a CTG Will Be Substantially as Effective as a Regulation*

In determining whether to issue a national rule or a CTG for the paper, film, and foil coatings product category under CAA section 183(e)(3)(C), we analyzed the four factors identified in Section I.D of this notice in light of the specific facts and circumstances associated with this product category. Based on that analysis, we propose to determine that a CTG will be substantially as effective as a rule in achieving VOC emission reductions in ozone nonattainment areas from paper, film, and foil surface coating operations.

As noted above, this section is divided into two parts, each of which addresses two of the factors relevant to the CAA section 183(e)(1)(C) determination. In the first part, we discuss our belief that the most effective means of achieving VOC emission reductions in this category is through controls at the point of use of the product (*i.e.*, through controls on the use of coatings at facilities that apply surface coatings to paper, film, and foil products), and this can only be accomplished through a CTG. We further explain that the approaches in the draft CTG are consistent with existing effective Federal, State and local VOC control strategies. In the second part, we discuss how the distribution and place of use of the products in this category also support the use of a CTG. We also discuss the likely VOC emission reductions associated with a CTG, as compared to a regulation. We further explain that there are control approaches for this category that result in significant VOC emission reductions and that such reductions could only be obtained by controlling the use of the products through a CTG. Such reductions could

[13] We are defining a paper, film, and foil surface coating line as a series of coating applicator(s), flash-off area(s), and any associated curing/drying equipment between one or more an unwind (or feed) stations and one or more rewind (or cutting) stations.

not be obtained through a regulation under CAA section 183(e) because the controls affect the end-user, which cannot be a regulated entity under CAA section 183(e)(1)(C). For these reasons, which are described more fully below, we believe that a CTG will achieve greater VOC emission reductions than a rule for this category.

1. The Most Effective Entity To Target for VOC Reductions and Consistency With State and Local VOC Strategies

To evaluate the most effective entity to target for VOC reductions, it is important to first identify the primary sources of VOC emissions. There are two main sources of VOC emissions from paper, film, and foil surface coating operations: (1) Evaporation of VOC from coatings; and (2) evaporation of VOC from cleaning materials. We address each of these sources of VOC emissions in turn below as we discuss the CTG versus regulation approach.

a. Coatings

A national rule could contain limits for the as-sold VOC content of paper, film, and foil coatings. However, given the nature of the paper, film, and foil surface coating process, we believe that such a rule would result in little reduction in VOC emissions.

Although significant amounts of low-VOC content coatings are currently being used for paper, film, and foil surface coating, they cannot replace the traditional solvent-borne coatings in some instances. Performance specifications and other functional characteristics determine the types of coatings that can be used. For example, hot-melt coatings are virtually solvent free, but cannot be used on film substrates that are sensitive to heat because the substrate could melt during the coating process. Accordingly, a national rule that requires low VOC content in paper, film, and foil coatings would nevertheless need to include higher VOC limits to allow for the use of solvent-borne materials when necessary and to maintain these materials' intended effect. Because such a rule would merely codify what the paper, film, and foil coating facilities are already doing, we do not expect that it would result in significant VOC reductions from these facilities.

Furthermore, the effect of a national rule setting low VOC content limits for paper, film, and foil coatings could be easily subverted because it does not guarantee that only those low-VOC content coating materials will be used for paper, film, and foil surface coating. Many coatings used in the paper, film, and foil surface coating industry are not specifically identified by the supplier as paper, film, and foil coatings. Therefore, these facilities can purchase and use coating materials not specified as paper, film, and foil coatings, which would effectively nullify the reformulation actions of the manufacturers and suppliers, resulting in no net change in VOC emissions in ozone nonattainment areas.

Alternatively, a national rule could set low VOC content limits for all coatings sold, regardless of specified end use, thus ensuring that only low-VOC coatings are available for paper, film, and foil surface coatings. Such an approach would be unreasonable and impractical. Coatings are sold for multiple different commercial and industrial purposes. Reducing the VOC content of all coatings would impact uses of these materials in operations other than paper, film, and foil surface coating and may inadvertently preclude the use of higher VOC containing materials in many important, legitimate contexts.

By contrast, a CTG can reach the end users of the coating materials and can therefore implement the control measures that are more likely to achieve the objective of reducing VOC emissions from this product category in ozone nonattainment areas. As previously discussed, the draft CTG recommends two VOC control options for this product category: (1) Emission limits for paper, film, and foil surface coating operations that can be achieved through the use of low-VOC content coatings; and (2) a 90 percent control efficiency for facilities that choose to use add-on controls in conjunction with high-VOC content coatings. The draft CTG also recommends work practices to reduce VOC emissions from cleaning materials. The use of low-VOC content coatings, which are available for paper, film, and foil surface coating, can greatly reduce VOC emissions. Alternatively, control devices, such as oxidizers or carbon adsorbers, can achieve a significant reduction in VOC emissions from high-VOC content materials during surface coating operations. The recommended work practices have also been shown to be effective VOC reduction measures. Given the significant reductions achievable through these recommended VOC control measures, the most effective entity to address VOC emissions associated with paper, film, and foil coatings is the facility using the coating.

These control measures are consistent with existing Federal, State and local VOC control strategies applicable to paper, film, and foil surface coating. As mentioned above, previous EPA actions and existing State and local regulations applicable to paper, film, and foil surface coating similarly call for VOC emission reduction [14] either through the use of control devices in conjunction with high-VOC content coatings or the use of equivalent low-VOC content coatings.

We cannot issue a national rule directly requiring paper, film, and foil surface coating facilities to use low-VOC content coating materials or control devices because, pursuant to CAA section 183(e)(1)(C) and (e)(3)(A), the regulated entities subject to a national rule would be the coating manufacturers and suppliers, not the paper, film, and foil surface coating facilities. By contrast, a CTG can reach these end users of paper, film, and foil coatings, and can therefore implement the measures by the users that are identified above as more likely to achieve the intended VOC emission reduction goal. Accordingly, we are including these control measures in the draft CTG that applies to paper, film, and foil surface coating facilities as the end users of these materials.

b. Cleaning Materials

There are two primary means to control VOC emissions associated with the cleaning materials used in paper, film, and foil surface coating: (1) Limiting the VOC content or vapor pressure of the cleaning materials, and (2) implementing work practices governing the use of the cleaning materials. A national rule requiring that manufacturers of cleaning materials for paper, film, and foil coating operations provide low-VOC content or low vapor pressure (*i.e.*, replace VOC that have a high vapor pressure with low vapor pressure VOC) cleaning materials would suffer from the same deficiencies noted above with regard to the coatings. Specifically, nothing in a national rule that specifically regulates manufacturers and suppliers of cleaning materials specified for use in paper, film, and foil surface coating operations would preclude the industry from purchasing bulk solvents or other multipurpose cleaning materials from other vendors. The general availability of bulk solvents or multipurpose cleaning materials from vendors that would not be subject to such regulation would directly undermine the effectiveness of such a national regulation.

A national rule also could, in theory, limit the VOC content or vapor pressure of all cleaning materials and all solvents sold regardless of specified end use,

[14] The 2002 NESHAP requires reduction of organic HAP, over 99 percent of which are VOC.

which would ensure that only low-VOC content or low vapor pressure cleaning materials are available for cleaning operations associated with paper, film, and foil surface coating. As with a low-VOC content limit on coatings, setting a low-VOC content or low vapor pressure limit for all cleaning materials and solvents would be unreasonable and impractical. Cleaning materials and solvents are sold for multiple different commercial and industrial purposes. Replacing highly volatile cleaning materials with less volatile cleaning materials and solvents would impact uses of these materials other than cleaning operations at paper, film, and foil surface coating facilities and may inadvertently preclude the use of such materials in many important, legitimate contexts.

The more effective approach for reducing VOC emissions from cleaning materials used by paper, film, and foil surface coaters is to control the use of the cleaning materials through work practices. The draft CTG recommends that paper, film, and foil surface coating facilities implement work practices to reduce VOC emissions from cleaning materials during paper, film, and foil surface coating operations. An example of an effective work practice is keeping solvents and used shop towels in closed containers. This measure alone results in significant reduction of VOC emissions from cleaning materials. Provided immediately below are examples of other effective work practices that are being required by State and local regulations. Given the significant VOC reductions achievable through implementation of work practices, we conclude that the most effective entity to address VOC emissions from cleaning materials used in paper, film, and foil surface coating operations is the facility using the cleaning materials during surface coating operations.

This recommendation is consistent with measures required by State and local jurisdictions for reducing VOC emissions from cleaning materials used in paper, film, and foil surface coating operations. In addition to keeping solvents and shop towels in closed containers, State and local requirements include: Minimizing spills of VOC-containing cleaning materials; cleaning up spills immediately; and conveying any VOC-containing cleaning materials in closed containers or pipes. Work practices have proven to be effective in reducing VOC emissions.

We cannot issue a national rule requiring such work practices for paper, film, and foil surface coating facilities because, pursuant to CAA section 183(e)(1)(C) and (e)(3)(A), the regulated entities subject to a national rule would be the cleaning materials manufactures and suppliers and not the paper, film, and foil surface coating facilities. Accordingly, we are including these work practices in the draft CTG that applies to these facilities as the end users of the cleaning materials.

Based on the nature of the paper, film, and foil surface coating process, the sources of significant VOC emissions from this process, and the available strategies for reducing such emissions, the most effective means of achieving VOC emission reductions from this product category is through controls at the point of use of the products (*i.e.*, through controls on surface coating facilities), and this can only be accomplished through a CTG. The approaches described in the draft CTG are also consistent with effective State and local VOC control strategies. These two factors alone demonstrate that a CTG will be substantially as effective as a national regulation.

2. The Product's Distribution and Place of Use and Likely VOC Emission Reductions Associated With a CTG Versus a Regulation

The factors described in the above section, taken by themselves, weigh heavily in favor of the CTG approach. The other two factors relevant to the CAA section 183(e)(3)(C) determination only further confirm that a CTG will be substantially as effective as a national regulation for paper, film, and foil coatings and cleaning materials.

First, paper, film, and foil coatings and associated cleaning materials are used at commercial facilities in specific, identifiable locations. Specifically, these materials are used in commercial facilities that coat paper, film, and foil products, as described in Section II.A. This stands in contrast to other consumer products, such as architectural coatings, that are widely distributed and used by innumerable small users (*e.g.*, individual consumers in the general public). Because the VOC emissions are occurring at commercial manufacturing facilities, implementation and enforcement of controls concerning the use of these products are feasible. Therefore, the nature of these products' place of use further counsels in favor of the CTG approach.

Second, a CTG will achieve greater emission reduction than a national rule for each source of VOC emissions from paper, film, and foil surface coating and associated cleaning materials. For the reasons described above, we believe that a national rule limiting the VOC content in coatings and cleaning materials used in paper, film, and foil surface coating operations would result in little VOC emission reduction. By contrast, a CTG can achieve significant VOC emission reductions because it can provide for the highly effective emission control strategies described above that are applicable to the end-users of the coatings and cleaning materials at paper, film, and foil surface coating facilities. Specifically, this draft CTG can provide for the use of control devices in conjunction with high VOC content coatings and work practices associated with cleaning materials. These significant VOC reductions could not be obtained through a national regulation, because they require the implementation of measures by the end-user. In addition, as previously explained, strategies that arguably could be implemented through rulemaking, such as a limit on VOC content in coatings and cleaning materials, are far more effective if implemented directly at the point of use of the product. For the reasons stated above it is more effective to control the VOC content of coatings through a CTG than through a national regulation.

Furthermore, the number of paper, film, and foil surface coating facilities affected by our recommendations in this draft CTG, as compared to the total number of such facilities in ozone nonattainment areas, does not change our conclusion that the CTG would be more effective than a rule in controlling VOC emissions for this product category. As previously mentioned, we recommend the control measures described in the draft CTG for paper, film, and foil surface coating facilities that emit 6.8 kg/day (15 lb/day) or more VOC. Based on the April 2004 ozone nonattainment designations, we estimate that 251 of the 474 paper, film, and foil surface coating facilities located in ozone nonattainment areas emit 6.8 kg/day (15 lb/day) or more and are therefore addressed by our recommendations in the draft CTG. There are 223 paper, film, and foil surface coating facilities that would not be covered by the recommendations in the draft CTG. According to the 2002 NEI database, these 223 facilities collectively emitted less than 150 Mg/yr (170 tpy), which is less than 2 percent of the total VOC reported emissions (an average of 0.68 Mg/yr (0.75 tpy) per facility) in ozone nonattainment areas. The CTG thus addresses 98 percent of the VOC emissions from these paper, film, and foil surface coating facilities in ozone nonattainment areas, which further supports our conclusion that a

CTG is more likely to achieve the intended VOC emission reduction goal for this product category than a national rule.

Upon considering the above factors in light of the facts and circumstances associated with this product category, we propose to determine that a CTG for paper, film, and foil coatings and cleaning materials will be substantially as effective as a national regulation.

## III. Metal Furniture Coatings

### *A. Industry Characterization*

#### 1. Source Category Description

This category of consumer and commercial products includes the coatings that are applied to metal furniture surfaces at facilities that manufacture metal furniture. Metal furniture includes household, office, institutional, laboratory, hospital, public building, restaurant, barber and beauty shop, and dental furniture, as well as components of these products. Metal furniture also includes office and store fixtures, partitions, shelving, lockers, lamps and lighting fixtures, and wastebaskets. Metal furniture coatings include paints and adhesives, and are typically applied without a primer. Higher solids and powder coatings are used extensively in the metal furniture industry. Metal furniture coatings provide a covering, finish, or functional or protective layer, and also provide a decorative finish to metal furniture.

#### 2. Processes, Sources of VOC Emissions, and Controls

The VOC emissions from metal furniture surface coating operations are a result of evaporation of the VOC contained in many of the coatings and cleaning materials [15] used in these operations. The primary VOC emissions from metal furniture coatings occur during coating application, flash-off, and coating drying/curing. The remaining emissions are primarily from mixing and thinning of the coatings, and evaporation of the VOC contained in the cleaning materials during cleaning activities, such as spray gun cleaning, paint line flushing, rework operations, and touchup cleaning at final assembly. VOC emissions from surface preparation (where metal furniture components and products are treated and/or cleaned prior to coating application), coating storage and handling, and waste/wastewater operations (*i.e.*, handling waste/wastewater that may contain residues from both coatings and cleaning materials) are small.

As previously mentioned, some VOC emissions occur during mixing and thinning operations. These VOC emissions occur from displacement of VOC-laden air in containers used to mix coatings before coating application. The displacement of VOC-laden air can occur during the filling of containers. It can also be caused by changes in temperature or barometric pressure, or by agitation during mixing.

The majority of VOC emissions occur from evaporation of solvents during coating application. The transfer efficiency (the percent of coating solids deposited on the metal furniture component or product) of a coating application method affects the amount of VOC emissions during coating application. The more efficient a coating application method is in transferring coatings to the metal furniture component or product, the lower the volume of coatings (and therefore solvents) needed per given amount of production, thus resulting in lower VOC emissions.

The coatings used in the metal furniture surface coating industry may be in the form of a liquid or powder, and may be applied by means of spray or dip coating. Conventional air atomized spray application systems utilize higher atomizing air pressure and typically have transfer efficiencies ranging between 25 and 40 percent. Dip coating is the immersion of metal furniture components or products into a coating bath and is typically used on parts that do not require high quality appearance. The transfer efficiency of a dip coater is very high (approximately 90 percent); however, some VOC is emitted from the liquid coating bath due to its large exposed surface area.

Most spray applied coatings are electrostatically applied. In electrostatic coating, the presence of an electrostatic field creates an electrical attraction between the paint, which is positively charged, and the grounded metal furniture component or product and enhances the amount of coating deposited on the surface. This coating method is more efficient than conventional air atomized spray, with transfer efficiency typically ranging from 60 to 90 percent.

Other coatings application methods used in the metal furniture surface coating industry include flow coating, roll coating, high volume/low pressure (HVLP) spray, electrocoating, autophoretic coating, and application of coatings by hand. These coating methods are described in more detail in the draft CTG.

The coated metal furniture components and products are usually baked or cured in heated drying ovens, but some are air dried. For liquid spray and dip coating operations, the coated components or products are typically first moved through a flash-off area after the coating application operation. The flash-off area, which lies between the coating application area and the oven, allows solvents in the wet coating film to evaporate slowly, thus avoiding bubbling of the coating while it is curing in the oven. The amount of VOC emitted from the flash-off area depends on the type of coating used, the speed of the coating line (*i.e.*, how quickly the component or product moves through the flash-off area), and the distance between the application area and bake oven.

After the flash-off area, the metal furniture components or products are usually cured or dried. For powder coatings, the curing/drying step melts the powder and forms a continuous coating on the component or product. For liquid coatings, this step removes any remaining volatiles from the coating. The cured coatings provide the desired decorative and/or protective characteristics. The VOC emissions during the curing/drying process result from the evaporation of the remaining solvents in the dryer.

Until the late 1970's, conventional solvent-borne coatings were used in the metal furniture surface coating industry. Since then, the industry has steadily moved towards alternative coating formulations that eliminate or reduce the amount of solvent in the formulations, thus reducing VOC emissions per unit amount of coating solids used.

Currently the metal furniture surface coating industry uses primarily higher solids solvent-borne coatings and powder coatings and applies them by electrostatic spraying. This combination of coating type and application method is an effective measure for reducing VOC emissions. Not only are VOC emissions reduced by using coatings with low VOC content, the use of an application method with a high transfer efficiency, such as electrostatic spraying, lowers the volume of coatings needed per given amount of production, thus further reducing the amount of VOC emitted during the coating application.

Other alternative coatings include waterborne coatings and UV cured

[15] In a previous notice, EPA identified specific categories, including metal furniture coating, the cleaning operations of which would not be covered by EPA's 2006 CTG for industrial cleaning solvents (71 FR 44522 and 44540, October 5, 2006). In the notice, EPA expressed its intention to address cleaning operations associated with these categories in the CTGs for these specified categories if the Agency determines that a CTG is appropriate for the respective categories.

coatings. These coatings are described in more detail in the CTG.

The most common approach to reduce emission from metal furniture coating operations is to use low-VOC content coatings, including powder coatings, higher solids solvent-borne coatings, and UV cured coatings. Add-on controls may also be used to reduce VOC emissions from metal furniture coating operations. The majority of VOC emissions from spray coating operations occur in the spray booth. The volume of air exhausted from a spray booth is typically high and the VOC concentration in spray booth exhaust is typically low. The cost of controlling VOC in spray booth exhaust is therefore greater than the cost of using low-VOC content coatings. The wide availability and lower cost of low-VOC content coatings makes them a more attractive option than add-on controls. For those situations where an add-on control device is used, thermal oxidation and carbon adsorption are most widely used. Please see the draft CTG for a detailed discussion of these and other available control devices.

To control VOC emissions from containers used to store VOC-containing solvents or to mix coatings containing VOC solvents, work practices (*e.g.*, using closed storage containers) are used throughout the metal furniture surface coating industry.

As previously mentioned, another source of VOC emissions from metal furniture surface coating is cleaning materials. The VOC are emitted when solvents evaporate from the cleaning materials. Cleaning materials are used for several purposes, including the removal of coating residue or other unwanted materials from equipment related to the coating operations, as well as the cleaning of spray guns, transfer lines (*e.g.*, tubing or piping), tanks, and the interior of spray booths. These cleaning materials are typically mixtures of organic solvents. Work practices are widely used throughout the metal furniture surface coating industry as a means of reducing VOC emissions from these types of cleaning operations. These measures include covering mixing tanks, storing solvents and solvent soaked rags and wipes in closed containers, and cleaning spray guns in an enclosed system. Another means of reducing VOC emissions from cleaning operations associated with surface coating operations is the use of low-VOC content or low vapor pressure cleaning materials. However, little information is available regarding the effectiveness of the use of these types of cleaning materials to reduce VOC emissions in the metal furniture surface coating industry.

3. Existing Federal, State, and Local VOC Control Strategies

There are three previous EPA actions that affect metal furniture surface coating operations. In 1977, EPA issued a CTG document entitled ''Control of Volatile Organic Emissions from Existing Stationary Sources Volume III: Surface Coating of Metal Furniture'' (EPA–450/2–77–032) (1977 CTG) that provided RACT recommendations for controlling VOC emissions from metal furniture surface coating operations. The 1977 CTG addresses VOC emissions from metal furniture coating lines, which include the coating application area, the flash-off area, and the drying/curing ovens. The 1977 CTG recommended RACT for metal furniture surface coating operations as 0.36 kg VOC/l (3.0 lb/gal) of coating, excluding water and exempt compounds, as applied. This recommendation was derived using an assumed VOC density of 0.88 kg/l (7.36 lb/gal). The recommended limit represents a higher solids solvent-borne coating with approximately 59 percent volume solids and is equivalent to 0.61 kg VOC/l (5.1 lb VOC/gal) coating solids (the 1977 CTG-equivalent limit). This equates to an 81 percent reduction of VOC emissions from a conventional high-VOC content solvent-borne coating.

In 1982, EPA promulgated the metal furniture surface coating NSPS) (40 CFR part 60 subpart EE.[16] The 1982 NSPS is similar to the 1977 CTG in that it applies to metal furniture surface coating operations which include the coating application station, the flash-off area, and the drying/curing oven. In contrast to the 1977 CTG, metal furniture surface coating operations that use less than 3,842 l/yr (1,015 gal/yr) of coating as-applied, are not subject to the emission limits (other requirements, such as recordkeeping and reporting, in the 1982 NSPS do apply). The 1982 NSPS VOC limit is 0.90 kg VOC/l (7.5 lb VOC/gal) coating solids deposited. Because the 1982 NSPS limit is in terms of coating solids deposited and the 1977 CTG-equivalent limit is in terms of coating solids used, these limits cannot be compared directly. During the implementation of the 1977 CTG, a baseline transfer efficiency of 60 percent (*i.e.*, 0.60 volume of solids deposited per unit volume of solids used) was used to express the CTG-equivalent limit on a solids deposited basis. The CTG-equivalent limit on a solids deposited basis is 1.01 kg VOC/l (8.4 lb VOC/gal) coating solids deposited. The 1982 NSPS limit is more stringent than the 1977 CTG-equivalent limit on a solids deposited basis.

In 2003, EPA promulgated the National Emissions Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture, 40 CFR part 63, subpart RRRR, which applies to metal furniture surface coating operations. The 2003 NESHAP addresses organic HAP emissions, including VOC HAP emissions, from all activities at a facility that involve coatings, thinners, and cleaning materials used in metal furniture surface coating operations. The areas covered by the 2003 NESHAP include: Coating operations; vessels used for storage and mixing of coatings, thinners, and cleaning materials; equipment, containers, pipes and pumps used for conveying coatings, thinners, and cleaning materials; and storage vessels, pumps and piping, and conveying equipment and containers used for waste materials.

The 2003 NESHAP imposes an organic HAP emission limitation for sources that commenced construction on or before April 24, 2002 (existing sources), of 0.10 kg organic HAP/l (0.83 lb organic HAP/gal) of coating solids used. For sources that commenced construction after April 24, 2002 (new sources) the 2003 NESHAP prohibits organic HAP emissions. The 2003 NESHAP also specifies work practices to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in and waste materials generated by the coating operation.

In addition to the EPA actions mentioned above, at least 36 States and several local jurisdictions have specific regulations that control VOC emissions from metal furniture surface coating operations. Almost all of the jurisdictions that specifically address metal furniture coatings have adopted the emission limit recommended in the 1977 CTG. The California Bay Area Air Quality Management District (Bay Area), however, has adopted more stringent limits. The Bay Area has established two VOC emission limits for metal furniture surface coatings: (1) 275 g VOC/l (2.3 lb VOC/gal) of coating, excluding water and exempt compounds, as applied, for baked coating; and (2) 340 g VOC/l (2.8 lb VOC/gal) of coating, excluding water and exempt compounds, as applied, for air-dried coating. Under the Bay Area regulation, metal furniture surface coating facilities must use coatings that

[16] The 1982 NSPS applies to sources that commenced construction, reconstruction, or modification after November 28, 1980.

comply with the VOC emission limit or as an alternative to using low-VOC content coatings, the facility may choose to install add-on controls. If add-on controls are used, the Bay Area requires that the VOC emissions generated by all sources of VOC emissions (*i.e.*, the coating line) are reduced by at least 85 percent. The Bay Area's emission limit for air dried coating is also more stringent than the 1977 CTG recommended limit. In addition, its rule requires the use of coating application equipment that can meet a 65 percent or greater transfer efficiency. Compliance with the standard's 65 percent or greater transfer efficiency can be achieved by properly operated electrostatic application or HVLP spray, flow coat, roller coat, dip coat including electrodeposition, and brush coat.

Like the Bay Area's limits the VOC emission limits established by the South Coast Air Quality Management District (South Coast) for the coating of metal parts and products (which includes metal furniture using a baked general multi-component coating) are: (1) 275 g VOC/l (2.3 lb VOC/gal) coating, excluding water and exempt compounds, as applied, for baked coating; and (2) 340 g VOC/l (2.8 lb VOC/gal) of coating, excluding water and exempt compounds, as applied, for air-dried coating. In addition to the VOC emission limits, the South Coast regulation specifies the use of the following application methods: Electrostatic application, flow coat, dip coat, roll coat, HVLP spray, hand application methods, or other coating application method capable of achieving a transfer efficiency equivalent or better than that achieved by HVLP spraying. As an alternative to the VOC emission limit and specified operating equipment, the South Coast regulation allows metal furniture facilities to choose to install emission capture systems and add-on control devices. The South Coast regulation requires that if a facility chooses the capture and add-on control device alternative, 90 percent of the VOC emissions must be captured and the add-on control device must have a control efficiency of 95 percent.

Several jurisdictions in California have requirements to regulate the VOC content of cleaning materials used in the metal furniture surface coating industry. These regulations are aimed at reducing VOC emissions from cleaning materials by combining work practice standards with limits on the VOC content or composite vapor pressure of the solvent being used. In some cases, the jurisdictions allow the use of add-on controls as an alternative to the VOC content/vapor pressure limits. The different air pollution control authorities in California have established similar work practice standards. However, the cleaning material VOC content/vapor pressure limits vary by jurisdiction, as do the overall control efficiency required when add-on controls are used as an alternative.

There are ten States that have cleaning material regulations that apply to metal furniture surface coating operations. Of these, nine States do not limit the VOC content/vapor pressure of cleaning materials. Instead, they have established equipment standards, work practices, and/or recordkeeping requirements. There is one State that requires work practices as well as limiting the vapor pressure of the cleaning materials.

*B. Recommended Control Techniques*

The draft CTG recommends certain control techniques for reducing VOC emissions from metal furniture coatings and cleaning materials. As explained in the draft CTG, we are recommending these control options for the metal furniture surface coating operations that emit 6.8 kg VOC/day (15 lb VOC/day or 3 tons/year) or more before consideration of control. We do not recommend these control approaches for facilities that emit below this level because of the very small VOC emission reductions that can be achieved. The recommended threshold level is equivalent to the evaporation of approximately 2 gallons of solvent per day. Such a level is considered to be an incidental level of solvent usage that could be expected even in facilities that use very low-VOC content coatings, such as powder or UV cure coatings. Furthermore, based on the 2002 NEI data and the 2004 ozone nonattainment designations, facilities emitting below the recommended threshold level collectively emit less than 4 percent of the total reported VOC emissions from metal furniture surface coating facilities in ozone nonattainment areas. For these reasons, we did not extend our recommendations in the draft CTG to these low emitting facilities. This recommended threshold is also consistent with our recommendations in many previous CTGs.

For purposes of determining whether a facility meets the 6.8-kg/day (15-lb/day) threshold, aggregate emissions from all metal furniture surface coating operations and related cleaning activities at a given facility are included.

1. Coatings

The draft CTG provides flexibility by recommending two options for controlling VOC emissions from coatings: (1) An emission limit that can be achieved through the use of low-VOC content coatings; or (2) an overall control efficiency of 90 percent for facilities that choose to use add-on controls instead of low-VOC content coating. Specifically, the low-VOC content coatings recommendation includes a limit of 0.275 kg VOC/l (2.3 lb VOC/gal) of coating, excluding water and exempt compounds, as applied, and the use of the following application methods: Electrostatic spray, HVLP spray, flow coat, roller coat, dip coat including electrodeposition, brush coat, or other coating application method capable of achieving a transfer efficiency equivalent or better than that achieved by HVLP spraying. As an alternative to using low-VOC content coatings, a facility could choose to use combinations of capture and add-on control equipment to meet an overall control efficiency of 90 percent.

Furthermore, the draft CTG recommends work practices to control VOC emissions from metal furniture surface coating-related activities. The draft CTG recommends that these work practices include the following: (1) Store all VOC-containing coatings, thinners, and coating-related waste materials in closed containers; (2) ensure that mixing and storage containers used for VOC-containing coatings, thinners, and coating-related waste materials are kept closed at all times except when depositing or removing these materials; (3) minimize spills of VOC-containing coatings, thinners, and coating-related waste materials; and (4) convey coatings, thinners and coating-related waste materials from one location to another in closed containers or pipes.

2. Cleaning Materials

The draft CTG recommends work practices to reduce VOC emissions from cleaning materials used in metal furniture surface coating operations. The draft CTG recommends that, at a minimum, these work practices include the following: (1) Store all VOC-containing cleaning materials and used shop towels in closed containers; (2) ensure that mixing and storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials; (3) minimize spills of VOC-containing cleaning materials; (4) convey cleaning materials from one location to another in closed containers or pipes; and (5) minimize VOC emissions from cleaning of storage, mixing, and conveying equipment.

*C. Impacts of Recommended Control Techniques*

Based on the 2002 NEI database, we estimate that there are a total of 456 metal furniture facilities in the U.S. Using the April 2004 ozone nonattainment designations, we estimated that a total of 289 of these facilities are in ozone nonattainment areas. Based on the 2002 NEI VOC emissions data, 143 of the 289 facilities in ozone nonattainment areas emitted VOC at or above the recommended 6.8-kg/day (15-lb/day) VOC emissions applicability threshold. According to the 2002 NEI, these 143 facilities, in aggregate, emit about 3,100 Megagrams per year (Mg/yr) (3,400 tons per year (tpy)) of VOC per year, or an average of about 21 Mg/yr (23 tpy) of VOC per facility.

As previously mentioned, the draft CTG recommends either the use of low-VOC content coatings with specified application methods or optional add-on control technology. Both recommendations also include certain work practices to further reduce emission from coatings, as well as controlling VOC emissions from cleaning materials. Because the industry is already using predominantly low-VOC content coatings, such as powder coatings, we have estimated the total annual costs to be approximately $240,500. Since these recommended measures are expected to result in a VOC emissions reduction of 1855 Mg/yr (2040 tpy), the cost-effectiveness is estimated to be $130/Mg ($118/ton). The impacts are further discussed in the draft CTG document.

The draft CTG also recommends work practices for reducing VOC emissions from both coatings and cleaning materials. We believe that our work practice recommendations in the draft CTG will result in a net cost savings. Implementing work practices reduce the amount of cleaning materials used by decreasing the amount that evaporates and is wasted.

*D. Considerations in Determining Whether a CTG Will Be Substantially as Effective as a Regulation*

In determining whether to issue a national rule or a CTG for the product category of metal furniture coatings under CAA section 183(e)(3)(C), we analyzed the four factors identified above in Section I.D in light of the specific facts and circumstances associated with this product category. Based on that analysis, we propose to determine that a CTG will be substantially as effective as a rule in achieving VOC emission reductions in ozone nonattainment areas from metal furniture surface coating operations.

As noted above, this section is divided into two parts. In the first part, we discuss our belief that the most effective means of achieving VOC emission reductions in this category is through controls at the point of use of the product, (i.e., through controls on the use of coating and cleaning materials at metal furniture surface coating facilities), and this can only be accomplished through a CTG. We further explain that the recommended approaches in the draft CTG are consistent with existing effective EPA, State, and local VOC control strategies. In the second part, we discuss how the distribution and place of use of the products in this category also support the use of a CTG. We also discuss the likely VOC emission reductions associated with a CTG, as compared to a regulation. We further explain that there are control approaches for this category that result in significant VOC emission reductions and that such reductions could only be obtained by controlling the use of the products through a CTG. Such reductions could not be obtained through a regulation under CAA section 183(e) because the controls affect the end-user, which is not a regulated entity under CAA section 183(e)(1)(C). For these reasons, which are described more fully below, we believe that a CTG will achieve greater VOC emission reductions than a rule for this category.

1. The Most Effective Entity To Target for VOC Reductions and Consistency With Existing Federal, State, and Local VOC Strategies

To evaluate the most effective entity to target for VOC reductions, it is important first to identify the primary sources of VOC emissions. There are two main sources of VOC emissions from metal furniture coating: (1) Evaporation of VOC from coatings; and (2) evaporation of VOC from cleaning materials. We address each of these sources of VOC emissions, in turn, below, as we discuss the CTG versus regulation approach.

a. Coatings

A national rule could contain limits for the as-sold VOC content of metal furniture coatings. However, given the nature of the metal furniture surface coating process, we believe that such a rule would result in little reduction in VOC emissions.

Although the metal furniture surface coating industry currently uses primarily low-VOC content coatings (such as high solids and powder coatings), these low-VOC content coatings cannot replace the traditional solvent-borne coatings in some instances. Specialized appearance and other functional characteristics determine the types of coatings that can be used. For example, some products (e.g., recliner mechanisms) require a thin dried film thickness that can only be achieved using solvent-borne coatings. Accordingly, a national rule that requires low VOC content in metal furniture surface coatings would nevertheless need to include higher VOC limits to allow for the use of solvent-borne coatings when necessary and to maintain these materials' intended effect. Because such a rule would merely codify what the metal furniture surface coating facilities are already doing, we do not expect that it would result in significant reductions from these facilities.

Furthermore, the effect of a national rule setting low VOC content limits for metal furniture coatings could be easily subverted because it does not guarantee that only those low-VOC content coating materials will be used for metal furniture surface coating. Many coatings used in metal furniture surface coating are not specifically identified by the supplier as metal furniture coatings. Therefore, these facilities can purchase and use coating materials not specified as metal furniture coatings, which would effective nullify the reformulation actions of the manufacturers and suppliers, resulting in no net change in VOC emissions in ozone nonattainment areas.

Alternatively, a national rule could set low VOC content limits for all coatings sold, regardless of specified end use, thus ensuring that only low-VOC materials are available for metal furniture surface coating. Such an approach would be unreasonable and impractical. Coatings are sold for multiple different commercial and industrial purposes. Reducing the VOC content of all coatings would impact uses of these materials in operations other than metal furniture surface coating and may inadvertently preclude the use of higher VOC containing materials in many important, legitimate contexts.

By contrast, a CTG can reach the end users of the coating materials and can therefore implement the control measures that are more likely to achieve the objective of reducing VOC emissions from this product category in ozone nonattainment areas. As previously discussed, the draft CTG recommends an emission limit for metal furniture surface coating operations that can be achieved through the use of low-VOC

content coatings, and specific application methods. Alternatively, the draft CTG recommends an overall 90 percent control efficiency should a facility choose to use add-on controls in conjunction with high-VOC content coatings. In addition, both recommendations in the draft CTG include work practices to further reduce VOC emissions from coatings as well as controlling VOC emissions from cleaning materials. The use of low-VOC content coatings, which are available for metal furniture surface coating, can greatly reduce VOC emissions. Alternatively, control devices, such as thermal oxidizers, catalytic oxidizers, or carbon adsorbers, can achieve a significant reduction in VOC emissions from high-VOC content coatings. The recommended work practices and application methods have also been shown to be effective VOC reduction measures. Given the significant reductions achievable through the use of these recommended control measures, the most effective entity to address VOC emissions from metal furniture coatings is the facility using the coating.

These control measures are consistent with existing EPA, State, and local VOC control strategies applicable to metal furniture surface coating. As mentioned above, previous EPA actions and existing State and local regulations (in particular, the majority of the California jurisdictions) that address metal furniture surface coating similarly call for VOC emission reduction either through the use of control devices in conjunction with high-VOC content coating materials or the use of equivalent low-VOC content coating materials; some also include work practices and specific application methods.

We cannot, however, issue a national rule directly requiring metal furniture surface coating facilities to use low-VOC content coatings, control devices or specific application methods, or to implement work practices to reduce VOC emissions because, pursuant to CAA section 183(e)(1)(C) and (e)(3)(A), the regulated entities subject to a national rule would be the coating manufacturers and suppliers, not the metal furniture surface coating facilities. By contrast, a CTG can reach the end users of the metal furniture coatings, and can therefore implement the measures by the users that are identified above as more likely to achieve the intended VOC emission reduction goal. Accordingly, we are including these recommended control measures in the draft CTG that applies to metal furniture surface coatings facilities as the end users of the coating materials.

b. Cleaning Materials

There are two primary means to control VOC emissions associated with the cleaning materials used in the metal furniture surface coating process: (1) Limiting the VOC content or VOC vapor pressure of the cleaning materials, and (2) implementing work practices governing the use of the cleaning materials. A national rule requiring that manufacturers of cleaning materials for metal furniture coating operations provide low-VOC content or low vapor pressure (*i.e.*, replacing VOC that have a high vapor pressure with low vapor pressure VOC) cleaning materials would suffer from the same deficiencies noted above with regard to the coatings. Specifically, nothing in a national rule that specifically regulates manufacturers and suppliers of cleaning materials specified for use in metal furniture surface coating operations would preclude the metal furniture surface coating industry from purchasing bulk solvents or other multipurpose cleaning materials from other vendors. The general availability of bulk solvents or multipurpose cleaning materials from vendors that would not be subject to such regulation would directly undermine the effectiveness of such a national regulation.

A national rule also could, in theory, limit the VOC content or vapor pressure of all cleaning materials and all solvents sold regardless of specified end use, which would ensure that only low-VOC content or low vapor pressure cleaning materials are available for cleaning operations associated with metal furniture surface coating. As with a low-VOC content limit on coatings, setting a low-VOC content or a low vapor pressure limit for all cleaning materials and solvents would be unreasonable and impractical. Cleaning materials and solvents are sold for multiple different commercial and industrial purposes. Replacing highly volatile cleaning materials and solvents would impact uses of these materials other than cleaning operations at metal furniture surface coating facilities and may inadvertently preclude the use of such materials in many important, legitimate contexts.

The more effective approach for reducing VOC emissions from cleaning materials used by metal furniture surface coaters is to control the use of cleaning materials through work practices. The draft CTG recommends that metal furniture surface coating facilities implement work practices to reduce VOC emissions from cleaning materials during metal furniture surface coating operations. An example of an effective work practice is keeping solvents and used shop towels in closed containers. This measure alone can significantly reduce VOC emissions from cleaning materials. Provided immediately below are examples of other effective work practices that are being required by State and local regulations. Given the significant VOC reductions achievable through the implementation of work practices, we conclude that the most effective entity to address VOC emission from cleaning materials used in metal furniture surface coating operations is the facility using the cleaning materials during surface coating operations.

This recommendation is consistent with measures required by State and local jurisdictions for reducing VOC emissions from cleaning materials used in metal furniture surface coating operations. In addition to keeping solvents and shop towels in closed containers, State and local requirements include: Minimizing spills of VOC-containing cleaning materials; cleaning up spills immediately; and conveying any VOC-containing cleaning materials in closed containers or pipes. Work practices have proven to be effective in reducing VOC emissions.

We cannot, however, issue a rule requiring such work practices for metal furniture surface coating facilities because, pursuant to CAA section 183(e)(1)(C) and (e)(3)(A), the regulated entities subject to a national rule would be the cleaning materials manufactures and suppliers and not the metal furniture surface coating facilities. Accordingly, we are including these work practices in the draft CTG that applies to metal furniture surface coating facilities as the end users of the cleaning materials.

Based on the nature of the metal furniture surface coating process, the sources of significant VOC emissions from this process, and the available strategies for reducing such emissions, the most effective means of achieving VOC emission reductions from this product category is through controls at the point of use of the products, (*i.e.*, through controls on metal furniture surface coaters), and this can only be accomplished through a CTG. The recommended approaches described in the draft CTG are also consistent with effective existing EPA, State, and local VOC control strategies for metal furniture surface coating operations. These two factors alone demonstrate that a CTG will be substantially as effective as a national regulation.

2. The Product's Distribution and Place of Use and Likely VOC Emission Reductions Associated With a CTG Versus a Regulation

The factors described in the above section, taken by themselves, weigh heavily in favor of the CTG approach. The other two factors relevant to the CAA section 183(e)(3)(C) determination only further confirm that a CTG will be substantially as effective as a national regulation for metal furniture coatings.

First, metal furniture coatings and associated cleaning materials are used at commercial facilities in specific, identifiable locations. Specifically, these materials are used in commercial facilities that apply surface coating to metal furniture as described in section III.A. This stands in contrast to other consumer products, such as architectural coatings, that are widely distributed and used by innumerable small users (*e.g.*, individual consumers in the general public). Because the VOC emissions are occurring at commercial manufacturing facilities, implementation and enforcement of controls concerning the use of these products are feasible. Therefore the nature of the products' place of use further counsels in favor of the CTG approach.

Second, a CTG will achieve greater emission reduction than a national rule for each source of VOC emissions from metal furniture coating and associated cleaning materials. For the reasons described above, we believe that a national rule limiting the VOC content in coatings and cleaning materials used in metal furniture surface coating operations would result in little VOC emissions reduction. By contrast, a CTG can achieve significant VOC emissions reduction because it can provide for the highly effective emission control strategies described above that are applicable to the end-users of the coatings and cleaning materials at metal furniture surface coating facilities. Specifically, the draft CTG can provide for the use of control devices in conjunction with high-VOC content coatings, specific application methods, and work practices. These significant VOC reductions could not be obtained through a national regulation, because they require the implementation of measures by the end-user. In addition, as previously explained, strategies that arguably could be implemented through rulemaking, such as a limit on VOC content in coatings and cleaning materials, are far more effective if implemented directly at the point of use of the product. For the reasons stated above, it is more effective to control the VOC content of coatings and cleaning materials used for metal furniture surface coating through a CTG than through a national regulation.

Furthermore, the number of metal furniture surface coating facilities affected by our recommendations in this draft CTG, as compared to the total number of such facilities in ozone nonattainment areas, does not affect our conclusion that the CTG would be substantially more effective than a rule in controlling VOC emissions for this product category. As previously mentioned, we recommend the control measures described in the draft CTG for metal furniture surface coating facilities that emit 6.8 kg/day (15 lb/day) or more VOC. Based on the April 2004 ozone nonattainment designations, we estimate that 143 of the 289 metal furniture surface coating facilities located in ozone nonattainment areas emit 6.8 kg/day (15 lb/day) or more and are therefore addressed by our recommendations in the draft CTG. There are 146 metal furniture surface coating facilities that would not be covered by the recommendations in the draft CTG. According to the 2002 NEI database, these 146 facilities collectively emitted less than 103 Mg/yr (115 tpy), which is less than 4 percent of the total reported VOC (an average of 0.71 Mg/yr (0.78 tpy) per facility) in ozone nonattainment areas. The fact that the CTG addresses more than 96 percent of the VOC emissions from metal furniture surface coating facilities in an ozone nonattainment area further supports our conclusion that a CTG is more likely to achieve the intended VOC emission reduction goal for this product category than a national rule.

Upon considering the above factors in light of the facts and circumstances associated with this product category, we propose to determine that a CTG for metal furniture coatings will be substantially as effective as a national regulation.

## IV. Large Appliances Coatings

### *A. Industry Characterization*

1. Source Category Description

This category of consumer and commercial products includes the coatings that are applied to the surfaces of large appliances parts and products at facilities that manufacture or assemble large appliances. Large appliances coatings include, but are not limited to, primers, basecoats, topcoats, and adhesives used in the manufacture of large appliance parts or products. A large appliance part is defined as any organic surface-coated metal lid, door, casing, panel, or other interior or exterior metal part or accessory that is assembled to form a large appliance product. A large appliance product is defined as any organic surface-coated metal range, oven, microwave oven, refrigerator, freezer, washer, dryer, dishwasher, water heater, trash compactor, or any other large appliance or equipment manufactured for household, commercial, or recreational use. The coatings provide a protective and/or decorative layer to the surface of large appliance products.

2. Processes, Sources of VOC Emissions, and Controls

VOC emissions from large appliance surface coating operations result from the evaporation of VOC contained in many of the coatings or used as cleaning materials.[17] The primary VOC emissions from large appliances coatings occur during coating application (prime, single or topcoat application), flash-off, and drying/curing of the coatings. Some emissions also occur during mixing or thinning of the coatings. The primary VOC emissions from the cleaning materials occur during cleaning operations. VOC emissions from surface preparation (*i.e.*, wiping with cleaning materials), storage and handling of coatings and cleaning materials, and waste/wastewater operations (*i.e.* handling waste/wastewater that may contain residues from both coatings and cleaning materials) are small.

VOC emissions from mixing and/or thinning of the coatings occur from displacement of organic vapor-laden air in containers used to mix coatings containing solvents (thinners) prior to coating applications. The displacement of vapor-laden air can occur during the filling of containers and can also be caused by changes in temperature or barometric pressure, or by agitation during mixing.

The majority of VOC emissions occur from evaporation of solvents during coating application. The transfer efficiency (the percent of coating solids deposited on the large appliance part or product) of a coating application method affects the amount of VOC emissions during coating application. The more efficient a coating application method is in transferring coatings to the large appliance part or product, the

[17] In a previous notice, EPA stated that the cleaning operations associated with certain specified section 183(e) consumer and commercial product categories, including large appliances coatings, would not be covered by EPA's 2006 CTG for industrial cleaning solvents. 71 Fed. Reg. 44522, 44540 (2006). In that notice, EPA expressed its intention to address cleaning operations associated with these categories in the CTGs for these specific categories if the Agency determines that a CTG is appropriate for a respective category.

lower the volume of coatings (and therefore solvents) needed per given amount of production, thus resulting in lower VOC emissions.

Most spray applied coatings are electrostatically applied. In electrostatic coating, the presence of an electrostatic field creates an electrical attraction between the paint, which is positively charged, and the grounded metal furniture component or product and enhances the amount of coating deposited on the surface. This coating method is more efficient than conventional air atomized spray, with transfer efficiency typically ranging from 60 to 90 percent.

Other coatings application methods used in the large appliance surface coating industry include flow coating, roll coating, high volume/low pressure (HVLP) spray, electrocoating, autophoretic coating, and application of coatings by hand. These coating methods are described in more detail in the draft CTG.

In typical liquid spray and dip coating operations, the coated parts/products move from the coating application area through a flash-off area, where solvents in the wet coating film evaporate slowly, thus avoiding bubbling of the coating while it is curing in the oven. After being coated by any of the typical coating operations, large appliance parts and products are dried and cured using heated dryers or by air drying. This step removes any remaining volatiles from the coatings so that the surfaces of the large appliance parts and products meet the hardness, durability, and appearance requirements of customers.

Until the late 1970's, the large appliances industry used conventional solvent-borne coatings almost exclusively. Since then, the industry has steadily moved towards alternative coating formulations that eliminate or reduce the amount of solvent in the formulations, thus reducing VOC emissions per unit amount of coating solids used.

Currently the large appliance surface coating industry uses primarily higher solids solvent-borne coatings and powder coatings and applies them by electrostatic spraying. This combination of coating type and application method is an effective measure for reducing VOC emissions. Not only are VOC emissions reduced by using coatings with low VOC content, the use of an application method with a high transfer efficiency, such as electrostatic spraying, lowers the volume of coatings needed per given amount of production, thus further reducing the amount of VOC emitted during the coating application.

Other alternative coatings include waterborne coatings and UV cured coatings. These coatings are described in more detail in the CTG.

The most common approach to reduce emissions from large appliance coating operations is to use low-VOC content coatings, including powder coatings, higher solids solvent-borne coatings, waterborne coatings and UV cured coatings. Add-on controls may also be used to reduce VOC emissions from large appliance coating operations. The majority of VOC emissions from spray coating operations occur in the spray booth. The volume of air exhausted from a spray booth is typically high and the VOC concentration in spray booth exhaust is typically low. The cost of controlling VOC in spray booth exhaust is therefore greater than the cost of using low-VOC content coatings. The wide availability and lower cost of low-VOC content coatings makes them a more attractive option than add-on controls. For those situations where an add-on control device is used, thermal oxidation and carbon adsorption are most widely used. Please see the draft CTG for a detailed discussion of these and other available control devices. As previously mentioned, another main source of VOC emissions from large appliances coating is the cleaning materials. The VOC are emitted when solvents that are used as cleaning materials evaporate. Cleaning materials are used for several purposes, including the removal of coating residue or other unwanted materials from coating operations equipment, such as spray guns, transfer lines (*e.g.*, tubing or piping), tanks, and the interior of spray booths. These cleaning materials are typically VOC solvents such as methyl ethyl ketone (MEK) and toluene. However, there has been an increase in the use of alcohol and water-based cleaners. Work practices and housekeeping measures are widely used throughout the large appliances coating industry as a means of reducing VOC emissions from these types of cleaning operations. These measures include covering mixing tanks, storing solvents and solvent soaked rags and wipes in closed containers, and cleaning spray guns in an enclosed system. Another means of reducing VOC emissions from cleaning operations is the use of low-VOC content cleaning materials. However, little information is available regarding the extent of the use of these types of cleaning materials to reduce VOC emissions in the large appliances coating industry.

3. Existing Federal, State and Local VOC Control Strategies

There are three previous EPA actions that affect surface coating operations for large appliances. In 1977, EPA issued the Control of Volatile Organic Emissions from Existing Stationary Sources, Volume V: Surface Coating of Large Appliances (EPA–450/2–77–034, December 1977) document (1977 CTG), which provided RACT recommendations for controlling VOC emissions from this industry. The 1977 CTG is applicable to prime, single and topcoat application area(s), flash-off area, and ovens. The 1977 CTG recommended a VOC emission limit of 0.34 kg VOC/l (2.8 lb/gal) of coating, excluding water and exempt compounds, as applied. This recommendation was derived using an assumed VOC density of 0.88 kg/l (7.36 lb/gal). The recommended limit represents a higher solids solvent-borne coating with approximately 62 percent volume solids and is equivalent to 0.55 kg VOC/l (4.5 lb VOC/gal) coating solids (the 1977 CTG-equivalent limit). This equates to an 81 percent reduction of VOC emissions from a conventional high-VOC content solvent-borne coating.

In 1982, EPA promulgated the Standards of Performance for Industrial Surface Coating: Large Appliances, 40 CFR part 60, subpart SS (47 FR 47785, October 27, 1982). The 1982 NSPS is applicable to large appliance surface coating operations which are defined as prime coat or a topcoat operation and includes the coating application station(s), flash-off area, and curing oven. The 1982 NSPS requires new large appliances coating facilities to comply with an emission limit of 0.9 kg VOC/l(7.5 lb VOC/gal) of solids deposited. Because the 1982 NSPS limit is in terms of coating solids deposited and the 1977 CTG-equivalent limit is in terms of coating solids used, these limits cannot be compared directly. During the implementation of the 1977 CTG, a baseline transfer efficiency of 60 percent (*i.e.*, 0.60 volume of solids deposited per unit volume of solids used) was used to express the CTG-equivalent limit on a solids deposited basis. The CTG-equivalent limit on a solids deposited basis is 0.9 kg VOC/l (7.5 lb VOC/gal) coating solids deposited which is the same as the 1982 NSPS limit.

In 2002, EPA promulgated the National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances, 40 CFR part 63, subpart NNNN (67 FR 48254, July 23, 2002). The 2002 NESHAP addresses organic HAP emissions,

including VOC HAP emissions, from all activities that involve coatings, thinners, and cleaning materials used in large appliance coating operations. The areas covered by the 2002 NESHAP include: Coating operations; vessels used for storage and mixing of coatings, thinners, and cleaning materials; equipment, containers, pipes and pumps used for conveying coatings, thinners, and cleaning materials; and storage vessels, pumps and piping, and conveying equipment and containers used for waste materials. The 2002 NESHAP limits organic HAP to 0.13 kg/l (1.1 lb/gal) of coating solids used during each compliance period (monthly) for existing sources and 0.022 kg/l (0.18 lb/gal) of coating solids used for new sources.

In addition to the EPA actions mentioned above, at least 24 State and local jurisdictions have specific regulations that control VOC emissions from large appliances coating operations. Almost all of the jurisdictions that specifically address large appliances coatings have adopted the emission limit recommended in the 1977 CTG. The California Bay Area Air Quality Management District (Bay Area), however, has adopted more stringent limits. The Bay Area has established two VOC emission limits for surface coatings of large appliances: (1) 275 g VOC/l (2.3 lb VOC/gal) of coating, excluding water and exempt compounds, as applied, for baked coating; and (2) 340 g VOC/l (2.8 lb VOC/gal) of coating, excluding water and exempt compounds, as applied, for air-dried coating. Under the Bay Area regulation, large appliances coating facilities must use coatings that comply with the VOC emissions limit or as an alternative to using low-VOC content coatings, the facility may choose to install add-on controls. If add-on controls are used, the Bay Area requires that the VOC emissions generated by all sources of VOC emissions (*i.e.*, the coating line) are reduced by at least 85 percent. The Bay Area rule also requires the use of coating application equipment that can meet a 65 percent or greater transfer efficiency. Compliance with the standard's 65 percent or greater transfer efficiency requirement can be achieved by properly operated electrostatic application or HVLP spray, flow coat, roller coat, dip coat including electrodeposition, and brush coat.

Like the Bay Area's limits, the VOC emissions limits established by the South Coast Air Quality Management District (South Coast) for the coating of metal parts and products (which includes large appliances using a general multi-component coating) are: (1) 275 g VOC/l (2.3 lb VOC/gal) of coating, excluding water and exempt compounds, as applied, for baked coating; and (2) 340 g VOC/l (2.8 lb VOC/gal) of coating, excluding water and exempt compounds, as applied, for air-dried coating. The South Coast regulation specifies the use of the following application methods: Electrostatic application, flow coat, dip coat, roll coat, HVLP spray, hand application methods, or other coating application method capable of achieving a transfer efficiency equivalent or better than that achieved by HVLP spraying. As an alternative to the VOC emissions limit and specified operating equipment, the South Coast regulation allows large appliances coating facilities to choose to install emission capture systems and add-on control devices. The South Coast regulation requires that if a facility chooses the capture and add-on control device alternative, 90 percent of the VOC emissions must be captured and the add-on control device must have a control efficiency of 95 percent.

Of the existing Federal, State, and local large appliances coating regulations discussed, the 2002 NESHAP, the Bay Area, the South Coast, and some other State regulations contain work practices as a control strategy for controlling VOC emissions from coating and cleaning materials. Under the 2002 NESHAP, the large appliances coating facility must develop and implement a work practice plan to minimize volatile organic HAP emissions if they comply with the standard using the emission rate with add-on controls option. The California regulations emphasize the work practice of keeping coating and cleaning material containers closed.

*B. Recommended Control Techniques*

The draft CTG recommends certain control techniques for reducing VOC emissions from large appliance coatings and cleaning materials. As explained in the draft CTG, we are recommending these control options for the large appliance furniture surface coating operations that emit 6.8 kg VOC/day (15 lb VOC/day) or more before consideration of control. We do not recommend these control approaches for facilities that emit below this level because of the very small VOC emission reductions that can be achieved. The recommended threshold level is equivalent to the evaporation of approximately 2 gallons of solvent per day. Such a level is considered to be an incidental level of solvent usage that could be expected even in facilities that use very low-VOC content coatings, such as powder or UV cure coatings. Furthermore, based on the 2002 NEI data and the 2004 ozone nonattainment designations, we estimate that all 68 of the large appliance surface coating facilities located in ozone nonattainment areas currently emit at or above this level. For these reasons, we did not extend our recommendations in the draft CTG to these low emitting facilities. This recommended threshold is also consistent with our recommendations in many previous CTGs.

For purposes of determining whether a facility meets the 6.8-kg/day (15-lb/day) threshold, aggregate emissions from all large appliance surface coating operations and related cleaning activities at a given facility are included.

1. Coatings

The draft CTG provides flexibility by recommending two options for controlling VOC emissions from coatings: (1) An emission limit that can be achieved through the use of low VOC content coatings; or (2) an overall control efficiency of 90 percent for facilities that choose to use add-on controls instead of low-VOC content coating. Specifically, the low-VOC content coatings recommendation includes a limit of 0.275 kg VOC/l (2.3 lb VOC/gal) of coating, excluding water and exempt compounds, as applied, and the use of the following application methods: Electrostatic spray, HVLP spray, flow coat, roller coat, dip coat including electrodeposition, brush coat, or other coating application method capable of achieving a transfer efficiency equivalent or better than that achieved by HVLP spraying. As an alternative to using low-VOC content coatings, a facility could choose to use combinations of capture and add-on control equipment to meet an overall control efficiency of 90 percent.

Furthermore, the draft CTG recommends work practices to control VOC emissions from large appliance surface coating-related activities. The draft CTG recommends that these work practices include the following: (1) Store all VOC-containing coatings, thinners, and coating-related waste materials in closed containers; (2) ensure that mixing and storage containers used for VOC-containing coatings, thinners, and coating-related waste materials are kept closed at all times except when depositing or removing these materials; (3) minimize spills of VOC-containing coatings, thinners, and coating-related waste materials; and (4) convey coatings, thinners and coating-related waste materials from one location to another in closed containers or pipes.

2. Cleaning Materials

The draft CTG recommends work practices to reduce VOC emissions from cleaning materials used in large appliance surface coating operations. The draft CTG recommends that, at a minimum, these work practices include the following: (1) Store all VOC-containing cleaning materials and used shop towels in closed containers; (2) ensure that mixing and storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials; (3) minimize spills of VOC-containing cleaning materials; (4) convey cleaning materials from one location to another in closed containers or pipes; and (5) minimize VOC emissions from cleaning of storage, mixing, and conveying equipment.

*C. Impacts of Recommended Control Techniques*

EPA estimates that approximately 34 percent of the large appliances coating facilities are located in ozone nonattainment areas (based on the 2004 designations). Accordingly, of the estimated 200 large appliances coating facilities nationwide, 68 are projected to be in nonattainment areas. As previously mentioned, the control strategies in the draft CTG are recommended for large appliances coating operations that emit at least 6.8 kg/day (15 lb/day). As noted above, based on available data, we estimate that all of the facilities in ozone nonattainment areas emit at or above this level.

Assuming that the 68 facilities projected to be in nonattainment areas are currently controlled at the 1977 CTG recommended level of control,[18] they are estimated to emit, in total, about 3,064 Mg (3,370 tons) of VOC per year. As discussed above, the draft CTG recommends either the use of low-VOC content coatings with specified application methods or add-on control technology. Both recommendations also include certain work practices to further reduce emissions from coatings as well as controlling VOC emission from cleaning materials. We estimated that the control measures under either recommendation would reduce VOC emissions from large appliances coating operations by about 32 percent (a reduction of 989 Mg (1,088 tons) of VOC from the nonattainment area facilities). In our analysis of the impacts of the recommended level of control, we have assumed that all facilities will choose to utilize the low-VOC content coatings alternative. We made this assumption for two reasons. First, we believe that complying low-VOC content coatings are already widely available at a cost that is not significantly greater than the cost of coatings with higher VOC contents. Secondly, the use of add-on controls to reduce emissions from typical spray coating operations is a more costly alternative because the spray booths and flash-off areas are often quite large and, thus, very large volumes of air must be captured and directed to the control device.

The compliance cost information that was obtained during the development of the NSPS and the NESHAP were used to estimate the impacts of the recommended level of control. This information is believed to be applicable because the primary means of compliance with the NSPS and the NESHAP was projected to be through the use of complying low-VOC content and low-HAP content coatings, respectively. The coating reformulation costs that were developed for estimating the impacts of the NESHAP are also the most recent information available. Using relevant information from coating reformulation studies and/or analyses conducted as part of the development of the NSPS and NESHAP, we estimate that the recommended level of control can be achieved at a total cost of $544,000. Based on the associated VOC emission reductions of 989 Mg/yr (1088 tpy), the estimated cost-effectiveness is $550/Mg ($500/ton). These estimates are further discussed in the draft CTG document.

The draft CTG also recommends work practices for reducing VOC emissions from both coatings and cleaning materials. We believe that our work practice recommendations in the draft CTG will result in a net cost savings. Implementing work practices reduce the amount of cleaning materials used by decreasing the amount that evaporates and is wasted.

*D. Considerations in Determining Whether a CTG Will Be Substantially as Effective as a Regulation*

In determining whether to issue a national rule or a CTG for the product category of large appliances coatings under CAA section 183(e)(3)(C), we analyzed the four factors identified above in Section I.D in light of the specific facts and circumstances associated with this product category. Based on that analysis, we propose to determine that a CTG will be substantially as effective as a rule in achieving VOC emission reductions in ozone nonattainment areas from large appliance surface coating operations.

As noted above, this section is divided into two parts. In the first part, we discuss our belief that the most effective means of achieving VOC emission reductions in this category is through controls at the point of use of the products, (i.e., through controls on the use of coating and cleaning materials at large appliances coating facilities), and this can only be accomplished through a CTG. We further explain that the recommended approaches in the draft CTG are consistent with existing effective Federal, State and local VOC control strategies. In the second part, we discuss how the distribution and place of use of the products in this category also support the use of a CTG. We also discuss the likely VOC emission reductions associated with a CTG, as compared to a regulation. We further explain that there are control approaches for this category that result in significant VOC emission reductions and that such reductions could only be obtained by controlling the use of the products through a CTG. Such reductions could not be obtained through a regulation under CAA section 183(e) because the controls affect the end-user, which is not a regulated entity under CAA section 183(e)(1)(C). For these reasons, which are described more fully below, we believe that a CTG will achieve much greater VOC emission reductions than a national rule developed under CAA section 183(e) for this category.

1. The Most Effective Entity To Target for VOC Reductions and Consistency With Existing Federal, State and Local VOC Strategies

To evaluate the most effective entity to target for VOC reductions, it is important first to identify the primary sources of VOC emissions. There are two main sources of VOC emissions from large appliances coating: (1) Evaporation of VOC from coatings; and (2) evaporation of VOC from cleaning materials. We address each of these sources of VOC emissions, in turn, below, as we discuss the CTG versus regulation approach.

a. Coatings

A national rule could contain limits for the as-sold VOC content of large appliance coatings. However, given the nature of the large appliances coating process, we believe that such a rule would result in little reduction in VOC emissions.

Although significant amounts of low-VOC content coatings are currently being used for large appliances coating, they cannot replace the traditional

[18] We believe that this assumption is reasonable because 24 states have adopted the 1977 CTG limit.

solvent-borne coatings in some instances. As described above, customer specifications, quick drying time (needed to meet production demands and prevent surface damage) and capital investments are reasons why solvent-borne coatings are still being used. Accordingly, a national rule that requires low VOC content in large appliance coatings would nevertheless need to include higher VOC content limits to allow for the use of solvent-borne coatings when necessary and to maintain these materials' intended effect. Because such a rule would merely codify what the large appliance surface coating facilities are already doing, we do not expect that it would result in significant VOC reductions from these facilities.

Furthermore, the effect of a national rule setting low VOC content limits for large appliance surface coatings could be easily subverted because it does not guarantee that only those low VOC coating materials will be used for large appliance surface coating. Many coatings used in large appliance surface coating are not identified by the supplier specifically as large appliances coatings. Therefore, these facilities can purchase and use coating materials not specified as large appliance coatings, which would effectively nullify the reformulation actions of the manufacturers and suppliers, resulting in no net change in VOC emissions in ozone nonattainment areas.

Alternatively, a national rule could, in theory, limit the VOC content of all coatings sold regardless of specified end use, thus ensuring that only low-VOC materials are available for large appliances coatings. Such an approach would be unreasonable and impractical. Coatings are sold for multiple different commercial and industrial purposes. Coating reformulation could impact uses of these materials other than large appliances coating and may inadvertently preclude the use of such materials in many important, legitimate contexts.

By contrast, a CTG can reach the end users of the coating materials and can therefore implement the control measures that are more likely to achieve the objective of reducing VOC emissions from this product category in ozone nonattainment areas. As previously discussed, the draft CTG recommends an emission limit for large appliances surface coating operations that can be achieved through the use of low-VOC content coatings and specific application methods. Alternatively, the draft CTG recommends an overall 90 percent control efficiency should a facility choose to use add-on controls in conjunction with high VOC content coatings. In addition, both recommendations in the draft CTG include work practices to further reduce VOC emissions from coatings as well as controlling VOC emissions from cleaning materials. The use of low-VOC content coatings can greatly reduce VOC emissions. Alternatively, control devices, such as thermal oxidizers, catalytic oxidizers, or carbon adsorbers, can achieve a significant reduction in VOC emissions from high VOC content coatings. The recommended work practices and application methods have also been shown to be effective VOC reduction measures. Given the significant reductions achievable through use of these recommended control measures, the most effective entity to address VOC emissions from large appliances coatings is the facility using the coatings.

These control measures are consistent with existing EPA, State and local VOC control strategies applicable to large appliances coating. As mentioned above, previous EPA actions and existing State and local regulations that address large appliance surface coating similarly call for VOC emission reduction through the use of control devices in conjunction with high-VOC content coating materials or the use of equivalent low-VOC content coating materials; some also include work practices and specific application methods.

We cannot, however, issue a national rule directly requiring large appliances coating facilities to use low-VOC content coatings, specific application methods, or control devices, or to implement work practices to reduce VOC emissions because, pursuant to CAA section 183(e)(1)(C) and (e)(3)(A), the regulated entities subject to a national rule would be the coating manufacturers and suppliers, not the large appliances facilities. By contrast, a CTG can reach the end users of the large appliances coatings and can therefore implement the measures by the users that are identified above as more likely to achieve the intended VOC emission reduction goal. Accordingly, we are including these control measures in the draft CTG that applies to large appliances coating facilities as the end users of the coating materials.

b. Cleaning Materials

There are two primary means to control VOC emissions associated with the cleaning materials used in large appliances coating process: (1) Limiting the VOC content or vapor pressure of the cleaning materials, and (2) implementing work practices governing the use of the product. A national rule requiring that manufacturers of cleaning materials for large appliance coating operations provide low-VOC content or low vapor pressure cleaning materials would suffer from the same deficiencies noted above with regard to coatings. Specifically, nothing in a national rule governing manufacturers of the cleaning materials would preclude the large appliances products facilities from purchasing bulk solvents or other multipurpose cleaning materials from other vendors. The general availability of bulk solvents or multipurpose cleaning materials from vendors that would not be subject to the regulation would directly undermine the effectiveness of such a national regulation.

A national rule also could, in theory, limit the VOC content or vapor pressure of all cleaning materials and all solvents sold regardless of specified end use, which would ensure that only low-VOC content or low vapor pressure cleaning materials are available for cleaning operations associated with large appliance surface coating. As with a low-VOC content limit on coatings, setting a low-VOC content or a low vapor pressure limit for all cleaning materials and solvents would be unreasonable and impractical. Cleaning materials and solvents are sold for multiple different commercial and industrial purposes. Replacing highly volatile cleaning materials and solvents would impact uses of these materials other than cleaning operations at large appliance surface coating facilities and may inadvertently preclude the use of such materials in many important, legitimate contexts.

The more effective approach for obtaining VOC reductions from cleaning materials used by large appliances coaters is to control the use of such materials. The draft CTG recommends large appliance coaters implement work practices to reduce VOC emissions from cleaning materials during large appliances coating operations. An example of an effective work practice is keeping solvents and used shop towels in closed containers. This measure alone can significantly reduce VOC emissions from cleaning materials. Provided immediately below are examples of other effective work practices that are being required by State and local regulations. Given the significant VOC reductions achievable through implementation of work practices, we conclude that the most effective entity to address VOC emissions from cleaning materials used in large appliances coating operations is

the facility using the cleaning materials during these operations.

This recommendation is consistent with measures required by Federal, States, and localities for reducing VOC emissions from cleaning materials used in large appliances coating operations. In addition to keeping solvents and shop towels in closed containers, State and local requirements include: Cleaning and wash-off solvent accounting systems (*i.e.*, log of solvent purchase, usage, and disposal); collecting and containing all VOC when cleaning coating lines and spray guns, and using low-VOC cleaning materials. Work practices have proven to be effective in reducing VOC emissions.

We cannot, however, issue a rule requiring such work practices at large appliances facilities because, pursuant to CAA section 183(e)(1)(C) and (e)(3)(A), the regulated entities subject to a national rule would be the cleaning materials manufacturers and suppliers and not the large appliances facilities. Accordingly, we are including these work practices in the draft CTG that applies to large appliances coating facilities as the end users of the cleaning materials.

Based on the nature of large appliances coating process, the sources of significant VOC emissions from this process, and the available strategies for reducing such emissions, the most effective means of achieving VOC emission reductions from this product category is through controls at the point of use of the products, (*i.e.*, through controls on large appliances coaters), and this can only be accomplished through a CTG. The approaches described in the draft CTG are also consistent with effective existing EPA, State, local VOC control strategies for large appliances coating operations. These two factors alone demonstrate that a CTG will be substantially as effective as a national regulation under CAA section 183(e).

2. The Product's Distribution and Place of Use and Likely VOC Emission Reductions Associated With a CTG Versus a Regulation

The factors described in the above section, taken by themselves, weigh heavily in favor of the CTG approach. The other two factors relevant to the CAA section 183(e)(3)(C) determination only further confirm that a CTG will be substantially as effective as a national regulation for large appliances coatings.

First, the products described above are used at commercial facilities in specific, identifiable locations. Specifically, these materials are used in commercial facilities that coat large appliance products and parts, as described in Section IV.A. This stands in contrast to other consumer products, such as architectural coatings, that are widely distributed and used by innumerable small users (*e.g.*, individual consumers in the general public). Because the VOC emissions are occurring at commercial manufacturing facilities, implementation and enforcement of controls concerning the use of these products are feasible and therefore the nature of these products' place of use further counsels in favor of the CTG approach.

Second, a CTG will achieve greater emission reduction than a national rule for each source of VOC emissions from large appliances coatings and associated cleaning materials. For the reasons described above, we believe that a national rule limiting the VOC content in coatings and cleaning materials used in large appliance surface coating operations would result in little VOC emissions reduction. By contrast, a CTG can achieve significant VOC emission reduction because it can provide for the highly effective emission control strategies described above that are applicable to the end-users of the coating and cleaning materials at large appliance facilities. Specifically, the draft CTG can provide for the use of add-on control devices in conjunction with high-VOC coatings and work practices. These significant VOC reductions associated with these measures could not be obtained through a national regulation because they are achieved through the implementation of measures by the end-user. In addition, as previously explained, strategies that arguably could be implemented through rulemaking, such as limiting the VOC content in large appliances coatings and cleaning materials, are far more effective if implemented directly at the point of use of the product. For the reasons stated above, it is more effective to control the VOC content of coatings and cleaning materials used for large appliances coating through a CTG than through a national regulation.

Furthermore, the number of large appliances coating facilities affected by our recommendations in this draft CTG, as compared to the number of such facilities in nonattainment areas does not affect our conclusion that the CTG would be more effective than a rule in controlling VOC emissions for this product category. As previously mentioned, we recommend the control measures described in the draft CTG for large appliances surface coating facilities that emit at or above 6.8 kilograms per day (15 pounds per day). Based on the 2004 ozone nonattainment designations, we estimate that all of the large appliances surface coating facilities located in ozone nonattainment areas (68 facilities) emit at or above this level and are therefore addressed by our recommendations in the draft CTG.

Upon considering the above factors in light of the facts and circumstances associated with this product category, we propose to determine that a CTG for large appliances coatings will be substantially as effective as a national regulation.

## V. Statutory and Executive Order (EO) Reviews

### *A. Executive Order 12866: Regulatory Planning and Review*

Under EO 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action,'' since it is deemed to raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This action does not contain any information collection requirements.

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; 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.

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 40 CFR are listed in 40 CFR part 9.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare

a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed determination, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed action will not impose any requirements on small entities. EPA is proposing to take final action to list the three Group III consumer and commercial product categories addressed in this notice for purposes of CAA section 183(e) of the Act. The listing action alone does not impose any regulatory requirements. EPA is also proposing to determine that, for the three product categories at issue, a CTG will be substantially as effective as a national regulation in achieving VOC emission reductions in ozone nonattainment areas. The proposed determination means that EPA has concluded that it is not appropriate to issue Federal regulations under CAA section 183(e) to regulate VOC emissions from these three product categories. Instead, EPA has concluded that it is appropriate to issue guidance in the form of CTGs that provide recommendations to States concerning potential methods to achieve needed VOC emission reductions from these product categories. In addition to the proposed determination, EPA is also taking comment on the draft CTGs for these three product categories. When finalized, these CTG will be guidance documents. EPA does not directly regulate any small entities through the issuance of a CTG. Instead, EPA issues CTG to provide States with guidance on developing appropriate regulations to obtain VOC emission reductions from the affected sources within certain nonattainment areas. EPA's issuance of a CTG does trigger an obligation on the part of certain States to issue State regulations, but States are not obligated to issue regulations identical to the Agency's CTG. States may follow the guidance in the CTG or deviate from it, and the ultimate determination of whether a State regulation meets the RACT requirements of the CAA would be determined through notice and comment rulemaking in the Agency's action on each State's State Implementation Plan. Thus, States retain discretion in determining what degree to follow the CTGs.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the listing action and the proposed determination for each of the three product categories that a CTG would be substantially as effective as a regulation for these product categories contain no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector because they impose no enforceable duty on any State, local or tribal governments or the private sector. (Note: The term ''enforceable duty'' does not include duties and conditions in voluntary Federal contracts for goods and services.) Thus, this action is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, we have determined that the listing action and the proposed determination contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, this action is not subject to the requirements of section 203 of UMRA.

*E. Executive Order 13132: Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the EO to include regulations that 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.''

The listing action and the proposed determination that CTGs are substantially as effective as regulations for these product categories do not have federalism implications. They do 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. The CAA establishes the relationship between the Federal Government and the States, and this action does not impact that relationship. Thus, Executive Order 13132 does not apply to the listing action and the proposed determination. However, in the spirit of EO 13132, and consistent with EPA policy to promote communications between EPA and State

and local governments, EPA is soliciting comment on the listing action, the proposed determination, and the proposed draft CTGs from State and local officials.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.''

The listing action and the proposed determination that CTGs would be substantially as effective as regulations to achieve VOC emission reductions from these product categories do not have Tribal implications, as specified in Executive Order 13175. They do not have a substantial direct effect on one or more Indian Tribes, in that the listing action and the proposed determination impose no regulatory burdens on tribes. Furthermore, the listing action and the proposed determination do not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the Tribal Authority Rule (TAR) establish the relationship of the Federal government and Tribes in implementing the Clean Air Act. Because listing action and the proposed determination do not have Tribal implications, Executive Order 13175 does not apply.

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

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under EO 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The listing action and the proposed determination are not subject to Executive Order 13045 because they are not economically significant regulatory actions as defined by Executive Order 12866. In addition, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health and safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulations. The listing action and the proposed determination are not subject to Executive Order 13045 because they do not include regulatory requirements based on health or safety risks.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Action Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. These actions impose no regulatory requirements and are therefore not likely to have any adverse energy effects.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, with explanations when the Agency does not use available and applicable voluntary consensus standards.

The listing action and the proposed do not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that the listing action and the proposed determination will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. The purpose of section 183(e) is to obtain VOC emission reductions to assist in the attainment of the ozone NAAQS. The health and environmental risks associated with ozone were considered in the establishment of the ozone NAAQS. The level is designed to be protective of the public with an adequate margin of safety. EPA's listing of the products and its determination that CTGs are substantially as effective as regulations are actions intended to help States achieve the NAAQS in the most appropriate fashion. Accordingly, these actions would help increase the level of environmental protection to populations in affected ozone nonattainment areas without having any disproportionately high and adverse human health or environmental effects on any populations, including any minority or low-income populations.

**List of Subjects in 40 CFR Part 59**

Environmental protection, Air pollution control, Consumer and commercial products, Confidential business information, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 29, 2007.

**Stephen L. Johnson,**

*Administrator.*

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

## PART 59—[AMENDED]

1. The authority citation for part 59 continues to read as follows:

**Authority:** 42 U.S.C. 7414 and 7511b(e).

## Subpart A—General

2. Section 59.1 is revised to read as follows:

### § 59.1 Final determinations under section 183(e)(3)(C) of the Clean Air Act.

This section identifies the consumer and commercial product categories for which EPA has determined that control techniques guidelines (CTGs) will be substantially as effective as regulations

in reducing volatile organic compound (VOC) emissions in ozone nonattainment areas:

(a) Wood furniture coatings;

(b) Aerospace coatings;

(c) Shipbuilding and repair coatings;

(d) Lithographic printing materials;

(e) Letterpress printing materials;

(f) Flexible packaging printing materials;

(g) Flat wood paneling coatings;

(h) Industrial cleaning solvents;

(i) Paper, film, and foil coatings;

(j) Metal furniture coatings; and

(k) Large appliance coatings.

[FR Doc. E7–13104 Filed 7–9–07; 8:45 am]

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Federal Register

Tuesday,
July 10, 2007

# Part III

# Securities and Exchange Commission

## 17 CFR Part 240

## Exemption of Compensatory Employee Stock Options From Registration Under Section 12(g) of the Securities Exchange Act of 1934; Proposed Rule

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Part 240**

**[Release No. 34–56010; International Series Release No. 1303; File No. S7–14–07]**

**RIN 3235–AJ91**

## Exemption of Compensatory Employee Stock Options From Registration Under Section 12(g) of the Securities Exchange Act of 1934

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission is proposing two exemptions from the registration requirements of the Securities Exchange Act of 1934 for compensatory employee stock options. The first exemption would be available to issuers that are not required to file periodic reports under the Exchange Act. The proposed exemption would apply only to the issuer's compensatory employee stock options and would not extend to the class of securities underlying those options. The second exemption would be available to issuers that are required to file those reports because they have registered under Exchange Act Section 12 the class of securities underlying the compensatory employee stock options.

**DATES:** Comments must be received on or before September 10, 2007.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's *Internet comment form (http://www.sec.gov/rules/proposed.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–14–07 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–14–07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/proposed.shtml*. Comments also are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Amy M. Starr, Senior Special Counsel to the Director, at (202) 551–3115, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** We are proposing amendments to rule 12h–1[1] under the Securities Exchange Act of 1934.[2]

## I. Introduction and Background

### *A. Introduction*

In the 1980s, private, non-reporting issuers began using compensatory employee stock options[3] to compensate a broader range of employees, including executive, middle, and lower-level employees, directors, and consultants.[4] Compensatory employee stock options provide a method to use non-cash compensation to attract, retain, and motivate company employees, directors, and consultants.[5] Since the 1990s, a number of private, non-reporting issuers have granted compensatory employee stock options to 500 or more employees, directors, and consultants.[6]

Under Section 12(g)[7] of the Exchange Act, an issuer with 500 or more holders of record of a class of equity security and assets in excess of $10 million at the end of its most recently ended fiscal year must register that class of equity security, unless there is an available exemption from registration.[8] Stock options, including stock options issued to employees under stock option plans, are a separate class of equity security for purposes of the Exchange Act.[9] Accordingly, an issuer with 500 or more optionholders and more than $10 million in assets is required to register that class of options under the Exchange Act, absent an available exemption. While there is an exemption from Exchange Act Section 12(g) registration for interests and participations in certain other types of employee compensation plans involving securities,[10] currently there is no

[1] 17 CFR 240.12h–1.

[2] 15 U.S.C. 78a *et seq.*

[3] Throughout this release, we use the term ''compensatory employee stock options'' to refer to stock options issued to employees, directors, consultants, and advisors (to the extent permitted under Securities Act Rule 701 [17 CFR 230.701]).

[4] The National Center for Employee Ownership surveyed 275 venture capital-backed private businesses in the technology and telecommunications businesses. Of these firms, 77% provided options to all employees while 23% provided them to only select employees. ''New Data Show Venture-Backed Companies Still Issue Options Broadly,'' *http://www.nceo.org/library/option_venturebacked.html*; See also J. Hand, 2005 ''Give Everyone a Prize? Employee Stock Options in Private Venture-Backed Firms,'' Working Paper, Kenan-Flagler Business School, UNC Chapel Hill, available at *http://ssrn.com/abstracts=599904* (''Hand Paper'') (study investigating the impacts on the equity values of private venture-backed firms of the organizational depth to which they grant employee stock options).

Rule 701, which provides an exemption from Securities Act registration for non-reporting issuers for offerings of securities to employees, directors, consultants and advisors, and specified others, pursuant to written compensatory benefit plans or agreements, has given private issuers great flexibility in granting compensatory employee stock options to employees (and other eligible persons) at all levels. *See* Rule 701(d) [17 CFR 230.701(d)]; *Rule 701 Exempt Offerings Pursuant to Compensatory Arrangements*, Release No. 33–7645, 64 FR 11095 (March 8, 1999) (''Rule 701 Release''); *See also Compensatory Benefit Plans and Contracts*, Release No. 33–6768, 53 FR 12918 (April 14, 1988).

[5] *See* Hand Paper, note 4 *supra*.

[6] *See e.g.*, no-action letters to Starbucks Corporation (available April 2, 1992); Kinko's, Inc. (available Nov. 30, 1999); Mitchell International Holding, Inc. (available Dec. 27, 2000) (''Mitchell International''); AMIS Holdings, Inc. (available July 30, 2001) (''AMIS Holdings''); Headstrong Corporation (available Feb. 28, 2003); and VG Holding Corporation (available Oct. 31, 2006) (''VG Holding'').

[7] 15 U.S.C. 78*l*(g).

[8] The asset threshold was set originally at $1 million in Section 12(g). Pursuant to its authority under Section 12(h) of the Exchange Act, the Commission has increased the amount three times; from $1 million to $3 million in 1982 [*System of Classification for Purposes of Exempting Smaller Issuers From Certain Reporting and Other Requirements*, Release No. 34–18647 (April 13, 1982)], from $3 million to $5 million in 1986 [*Reporting by Small Issuers*, Release No. 34–23406 (July 8, 1986)], and from $5 million to $10 million in 1996 [*Relief from Reporting by Small Issuers*, Release No. 34–37157 (May 1, 1996)].

[9] Exchange Act Section 3(a)(11) [15 U.S.C. 78c(11)] defines equity security to include any right to purchase a security (such as options) and Exchange Act Rule 3a–11 [17 CFR 240.3a–11] explicitly includes options in the definition of equity security for purposes of Exchange Act Sections 12(g) and 16 [15 U.S.C. 78*l*(g) and 78p]. Exchange Act Section 12(g)(5) [15 U.S.C. 78*l*(g)(5)] defines class to include ''all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges.''

[10] The exemption from registration under Exchange Act Section 12(g) which is contained in Exchange Act Rule 12h–1(a), was adopted in 1965, for ''[a]ny interest or participation in an employee stock bonus, stock purchase, profit sharing, pension, retirement, incentive, thrift, savings or similar plan which is not transferable by the holder except in the event of death or mental incompetency, or any security issued solely to fund such plans.'' Rule 12h–1 is intended to exempt from Section 12(g) registration the same types of employee benefit plan interests as Section 3(a)(2) [15 U.S.C. 77c(a)(2)] of the Securities Act of 1933 [15 U.S.C. 77a et seq.] exempts from Securities Act registration and, thus, does not cover stock options. *See e.g.*, L. Loss and J. Seligman, *Securities Regulations, 3d.*, at § 6–A–4.

exemption for compensatory employee stock options.

We are proposing an exemption for private, non-reporting issuers from Exchange Act Section 12(g) registration for compensatory employee stock options issued under employee stock option plans. We also are proposing an exemption from Exchange Act Section 12(g) registration for compensatory employee stock options of issuers that have registered under Exchange Act Section 12 the class of equity security underlying those options.

*B. Overview of Applicable Exchange Act Provisions*

The addition of Section 12(g) to the Exchange Act was intended ''to extend to investors in certain over-the-counter securities the same protection now afforded to those in listed securities by providing that the issuers of certain securities now traded over the counter shall be subject to the same requirements that now apply to issuers of securities listed on an exchange.'' [11] Further, Section 12(g) extended the disclosure and other Exchange Act safeguards to unlisted securities as a means to prevent fraud.[12] The Commission has noted that the registration requirement of Section 12(g) was aimed at issuers that had ''sufficiently active trading markets and public interest and consequently were in need of mandatory disclosure to ensure the protection of investors.'' [13]

Exchange Act Section 12(h) [14] provides the Commission with exemptive authority with regard to certain provisions of the Exchange Act. Included in Exchange Act Section 12(h) is the authority to create appropriate exemptions from the Exchange Act registration requirements. Under Exchange Act Section 12(h), the Commission may exempt a class of securities by rules and regulations or by exemptive order if it ''finds, by reason of the number of public investors, amount of trading interest in the securities, the number and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors.'' [15]

*C. Historical Treatment of Compensatory Employee Stock Options Under Exchange Act Section 12(g)*

A number of private, non-reporting issuers faced with registration under Exchange Act Section 12(g) due solely to their compensatory employee stock options being held by 500 or more holders of record (as well as having more than $10 million in assets) at the end of their fiscal year have requested registration relief from our Division of Corporation Finance.[16] Since 1992, the Division has provided relief through no-action letters [17] to these private issuers when specified conditions were present.

Before 2001, the Division's no-action relief in this area was conditioned on, among other things, the options terminating at the time employment terminated. Further, that relief was conditioned on the compensatory employee stock options not being exercisable until after either the issuer's initial public offering or the time at which the issuer was no longer relying on the relief.[18] Beginning in 2001, the Division announced modified conditions to registration relief for compensatory employee stock options of private, non-reporting issuers that, due to market conditions, were delayed in their plans to go public.[19] Because the Division's no-action relief applies only to the private, non-reporting issuer's compensatory employee stock options, once that issuer has 500 or more holders of record of any other class of equity security (including, for example, common stock outstanding as a result of stock issuances, including option exercises), it would be required to register that other class of equity security under Exchange Act Section 12(g).

The Division's no-action letters providing Exchange Act Section 12(g) registration relief to private, non-reporting issuers currently include the following parameters:[20]

Scope of Relief

- The relief is limited solely to compensatory employee stock options granted under stock option plans; and
- No security appreciation rights or other rights may be issued in connection with the compensatory employee stock options.

Eligible Participants

- The compensatory employee stock options may be issued to a broad class of participants comprised only of employees, directors, and consultants (to the extent permitted under Securities Act Rule 701) of the issuer, its parents, or of majority-owned, direct or indirect, subsidiaries of the issuer or its parents.

Exercisability

- The exercisability of the compensatory employee stock options need not be limited while the optionholder is an employee, director, or consultant; however, if the compensatory employee stock options are not exercisable, there are modified information conditions.

Transferability and Ownership Restrictions

- There may be no means through which optionholders may receive compensation or consideration for the compensatory employee stock options (or the securities to be received on exercise of the compensatory employee stock options) before exercise; [21]
- The compensatory employee stock options must remain non-transferable in most cases, but the compensatory employee stock options may transfer on death or disability of the optionholder or to family members (as defined in Securities Act Rule 701) by gift or pursuant to domestic relations orders. These permitted transferees are not allowed to further transfer compensatory employee stock options. There may be no other pledging,

[11] House of Representatives Report No. 1418 (1964), 88th Cong., 2d Sess., HR 679, p.1. *See also* Section 3(c) of the Securities Act Amendments of 1964, Pub.L. 88–467; 78 Stat. 565.

[12] Senate Committee Report, No. 379 (1963), 88th Cong., 1st Sess., p. 63.

[13] *Reporting by Small Issuers*, Release No. 34–23407 (July 8, 1986).

[14] 15 U.S.C. 78*l*(h).

[15] Exchange Act Section 12(h) [15 U.S.C. 78*l*(h)].

[16] The Division has delegated authority to grant (but not deny) applications for exemption under Exchange Act Section 12(h). *See* Rule 200.30–1(e)(7) [17 CFR 200.30–1].

[17] For the conditions necessary to receive relief under these letters and orders *see*, for example, the no-action letter to Mitchell International, note 6 *supra* (for the pre-2001 relief) and the no-action letters to AMIS Holdings, note 6 *supra*; ISE Labs, Inc. (available June 2, 2003); Jazz Semiconductor, Inc. (available Nov. 21, 2005) (''Jazz Semiconductor''); and VG Holding, note 6 *supra* (for the modified relief beginning in 2001).

[18] *See e.g.*, no-action letters to Kinko's, Inc., note 6 *supra*; General Roofing Services, Inc. (available April 5, 2000); and Mitchell International, note 6 *supra*.

[19] *See* Division of Corporation Finance, Current Issues and Rulemaking Outline Quarterly Update (March 31, 2001).

[20] Following the announcement of the modified conditions to relief in 2001, issuers were still able to request relief under the former conditions. Since 2002, however, issuers have received relief based on the modified factors only. *See e.g.*, no-action letters to Jazz Semiconductor, note 17 *supra*; Network General Corporation (available May 22, 2006); Avago Technologies Limited (available Oct. 6, 2006); and VG Holding, note 6 *supra*. Our discussion regarding the current conditions to relief under the no-action letters refers only to the modified conditions set forth in the most recently issued no-action letters.

[21] This would not include payments received on exercise by an issuer or its affiliates of a repurchase right or obligation with regard to the options or the shares received on exercise of the options. *See e.g.*, no-action letter to VG Holding, note 6 *supra*.

hypothecation or donative transfer of compensatory employee stock options or the securities underlying the options;

• The securities received on exercise of the compensatory employee stock options may not be transferable, except back to the issuer (or to affiliates of the issuer if the issuer is unable to repurchase the shares), to family members under Rule 701 by gift or pursuant to domestic relations orders, or in the event of death or disability. These permitted transferees are not allowed to further transfer these securities. There may be no other pledging, hypothecation or donative transfer of these securities; and

• The ability of former employees to retain and exercise their vested compensatory employee stock options for a period of time following termination of employment need not be limited.

Information Requirements

• The issuer must provide optionholders and holders of shares received on exercise of compensatory employee stock options with essentially the same Exchange Act registration statement, annual report, and quarterly report information they would receive if the issuer registered the class of securities under Exchange Act Section 12, including audited annual financial statements (prepared in accordance with generally accepted accounting principles (''GAAP'')) and unaudited quarterly financial information, with the following specific conditions:

—The registration statement-type document must be delivered promptly after the issuer receives no-action relief;

—The annual report must be delivered within 90 days after the issuer's fiscal year end; [22]

—The quarterly reports must be delivered within 45 days after the end of the issuer's fiscal quarter; [23]

—The issuer may condition delivery of the information to an optionholder on the optionholder signing an appropriate confidentiality agreement but it must make the information available for examination at the issuer's offices by optionholders and holders of shares received on exercise of options unwilling to enter into confidentiality agreements;

—The issuer must provide certifications similar to those required of reporting issuers; [24] and

—The issuer must provide specified information relating to option vesting and changes in the stock option plan.[25]

*D. Recommendation of the Advisory Committee on Smaller Public Companies*

The Advisory Committee on Smaller Public Companies, in its Final Report, recommended that the Commission provide Exchange Act Section 12(g) registration relief for compensatory employee stock options.[26] In this regard, the Advisory Committee stated:

> [H]olders of employee stock options received in compensatory transactions are less likely to require the full protections afforded under the registration requirements of the federal securities laws. Therefore, we believe that such stock options should not be a factor in determining the point an issuer becomes subject to the burdens of a reporting company under the Exchange Act.[27]

*E. Overview of the Proposed Exemptions*

We believe that it is appropriate at this time to propose two new exemptions from the registration provisions of Exchange Act Section 12(g) for compensatory employee stock options issued under employee stock option plans that are limited to employees, directors, consultants, and advisors of the issuer, its parents, and majority-owned subsidiaries of the issuer or its parents.[28] Given the differences between issuers that are required to file reports under the Exchange Act and those issuers that do not have such an obligation, including the nature of the trading markets and the amount of publicly available information, we believe that it is appropriate to propose separate exemptions for these different types of issuers.

1. Exemption for Issuers That Are Not Exchange Act Reporting Issuers

We believe that an exemption from Exchange Act registration of compensatory employee stock options for private, non-reporting issuers will provide useful certainty to those issuers in their compensation decisions and will help them avoid becoming subject to the registration and reporting requirements of the Exchange Act prior to the time they have public shareholders.[29] Based on the factors identified in Exchange Act Section 12(h), we believe that it is appropriate to provide an exemption from Exchange Act Section 12(g) registration to a specified class of compensatory employee stock options.[30] We believe that the conditions to the proposed exemption and the existing statutory provisions and rules provide holders of compensatory employee stock options in private, non-reporting issuers appropriate disclosure and investor protections under the federal securities laws, given the compensatory circumstances of the securities issuance

[22] Since 2006, the time period to deliver the annual report and the quarterly report was shortened to 90 days and 45 days, respectively, from the 120 days for the annual report and 60 days for the quarterly report that was allowed in the earlier no-action letters relying on the modified conditions. *See* no-action letters to VG Holding, note 6 *supra* and AMIS Holdings, note 6 *supra*.

[23] *Id*.

[24] The certification condition requires that the issuer's chief executive officer and chief financial officer include a certification as required by the first three paragraphs of the certification required under Item 601(b)(31) of Regulation S–K [17 CFR 229.601(b)(31)]. *See e.g.*, no-action letter to VG Holding, note 6 *supra*.

[25] *See e.g.*, no-action letter to VG Holding, note 6 *supra*.

[26] *Final Report of the Advisory Committee on Smaller Public Companies to the Securities and Exchange Commission,* April 23, 2006 (''Final Report of the Advisory Committee'').

[27] *Id* at p. 87.

[28] The proposed exemptions would allow compensatory employee stock options to be held only by those persons described in Securities Act Rule 701(c) [17 CFR 230.701(c)]. Securities Act Rule 701(c) lists the categories of persons to whom offers and sales of securities under written compensatory benefit plans or contracts may be made in reliance on Rule 701 by an issuer, its parents, and majority-owned subsidiaries of the issuer or its parents. The categories of persons are: Employees (including specified insurance agents); directors; general partners; trustees (where the issuer is a business trust); officers; consultants and advisors (under certain conditions); family members who acquire their securities from such persons through gifts or domestic relations orders; and former employees, directors, general partners, trustees, officers, consultants and advisors only if such persons were employed by or providing services to the issuer at the time the securities were offered. As we note, the proposed amendments use the term ''those persons described in Rule 701(c)'' to refer to these permitted holders. For ease of discussion, in this release we use the phrase ''employees, directors, consultants and advisors of the issuer'' to refer to those persons described in Securities Act Rule 701(c).

[29] While we agree that an exemption from Exchange Act Section 12(g) registration for compensatory employee stock options is appropriate, in this regard, we do not agree with the Advisory Committee statement that holders of employee stock options received in compensatory transactions do not require the full protections afforded under the registration requirements of the federal securities laws.

[30] We believe that our proposal is consistent with the exemption provided for other employee benefit plans in Exchange Act Rule 12h–1, which is not available for stock option plans, the compensatory employee stock options issued pursuant to such plans, or the securities issued on exercise of such compensatory employee stock options. We believe that the characteristics of many employee benefit plans, which are by their own terms limited to employees, not available to the general public, and subject to transfer restrictions, obviate the need for applicability of all the rules and regulations aimed at public trading markets. In addition, because many of the proposed conditions refer to certain Securities Act Rule 701 definitions and requirements, we believe that the proposed exemption from Exchange Act Section 12(g) registration will allow non-reporting issuers to continue to rely on Securities Act Rule 701 in offering and selling compensatory employee stock options and the shares issued on exercise of those options.

and the restrictions on transferability of the compensatory employee stock options and shares received on exercise of those options. As such, we are proposing to amend Exchange Act Rule 12h–1 to provide an exemption from Exchange Act Section 12(g) registration for compensatory employee stock options issued under written compensatory stock option plans of an issuer that does not have a class of securities registered under Exchange Act Section 12 and is not subject to the reporting requirements of Exchange Act Section 15(d), where the following conditions are present: [31]

- Eligible optionholders are limited to employees, directors, consultants, and advisors of the issuer;
- Transferability by optionholders and holders of shares received on exercise of the options of compensatory employee stock options, shares received, or to be received, on exercise of those options, and shares of the same class as those underlying those options is restricted; and
- Risk and financial information is provided to optionholders and holders of shares received on exercise of those options that is of the type that would be required under Rule 701 if securities sold in reliance on Rule 701 exceeded $5 million in a 12-month period.[32]

The proposed exemption would apply only to a private, non-reporting issuer's compensatory employee stock options and would not extend to the class of securities underlying those options.[33]

The proposed restrictions on the type of issuer eligible to rely on the exemption, the limitation on who may be granted and hold the compensatory employee stock options, the transferability restrictions, and the limitation of the exemption to the compensatory employee stock options are intended to assure that there is no trading in the options or shares received on exercise of the options and that there are no public investors in the compensatory employee stock options that need the full range of protections that Exchange Act registration and reporting afford. In light of the circumstances under which private, non-reporting issuers issue compensatory employee stock options, the terms of those options, and the information provision requirements of the proposed exemption, we believe that the proposed amended rule contains appropriate conditions to an exemption of such compensatory employee stock options of private, non-reporting issuers from registration under Exchange Act Section 12(g). As such, we believe that the proposed exemption is in the public interest, in that it would clarify and routinize the basis for an exemption from Exchange Act Section 12(g) registration for compensatory employee stock options so private, non-reporting issuers would be able to continue to issue compensatory employee stock options and would provide appropriate investor protections for optionholders and holders of shares received on exercise of the options.

2. Exemption for Exchange Act Reporting Issuers

We are proposing to amend Exchange Act Rule 12h–1 to provide an exemption for compensatory employee stock options of issuers that are required to file reports under the Exchange Act because they have registered under Exchange Act Section 12 the class of equity security underlying those options. The proposed exemption would be available only where the options were issued pursuant to a written compensatory stock option plan and the class of persons eligible to receive or hold the options is limited appropriately. We believe that the proposed exemption of compensatory employee stock options from Exchange Act registration is appropriate for purposes of investor protection and the public interest because the optionholders would have access to the issuer's publicly filed Exchange Act reports and the appropriate provisions of Exchange Act Sections 13, 14, and 16 [34] would apply to the compensatory employee stock options and the securities issuable on exercise of the compensatory employee stock options.

## II. Discussion of Proposals

We are proposing two amendments to Exchange Act Rule 12h–1. These amendments would:

- Provide an exemption for private, non-reporting issuers from Exchange Act Section 12(g) registration for compensatory employee stock options issued under employee stock option plans; and
- Provide an exemption from Exchange Act Section 12(g) registration for compensatory employee stock options issued by issuers that have registered under Exchange Act Section 12 the class of equity security underlying the compensatory employee stock options.

### *A. Proposed Exemption for Compensatory Employee Stock Options of Issuers That Are Not Exchange Act Reporting Issuers*

We believe it is appropriate to provide an exemption from Exchange Act registration for compensatory employee stock options of issuers that are not required to file reports under the Exchange Act. The availability of this proposed exemption would be subject to specified limitations, including limitations concerning permitted optionholders, transferability and provision of information.

1. Eligible Issuers

The proposed amendment would provide an exemption from Exchange Act Section 12(g) registration for compensatory employee stock options of the following types of issuers:

- Issuers that do not have a class of securities registered under Exchange Act Section 12; and
- Issuers that are not subject to the reporting requirements of Exchange Act Section 15(d).[35]

The proposed exemption is intended to be available only to those issuers that are not reporting under the Exchange Act. As such, the proposed exemption would terminate once the issuer became subject to the reporting requirements of the Exchange Act.[36]

[31] The conditions build on and modify the current conditions to relief in the no-action requests discussed above. For example, the transferability restrictions in the proposed exemption are more clearly defined; there is no proposed restriction on the exercisability of the compensatory employee stock options; and the level of disclosure required to be provided to optionholders and holders of shares received on exercise of those options is the same level of information that private, non-reporting issuers relying on Securities Act Rule 701 for the offers and sales of those options and securities may be required to provide, rather than the level of information an issuer with public shareholders is required to provide. *See* the discussion under ''Proposed Exemption For Compensatory Employee Stock Options of Issuers That Are Not Exchange Act Reporting Issuers,'' below.

[32] *See* the discussion under ''Required Information,'' below.

[33] A private, non-reporting issuer would have to apply the registration requirements of Exchange Act Section 12 to the class of equity security underlying the compensatory employee stock options without regard to the proposed exemption. For the class of equity security underlying the options, for which there could be public shareholders, no transferability restrictions, and trading interest, we do not believe a Section 12 registration exemption would be appropriate.

[34] 15 U.S.C. 78m, 78n, and 78p.

[35] Under Section 15(d) of the Exchange Act, an issuer's ''duty to file [reports under Section 15(d) is] automatically suspended if and so long as any issue of securities of such issuer is registered pursuant to section 12 of this title.''[15 U.S.C. 780(d)].

[36] The proposed exemption under Exchange Act Section 12 would allow issuers 60 calendar days to register the class of options once an issuer was no longer able to rely on the proposed exemption. Currently, the no-action letter relief terminates once an issuer becomes subject to the Exchange Act

Continued

Request for Comment

• Should the proposed exemption be available to any private, non-reporting issuer? If not, which categories of non-reporting issuers should be ineligible for the exemption?

• Should the proposed exemption be available to those issuers that file Exchange Act reports and, thus, hold themselves out as Exchange Act reporting issuers, but who have neither a class of securities registered under Exchange Act Section 12 nor an existing reporting obligation under Exchange Act Section 15(d) (also known as ''voluntary filers'')? Should ''voluntary filers'' be treated differently under the proposed exemption if they do not have any public shareholders of any class of their equity securities?

2. Eligible Compensatory Employee Stock Options

The proposed exemption for compensatory employee stock options would:

• Apply only to compensatory employee stock options that are issued under a written compensatory stock option plan [37] that is limited to employees, directors, consultants, and advisors of the issuer; [38]

• Apply to all compensatory employee stock options issued under all of the issuer's written compensatory stock option plans on a combined basis where the securities underlying the compensatory employee stock options are of the same class of securities, with the proposed exemptive conditions applying to the compensatory employee stock options issued under each option plan; and

• Not extend to any class of securities received or to be received on exercise of the compensatory employee stock options.

The proposed exemption would cover all compensatory employee stock options of an issuer meeting the conditions of the exemption, even if the compensatory employee stock options were issued under separate written option plans. For this purpose, the compensatory employee stock options would be considered to belong to the same class of equity security if the same class of securities would be issuable on exercise of the compensatory employee stock options.[39]

The proposed exemption would apply to the compensatory employee stock options only and not to the securities issued (or to be issued) on exercise of the compensatory employee stock options. Thus, the issuer would have to apply the registration requirements of Exchange Act Section 12 to the class of equity security underlying the compensatory employee stock options without regard to the proposed exemption.[40]

Request for Comment

• Should the exemption cover all compensatory employee stock options issued under all employee stock option plans of a private, non-reporting issuer?

• Are there employee stock option plans that are not written that should be included? If so, what types of unwritten plans should be included and why?

• Are there employee stock options issued under written stock option contracts, other than written stock option plans, that should be included? If so, what types of written stock option contracts should be included and why?

• We have proposed to provide that the exemption would apply to all of the issuer's option plans on a combined basis where the securities underlying the compensatory employee stock options are of the same class of securities, while the options may be held by employees, directors, consultants, or advisors of an issuer, its parents, or majority-owned subsidiaries of the issuer or its parents. Should the class of options covered by the proposed exemption include only options issued by the issuer under its written compensatory plans or should the class of options covered by the proposed exemption also include options on the issuer's securities that are issued under written compensatory plans of the issuer's parent, its majority-owned subsidiaries or majority-owned subsidiaries of the issuer? Please explain.

3. Eligible Option Plan Participants

The proposed exemption would be available only where the class of persons eligible to receive compensatory employee stock options under the stock option plans is limited to those persons described in the exemption. These eligible optionholders would be the same as those participants permitted under Rule 701 and would include: [41]

• Employees of the issuer, its parents, or majority-owned, direct or indirect, subsidiaries of the issuer or its parents;

• Directors of the issuer, its parents, or majority-owned, direct or indirect, subsidiaries of the issuer or its parents; and

• Consultants and advisors of the issuer, its parents, or majority-owned, direct or indirect, subsidiaries of the issuer or its parents.

We have proposed that the exemption be limited to those situations where compensatory employee stock options may be held only by those persons who are permitted to hold or be granted compensatory employee stock options under Securities Act Rule 701. We believe that the experience of issuers and their counsels with Rule 701 will ease compliance with and limit uncertainty regarding the exemption.[42]

Just as Securities Act Rule 701 was designed specifically not to be available for capital-raising transactions, the proposed exemption would apply only to employee stock options issued for compensatory purposes. The restrictions on the eligible participants in the stock option plans are intended to assure that the proposed exemption is limited to employee stock options issued solely for compensatory purposes.[43]

Request for Comment

• Should the proposal limit further the types of persons eligible to hold compensatory employee stock options for purposes of the exemption? If so, what types of persons should not be eligible?

• Is the use of the Securities Act Rule 701 definitions of eligible participants appropriate for purposes of the proposed exemption? If not, what definitions should be used to characterize the optionholders who

reporting requirements. *See e.g.*, no-action letter to VG Holding, note 6 *supra.*

[37] Securities Act Rule 701 is available only for offers and sales of compensatory employee stock options and the shares issuable upon exercise of those options that are issued under written compensatory employee benefit plans of an issuer, its parents, or majority-owned subsidiaries of the issuer or its parents. *See* Securities Act Rule 701(c) [17 CFR 230.701(c)]. Thus, the proposed requirement that the options be issued under written compensatory stock option plans would not impose a new obligation on issuers relying on Securities Act Rule 701 in offering and selling its compensatory employee stock options or the shares issued on exercise of those options.

[38] The proposed exemption for the compensatory employee stock options would not extend to other rights issued in connection with the compensatory employee stock options, such as stock appreciation rights. Any such other rights would be evaluated separately for purposes of Exchange Act Section 12(g) registration.

[39] *See* Exchange Act Section 12(g)(5) [15 U.S.C. 78*l*(*g*)(5)].

[40] For example, if an issuer had more than $10 million in assets and 500 or more holders of a class of equity security underlying the compensatory employee stock options as of the end of its fiscal year, it would have to register under Exchange Act Section 12 that class of equity security.

[41] *See* the discussion at note 28 *supra.*

[42] In this regard, we note that this category of eligible optionholders is broader than the category of persons to whom employee benefit securities, including compensatory employee stock options may be offered and sold by reporting issuers using a Form S–8 registration statement. *See* General Instruction 1(a) to Form S–8 [17 CFR 239.16b].

[43] All option grants and exercises must, of course, comply with the requirements of the Securities Act.

have received the compensatory employee stock options solely for compensatory purposes and why should another definition be used?

• Would the proposed eligibility conditions affect an issuer's ability to rely on compensatory employee stock options to attract, retain, and motivate employees, directors, consultants, and advisors of the issuer?

4. Option Terms

a. Compensatory Employee Stock Option and Share Transferability Restrictions

The proposed exemption would be available only where there are certain restrictions on the transferability by an optionholder or holder of shares received on exercise of a compensatory employee stock option of those options, the shares issuable on exercise of those options, or shares of the same class of equity security as those underlying those options.[44] Specifically, the proposed exemption would be available only if:[45]

• The compensatory employee stock options and the shares received or to be received on exercise of those options could not be transferred except:[46]

—To family members (as defined in Rule 701) by gift or pursuant to domestic relations orders; or

—On death or disability of the optionholder;[47]

• Optionholders or holders of shares received on exercise of the compensatory employee stock options through a permitted transfer from the original holder could not transfer those options or shares further;

• There could be no other permitted pledges, gifts, hypothecations, or other transfers of the compensatory employee stock options, shares issued or issuable on exercise of those options, or shares of the same class of equity security as those underlying those options by the optionholder or holder of shares received on exercise of an option, other than transfers back to the issuer (or to affiliates of the issuer if the issuer is unable to repurchase those options or shares received on exercise of those options), until the issuer becomes subject to the reporting requirements of the Exchange Act;[48]

• The compensatory employee stock options, the securities issued or issuable upon exercise of those options, or shares of the same class of equity security as those underlying those options could not be the subject of a short position, a ''put equivalent position''[49] or a ''call equivalent position''[50] by the optionholder or holder of shares received on exercise of an option until the issuer becomes subject to the reporting requirements of the Exchange Act; and

• There could be no market or available process or methodology that would permit optionholders or holders of shares received on exercise of an option to receive any consideration or compensation for the options, the shares issuable on exercise of the options, or shares of the same class of equity security as those underlying the options, except from permitted transfers to the issuer or its affiliates as discussed above, until the issuer becomes subject to the reporting requirements of the Exchange Act.

Under the proposal, the exemption would not be available if optionholders and holders of shares received on exercise of compensatory employee stock options could enter into agreements, prior to or after the exercise of those options, that would allow those holders to monetize or receive compensation from or consideration for such compensatory employee stock options, the shares to be received upon exercise of those options, or shares of the same class of equity security as those underlying those options. Thus, the proposed conditions provide that, except with regard to the limited permitted transfers specified in the proposed conditions, an optionholder cannot be permitted to pledge, hypothecate, or otherwise transfer the compensatory employee stock options, the shares underlying those options, or shares of the same class of equity security as those underlying those options, including through a short position, a ''put equivalent position,'' or a ''call equivalent position,'' until the issuer becomes subject to the reporting requirements of the Exchange Act. The proposed exemption would be conditioned on a similar restriction on the holders of shares received on exercise of the options.

The proposed restrictions on transfer of the compensatory employee stock options, the shares underlying those options, and shares of the same class of equity security as those underlying those options by an optionholder or holder of shares received on exercise of an option are intended to limit the possibility for a trading market to develop for the compensatory employee stock options or the securities issued on exercise of those options while the issuer is relying on the proposed exemption. These restrictions also are intended to assure that an optionholder or holder of shares received on exercise of an option is not able to profit from the compensatory employee stock options or the securities received or to be received on exercise of those options (except from permitted transfers to the issuer or its affiliates as discussed above), until the issuer becomes subject to the reporting requirements of the Exchange Act.

While, in most cases, the securities of private, non-reporting issuers that are issued on exercise of compensatory employee stock options are deemed to be restricted securities as defined in Securities Act Rule 144,[51] we believe that the proposed transferability restrictions are necessary to limit further the possibility of a market developing in the securities issued or issuable on exercise of immediately exercisable compensatory employee stock options while the issuer is not reporting under the Exchange Act. Thus, the proposed

[44] The proposed exemption would not impose any limitations on the ability of current or former employees, directors, consultants, or advisors of an issuer to retain or exercise their compensatory employee stock options. The current no-action letters do, however, contain certain limitations on retention of both vested and unvested compensatory employee stock options. *See e.g.*, no-action letter to VG Holding, note 6 *supra*.

[45] The current no-action letters contain similar conditions on transferability, although the proposed rule clarifies the limitations on the ability to engage in certain derivative transactions, such as restrictions on an optionholder or holder of shares received on exercise of options from entering into a ''put equivalent position'' or ''call equivalent position'' until the issuer become subject to the reporting requirements of the Exchange Act. *See e.g.*, no-action letter to VG Holding, note 6 *supra*.

[46] The proposed transferability restrictions would not supersede other transferability restrictions imposed for other reasons, including under the Internal Revenue Code of 1986, as amended [26 U.S.C. 422(b)(5)].

[47] These permitted transferees are intended to be the same as those permitted under Securities Act Rule 701(c). *See* note 28 *supra*.

[48] If an express prohibition on transfer is not permitted under applicable state law, the proposed exemption would be available if the issuer retained the obligation, either directly or by assignment to an affiliate of the company, to repurchase the option or the shares issued on exercise of the options until the issuer becomes subject to the reporting requirements of the Exchange Act. This repurchase obligation would have to be contained in the stock option agreement pursuant to which the option is exercised, in a separate stockholders agreement, in the issuer's by-laws, or certificate of incorporation. *See* the discussion under ''Issuer Obligation to Impose the Conditions to the Proposed Exemption,'' below.

[49] 17 CFR 240.16a–1(h). Rule 16a–1(h) defines a ''put equivalent position'' as a derivative security position that increases in value as the value of the underlying equity decreases, including, but not limited to, a long put option and a short call option position.

[50] 17 CFR 240.16a–1(b). Rule 16a–1(b) defines a ''call equivalent position'' as a derivative security position that increases in value as the value of the underlying equity increases, including, but not limited to, a long convertible security, a long call option, and a short put option position.

[51] 17 CFR 230.144. *See, e.g.*, Securities Act Rule 701(g).

amendments would require that the issuer's securities received on exercise of compensatory employee stock options be restricted as to transfer until the issuer becomes subject to the reporting requirements of the Exchange Act.[52]

The proposed transfer restrictions for the compensatory employee stock options and the shares received or to be received on exercise of those options are consistent in most respects with the transfer restrictions on compensatory securities in Securities Act Rule 701.[53] In addition, we understand that private, non-reporting issuers generally restrict the transferability of shares received on exercise of compensatory employee stock options until the issuer becomes subject to the reporting requirements of the Exchange Act. As such, we believe that transferability restrictions should not impose additional constraints on such private, non-reporting issuers.

Request for Comment

- Should there be any other restrictions on the transferability by the optionholder or holder of shares received on exercise of the options of the compensatory employee stock options, the shares received on exercise of those options, or shares of the same class of equity security as those underlying those options prior to the issuer becoming subject to the reporting requirements of the Exchange Act?
- Should there be any other restrictions on the transferability of the securities received or to be received on exercise of the compensatory employee stock options or shares of the same class of equity security as the shares underlying those options?
- Should an optionholder be allowed to enter into agreements to transfer the shares to be received on exercise of the compensatory employee stock options or shares of the same class of equity security as the shares underlying those options prior to the exercise of those options while the issuer is relying on the exemption? If yes, why should an optionholder be able to enter into such arrangements and how would such arrangements affect whether an optionholder has received value for the compensatory employee stock options?
- Should there be restrictions on permitted transferees of compensatory employee stock options being able to further transfer such options? Should the permitted transferees be able to further transfer such options to other permitted transferees by gift, pursuant to domestic relations orders, or on death or disability? What types of other transfers, if any, should be permitted and why?
- Do the proposed restrictive provisions sufficiently cover hedging transactions by optionholders or holders of shares received on exercise of the options that would permit such persons to circumvent the proposed transferability conditions in the proposed exemption?
- Should the proposed exemption provide explicitly that the issuer may repurchase the compensatory employee stock options or shares received on exercise of those options if the issuer is unable to prohibit transfers of such options or shares under state law?
- Should the restrictive provisions of the proposed exemption apply to the securities received on exercise of the compensatory employee stock options for so long as the issuer is relying on the proposed exemption? If not, please explain.
- Should the transfer restrictions on the shares received on exercise of the compensatory employee stock options, following such exercise, be a condition to the proposed exemption only if the issuer does not restrict the transferability of any of the shares of the same class of its equity security prior to the issuer becoming subject to the reporting requirements of the Exchange Act?
- The proposed exemption provides that there can be no market or methodology that would permit optionholders or holders of shares received on exercise of an option to profit from or monetize the options, the shares received on exercise of the options, or shares of the same class of equity security as those underlying the options. These proposed restrictions are not intended to interfere with any means by which the issuer values its compensatory employee stock options for purposes of Statement of Financial Accounting Standards No. 123R (''Statement No. 123R'').[54] Do the proposed conditions affect an issuer's ability to value compensatory employee stock options for purposes of Statement 123R? If so, how would the valuation ability be affected? If affected, what alternative provisions should we consider that would not interfere with such valuation, yet not permit an optionholder or holder of shares received on exercise of an option to monetize or profit from the option, the shares received or to be received on exercise of the options, or shares of the same class of equity security as those underlying the options, prior to the issuer becoming subject to the reporting requirements of the Exchange Act?

b. Permitted Exercisability of Compensatory Employee Stock Options

The proposed exemption would not require that there be any restriction on the timing of the exercise of the compensatory employee stock options:

- By the optionholder (regardless of whether the optionholder continues to be an employee, director, consultant or advisor of the issuer);
- In the event of the death or disability of the optionholder, by the estate or guardian of the optionholder; or
- By a family member (as defined in Rule 701) who acquired the options through a gift or domestic relations order.

Request for Comment

- Should there be any restriction on the exercisability of the compensatory employee stock options while an issuer is relying on the proposed exemption?
- Should the compensatory employee stock options be required to terminate if the optionholder is no longer an employee, director, consultant or advisor of the issuer? If so, under what conditions should the options terminate?
- Should the proposed exemption be available only if the compensatory employee stock options are exercisable only for a limited time period after the optionholder ceases to be an employee, director, consultant or advisor of the issuer? If so, should such a limitation on exercise be different if such a cessation is because of death or disability, or because of a termination with cause or without cause? What limited time period should apply and why?

5. Required Information

The proposed exemption would require the issuer to provide information to optionholders and holders of shares received on exercise of compensatory employee stock options. This condition would require the issuer, for purposes of the proposed exemption, to provide the following information to optionholders (and holders of shares

[52] After an issuer becomes subject to the reporting requirements of the Exchange Act, the issuer would be able to rely on the exemption for Exchange Act reporting issuers only if it becomes subject to Exchange Act reporting as a result of its Exchange Act Section 12 registration of the class of equity security underlying the compensatory employee stock options.

[53] Securities Act Rule 701(c) and (g). The securities sold in Rule 701 transactions are deemed to be restricted securities as defined in Securities Act Rule 144 [17 CFR 230.144]. The transfer restrictions in the proposed exemption are more restrictive than those in Rule 701.

[54] *See* Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004) *Share-Based Payment.*

received on exercise of compensatory employee stock options):[55]

- The same risk and financial information that would be required to be provided under Securities Act Rule 701 if securities sold in reliance on Securities Act Rule 701 in a 12-month period exceeded $5 million, with the optionholders and holders of shares received on exercise of the compensatory employee stock options always having been provided required financial statements that are not more than 180 days old;[56] and
- The issuer's books and records, including corporate governance documents, to the same extent that they are available to other shareholders of the issuer.

The issuer would be permitted to provide the required information (other than the issuer's books and records) to the optionholders and holders of shares received on exercise of compensatory employee stock options either by:

- Physical or electronic [57] delivery of the information; or
- Notice to the optionholders and holders of shares received on exercise of compensatory employee stock options of:

—The availability of the information on a password-protected Internet site; and

—Any password needed to access the information.

The basis of the information requirement in the proposed exemption is the information that would be required to be provided pursuant to the exemption from Securities Act registration provided in Securities Act Rule 701 if securities sold in reliance on Securities Act Rule 701 in a 12-month period exceeded $5 million. In Securities Act Rule 701, we established the type of information that employees holding compensatory employee stock options must be provided before the exercise of those options.[58] The Securities Act Rule 701 information provisions provide optionholders and other persons who purchase securities without registration under Rule 701 with important information. We believe that the ongoing provision of the same information is necessary and appropriate for purposes of the proposed exemption from Exchange Act registration.[59]

Securities Act Rule 701 provides that the required information must be provided to an optionholder a reasonable period of time before the date of exercise of the compensatory employee stock options. Rule 701 also requires that the required financial statements must be as of a date no more than 180 days before the sale of the securities (which in the case of compensatory employee stock options is the date of exercise of the options). We believe that the proposed exemption from Exchange Act registration presents the need for ongoing information to be provided to optionholders and holders of shares received on exercise of those options. As such, the proposed exemption would require that the optionholders and holders of shares received on exercise of the compensatory employee stock options always be provided the required financial statements that are not more than 180 days old.

While requiring private, non-reporting issuers to provide information, the proposed exemption would allow flexibility in the means of providing the information by permitting physical, electronic, or Internet-based delivery. Under the proposal, the issuer would be required to make its books and records available for inspection by the optionholder and holders of shares received on exercise of compensatory employee stock options to the same extent that they are available to other shareholders of the issuer.

To permit issuers to safeguard proprietary or confidential information that may be contained in the information to be provided, the proposed exemption would permit provision of the disclosure to be conditioned on the optionholder (or holder of shares received on exercise of compensatory employee stock options) agreeing to maintain the confidentiality of the information.[60] As proposed, if an optionholder (or holder of shares) chooses not to enter into such a confidentiality agreement, the exemption would permit the issuer to choose to not provide the information to that optionholder or holder of shares received on exercise of options if it allows inspection of the documents at one of the described issuer offices.

In the no-action registration relief provided to issuers to date, the staff of the Division of Corporation Finance has provided that relief only where the issuer commits to providing essentially the same Exchange Act information and reports as if it was subject to the Exchange Act reporting requirements. We believe that our experience with Securities Act Rule 701 and the combined conditions of the proposed exemption, including the eligibility and transferability provisions, alleviate the need for that level of information in the context of an on-going reporting exemption relating to compensatory employee stock options.[61] As such, we believe that the scope of information that the optionholders and holders of shares will be provided under the proposed exemption is not inconsistent

[55] The information conditions may terminate once the company becomes subject to the reporting requirements of the Exchange Act.

[56] *See* Securities Act Rule 701(e) [17 CFR 230.701(e)] for a description of the risk factor and financial statement requirements. The required information would have to be provided under the terms of the proposed exemption regardless of whether the issuer would be required to provide the information under Rule 701 (for example because the issuer did not sell $5 million in securities in a 12-month period in reliance on Rule 701).

[57] Electronic delivery of such information would have to be made in compliance with the Commission's interpretations regarding the electronic delivery of information. *See e.g.*, ''Use of Electronic Media,'' Release No. 34–42728 (April 28, 2000).

[58] *See* Rule 701 Release, note 4 *supra.* ''The type and amount of disclosure needed in a compensatory securities transaction differs from that needed in a capital-raising transaction. In a bona fide compensatory arrangement, the issuer is concerned primarily with compensating the employee-investor rather than maximizing its proceeds from the sale. Because the compensated individual has some business relationship, perhaps extending over a long period of time, with the securities issuer, that person will have acquired some, and in many cases, a substantial amount of knowledge about the enterprise. The amount and type of disclosure required for this person is not the same as for the typical investor with no particular connection with the issuer.'' *Id.*

[59] As the Commission reminded issuers when it adopted the amendments to Securities Act Rule 701 in 1999, issuers should be aware that compliance with the minimum disclosure standards for Rule 701 may not necessarily satisfy the antifraud standards of the securities laws. *See* Rule 701 Release, note 4 *supra.* (Preliminary Note 1 to Rule 701 states that issuers and other persons acting on their behalf have an obligation to provide investors with disclosure adequate to satisfy the antifraud provisions of the federal securities laws.) We recognize that the Advisory Committee has recommended modifications to Rule 701 that would affect the thresholds that would trigger the disclosure provisions of that rule. Our proposals do not address the Advisory Committee's recommendations regarding Rule 701. *See* Final Report of the Advisory Committee, at p. 92–93.

[60] This proposed provision is consistent with the related information required under Securities Act Rule 701.

[61] As the Commission also recognized when it adopted the Securities Act Rule 701 amendments in 1999, and because many issuers that have 500 or more optionholders and more than $10 million in assets are likely to have received venture capital financing (*see* for example the data in the Hand Paper, note 4 *supra*), we believe that many of these issuers already have prepared the type of disclosure required in their normal course of business, either for using other exemptions, such as Regulation D, or for other purposes. As a result, the disclosure requirement generally would be less burdensome for them. In adopting the amendments to Rule 701, we stated that a minimum level of disclosure was essential to meet even the reduced level of information needed to inform compensatory-type investors such as employees and consultants. *See* Rule 701 Release, note 4 *supra.*

with investor protection and the public interest.[62]

Request for Comment

- Should the proposed exemption require additional information to be provided? If so, what additional information should be required?
- Should the proposed exemption require that audited financial statements be provided in all cases, even if the issuer does not otherwise prepare audited financial statements?
- Should the proposed exemption also require that the information be provided in specified time frames prior to the exercise of the compensatory employee stock options?
- Should the proposed exemption require that the information be provided to holders of shares received on exercise of the compensatory employee stock options until the issuer becomes subject to the reporting requirements of the Exchange Act or for so long as the issuer is relying on the proposed exemption? If not, should there be restrictions on the information provided and, if so, what restrictions should be imposed and why?
- Should the proposed exemption apply to holders of shares received on exercise of compensatory employee stock options only if the issuer has a repurchase right in the event of an attempted transfer of the shares? If so, what information would be provided to a holder of shares prior to the issuer becoming a reporting issuer under the Exchange Act?
- As proposed, the issuer could provide the required information by physical, electronic, or Internet-based delivery. Is it appropriate to allow issuers to choose how to satisfy this requirement by using these alternate means? What role should investor preference play?
- Should the condition specifying the manner in which the information should be provided mandate that the information be available through a password-protected Internet site?
- The proposed exemption would require that issuers make their books and records available to optionholders and to holders of shares received on exercise of the options to the same extent they are available to other shareholders of the issuer. Is this an appropriate information requirement for the proposed exemption? If not, why not? What books and records and corporate governance documents do private, non-reporting issuers provide to optionholders and holders of shares received on exercise of options? Would this condition affect issuers' practices of granting options to consultants and advisors? If so, why?
- As proposed, the exemption does not require private, non-reporting issuers to provide optionholders or holders of shares received on exercise of an option with the information that would be required to be disclosed by our issuer tender offer rules (Exchange Act Rule 13e–4)[63] or going private transaction rules (Exchange Act Rule 13e–3)[64] if the compensatory employee stock options (or shares received on exercise of those options) were registered pursuant to Exchange Act Section 12(g). Should the information disclosure requirements of the proposed exemption be expanded to require disclosure of additional information such as any information that would otherwise be required by Rule 13e–3 or Rule 13e–4? If so, what information should be required to be provided?
- In addition, beneficial ownership of compensatory employee stock options not Exchange Act Section 12-registered in reliance on the proposed exemption would not trigger the beneficial ownership reporting requirements in Exchange Act Regulation 13D–G[65] unless the options were exercisable for Section 12 registered securities within 60 days. Is this the correct result?

6. Issuer Obligation To Impose the Conditions to the Proposed Exemption

For the proposed exemption to be available, a private, non-reporting issuer would be required to include the necessary limitations and conditions either in the written stock option plans or within the terms of the individual written option agreements. In addition, the transferability restrictions on the shares received on exercise of the compensatory employee stock options also must be included in the issuer's by-laws, certificate of incorporation, or a stock purchase or stockholder agreement between the issuer and the exercising optionholder or holder of shares received on exercise of an option. We believe that the self-executing nature of the proposed exemption necessitates the inclusion of the conditions to the exemption in an enforceable agreement between the issuer, the optionholders, and the holders of shares received on exercise of an option, or in the issuer's by-laws or certificate of incorporation.

Request for Comment

- Should the proposed exemption require that the conditions be contained in a particular written document or should the proposed exemption allow the conditions to be contained in any agreement between the issuer, the optionholders, and the holders of shares received on exercise of an option?
- Should the proposed exemption permit any of the conditions, including the transferability restrictions on the shares received on exercise of the compensatory employee stock options, to be included in the issuer's by-laws or certificate of incorporation?

*B. Proposed Exemption for Compensatory Employee Stock Options of Exchange Act Reporting Issuers*

To provide certainty regarding the obligations of issuers that already have registered the securities underlying the compensatory employee stock options under the Exchange Act, we believe it is appropriate to provide an exemption from Exchange Act registration for compensatory employee stock options of these reporting issuers.[66] The proposed exemption would be available only for an issuer that has registered under Exchange Act Section 12 the class of equity security underlying the compensatory employee stock options. Such a registration gives rise to a requirement to file the reports required under Exchange Act Section 13.[67] The filing of these reports is essential to the proposed exemption, as we believe the

[62] For a private, non-reporting issuer with a significant number of optionholders (and with more than $10 million in assets at the end of its fiscal year), we believe it is likely that such issuer either already is obligated to provide the same information to optionholders due to sales of securities in reliance on Securities Act Rule 701 or already prepares and, as such, provides such information to its shareholders. As a result, it is likely that optionholders and holders of shares received on exercise of those options already will have received such disclosures in connection with the option grants and exercises and, because of the proposed transferability restrictions on the compensatory employee stock options and the shares received or to be received on exercise of those options, will not have further investment decisions to make, until the issuer becomes subject to the reporting requirements of the Exchange Act. Consequently, we believe that the disclosure required under the proposed exemption is the appropriate level of disclosure to be provided option holders and holders of shares received on exercise of those options until the issuer becomes subject to the reporting requirements of the Exchange Act.

[63] 17 CFR 240.13e–4.

[64] 17 CFR 240.13e–3.

[65] 17 CFR 240.13d–1 through 240.13d–102.

[66] Public reporting issuers may be unclear regarding the need to comply with the Exchange Act Section 12(g) registration requirements for compensatory employee stock options if the issuer has registered under Exchange Act Section 12 the class of equity security underlying those options or has registered under the Securities Act the offer and sale of the options and the shares issuable on exercise of the options on Form S–8. Consequently, we believe the proposed exemption will provide important guidance regarding, and an appropriate exemption to eligible issuers from, the Exchange Act registration requirement for compensatory employee stock options.

[67] 15 U.S.C. 78m.

exemption is appropriate because the Exchange Act reports of those issuers will provide the appropriate information to optionholders.

As with the proposed exemption for private, non-reporting issuers, the proposed exemption for issuers subject to the reporting requirements of the Exchange Act would be available only where the options were issued pursuant to a written compensatory stock option plan and where the class of persons eligible to receive or hold compensatory employee stock options under the stock option plans was limited to those participants permitted under Securities Act Rule 701.[68] The proposed exemption from Section 12(g) registration for compensatory employee stock options of Exchange Act reporting issuers would not include any information conditions, other than those arising from the registration of the class of equity security underlying the options.

As proposed, the availability of the exemption would not be conditioned on the issuer being current in its Exchange Act reporting. We have not proposed such a condition, as it would seem inappropriate for the issuer to lose the exemption, and be required to register a class of compensatory employee stock options under Exchange Act Section 12(g), because it was late in filing a required Exchange Act report and, for the days before that report was filed, was not ''current'' in its Exchange Act reporting. We are requesting comment as to whether it would be appropriate to include a requirement in the exemption regarding the issuer's ongoing satisfaction of its Exchange Act reporting obligations.

While the proposed exemption would apply to the registration of compensatory employee stock options as a separate class of equity security, the protections of Exchange Act Sections 13(e) and 14(e) will continue to apply to offers for those compensatory employee stock options. Further, the requirements of Exchange Act Section 16 also will apply to the equity securities underlying the compensatory employee stock options and the beneficial ownership reporting requirements of Exchange Act Sections 13(d) and 13(g)[69] will continue to apply if the compensatory employee stock options are exercisable for Exchange Act Section 12 registered securities.[70] The proposed exemption, therefore, would be available only to an issuer that had registered under Exchange Act Section 12 the class of equity security to be issued on exercise of the compensatory employee stock options. As a result, the proposed exemption would not be available to an issuer that is required to file Exchange Act reports solely pursuant to Exchange Act Section 15(d).

Request for Comment

- Should the proposed exemption apply to any issuer that is required to file Exchange Act periodic reports, whether or not the issuer has registered the class of equity security underlying the compensatory employee stock options under Exchange Act Section 12? If so, why?
- Should the proposed exemption be available only to issuers that are current in their Exchange Act reporting obligations? Should the proposed exemption be available only to issuers that, at the end of their fiscal years, are current in their Exchange Act reporting obligations? If so, why? If not, why not?
- Should the proposed exemption be available to issuers that are required to file reports under the Exchange Act solely pursuant to Section 15(d)? If so, why?
- How would the exclusion from the proposed exemption affect issuers required to file reports solely pursuant to Section 15(d) of the Exchange Act? How many issuers would be affected?
- Should the proposed exemption be available to those issuers that are not required to file Exchange Act reports but file such reports on a voluntary basis (also known as ''voluntary filers'') and, if so, why?
- Should the proposed exemption apply only to the reporting obligations under Section 13(a) of the Exchange Act and not to the application of other Exchange Act provisions, such as the tender offer provisions of Section 13(e) and Section 14(e) of the Exchange Act? Please explain.
- Is the use of the Securities Act Rule 701 definitions of eligible participants appropriate for purposes of the proposed exemption? If not, what definitions should be used to characterize the eligible optionholders? Should the eligible optionholders only be those persons permitted to be offered and sold options pursuant to a registration statement on Form S–8? If so, why?
- Should there be any restrictions on the transferability or ownership of the compensatory employee stock options, the shares received on exercise of those options, or shares of the same class of equity security as those underlying those options under the proposed exemption for reporting issuers?

*C. Transition Provisions*

The proposed exemption from Exchange Act Section 12(g) registration for compensatory employee stock options for private, non-reporting issuers would not affect the no-action relief from Exchange Act Section 12(g) registration of compensatory employee stock options that issuers have received from our Division of Corporation Finance. While the existing no-action letters will remain unaffected by the proposed exemption if adopted, issuers who have received such letters would be able, of course, to rely instead on the proposed exemption.

The proposed exemptions are self-executing. If the issuer becomes ineligible to rely on an applicable proposed exemption, the issuer would be permitted up to 60 calendar days from the date it became ineligible to rely on the proposed exemption to file a registration statement to register under Exchange Act Section 12(g) the class of compensatory employee stock options or, in the case of a reporting issuer, the class of equity security underlying such options.

Request for Comment

- Do the proposed transition provisions of 60 calendar days provide enough time for private, non-reporting and reporting issuers to comply with the Exchange Act Section 12 registration requirements upon the loss of an exemption for the compensatory employee stock options? Should it be 30 calendar days? 90 calendar days? If not, what time frame should be provided and why?
- Should the proposed exemptions be exclusive exemptions for Section 12 registration of compensatory employee stock options?

*D. General Request for Comment*

We request and encourage any interested person to submit comments on the proposed exemptions and any other matters that might have an impact on the proposed exemptions. With respect to any comments, we note that such comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

[68] *See* the discussion under ''Eligible Option Plan Participants,'' above, for a description of the eligible optionholders.

[69] 15 U.S.C. 78m(d) and (g).

[70] The provisions of Exchange Act Section 16 would apply to the options if the securities to be issued upon exercise of the options are registered as a class of equity security under Section 12. *See* 15 U.S.C. 78p and the rules promulgated thereunder. As a result, we do not believe it is necessary for compensatory employee stock options to be subject to Section 16 as a separate class of equity security.

## III. Paperwork Reduction Act Analysis

### *A. Background*

Certain provisions of the proposed amendments to Rule 12h–1 [71] contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[72] We are submitting these to the Office of Management and Budget (''OMB'') for review and approval in accordance with the PRA.[73] 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 title for this information is:

- Exchange Act Rule 12h–1.

The hours and costs associated with preparation of notices, maintaining Internet sites, and preparation of information to be disclosed to optionholders and holders of shares received on exercise of compensatory employee stock options for private, non-reporting issuers relying on the proposed exemption from Exchange Act Section 12(g) [74] registration constitute cost burdens imposed by the collection of information. The proposed exemption available to reporting issuers would not constitute new collections of information. The proposed amendments would not affect existing collections of information.

The proposed exemptions from Exchange Act Section 12(g) registration would be adopted pursuant to the Exchange Act. The information collection requirements related to the proposed exemption for private, non-reporting issuers would be a condition to reliance on the exemption. There is no mandatory retention period for the information disclosed and the information disclosed is not required to be filed with the Commission.

### *B. Summary of Collection of Information*

Our proposed amendments to Exchange Act Rule 12h–1 would provide an exemption for private, non-reporting issuers from Exchange Act Section 12(g) registration for compensatory employee stock options issued under employee stock option plans. The proposed amendments also would provide an exemption from Exchange Act Section 12(g) registration for compensatory employee stock options of issuers that have registered under Exchange Act Section 12 the class of equity security underlying those options.

The proposed requirements regarding notice of information availability, Internet availability of information, and, for certain issuers, the preparation of information related to the proposed exemption from Exchange Act Section 12(g) for compensatory employee stock options of private, non-reporting issuers would, if adopted, constitute a new collection of information under the Exchange Act. The proposed information provision in the proposed exemption for private, non-reporting issuers would not be a new collection of information for those private, non-reporting issuers that also are required to provide such information to optionholders pursuant to Securities Act Rule 701 [75] or that already prepare and provide such information to their shareholders.

The collection of information would be required for those private, non-reporting issuers that rely on the proposed exemption because they had 500 or more optionholders and more than $10 million in assets at the end of their fiscal year. The issuers likely to use the proposed exemption would be those private, non-reporting issuers that had more than $10 million in assets and had used stock options to compensate employees, directors, consultants, and advisors on a broad basis. The proposed exemption from Section 12(g) registration for compensatory employee stock options of reporting issuers that have registered under Exchange Act Section 12(g) the class of equity security underlying such options does not impose any new collection of information on these reporting issuers.

### *C. Paperwork Reduction Act Burden Estimates*

If the proposed exemption for private, non-reporting issuers is adopted, we estimate that the annual burden for responding to the collection of information in the proposed exemption would not increase significantly for most private, non-reporting issuers, due to the current disclosure provisions of Securities Act Rule 701 and the probability that such issuers already prepare such information for other purposes. The costs may increase for those private, non-reporting issuers who are not relying on Securities Act Rule 701 when they grant compensatory employee stock options or who do not prepare the information for other purposes. The cost of providing such information may increase because of the requirement in the proposed exemption for private, non-reporting issuers to provide the required information. We seek comment on the number of private, non-reporting issuers that would rely on the proposed exemption that already prepare the information required by the proposed exemption for other purposes.

Our estimates represent the burden for private, non-reporting issuers eligible to rely on the proposed exemption. Because the registration provisions of Section 12(g) apply only to an issuer with 500 or more holders of record of a class of equity security and assets in excess of $10 million at the end of its most recently ended fiscal year, only those private, non-reporting issuers satisfying those thresholds would be subject to the collection of information. The Division of Corporation Finance has granted no-action relief from registration of compensatory employee stock options to 30 private, non-reporting issuers during the period 1992 through 2006. If we assume that approximately 3 new private, non-reporting issuers would be relying on the proposed exemption each year and that a certain number of private, non-reporting issuers will no longer be relying on the exemption because they have become reporting issuers, have been acquired, or have terminated business, we estimate that approximately 40 private, non-reporting issuers each year may be relying on the exemption. The proposed exemption for private, non-reporting issuers would terminate once such issuer became subject to the reporting requirements of the Exchange Act. Thus, the number of private, non-reporting issuers that may rely on the proposed exemption may vary from year to year.

For purposes of the PRA, we estimate the annual paperwork burden for private, non-reporting issuers desiring to rely on the proposed exemption and to comply with our proposed collection of information requirements to be approximately 20 hours of in-house issuer personnel time and to be approximately $24,000 for the services of outside professionals.[76] These estimates include the time and the cost of preparing and reviewing the information and making the information available to optionholders and holders of shares received on exercise of the options. We assume that the same number of private, non-reporting issuers would rely on the proposed exemption each year.

[71] 17 CFR 240.12h–1.

[72] 44 U.S.C. 3501 *et seq.*

[73] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[74] 15 U.S.C. 78l(g).

[75] 17 CFR 230.701.

[76] For administrative convenience, the presentation of the totals related to the paperwork burden hours have been rounded to the nearest whole number and the cost totals have been rounded to the nearest hundred.

We estimate that 25% of the burden of preparation and provision of the information required by the proposed exemption is carried by the issuer internally and that 75% of the burden is carried by outside professionals retained by the issuer at an average cost of $400 per hour.[77] The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the issuer internally is reflected in hours. We request comment and supporting empirical data on the number of private, non-reporting issuers that would rely on the proposed exemption and the burden and cost of preparing and providing the information required by the proposed exemption.

*D. Request for Comment*

We request comment in order to evaluate the accuracy of our estimate of the burden of the collections of information.[78] Any member of the public may direct to us any comments concerning the accuracy of these burden estimates. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy of the comments to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–14–07. Requests for materials submitted to the OMB by us with regard to this collection of information should be in writing, refer to File No. S7–14–07, and be submitted to the Securities and Exchange Commission, Office of Filings and Information Services, Branch of Records Management, 6432 General Green Way, Alexandria, VA 22312. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

## IV. Cost-Benefit Analysis

*A. Background*

Compensatory stock options provide a method to use non-cash compensation to attract, retain, and motivate issuer employees, directors and consultants. Since the 1990s, a number of private, non-reporting issuers have granted compensatory employee stock options to 500 or more employees, directors, and consultants. Compensatory employee stock options also are used routinely by issuers required to report under the Exchange Act.

Stock options, including stock options issued to employees under stock option plans, are a separate class of equity security for purposes of the Exchange Act. Under Section 12(g) of the Exchange Act, an issuer with 500 or more holders of record of a class of equity security and assets in excess of $10 million at the end of its most recently ended fiscal year must register that class of equity security, unless there is an available exemption from registration. While there is an exemption from Exchange Act Section 12(g) registration for interests and participations in certain other types of employee compensation plans involving securities, currently there is no exemption for compensatory employee stock options.

*B. Summary of Proposed Amendments*

We are proposing two exemptions from the registration provisions of Exchange Act Section 12(g) for compensatory employee stock options issued under employee stock option plans that are limited to employees, directors, consultants, and advisors of the issuer.

One proposed amendment to Rule 12h–1 would provide an exemption from Exchange Act Section 12(g) registration for compensatory employee stock options of an issuer that does not have a class of securities registered under Section 12 and is not subject to the reporting requirements of Exchange Act Section 15(d), where the following conditions are present:

- Eligible optionholders are limited to employees, directors, consultants, and advisors of the issuer;
- Transferability by optionholders and holders of shares received on exercise of the options of compensatory employee stock options, the shares received, or to be received, on exercise of those options, and shares of the same class as those underlying those options is restricted; and
- Risk and financial information is provided to optionholders and holders of shares received on exercise of those options that is of the type that would be required under Rule 701 if securities sold in reliance on Rule 701 exceeded $5 million in a 12-month period.

The second proposed amendment to Exchange Act Rule 12h–1 would provide an exemption for compensatory employee stock options of issuers that are required to file reports under the Exchange Act because they have registered under Exchange Act Section 12 the class of equity security underlying those options.

1. Expected Benefits

Benefits of the proposed exemption for private, non-reporting issuers are likely to include the following: (1) Lower costs to, and reduced uncertainty for, private, non-reporting issuers desiring relief from registration under Section 12(g) for compensatory employee stock options issued to employees, directors, consultants, and advisors for compensatory purposes; (2) benefits to private, non-reporting issuers in designing and implementing employee stock option plans without regard to concerns arising from Exchange Section 12(g) registration of the compensatory employee stock options; (3) benefits to private, non-reporting issuers arising from the use of electronic or Internet-based methods of providing the information necessary to satisfy the information requirement of the proposed exemption; and (4) benefits to optionholders and holders of shares received on exercise of options of private, non-reporting issuers arising from the required provision of information under the proposed exemption.

Private, non-reporting issuers would benefit from cost savings as a result of the proposed exemption from Section 12(g) registration of their compensatory employee stock options. A number of private, non-reporting issuers that have 500 or more optionholders and assets in excess of $10 million have hired attorneys and requested no-action relief from the Division of Corporation Finance with regard to the registration of the options. The conditions to no-action relief from the Division include information provision conditions that are more extensive than in the proposed exemption. The proposed exemption, which would be self-executing if the provisions of the exemption were satisfied, would reduce the legal and other costs to a private, non-reporting issuer arising from the no-action request and relief. Such cost savings include reduced legal and accounting fees arising from both the request for no-action relief and for preparation of reports equivalent to Exchange Act reports of a reporting issuer on an ongoing basis. Because we expect that a number of the issuers that may take advantage of the proposed exemption may be smaller issuers, these cost

[77] In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $400 as the average cost of outside professionals that assist issuers in preparing disclosures for offerings.

[78] Comments are requested pursuant to 44 U.S.C. 3506(c)(2)(B).

savings could be significant relative to revenues.

The proposed amendments would require the same information that the issuer otherwise would be required to provide if securities sold in reliance on Securities Act Rule 701 exceeded $5 million during any consecutive 12-month period. Thus, for private, non-reporting issuers with a significant number of optionholders (and with more than $10 million in assets at the end of its fiscal year), it is likely that such issuer either already is obligated to provide the same information to optionholders due to sales of securities in reliance on Securities Act Rule 701, or already prepares and, as such, provides such information to its shareholders. Further, any private, non-reporting issuer that has received no-action relief regarding registration of its compensatory employee stock options will face reduced disclosure costs under the proposed exemption.

The proposed amendment also would benefit private, non-reporting issuers by providing the less expensive alternative of electronic or Internet-based methods of providing the information necessary to satisfy the information requirement of the proposed exemption.

Private, non-reporting issuers also would benefit from the certainty that the proposed exemption would provide in designing and implementing compensation programs and employee stock option plans. The proposed amendments would identify the eligibility provisions and transfer restrictions that would need to be contained in compensatory stock option plans or agreements, thereby lessening the need for issuers, at the time that Section 12(g) registration relief is needed for the compensatory employee stock options, to amend their stock option plans and outstanding options to include provisions that would be necessary to obtain no-action relief. The proposed exemption would help private, non-reporting issuers avoid becoming subject to the registration and reporting requirements of the Exchange Act prior to the time they have public shareholders.

Optionholders and holders of shares received on exercise of options also would benefit from the proposed exemption. The proposed exemption assures the provision of the information, including financial information that is not more than 180 days old, to optionholders and holders of shares received on exercise of options. Employees, directors, consultants, and advisors would benefit from the proposed exemption because private, non-reporting issuers would be able to use options for compensatory purposes without concern that the option grants would subject the issuer to Exchange Act registration.

The proposed exemption for reporting issuers also would benefit optionholders and holders of shares received on exercise of options. Optionholders and holders of shares received on exercise of options would have access to the issuer's publicly filed Exchange Act reports. Further, certain provisions of Sections 13, 14, and 16 would apply to the options and the securities issuable on exercise of the options. Holders of shares issued on exercise of those options would have the same rights as other shareholders of the issuer. Thus, the proposed exemption eliminates a possible disincentive for issuers to use certain compensatory employee stock options. This may be a benefit if this type of compensation is useful in attracting and retaining qualified employees that increase the issuer's competitiveness.

2. Expected Costs

Issuers would be required to satisfy the provisions of the proposed amendments, if adopted, to avoid registering under Section 12(g) their compensatory employee stock options if the registration thresholds are met at the end of the issuer's fiscal year. Private, non-reporting issuers may incur certain costs to rely on the proposed exemption including (1) costs to amend their existing employee stock option plans if the plans and option grants do not contain the restrictive and information provisions of the proposed exemption; (2) costs arising from preparing and providing the information required by the proposed exemption to the extent that the issuer does not already prepare or provide such information for other purposes; and (3) costs of maintaining an Internet site on which the information may be available if the issuer chooses to use that method to provide the required information to optionholders and holders of shares received on exercise of options.

We believe that the provisions of the proposed exemption are consistent in many respects with the restrictive provisions of other laws and rules governing option grants and, thus, the costs to private, non-reporting issuers should not be increased. The proposed exemption provisions also are consistent with or are more flexible than the existing conditions for obtaining no-action relief from the Division of Corporation Finance. Therefore, the costs to private, non-reporting issuers to prepare the information required by the proposed exemption may be the same or less than the current costs to the issuer relying on registration relief provided in a no-action letter issued by the Division of Corporation Finance.

Those private, non-reporting issuers who do not already prepare the required information will face costs if they desire to avail themselves of the proposed exemption. In addition to the costs discussed in the Paperwork Reduction Act Analysis,[79] as described below, issuers may face costs in maintaining the confidentiality of the information required to be provided, including preparation and enforcement of confidentiality agreements entered into with optionholders and holders of shares received on exercise of options. It should be noted, however, that these increased costs would be borne voluntarily, as it is within the issuer's control as to the number of optionholders it may have. Issuers would be able to perform their own cost-benefit analysis to determine whether to comply with the conditions to the exemption or avoid issuing options to 500 or more optionholders.

Private, non-reporting issuers may incur costs in providing the information required under the exemption. These costs may include printing and sending the information or making the information available on an Internet site. We request comment on the magnitude of these potential costs and whether there are any other additional potential costs.

The Division of Corporation Finance has granted no-action relief from registration of compensatory employee stock options to 30 private, non-reporting issuers during the period 1992 through 2006. If we assume that approximately 3 new private, non-reporting issuers would be relying on the proposed exemption each year and that a certain number of private, non-reporting issuers will no longer be relying on the exemption because they have become reporting issuers, have been acquired, or have terminated business, we estimate that approximately 40 private, non-reporting issuers each year may be relying on the exemption. The proposed exemption for private, non-reporting issuers would terminate once such issuer became subject to the reporting requirements of the Exchange Act. Thus, the number of private, non-reporting issuers that may rely on the proposed exemption may vary from year to year.

For purposes of the Paperwork Reduction Act, the Commission staff has estimated that the annual paperwork

[79] *See* discussion under ''PAPERWORK REDUCTION ACT ANALYSIS,'' above.

burden for private, non-reporting issuers desiring to rely on the proposed exemption and to comply with our proposed collection of information requirements to be approximately 20 hours of in-house issuer personnel time, which is equivalent to $3,500, and to be approximately $24,000 for the services of outside professionals, for a total paperwork burden cost of $27,500.[80] These estimates include the time and the cost of preparing and reviewing the information and making the information available to optionholders and holders of shares received on exercise of the options. The Commission staff assumed that the same number of private, non-reporting issuers would rely on the proposed exemption each year. The Commission staff estimated that 25% of the burden of preparation and provision of the information required by the proposed exemption would be carried by the private, non-reporting issuer internally and that 75% of the burden would be carried by outside professionals retained by the private, non-reporting issuer at an average cost of $400 per hour.[81]

Although a private, non-reporting issuer relying on the proposed exemption would benefit from cost savings associated with not having to register the compensatory employee stock options as a separate class of equity security under the Exchange Act, or obtaining no-action relief, by not doing so, an optionholder or holder of shares received on exercise of an option would not have the benefit of the disclosures contained in Exchange Act reports that the issuer otherwise would be obligated to file with us, including audited financial statements, or the disclosures required to be provided under the terms of the no-action relief.

Optionholders and holders of shares received on exercise of options also would not be able to freely sell their options or shares received on exercise of such options while the private, non-reporting issuer is relying on the proposed exemption. Optionholders and holders of shares received on exercise of such options would not be able to realize value from the options or shares until after the private, non-reporting issuer becomes subject to the reporting requirements of the Exchange Act. Many private, non-reporting issuers that grant options, however, currently restrict the transfer of securities held by holders of shares received on exercise of options, in most cases until after the issuer becomes subject to the reporting requirements of the Exchange Act or unless the issuer is acquired by another entity. In some cases, private, non-reporting issuers retain the right to repurchase options or shares received on exercise of an option. Any exercise of such repurchase right by the issuer would be a cost to such issuer.

Request for Comment

We request comment on the costs and benefits to optionholders, holders of shares received on exercise of compensatory employee stock options, private, non-reporting issuers, reporting issuers, and others who may be affected by the proposed exemptions in Rule 12h–1. We request your views on the costs and benefits described above as well as on any other costs and benefits that could result from adoption of the proposed exemptions. We also request data to quantify the costs and value of the benefits identified.

## V. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation Analysis

Section 23(a)(2)[82] of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. We are proposing an exemption for private, non-reporting issuers from Exchange Act Section 12(g) registration for compensatory employee stock options issued under employee stock option plans. We also are proposing an exemption from Exchange Act Section 12(g) registration for compensatory employee stock options of issuers that have registered under Exchange Act Section 12 the class of equity security underlying those options.

We expect that the proposed exemption for private, non-reporting issuers from Exchange Act registration of compensatory employee stock options will provide necessary certainty to those issuers in their compensation decisions and will help them avoid becoming subject to the registration and reporting requirements of the Exchange Act prior to the time they have public shareholders. We anticipate that the exemption would save such private, non-reporting issuers significant costs and would not require that their confidential issuer information become public prior to the issuer voluntarily determining to become a public reporting issuer. Further, we anticipate that the proposed exemption would continue to provide private, non-reporting issuers freedom to determine appropriate methods of compensating their employees, directors, consultants, and advisors without concern that they would be required to register their compensatory employee stock options as a class of equity security under Exchange Act Section 12. Thus, the proposed exemption eliminates a possible disincentive for issuers to use certain compensatory employee stock options. This may be a benefit if this type of compensation is useful in attracting and retaining qualified employees that increase the private, non-reporting issuer's competitiveness.

The proposed exemption for reporting issuers will provide certainty regarding the obligations of issuers that already have registered under the Exchange Act the securities underlying compensatory employee stock options to register those options under the Exchange Act. In addition, in the case of these reporting issuers, the optionholders would have access to the issuer's publicly filed Exchange Act reports and the appropriate provisions of Sections 13, 14, and 16 would apply to the compensatory employee stock options and the equity securities issuable on exercise of those options.

Section 3(f)[83] of the Exchange Act requires us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

We anticipate that the proposed amendments, if adopted, would allow private, non-reporting issuers to continue to maintain the confidentiality of information regarding their business and operations through the use of confidentiality agreements with optionholders and holders of shares received on exercise of the options. For issuers that are voluntarily reporting under the Exchange Act or those reporting issuers that are subject to Exchange Act reporting under Section

[80] For administrative convenience, the presentation of the totals related to the paperwork burden hours have been rounded to the nearest whole number and the cost totals have been rounded to the nearest hundred.

[81] In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $400 as the average cost of outside professionals that assist issuers in preparing disclosures and conducting registered offerings. Consistent with recent rulemaking releases, we estimate the value of work performed by the company internally at a cost of $175 per hour.

[82] 15 U.S.C. 78w(a)(2).

[83] 15 U.S.C. 78c(f).

15(d), the proposed exemption from Section 12(g) for compensatory employee stock options would be unavailable and such issuers would be required to register under Exchange Act Section 12 the class of equity security underlying the options in order to take advantage of the proposed exemption.

We believe that the proposed exemption from Exchange Act registration for the compensatory stock options may beneficially affect the issuer's ability to compete for employees because it will allow such issuers to continue to use employee stock options in their compensation programs, thus enabling them to compete for such employees with both private, non-reporting issuers and public reporting issuers. The proposed exemption also will provide an eligible issuer a more efficient, self-executing exemption from Exchange Act Section 12(g) registration of compensatory employee stock options, instead of such issuer having to seek no-action relief.

The proposed exemptions do not relate to or affect capital formation, as the compensatory employee stock options covered by the proposed exemptions are issued for compensatory and not capital raising purposes.

The proposed exemptions would allow eligible issuers to continue to have freedom to determine appropriate methods of compensating their employees, directors, consultants, and advisors. For private, non-reporting issuers, these compensation decisions could be made without concern that the issuer would become subject to the Exchange Act reporting requirements before they had public shareholders.

*Request for Comment*

We request comment on whether the proposed rule would impose a burden on competition or whether it would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

## VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed amendments to Rule 12h–1 that would provide two exemptions from the registration provisions of Exchange Act Section 12(g) for compensatory employee stock options issued under employee stock option plans that are limited to employees, directors, consultants, and advisors of the issuer, its parents, and the majority-owned subsidiaries of the issuer or its parents.

*A. Reasons for the Proposed Action*

Compensatory stock options provide a method to use non-cash compensation to attract, retain, and motivate issuer employees, directors and consultants. Since the 1990s, a number of private, non-reporting issuers have granted compensatory employee stock options to 500 or more employees, directors, and consultants. Compensatory employee stock options routinely are used by issuers required to report under the Exchange Act as well.

Stock options, including stock options issued to employees under stock option plans, are a separate class of equity security for purposes of the Exchange Act. Under Section 12(g) of the Exchange Act, an issuer with 500 or more holders of record of a class of equity security and assets in excess of $10 million at the end of its most recently ended fiscal year must register that class of equity security, unless there is an available exemption from registration. While there is an exemption from Section 12(g) registration for interests and participations in certain other types of employee compensation plans involving securities, currently there is no exemption for compensatory employee stock options.

*B. Objectives*

The primary objective of the proposed amendments is to provide two exemptions from Exchange Act Section 12(g) registration for compensatory employee stock options. One proposed exemption would be for compensatory employee stock options of issuers that do not have a class of securities registered under Section 12 and are not subject to the reporting requirements of Exchange Act Section 15(d). The second proposed exemption would be for compensatory employee stock options of issuers that are required to file reports under the Exchange Act because they have registered under Exchange Act Section 12 the class of equity security underlying those options.

Codifying an exemption from registration for compensatory employee stock options will provide necessary certainty to issuers in their compensation decisions and will help private non-reporting issuers avoid becoming subject to the registration and reporting requirements of the Exchange Act prior to the time they have public shareholders. For reporting issuers that have registered under Section 12 the class of security underlying the compensatory employee stock options, we believe the proposed exemption of compensatory employee stock options from Exchange Act registration is appropriate because the optionholders would have access to the issuer's publicly filed Exchange Act reports and the appropriate provisions of Sections 13, 14, and 16 would apply to the compensatory employee stock options and the equity securities issuable on exercise of those options. The proposed exemptions would allow private, non-reporting issuers, as well as reporting issuers, to continue to reward and retain employees with the issuers' securities.

*C. Legal Basis*

We are proposing the amendments to Rule 12h–1 under the authority set forth in Sections 12,[84] 23,[85] and 36[86] of the Securities Exchange Act of 1934, as amended.

*D. Small Entities Subject to the Proposed Rules*

The proposed exemptions would not affect issuers that are small entities. Exchange Act Rule 0–10(a)[87] defines an issuer to be a ''small business'' or ''small organization'' for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year. The registration requirements of Section 12(g) arise only if an issuer has more than $10 million in assets and has 500 or more holders of a class of equity security at the end of its most recently ended fiscal year. Small entities do not satisfy the asset threshold of Section 12(g) and therefore the proposed exemptions would not be needed by such entities until their asset size increased to more than $10 million at the end of a fiscal year.

Because the registration requirements of Section 12(g) are not implicated unless an entity has assets in excess of $10 million at the end of a fiscal year, we conclude that there are not a large number of small entities that may be impacted. We request comment on this conclusion, including any available empirical data.

*E. Reporting, Recordkeeping and Other Compliance Requirements*

The proposed exemptions would not affect small entities. The proposed amendments would require the same information that the issuer otherwise would be required to provide if securities sold in reliance on Securities Act Rule 701 exceeded $5 million

[84] 15 U.S.C. 78*l*.

[85] 15 U.S.C. 78w.

[86] 15 U.S.C. 78mm.

[87] 17 CFR 240.0–10(a).

during any consecutive 12-month period. Thus, for private, non-reporting issuers with a significant number of optionholders (and with more than $10 million in assets at the end of its fiscal year), it is likely that such issuer either already is obligated to provide the same information to optionholders due to sales of securities in reliance on Securities Act Rule 701 or already prepares and provides such information to its shareholders.

*F. Duplicative, Overlapping or Conflicting Federal Rules*

We believe that there are no rules that conflict with or duplicate the proposed amendments to Exchange Act Rule 12h–1.

*G. Significant Alternatives*

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. Insofar as the amendments only apply to entities that are subject to Section 12(g) registration with regard to a class of equity security and, therefore, do not apply to small entities, we did not consider any alternatives to the proposed amendments specifically with respect to small entities. In connection with the proposed exemptions, we considered alternatives related to the scope of issuers eligible for the exemption, the information required to be provided, and transfer restrictions on the options and shares issuable on exercise of the options.

*H. Request for Comment*

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of any impact on small entities. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments.

## VII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 [88] (''SBREFA''), a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposed exemptions would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment or innovation.

## VIII. Statutory Basis and Text of Proposed Rule Amendments

We are proposing to amend Exchange Act Rule 12h–1 under the authority in Sections 12, 23, and 36 of the Securities Exchange Act of 1934, as amended.

### List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

### Text of Proposed Rule

For the reasons set out in the preamble, we propose to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Amend § 240.12h–1 to add paragraphs (f) and (g) to read as follows:

### § 240.12h–1 Exemptions from registration under section 12(g) of the Act.

* * * * *

(f)(1) Stock options issued under written compensatory stock option plans of an issuer under the following conditions:

(i) The issuer of the stock options does not have a class of security registered under section 12 of the Act and is not required to file reports pursuant to section 15(d) of the Act;

(ii) The stock options have been issued by the issuer pursuant to one or more written compensatory stock option plans established by the issuer, its parents, its majority-owned subsidiaries or majority-owned subsidiaries of the issuer's parents;

**Note to paragraph (f)(1)(ii):** All stock options issued under all of the issuer's written compensatory stock option plans on the same class of equity security will be considered part of the same class of equity security for purposes of the provisions of this section.

(iii) The stock options are held only by those persons described in Rule 701(c) under the Securities Act (17 CFR 230.701(c));

(iv) The stock options and the shares issuable upon exercise of such stock options are restricted as to transfer by the optionholder or holder of the shares received on exercise of the option other than to persons who are family members (as defined in Rule 701(c)(3) under the Securities Act (17 CFR 230.701(c)(3)) through gifts or domestic relations orders, or to an executor or guardian of the optionholder or holder of shares received on exercise of such stock option upon the death or disability of the optionholder or holder of shares, until the issuer becomes subject to the reporting requirements of section 13 or 15(d) of the Act; provided that the optionholder or holder of shares may transfer the options or shares to the issuer (or its designated affiliate if the issuer is unable to repurchase the options or shares) if applicable law prohibits a restriction on transfer;

**Note to paragraph (f)(1)(iv):** For purposes of this section, optionholders and holders of shares received on exercise of an option may include any permitted transferee under paragraph (f)(1)(iv) of this section; provided that such permitted transferees may not further transfer the stock options or shares issuable upon exercise of such stock options;

(v) The stock options, the shares issuable upon exercise of such stock options, and shares of the same class of equity security as those underlying the options are restricted as to any pledge, hypothecation, or other transfer, including any short position, any ''put equivalent position'' (as defined in § 240.16a–1(h) of this chapter), or any ''call equivalent position'' (as defined in § 240.16a–1(b) of this chapter) by the optionholder or holder of shares received on exercise of an option, except as permitted in paragraph (f)(1)(iv) of this section, until the issuer becomes subject to the reporting requirements of section 13 or 15(d) of the Act;

(vi) There can be no market or available process or methodology that permits an optionholder or holder of shares received on exercise of an option to receive any consideration or compensation for the options, the shares issuable on exercise of the options, or shares of the same class of equity security as those underlying the options,

[88] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

except as permitted in paragraph (f)(1)(iv) of this section, until the issuer becomes subject to the reporting requirements of section 13 or 15(d) of the Act;

**Note to paragraphs (f)(1)(iv), (f)(1)(v), and (f)(1)(vi):** The transferability restrictions in paragraphs (f)(1)(iv), (f)(1)(v), and (f)(1)(vi) of this section must be contained in either the written compensatory stock option plan, individual written compensatory stock option agreement, or other stock purchase or stockholder agreement to which the issuer and the optionholder or holder of shares are a signatory or party, or in the issuer's by-laws, certificate of incorporation; and

(vii) The issuer has agreed in the written compensatory stock option plan or the individual written compensatory stock option agreement to provide the following information to optionholders and holders of shares received on exercise of an option until the issuer becomes subject to the reporting requirements of section 13 or 15(d) of the Act:

(A) The information described in Rules 701(e)(3), (4), and (5) under the Securities Act (17 CFR 230.701(e)(3), (4), and (5)), with such information provided either by physical or electronic delivery to the optionholders and holders of shares received on exercise of an option or by written notice to the optionholders and holders of shares received on exercise of an option of the availability of the information on a password-protected Internet site and of any password needed to access the information; and

(B) Access to the issuer's books and records, including corporate governance documents, to the same extent that they are available to other shareholders of the issuer.

**Note to paragraph (f)(1)(vii):** The issuer may request that the optionholder or holder of shares received on exercise of an option agree to keep the information to be provided pursuant to this section confidential. If an optionholder or holder of shares received on exercise of an option does not agree to keep the information to be provided pursuant to this section confidential, then the issuer is not required to provide the information; provided, that the issuer must then allow the optionholder or holder of shares received on exercise of an option to inspect the information and documents at one of the issuer's offices that is at or near where the optionholder or holder of shares received on exercise of an option is or was employed or retained by the issuer.

(2) If the exemption provided by paragraph (f)(1) of this section ceases to be available, the issuer of the compensatory stock options that is relying on the exemption provided by this section must file a registration statement to register the class of options under section 12 of the Act within 60 calendar days after the conditions in paragraph (f)(1) of this section are no longer satisfied.

(g)(1) Stock options issued under written compensatory stock option plans of an issuer under the following conditions:

(i) The issuer of the stock options has registered the class of equity security issuable on exercise of the options under section 12 of the Act;

(ii) The stock options have been issued by the issuer pursuant to one or more written compensatory stock option plans established by the issuer, its parents, its majority-owned subsidiaries or majority-owned subsidiaries of the issuer's parents;

**Note to paragraph (g)(1)(ii):** All stock options issued under all of the issuer's written compensatory stock option plans on the same class of equity security will be considered part of the same class of equity security for purposes of the provisions of this section; and

(iii) The stock options are held only by those persons described in Rule 701(c) under the Securities Act (17 CFR 230.701(c)).

(2) If the exemption provided by paragraph (g)(1) of this section ceases to be available, the issuer of the compensatory stock options that is relying on the exemption provided by this section must file a registration statement to register the class of options or the class of equity security issuable on exercise of the options under section 12 of the Act within 60 calendar days after the conditions in paragraph (g)(1) of this section are no longer satisfied.

Dated: July 5, 2007.

By the Commission.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E7–13324 Filed 7–9–07; 8:45 am]

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Federal Register

Tuesday,
July 10, 2007

# Part IV

# The President

## Memorandum of July 3, 2007—Assignment of Certain Functions Relating to Nuclear Energy Facilities

Federal Register
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# Presidential Documents

**Title 3—**

## The President

**Memorandum of July 3, 2007**

## Assignment of Certain Functions Relating to Nuclear Energy Facilities

**Memorandum for the Secretary of Health and Human Services[,] the Secretary of Energy[,] the Secretary of Homeland Security[,] the Chairman of the Nuclear Regulatory Commission[, and] the Director of the Office of Science and Technology Policy**

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, and section 204(b) of the National Science and Technology Policy, Organization, and Priorities Act of 1976, as amended (42 U.S.C. 6613(b)), the functions of the President under section 127 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188) (42 U.S.C. 247d–6b note) are assigned as follows:

(1) the function of making a determination under subsection 127(f) of Public Law 107–188 is assigned to the Director of the Office of Science and Technology Policy; and

(2) the functions of the President under section 127 of Public Law 107–188 other than that assigned under subsection 127(f) are assigned to the Chairman of the Nuclear Regulatory Commission.

In the performance of such functions the Chairman and the Director should consult each other and the Secretaries of Health and Human Services, Energy, and Homeland Security, as appropriate.

The Director is authorized and directed to publish this memorandum in the **Federal Register**.

[FR Doc. 07–3384
Filed 7–9–07; 9:57 am]
Billing code 3170–W7–P

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**S. 1704/P.L. 110–44**

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**S. 229/P.L. 110–45**

To redesignate a Federal building in Albuquerque, New Mexico, as the "Raymond G. Murphy Department of Veterans Affairs Medical Center". (July 5, 2007; 121 Stat. 239)

**S. 801/P.L. 110–46**

To designate a United States courthouse located in Fresno, California, as the "Robert E. Coyle United States Courthouse". (July 5, 2007; 121 Stat. 240)

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