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# Federal Register

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# Presidential Documents

**Title 3—**

## The President

**Presidential Determination No. 2008–9 of January 28, 2008**

## Waiver of Section 1083 of the National Defense Authorization Act for Fiscal Year 2008

**Memorandum for the Secretary of State**

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 1083(d) of the National Defense Authorization Act for Fiscal Year 2008 (the ''Act''), I hereby determine that:

- All provisions of section 1083 of the Act, if applied to Iraq or any agency or instrumentality thereof, may affect Iraq or its agencies or instrumentalities, by exposing Iraq or its agencies or instrumentalities to liability in United States courts and by entangling their assets in litigation.

- The economic security and successful reconstruction of Iraq continue to be top national security priorities of the United States. Section 1083 of the Act threatens those key priorities. If permitted to apply to Iraq, section 1083 would risk the entanglement of substantial Iraqi assets in litigation in the United States—including those of the Development Fund for Iraq, the Central Bank of Iraq, and commercial entities in the United States in which Iraq has an interest. Section 1083 also would expose Iraq to new liability of at least several billion dollars by undoing judgments favorable to Iraq, by foreclosing available defenses on which Iraq is relying in pending litigation, and by creating a new Federal cause of action backed by the prospect of punitive damages to support claims that may previously have been foreclosed. If permitted to apply to Iraq, section 1083 would have a significant financial impact on Iraq and would result in the redirection of financial resources from the continued reconstruction of Iraq and the harming of Iraq's stability, contrary to the interests of the United States.

- A waiver of all provisions of section 1083 with respect to Iraq and any agency or instrumentality of Iraq is therefore in the national security interest of the United States and will promote the reconstruction of, the consolidation of democracy in, and the relations of the United States with, Iraq.

- Iraq continues to be a reliable ally of the United States and a partner in combating acts of international terrorism. The November 26, 2007, Declaration of Principles for a Long-Term Relationship of Cooperation and Friendship between the Republic of Iraq and the United States of America confirmed the commitment of the United States and Iraq to build an enduring relationship in the political, diplomatic, economic, and security arenas and to work together to combat all terrorist groups, including al-Qaida.

Accordingly, I hereby waive all provisions of section 1083 of the Act with respect to Iraq and any agency or instrumentality thereof.

You are authorized and directed to notify the Congress of this determination and waiver and the accompanying memorandum of justification, incorporated by reference herein, and to arrange for their publication in the **Federal Register**.

THE WHITE HOUSE,
*Washington, January 28, 2008.*

Billing code 4710–10–P

MEMORANDUM OF JUSTIFICATION FOR WAIVER OF SECTION 1083 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2008 WITH RESPECT TO IRAQ

Section 1083 of the National Defense Authorization Act for Fiscal Year 2008 (the "Act") amends the Foreign Sovereign Immunities Act, which establishes a framework for lawsuits against foreign countries and their agencies and instrumentalities under U.S. law. Immediately upon enactment, Section 1083 would put at risk substantial Iraqi assets in the United States that are crucial to Iraq's recovery efforts -- including the Development Fund for Iraq, the assets of the Central Bank of Iraq held by the Federal Reserve Bank of New York, and assets of Iraqi agencies or instrumentalities used in commercial transactions in the United States. Section 1083 would also expose Iraq to potential new liability by undoing judgments favorable to Iraq, by foreclosing available defenses on which Iraq has relied, and by creating a new Federal cause of action backed by punitive damages. Any and all provisions of section 1083 may adversely affect Iraq or its agencies or instrumentalities, by exposing Iraq or its agencies or instrumentalities to liability in United States courts and by entangling their assets in litigation. Such burdens would undermine the national security and foreign policy interests of the United States, including by weakening the ability of the democratically-elected government of Iraq to use Iraqi funds to promote political and economic progress and further develop its security forces.

Section 1083(d)(1)-(3) of the Act provides that:

> (d) Applicability to Iraq-
>
> (1) APPLICABILITY- The President may waive any provision of this section with respect to Iraq, insofar as that provision may, in the President's determination, affect Iraq or any agency or instrumentality thereof, if the President determines that--
>
> (A) the waiver is in the national security interest of the United States;

> (B) the waiver will promote the reconstruction of, the consolidation of democracy in, and the relations of the United States with, Iraq; and
> (C) Iraq continues to be a reliable ally of the United States and partner in combating acts of international terrorism.
>
> (2) TEMPORAL SCOPE- The authority under paragraph (1) shall apply--
> (A) with respect to aconduct or event occurring before or on the date of the enactment of this Act;
> (B) with respect to any conduct or event occurring before or on the date of the exercise of that authority; and
> (C) regardless of whether, or the extent to which, the exercise of that authority affects any action filed before, on, or after the date of the exercise of that authority or of the enactment of this Act.
>
> (3) NOTIFICATION TO CONGRESS- A waiver by the President under paragraph (1) shall cease to be effective 30 days after it is made unless the President has notified Congress in writing of the basis for the waiver as determined by the President under paragraph (1).

A waiver of all provisions of section 1083 with respect to Iraq, and all agencies and instrumentalities thereof, is in the national security interest of the United States and will promote the reconstruction of, the consolidation of democracy in, and the relations of the United States with, Iraq. In particular:

- Absent a waiver, section 1083 would have a potentially devastating impact on Iraq's ability to use Iraqi funds to expand and equip the Iraqi Security Forces, which would have serious implications for U.S. troops in the field acting as part of the Multinational Force-Iraq and would harm anti-terrorism and counter-insurgency efforts.
- Application of section 1083 to Iraq or any agency or instrumentality thereof will hurt the interests of the United States by unacceptably interfering with political and economic progress in Iraq that is critically important to bringing U.S. troops home.
- If applied to Iraq or any agency or instrumentality thereof, the provisions of section 1083 would redirect financial

resources from the continued reconstruction of Iraq and would harm Iraq's stability, contrary to the interests of the United States. A waiver will ensure that Iraqi assets of the Central Bank of Iraq, the government and commercial entities in which Iraq has an interest, remain available to maintain macroeconomic stability in Iraq and support private sector development and trade.

- By providing for the maintenance of macroeconomic stability, the waiver of section 1083 will promote the consolidation of democracy in Iraq.

- Absent a waiver of section 1083, Iraq's ability to finance employment alternatives, vocational training, and job placement programs necessary to promote community reintegration and development efforts contributing to counterterrorism efforts would be harmed.

- By ensuring that Iraq and its agencies and instrumentalities are not subject to litigation or liability pursuant to section 1083, waiver of section 1083 will promote the close relationship between the United States and Iraq.

In addition, Iraq continues to be a reliable ally of the United States and partner in combating acts of international terrorism. The November 26, 2007 Declaration of Principles for a Long-Term Relationship of Cooperation and Friendship between the Republic of Iraq and the United States of America confirmed the commitment of the United States and Iraq to build an enduring relationship in the political, diplomatic, economic, and security arenas and to work together to combat all terrorist groups and international terrorism, including al-Qaida. This Declaration reinforced the crucial actions Iraq is taking against terrorists groups, including al-Qaida.

[FR Doc. 08–515
Filed 2–4–08; 8:45 am]
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# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 246

**[FNS–2006–0037]**

**RIN 0584–AD77**

### Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages; Approval of Information Collection Request

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Interim rule; notice of approval of Information Collection Request (ICR).

**SUMMARY:** The interim rule entitled Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages was published on December 6, 2007. The Office of Management and Budget cleared the associated information collection requirements (ICR) on December 7, 2007. This document announces approval of the ICR.

**DATES:** The ICR associated with the interim rule published in the **Federal Register** on December 6, 2007, at 72 FR 68966, was approved by OMB on December 7, 2007, under OMB Control Number 0584–0545.

**FOR FURTHER INFORMATION CONTACT:** Debra Whitford, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302, (703) 305–2746, OR *Debbie.Whitford@fns.usda.gov.*

Dated: January 29, 2008.

**Gloria Gutierrez,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. E8–2030 Filed 2–4–08; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

**[Docket No. APHIS–2007–0114]**

### Imported Fire Ant; Additions to the List of Quarantined Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the imported fire ant regulations by designating as quarantined areas all or portions of 2 counties in Arkansas, 3 in North Carolina, and 3 in Tennessee, by expanding the quarantined area in 1 county in Arkansas and 15 in Tennessee, and by designating the entire State of South Carolina as a quarantined area. The interim rule was necessary to prevent the artificial spread of imported fire ant to noninfested areas of the United States. As a result of the interim rule, the interstate movement of regulated articles from those quarantined areas is restricted.

**DATES:** Effective on February 5, 2008, we are adopting as a final rule the interim rule published at 72 FR 60533–60537 on October 25, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles L. Brown, Imported Fire Ant Quarantine Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4838.

**SUPPLEMENTARY INFORMATION:**

#### Background

The imported fire ant regulations (contained in 7 CFR 301.81 through 301.81–10 and referred to below as the regulations) quarantine infested States or infested areas within States and restrict the interstate movement of regulated articles to prevent the artificial spread of the imported fire ant. The regulations are intended to prevent the imported fire ant from spreading throughout its ecological range within the country.

The regulations in § 301.81–3 provide that the Administrator of the Animal and Plant Health Inspection Service will list as a quarantined area each State, or each portion of a State, that is infested with the imported fire ant. The Administrator will designate less than an entire State as a quarantined area only under the following conditions: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.81–2 that are equivalent to the interstate movement restrictions imposed by the regulations; and (2) designating less than the entire State will prevent the spread of the imported fire ant. The Administrator may include uninfested acreage within a quarantined area due to its proximity to an infestation or its inseparability from an infested locality for quarantine purposes. In § 301.81–3, paragraph (e) lists quarantined areas.

In an interim rule [1] effective and published in the **Federal Register** on October 25, 2007 (72 FR 60533–60537, Docket No. APHIS–2007–0114), we amended § 301.81–3(e) by:

- Adding all of Lonoke and Yell Counties, AR, to the quarantined area;
- Expanding the quarantined area in Faulkner County, AR, to include the entirety of the county;
- Adding portions of Iredell, Lincoln, and Rutherford Counties, NC, to the list of quarantined areas;
- Expanding the quarantined areas in Cherokee, Greenville, and Spartanburg Counties, SC, to include the entirety of each county, with the result that the entire State of South Carolina is now designated as a quarantined area;
- Adding portions of Crockett, Morgan, and Warren Counties, TN, to the list of quarantined areas;
- Expanding the quarantined areas in Anderson, Coffee, Cumberland, Haywood, Knox, and Williamson Counties, TN; and
- Expanding the quarantined areas in Bedford, Benton, Bledsoe, Blount, Carroll, Grundy, Hickman, Rutherford,

[1] To view the interim rule, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0114.*

and Van Buren Counties, TN, to include the entirety of each county.

Comments on the interim rule were required to be received on or before December 24, 2007. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule regarding Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

## PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 72 FR 60533–60537 on October 25, 2007.

Done in Washington, DC, this 30th day of January 2008.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E8–2048 Filed 2–4–08; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2007–29061; Directorate Identifier 2006–NM–243–AD; Amendment 39–15362; AD 2008–03–12]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 Airplanes; Model DC–8F–54 and DC–8F–55 Airplanes; Model DC–8–50, –60, –60F, –70, and –70F Series Airplanes; Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) Airplanes; and Model MD–88 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding an existing airworthiness directive (AD), which applies to certain McDonnell Douglas airplanes. The existing AD currently requires an initial general visual or dye penetrant inspection, repetitive dye penetrant inspections, and replacement, as necessary, of the rudder pedal bracket. The existing AD also currently requires, for certain airplanes, replacing the rudder pedal bracket assemblies with new, improved parts, which would terminate the repetitive inspections. For certain airplanes, this new AD requires initial inspection at a reduced threshold, removes an inspection option, and lengthens the repetitive inspection intervals. This AD results from reports of failures of the captain's rudder pedal brackets before reaching the initial inspection threshold identified in the existing AD. We are issuing this AD to prevent failure of the rudder pedal bracket assembly, which could result in the loss of rudder and braking control at either the captain's or first officer's position.

**DATES:** This AD becomes effective March 11, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 11, 2008.

On May 16, 2006 (71 FR 18201, April 11, 2006), the Director of the Federal Register approved the incorporation by reference of certain other publications listed in the AD.

**ADDRESSES:** For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2006–07–25, amendment 39–14552 (71 FR 18201, April 11, 2006). The existing AD applies to certain McDonnell Douglas airplanes. That NPRM was published in the **Federal Register** on August 31, 2007 (72 FR 50284). That NPRM proposed to retain the requirements of AD 2006–07–25. That NPRM also, for certain airplanes, proposed to reduce certain initial inspection thresholds, remove an inspection option, and lengthen certain repetitive inspection intervals.

**Comments**

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

**Request To Clarify Repetitive Inspections**

Air Transport Association (ATA), on behalf of its member American Airlines, requests that we clarify paragraphs (h) and (l) of the NPRM. These paragraphs specify repetitive inspections to continue based on the part number of the replaced rudder pedal bracket assemblies in accordance with paragraph (g) or (k) of the NPRM. The commenters state that the referenced rudder pedal bracket assemblies should be clarified to indicate that repetitive inspections apply only to rudder pedal bracket assemblies that are of the same part number as the ones inspected.

We agree with the request for the reasons stated. The intent of the replacement in paragraphs (h) and (l) of the NPRM is to replace the rudder pedal bracket assemblies with a part that has the same part number as the part inspected. Therefore, we have revised paragraph (h) and (l) of the AD to replace the words ''new part'' with ''same part number as the one inspected.''

**Request To Clarify Inspection Criteria in Paragraph (j) of the NPRM**

ATA, on behalf of its member ASTAR Air Cargo, requests that we clarify the inspection criteria in paragraph (j) of the NPRM. The commenters note that paragraph (j) of the NPRM specifies a special detailed inspection in accordance with McDonnell Douglas

DC–8 Alert Service Bulletin A27–273, Revision 1, dated May 16, 1989; or Revision 5, dated February 18, 1993. The commenters point out that the service bulletins do not have any inspection criteria listed.

We agree with the commenters that the paragraph needs clarification. The intent of paragraph (j) of the AD is to specify a general visual inspection and penetrant inspection for Category 2 airplanes in accordance with McDonnell Douglas DC–8 Alert Service Bulletin A27–273, Revision 1. Revision 1 of that service bulletin contains the inspection criteria. The intent of paragraph (j) was to specify a special detailed inspection for Category 4 airplanes in accordance with Boeing Alert Service Bulletin DC9–27A307, Revision 7, dated August 29, 2006. Revision 7 of that service bulletin contains the inspection criteria. We have revised paragraph (j) of the AD to clarify the requirements.

**Request To Clarify Compliance Time in Paragraph (j)(1) of the NPRM**

ATA, on behalf of its member ASTAR Air Cargo, also notes that paragraph (j)(1) of the NPRM specifies a compliance time of within 40,000 total landings or 30 days after the effective date of the AD, whichever occurs later. The commenters state that paragraph (j)(1) should refer instead to 40,000 total landings on the installed part.

We agree with the commenters. McDonnell Douglas DC–8 Alert Service Bulletin A27–273, Revision 1, and Revision 5, specify a compliance time based on the accumulation of 40,000 total landings on the bracket assembly. We have revised paragraph (j)(1) of the AD to specify that the compliance time is 40,000 total landings on the installed part.

**Conclusion**

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

**Costs of Compliance**

There are about 1,840 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD. The replacements are applicable only to Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes.

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| General visual inspection (required by AD 2006–07–25). | 3 | $80 | None ..... | $240, per inspection cycle. | 250 ..... | $60,000, per inspection cycle. |
| Dye penetrant (special detailed) inspection (required by AD 2006–07–25). | 5 | 80 | None ..... | $400, per inspection cycle. | 946 ..... | $378,400, per inspection cycle. |
| Replacements (required by AD 2006–07–25). | 9 | 80 | $9,466 .... | $10,186 ..... | up to 946 ..... | up to $9,635,956. |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14552 (71 FR 18201, April 11, 2006) and by adding the following new airworthiness directive (AD):

**2008–03–12 McDonnell Douglas:** Amendment 39–15362. Docket No. FAA–2007–29061; Directorate Identifier 2006–NM–243–AD.

**Effective Date**

(a) This AD becomes effective March 11, 2008.

**Affected ADs**

(b) This AD supersedes AD 2006–07–25.

**Applicability**

(c) This AD applies to the airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

| McDonnell Douglas— | As identified in— |
|---|---|
| Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; Model DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes; Model DC–8F–54 and DC–8F–55 airplanes; Model DC–8–61, DC–8–62, and DC–8–63 airplanes; Model DC–8–61F, DC–8–62F, and DC–8–63F airplanes; Model DC–8–71, DC–8–72, and DC–8–73 airplanes; Model DC–8–71F, DC–8–72F, and DC–8–73F airplanes. | McDonnell Douglas DC–8 Alert Service Bulletin A27–273, Revision 5, dated February 18, 1993. |
| Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; Model DC–9–21 airplanes; Model DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes; Model DC–9–41 airplanes; Model DC–9–51 airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes. | Boeing Alert Service Bulletin DC9–27A307, Revision 7, dated August 29, 2006. |

**Unsafe Condition**

(d) This AD results from reports of failures of the captain's rudder pedal brackets before reaching the initial inspection threshold identified in AD 2006–07–25. We are issuing this AD to prevent failure of the rudder pedal bracket assembly, which could result in the loss of rudder and braking control at either the captain's or first officer's position.

**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 and Airplane Categories**

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the applicable service bulletin identified in Table 2 of this AD. The term ''airplane category,'' as used in this AD, means the category identified in Table 2 of this AD.

TABLE 2.—SERVICE INFORMATION AND AIRPLANE CATEGORIES

| For Model— | Called airplane category— | Use— |
|---|---|---|
| (1) DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; Model DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes; Model DC–8F–54 and DC–8F–55 airplanes; Model DC–8–61, DC–8–62, and DC–8–63 airplanes; Model DC–8–61F, DC–8–62F, and DC–8–63F airplanes; Model DC–8–71, DC–8–72, and DC–8–73 airplanes. | 1 | McDonnell Douglas DC–8 Alert Service Bulletin A27–273, Revision 1, dated May 16, 1989; or Revision 5, dated February 18, 1993. |
| (2) DC–8–71F, DC–8–72F, and DC–8–73F airplanes | 2 | |
| (3) DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; Model DC–9–21 airplanes; Model DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes; Model DC–9–41 airplanes; Model DC–9–51 airplanes. | 3 | McDonnell Douglas DC–9 Alert Service Bulletin A27–307, Revision 1, dated May 16, 1989; or Boeing Alert Service Bulletin DC9–27A307, Revision 7, dated August 29, 2006, after the effective date of this AD, only Revision 7 may be used. |
| (4) DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes. | 4 | |

**Requirements of AD 2006–07–25**

**Initial Inspection Threshold**

(g) For airplane categories 1, 3, and 4, prior to the accumulation of 40,000 total landings or within 30 days after July 5, 1989 (the effective date of AD 89–14–02, amendment 39–6245, which was superseded by AD 2006–07–25), whichever occurs later: Perform either a general visual inspection, dye penetrant inspection, or special detailed inspection (eddy current with dye penetrant or just dye penetrant), as applicable, for cracking of the captain's and first officer's rudder pedal bracket, part numbers (P/N) 5616067 and 5616068, respectively, in accordance with the Accomplishment Instructions of the applicable service bulletin specified in Table 2 of this AD. After the effective date of this AD, only the special detailed inspection specified in Boeing Alert Service Bulletin DC9–27A307, Revision 7, dated August 29, 2006, may be used for airplanes identified in Revision 7. For airplane category 4: Do the inspection required by this paragraph until the inspection required by paragraph (j) of this AD is accomplished.

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

(1) If an initial general visual inspection is accomplished, and no crack is found, perform a dye penetrant inspection of the rudder pedal bracket assembly within 180 days after the general visual inspection, and thereafter accomplish dye penetrant inspections at intervals not to exceed 12 months or 2,500 landings, whichever occurs earlier. For airplane categories 3 and 4, repeat at this interval until the inspection required by paragraph (k) of this AD is accomplished.

(2) If an initial dye penetrant inspection is accomplished, and no crack is found, accomplish repetitive dye penetrant inspections at intervals not to exceed 12 months or 2,500 landings, whichever occurs earlier. For airplane categories 3 and 4, repeat at this interval until the inspection required by paragraph (k) of this AD is accomplished.

(3) If an initial special detailed inspection is accomplished after the effective date of this AD, and no crack is found, repeat the

inspection in accordance with paragraph (k) of this AD.

**Corrective Action**

(h) Except as provided by paragraph (l) of this AD: If any crack is detected during any inspection required by paragraph (g) or (j) of this AD, before further flight, remove and replace the rudder pedal bracket assembly in accordance with the service bulletin. Prior to the accumulation of 40,000 total landings after replacement with a part that has the same number as the part inspected, resume the repetitive inspections in accordance with paragraph (g) or (k) of this AD, as applicable. Doing the action required by paragraph (l) of this AD terminates the requirements of this paragraph for airplane category 4.

**Terminating Action for Certain Airplanes**

(i) For airplane categories 3 and 4: Do the actions in paragraphs (i)(1) and (i)(2) of this AD in accordance with the Accomplishment Instructions of the applicable service bulletin specified in Table 2 of this AD.

(1) Before the accumulation of 75,000 total landings on the captain's rudder pedal bracket assembly, P/N 5616067–501, or within 60 months after May 16, 2006, whichever occurs later: Remove the rudder pedal bracket assembly and replace it with new, improved P/N 5962903–501. Accomplishment of the replacement terminates the repetitive inspections of the captain's rudder pedal bracket assembly required by paragraphs (g), (h), (j), (k), and (l) of this AD.

(2) Before the accumulation of 75,000 total landings on the first officer's rudder pedal bracket assembly, P/N 5616068–501, or within 60 months after May 16, 2006, whichever occurs later: Remove the rudder pedal bracket assembly and replace it with new, improved P/N 5962904–501. Accomplishment of the replacement terminates the repetitive inspections of the first officer's rudder pedal bracket assembly required by paragraphs (g), (h), (j), (k), and (l) of this AD.

**New Requirements of This AD**

**Revised Initial Inspection at Reduced Threshold for Certain Airplanes**

(j) For airplane categories 2 and 4, at the applicable time specified in paragraph (j)(1), (j)(2) or (j)(3) of this AD: Do a general visual and penetrant inspection (for airplane category 2), and a special detailed inspection (for airplane category 4), as applicable, to detect cracking of the captain's and first officer's rudder pedal bracket, part numbers (P/N) 5616067 and 5616068, respectively, in accordance with the applicable service bulletin specified in Table 2 of this AD. Procedures for the dye penetrant inspection for airplane category 2 are contained only in the Accomplishment Instructions of McDonnell Douglas DC–8 Alert Service Bulletin A27–273, Revision 1, dated May 16, 1989. Procedures for the special detailed inspection are contained in Boeing Alert Service Bulletin DC9–27A307, Revision 7, dated August 29, 2006. Doing the applicable inspection required by this paragraph terminates the inspection requirements of paragraphs (g) and (h) of this AD for airplane category 4.

(1) For category 2 airplanes: Before the accumulation of 40,000 total landings on the installed part, or within 30 days after the effective date of this AD, whichever occurs later.

(2) For category 4 airplanes that have accumulated fewer than 25,000 total landings as of the effective date of this AD: Before the accumulation of 25,000 total landings, or within 3,000 landings after the effective date of this AD, whichever occurs later.

(3) For category 4 airplanes that have accumulated 25,000 or more total landings as of the effective date of this AD, do the next inspection at the applicable time in paragraph (j)(3)(i) or (j)(3)(ii) of this AD.

(i) For category 4 airplanes on which the corrective action specified in paragraph (h) of this AD has not been accomplished, do the inspection within 3,000 landings after the effective date of this AD.

(ii) For category 4 airplanes on which the corrective action required by paragraph (h) of this AD has been accomplished, do the inspection at the earlier of the following: The next repetitive interval required by paragraph (h) of this AD; 40,000 total landings after doing the corrective action required by paragraph (h) of this AD; or 3,000 landings after the effective date of this AD.

**Repetitive Inspections at Revised Interval for Certain Airplanes**

(k) For airplane categories 3 and 4: Repeat the special detailed inspection required by paragraph (g) or (j) of this AD thereafter at intervals not to exceed 3,000 landings. Doing the first repetitive inspection required by this paragraph terminates the repetitive inspection requirements of paragraph (g) of this AD for airplane categories 3 and 4.

**Corrective Action Including Reduced Inspection Threshold for Certain Airplanes**

(l) For airplane category 4: If any crack is detected during any inspection required by paragraph (g), (j), or (k) of this AD: Before further flight, remove and replace the rudder pedal bracket assembly with a part that has the same part number as the one inspected, in accordance with the applicable service bulletin specified in Table 2 of this AD. Before the accumulation of 25,000 total landings after replacement, resume the repetitive inspections in accordance with paragraph (k) of this AD. Doing the action in this paragraph terminates the requirements of paragraph (h) of this AD for airplane category 4.

**Alternative Methods of Compliance (AMOCs)**

(m)(1) The Manager, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

(3) AMOCs, approved previously in accordance with AD 2006–07–25, amendment 39–14552; and AD 89–14–02, amendment 39–6245; are approved as AMOCs for the corresponding requirements of this AD.

**Material Incorporated by Reference**

(n) You must use the service information listed in Table 3 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 3.—ALL MATERIAL INCORPORATED BY REFERENCE

| Service Bulletin | Revision level | Date |
|---|---|---|
| McDonnell Douglas DC–8 Alert Service Bulletin A27–273 | 1 | May 16, 1989. |
| McDonnell Douglas DC–8 Alert Service Bulletin A27–273 | 5 | February 18, 1993. |
| McDonnell Douglas DC–9 Alert Service Bulletin A27–307 | 1 | May 16, 1989. |
| Boeing Alert Service bulletin DC9-27A307 | 7 | August 29, 2006. |

(1) The Director of the Federal Register approved the incorporation by reference of McDonnell Douglas DC–8 Alert Service Bulletin A27–273, Revision 5, dated February 18, 1993; and Boeing Alert Service Bulletin DC9–27A307, Revision 7, dated August 29, 2006; in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On May 16, 2006 (71 FR 18201, April 11, 2006), the Director of the Federal Register approved the incorporation by reference of McDonnell Douglas DC–8 Alert Service Bulletin A27–273, Revision 1, dated May 16, 1989; and McDonnell Douglas DC–9 Alert Service Bulletin A27–307, Revision 1, dated May 16, 1989.

(3) Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington;

or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on January 24, 2008.

**Ali Bahrami,**

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

[FR Doc. E8–1813 Filed 2–4–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–28956; Directorate Identifier 2007–CE–068–AD; Amendment 39–15360; AD 2008–03–10]**

**RIN 2120–AA64**

## Airworthiness Directives; Cessna Aircraft Company Models 525, 525A, and 525B Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Cessna Aircraft Company (Cessna) Models 525, 525A, and 525B airplanes. This AD requires you to inspect the lower wing skin structure, forward wing spar, lower fuselage skin, fairings, and the external fairing frames for corrosion; repair any damage found; apply a corrosion inhibitive sealant to the fuselage fairings before reinstalling; and disable the cockpit mounted pilot relief tube. This AD results from leaking of the cockpit mounted pilot relief tube, which caused corrosion of the airplane structure. We are issuing this AD to detect and correct any damage from corrosion of the airplane structure. Corrosion of the airplane structure could cause structural degradation and lead to structural failure of the airplane with consequent loss of control.

**DATES:** This AD becomes effective on March 11, 2008.

On March 11, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

**ADDRESSES:** For service information identified in this AD, contact Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277; telephone: 1–800–835–4090; fax: 1–800–517–8500.

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.* The docket number is FAA–2007–28956; Directorate Identifier 2007–CE–068–AD.

**FOR FURTHER INFORMATION CONTACT:** T.N. Baktha, Aerospace Engineer,1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4155; fax: (316) 946–4107.

**SUPPLEMENTARY INFORMATION:**

### Discussion

On October 22, 2007, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cessna Models 525, 525A, and 525B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 26, 2007 (72 FR 60790). The NPRM proposed to require you to inspect the lower wing skin structure, forward wing spar, lower fuselage skin, fairings, and the external fairing frames for corrosion; repair any damage found; apply a corrosion inhibitive sealant to the fuselage fairings before reinstalling; and disable the cockpit mounted pilot relief tube.

### Comments

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

### Conclusion

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

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

### Costs of Compliance

We estimate that this AD affects 261 airplanes in the U.S. registry.

We estimate the following costs to do the inspection:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 80 work-hours × $80 per hour = $6,400 | Not applicable | $6,400 | $1,670,400 |

We have no way of determining the number of airplanes that may need repair or further inspection based on the results of the inspection, or the costs associated with such repair or inspection.

We estimate the following costs to disable the cockpit mounted pilot relief tube:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| .5 work-hour × $80 per hour = $40 | Not applicable | $40 | $10,440 |

Cessna will provide warranty credit to the extent specified in Cessna Citation Service Bulletin SB525–53–20, dated April 30, 2007; Cessna Citation Service Bulletin SB525A–53–01, dated April 30, 2007; Cessna Citation Service Bulletin SB525B–53–01, dated April 30, 2007; Cessna Citation Alert Service Letter ASL525–53–04, Revision 2, dated August 19, 2007; Cessna Citation Alert Service Letter ASL525A–53–05, Revision 2, dated July 25, 2007; and Cessna Citation Alert Service Letter ASL525B–53–02, Revision 2, dated July 25, 2007.

### Authority for This Rulemaking

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

detail the scope of the agency's authority.

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

**Regulatory Findings**

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

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

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2007–28956; Directorate Identifier 2007-CE–068-AD'' in your request.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2008–03–10 Cessna Aircraft Company:** Amendment 39–15360; Docket No. FAA–2007–28956; Directorate Identifier 2007-CE–068-AD.

**Effective Date**

(a) This AD becomes effective on March 11, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to the following airplane models and serial numbers that have a cockpit mounted pilot relief tube installed and are certificated in any category:

| Models | Serial No. |
|---|---|
| (1) 525 | 0001 through 0637. |
| (2) 525A | 0001 through 0347. |
| (3) 525B | 0001 through 0152. |

**Unsafe Condition**

(d) This AD results from leaking of the pilot relief tube, which caused corrosion of the airplane structure. We are issuing this AD to detect and correct any damage from corrosion on the airplane structure. Corrosion of the airplane structure could cause structural degradation and lead to structural failure of the airplane with consequent loss of control.

**Compliance**

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

TABLE 1.—ACTIONS, COMPLIANCE, AND PROCEDURES

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Inspect the lower wing skin structure, forward wing spars, lower fuselage skin, fairings, and external fairing frames for corrosion. | Within the next 90 days after March 11, 2008 (the effective date of this AD). | Follow Cessna Citation Alert Service Letter ASL525–53–04, Revision 2, dated August 19, 2007; Cessna Citation Alert Service Letter ASL525A–53–05, Revision 2, dated July 25, 2007; or Cessna Citation Alert Service Letter ASL525B–53–02, Revision 2, dated July 25, 2007. |
| (2) If corrosion damage is found in the lower wing skin structure, forward wing spars, lower fuselage skin, fairings, or external fairing frames during the inspection required in paragraph (e)(1) of this AD, repair as specified in the applicable service information. If the corrosion damage cannot be repaired within the limits specified in the applicable service information, contact the manufacturer at 1–800–835–4090 for an FAA-approved repair scheme and incorporate this repair. | Before further flight after the inspection required in paragraph (e)(1) of this AD. | Follow Cessna Citation Alert Service Letter ASL525–53–04, Revision 2, dated August 19, 2007; Cessna Citation Alert Service Letter ASL525A–53–05, Revision 2, dated July 25, 2007; or Cessna Citation Alert Service Letter ASL525B–53–02, Revision 2, dated July 25, 2007. |
| (3) If corrosion on the lower wing skin structure, forward wing spars, and lower fuselage skin was repaired by blending within the limits specified in the service information, do a surface eddy current inspection or a dye-penetrant inspection for cracks. | Before further flight after the repair by blending was done as specified in paragraph (e)(2) of this AD. | Follow Cessna Citation Alert Service Letter ASL525–53–04, Revision 2, dated August 19, 2007; Cessna Citation Alert Service Letter ASL525A–53–05, Revision 2, dated July 25, 2007; or Cessna Citation Alert Service Letter ASL525B–53–02, Revision 2, dated July 25, 2007. |
| (4) If cracks are found during the surface eddy current inspection or the dye-penetrant inspection required in paragraph (e)(3) of this AD, contact the manufacturer for an FAA-approved repair scheme and incorporate this repair. | Before further flight after the inspection required in paragraph (e)(3) of this AD. | Contact Cessna Aircraft Company, Citation Customer Support at 1–800–835–4090. |

TABLE 1.—ACTIONS, COMPLIANCE, AND PROCEDURES—Continued

| Actions | Compliance | Procedures |
|---|---|---|
| (5) Install the fuselage fairings and apply corrosion inhibitive sealant. | Before further flight after the inspection required in paragraph (e)(1) of this AD if no corrosion was found; or before further flight after doing the repairs and inspections required in paragraphs (e)(2), (e)(3), and (e)(4) of this AD if corrosion or cracks were found. | Follow Cessna Citation Alert Service Letter ASL525–53–04, Revision 2, dated August 19, 2007; Cessna Citation Alert Service Letter ASL525A–53–05, Revision 2, dated July 25, 2007; or Cessna Citation Alert Service Letter ASL525B–53–02, Revision 2, dated July 25, 2007. |
| (6) Determine the type of installation of the cockpit mounted pilot relief tube and disable the relief tube. | Before further flight after the inspection required in paragraph (e)(1) of this AD. | Cessna Citation Service Bulletin SB525–53–20, dated April 30, 2007; Cessna Citation Service Bulletin SB525A–53–01, dated April 30, 2007; or Cessna Citation Service Bulletin SB525B–53–01, dated April 30, 2007. |

**Alternative Methods of Compliance (AMOCs)**

(f) The Manager, Wichita Aircraft Certification Office (ACO), 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: T.N. Baktha, Wichita ACO, Aerospace Engineer, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4155; fax: (316) 946–4107. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

**Material Incorporated by Reference**

(g) You must use the service information specified in Table 2 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Cessna Aircraft Company, Citation Marketing Division, P.O. 7706, Wichita, Kansas 67277; telephone: 1–800–835–4090; fax: 1–800–517–8500.

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

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

| Service Bulletin No. | Revision | Date |
|---|---|---|
| Cessna Citation Alert Service Letter ASL525–53–04 | 2 | August 19, 2007. |
| Cessna Citation Alert Service Letter ASL525A–53–05 | 2 | July 25, 2007. |
| Cessna Citation Alert Service Letter ASL525B–53–02 | 2 | July 25, 2007. |
| Cessna Citation Service Bulletin SB525A–53–20 | ..... | April 30, 2007 |
| Cessna Citation Service Bulletin SB525A–53–01 | ..... | April 30, 2007. |
| Cessna Citation Service Bulletin SB525B–53–01 | ..... | April 30, 2007. |

Issued in Kansas City, Missouri, on January 24, 2008.

**John Colomy,**

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

[FR Doc. E8–1821 Filed 2–4–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0100; Directorate Identifier 2007–SW–41–AD; Amendment 39–15356; AD 2008–03–07]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter Model AS 332 L2 Helicopters

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for Eurocopter Model AS 332 L2 helicopters. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority to identify and correct an unsafe condition on an aviation product. The European Aviation Safety Agency (EASA), the Technical Agent of France, with which we have a bilateral agreement, states in the MCAI:

A borescope inspection during scheduled maintenance revealed wear on the internal skin of a Life Raft Inflation Cylinder, P/N 41918001, that had been installed on a Eurocopter AS 332 L2 helicopter. The plunger tube end is fitted with a metal end-fitting that presses against the internal surface of the cylinder due to its installation horizontally aboard the aircraft. Vibrations generated by helicopter operation are therefore causing such wear, which may result in a drop of internal pressure of the cylinder. This internal damage, if not corrected, could lead to functional failure of the cylinder, making the life raft inflation no longer possible.

This AD requires actions that are intended to address the failure of a life raft to inflate during an emergency landing on water (ditching), which could result in loss of the crew and passengers.

**DATES:** This AD becomes effective on February 20, 2008.

The Director of the Federal Register approved the incorporation by reference of Eurocopter Alert Service Bulletin No. 05.00.71, dated July 31, 2007, as of February 20, 2008.

We must receive comments on this AD by April 7, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Examining the AD Docket:* You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the economic 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:** Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

**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 helicopters.

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

**Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No. 2007–0244, dated September 4, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified helicopters. The MCAI states:

A borescope inspection during scheduled maintenance revealed wear on the internal skin of a Life Raft Inflation Cylinder, P/N 41918001, that had been installed on a Eurocopter AS 332 L2 helicopter. The plunger tube end is fitted with a metal end-fitting that presses against the internal surface of the cylinder due to its installation horizontally aboard the aircraft. Vibrations generated by helicopter operation are therefore causing such wear, which may result in a drop of internal pressure of the cylinder. This internal damage, if not corrected, could lead to functional failure of the cylinder, making the life raft inflation no longer possible.

Pending the development of a modification to the inflation cylinder, this AD requires identification of all affected cylinders and the removal from service of those that have accumulated 2,500 Flight Hours (FH) or more since installation or since overhaul.

**Relevant Service Information**

Eurocopter has issued Alert Service Bulletin No. 05.00.71, dated July 31, 2007. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

**FAA's Determination and Requirements of This AD**

This helicopter has been approved by the aviation authority of the Member States of the European Community, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, we have been notified of the unsafe condition described in the MCAI and the service information. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other helicopters of the same type design.

There are no helicopters of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Registry in the future.

**Differences Between the AD and the MCAI or Service Information**

We have reviewed the MCAI and related service information and, in general, agree with their substance. We have limited the ''Applicability'' section of our AD to those helicopters type certificated in the United States. We also changed ''flight hours'' to ''hours time-in-service.'' In making these small changes, we do not intend to differ substantively from the information provided in the MCAI and related service information. These differences are highlighted in the ''Differences Between the FAA AD and the MCAI'' section in the AD.

**FAA's Determination of the Effective Date**

Since there are currently no domestic operators of these helicopters, notice and opportunity for public comment before issuing this AD are unnecessary, and this amendment can be made effective in less than 30 days.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0100; Directorate Identifier 2007–SW–41–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

**Costs of Compliance**

There are no costs of compliance since there are no helicopters of this type design on the U.S. Registry.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this AD:

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2008–03–07 Eurocopter:** Amendment 39–15356. Docket No. FAA–2008–0100; Directorate Identifier 2007–SW–41–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective February 20, 2008.

**Other Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Eurocopter Model AS 332 L2, with Life Raft, part number (P/N) 00051047 or P/N 00051048, that has a Life Raft Inflation Cylinder, P/N 41918001, installed, certificated in any category.

**Reason**

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

A borescope inspection during scheduled maintenance revealed wear on the internal skin of a Life Raft Inflation Cylinder, P/N 41918001, that had been installed on a Eurocopter AS 332 L2 helicopter. The plunger tube end is fitted with a metal end-fitting that presses against the internal surface of the cylinder due to its installation horizontally aboard the aircraft. Vibrations generated by helicopter operation are therefore causing such wear, which may result in a drop of internal pressure of the cylinder. This internal damage, if not corrected, could lead to functional failure of the cylinder, making the life raft inflation no longer possible.

Pending the development of a modification to the inflation cylinder, this AD requires identification of all affected cylinders and the removal from service of those that have accumulated 2,500 Flight Hours (FH) or more since installation or since overhaul.

**Actions and Compliance**

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

(1) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, remove each life raft inflation cylinder, P/N 41918001, that has accumulated or exceeded 2,500 hours TIS since first installation or since last overhaul, whichever is later, in accordance with Appendix 1, paragraph 3.1., of Eurocopter Alert Service Bulletin No. 05.00.71, dated July 31, 2007 (ASB), and replace it with an airworthy cylinder in accordance with Appendix 1, paragraph 3.2 of the ASB.

(2) After the effective date of this AD, no person shall install a life raft inflation cylinder, P/N 41918001, on a helicopter, if that cylinder has accumulated or exceeded 2,500 hours TIS since first installation or since last overhaul, or if it is older than 3 years since manufacture and has never been overhauled.

**Differences Between the FAA AD and the MCAI**

(f) This AD does not apply to Model EC 225 LP helicopters as does the MCAI because that model helicopter is not type certificated in the United States. Additionally, we have changed ''flight hours'' to ''hours time-in-service.'' We also clarified the applicable paragraphs from the ASB in paragraph (e)(1) of this AD.

**Subject**

(g) Air Transport Association of America (ATA) Code 2564: Life Raft.

**Other Information**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Safety Management Group, 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: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

(2) *Airworthy Product:* Use only FAA-approved corrective actions. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent) if the State of Design has an appropriate bilateral agreement with the United States. 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**

(i) Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2007–0244, dated September 4, 2007 contains related information.

**Material Incorporated by Reference**

(j) The Director of the Federal Register approved the incorporation by reference of Eurocopter Alert Service Bulletin No. 05.00.71, dated July 31, 2007, under 5 U.S.C. 552(a) and 1 CFR part 51.

(k) For service information identified in this AD, contact American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

(l) You may review copies of Eurocopter Alert Service Bulletin No. 05.00.71, dated July 31, 2007, at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

**Scott A. Horn,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. E8–1701 Filed 2–4–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–28299; Directorate Identifier 2005–NM–139–AD; Amendment 39–15354; AD 2008–03–05]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP Series Airplanes; and Model 767–200 and –300 Series Airplanes; Equipped With Certain Goodrich Evacuation Systems

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain

Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes; and Model 767–200 and –300 series airplanes; equipped with certain Goodrich evacuation systems. For certain airplanes, this AD requires replacing the evacuation system shear-pin restraints with new ones. For certain other airplanes, this AD requires an inspection for manufacturing lot numbers; and a general visual inspection of the shear-pin restraints for discrepancies, and corrective actions if necessary. This AD results from several reports of corroded shear-pin restraints that prevented Goodrich evacuation systems from deploying properly. We are issuing this AD to prevent failure of an evacuation system, which could impede an emergency evacuation and increase the chance of injury to passengers and flightcrew during the evacuation.

**DATES:** This AD becomes effective March 11, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 11, 2008.

**ADDRESSES:** For service information identified in this AD, contact Goodrich, Aircraft Interior Products, ATTN: Technical Publications, 3414 South Fifth Street, Phoenix, AZ 85040–1169.

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Tracy Ton, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5352; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes; and Model 767–200 and –300 series airplanes; equipped with certain Goodrich evacuation systems. That NPRM was published in the **Federal Register** on May 29, 2007 (72 FR 29452). For certain airplanes, that NPRM proposed to require replacing the evacuation system shear-pin restraints with new ones. For certain other airplanes, that NPRM proposed to require an inspection for manufacturing lot numbers; and a general visual inspection of the shear-pin restraints for discrepancies, and corrective actions if necessary.

**Comments**

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

**Supportive Comment**

One commenter, Air Line Pilots Association, International (ALPA), supports the proposed AD.

**Request To Combine Two AD Actions Into One AD**

Delta requests that this NPRM be combined with another NPRM (Directorate Identifier 2003–NM–239–AD/Docket No. FAA–2007–28370 (72 FR 31761, June 8, 2007)) so that a single AD is issued. Both NPRMs refer to Goodrich Service Bulletin 25–343, Revision 3, dated January 12, 2007, as an appropriate source of service information for accomplishing the proposed actions.

We do not agree with the commenter's request. While the evacuation slides affected by this AD and the other NPRM are identified in the same service bulletin and have the same unsafe condition, the individual evacuation slides were approved under different certification processes. This AD affects airplanes that had certain evacuation slides approved as part of a type certificate. The other NPRM (Docket No. FAA–2007–28370) affects certain other evacuation slides that were approved under a technical special order (TSO) that specified certain requirements for evacuation slides. The TSO approval process specifies which airplane model(s) a specific evacuation slide can be installed on. These two approval processes affect how we issue ADs. We have not changed this AD or NPRM Docket No. FAA–2007–28370 in this regard.

**Request To Revise Sequence of Part Number in a Table**

Goodrich, the evacuation slide manufacturer, requests that we reverse the sequence of rows (6) and (7) of Table 1 of the NPRM to match the sequence in the Goodrich service bulletin.

We agree with the commenter's request. Revising the sequence of rows to match the sequence in the service bulletin will reduce any confusion. We have revised paragraphs (c)(6) and (c)(7) of this AD (rows (6) and (7) of Table 1 of the AD) accordingly.

**Request To Give Credit for a Service Bulletin**

Goodrich also requests that we give credit to operators who accomplish Revision 3 of the service bulletin before the effective date of this AD. Goodrich states that ''The wording of Paragraph (j) does not provide credit for actions done in compliance with Revision 3 unless it occurs 'after the effective date of this AD'.'' (We infer that Goodrich interprets the text of paragraph (j) of the AD to mean that operators that have accomplished Revision 3 of the service bulletin before the effective date would be required to accomplish those actions again after the effective date to comply with this AD.)

We disagree with the commenter's request. Paragraph (e) of this AD states that the actions must be done as specified in the AD ''unless the actions have already been done.'' Goodrich Service Bulletin 25–343, Revision 3, dated January 12, 2007, is referred to as the appropriate source of service information for accomplishing the requirements of paragraph (g) of this AD. Accomplishing the requirements of this AD in accordance with Goodrich Service Bulletin 25–343, Revision 3, dated January 12, 2007, before the effective date of the AD is acceptable for compliance with paragraph (g) of this AD. Paragraph (j) of this AD gives credit for accomplishing earlier revisions of the service bulletin before the effective date of this AD. We have not changed the AD in this regard.

**Clarification of Alternative Method of Compliance (AMOC) Paragraph**

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

**Additional Change**

In paragraph (j) of the NPRM, we inadvertently referenced paragraph (h) of the AD. Instead, the correct reference is paragraph (g) of the AD. We have

revised paragraph (j) of this AD to cite the correct paragraph.

**Conclusion**

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

**Costs of Compliance**

There are about 1,063 airplanes of the affected design in the worldwide fleet. This AD affects about 144 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

| Action | Work hours per slide unit | Average labor rate per hour | Parts | Number of slide units per airplane | Cost per airplane | Fleet cost |
|---|---|---|---|---|---|---|
| Replacement ..... | Between 2 and 9 .. | $80 | Between $58 and $638, depending on number of restraints. | Between 1 and 12 | Between $218 and $16,296. | Between $31,392 and $2,346,624. |
| Inspection ..... | Between 2 and 9 .. | 80 | None ..... | Between 1 and 12 | Between $160 and $8,640. | Between $23,040 and $1,244,160. |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2008–03–05 Boeing:** Amendment 39–15354. Docket No. FAA–2007–28299; Directorate Identifier 2005–NM–139–AD.

**Effective Date**

(a) This AD becomes effective March 11, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes; and Model 767–200 and –300 series airplanes; certificated in any category; equipped with any Goodrich evacuation system listed in Table 1 of this AD.

TABLE 1.—GOODRICH EVACUATION SYSTEMS

| Goodrich evacuation systems part number | Serial No. (S/N) | Component/part name |
|---|---|---|
| (1) 101651–303 ..... | PA2475 through PA2955 inclusive ..... | Slide/Raft, forward/aft doors. |
| (2) 7A1412–3 through 7A1412–8 inclusive. | GU0154 through GU0325 inclusive ..... | Slide, upper deck. |
| (3) 101651–109 through 101651–303 inclusive. | All S/Ns with a B51 prefix, and S/Ns PA0001 through PA2474 inclusive. | Slide/Raft, forward/aft doors. |
| (4) 7A1101–20 through 7A1101–24 inclusive. | All S/Ns with a single letter G prefix, and S/Ns GL0001 through GL0099 inclusive. | Slide, doors 1 and 2. |
| (5) 7A1102–20 through 7A1102–24 inclusive. | All S/Ns with a single letter G prefix, and S/Ns GN001 through GN121 inclusive. | Slide, door 4. |
| (6) Odd dash numbers 7A1103–45 through 7A1103–51. | All odd S/Ns with a single letter G prefix, and odd S/Ns GC0001 through GC0127. | Slide, door 5, left-hand (LH) side. |

TABLE 1.—GOODRICH EVACUATION SYSTEMS—Continued

| Goodrich evacuation systems part number | Serial No. (S/N) | Component/part name |
|---|---|---|
| (7) Even dash numbers 7A1103–46 through 7A1103–52. | All even S/Ns with a single letter G prefix, and even S/Ns GC0002 through GC0128. | Slide, door 5, right-hand (RH) side. |
| (8) 7A1104–14 through 7A1104–24 inclusive. | All S/Ns with a single letter G prefix, and S/Ns GM0001 through GM0138 inclusive. | Slide, crew door. |
| (9) Odd dash numbers 7A1105–35 through 7A1105–43. | All | Slide, off-wing, LH side. |
| (10) Even dash numbers 7A1105–36 through 7A1105–44. | All | Slide, off-wing, RH side. |
| (11) Odd dash numbers 7A1238–3 through 7A1238–69. | All odd S/Ns with a single letter G prefix, and odd S/Ns GE0001 through GE2091. | Slide/Raft, doors 1, 2, and 4, LH side. |
| (12) Even dash numbers 7A1238–4 through 7A1238–70. | All even S/Ns with a single letter G prefix, and even S/Ns GE0002 through GE2076. | Slide/Raft, doors 1, 2, and 4, RH side. |
| (13) Odd dash numbers 7A1239–3 through 7A1239–33. | All odd S/Ns with a single letter G prefix, and odd S/Ns GF0001 through GF0649. | Slide/Raft, door 5, LH side. |
| (14) Even dash numbers 7A1239–4 through 7A1239–34. | All even S/Ns with a single letter G prefix, and even S/Ns GF0002 through GF0650. | Slide/Raft, door 5, RH side. |
| (15) Odd dash numbers 7A1248–1 through 7A1248–35. | All odd S/Ns with a single letter G prefix, and odd S/Ns GU001 through GU321. | Slide, upper deck, LH side. |
| (16) Even dash numbers 7A1248–2 through 7A1248–36. | All even S/Ns with a single letter G prefix, and even S/Ns GU002 through GU662. | Slide, upper deck, RH side. |
| (17) Odd dash numbers 7A1252–1 through 7A1252–9. | All odd S/Ns with a single letter G prefix, and odd S/Ns GO001 through GO505. | Slide, off-wing, LH side. |
| (18) Even dash numbers 7A1252–2 through 7A1252–10. | All even S/Ns with a single letter G prefix, and even S/Ns GO002 through GO506. | Slide, off-wing, RH side. |
| (19) Odd dash numbers 7A1255–1 through 7A1255–29. | All odd S/Ns with a single letter G prefix, and odd S/Ns WH0001 through WH0139. | Slide/Raft, door 2, LH side. |
| (20) Even dash numbers 7A1255–2 through 7A1255–30. | All even S/Ns with a single letter G prefix, and even S/Ns WH0002 through WH0136. | Slide/Raft, door 2, RH side. |
| (21) Odd dash numbers 7A1256–1 through 7A1256–29. | All odd S/Ns with a single letter G prefix, and odd S/Ns WI0001 through WI0143. | Slide/Raft, door 3, LH side. |
| (22) Even dash numbers 7A1256–2 through 7A1256–30. | All even S/Ns with a single letter G prefix, and even S/Ns WI0002 through WI0144. | Slide/Raft, door 3, RH side. |
| (23) Odd dash numbers 7A1257–1 through 7A1257–29. | All odd S/Ns with a single letter G prefix, and odd S/Ns WJ0001 through WJ0167. | Slide/Raft, door 4, LH side. |
| (24) Even dash numbers 7A1257–2 through 7A1257–30. | All even S/Ns with a single letter G prefix, and even S/Ns WJ0002 through WJ0160. | Slide/Raft, door 4, RH side. |
| (25) Odd dash numbers 7A1261–1 through 7A1261–33. | All odd S/Ns with a single letter G prefix, and odd S/Ns WG0001 through WG0165. | Slide/Raft, door 1, LH side. |
| (26) Even dash numbers 7A1261–2 through 7A1261–34. | All even S/Ns with a single letter G prefix, and even S/Ns WG0002 through WG0162. | Slide/Raft, door 1, RH side. |
| (27) 7A1412–1 through 7A1412–8 inclusive. | All S/Ns with a single letter G prefix, and S/Ns GU001 through GU153. | Slide, upper deck. |

**Unsafe Condition**

(d) This AD results from several reports of corroded shear-pin restraints that prevented Goodrich evacuation systems from deploying properly. We are issuing this AD to prevent failure of an evacuation system, which could impede an emergency evacuation and increase the chance of injury to passengers and flightcrew during the evacuation.

**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 Goodrich Service Bulletin 25–343, Revision 3, dated January 12, 2007.

**Replacement, or Inspections and Corrective Action**

(g) Within 36 months after the effective date of this AD, do the actions specified in paragraph (g)(1) or (g)(2) of this AD in accordance with the service bulletin.

(1) For airplanes equipped with any Goodrich evacuation system identified in paragraph (c)(1) or (c)(2) of this AD: Replace the shear-pin restraints with new restraints.

(2) For airplanes equipped with any Goodrich evacuation system identified in paragraphs (c)(3) through (c)(27) of this AD: Do an inspection to verify the manufacturing lot number of the shear-pin restraint. A review of airplane maintenance records is acceptable in lieu of this inspection if the manufacturing lot number of the shear-pin restraint can be conclusively determined from that review.

(i) If a manufacturing lot number from 3375 through 5551 inclusive is found, before further flight, replace the shear-pin restraint with a new restraint.

(ii) If a manufacturing lot number from 3375 through 5551 inclusive is not found, do a general visual inspection of the shear-pin restraints for discrepancies (i.e., corrosion, security of pin retainer/label, overall condition, and lack of play). If any discrepancy is found, before further flight, replace the shear-pin restraint with a new restraint.

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

**Parts Installation**

(h) As of the effective date of this AD, no Goodrich evacuation system with a part number and serial number identified in paragraph (c)(1) or (c)(2) of this AD may be installed on any airplane, unless the shear-

pin restraints have been replaced with new restraints in accordance with paragraph (g)(1) of this AD.

(i) As of the effective date of this AD, no Goodrich evacuation system with a part number and serial number identified in paragraphs (c)(3) through (c)(27) of this AD may be installed on any airplane, unless the shear-pin restraints have been inspected and found acceptable in accordance with paragraph (g)(2) of this AD.

**Credit for Actions Done Using Previous Service Information**

(j) Replacements and inspections done before the effective date of this AD in accordance with Goodrich Service Bulletin 25–343, dated October 15, 2003; Revision 1, dated January 31, 2005; or Revision 2, dated October 11, 2006; are acceptable for compliance with the requirements of paragraph (g) of this AD.

**Alternative Methods of Compliance (AMOCs)**

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

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

**Material Incorporated by Reference**

(l) You must use Goodrich Service Bulletin 25–343, Revision 3, dated January 12, 2007, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Goodrich, Aircraft Interior Products, ATTN: Technical Publications, 3414 South Fifth Street, Phoenix, AZ 85040–1169, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on January 18, 2008.

**Ali Bahrami,**

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

[FR Doc. E8–1724 Filed 2–4–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–0299; Directorate Identifier 2007–NM–239–AD; Amendment 39–15358; AD 2008–03–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Saab Model SAAB 2000 Airplanes

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

**ACTION:** Final rule.

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

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, the FAA has published Special Federal Aviation Regulation 88 (SFAR88) * * * [which] required * * * [conducting] a design review against explosion risks.

The unsafe condition is 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. We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective March 11, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 11, 2008.

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

**FOR FURTHER INFORMATION CONTACT:** Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 10, 2007 (72 FR 69628). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, the FAA has published Special Federal Aviation Regulation 88 (SFAR88) in June 2001.

In their Letters referenced 04/00/02/07/01–L296 dated March 4th, 2002 and 04/00/02/07/03–L024, dated February 3rd, 2003, the JAA (Joint Aviation Authorities) recommended the application of a similar regulation to the National Aviation Authorities (NAA).

Under this regulation, all holders of type certificates for passenger transport aircraft with either a passenger capacity of 30 or more, or a payload capacity of 7,500 pounds (3402 kg) or more, which have received their certification since January 1st, 1958, are required to conduct a design review against explosion risks.

This Airworthiness Directive (AD), which renders mandatory the modification [6089] of improving the sealing of Fuel Access Doors, is a consequence of the design review.

The unsafe condition is 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. Saab Modification 6089 includes removing the fuel tank access doors and the old type of clamp rings and gaskets; installing new, improved clamp rings; re-installing the fuel tank access doors; and doing related investigative actions and applicable corrective actions. Related investigative actions and applicable corrective actions include inspecting for corrosion of the wing skin panel and access door areas, and, as applicable, replacing wear protection; contacting Saab and doing repairs if doubler flange is less than specified thickness; replacing any corroded or damaged foil panel; replacing any damaged sealing ring; removing corrosion from the wing skin panel; inspecting the access doors for damage and correct installation of the aluminum panel on the access door; and, as applicable, replacing the aluminum panel or the entire access door. You may obtain further information by examining the MCAI in the AD docket.

### Comments

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

**Conclusion**

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

**Differences Between This AD and the MCAI or Service Information**

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

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

**Costs of Compliance**

We estimate that this AD will affect about 6 products of U.S. registry. We also estimate that it will take about 130 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $6,400 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $100,800, or $16,800 per product.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this AD:

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

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

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

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

**Examining the AD Docket**

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2008–03–08 SAAB Aircraft AB:** Amendment 39–15358. Docket No. FAA–2007–0299; Directorate Identifier 2007–NM–239–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective March 11, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Saab Model SAAB 2000 airplanes, all serial numbers, certificated in any category.

**Subject**

(d) Air Transport Association (ATA) of America Code 57: Wings.

**Reason**

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

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, the FAA has published Special Federal Aviation Regulation 88 (SFAR88) in June 2001.

In their Letters referenced 04/00/02/07/01–L296 dated March 4th, 2002 and 04/00/02/07/03–L024, dated February 3rd, 2003, the JAA (Joint Aviation Authorities) recommended the application of a similar regulation to the National Aviation Authorities (NAA).

Under this regulation, all holders of type certificates for passenger transport aircraft with either a passenger capacity of 30 or more, or a payload capacity of 7,500 pounds (3402 kg) or more, which have received their certification since January 1st, 1958, are required to conduct a design review against explosion risks.

This Airworthiness Directive (AD), which renders mandatory the modification [6089] of improving the sealing of Fuel Access Doors, is a consequence of the design review.

The unsafe condition is 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.

**Actions and Compliance**

(f) Within 48 months after the effective date of this AD, unless already done, do Modification 6089 and all related investigative actions and applicable corrective actions, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–57–033, dated March 2, 2000; or Revision 01, dated March 31, 2000. Do all applicable related investigative and corrective actions before further flight.

**FAA AD Differences**

**Note 1:** This AD differs from the MCAI and/or service information as follows: No differences.

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–

3356; telephone (425) 227–1112; 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 EASA Airworthiness Directive 2007–0167, dated June 15, 2007; Saab Service Bulletin 2000–57–033, dated March 2, 2000; and Saab Service Bulletin 2000–57–033, Revision 01, dated March 31, 2000; for related information.

**Material Incorporated by Reference**

(i) You must use Saab Service Bulletin 2000–57–033, dated March 2, 2000; or Saab Service Bulletin 2000–57–033, Revision 01, dated March 31, 2000; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden.

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

Issued in Renton, Washington, on January 24, 2008.

**Ali Bahrami,**

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

[FR Doc. E8–1812 Filed 2–4–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–0249; Directorate Identifier 2007–CE–088–AD; Amendment 39–15361; AD 2008–03–11]**

**RIN 2120–AA64**

## Airworthiness Directives; Alpha Aviation Design Limited Model R2160 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are superseding an existing airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as distortion of the rudder bars due to rudder control forces during aerobatic operation and nose wheel steering reaction forces. Rudder bar distortion could result in reduced control or loss of control. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** This AD becomes effective March 11, 2008.

As of March 11, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

**ADDRESSES:** You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

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

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 27, 2007 (72 FR 66089) and proposed to supersede AD 87–08–01, Amendment 39–5601, published in 1987 and AD 99–01–04, Amendment 39–10971, published in 1999. That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that rudder control forces during aerobatic operation and nose wheel steering reaction forces may cause rudder bar distortion. Rudder bar distortion could result in reduced control or loss of control.

The MCAI requires you to replace the left and right rudder bars with reinforced rudder bars.

### Comments

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

### Conclusion

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

### Differences Between This AD and the MCAI or Service Information

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

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

### Costs of Compliance

We estimate that this AD will affect 9 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to comply with basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $657 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $8,073 or $897 per product.

### Authority for This Rulemaking

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this AD:

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

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

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

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

**Examining the AD Docket**

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Amendment 39–5601 and Amendment 39–10971 and adding the following new AD:

**2008–03–11 Alpha Aviation Design Limited:** Amendment 39–15361; Docket No. FAA–2007–0249; Directorate Identifier 2007–CE–088–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective March 11, 2008.

**Affected ADs**

(b) This AD supersedes AD 87–08–01, Amendment 39–5601; and AD 99–01–04, Amendment 39–10971.

**Applicability**

(c) This AD applies to Model R2160 airplanes, serial numbers 1 through 378, that:

(1) Are certificated in any category; and

(2) Have not installed the improved design rudder bars part number (P/N) 27.40.31.010 and P/N 27.40.31.020 following either Avions Pierre Robin Service Bulletin No. 143, dated September 8, 1995, or Alpha Aviation Service Bulletin AA–SB–27–003, dated October 19, 2007.

**Subject**

(d) Air Transport Association of America (ATA) Code 27: Flight Controls.

**Reason**

(e) The mandatory continuing airworthiness information (MCAI) states that rudder control forces during aerobatic operation and nose wheel steering reaction forces may cause rudder bar distortion. Rudder bar distortion could result in reduced or loss of control. The MCAI requires you to replace the left and right rudder bars with reinforced rudder bars.

**Restatement of Requirements of AD 99–01–04**

(f) For airplanes with serial numbers 250 through 378: Unless already done, within the next 50 hours time-in-service (TIS) after March 12, 1999 (the effective date of AD 99–01–04) replace the left and right rudder bars, part number (P/N) 27.23.01.010 (left) and P/N 27.23.01.020 (right), with the reinforced rudder bars, P/N 27.40.31.010 (left) and P/N 27.40.31.020 (right) or FAA-equivalent part numbers, following Alpha Aviation Service Bulletin AA–SB–27–003, dated October 19, 2007.

**New Requirements of This AD: Actions and Compliance**

(g) For airplanes with serial numbers 1 through 249: Unless already done, within the next 50 hours TIS after the effective date of this AD or within the next 3 months after the effective date of this AD, whichever occurs first, replace the left and right rudder bars, P/N 27.23.05.010 (left) and P/N 27.23.05.020 (right), with the reinforced rudder bars, P/N 27.40.31.010 (left) and P/N 27.40.31.020 (right) or FAA-equivalent part numbers, following Alpha Aviation Service Bulletin AA–SB–27–003, dated October 19, 2007.

**FAA AD Differences**

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

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090. 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 (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

**Related Information**

(i) Refer to New Zealand Civil Aviation Authority AD DCA/R2000/23B, dated October 25, 2007; and Alpha Aviation Service Bulletin AA–SB–27–003, dated October 19, 2007, for related information.

**Material Incorporated by Reference**

(j) You must use Alpha Aviation Service Bulletin AA–SB–27–003, dated October 19, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Alpha Aviaton, Ingram Road, Hamilton Airport, RD 2, Hamilton 2021, New Zealand; telephone: +64 7 843 7070; fax: +64 7 843 8040; Internet: *www.alphaaviation.co.nz.*

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For

information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on January 23, 2008.

**John Colomy,**

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

[FR Doc. E8–1829 Filed 2–4–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0121; Directorate Identifier 2007–NM–277–AD; Amendment 39–15363; AD 2008–03–13]**

**RIN 2120–AA64**

## Airworthiness Directives; ATR Model ATR42–500 Airplanes

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain ATR Model ATR42–500 series airplanes. This AD requires removing metallized polyethylene terephtalate (MPET) insulation blankets installed on the left and the right sides of the airplane over frame 24 between stringers 5 and 14. This AD results from reports indicating that burnt spots were found on the MPET insulation blankets installed over frame 24. The actions specified by this AD are intended to ensure that MPET insulation blankets are removed over frame 24. Such MPET insulation blankets, if not removed, could propagate a small fire that is the result of an electrical arc and could lead to a much larger fire.

**DATES:** This AD becomes effective February 20, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 20, 2008.

We must receive comments on this AD by March 6, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact ATR, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France.

### Examining the AD Docket

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

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

**SUPPLEMENTARY INFORMATION:**

### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, notified us that an unsafe condition may exist on certain ATR Model ATR42–500 series airplanes. The EASA advises that there have been reports of two in-service aircraft where burnt spots were found on the insulation blankets installed over frame 24. Investigations concluded that due to the presence of the bleed air duct, installation of the thermal-acoustical insulation blankets having a metallized polyethylene terephtalate (MPET) made the covering (also known as Mylar™) at this location unsafe. Such MPET insulation blankets, if not removed, could propagate a small fire that is the result of an electrical arc and could lead to a much larger fire. This action is intended to address the identified unsafe condition.

### Relevant Service Information

ATR has issued Service Bulletin ATR42–25–0155, dated April 10, 2007. The service bulletin describes procedures for removing the MPET insulation blankets installed on the left and the right sides of the airplane over frame 24 between stringers 5 and 14. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The EASA mandated the service information and issued emergency airworthiness directive 2007–0106–E, dated April 18, 2007, to ensure the continued airworthiness of these airplanes in the European Union.

### FAA's Determination and Requirements of This AD

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

Therefore, we are issuing this AD to ensure that MPET insulation blankets are removed over frame 24. Such MPET insulation blankets, if not removed, could propagate a small fire that is the result of an electrical arc and could lead to a much larger fire. This AD requires accomplishing the actions specified in the service information described previously.

### Costs of Compliance

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

If an affected airplane is imported and placed on the U.S. Register in the future, the required action would take about 6 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD would be $480 per airplane.

### FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register.

Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0121; Directorate Identifier 2007–NM–277–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2008–03–13 ATR—GIE Avions de Transport Régional (Formerly Aerospatiale):** Amendment 39–15363. Docket No. FAA–2008–0121; Directorate Identifier 2007–NM–277–AD.

**Effective Date**

(a) This AD becomes effective February 20, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to ATR Model ATR42–500 series airplanes, certificated in any category; except for airplanes modified in accordance with ATR modification numbers 05117, 05322, and 05791, or ATR Service Bulletin ATR42–25–1034, dated January 24, 2002.

**Unsafe Condition**

(d) This AD results from reports indicating that burnt spots were found on the metallized polyethylene terephtalate (MPET) insulation blankets installed over frame 24. We are issuing this AD to ensure that MPET insulation blankets are removed over frame 24. Such MPET insulation blankets, if not removed, could propagate a small fire that is the result of an electrical arc and could lead to a much larger fire.

**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.

**Removal of Installation Blankets**

(f) Within 15 days after the effective date of this AD, remove the MPET insulation blankets installed on the left and the right sides of the airplane over frame 24 between stringers 5 and 14, in accordance with the Accomplishment Instructions of ATR Service Bulletin ATR42–25–0155, dated April 10, 2007.

**Alternative Methods of Compliance (AMOCs)**

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

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

**Related Information**

(h) EASA emergency airworthiness directive 2007–0106–E, dated April 18, 2007, also addresses the subject of this AD.

**Material Incorporated by Reference**

(i) You must use ATR Service Bulletin ATR42–25–0155, dated April 10, 2007, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact ATR, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on January 24, 2008.

**Ali Bahrami,**

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

[FR Doc. E8–2004 Filed 2–4–08; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2007–0349 Directorate Identifier 2007–CE–094–AD; Amendment 39–15366; AD 2008–03–15]**

**RIN 2120–AA64**

## Airworthiness Directives; EADS SOCATA Model TBM 700 Airplanes

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

**ACTION:** Final rule.

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

A non-respect of the pilot door adjustment procedure could have damaged the stop fitting and could result in a consequent depressurization of the airplane.

We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective March 11, 2008.

On March 11, 2008, the Director of the Federal Register approved the incorporation by reference of EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–131, Amendment 1, dated June 2007, listed in this AD.

As of March 23, 2007 (72 FR 7559, February 16, 2007), the Director of the Federal Register approved the incorporation by reference of EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–131, dated July 2005, listed in this AD.

**ADDRESSES:** You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Albert J. Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri, 64106; *telephone:* (816) 329–4119; *facsimile:* (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 17, 2007 (72 FR 71279) and proposed to supersede AD 2007–04–08, Amendment 39–14939 (72 FR 7559, February 16, 2007). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

A non-respect of the pilot door adjustment procedure could have damaged the stop fitting and could result in a consequent depressurization of the airplane.

This AD requires you to inspect the pilot door locking stop fittings for correct length and replace any incorrect length pilot door locking stop fittings found.

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

### Comments

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

### Conclusion

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

### Differences Between This AD and the MCAI or Service Information

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

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

### Costs of Compliance

Based on the service information, we estimate that this AD will affect about 157 products of U.S. registry. We also estimate that it will take about 4.5 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $15 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $58,875, or $375 per product.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

### Examining the AD Docket

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

available in the AD docket shortly after receipt.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Amendment 39–14939 (72 FR 7559, February 16, 2007), and adding the following new AD:

**2008–03–15 EADS SOCATA:** Amendment 39–15366; Docket No. FAA–2007–0349; Directorate Identifier 2007–CE–094–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective March 11, 2008.

**Affected ADs**

(b) This AD supersedes AD 2007–04–08, Amendment 39–14939.

**Applicability**

(c) This AD applies to Model TBM 700 airplanes, serial numbers 126 through 322, that are:

(1) Equipped with a pilot door; and

(2) Certificated in any category.

**Subject**

(d) Air Transport Association of America (ATA) Code 53: Fuselage.

**Reason**

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

A non-respect of the pilot door adjustment procedure could have damaged the stop fitting and could result in a consequent depressurization of the airplane.

This AD requires you to inspect the pilot door locking stop fittings for correct length and replace any incorrect length pilot door locking stop fittings found.

**Requirements Retained From AD 2007–04–08**

(f) Unless already done, inspect the pilot door locking stop-fittings for correct length within 30 days after March 23, 2007 (the effective date of AD 2007–04–08). Do the inspection following EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–131, dated July 2005 or EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–131, Amendment 1, dated June 2007.

**New Requirements of This AD: Actions and Compliance**

(g) Do the following actions, unless already done:

(1) Any incorrect length pilot door locking stop-fittings replaced following the inspection required in paragraph (f) of this AD in accordance with AD 2007–04–08, using the original issue of EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–131, dated July 2005, must be replaced again within the next 12 months after March 11, 2008 (the effective date of this AD). Do the replacement using EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–131, Amendment 1, dated June 2007.

(2) Any incorrect length pilot door locking stop-fittings found during the inspection required in paragraph (f) of this AD and not previously replaced in accordance with AD 2007–04–08, must be replaced before further flight after March 11, 2008 (the effective date this AD). Do the replacement using EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–131, Amendment 1, dated June 2007.

**FAA AD Differences**

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

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *ATTN:* Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4119; fax: (816) 329–4090. 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 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

**Special Flight Permit**

(i) If you have ordered parts and they are not available, then you may fly unpressurized until parts become available or for a period not to exceed 90 days after the inspection required in paragraph (f) of this AD, whichever occurs first. You must also fabricate and install a placard as described below. Completing the action of paragraph (g)(2) of this AD terminates the placard requirement.

(1) Fabricate (using letters at least 1/8 inch in height) a warning placard that states ''This airplane is prohibited from pressurized flight.''

(2) Install the placard in full view of the pilot. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may install the placard as required in paragraph (h) of this AD.

**Related Information**

(j) Refer to MCAI Direction générale de l'aviation civile (DGAC) AD No. F–2007–016, October 10, 2007; and EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–131, Amendment 1, dated June 2007, for related information.

**Material Incorporated by Reference**

(k) You must use EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–131, dated July 2005, or EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–131, Amendment 1, dated June 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–131, Amendment 1, dated June 2007, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On March 23, 2007 (72 FR 7559, February 16, 2007), the Director of the Federal Register previously approved the incorporation by reference of EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–131, dated July 2005.

(3) For service information identified in this AD, contact EADS SOCATA, Direction des Services, 65921 Tarbes Cedex 9, France; telephone: 33 (0)5 62 41 73 00; fax: 33 (0)5 62 41 76 54; or SOCATA Aircraft, Inc., North Perry Airport, 7501 South Airport Rd., Pembroke Pines, FL 33023; telephone: (954) 893–1400; fax: (954) 964–4141.

(4) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on January 29, 2008.

**John Colomy,**

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

[FR Doc. E8–2026 Filed 2–4–08; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2007–28246; Directorate Identifier 2007–CE–048–AD; Amendment 39–15367; AD 2008–03–16]**

**RIN 2120–AA64**

## Airworthiness Directives; Cirrus Design Corporation Models SR20 and SR22 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Cirrus Design Corporation (CDC) Models SR20 and SR22 airplanes. This AD requires you to inspect the rudder, aileron, and rudder-aileron interconnect rigging; correct any out-of-rig condition; replace the attaching hardware for the rudder-aileron interconnect arm; and report any out-of-rig condition found. This AD results from a jamming of the aileron and rudder controls on a Model SR20 airplane, which resulted in loss of rudder and aileron flight controls. We are issuing this AD to prevent the possibility of jamming of the rudder-aileron interconnect system, which may result in loss of rudder and aileron flight controls.

**DATES:** This AD becomes effective on March 11, 2008.

On March 11, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

**ADDRESSES:** For service information identified in this AD, contact Cirrus Design Corporation, 4515 Taylor Circle, Duluth, Minnesota 55811; *telephone:* (218) 727–2737; internet address: *http://www.cirrusdesign.com.*

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.* The docket number is FAA–2007–28246; Directorate Identifier 2007–CE–048–AD.

**FOR FURTHER INFORMATION CONTACT:** Wess Rouse, Aerospace Engineer, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone: (847) 294–8113; fax: (847) 294–7834.

**SUPPLEMENTARY INFORMATION:**

### Discussion

On November 28, 2007, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain CDC Models SR20 and SR22 airplanes. This proposal was published in the **Federal Register** as a supplemental notice of proposed rulemaking (NPRM) on December 4, 2007 (72 FR 68108). The NPRM proposed to require you to inspect the rudder, aileron, and rudder-aileron interconnect rigging; correct any out-of-rig condition; replace the attaching hardware for the rudder-aileron interconnect arm; and require you to report any out-of-rig condition found.

### Comments

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

### Conclusion

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

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

### Costs of Compliance

We estimate that this AD affects 2,435 airplanes in the U.S. registry.

We estimate the following costs to do the inspection of the rudder, aileron, and rudder-aileron interconnect rigging, and replacement of the attaching hardware for the rudder-aileron interconnect arm and RH aileron cable clamps:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 1.5 work-hours × $80 per hour = $120 | $18 | $138 | $336,030 |

CDC will provide warranty credit to the extent noted in Service Bulletin SB 2X–27–14 R3, Revised: October 10, 2007.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2007–28246; Directorate Identifier 2007–CE–048–AD'' in your request.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2008–03–16 Cirrus Design Corporation:** Amendment 39–15367; Docket No. FAA–2007–28246; Directorate Identifier 2007–CE–048–AD.

**Effective Date**

(a) This AD becomes effective on March 11, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Model SR20 airplanes, serial numbers (SN) 1005 through 1861, and Model SR22 airplanes, SN 0002 through 2333, SN 2335 through 2419, and SN 2421 through 2437, that are certificated in any category.

**Unsafe Condition**

(d) This AD results from an incident of jamming of the aileron and rudder controls on a Model SR20 airplane and the possibility of the occurrence on other airplanes. In addition, other Models SR20 and SR22 airplanes have been found with misrigging of the flight controls that could lead to jamming. We are issuing this AD to prevent the possibility of jamming of the rudder-aileron interconnect system, which may result in loss of rudder and aileron flight controls.

**Compliance**

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

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Inspect the rudder, aileron, and rudder-aileron interconnect rigging; correct any out-of-rig condition; and replace the attaching hardware for the rudder-aileron interconnect arm. | At whichever occurs first:<br>(i) Within the next 25 hours time-in-service (TIS) after March 11, 2008 (the effective date of this AD); or.<br>(ii) Within the next 3 months after March 11, 2008 (the effective date of this AD). | Follow Cirrus Service Bulletin No. SB 2X–27–14 R3, Revised: October 10, 2007. |
| (2) *Only if you find an out-of-rig condition:* Report to the FAA any out-of-rig conditions discovered as a result of the inspection required by paragraph (e)(1) of this AD on the form in Figure 1 of this AD. The Office of Management and Budget (OMB) approved the information contained in this regulation under the provisions of the Paperwork Reduction Act and assigned OMB Control Number 2120–0056. | At whichever occurs later:<br>(i) Within 10 days after the inspection required in paragraph (e)(1) of this AD; or.<br>(ii) Within 10 days after March 11, 2008 (the effective date of this AD). | Send the form (Figure 1 of this AD) to FAA, Manufacturing Inspection District Office, 6020 28th Avenue South, Room 103, Minneapolis, Minnesota 55450–2700; telephone (612) 713–4366; facsimile (612) 713–4365. |

**Note:** Temporary revisions to the airplane maintenance manuals (AMM), SR20 AMM Temporary Revision No. 27–1 and SR22 AMM Temporary Revision No. 27–1, both dated October 10, 2007, contain information pertaining to this subject.

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AD 2008-03-16
INSPECTION REPORT
(REPORT ONLY IF YOU FIND AN OUT-OF-RIG CONDITION)

| | |
|---|---|
| 1. Inspection Performed By: | 2. Telephone: |
| 3. Aircraft Model: | 4. Airplane Serial Number: |
| 5. Aircraft Total Hours Time-in-Service: | 6. Date of inspection required in paragraph (e)(1) of this AD: |
| 7a. Do any of the aircraft logs contain entries describing flight control system maintenance, preventative maintenance, or alteration:<br><br>___ Yes ___ No | 7b. If Yes, copy the log book entry(s) and include the date of the entry. |
| 8. Inspection Results: (Report only if an out-of-rig condition is found, and describe the out-of-rig condition as accurate and detailed as possible): | |
| 9. Corrective Action Taken: | |
| Send to:<br><br>Federal Aviation Administration<br>Manufacturing Inspection District Office<br>6020 28th Avenue South, Room 103<br>Minneapolis, Minnesota 55450-2700<br><br>Telephone (612) 713-4366<br>Facsimile (612) 713-4365 | |

Figure 1.

BILLING CODE 4910–13–C

**Alternative Methods of Compliance (AMOCs)**

(f) The Manager, Chicago Aircraft Certification Office (ACO), 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: Wess Rouse, Aerospace Engineer, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; *telephone:* (847) 294–8113; *fax:* (847) 294–7834. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

**Material Incorporated by Reference**

(g) You must use Cirrus Service Bulletin No. SB 2X–27–14 R3, Revised: October 10, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Cirrus Design Corporation, 4515 Taylor Circle, Duluth, Minnesota 55811; telephone: (218) 727–2737; internet address: *www.cirrusdesign.com*.

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

Issued in Kansas City, Missouri, on January 29, 2008.

**John Colomy,**

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

[FR Doc. E8–2044 Filed 2–4–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–0294 Directorate Identifier 2007–CE–087–AD; Amendment 39–15365; AD 2008–03–14]**

**RIN 2120–AA64**

## Airworthiness Directives; Piaggio Aero Industries S.p.A. Model P 180 Airplanes

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

**ACTION:** Final rule.

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

Due to pressurization loads, the fuselage frame of the emergency exit door could suffer from fatigue and develop cracks in its corners. The superseded Italian Airworthiness Directive (AD) 1995–059 was issued to require modification of the emergency door frame in accordance with Piaggio (at the time I.A.M. Rinaldo Piaggio S.p.A.) Service Bulletin 80–0057 original issue. Parts necessary to carry out the modification were a new door pan assembly and a doubler; Since these parts are no longer available, Piaggio Aero Industries S.p.A. (PAI) designed new suitable part numbers introduced by Revision 1 of Service Bulletin 80–0057. The present AD mandates modification of the fuselage emergency door frame in accordance with Revision 1 of Service Bulletin 80–0057 from PAI.

We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective March 11, 2008.

**ADDRESSES:** You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4145; *fax:* (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 14, 2007 (72 FR 71089). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Due to pressurization loads, the fuselage frame of the emergency exit door could suffer from fatigue and develop cracks in its corners. The superseded Italian Airworthiness Directive (AD) 1995–059 was issued to require modification of the emergency door frame in accordance with Piaggio (at the time I.A.M. Rinaldo Piaggio S.p.A.) Service Bulletin 80–0057 original issue. Parts necessary to carry out the modification were a new door pan assembly and a doubler; Since these parts are no longer available, Piaggio Aero Industries S.p.A. (PAI) designed new suitable part numbers introduced by Revision 1 of Service Bulletin 80–0057. The present AD mandates modification of the fuselage emergency door frame in accordance with Revision 1 of Service Bulletin 80–0057 from PAI.

We are issuing this AD to require actions to correct the unsafe condition on these products.

### Comments

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

### Conclusion

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

### Differences Between This AD and the MCAI or Service Information

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

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

### Costs of Compliance

We estimate that this AD will affect 31 products of U.S. registry. We also estimate that it will take about 70 work-hours per product to comply with basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $14,105 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $610,855 or $19,705 per product.

### Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that

section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

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

For the reasons discussed above, I certify this AD:

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

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

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

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

**Examining the AD Docket**

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2008–03–14 Piaggio Aero Industries S.p.A.:** Amendment 39–15365; Docket No. FAA–2007–0294; Directorate Identifier 2007–CE–087–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective March 11, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to PIAGGIO P–180 airplanes, manufacturer serial numbers (MSN) 1001, 1002, 1004, and MSN 1006 through 1033, that:

(1) are certificated in any category; and

(2) have not been modified in accordance with Piaggio Aero Industries Service Bulletin No. 80–0057, dated February 7, 1995.

**Subject**

(d) Air Transport Association of America (ATA) Code 53: Fuselage.

**Reason**

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

Due to pressurization loads, the fuselage frame of the emergency exit door could suffer from fatigue and develop cracks in its corners. The superseded Italian Airworthiness Directive (AD) 1995–059 was issued to require modification of the emergency door frame in accordance with Piaggio (at the time I.A.M. Rinaldo Piaggio S.p.A.) Service Bulletin 80–0057 original issue. Parts necessary to carry out the modification were a new door pan assembly and a doubler; Since these parts are no longer available, Piaggio Aero Industries S.p.A. (PAI) designed new suitable part numbers introduced by Revision 1 of Service Bulletin 80–0057. The present AD mandates modification of the fuselage emergency door frame in accordance with Revision 1 of Service Bulletin 80–0057 from PAI.

The MCAI requires the modification of the fuselage frame of the emergency door, using the newly designed door pan assembly and doubler, following Piaggio Aero Industries S.p.A. SB 80–0057, Revision 1, dated May 31, 2007.

**Actions and Compliance**

(f) Unless already done, replace the emergency exit door pan assembly part number (P/N) 80–111152–401 with a new door pan assembly P/N 80–111152–405, and a new doubler reinforcement P/N 80–111604–001, following Piaggio Aero Industries S.p.A. Mandatory Service Bulletin N.: 80–0057, Revision 1, dated May 31, 2007, at whichever of the following occurs later:

(1) When the airplane reaches 4,500 hours total time-in-service (TIS); or

(2) Within 6 months after March 11, 2008 (the effective date of this AD) or 500 hours TIS after March 11, 2008 (the effective date of this AD), whichever of these occurs first.

**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, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *ATTN:* Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4145; *fax:* (816) 329–4090. 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 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

**Material Incorporated by Reference**

(h) You must use Piaggio Aero Industries S.p.A. Mandatory Service Bulletin N.: 80–0057, Revision 1, dated May 31, 2007 to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Piaggio Aero Industries S.p.a., Via Cibrario, 4—16154 Genoa, Italy; telephone +39 010 06481 741; *fax:* +39 010 6481 309; e-mail: *MMicheli@piaggioaero.it.*

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on January 29, 2008.

**John Colomy,**

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

[FR Doc. E8–2040 Filed 2–4–08; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Parts 742, 744, 748 and 774**

**[Docket No. 070105004–7809–02]**

**RIN 0694 AD95**

## December 2006 Wassenaar Arrangement Plenary Agreement Implementation: Categories 1, 3, 6, and 7 of the Commerce Control List; Wassenaar Reporting Requirements

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule; correction.

**SUMMARY:** On November 5, 2007, the Bureau of Industry and Security published a final rule that amended the Export Administration Regulations (EAR) to implement the agreement reached at the December 2006 plenary meeting of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. The November 5 final rule contained errors in Parts 742 and 744, and Categories 1, 3, 6 and 7 on the Commerce Control List. This rule corrects those errors.

In addition, the November 5th rule indirectly affected an item of the list of eligible items for Authorized Validated End-User (VEU) Applied Materials China, Ltd. This rule corrects that item listing to harmonize with revisions of the November 5th rule.

**DATES:** Effective Date: This rule is effective February 5, 2008.

**FOR FURTHER INFORMATION CONTACT:** For questions of a general nature contact Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce at (202) 482–2440 or E-mail: *scook@bis.doc.gov.*

For questions of a technical nature contact:

*Category 1*: Bob Teer 202–482–4749

*Category 3*: Brian Baker 202–482–5534

*Category 6*: Chris Costanzo 202–482–0718 and Mark Jaso 202–482–0987

Comments regarding the collections of information associated with this rule, including suggestions for reducing the burden, should be sent to OMB Desk Officer, New Executive Office Building, Washington, DC 20503, Attention: David Rostker; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION**

**Background**

This document corrects errors contained in the Bureau of Industry and Security (BIS) final rule published in the **Federal Register** on November 5, 2007 (72 FR 62524). Specifically, this rule corrects sections of the EAR as set forth below.

**Part 742**

• Section 742.6 is amended by adding the phrase ''(except 6A002.a.3.d.a.2 and 6A002.a.3.e for lead selenide focal plane arrays)'' after 6A002.a.3 in paragraph (a)(1) to reflect the change in RS controls in Export Control Classification Number (ECCN) 6A002 that was published on November 5, 2007.

**Part 744**

• Section 744.17 is amended by revising the reference in the first sentence to ''Part 42'' to read ''Part 742'' to fix the typographical error.

**Category 1**

• ECCN 1A002 is amended to fix a typographical error by revising the phrase ''structures of laminates'' to read ''structures or laminates'' in the last note in the items paragraph of the List of Items Controlled section.

**Category 3**

• ECCN 3A001 is amended by revising the abbreviation ''TWAS'' to read ''TWTAs'' in the GBS paragraph of the License Exception section to fix that typographical error.

**Category 6**

• ECCN 6A004 is amended by replacing the double quotes with single quotes around the term 'aspheric optical element' in the Related Definitions paragraph of the List of Items Controlled section of ECCN 6A004, because single quotes signify a local definition found in the ECCN as opposed to a definition that is located in Part 772.

• ECCN 6A005 is amended by:

a. Removing the reference to a.4 in the NP control paragraph of the License Requirements section, because the equipment in this paragraph is not controlled for nuclear non-proliferation;

b. Revising the phrase ''6A005.c.1.b and 6A005.c.2.b'' to read ''6A005.c.1.b or 6A005.c.2.b'' in paragraphs h and i of the License Requirement Note; and

c. Revising the GBS and CIV paragraphs in the License Exception section of ECCN 6A005 (lasers);

*Rationale: The license exception language under the recently revised ECCN 6A005 does not represent the intent of the agencies involved in the revisions for ECCN 6A005. The intent was for the items described under the revised license exception language to match the descriptions under the earlier version. The license exception language for License Exceptions GBS and CIV under the previous ECCN 6A005 allowed only certain dye, liquid, CO and CO2, and neodymium lasers to be eligible for these exceptions. The license exception language under the recently revised ECCN 6A005 allows all lasers and components, with the exception of NP controlled items, to be eligible for GBS and CIV exceptions. Implementing controls for fiber lasers was a significant part of the 2006 Wassenaar revisions to 6A005. An unintended consequence of the language published on November 5, 2007 permitted these lasers to be eligible for License Exceptions GBS and CIV.*

• ECCN 6A995 is amended by:

a. Revising the numbering of the paragraphs in 6A995.d.1, because these paragraphs were mis-numbered; and

b. Revising the average output power from ''500 W'' to ''50 W'' in 6A995.e.1.b to maintain the anti-terrorism controls on lasers that were controlled in 6A005.c.2.c.3.b.2 prior to the November 2007 rule.

• ECCN 6E201 is amended by revising the heading to:

a. Remove the phrase ''not controlled by 6E001 or 6E002'', because 6E001 controls development technology and 6E002 controls production technology, and therefore, the phrase is not necessary in 6E201, which controls use technology; and

b. Remove the reference to 6A005.a.4, because it is not controlled for nuclear non-proliferation reasons.

**Category 7**

• ECCN 7A101 is amended by replacing the word ''therefore'' with ''therefor'' in the heading.

• ECCNs 7D001 and 7D003 are amended by revising the MT paragraph in the License Requirements section to replace the text ''MT applies to entire entry except 7A008'' with ''MT applies to ''software'' for equipment controlled for MT reasons. MT does not apply to ''software'' for equipment controlled by 7A008''. This amendment clarifies that the MT controls for these ECCNs only apply to equipment controlled for MT reasons and do not apply to software for equipment controlled by 7A008.

• ECCNs 7E001 and 7E002 are amended by revising the MT paragraph in the License Requirements section to replace the text ''MT applies to entire entry except 7A008'' with ''MT applies to ''technology'' for equipment controlled for MT reasons. MT does not apply to ''technology'' for equipment controlled by 7A008''. This amendment clarifies that the MT controls for these

ECCNs only apply to equipment controlled for MT reasons and do not apply to technology for equipment controlled by 7A008.

**Supplement No. 7 to Part 748 ''Authorization Validated End-User (VEU): List of Validated End-Users, Respective Items Eligible for Export, Reexport and Transfer, and Eligible Destinations''**

The November 5th Wassenaar implementation rule redesignated 3B001.f.2 as 3B001.f.3. Therefore, this rule replaces the listing of ''3B001.f.2'' with ''3B001.f.3'' for Applied Materials China, Ltd in Supplement No 7 to Part 748.

**Saving Clause**

Shipments of items removed from license exception eligibility or eligibility for export without a license as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on February 5, 2008, pursuant to actual orders for export to a foreign destination, may proceed to that destination under the previous license exception eligibility or without a license so long as they have been exported from the United States before April 7, 2008. Any such items not actually exported before midnight, on April 7, 2008, require a license in accordance with this regulation.

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

**Rulemaking Requirements**

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves two collections of information subject to the PRA. One of the collections has been approved by OMB under control number 0694 0088, ''Multi Purpose Application,'' and carries a burden hour estimate of 58 minutes for a manual or electronic submission. The other of the collections has been approved by OMB under control number 0694 0106, ''Reporting and Recordkeeping Requirements under the Wassenaar Arrangement,'' and carries a burden hour estimate of 21 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6622, Washington, DC 20230.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, 14th & Pennsylvania Ave., NW., Room 2705, Washington, DC 20230.

**List of Subjects**

*15 CFR Part 742*

Exports, Terrorism.

*15 CFR Part 744*

Exports, Reporting and recordkeeping requirements, Terrorism.

*15 CFR Part 748*

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

*15 CFR Part 774*

Exports, Reporting and recordkeeping requirements.

■ Accordingly, Parts 742, 744, 748 and 774 of the Export Administration Regulations (15 CFR Parts 730–774) are amended as follows:

## PART 742—[AMENDED]

■ 1. The authority citation for part 742 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401, *et seq.*; 50 U.S.C. 1701, *et seq.*; 22 U.S.C. 3201, *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of October 27, 2006, 71 FR 64109 (October 31, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 2. Section 742.6 is amended by revising paragraph (a)(1) to read as follows:

**§ 742.6 Regional stability.**

(a) * * *

(1) As indicated in the CCL and in RS Column 1 of the Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to all destinations, except Canada, for items described on the CCL under ECCNs 6A002.a.1, a.2, a.3, .c, or .e; 6A003.b.3 and b.4; 6A008.j.1; 6A998.b; 6D001 (only ''software'' for the ''development'' or ''production'' of items in 6A002.a.1, a.2, a.3 (except 6A002.a.3.d.a.2 and 6A002.a.3.e for lead selenide focal plane arrays), .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D002 (only ''software'' for the ''use'' of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D991 (only ''software'' for the ''development,'' ''production,'' or ''use'' of equipment controlled by 6A002.e or 6A998.b); 6E001 (only ''technology'' for ''development'' of items in 6A002.a.1, a.2, a.3, and .c or .e, 6A003.b.3 and b.4, or 6A008.j.1); 6E002 (only ''technology'' for ''production'' of items in 6A002.a.1, a.2, a.3, .c, or .e, 6A003.b.3 or b.4, or 6A008.j.1); 6E991 (only ''technology'' for the ''development,'' ''production,'' or ''use'' of equipment controlled by 6A998.b); 7D001 (only ''software'' for ''development'' or ''production'' of items in 7A001, 7A002, or 7A003); 7E001 (only ''technology'' for the ''development'' of inertial navigation systems, inertial equipment, and specially designed components therefor

for civil aircraft); 7E002 (only ''technology'' for the ''production'' of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E101 (only ''technology'' for the ''use'' of inertial navigation systems, inertial equipment, and specially designed components for civil aircraft).

* * * * *

## PART 744—[AMENDED]

■ 3. The authority citation for part 744 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401, *et seq.*; 50 U.S.C. 1701, *et seq.*; 22 U.S.C. 3201, *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of October 27, 2006, 71 FR 64109 (October 31, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 4. Section 744.17 is amended by revising the reference ''Part 42'' to read ''Part 742'' in paragraph (a).

## PART 748—[AMENDED]

■ 5. The authority citation for part 748 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401, *et seq.*; 50 U.S.C. 1701, *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 6. Supplement No. 7 to part 748 is amended by removing the reference to ''3B001.f.2'' and adding in its place ''3B001.f.3'' in the Eligible Items (By ECCN) column for Applied Materials China, Ltd.

## PART 774—[AMENDED]

■ 7. The authority citation for part 774 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401, *et seq.*; 50 U.S.C. 1701,ex *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201, *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

**Supplement No. 1 to part 774—Commerce Control List [AMENDED]**

■ 8. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1 Materials, Chemicals, Microorganisms, and Toxins, Export Control Classification Number (ECCN) 1A002 is amended by revising the phrase ''structures of laminates'' to read ''structures or laminates'' in the last Note appearing in the ''items'' paragraph in the List of Items Controlled section.

■ 9. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3 Electronics, Export Control Classification Number (ECCN) 3A001 is amended by removing the abbreviation ''TWAS'' and adding in its place ''TWTAs'' in the GBS paragraph of the License Exceptions section.

■ 10. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6 Sensors, Export Control Classification Number (ECCN) 6A004 is amended by removing the double quotes and adding in their place single quotes around the term ''aspheric optical element'' in the Related Controls paragraph and the Related Definitions paragraph of the List of Items controlled section.

■ 11. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6 Sensors, Export Control Classification Number (ECCN) 6A005 is amended by:

■ a. Removing ''a.4'' from the list of references in the NP paragraph of the License Requirements section;

■ b. Revising the phrase ''6A005.c.1.b and 6A005.c.2.b'' to read ''6A005.c.1.b or 6A005.c.2.b'' in paragraphs (h) and (i) of the License Requirement Note; and

■ c. Revising the GBS and CIV paragraphs in the License Exception section, to read as follows:

6A005 ''Lasers'' (other than those described in 0B001.g.5 or .h.6), components and optical equipment, as follows (see List of Items Controlled).

* * * * *

License Exceptions

* * * * *

GBS: Neodymium-doped (other than glass) ''lasers'' controlled by 6A005.b.6.c.2 (except 6A005.b.6.c.2.b) that have an output wavelength exceeding 1,000 nm, but not exceeding 1,100 nm, and an average or CW output power not exceeding 2kW, and operate in a pulse-excited, non-''Q-switched'' multiple-transverse mode, or in a continuously excited, multiple-transverse mode; Dye and Liquid Lasers controlled by 6A005.c.1 and c.2, except for a pulsed single longitudinal mode oscillator having an average output power exceeding 1 W and a repetition rate exceeding 1 kHz if the ''pulse duration'' is less than 100 ns; CO ''lasers'' controlled by 6A005.d.2 having a CW maximum rated single or multimode output power not exceeding 10 kW; $CO_2$ or $CO/CO_2$ ''lasers'' controlled by 6A005.d.3 having an output wavelength in the range from 9,000 to 11,000 nm and having a pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW; $CO_2$ ''lasers'' controlled by 6A005.d.3 that operate in CW multiple-transverse mode, and having a CW output power not exceeding 15kW; and 6A005.f.1.

CIV: Neodymium-doped (other than glass) ''lasers'' controlled by 6A005.b.6.c.2 (except 6A005.b.6.c.2.b) that have an output wavelength exceeding 1,000 nm, but not exceeding 1,100 nm, and an average or CW output power not exceeding 2kW, and operate in a pulse-excited, non-''Q-switched'' multiple-transverse mode, or in a continuously excited, multiple-transverse mode; Dye and Liquid Lasers controlled by 6A005.c.1 and c.2, except for a pulsed single longitudinal mode oscillator having an average output power exceeding 1 W and a repetition rate exceeding 1 kHz if the ''pulse duration'' is less than 100 ns; CO ''lasers'' controlled by 6A005.d.2 having a CW maximum rated single or multimode output power not exceeding 10 kW; $CO_2$ or $CO/CO_2$ ''lasers'' controlled by 6A005.d.3 having an output wavelength in the range from 9,000 to 11,000 nm and having a pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW; $CO_2$ ''lasers'' controlled by 6A005.d.3 that operate in CW multiple-transverse mode, and having a CW output power not exceeding 15kW; and 6A005.f.1.

* * * * *

■ 12. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6 Sensors, Export Control Classification Number (ECCN) 6A995 is amended by:

■ a. Revising paragraph d.1.a in the items paragraph of the List of Items Controlled section, to read as set forth below; and

■ b. Revising the average output power from ''500 W'' to read ''50 W'' in 6A995.e.1.b.

6A995 ''Lasers'', not controlled by 0B001.g.5, 0B001.h.6, 6A005 or 6A205.

* * * * *

List of Items Controlled

* * * * *

*Items:*

* * * * *

d. * * *

d.1. * * *

d.1.a. A single transverse mode output and having any of the following:

d.1.a.1. A 'wall-plug efficiency' exceeding 12% and an ''average output power'' exceeding 10W and capable of operating at a pulse repetition frequency greater than 1kHz; *or*

d.1.a.2. An ''average output power'' exceeding 20W; *or*

* * * * *

■ 13. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6 Sensors, Export Control Classification

Number (ECCN) 6E201 is amended by revising the heading to read as follows:

6E201 ''Technology'' according to the General Technology Note for the ''use'' of equipment controlled by 6A003.a.2. 6A003.a.3, 6A003.a.4; 6A005.a.2, 6A005.b.2.b, 6A005.b.3.a, 6A005.b.4.b, 6A005.b.6.b, 6A005.c.1.b, 6A005.c.2.b, 6A005.d.3.c, or 6A005.d.4.c (as described in the license requirement note to 6A005); 6A202, 6A203, 6A205, 6A225 or 6A226.

* * * * *

■ 14. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 7 Navigation and Avionics, Export Control Classification Number (ECCN) 7A101 is amended by removing the word ''therefore'' and adding in its place ''therefor'' in the heading.

■ 15. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 7 Navigation and Avionics, Export Control Classification Number (ECCN) 7D001 is amended by revising the MT paragraph of the License Requirements section, to read as follows:

7D001 ''Software'' specially designed or modified for the ''development'' or ''production'' of equipment controlled by 7A (except 7A994) or 7B (except 7B994).

License Requirements

* * * * *

| *Control(s)* | *Country Chart* |
|---|---|
| * * * * * * * | |
| MT applies to ''software'' for equipment controlled for MT reasons. MT does not apply to ''software'' for equipment controlled by 7A008. | MT Column 1. |
| * * * * * * * | |

■ 16. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 7 Navigation and Avionics, Export Control Classification Number (ECCN) 7D003 is amended by revising the MT paragraph of the License Requirements section, to read as follows:

7D003 Other ''software'', as follows (see List of Items Controlled).

License Requirements

* * * * *

| *Control(s)* | *Country chart* |
|---|---|
| * * * * * * * | |
| MT applies to ''software'' for equipment controlled for MT reasons. MT does not apply to ''software'' for equipment controlled by 7A008. | MT Column 1. |
| * * * * * * * | |

■ 17. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 7 Navigation and Avionics, Export Control Classification Number (ECCN) 7E001 is amended by revising the MT paragraph in the License Requirements section to read as follows:

7E001 ''Technology'' according to the General Technology Note for the ''development'' of equipment or ''software'' controlled by 7A (except 7A994), 7B (except 7B994) or 7D (except 7D994).

License Requirements

* * * * *

| *Control(s)* | *Country chart* |
|---|---|
| * * * * * * * | |
| MT applies to ''technology'' for equipment controlled for MT reasons. MT does not apply to ''technology'' for equipment controlled by 7A008. | MT Column 1. |
| * * * * * * * | |

■ 18. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 7 Navigation and Avionics, Export Control Classification Number (ECCN) 7E002 is amended by revising the MT paragraph in the License Requirements section, to read as follows:

7E002 ''Technology'' according to the General Technology Note for the ''production'' of equipment controlled by 7A (except 7A994) or 7B (except 7B994).

License Requirements

* * * * *

| *Control(s)* | *Country chart* |
|---|---|
| * * * * * * * | |
| MT applies to ''technology'' for equipment controlled for MT reasons. MT does not apply to ''technology'' for equipment controlled by 7A008. | MT Column 1. |
| * * * * * * * | |

**Eileen M. Albanese,**

*Director for Office of Exporter Services.*

[FR Doc. 08–480 Filed 2–4–08; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 520

### Oral Dosage Form New Animal Drugs; Spectinomycin

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to correct an error in the indications for use for spectinomycin oral solution in swine. FDA is also amending the regulations for other oral dosage forms of spectinomycin to reflect a current format. These actions are being taken to improve the accuracy and readability of the animal drug regulations.

**DATES:** This rule is effective February 5, 2008.

**FOR FURTHER INFORMATION CONTACT:** George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, e-mail: *george.haibel@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** FDA has noticed that the animal drug regulations do not reflect the approved indications for use for spectinomycin oral solution in swine. At this time, FDA is amending the animal drug regulations in § 520.2123c (21 CFR 520.2123c) to correct this error. FDA is also amending the regulations in § 520.2123a for spectinomycin tablets and in § 520.2123b for spectinomycin powder to reflect a current format. These actions are being taken to improve the accuracy and readability of the animal drug regulations.

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 the 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.

■ 2. Revise § 520.2123 to read as follows:

**§ 520.2123 Spectinomycin oral dosage forms.**

■ 3. Revise § 520.2123a to read as follows:

**§ 520.2123a Spectinomycin tablets.**

(a) *Specifications.* Each tablet contains spectinomycin dihydrochloride pentahydrate equivalent to 100 milligrams (mg) spectinomycin.

(b) *Sponsor.* See No. 061623 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Administer orally to provide 10 mg per pound (lb) of body weight twice daily. Dosage may be continued for 4 consecutive days.

(2) *Indications for use.* For the treatment of infectious diarrhea and gastroenteritis caused by organisms susceptible to spectinomycin.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 4. Revise § 520.2123b to read as follows:

**§ 520.2123b Spectinomycin powder.**

(a) *Specifications.* Each gram (g) of powder contains spectinomycin dihydrochloride pentahydrate equivalent to 0.5 g spectinomycin.

(b) *Sponsor.* See No. 061623 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.600 of this chapter.

(d) *Conditions of use in chickens.* It is administered in the drinking water of growing chickens as follows:

(1) *Indications for use and amounts*—(i) For increased rate of weight gain and improved feed efficiency in broiler chickens, administer 0.5 g per gallon of water as the only source of drinking water for the first 3 days of life and for 1 day following each vaccination.

(ii) As an aid in controlling infectious synovitis due to *Mycoplasma synoviae* in broiler chickens, administer 1 g per gallon of water as the only source of drinking water for the first 3 to 5 days of life.

(iii) As an aid in the prevention or control of losses due to CRD associated with *M. gallisepticum* (PPLO) in growing chickens, administer 2 g per gallon of water as the only source of drinking water for the first 3 days of life and for 1 day following each vaccination.

(2) *Limitations.* Do not administer to laying chickens. Do not administer within 5 days of slaughter.

■ 5. Revise § 520.2123c to read as follows:

**§ 520.2123c Spectinomycin solution.**

(a) *Specifications.* Each milliliter of solution contains spectinomycin dihydrochloride pentahydrate equivalent to 50 milligrams (mg) spectinomycin.

(b) *Sponsors.* See Nos. 000856, 059130, and 061623 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.600 of this chapter.

(d) *Conditions of use in swine*—(1) *Amount.* Administer 5 mg per pound (lb) of body weight orally twice daily for 3 to 5 days.

(2) *Indications for use.* For the treatment and control of porcine enteric colibacillosis (scours) caused by *E. coli* susceptible to spectinomycin in pigs under 4 weeks of age.

(3) *Limitations.* Do not administer to pigs over 15 lb body weight or over 4 weeks of age. Do not administer within 21 days of slaughter.

Dated: January 24, 2008.

**Bernadette Dunham,**

*Director, Center for Veterinary Medicine.*

[FR Doc. E8–2065 Filed 2–4–08; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 110

**[Docket No. USCG–2007–0036, formerly CGD07–122]**

**RIN 1625–AA01**

### Anchorage Regulation; Port Everglades, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard amends the anchorage regulations for Port Everglades, Florida. The amendment modifies the current anchorage area by eliminating that portion of the anchorage closest to sensitive coral reef areas, expands that portion of the anchorage area that poses less risk to these areas, and limits the amount of time a vessel may remain in the anchorage area. These changes ensure

all vessels have fair access to the anchorage area, and provide a higher degree of vessel and environmental safety by reducing the possibility of vessels grounding in sensitive coral reef areas.

**DATES:** This rule is effective March 6, 2008.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [USCG–2007–0036, formerly CGD07–122] and are available for inspection or copying at United States Coast Guard Sector Miami, 100 MacArthur Causeway, Miami Beach, Florida between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LTJG Chris Svencer, United States Coast Guard Sector Miami Waterways Management at 305–535–4550.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On October 22, 2007, we published a notice of proposed rulemaking (NPRM) entitled Anchorage Regulation; Port Everglades, FL in the **Federal Register** (72 FR 59491). We received 10 letters commenting on the proposed rule. No public meeting was requested, and none was held.

**Background and Purpose**

During the last ten (10) years, nine (9) known vessel groundings and six (6) known vessel anchor mishaps have occurred during attempted or actual use of the Port Everglades anchorage areas. Anchoring mishaps include both misplacement of the anchor itself and/or laying of the anchor chain on the sensitive coral reefs. The east coast of Florida is susceptible to severe and erratic weather, and mariners who are not vigilant can find themselves in extreme situations. Adverse weather conditions, proximity to the reef, congestion in the anchorage, poor navigation and seamanship were contributing factors to the groundings and anchoring mishaps in the Port Everglades anchorage and surrounding vicinity. The current anchorage regulation is published in 33 CFR 110.186. This rule is needed to strengthen existing anchoring requirements and guidelines in order to provide a higher degree of protection to the coastal area and sensitive benthic coral reef ecosystems, as well as to provide a safer anchorage for mariners. This rule re-designates the anchorage areas to account for anchor position and chain lay and limit the amount of time vessels may remain at anchorage. The Coast Guard has also researched alternative solutions for restructuring the anchorage. These alternatives have included: change nothing and continue to use the current anchorage; create anchorage circles to control the location of vessels in the anchorage; and remove the anchorage completely. The groundings and anchor mishaps have had a negative impact on the sensitive coral reefs and prompts the Coast Guard to alter the current anchorage area. Creating anchorage circles for precision anchorage does not eliminate the threat to the local reefs due to changing weather conditions that may cause vessels, even if properly anchored, to drag over the coral reefs to the west. Lastly, while removing the anchorage altogether would arguably be best for the environment, this option is not economically feasible due to the legitimate need for commercial vessels to anchor while awaiting berth in Port Everglades.

**Discussion of Comments and Changes**

On October 22, 2007 the Coast Guard published a notice of proposed rulemaking (NPRM) that proposed changing the location of the commercial anchorage located offshore from Port Everglades in Fort Lauderdale, Florida. Ten letters were received in response to the NPRM. All ten letters were in favor of moving the anchorage into deeper waters to protect the environment. Within the ten letters there were numerous different comments addressing the new location of the anchorage.

Three comments addressed moving the anchorage either farther to the south or farther offshore from the Port Everglades main ship channel. Both of these options were extensively explored by the Harbor Safety Committee. Due to a restricted area designated by 33 CFR 334.580, the area south of Port Everglades does not permit anchoring of vessels. This area is immediately south of the main ship channel entrance and continues south for approximately 4 nautical miles. Moving the anchorage further offshore than proposed by this rule creates a potentially untenable and even dangerous situation for many commercial vessels awaiting berths in Port Everglades. The further the vessels are offshore the deeper the water they must anchor in. Beyond the reasonable depth that the revised anchorage proposes, many of the commercial vessels calling on Port Everglades will have insufficient anchor chain to properly scope to the standard 5 to 7 times the water depth to provide sufficient holding, thus presenting a risk to the reefs, other vessels in the anchorage, and even the vessel deploying their anchor.

Two comments addressed installing a mooring buoy system for vessels in the anchorage. The installation of mooring buoys is extremely costly and once installed require continual maintenance to be effective. One of the comments also addressed funding the buoys by taxing each vessel that uses the port. This option was reviewed and considered by the Harbor Safety Committee but was not a viable option. At this time the committee is unaware of any federal, state, or local government agency willing to authorize, fund, and maintain the mooring buoys. If at a later time a single or joint entity would fund this project, the Harbor Safety Committee would readdress this issue at that time. The solution to move the anchorage offshore to its new location is a step in the right direction to ensure the safety of our reefs and shores.

Another comment addressed better educating mariners regarding the location of the sensitive reefs in the area. In cooperation with the anchorage relocation, the National Oceanic and Atmospheric Administration has added ''Co'', the charting designation for a coral bottom, on all charts that depict the area offshore of Fort Lauderdale. This in coordination with increased information in the Coast Pilot will assist mariners in understanding the location of reefs in the area.

**Regulatory Evaluation**

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

**Small Entities**

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

This rule may affect the following entities, some of which might be small entities: The owners or operators of vessels intending to utilize the anchorage area outside Port Everglades, Florida. This rule will not have a

significant economic impact on a substantial number of small entities for the same reasons given above in the ''Regulatory Evaluation'' section of this preamble.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If this rule affects your small business, organization, or governmental jurisdiction and you have questions concerning compliance, please contact Lieutenant Junior Grade Chris Svencer, Coast Guard Sector Miami, Waterways Management Division at (305) 535–4550. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation.

Under figure 2–1, paragraph (34)(f), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Even though a categorical exclusion may be used the Coast Guard found good reason to further investigate the effects the anchorage area modification would have on the environment. A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**. Furthermore, as part of section 7 of the Endangered Species Act (50 CFR part 402, 16 U.S.C. 1536), the U.S. Coast Guard opened consultation with a number of stakeholders. The National Oceanic and Atmospheric Administration (NOAA), the National Marine Fisheries Service (NMFS), and U.S. Fish and Wildlife Service (FWS) have reviewed all restructuring plans and believe the proposed action would not likely affect the West Indian Manatee, Johnson's Seagrass, Smalltooth Sawfish, and all local turtle species because the project does not have any elements with the potential to affect these listed species. NOAA also found that the restructuring into deeper waters, farther away from the easternmost reef, is likely to have an indirect beneficial effect on Elkhorn and Staghorn coral by potentially reducing vessel groundings and anchor damage that have adversely affected corals and other important near shore benthic resources in the project area.

**List of Subjects in 33 CFR Part 110**

Anchorage grounds.

**Words of Issuance and Regulatory Text**

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

## PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071,; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 110.186 by revising paragraphs (a), (b)(3) through (6), and adding paragraphs (b)(7) through (9) to read as follows:

**§ 110.186 Port Everglades, Florida.**

(a) The anchorage grounds. The anchorage grounds, the center of which is located approximately two and one half miles northeast of the entrance to Port Everglades, is an area bounded by a line connecting points with the following North American Datum 83 coordinates:

| Latitude | Longitude |
|---|---|
| 26–08′26.934″ N ..... | 080–04′28.240″ W |
| 26–08′08.560″ N ..... | 080–04′16.158″ W |
| 26–07′56.000″ N ..... | 080–04′17.486″ W |
| 26–07′56.000″ N ..... | 080–02′42.623″ W |
| 26–07′19.500″ N ..... | 080–02′53.153″ W |
| 26–07′19.500″ N ..... | 080–04′28.800″ W |
| 26–06′35.160″ N ..... | 080–04′28.800″ W |
| 26–06′35.160″ N ..... | 080–04′38.694″ W |
| 26–08′26.934″ N ..... | 080–04′28.240″ W |

(b) * * *

(3) All vessels within the designated anchorage area shall maintain a 24-hour bridge watch by a licensed deck officer proficient in English, monitoring VHF–FM channel 16. This individual shall confirm that the ship's crew performs frequent checks of the vessel's position to ensure the vessel is not dragging anchor.

(4) Vessels may anchor anywhere within the designated anchorage area provided that: such anchoring does not interfere with the operations of any other vessels currently at anchorage; and all anchor and chain or cable is positioned in such a manner to preclude dragging over reefs.

(5) No vessel may anchor in a ''dead ship'' status (*i.e.* propulsion or control unavailable for normal operations) without the prior approval of the Captain of the Port. Vessels experiencing casualties such as a main propulsion, main steering or anchoring equipment malfunction or which are planning to perform main propulsion engine repairs or maintenance, shall immediately notify the Coast Guard Captain of the Port via Coast Guard Sector Miami on VHF–FM Channel 16.

(6) No vessel may anchor within the designated anchorage for more than 72 hours without the prior approval of the Captain of the Port. To obtain this approval, contact the Coast Guard Captain of the Port, via the Port Everglades Harbor Master, on VHF–FM Channel 14.

(7) The Coast Guard Captain of the Port may close the anchorage area and direct vessels to depart the anchorage during periods of adverse weather or at other times as deemed necessary in the interest of port safety or security.

(8) Commercial vessels anchoring under emergency circumstances outside the anchorage area shall shift to new positions within the anchorage area immediately after the emergency ceases.

(9) Whenever the maritime or commercial interests of the United States so require, the Captain of the Port, U.S. Coast Guard, Miami, Florida, may direct relocation of any vessel anchored within the anchorage area. Once directed, such vessel must get underway at once or signal for a tug, and must change position as directed.

Dated: January 10, 2008.

**D.W. Kunkel,**

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

[FR Doc. E8–1757 Filed 2–4–08; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2008–0013]**

**RIN 1625–AA87**

## Security Zone; MacDill Air Force Base, Tampa Bay, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Coast Guard is establishing a security zone that is concurrent with the Army Corps of Engineers restricted area adjacent to MacDill Air Force Base. The security zone is necessary to facilitate security operations conducted at the Air Force Base. All persons, vessels, or other craft are prohibited from anchoring, mooring, drifting, or transiting within this zone, unless authorized by the Captain of the Port St. Petersburg or a designated representative.

**DATES:** This interim rule is effective February 5, 2008. Comments and related material must reach the Docket Management Facility on or before April 7, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2008–0013 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov*.

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Waterways Management Division, Sector St. Petersburg, FL (813) 228–2191, Ext 8307. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

**Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

**Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0013), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have

questions regarding your submission. For example, we may ask you to resubmit your comment if we are not able to read your original submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

**Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time, click on ''Search for Dockets,'' and enter the docket number for this rulemaking (USCG-USCG–2008–0013) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Privacy Act**

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov*.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Regulatory Information**

We did not publish a notice of proposed rule making (NPRM) for this rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. It is unnecessary because the purpose of this rule is to reinforce and support an already existing exclusionary area that was previously designated with prohibitions against both person and vessel movements. There are no new restrictions being proposed.

For the same reasons above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**.

**Background and Purpose**

This area is already a designated an exclusionary zone. Under 33 CFR 334.635, the Army Corps of Engineers established a restricted area adjacent to MacDill Air Force Base. The Coast Guard is establishing a security zone that is concurrent with this restricted area to assist in enforcing the prohibition against all persons, vessels, and other craft that may enter, transit, anchor, or drift into this prohibited area. MacDill Air Force base routinely conducts operations and contains infrastructure critical to national security. This security zone is necessary to protect those operations and infrastructure as well as to prevent subversive activities. To more appropriately address the security risks associated with MacDill Air Force Base, as well as to enable agencies to work from a common operating picture and to maximize the synergy of enforcement resources, the Coast Guard is establishing this security zone.

Using the newly developed Maritime Security Risk Analysis tool, a working group comprised of security analysts from local law enforcement agencies, MacDill Operations, industrial partners, and the Coast Guard evaluated the risk to the maritime transportation system (MTS) within Tampa Bay. The results of the risk assessment indicated the need to revisit whether the existing security zones sufficiently provided adequate coverage for implementing counter-surveillance, intrusion detection, and response measures for the port community. This holistic approach determined that additional mechanisms were necessary to address MacDill Air Force Base security risks as well as help mitigate common risk factors across the entire bay. The resulting proposal consists of the existing exclusionary area defined by the Army Corps of Engineers and the establishment of a Coast Guard security zone that coincides with that exclusionary area.

**Discussion of Rule**

The security zone coincides with the Army Corps of Engineers restricted area adjacent to MacDill Air Force Base and includes portions of the waters of Hillsborough Bay, Old Tampa Bay, and Tampa Bay. This area is marked as a prohibited area on navigation charts and is bounded by the following coordinates: latitude 27°51′52.901″ N., longitude 82°29′18.329″ W., thence directly to latitude 27°52′00.672″ N., longitude 82°28′51.196″ W., thence directly to latitude 27°51′28.859″ N., longitude 82°28′10.412″ W., thence directly to latitude 27°51′01.067″ N., longitude 2°27′45.355″ W., thence directly to latitude 27°50′43.248″ N., longitude 82°27′36.491″ W., thence directly to latitude 27°50′19.817″ N., longitude 82°27′35.466″ W., thence directly to latitude 27°49′38.865″ N., longitude 82°27′43.642″ W., thence directly to latitude 27°49′20.204″ N., longitude 82°27′47.517″ W., thence directly to latitude 27°49′06.112″ N., longitude 82°27′52.750″ W., thence directly to latitude 27°48′52.791″ N., longitude 82°28′05.943″ W., thence directly to latitude 27°48′45.406″ N., longitude 82°28′32.309″ W., thence directly to latitude 27°48′52.162″ N., longitude 82°29′26.672″ W., thence directly to latitude 27°49′03.600″ N., longitude 82°30′23.629″ W., thence directly to latitude 27°48′44.820″ N., longitude 82°31′10.000″ W., thence directly to latitude 27°49′09.350″ N., longitude 82°32′24.556″ W., thence directly to latitude 27°49′38.620″ N., longitude 82°33′02.444″ W., thence directly to latitude 27°49′56.963″ N., longitude 82°32′45.023″ W., thence directly to latitude 27°50′05.447″ N., longitude 82°32′48.734″ W., thence directly to latitude 27°50′33.715″ N., longitude 82°32′45.220″ W., thence directly to a point on the western shore of the base at latitude 27°50′42.836″ N., longitude 82°32′10.972″ W.

All persons, vessels, or other craft are prohibited from anchoring, mooring, drifting, or transiting within this security zone under § 165.768, unless authorized by the Captain of the Port St. Petersburg or a designated representative. Also, § 334.635 requires that permission from the Commander of the MacDill Air Force Base, Florida, would need to be obtained before entering the Army Corps of Engineers restricted area which covers the same waters.

**Regulatory Evaluation**

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

Budget has not reviewed it under that Order. This area has already been designated as an exclusionary zone. The impact on routine navigation is expected to be minimal since the geographic boundaries of this security zone are the same as the Army Corps of Engineers restricted area.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule should not impact any entities due to the restricted nature of the waters surrounding MacDill Air Force Base. This security zone will not have a significant economic impact on a substantial number of small entities since vessel traffic in this area is already prohibited.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Comments submitted in response to this finding will be evaluated under the criteria in the ''Regulatory Information'' section of this preamble.

**Assistance for Small Entities**

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

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation. This rule seeks to establish a security zone. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the

docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

**Words of Issuance and Regulatory Text**

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—SAFETY ZONES AND SECURITY ZONES

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new § 165.768 is added to read as follows:

**§ 165.768 Security Zone; MacDill Air Force Base, Tampa Bay, FL.**

(a) *Location.* The following area is a security zone which exists concurrent with an Army Corps of Engineers restricted area in § 334.635 of this title. All waters within Tampa Bay, Florida in the vicinity of MacDill Air Force Base, including portions of the waters of Hillsborough Bay, Old Tampa Bay, and Tampa Bay, encompassed by a line connecting the following coordinates: latitude 27°51′52.901″ N., longitude 82°29′18.329″ W., thence directly to latitude 27°52′00.672″ N., longitude 82°28′51.196″ W., thence directly to latitude 27°51′28.859″ N., longitude 82°28′10.412″ W., thence directly to latitude 27°51′01.067″ N., longitude 2°27′45.355″ W., thence directly to latitude 27°50′43.248″ N., longitude 82°27′36.491″ W., thence directly to latitude 27°50′19.817″ N., longitude 82°27′35.466″ W., thence directly to latitude 27°49′38.865″ N., longitude 82°27′43.642″ W., thence directly to latitude 27°49′20.204″ N., longitude 82°27′47.517″ W., thence directly to latitude 27°49′06.112″ N., longitude 82°27′52.750″ W., thence directly to latitude 27°48′52.791″ N., longitude 82°28′05.943″ W., thence directly to latitude 27°48′45.406″ N., longitude 82°28′32.309″ W., thence directly to latitude 27°48′52.162″ N., longitude 82°29′26.672″ W., thence directly to latitude 27°49′03.600″ N., longitude 82°30′23.629″ W., thence directly to latitude 27°48′44.820″ N., longitude 82°31′10.000″ W., thence directly to latitude 27°49′09.350″ N., longitude 82°32′24.556″ W., thence directly to latitude 27°49′38.620″ N., longitude 82°33′02.444″ W., thence directly to latitude 27°49′56.963″ N., longitude 82°32′45.023″ W., thence directly to latitude 27°50′05.447″ N., longitude 82°32′48.734″ W., thence directly to latitude 27°50′33.715″ N., longitude 82°32′45.220″ W., thence directly to a point on the western shore of the base at latitude 27°50′42.836″ N., longitude 82°32′10.972″ W.

(b) *Definitions.* The following definition applies to this section. *Designated representative* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port St. Petersburg (COTP), in the enforcement of regulated navigation areas, safety zones, and security zones.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into, anchoring, mooring, or transiting this zone by persons or vessels is prohibited without the prior permission of the Coast Guard Captain of the Port St. Petersburg or a designated representative.

Dated: January 16, 2008.

**J.A. Servidio,**

*Captain, U.S. Coast Guard, Captain of the Port Sector St. Petersburg.*

[FR Doc. E8–1765 Filed 2–4–08; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

**[EPA–HQ–SFUND–1983–0002 Notice 4; FRL–8523–7]**

### National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List Update

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final notice of deletion of the Industrial Waste Control Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 6 is publishing a direct final notice of deletion of the Industrial Waste Control Superfund Site (Site), located near Fort Smith, Arkansas from the National Priorities List (NPL). The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR Part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Arkansas, through the Arkansas Department of Environmental Quality (ADEQ), because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

**DATES:** This direct final notice of deletion will be effective April 7, 2008 unless EPA receives adverse comments by March 6, 2008. If adverse comments are received, EPA will publish a timely withdrawal of the direct final notice of deletion in the **Federal Register** informing the public that the deletion will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1983–0002 Notice 4, by one of the following methods:

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

*E-mail: walters.donn@epa.gov.*

*Fax:* 214–665–6660.

*Mail:* Donn Walters, Community Involvement, U.S. EPA Region 6 (6SF–TS), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–6483 or 1–800–533–3508.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–SFUND–1983–0002 Notice 4.

EPA 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, disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will automatically be captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA

cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information disclosure of which 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 at *http://www.regulations.gov* or in hard copy at the information repositories.

*Information Repositories:* Comprehensive information about the Site is available for viewing and copying during central standard time at the Site information repositories located at: U.S. EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, (214) 665–6617, by appointment only Monday through Friday 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m.; Fort Smith Public Library, 3201 Rogers Avenue, Ft. Smith, AR 72903, (479) 783–0229, Monday through Thursday, 9 a.m. to 9 p.m., 9 a.m. to 6 p.m. Friday, 10 a.m. to 5 p.m. Saturday and 1 p.m. to 5 p.m. Sunday, Arkansas Department of Environmental Quality (ADEQ), 5301 Northshore Drive, North Little Rock, Arkansas 72118, (501) 682–0744, Monday through Friday 8 a.m. to 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Shawn Ghose M.S., P.E., Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF–RA), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–6782 or 1–800–533–3508 or *ghose.shawn@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

## I. Introduction

The EPA Region 6 office is publishing this direct final notice of deletion of the Industrial Waste Control Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective April 7, 2008 unless EPA receives adverse comments by March 6, 2008 on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion, and the deletion will not take effect. The EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Industrial Waste Control Superfund Site, and demonstrates how it meets the deletion criteria. Section V discusses EPA actions to delete the Site from the NPL unless adverse comments are received during the public comment period.

## II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a Site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA Section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available that indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

## III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with ADEQ on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) ADEQ concurred with deletion of the Site from the NPL.

(3) Concurrent with publication of this direct final notice of deletion, a notice of availability of the parallel notice of intent to delete published today in the ''Proposed Rules'' section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site, and is being distributed to appropriate federal, state and local government officials and other interested parties. The newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions should future conditions warrant such actions.

## IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting this Site from the NPL.

*Site Location*

The IWC Site is 8 miles southeast of Ft. Smith, in Sebastian County, Arkansas. It is 1 mile west of the town of Jenny Lind and 4.5 miles east of the town of Bonanza. It can be reached by taking Highway 71 approximately 8 miles south of Ft. Smith, turning east on Bonanza Rd. for about one mile then turning south on the second entrance to Racetrack Road. The Site is the eight acre tract of elevated land enclosed within a six foot chain link fence at the south end of the Racetrack Rd loop less than a mile from Bonanza Rd.

*Site History*

The Site is located in a historic coal mining region which dates back to the late 1800's. There is an extensive network of abandoned underground coal mines north of the Site operated from the 1890s through 1932. In the mid-1940's, a surface strip mine was placed in operation at the Site to recover coal which was too shallow to mine by underground methods. The extent of the final narrow strip mine was approximately 40 feet deep and 2,000 feet long. The western half of this strip mine was ultimately converted into a commercial industrial waste landfill in the late 1960s.

A full permit to receive industrial waste at the Site was issued by the Arkansas Department of Pollution Control and Ecology (currently known as the Arkansas Department of Environmental Quality or ADEQ) to GNJ, Inc. on May 24, 1974. In August of 1974 the Site was sold and renamed the Industrial Waste Control Landfill (IWC).

The IWC operations included the landfill and surface impoundments. The facility received waste from industrial plants in and around Ft. Smith. The surface impoundments were constructed sometime in the late summer or early fall of 1975. They were used to store and evaporate liquid wastes received at the Site. Drums were deposited in two isolated drum disposal areas.

In response to ADEQ's directives concerning a surface impoundment release the operator stopped accepting liquid solvents in mid-1977. Closure activities were initiated shortly thereafter. On August 8, 1978 the ADEQ was notified that the landfill had been closed and covered with compacted material and graded to ensure adequate surface drainage.

The EPA initiated investigations at the Site in 1980 in response to an ADEQ 1979 report of a surface impoundment leachate problem. As a result, the IWC site was placed on the NPL on December 30, 1982. The Site *Remedial Action Master Plan* was completed by the EPA on September 30, 1983. The EPA notified potentially responsible parties (PRPs) who organized into the IWC Steering Committee (''the Committee'') in November of 1983. The Committee met with the regulatory agencies in November of 1983 to discuss voluntary remediation and the following studies were undertaken by the EPA and the Committee respectively.

*Remedial Investigation and Feasibility Study (RI/FS)*

The EPA's *Remedial Investigation* (RI) report and *Endangerment Assessment* (EA) were completed on March 31, 1986, and its *Feasibility Study* (FS) was completed on June 3, 1986. The EPA authorized the Committee under an agreed Administrative Order to conduct an independent remedial investigation referred to as the *Hydrological and Waste Quantification Study* (HWQS). The HWQS was conducted from March through July 1987. All field investigation activities conducted by the Committee were overseen by the EPA, and coordinated through the ADEQ. The HWQS report was submitted to the Agencies in October of 1987. A *Supplemental Feasibility Study* and *Supplemental Endangerment Assessment* were prepared by the Committee and submitted to the Agencies in February 1988.

The Endangerment Assessments (EA) were conducted to identify the potential risks to public health and the environment. The general EA conclusions were that the exposure pathways did not present an unacceptable risk; significant concentrations of constituents of concern (COC) had not migrated off site; most COC were non-carcinogens; and without a transport mechanism COC did not present an unacceptable risk to groundwater. The selected response action took these risk factors into account.

The Committee's FS evaluated remedy options and proposed a remedial action plan which included removing the surface impoundments and drum disposal areas, treating soils with constituents of concern above clean up criteria, placement of the treated soils in the surface impoundment excavation, controlling migration and infiltration by installing slurry wall/french drain system, covering the surface with a full RCRA cap and cover, and securing the entire Site within a secure 6 foot chain link fence topped with three barb wire strands and controlling access.

The EPA and the ADEQ determined that the proposed remediation alternative met the mandates of Superfund Amendments and Reauthorization Act (SARA). A press release and a fact sheet summarizing the alternative were distributed to the general local population and interested parties on April 19, 1988. A public meeting was held with the area residents and local officials on May 9, 1988 at the South Sebastian County Courthouse. Written comments and questions were received during the comment period which ended June 2, 1988. The EPA's *Record of Decision* (ROD) was signed on June 28, 1988.

*Record of Decision*

The Record of Decision (ROD) established remediation objectives. The objectives were to remove buried drums in Area C and D and dispose of all liquids in an offsite RCRA facility; treat contaminated soils above clean up criteria from Areas C, D, and 09B to pass the RCRA Toxicity Characteristic Leaching Procedure (TCLP) and solidify the treated soil in the Area C excavation; install a french drain to intercept and divert shallow groundwater around the Site, and a slurry wall to prevent migration of onsite groundwater. Groundwater encountered during remediation excavation was to be collected and treated to meet effluent limitations or mixed with the stabilized soils to meet TCLP limits. Solid and liquid wastes generated during RI were to be characterized and treated and disposed on or offsite as appropriate. A multi-layered RCRA cap was to be constructed to cover the entire site area. A surface drainage ditch was to be constructed on the upgradient side of the RCRA cap to divert surface run-on around the covered Site. Land use restrictions and a security fence were to be put in place to prevent development of the site. Upgradient and downgradient groundwater was to be monitored, and the effectiveness of the remedy was to be verified every five years.

The objectives of the ROD were to be implemented in accordance with the Remedial Action Plan (RAP), which outlined the general conceptual procedures to be followed including preparation of contingency, solid and waste management, health and safety, and QA/QC Plans. The RAP was prepared to comply with all applicable or relevant and appropriate requirements (ARARs) of the Federal, State and local rules and regulations.

*Cleanup Standards*

The remedial action objectives were to minimize the potential for waste migration, protect human health and the environment, prevent future contamination of surface water and groundwater and minimize short-term air emissions resulting from remedial activities.

*Response Actions*

The following actions were conducted in response to the ROD/RAP to minimize the potential risks to the water stored in the mine void reservoir:

Reduce toxicity and volume by excavating soils that exceeded Clean-up Criteria (1000ppm Total VOC) encountered in Areas B, C, D, 09B, and along the Slurry Wall and French Drain pathway and treating the soils using chemical fixation and stabilization to meet treatment standards based on EPA Toxicity Concentration Leachate Procedure (TCLP). The treated soils meeting TCLP standards were placed back into the excavation of Area C, solidified with concrete. Area C was then contained within a slurry wall keyed into the weathered bedrock and Site slurry wall and then capped with a RCRA Cap and Cover. Drums removed from Areas C and D that contained liquids were transport to an offsite permitted commercial disposal facility.

Mobility was reduced by removing the leachate transport mechanism by installing French Drain upgradient of the Site to intercept shallow rain infiltration above the weathered bedrock and divert it around the remediated area. A slurry wall was installed downgradient and parallel to the French Drain to cutoff backflow from the impacted Site soils into the French Drain, and to provide backup for the French Drain. The entire remediated area including the Landfill, French Drain, Site slurry wall and self contained Area C was covered with a multilayer RCRA Cap and Cover to prevent rainfall infiltration into the remediated area.

Long term security for the remediated site is provided by the Cap and Cover, site security fence and restricted site access and use. The Site is maintained, monitored and inspected regularly in accordance with the Post Closure Activity Plan.

*Operation and Maintenance (O&M)*

The Post Closure Activity Plan (January 1991) as approved by the EPA specified the actions to be carried out once remediation construction was completed (3/29/91). The Post Closure Activity Plan (PCAP) included: monitor well sampling on a quarterly then semiannual basis once baseline action levels were established; site inspections to coincide with monitor well sample events; site mowing and erosion control maintenance; monitor event reports and Five Year Reports to be submitted by the EPA and ADEQ.

The site monitoring has been conducted in compliance with the PCAP as amended, with minor occasional variances duly noted and reported. Monitor wells are sampled in accordance with standard EPA protocol. Sample results which exceed action limits are resampled to confirm conditions. Such occurrences have been infrequent and follow-up resample results have returned to below action limits. The Site vegetation and erosion control has been maintained. While significant site repair has not been necessary, occasional site maintenance has included: well repair and Area C evaluation, installation of additional downgradient monitor wells, repair of french drain and recharge well, regular site mowing, and topsoil replacement.

The Site is totally enclosed by a 6 foot chain link fence topped with three strands of barbed wire. Access is limited to two gates secured with a chain and lock to which only authorized agency and PRP personnel have keys. Over the course of the Post Closure Care period, there have been infrequent and minor instances of site disturbance and trespassing.

Institutional controls (ICs) are a necessary component of maintaining the long-term protectiveness of the remedy. ICs are legal and administrative measures that prevent exposure to contaminants that may remain at a site at concentrations above health-based risk levels. They are typically designed to limit activities at or near the Site, and include requirements for providing notice (i.e., deed recordation) in the real property records for properties where residual contamination will remain. For this Site, the ICs include a deed recordation with a notice that buried contaminants remain on the property, and a prohibition against any reuse, development or other activities that might disturb or damage the affected areas without the approval of EPA, ADEQ and the property owner. The requirement for institutional controls was met through deed recordation in the Official Public Records of Real Property in Sebastian County, Arkansas.

*Five-Year Review*

The EPA must conduct a statutory five-year review of the remedy no less than every five years after the initiation of the remedial action pursuant to CERCLA Section 121(c). Based on the five-year reviews, EPA will determine whether human health and the environment continue to be adequately protected by the implemented remedy. Five-year reviews for this Site were completed in February 1997, July 2002, and a revised version in September 2007. During the July 2002 five-year review, EPA had prepared Deletion document for the Site. However Deletion was put on hold as baseline contaminants were exceeded in three monitor wells. IWC Settling Defendants (PRPs) conducted a Site Assessment Study (SAS) which included statistical analysis, risk assessment and fate and transport studies of the contaminants in the offending monitor wells. Based on the data from SAS study by the IWC Settling Defendants, EPA has concluded that offsite migration of contaminants will not occur. Therefore Deletion of the Site from the National Priorities List (NPL) is appropriate at this time. The next five-year review will occur no later than September 2012.

*Community Involvement*

Public participation activities required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and CERCLA Section 117, 42 U.S.C. 9617, have been satisfied, and documents which EPA generated and/or relied on are available to the public in these information repositories.

**V. Deletion Action**

The EPA, with concurrence of the State of Arkansas, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions under CERCLA, other than O&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective April 7, 2008 unless EPA receives adverse comments by March 6, 2008. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect. The EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances,

Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 28, 2007.

**Richard E. Greene,**

*Regional Administrator, EPA Region 6.*

■ For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

## PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

**Appendix B—[Amended]**

■ 2. Table 1 of Appendix B to Part 300 is amended under Arkansas (''AR'') by removing the entry for ''Industrial Waste Control.''

[FR Doc. E8–1964 Filed 2–4–08; 8:45 am]

BILLING CODE 6560–50–P

# Proposed Rules

Federal Register
Vol. 73, No. 24
Tuesday, February 5, 2008

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

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0116; Directorate Identifier 2007–NM–257–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Dassault Model Falcon 2000 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:

Wing anti ice telescopic tubes (P/N [part number] 5035–400 and 5035–500) ball joints were originally designed with high temperature polymer (Kynel ™) sealing rings. Temperature induced cracking of these rings associated with long term wear has been encountered in a small number of cases. This degradation may lead to binding of the ball joint and high swiveling forces which may result in improper operation of the leading edge slats and also in failure of the ball joint mounting bracket with possible friction on the aileron control rod, which could lead, if combined with a failure of the aileron emergency actuator, to an aileron jamming.

The unsafe condition is a jammed aileron, which results in reduced controllability 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 March 6, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### Examining the AD Docket

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

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0116; Directorate Identifier 2007–NM–257–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2006–0276, dated September 6, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Wing anti ice telescopic tubes (P/N [part number] 5035–400 and 5035–500) ball joints were originally designed with high temperature polymer (Kynel ™) sealing rings. Temperature induced cracking of these rings associated with long term wear has been encountered in a small number of cases. This degradation may lead to binding of the ball joint and high swiveling forces which may result in improper operation of the leading edge slats and also in failure of the ball joint mounting bracket with possible friction on the aileron control rod, which could lead, if combined with a failure of the aileron emergency actuator, to an aileron jamming.

A replacement carbon based material has been defined by the telescopic tube manufacturer Zodiac and can be applied per Zodiac Service bulletins (SB) 5035–30–001 and 5035–30–002, resulting in P/N re-designations 5035–600 Amdt.A and 5035–700 Amdt.A, respectively.

The purpose of this Airworthiness Directive (AD), by requiring modification of the wing anti-ice telescopic tubes in accordance with the Zodiac service bulletins, is to ensure that no old definition sealing rings remain in operation beyond a life limit of 2,400 flight hours (FH) or 2,000 flight cycles (FC).

The unsafe condition is a jammed aileron, which results in reduced controllability of the airplane. You may obtain further information by examining the MCAI in the AD docket.

### Relevant Service Information

Zodiac has issued Service Bulletins 5035–30–001 and 5035–30–002, both dated April 15, 2002. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

### FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information

referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Differences Between This AD and the MCAI or Service Information**

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

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

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 159 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $1,423 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $277,137, or $1,743 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:

**Dassault Aviation:** Docket No. FAA–2008–0116; Directorate Identifier 2007–NM–257–AD.

**Comments Due Date**

(a) We must receive comments by March 6, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Dassault Model Falcon 2000 airplanes, certificated in any category; all serial numbers; equipped with wing anti-ice telescopic tubes having part number (P/N) 5035–400 or 5035–500.

**Subject**

(d) Air Transport Association (ATA) of America Code 30: Ice and rain protection.

**Reason**

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

Wing anti ice telescopic tubes (P/N [part number] 5035–400 and 5035–500) ball joints were originally designed with high temperature polymer (Kynel™) sealing rings. Temperature induced cracking of these rings associated with long term wear has been encountered in a small number of cases. This degradation may lead to binding of the ball joint and high swiveling forces which may result in improper operation of the leading edge slats and also in failure of the ball joint mounting bracket with possible friction on the aileron control rod, which could lead, if combined with a failure of the aileron emergency actuator, to an aileron jamming.

A replacement carbon based material has been defined by the telescopic tube manufacturer Zodiac and can be applied per Zodiac Service bulletins (SB) 5035–30–001 and 5035–30–002, resulting in P/N re-designations 5035–600 Amdt.A and 5035–700 Amdt.A, respectively.

The purpose of this Airworthiness Directive (AD), by requiring modification of the wing anti-ice telescopic tubes in accordance with the Zodiac service bulletins, is to ensure that no old definition sealing rings remain in operation beyond a life limit of 2,400 flight hours (FH) or 2,000 flight cycles (FC).

The unsafe condition is a jammed aileron, which results in reduced controllability of the airplane.

**Actions and Compliance**

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

(1) At the later of the compliance times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, remove and modify the affected tubes in accordance with instructions contained in Zodiac Service Bulletins 5035–30–001 and 5035–30–002, both dated April 15, 2002.

(i) Before the telescopic tubes, P/N 5035–400 and 5035–500, exceed the limit of 2,400 flight hours, or 2,000 flight cycles, time-in-service since new, whichever occurs first.

(ii) At the earlier of the times specified in paragraphs (f)(1)(ii)(A) and (f)(1)(ii)(B) of this AD.

(A) Within 330 flight hours after the effective date of this AD.

(B) Within 7 months after the effective date of this AD.

(2) As of 7 months after the effective date of this AD, no person may install an affected telescopic tube P/N 5035–400 or 5035–500 in any aircraft as a replacement part, unless it has been modified in accordance with instructions contained in Zodiac Service Bulletins 5035–30–001 and 5035–30–002, both dated April 15, 2002.

**FAA AD Differences**

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

**Other FAA AD Provisions**

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

**Related Information**

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2006–0276, dated September 6, 2006; and Zodiac Service Bulletins 5035–30–001 and 5035–30–002, both dated April 15, 2002; for related information.

Issued in Renton, Washington, on January 24, 2008.

**Ali Bahrami,**

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

[FR Doc. E8–1984 Filed 2–4–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0118; Directorate Identifier 2007–NM–289–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Dassault Model Mystere-Falcon 50 Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. 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:

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

* * * * *

Chafing between an electrical feeder bundle and a bus bar under the circuit breaker panel could lead to electrical arcing, which could result in smoke and fire in the cockpit. 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 March 6, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Examining the AD Docket**

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

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

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0118; Directorate Identifier 2007–NM–289–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

**Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued Airworthiness Directive 2007–0175, dated June 28, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

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

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

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

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

with wiring retaining strips. You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

Dassault has issued Service Bulletin F50–483, dated June 6, 2007, including Erratum dated July 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of This Proposed AD**

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

**Differences Between This AD and the MCAI or Service Information**

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

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

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 76 products of U.S. registry. We also estimate that it would take about 12 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $72,960, or $960 per product.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

We determined that this 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:

**Dassault Aviation:** Docket No. FAA–2008–0118; Directorate Identifier 2007–NM–289–AD.

**Comments Due Date**

(a) We must receive comments by March 6, 2008.

**Affected ADs**

(b) None.

**Applicability**

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

**Subject**

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

**Reason**

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

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

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

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

**Actions and Compliance**

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

**FAA AD Differences**

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

**Other FAA AD Provisions**

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

**Related Information**

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

Issued in Renton, Washington, on January 24, 2008.

**Ali Bahrami,**

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

[FR Doc. E8–1985 Filed 2–4–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0123; Directorate Identifier 2007–NM–056–AD]**

**RIN 2120–AA64**

# Airworthiness Directives; McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 Airplanes; Model DC–8–51, DC–8–52, DC–8–53, and DC–8–55 Airplanes; Model DC–8F–54 and DC–8F–55 Airplanes; Model DC–8–61, DC–8–62, and DC–8–63 Airplanes; Model DC–8–61F, DC–8–62F, and DC–8–63F Airplanes; Model DC–8–71, DC–8–72, and DC–8–73 Airplanes; and Model DC–8–71F, DC–8–72F, and DC–8–73F Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) that applies to McDonnell Douglas Model DC–8 airplanes. The existing AD currently requires, among other things, revision of an existing program of structural inspections. This proposed AD would require implementation of a program of structural inspections of baseline structure to detect and correct fatigue cracking in order to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. This proposed AD results from a significant number of these airplanes approaching or exceeding the design service goal on which the initial type certification approval was predicated. We are proposing this AD to detect and correct fatigue cracking that could compromise the structural integrity of these airplanes.

**DATES:** We must receive comments on this proposed AD by March 21, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Jon Mowery, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5322; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0123; Directorate Identifier 2007-NM–056-AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

**Discussion**

On January 11, 1993, we issued AD 93–01–15, amendment 39–8469 (58 FR 5576, January 22, 1993), for McDonnell Douglas Model DC–8 airplanes. That AD requires structural inspections to detect fatigue cracking, reporting of the inspection results, and repair, as

necessary, to ensure continued airworthiness as these airplanes approach the manufacturer's original fatigue design life goal. That AD resulted from new data submitted by the manufacturer indicating that additional inspections and an expanded sample size are necessary to increase the confidence level of the statistical program to ensure timely detection of cracks in the principal structural elements (PSEs). We issued that AD to prevent fatigue cracking, which could result in a compromise of the structural integrity of these airplanes.

**Supplemental Inspection Documents (SIDs) ADs**

In the early 1980s, as part of our continuing work to maintain the structural integrity of older transport category airplanes, we concluded that the incidence of fatigue cracking may increase as these airplanes reach or exceed their design service goal (DSG). A significant number of these airplanes were approaching or had exceeded the DSG on which the initial type certification approval was predicated. In light of this, and as a result of increased utilization, longer operational lives, and the high levels of safety expected of the currently operated transport category airplanes, we determined that a supplemental structural inspection program (SSIP) was necessary to ensure a high level of structural integrity for all airplanes in the transport fleet.

**Issuance of Advisory Circular (AC)**

As a follow-on from that determination, we issued AC No. 91–56, ''Supplemental Structural Inspection Program for Large Transport Category Airplanes,'' dated May 6, 1981. That AC provides guidance material to manufacturers and operators for use in developing a continuing structural integrity program to ensure safe operation of older airplanes throughout their operational lives. This guidance material applies to transport airplanes that were certified under the fail-safe requirements of part 4b (''Airplane Airworthiness, Transport Categories'') of the Civil Air Regulations of the Federal Aviation Regulations (FAR) (14 CFR part 25), and that have a maximum gross weight greater than 75,000 pounds. The procedures set forth in that AC are applicable to transport category airplanes operated under subpart D (''Special Flight Operations'') of part 91 of the FAR (14 CFR part 91); part 121 (''Operating Requirements: Domestic, Flag, and Supplemental Operations''); part 125 (''Certification and Operations: Airplanes having a Seating Capacity of 20 or More Passengers or a Maximum Payload of 6,000 Pounds or More''); and part 135 (''Operating Requirements: Commuter and On-Demand Operations'') of the FAR (14 CFR parts 121, 125, and 135). The objective of the SSIP was to establish inspection programs to ensure timely detection of fatigue cracking.

**Aging Aircraft Safety Act (AASA)**

In October 1991, Congress enacted Title IV of Public Law 102–143, the AASA of 1991, to address aging aircraft concerns. That Act instructed the FAA administrator to prescribe regulations that will ensure the continuing airworthiness of aging aircraft.

**FAA Responses To AASA**

On January 25, 2005, as one of the responses to the AASA, we issued the Aging Airplane Safety; Final Rule (AASFR) (70 FR 5518, February 2, 2005). The AASFR applies to certain transport category, turbine powered airplanes with a type certificate issued after January 1, 1958 (including the airplanes that would be subject to this proposed AD), that are operated under 14 CFR parts 121 or 129, with the exception of airplanes operated within the State of Alaska. Sections 121.370a and 129.16 of the AASFR require the maintenance programs of those airplanes to include damage tolerance-based inspections and procedures for structure that is susceptible to fatigue cracking that could contribute to a catastrophic failure. The inspections and procedures must take into account the adverse affects that RAMs may have on fatigue cracking and the inspection of the structure. The procedures are to be established and incorporated before December 20, 2010. Compliance with this proposed AD also would be compliance with some aspects of the AASFR.

**Relevant Service Information**

We have reviewed Boeing Report No. L26–011, ''DC–8 All Series Supplemental Inspection Document (SID),'' Volume I, Revision 6, dated July 2005 (hereafter ''Revision 6''). The purpose of Revision 6 is to define the mandatory inspection requirements for the PSEs and to provide specific non-destructive inspection (NDI) techniques and procedures for each PSE. Revision 6 also revises the maintenance program by removing provisions for the sampling inspection program. However, Revision 6 retains the program goal to inspect airplanes in advance of a certain threshold for the possibility of increasing that threshold and using service history to justify delaying inspections on the younger portion of the fleet. As with previous revisions, Revision 6 provides credit for inspections previously accomplished within the required intervals. Revision 6 provides a description of PSEs, NDI locations, planning and reporting procedures, and certain criteria upon which the supplemental inspection program is based.

We also have reviewed McDonnell Douglas Report No. L26–011, ''DC–8 Supplemental Inspection Document (SID),'' Volume II, Revision 8, dated January 2005. This document describes specific non-destructive testing inspections of the SID, and has been approved as an acceptable alternative method of compliance with corresponding paragraphs of AD 93–01–15.

Accomplishing the actions specified in the service information described above 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 products of this same type design. This proposed AD would retain certain requirements of AD 93–01–15. This proposed AD also would require revision of the FAA-approved maintenance program. This proposed AD would require implementation of a structural inspection program of baseline structure to detect and correct fatigue cracking in order to ensure the continued airworthiness of airplanes as they approach the manufacturer's original fatigue design life goal. For the purposes of this proposed AD, a PSE is defined as an element that contributes significantly to the carrying of flight, ground or pressurization loads, and the integrity of that element is essential in maintaining the overall structural integrity of the airplane.

The following paragraphs summarize certain specific actions in this proposed AD:

Paragraph (h) of the proposed AD would require a revision of the maintenance inspection program that provides for inspection(s) of the PSE in accordance with Boeing Report No. L26–011, ''DC–8 Supplemental Inspection Document (SID),'' Volume I, Revision 6, dated July 2005. PSEs are also defined and specified in the SID.

Paragraph (i) of the proposed AD would specify that the SID be implemented on a PSE-by-PSE basis before structure exceeds its 75% fatigue life threshold ($\frac{3}{4}N_{TH}$) and its full fatigue life threshold ($N_{TH}$). The threshold value is defined as the life of the

structure measured in total landings, when the probability of failure reaches one in a billion. The DC–8 SID program is not a sampling program. Airplanes would be inspected once before reaching both PSE thresholds (once by $\frac{3}{4}N_{TH}$ and once by $N_{TH}$). In order for the inspection to have value, no PSE would be inspected before half of the fatigue life threshold, $\frac{1}{2}N_{TH}$. The additional $\frac{3}{4}N_{TH}$ threshold aids in advancing the threshold for some PSEs as explained in Section 4 of Volume I of the SID. Inspection of each PSE should be done in accordance with the NDI procedures set forth in Volume II of the SID.

For airplanes past the threshold $N_{TH}$, the proposed AD would require that the PSE be inspected at repetitive intervals not to exceed $\Delta NDI/2$ as specified in Section 4 of Volume I of the SID per the NDI procedure, which is specified in Volume II of the SID. The definition of $\Delta NDI/2$ is half of the life for a crack to grow from a given NDI detectable crack size to instability.

Paragraph (i) of this proposed AD also would require, for airplanes that have exceeded the $N_{TH}$, that each PSE be inspected within 18 months after the effective date of this AD. The entire PSE must be inspected regardless of whether or not it has been repaired, altered, or modified.

Paragraph (j) of this proposed AD would require that, if any PSE is repaired, altered, or modified, it must be considered a ''discrepant finding.'' A discrepant PSE indicates that it could not be completely inspected because the NDI procedure could not be accomplished due to differences on the airplane from the NDI reference standard (i.e., RAMs). For any discrepancy (e.g., a PSE cannot be inspected as specified in Volume II of the SID or does not match rework, repair, or modification description in Volume I of the SID), this proposed AD would require that the discrepancy be inspected in accordance with a method approved by the FAA.

Paragraph (k) of this proposed AD would require that all negative or positive findings of the inspection done in paragraph (i) of the AD be reported to Boeing at the times specified, and per instructions contained in Section 4 of Volume I of the SID.

Paragraph (l) of this proposed AD would require that any cracked structure detected during any inspection required by paragraph (i) of this proposed AD be repaired before further flight. Additionally, paragraph (l) of this AD would require accomplishment of the actions as specified in paragraphs (l)(1), (l)(2), and (l)(3) of this proposed AD, at the times specified below.

1. Within 18 months after repair, accomplish a damage tolerance assessment (DTA) that defines the threshold for inspection and submit the assessment for approval to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

2. Before reaching 75% of the threshold, submit the inspection methods and repetitive inspections intervals for the repair for approval by the Manager of the Los Angeles ACO.

3. Before the threshold, the inspection method and repetitive inspection intervals are to be incorporated into the FAA-approved structural maintenance or inspection program for the airplane.

For the purposes of this proposed AD, the FAA anticipates that submissions of the DTA of the repair, if acceptable, should be approved within six months after submission.

Paragraph (m) of this proposed AD specifies the requirements of the inspection program for transferred airplanes. Before any airplane that is subject to this proposed AD can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this proposed AD must be established. Paragraph (m) of the proposed AD would require accomplishment of the following:

1. For airplanes that have been inspected per this proposed AD: The inspection of each PSE must be done by the new operator per the previous operator's schedule and inspection method, or per the new operator's schedule and inspection method, at whichever time would result in the earlier accomplishment date for that PSE inspection. The compliance time for accomplishment of this inspection must be measured from the last inspection done by the previous operator. After each inspection has been done once, each subsequent inspection must be done per the new operator's schedule and inspection method.

2. For airplanes that have not been inspected per this proposed AD: The inspection of each PSE must be done either before adding the airplane to the air carrier's operations specification, or per a schedule and an inspection method approved by the FAA. After each inspection has been performed once, each subsequent inspection must be done per the new operator's schedule.

Accomplishment of these actions will ensure that: (1) An Operator's newly acquired airplanes comply with its SSIP before being operated; and (2) frequently transferred airplanes are not permitted to operate without accomplishment of the inspections defined in the SID.

Paragraph (n) of this proposed AD specifies that repairs and inspection/replacement programs done before the effective date in accordance with McDonnell Douglas Report No. MDC 91K0262, ''DC–8 Aging Aircraft Repair Assessment Program Document,'' Revision 1, dated October 2000; are acceptable for compliance with the requirements of paragraphs (g) and (l) of this proposed AD.

**Differences Between the Proposed AD and the SID**

The SID specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

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

**Change to Existing AD**

This proposed AD would retain all requirements of AD 93–01–15. Since AD 93–01–15 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

| Requirement in AD 93–01–15 | Corresponding requirement in this proposed AD |
|---|---|
| paragraph (b) ..... | paragraph (f). |
| paragraph (c) ..... | paragraph (g). |

**Costs of Compliance**

There are about 194 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 | Cost per perator | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|
| Revision of maintenance inspection program (required by AD 93–01–15). | 544 per operator (17 U.S. operators). | $80 | $43,520 | 131 | $739,840 |
| Revision of maintenance program and inspections (new proposed actions). | 250 per operator (17 U.S. operators). | 80 | 20,000 | 131 | 340,000 |

The number of inspection work hours, as indicated above, is presented as if the accomplishment of the actions in this proposed AD is to be conducted as ''stand alone'' actions. However, in actual practice, these actions for the most part will be done coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional inspection work hours will be minimal in many instances. Additionally, any costs associated with special airplane scheduling will be minimal.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–8469 (58 FR 5576, January 22, 1993) and adding the following new airworthiness directive (AD):

**McDonnell Douglas:** Docket No. FAA–2008–0123; Directorate Identifier 2007–NM–056–AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by March 21, 2008.

**Affected ADs**

(b) This AD supersedes AD 93–01–15.

**Applicability**

(c) This AD applies to all McDonnell Douglas airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

| Model |
|---|
| (1) DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes. |
| (2) DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes. |
| (3) DC–8F–54 and DC–8F–55 airplanes. |
| (4) DC–8–61, DC–8–62, and DC–8–63 airplanes. |
| (5) DC–8–61F, DC–8–62F, and DC–8–63F airplanes. |
| (6) DC–8–71, DC–8–72, and DC–8–73 airplanes. |
| (7) DC–8–71F, DC–8–72F, and DC–8–73F airplanes. |

**Unsafe Condition**

(d) This AD results from a significant number of these airplanes approaching or exceeding the design service goal on which the initial type certification approval was predicated. We are issuing this AD to detect and correct fatigue cracking that could compromise the structural integrity of these airplanes.

**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.

**Certain Requirements of AD 93–01–15**

**Revise the FAA-Approved Maintenance Inspection Program**

(f) Within 6 months after February 26, 1993 (the effective date of AD 93–01–15), incorporate a revision of the FAA-approved maintenance inspection program that provides no less than the required inspection of the Principal Structural Elements (PSE's) defined in Sections 2 and 3 of Volume I of McDonnell Douglas Report No. L26–011, ''DC–8 Supplemental Inspection Document (SID),'' dated March 1991, in accordance with Section 2 of Volume III–91, dated April 1991, of that document. The non-destructive inspection techniques set forth in Sections 2 and 3 of Volume II, dated March 1991, of that SID provide acceptable methods for accomplishing the inspections required by this AD. All inspection results, negative or positive, must be reported to McDonnell Douglas, in accordance with the instructions of Section 2 of Volume III–91 of the SID. Information collection requirements contained in this regulation have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

**Corrective Action**

(g) Cracked structure detected during the inspections required by paragraph (f) of this AD must be repaired before further flight, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

**New Requirements of This AD**

**Revision of the Maintenance Inspection Program**

(h) Within 12 months after the effective date of this AD, incorporate a revision of the FAA-approved maintenance inspection program that provides for inspection(s) of the PSEs, in accordance with Boeing Report No. L26–011, ''DC–8 All Series Supplemental Inspection Document (SID),'' Volume I, Revision 6, dated July 2005. Incorporation of this revision ends the requirements of paragraphs (f) and (g) of this AD.

**Non-Destructive Inspections (NDIs)**

(i) For all PSEs listed in Section 2 of Boeing Report No. L26–011, ''DC–8 All Series Supplemental Inspection Document (SID),'' Volume I, Revision 6, dated July 2005, perform an NDI for fatigue cracking of each PSE, in accordance with the NDI procedures specified in Section 2 of McDonnell Douglas Report No. L26–011, ''DC–8 Supplemental Inspection Document (SID),'' Volume II, Revision 8, dated January 2005, at the times specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD, as applicable.

(1) For airplanes that have less than three quarters of the fatigue life threshold ($^3/_4N_{TH}$) as of the effective date of this AD: Perform the NDI for fatigue cracking at the times specified in paragraphs (i)(1)(i) and (i)(1)(ii) of this AD. After reaching the threshold ($N_{TH}$), repeat the inspection for that PSE at intervals not to exceed ΔNDI/2.

(i) Perform an initial NDI no earlier than one-half of the threshold ($^1/_2N_{TH}$) but before reaching three-quarters of the threshold ($^3/_4N_{TH}$), or within 60 months after the effective date of this AD, whichever occurs later.

(ii) Repeat the NDI no earlier than $^3/_4N_{TH}$ but before reaching the threshold ($N_{TH}$), or within 18 months after the inspection required by paragraph (i)(1)(i) of this AD, whichever occurs later.

**Note 1:** The DC–8 SID and this AD refer to the repetitive inspection interval as ΔNDI/2. However, the headings of the tables in Section 4 of Volume I of the DC–8 SID refer to the repetitive inspection interval of NDI/2. The values listed under NDI/2 in the tables in Section 4 of Volume I of the DC–8 SID are the repetitive inspection intervals, ΔNDI/2.

(2) For airplanes that have reached or exceeded three-quarters of the fatigue life threshold ($^3/_4N_{TH}$), but less than the threshold ($N_{TH}$), as of the effective date of this AD: Perform an NDI before reaching the threshold ($N_{TH}$), or within 18 months after the effective date of this AD, whichever occurs later. Thereafter, after passing the threshold ($N_{TH}$), repeat the inspection for that PSE at intervals not to exceed ΔNDI/2.

(3) For airplanes that have reached or exceeded the fatigue life threshold ($N_{TH}$) as of the effective date of this AD: Perform an NDI within 18 months after the effective date of this AD. Thereafter, repeat the inspection for that PSE at intervals not to exceed ΔNDI/2.

**Discrepant Findings**

(j) If any discrepancy (*e.g.*, differences on the airplane from the NDI reference standard, such as PSEs that cannot be inspected as specified in McDonnell Douglas Report No. L26–011, ''DC–8 Supplemental Inspection Document (SID),'' Volume II, Revision 8, dated January 2005, or do not match rework, repair, or modification descriptions in Boeing Report No. L26–011, ''DC–8 All Series Supplemental Inspection Document (SID),'' Volume I, Revision 6, dated July 2005) is detected during any inspection required by paragraph (i) of this AD, do the action specified in paragraph (j)(1) or (j)(2) of this AD, as applicable.

(1) If a discrepancy is detected during any inspection done before $3/4N_{TH}$ or $N_{TH}$: The area of the PSE affected by the discrepancy must be inspected before $N_{TH}$ or within 18 months after the discovery of the discrepancy, whichever occurs later, in accordance with a method approved by the Manager, Los Angeles ACO.

(2) If a discrepancy is detected during any inspection done after $N_{TH}$: The area of the PSE affected by the discrepancy must be inspected before the accumulation of an additional ΔNDI/2 or within 18 months after the discovery of the discrepancy, whichever occurs later, in accordance with a method approved by the Manager, Los Angeles ACO.

**Reporting Requirements**

(k) All negative or positive findings of the inspections done in accordance with paragraph (i) of this AD must be reported to Boeing at the times specified in, and in accordance with, the instructions contained in Section 4 of Boeing Report No. L26–011, ''DC–8 All Series Supplemental Inspection Document (SID),'' Volume I, Revision 6, dated July 2005. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

**Corrective Actions**

(l) Any cracked structure of a PSE detected during any inspection required by paragraph (i) of this AD must be repaired before further flight using a method approved in accordance with the procedures specified in paragraph (o) of this AD. Accomplish the actions described in paragraphs (l)(1), (l)(2), and (l)(3) of this AD, at the times specified.

(1) Within 18 months after repair, do a damage tolerance assessment (DTA) that defines the threshold for inspection of the repair and submit the assessment for approval.

(2) Before reaching 75% of the repair threshold as determined in paragraph (l)(1) of this AD, submit the inspection methods and repetitive inspection intervals for the repair for approval.

(3) Before the repair threshold, as determined in paragraph (l)(1) of this AD, incorporate the inspection method and repetitive inspection intervals into the FAA-approved structural maintenance or inspection program for the airplane.

**Note 2:** For the purposes of this AD, we anticipate that submissions of the DTA of the repair, if acceptable, should be approved within 6 months after submission.

**Note 3:** FAA Order 8110.54, ''Instructions for Continued Airworthiness,'' dated July 1, 2005, provides additional guidance about the approval of repairs to PSEs.

**Inspection for Transferred Airplanes**

(m) Before any airplane that has exceeded the fatigue life threshold ($N_{TH}$) can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this AD must be established as specified in paragraph (m)(1) or (m)(2) of this AD, as applicable.

(1) For airplanes that have been inspected in accordance with this AD: The inspection of each PSE must be done by the new operator in accordance with the previous operator's schedule and inspection method, or the new operator's schedule and inspection method, at whichever time would result in the earlier accomplishment date for

that PSE inspection. The compliance time for accomplishing this inspection must be measured from the last inspection done by the previous operator. After each inspection has been done once, each subsequent inspection must be done in accordance with the new operator's schedule and inspection method.

(2) For airplanes that have not been inspected in accordance with this AD: The inspection of each PSE required by this AD must be done either before adding the airplane to the air carrier's operations specification, or in accordance with a schedule and an inspection method approved by the Manager, Los Angeles ACO. After each inspection has been done once, each subsequent inspection must be done in accordance with the new operator's schedule.

**Acceptable for Compliance**

(n) McDonnell Douglas Report No. MDC 91K0262, ''DC–8 Aging Aircraft Repair Assessment Program Document,'' Revision 1, dated October 2000, provides inspection/replacement programs for certain repairs to the fuselage pressure shell. Accomplishing these repairs and inspection/replacement programs before the effective date of this AD is considered acceptable for compliance with the requirements of paragraphs (g) and (l) of this AD for repairs subject to that document.

**Alternative Methods of Compliance (AMOCs)**

(o)(1) The Manager, Los Angeles 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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(4) AMOCs approved previously in accordance with AD 93–01–15 are approved as AMOCs for the corresponding provisions of this AD.

Issued in Renton, Washington, on January 24, 2008.

**Ali Bahrami,**

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

[FR Doc. E8–1989 Filed 2–4–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0120; Directorate Identifier 2007–NM–327–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Gulfstream Aerospace LP Model Gulfstream G150 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:

Possible chafing between [the] electrical feeder cable connected to contactor 123P/2 and ground point 803GND, installed within the left DC power box, discovered during routine receiving inspection. This condition may exist on boxes installed on in-service aircraft. If this chafing condition is left unattended, an electrical short may develop, leading to disconnection of the battery and battery bus from the electrical system of the aircraft, [which could result in] overheating, arcing, smoke and fire.

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 March 6, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Examining the AD Docket**

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

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

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0120; Directorate Identifier 2007–NM–327–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

**Discussion**

The Civil Aviation Authority of Israel (CAAI), which is the aviation authority for Israel, has issued Israeli Airworthiness Directive 24–07–10–11, dated October 31, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Possible chafing between [the] electrical feeder cable connected to contactor 123P/2 and ground point 803GND, installed within the left DC power box, discovered during routine receiving inspection. This condition may exist on boxes installed on in-service aircraft. If this chafing condition is left unattended, an electrical short may develop, leading to disconnection of the battery and battery bus from the electrical system of the aircraft, [which could result in] overheating, arcing, smoke and fire.

The corrective action includes inspecting for chafing and arcing damage of the feeder cable terminal lug and ground point, contacting Gulfstream for repair if any damage is found, and

repairing, and installing new heat-shrink tubing if the tubing is missing or damaged, and repositioning the feeder cable. You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

Gulfstream has issued Alert Service Bulletin 150–24A–046, dated October 31, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of This Proposed AD**

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

**Differences Between This AD and the MCAI or Service Information**

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

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

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 26 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $6,240, or $240 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:

**Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.):** Docket No. FAA–2008–0120; Directorate Identifier 2007–NM–327–AD.

**Comments Due Date**

(a) We must receive comments by March 6, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Gulfstream Model Gulfstream G150 airplanes, certificated in any category, serial numbers 201 through 239 inclusive.

**Subject**

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

**Reason**

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

''Possible chafing between [the] electrical feeder cable connected to contactor 123P/2 and ground point 803GND, installed within the left DC power box, discovered during routine receiving inspection. This condition may exist on boxes installed on in-service aircraft. If this chafing condition is left unattended, an electrical short may develop, leading to disconnection of the battery and battery bus from the electrical system of the aircraft, [which could result in] overheating, arcing, smoke and fire.''

The corrective action includes inspecting for chafing and arcing damage of the feeder cable terminal lug and ground point, contacting Gulfstream for repair if any damage is found, and repairing, and installing new heat-shrink tubing if the tubing is missing or damaged, and repositioning the feeder cable.

**Actions and Compliance**

(f) Unless already done, do the following actions. Within 50 flight hours or 30 days after the effective date of this AD, whichever occurs first, inspect the feeder cable, terminal lug 123P/2, and ground point 803GND for chafing and arcing damage, reposition the feeder cable to maintain an adequate gap, and do all applicable corrective actions. Do the actions in accordance with Gulfstream Alert Service Bulletin 150–24A–046, dated October 31, 2007. Do all applicable corrective actions before further flight.

**FAA AD Differences**

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

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149. 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 CAAI Airworthiness Directive 24–07–10–11, dated October 31, 2007, and Gulfstream Alert Service Bulletin 150–24A–046, dated October 31, 2007, for related information.

Issued in Renton, Washington, on January 24, 2008.

**Ali Bahrami,**

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

[FR Doc. E8–1988 Filed 2–4–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0117; Directorate Identifier 2007–NM–273–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Fokker Model F.28 Mark 0070 and Mark 0100 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:

[L]eakage of hot wing anti-icing air from the Peri-seal housing. This results in an uncontrolled flow of high-pressure hot air to enter the forward (anti-icing) plenum chamber of the wing leading edge, potentially damaging the anti-icing barrier webs. Subsequently, the wing auxiliary spar can also be damaged by high-pressure hot air. * * * [D]eterioration of the Peri-seals enables the piccolo tubes to vibrate, resulting in a broken piccolo tube. This condition, if not corrected, may cause heat damage to the front spar that potentially affects the wing's load capability.

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 March 6, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Examining the AD Docket**

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

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

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0117; Directorate Identifier 2007–NM–273–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

**Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0229, dated August 15, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

In 1997, Fokker introduced a new type of Peri-seal (SBF 100–30–022). The old type was known to be subject to deterioration, which, in combination with improper installation, can cause leakage of hot wing anti-icing air from the Peri-seal housing. This results in an uncontrolled flow of high-pressure hot air to enter the forward (anti-icing) plenum chamber of the wing leading edge, potentially damaging the anti-icing barrier webs. Subsequently, the wing auxiliary spar can also be damaged by high-pressure hot air. Analysis at the time showed that any resulting damage (known to occur at inboard positions only) would not affect the wing load capability. For this reason, the modification was not classified as MANDATORY and no AD action was warranted. However, through a recent occurrence, it was discovered that deterioration of the Peri-seals enables the piccolo tubes to vibrate, resulting in a broken piccolo tube. In this case, the location of the failure was more outboard than previous occurrences. This condition, if not corrected, may cause heat damage to the front spar that potentially affects the wing's load capability. Since an unsafe condition was identified, likely to exist or develop on an aircraft of this type design, CAA (Civil Aviation Authority) Netherlands issued AD NL–2006–011 to require inspection of the Piccolo Tubes and the surrounding structure to establish correct installation, as well as the replacement of the 460-series Peri-seals by the improved 600-series, which have a higher temperature limit.

Since the issuance of that AD, Fokker has developed a modification, published as

Component Service Bulletin (CSB) D14000–57–007, for spare wing leading edge sections that may still contain the 460-series Peri-seals. For that reason, this EASA AD retains the requirements of AD NL–2006–011 and adds a limit for the allowed use of unmodified wing leading edge section as replacement part.

The corrective actions include inspection of the piccolo tubes and the wing leading edge for damage and replacement of the Peri-seals or repair of damage, as applicable. You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

Fokker has issued Service Bulletin SBF100–30–028, Revision 1, dated April 17, 2007, and Component Service Bulletin D14000–57–007, dated April 17, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of This Proposed AD**

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

**Differences Between This AD and the MCAI or Service Information**

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

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

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 9 products of U.S. registry. We also estimate that it would take about 48 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $3,430 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $65,430, or $7,270 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:

**Fokker Services B.V.:** Docket No. FAA–2008–0117; Directorate Identifier 2007–NM–273–AD.

**Comments Due Date**

(a) We must receive comments by March 6, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Fokker Model F.28 Mark 0070 and Mark 0100 airplanes, certificated in any category, all serial numbers, except those previously modified in accordance with Fokker Service Bulletin SBF 100–30–022.

**Subject**

(d) Air Transport Association (ATA) of America Code 30: Ice and Rain Protection.

**Reason**

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

In 1997, Fokker introduced a new type of Peri-seal (SBF 100–30–022). The old type was known to be subject to deterioration, which, in combination with improper installation, can cause leakage of hot wing anti-icing air from the Peri-seal housing. This results in an uncontrolled flow of high-pressure hot air to enter the forward (anti-icing) plenum chamber of the wing leading edge, potentially damaging the anti-icing barrier webs. Subsequently, the wing auxiliary spar can also be damaged by high-pressure hot air. Analysis at the time showed that any resulting damage (known to occur at inboard positions only) would not affect the wing load capability. For this reason, the modification was not classified as MANDATORY and no AD action was warranted. However, through a recent occurrence, it was discovered that deterioration of the Peri-seals enables the piccolo tubes to vibrate, resulting in a broken piccolo tube. In this case, the location of the failure was more outboard than previous occurrences. This condition, if not corrected, may cause heat damage to the front spar that potentially affects the wing's load capability. Since an unsafe condition was identified, likely to exist or develop on an aircraft of this

type design, CAA (Civil Aviation Authority) Netherlands issued AD NL–2006–011 to require inspection of the Piccolo Tubes and the surrounding structure to establish correct installation, as well as the replacement of the 460-series Peri-seals by the improved 600-series, which have a higher temperature limit.

Since the issuance of that AD, Fokker has developed a modification, published as Component Service Bulletin (CSB) D14000–57–007, for spare wing leading edge sections that may still contain the 460-series Peri-seals. For that reason, this EASA AD retains the requirements of AD NL–2006–011 and adds a limit for the allowed use of unmodified wing leading edge section as replacement part.

The corrective actions include inspection of the piccolo tubes and the wing leading edge for damage and replacement of the Peri-seals or repair of damage, as applicable.

**Actions and Compliance**

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

(1) Within 4,000 flight hours or 12 months after the effective date of this AD, whichever occurs first, do the actions in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–30–028, Revision 1, dated April 17, 2007.

(i) Inspect for damage of the piccolo tubes and the wing leading edge on the outside and on the inside at the access panels. If any damage is found that is beyond the limits specified in the service bulletin, repair before further flight.

(ii) Replace the 460-series Peri-seals in the riblets with improved 600-series Peri-seals.

(2) As of 12 months after the effective date of this AD, no person may install on any airplane a spare wing leading edge section unless the leading edge section has been modified in accordance with Fokker Component Service Bulletin D14000–57–007, dated April 17, 2007.

(3) Actions done before the effective date of this AD in accordance with Fokker Service Bulletin SBF100–30–028, dated May 18, 2006, are considered acceptable for compliance with the actions required by paragraph (f)(1) of this AD.

**FAA AD Differences**

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

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

**Related Information**

(h) Refer to European Aviation Safety Agency (EASA) Airworthiness Directive 2007–0229, dated August 15, 2007, Fokker Service Bulletin SBF100–30–028, Revision 1, dated April 17, 2007, and Fokker Component Service Bulletin D14000–57–007, dated April 17, 2007, for related information.

Issued in Renton, Washington, on January 24, 2008.

**Ali Bahrami,**

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

[FR Doc. E8–1991 Filed 2–4–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0119; Directorate Identifier 2007–NM–304–AD]**

**RIN 2120–AA64**

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

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all EMBRAER Model ERJ 170–100 LR, –100 SE, –100 STD, and –100 SU airplanes; and Model ERJ 190–100 IGW, –100 LR, and –100 STD airplanes. The existing AD currently requires revising the Limitations section of the airplane flight manual (AFM) to prohibit the flightcrew from moving the throttle into the forward thrust range immediately after applying the thrust reverser. This proposed AD would add additional airplanes to the applicability and would require the AFM revision for those additional airplanes. For certain airplanes, this proposed AD would also require installing new, improved full-authority digital engine-control (FADEC) software. This proposed AD results from a report that, during landing, the thrust reverser may not re-stow completely if the throttle lever is moved into the forward thrust range immediately after the thrust reverser is applied. We are proposing this AD to prevent the flightcrew from performing a takeoff with a partially deployed thrust reverser, which could result in reduced controllability of the airplane.

**DATES:** We must receive comments on this proposed AD by March 6, 2008.

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

- *Federal eRulemaking Portal*: Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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:** Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0119; Directorate Identifier 2007–NM–304–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

**Discussion**

On May 22, 2006, we issued AD 2006–11–15, amendment 39–14619 (71 FR 30577, May 30, 2006), for all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170–100 LR, –100 SE, –100 STD, and –100 SU airplanes; and Model ERJ 190–100 IGW, –100 LR, and –100 STD airplanes. That AD requires revising the Limitations section of the airplane flight manual (AFM) to prohibit the flightcrew from moving the throttle into the forward thrust range immediately after applying the thrust reverser. That AD resulted from a report that, during landing, the thrust reverser may not re-stow completely if the throttle lever is moved into the forward thrust range immediately after the thrust reverser is applied. We issued that AD to prevent the flightcrew from performing a takeoff with a partially deployed thrust reverser, which could result in reduced controllability of the airplane.

**Actions Since Existing AD Was Issued**

The preamble to AD 2006–11–15 explains that we consider the requirements ''interim action'' and were considering further rulemaking. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination. The Agência Nacional de Aviação Civil (ANAC), which is the airworthiness authority for Brazil, has determined that new, improved full-authority digital engine-control (FADEC) software must be installed on certain airplanes to adequately address the unsafe condition.

Since we issued AD 2006–11–15, we have type certificated EMBRAER Model ERJ 170–200 LR, –200 STD, and –200 SU airplanes; and Model ERJ 190–200 IGW, –200 LR, and –200 STD airplanes for operation in the U.S. Therefore, the AFM revision required by AD 2006–11–15 should also apply to those additional airplanes.

**Relevant Service Information**

EMBRAER has issued the following service bulletins:

- EMBRAER Service Bulletin 170–73–0003, Revision 01, dated September 4, 2006, for Model ERJ 170–100 LR, –100 SE, –100 STD, –100 SU, –200 LR, –200 STD, and –200 SU airplanes;
- EMBRAER Service Bulletin 190–73–0005, dated November 9, 2006, for a Model ERJ 190–200 LR airplane; and
- EMBRAER Service Bulletin 190–73–0009, Revision 01, dated April 23, 2007, for Model ERJ 190–100 IGW, –100 LR, –100 STD, –200 IGW, –200 LR, and –200 STD airplanes.

The service bulletins describe procedures for installing new, improved FADEC software having a certain version or higher. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The ANAC mandated the service information and issued Brazilian airworthiness directive 2006–03–02R1, effective February 27, 2007; and Brazilian airworthiness directive 2006–03–03R1, effective November 9, 2007; to ensure the continued airworthiness of these airplanes in Brazil.

**FAA's Determination and Requirements of the Proposed AD**

These airplanes are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the ANAC has kept the FAA informed of the situation described above. We have examined the ANAC's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 2006–11–15 and would retain the requirements of the existing AD. This proposed AD would also add Model ERJ 170–200 LR, –200 STD, and –200 SU airplanes; and Model ERJ 190–200 IGW, –200 LR, and –200 STD airplanes to the applicability and would require the AFM revision for those additional airplanes. This proposed AD would also require accomplishing the actions specified in the service information described previously.

**Costs of Compliance**

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

ESTIMATED COSTS

| Action | Work hours | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|
| AFM revision (required by AD 2006–11–15). | 1 | None | $80 | 76 | $6,080 |
| AFM revision (new proposed action) | 1 | None | 80 | 57 | 4,560 |
| Software installation (new proposed action). | 1 | The manufacturer states that it will supply the required software to operators at no cost. | 80 | 133 | 10,640 |

**Authority for This Rulemaking**

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

We are issuing this rulemaking under the authority described in Subtitle VII,

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14619 (71 FR 30577, May 30, 2006) and adding the following new airworthiness directive (AD):

**Empresa Brasileira De Aeronautica S.A. (EMBRAER):** Docket No. FAA–2008–0119; Directorate Identifier 2007–NM–304–AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by March 6, 2008.

**Affected ADs**

(b) This AD supersedes AD 2006–11–15.

**Applicability**

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

**Unsafe Condition**

(d) This AD results from report that, during landing, the thrust reverser may not re-stow completely if the throttle lever is moved into the forward thrust range immediately after the thrust reverser is applied. We are issuing this AD to prevent the flightcrew from performing a takeoff with a partially deployed thrust reverser, which could result in reduced controllability of the airplane.

**Compliance**

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

**Restatement of Requirements of AD 2006–11–15**

**Airplane Flight Manual Revision**

(f) For Model ERJ 170–100 LR, –100 SE, –100 STD, and –100 SU airplanes; and Model ERJ 190–100 IGW, –100 LR, –100 STD airplanes: Within 7 days after June 14, 2006 (the effective date of AD 2006–11–15), revise the Limitations section of the EMBRAER 170/190 Airplane Flight Manual (AFM) to include the following statement. This may be done by inserting a copy of this AD in the AFM. Factory-installation or installation of the applicable software required by paragraph (h) of this AD terminates the AFM revision required by this paragraph.

''After applying thrust reverser, do not move the throttle back to the forward thrust range, unless the REV icon on the EICAS is shown in amber or green.''

**Note 1:** When a statement identical to that in paragraph (f) 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.

**New Requirements of This AD**

**AFM Revision for New Airplanes**

(g) For Model ERJ 170–200 LR, –200 STD, and –200 SU airplanes; and Model ERJ 190–200 IGW, –200 LR, and –200 STD airplanes: Within 14 days after the effective date of this AD, revise the Limitations section of the EMBRAER 170/190 AFM to include the following statement. This may be done by inserting a copy of this AD in the AFM. Factory-installation or installation of the applicable software required by paragraph (h) of this AD terminates the AFM revision required by this paragraph.

''After applying thrust reverser, do not move the throttle back to the forward thrust range, unless the REV icon on the EICAS is shown in amber or green.''

**Note 2:** When a statement identical to that in paragraph (g) 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.

**Software Installation**

(h) Within 1,200 flight hours after the effective date of this AD, install the full-authority digital engine-control (FADEC) software specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD, as applicable. Installing the applicable software terminates the applicable AFM revision required by paragraph (f) or (g) this AD.

(1) For Model ERJ 170–100 LR, –100 SE, –100 STD, –100 SU, –200 LR, –200 STD, and –200 SU airplanes identified in EMBRAER Service Bulletin 170–73–0003, Revision 01, dated September 4, 2006: Install engine FADEC software version 5.30 or higher in accordance with the service bulletin.

(2) For the Model ERJ 190–200 LR airplane identified in EMBRAER Service Bulletin 190–73–0005, dated November 9, 2006: Install engine FADEC software version 5.10 or higher in accordance with the service bulletin.

(3) For Model ERJ 190–100 IGW, –100 LR, –100 STD, –200 IGW, –200 LR, and –200 STD airplanes identified in EMBRAER Service Bulletin 190–73–0009, Revision 01, dated April 23, 2007: Install engine FADEC software version 5.20 or higher in accordance with the service bulletin.

**Alternative Methods of Compliance (AMOCs)**

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

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

**Related Information**

(j) Brazilian airworthiness directive 2006–03–02R1, effective February 27, 2007; and Brazilian airworthiness directive 2006–03–03R1, effective November 9, 2007; also address the subject of this AD.

Issued in Renton, Washington, on January 24, 2008.

**Ali Bahrami,**

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

[FR Doc. E8–1990 Filed 2–4–08; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2006–26490; Directorate Identifier 2006–CE–075–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Alpha Aviation Design Limited (Type Certificate No. A48EU Previously Held by APEX Aircraft and AVIONS PIERRE ROBIN) Model R2160 Airplanes

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

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of the comment period.

**SUMMARY:** We are revising an earlier NPRM 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:

To prevent failure of the wing structure and assembly components due to undetected fatigue and corrosion * * *

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 March 6, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### Examining the AD Docket

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

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

**SUPPLEMENTARY INFORMATION:**

### 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–2006–26490; Directorate Identifier 2006–CE–075–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

### Discussion

We proposed to amend 14 CFR part 39 with an earlier NPRM for the specified products, which was published in the **Federal Register** on October 11, 2007 (72 FR 57896). That earlier NPRM proposed to require actions intended to address the unsafe condition for the products listed above.

Since that NPRM was issued, public comments have resulted in changes to the preamble and body of the proposed AD. The changes to the body of the proposed AD add a burden that necessitates a supplemental NPRM and re-opening of the comment period.

### Relevant Service Information

AVIONS PIERRE ROBIN (recent type certificate responsibility was with APEX Aircraft and current responsibility is with Alpha Aviation Design Limited) has issued Mandatory Service Bulletin No. 123, revision 3, dated December 23, 1999.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

### Comments

We have considered the following comments received on the earlier NPRM.

*Comment Issue No. 1: The AD Action Reflects Current FAA Registry Numbers of Affected Aircraft*

Mr. Richard Martindale states that there are 9 airplanes of the affected model on the U.S. registry. However, he states that 1 of these 9 airplanes was destroyed in an accident. He also believes that 1 airplane has been exported to Central America. Mr. Martindale concludes that only 7 airplanes of U.S. registry will be affected by the proposed AD. He recommends that we revise the estimated number of airplanes affected to 7 or 8 airplanes.

Since the U.S. registry includes 9 airplanes, we will identify this as the affected number of aircraft in the Cost of Compliance section.

*Comment Issue No. 2: Remove Reference to Avions Pierre Robin Service Bulletin No. 123, Revision 2*

Mr. Martindale states that the MCAI references Robin Aviation Service Bulletin No. 123, revision 3, dated December 23, 1999, and that this service bulletin refers to actions in Avions Pierre Robin Service Bulletin No. 123, revision 2, dated November 14, 1995, which has been superseded and is unavailable. He recommends that the AD action rely only on Robin Aviation Service Bulletin No. 123, revision 3, dated December 23, 1999.

We agree with the commenter and will remove reference to Avions Pierre Robin Service Bulletin No. 123, revision 2, dated November 14, 1995, for repair of any defects.

The reference will remain in certain areas of the Actions and Compliance section because previous accomplishment of certain actions in revision 2 determines what actions in revision 3 actions should be done. Evidence of revision 2 accomplishment should be determinable from the records of the affected airplanes.

*Comment Issue No. 3: Clarify Inspection Requirements for This Proposed AD and the Requirements of AD 99–10–01*

Mr. Martindale requests that we clarify the inspection requirements of this proposed AD with the requirements of AD 99–10–01. He also states that the 750-hour repetitive inspection is missing from the proposed AD.

We agree that there is a need to clarify the inspection requirements of this proposed AD with the requirements of AD 99–10–01. The FAA will explain that the 3,500-hour inspection is 3,500

hours time-in-service (TIS) of new bolts, and thereafter, repetitively inspect every 750 hours. We will add a periodic 750 hours TIS inspection to paragraph (f)(2) of the proposed AD.

*Comment Issue No. 4: Revise the Labor Rate*

Mr. Martindale states that labor rates in the southern California area are $100 per work-hour or more and not the estimated $80 per work-hour used in the NPRM. He also notes that the majority of currently registered aircraft are located in California; thus, the estimated cost of compliance is understated. Mr. Martindale recommends that we use a rate of at least $100 per work-hour.

We are not allowed to accept this recommendation. The U.S. Office of Personnel Management (OPM) established the average labor rates based on an average of the national rate. The rate of $80 per work-hour is the current rate provided by OPM and is the rate the FAA must use for all AD actions.

We are not changing the cost of compliance as a result of this comment.

*Comment Issue No. 5: Costs of Compliance Are Understated*

Mr. Martindale states that the costs of compliance do not consider other factors that drive up the costs to do the proposed AD actions. He recommends that we revise the estimated cost of compliance to include not only parts and labor costs but to also include the estimated cost of procuring or fabricating ground support equipment that enable the required work to be performed in a safe manner. The AD should also address in the estimated cost of compliance the financial risk to operators due to the unavailability of required ground support equipment and/or to the unavailability of mechanics with sufficient experience on the affected aircraft model to perform the required tasks.

The FAA estimates the cost of the AD action based on approximate work-hours and cost of parts. We have no way of determining the cost an individual operator would incur in obtaining proper tooling.

We are not changing the cost of compliance as a result of this comment.

**FAA's Determination and Requirements of the 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 this 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 and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Certain changes described above expand the scope of the earlier NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on the proposed AD.

**Differences Between This Proposed 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**

We estimate that this proposed AD will affect 9 products of U.S. registry. We also estimate that it will take about 15 work-hours per product to comply with basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts will cost about $1,326 per product.

Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $22,734 or $2,526 per product.

We have no way to determine what aircraft will need replacement parts that may be required based on the results of any inspection.

**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:

**Alpha Aviation Design Limited (Type Certificate No. A48EU previously held by Apex Aircraft and AVIONS PIERRE ROBIN):** Docket No. FAA–2006–26490; Directorate Identifier 2006–CE–075–AD.

**Comments Due Date**

(a) We must receive comments by March 6, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Model R2160 airplanes, serial numbers 001 through 378, certificated in any category.

**Subject**

(d) Air Transport Association of America (ATA) Code: 57: Wings.

**Reason**

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

To prevent failure of the wing structure and assembly components due to undetected fatigue and corrosion * * *

The MCAI requires that you inspect the wing structure and fuselage attachment and repair any defects that you find.

**Actions and Compliance**

(f) Unless already done, do the following actions:

(1) Disassemble the wings from the fuselage and inspect the wing structure and assembly components using instruction No. 1 in Robin Aviation Service Bulletin No. 123, revision 3, dated December 23, 1999. If any defects are found, repair following Robin Aviation Service Bulletin No. 123, revision 3, dated December 23, 1999. Use the following compliance times for the inspection:

(i) *For airplanes with less than 4,000 hours time-in-service (TIS):* When the airplane reaches a total of 3,500 hours TIS or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 750 hours TIS.

(ii) *For airplanes with 4,000 hours TIS or more that have not complied with the special instruction in paragraph E of Avions Pierre Robin Service Bulletin No. 123, revision 2, dated November 14, 1995:* Within the next 100 hours TIS after the effective date of this AD and thereafter at intervals not to exceed 750 hours TIS.

(iii) *For airplanes with 4,000 hours TIS or more that have complied with the special instruction in paragraph E of Avions Pierre Robin Service Bulletin No. 123, revision 2, dated November 14, 1995:* Within the next 750 hours TIS after the effective date of this AD and thereafter at intervals not to exceed 750 hours TIS.

(2) When the airplane reaches a total of 3,500 hours TIS with original wing-to-fuselage bolts installed or 3,500 hours TIS of an airplane since new bolts have been installed or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, do a non-destructive inspection of the wing-to-fuselage retaining bolts and replace any bolts that do not pass this inspection following instruction No. 2 in Robin Aviation Service Bulletin No. 123, revision 3, dated December 23, 1999. Thereafter, repetitively inspect wing-to-fuselage retaining bolts and replace any bolts that do not pass this inspection every 750 hours TIS following instruction No. 2 in Robin Aviation Service Bulletin No. 123, revision 3, dated December 23, 1999.

**Note 1:** The requirement for a 3,500-hour inspection is a time since new or time since installation (that is, the TIS of new bolts).

(3) Within the next 50 hours TIS after re-assembling the wing and thereafter at intervals not to exceed 100 hours TIS, inspect the wing-to-fuselage retaining bolts for correct torque settings following instruction No. 3 in Robin Aviation Service Bulletin No. 123, revision 3, dated December 23, 1999. The required torque value is 22 ft-lb with nut part number 95.24.39.010. Tighten to 16 ft-lb (pre-loading) and then torque from 16 to 22 ft-lb.

**FAA AD Differences**

**Note 2:** 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, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090. 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 (44 U.S.C. 3501 et. seq.), 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 Civil Aviation Authority AD DCA/R2000/28, dated September 28, 2006, and Robin Aviation Mandatory Service Bulletin No. 123, revision 3, dated December 23, 1999, for related information.

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

**John Colomy,**

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

[FR Doc. E8–2047 Filed 2–4–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0136; Directorate Identifier 2007–CE–104–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Pacific Aerospace Limited Model 750XL 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) 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 1/8-inch rivets installed in place of the correct 5/32-inch rivets that secure the horizontal tail surface load transfer angles to the rearmost fuselage frame at Station 384.62 (Corrected from 369.62 per notification from the Civil Aviation Authority of New Zealand). 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 March 6, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments

received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0136; Directorate Identifier 2007–CE–104–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

**Discussion**

The Civil Aviation Authority (CAA), which is the airworthiness authority for New Zealand, has issued AD DCA/750XL/4, effective date: September 30, 2004 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI describes the unsafe condition as 1/8-inch rivets installed in place of the correct 5/32-inch rivets that secure the horizontal tail surface load transfer angles to the rearmost fuselage frame at Station 384.62 (Corrected from 369.62 per notification from the Civil Aviation Authority of New Zealand). The MCAI requires you to inspect for the correct size rivets and if the wrong size rivets are installed, replace the rivets with the correct size rivets.

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

**Relevant Service Information**

Pacific Aerospace Corporation Limited has issued Mandatory Service Bulletin No. PACSB/XL/010, dated: July 23, 2004. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of the 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 this 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 and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Differences Between This Proposed 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.

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 7 products of U.S. registry. We also estimate that it would take about .5 work-hour 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 $280, or $40 per product.

In addition, we estimate that any necessary follow-on actions would take about 2 work-hours and require parts costing $10, for a cost of $170 per product. We have no way of determining the number of products that may need these actions.

**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:

**Pacific Aerospace Limited:** Docket No. FAA–2008–0136; Directorate Identifier 2007–CE–104–AD.

**Comments Due Date**

(a) We must receive comments by March 6, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to 750XL airplanes, serial numbers 101 through 108, certificated in any category.

**Subject**

(d) Air Transport Association of America (ATA) Code 51: Structures.

**Reason**

(e) The MCAI describes the unsafe condition as 1/8-inch rivets installed in place of the correct 5/32-inch rivets that secure the horizontal tail surface load transfer angles to the rearmost fuselage frame at Station 384.62 (Corrected from 369.62 per notification from the Civil Aviation Authority of New Zealand). The MCAI requires you to inspect for the correct size rivets and if the wrong size rivets are installed, replace the rivets with the correct size rivets.

**Actions and Compliance**

(f) Unless already done, do the following actions:

(1) Within 100 hours time-in-service (TIS) after the effective date of this AD, inspect to ensure that 1/8-inch rivets are not installed in place of the correct 5/32-inch rivets that secure the horizontal tail surface load transfer angles to the rearmost fuselage frame at Station 384.62 following Pacific Aerospace Corporation Limited Mandatory Service Bulletin No. PACSB/XL/010, dated: July 23, 2004.

(2) Before further flight, if you find undersized rivets are installed as a result of the inspection required by paragraph (f)(1) of this AD, replace the undersized rivets with the correct 5/32-inch rivets following Pacific Aerospace Corporation Limited Service Mandatory Bulletin No. PACSB/XL/010, dated: July 23, 2004.

**FAA AD Differences**

**Note:** This AD differs from the MCAI and/or service information as follows: An official of The New Zealand Civil Aviation Authority confirms that the MCAI should reference Station 384.62.

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090. 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 (44 U.S.C. 3501 et. seq.), 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 Civil Aviation Authority of New Zealand AD DCA/750XL/4, effective date: September 30, 2004; and Pacific Aerospace Corporation Limited Mandatory Service Bulletin No. PACSB/XL/010, dated: July 23, 2004, for related information.

Issued in Kansas City, Missouri, on January 29, 2008.

**John Colomy,**

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

[FR Doc. E8–2046 Filed 2–4–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–0169; Directorate Identifier 2007–NE–45–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG, BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 Turbofan Engines

**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) issued by another country to identify and correct an unsafe condition on Rolls-Royce Deutschland Ltd & Co KG, BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 turbofan engines. The MCAI states the following:

The application of most recent 3D FEM modeling has resulted in the need to reconsider the disc lives as currently shown in the Time Limits Manual. The current Post Certification Life Statement for the low pressure (LP) compressor (fan) disc assembly revises the Declared Safe Cyclic Life (DSCL) from 33,000 flight cycles to 25,000 flight cycles for both the BR715 LP (fan) disc assembly Part No. (P/N) BRH10048 and BR715 LP compressor (fan) disc assembly P/N BRH19253, when installed in the BR700–715A1–30 engine model and operated against the Hawaiian Flight Mission.

The proposed AD would require revising the maximum approved life limit for both the BR715 LP compressor (fan) disc assembly P/N BRH10048 and BR715 LP compressor (fan) disc assembly P/N BRH19253, from 33,000 flight cycles to 25,000 flight cycles, if ever operated against the Hawaiian Flight Mission and removing LP compressor (fan) disc assemblies from service that exceed the maximum approved life limit before further flight. This condition, if not corrected, could result in uncontained failure of the LP compressor (fan) disc assembly and damage to the airplane.

**DATES:** We must receive comments on this proposed AD by March 6, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *Jason.yang@faa.gov;* telephone (781) 238–7747; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0169; Directorate Identifier 2007–NE–45–AD'' at the beginning of

your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

**Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the European Community, has issued EASA Airworthiness Directive 2007–0116–E, dated May 4, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> The application of most recent 3D FEM modeling has resulted in the need to reconsider the disc lives as currently shown in the Time Limits Manual. The current Post Certification Life Statement for the low pressure (LP) compressor (fan) disc assembly revises the Declared Safe Cyclic Life (DSCL) from 33,000 flight cycles to 25,000 flight cycles for both the BR715 LP (fan) disc assembly P/N BRH10048 and BR715 LP compressor (fan) disc assembly P/N BRH19253, when installed in the BR700–715A1–30 engine model and operated against the Hawaiian Flight Mission.

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

**FAA's Determination and Requirements of This Proposed AD**

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

- Revising the maximum approved life limit for both the BR715 LP compressor (fan) disc assembly P/N BRH10048 and BR715 LP compressor (fan) disc assembly P/N BRH19253, in the Time Limits Manual No. T–715–3BR; from 33,000 flight cycles to 25,000 flight cycles, if ever operated against the Hawaiian Flight Mission; and
- Removing LP compressor (fan) disc assemblies from service that exceed the maximum approved life limit before further flight.
- Applying the pro rate calculations and completing the Life Limited Part Tracking Sheet, using the revised Hawaiian Flight Mission maximum life limit of 25,000 flight cycles and checking if their consumed life has exceeded maximum approved life of the Flight Mission currently installed in; and
- Before further flight, removing LP compressor disc assemblies from service that do not pass the check.

**Costs of Compliance**

We estimate that this proposed AD would affect about 240 engines installed on aircraft of U.S. registry. This proposed LP compressor (fan) disc assembly removal does not impose any additional labor costs if performed at the time of scheduled engine overhaul. We also estimate that it will take about one work-hour per engine to calculate and re-establish the achieved cyclic life for an LP compressor (fan) disc assembly, and that the average labor rate is $80 per work-hour. We estimate that the prorate cost of the life reduction per engine will be $33,000. Total cost of this proposed AD is, therefore, $7,939,200.

**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:

**Rolls-Royce Deutschland Ltd & Co KG (formerly BMW Rolls-Royce GmbH, and BMW Rolls-Royce Aero Engines):** Docket No. FAA–2007–0169; Directorate Identifier 2007–NE–45–AD.

**Comments Due Date**

(a) We must receive comments by March 6, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD), BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 turbofan engines, with a low pressure (LP) compressor disc assembly, part number (P/N) BRH10048 or P/N BRH19253, when installed in the BR700–715A1–30 engine model and operated against the Hawaiian Flight Mission. These engines are installed on, but not limited to, McDonnell Douglas Corporation model 717–200 airplanes.

**Reason**

(d) The mandatory continuous airworthiness information (MCAI) states:

> The application of most recent 3D FEM modeling has resulted in the need to reconsider the disc lives as currently shown in the Time Limits Manual. The current Post Certification Life Statement for the low pressure (LP) compressor (fan) disc assembly

revises the Declared Safe Cyclic Life (DSCL) from 33,000 flight cycles to 25,000 flight cycles for both the BR715 LP (fan) disc assembly P/N BRH10048 and BR715 LP compressor (fan) disc assembly P/N BRH19253, when installed in the BR700–715A1–30 engine model and operated against the Hawaiian Flight Mission.

This condition, if not corrected, could result in uncontained failure of the LP compressor (fan) disc assembly and damage to the airplane.

**Actions and Compliance**

(e) No later than 100 flight cycles after the effective date of this AD, do the following actions, unless already done.

**BR700–715A1–30 Turbofan Engines**

(1) For BR700–715A1–30 turbofan engines, amend the Airworthiness Limitations Section of the Time Limits Manual SUBTASK 05–10–01–860–016, (Hawaiian Flight Mission Only) by revising the ''GIVEN LIFE A1–30 RATING (FLIGHT CYCLES)'' for both the LP compressor (fan) disc assembly P/N BRH10048 and LP compressor (fan) disc assembly P/N BRH19253 from 33,000 flight cycles to 25,000 flight cycles.

(2) Amend any other Reference, where the maximum approved life limit is quoted for the LP compressor (fan) disc assembly P/N BRH10048 or LP compressor (fan) disc assembly P/N BRH19253, when installed in the BR700–715A–30 engine model and operated under the Hawaiian Flight Mission, to the revised maximum approved life limit of 25,000 flight cycles.

**BR700–715B1–30 and BR700–715C1–30 Turbofan Engines**

(3) For BR700–715B1–30 and BR700–715C1–30 turbofan engines:

(i) Check to see if the LP compressor (fan) disc assembly P/N BRH10048 or LP compressor (fan) disc assembly P/N BRH19253 is currently, or has previously been, installed in the BR700–715A1–30 engine model and operated under the Hawaiian Flight Mission, by checking the Life Limited Parts (LLP) Tracking Sheet. Information on recording and control of the lives of the parts can be found in the Airworthiness Limitations Section of the Time Limits Manual TASK 05–00–01–800–001.

(ii) If the LP compressor (fan) disc assembly has not operated, and is not going to operate in the Hawaiian Flight Mission, no further action is required.

(iii) If the LP compressor (fan) disc assembly has operated in the Hawaiian Flight Mission:

(A) Apply the prorate calculations and complete the LLP Tracking Sheet using the revised Hawaiian Flight Mission maximum approved life limit of 25,000 flight cycles.

(B) Remove LP compressor (fan) disc assemblies from service before reaching 25,000 flight cycles.

**Other FAA AD Provisions**

(f) *Alternative Methods of Compliance:* The Manager, Engine Certification Office, FAA, has the authority to approve alternative methods of compliance for this AD, if requested using the procedures found in 14 CFR 39.19.

**Related Information**

(g) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2007–0116–E, dated May 4, 2007, for related information.

(h) Contact Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *Jason.yang@faa.gov;* telephone (781) 238–7747; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on January 28, 2008.

**Peter A. White,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. E8–2039 Filed 2–4–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0115; Directorate Identifier 2007–NM–240–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Saab Model SAAB 2000 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:

One LM–219–92 Centre Bracket from an LM–219-SA28 Aft Engine Mounting assembly was found to be cracked while installed on the aircraft.

This reduces the effectiveness of the mounting assembly and could eventually cause it to fail.

* * * * *

A failed mounting assembly, if not corrected, could result in loss of the engine. 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 March 6, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0115; Directorate Identifier 2007–NM–240–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

**Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA

Airworthiness Directive 2007–0204, dated August 8, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> One LM–219–92 Centre Bracket from an LM–219–SA28 Aft Engine Mounting assembly was found to be cracked while installed on the aircraft.
>
> This reduces the effectiveness of the mounting assembly and could eventually cause it to fail.
>
> This AD requires rework in order to make the centre bracket less sensitive to external damage that may result in a crack.

A failed mounting assembly, if not corrected, could result in loss of the engine. The corrective action also includes a visual and fluorescent penetrant inspection for cracking of the center bracket of the aft engine mounting assembly for both engines, re-identification of a reworked center bracket, additional fluorescent penetrant inspections for cracking of the reworked center bracket, and replacement of the aft engine mounting assembly if any cracked center bracket is found. You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

Saab has issued Saab 2000 Service Bulletin 2000–71–025, dated June 13, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of This Proposed AD**

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

**Differences Between This AD and the MCAI or Service Information**

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

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

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 6 products of U.S. registry. We also estimate that it would take about 8 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 $3,840, or $640 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:

**SAAB Aircraft AB:** Docket No. FAA–2008–0115; Directorate Identifier 2007–NM–240–AD.

**Comments Due Date**

(a) We must receive comments by March 6, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Saab Model SAAB 2000 airplanes, certificated in any category, serial number 004 through 063.

**Subject**

(d) Air Transport Association (ATA) of America Code 71: Power Plant.

**Reason**

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

> One LM–219–92 Centre Bracket from an LM–219–SA28 Aft Engine Mounting assembly was found to be cracked while installed on the aircraft.
>
> This reduces the effectiveness of the mounting assembly and could eventually cause it to fail.
>
> This AD requires rework in order to make the centre bracket less sensitive to external damage that may result in a crack.

A failed mounting assembly, if not corrected, could result in loss of the engine. The corrective action also includes a visual and fluorescent penetrant inspection for cracking of the center bracket of the aft engine mounting assembly for both engines, re-identification of a reworked center bracket, additional fluorescent penetrant inspections for cracking of the reworked center bracket, and replacement of the aft engine mounting assembly if any cracked center bracket is found.

**Actions and Compliance**

(f) Unless already done, do the following actions in accordance with the

Accomplishment Instructions of Saab 2000 Service Bulletin 2000–71–025, dated June 13, 2007.

(1) Within 1,000 flight hours after the effective date of this AD, do a visual and a fluorescent penetrant inspection for cracking of the center bracket of both of the aft engine mounting assemblies.

(2) If no cracking is found during the inspections required by paragraph (f)(1) of this AD, within 4,000 flight hours after the effective date of this AD, rework the center bracket of the aft engine mounting assembly, do fluorescent penetrant inspections for cracking of the reworked bracket, and re-identify with new part numbers the reworked center bracket and the applicable aft engine mounting assembly.

(3) If any cracking is found during any inspection required by paragraph (f)(1) or (f)(2) of this AD, before further flight, replace the aft engine mounting assembly, and rework and re-identify the center bracket.

**FAA AD Differences**

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

(1) Although the MCAI or service information allows further flight after cracks are found during compliance with the required action, paragraph (f)(3) of this AD requires that you replace the aft engine mounting assembly before further flight.

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, Transport Airplane Directorate, ANM–116, 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: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; 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 2007–0204, dated August 8, 2007, and Saab 2000 Service Bulletin 2000–71–025, dated June 13, 2007, for related information.

Issued in Renton, Washington, on January 24, 2008.

**Ali Bahrami,**

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

[FR Doc. E8–1992 Filed 2–4–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 138

**[USCG 2005–21780]**

**RIN 1625–AA98**

## Financial Responsibility for Water Pollution (Vessels) and OPA 90 Limits of Liability (Vessels and Deepwater Ports)

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend the regulatory requirements, under the Oil Pollution Act of 1990 and the Comprehensive Environmental Response, Compensation and Liability Act, for vessel operators to establish and maintain evidence of financial responsibility. The amendments would ensure the amounts of financial responsibility demonstrated are consistent with recent statutory increases, and future mandated increases, in the limits of liability under the Oil Pollution Act of 1990. The amendments would also implement changes in the Coast Guard's administration of the certificate of financial responsibility program, and would clarify the current rule.

**DATES:** Comments and related material must reach the Docket Management Facility on or before May 5, 2008. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before May 5, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2005–21780 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

You must also send comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure that the comments are received on time, the preferred method is by e-mail at *nlesser@omb.eop.gov* or fax at 202–395–6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Benjamin White, National Pollution Funds Center, Coast Guard, telephone 202–493–6863. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

*A. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (USCG–2005–21780), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. For example, we may ask you to resubmit your comment if we are not able to read your original submission. You may submit your comments and material by electronic means, mail, fax,

or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

*B. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time, click on ''Search for Dockets,'' and enter the docket number for this rulemaking (USCG–2005–21780) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*C. Privacy Act*

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

*D. Public Meeting*

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**II. Background and Purpose**

Under the Oil Pollution Act of 1990, as amended (OPA 90), at 33 U.S.C. 2702, responsible parties for a vessel or facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone, are jointly and severally liable for specified removal costs and damages up to prescribed limits of liability. Similar requirements apply to owners and operators of vessels and facilities under 42 U.S.C. 9607 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The OPA 90 limits of liability are set out in 33 U.S.C. 2704, and pursuant 33 U.S.C. 2704(d)(4) are subject to amendment by regulation issued not less often than every three years to reflect significant increases in the Consumer Price Index. The CERCLA limits of liability are set out in 42 U.S.C. 9607, and are not subject to Consumer Price Index adjustments.

In addition, 33 U.S.C. 2716(a) of OPA 90 and 42 U.S.C. 9608(a) of CERCLA require that responsible parties of certain vessels establish and maintain evidence of financial responsibility (i.e., ability to pay) sufficient to meet the maximum amount of liability to which they could be subjected under 33 U.S.C. 2704 and 42 U.S.C. 9607.[1] According to 33 U.S.C. 2716(a)(1) and (2), those requirements apply, in relevant part for purposes of OPA 90, to responsible parties for: Any vessel over 300 gross tons (except a non-self propelled vessel that does not carry oil as cargo or fuel) using any place subject to the jurisdiction of the United States; and any vessel using the waters of the exclusive economic zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States.

On July 11, 2006, the President signed the Delaware River Protection Act of 2006 (Title VI of the Coast Guard and Maritime Transportation Act of 2006) (Pub. L. 109–241) (DRPA). Section 603 of DRPA amended the OPA 90 limits of liability for vessels at 33 U.S.C. 2704(a). The new OPA 90 limits of liability were effective for non-tank vessels on July 11, 2006 and for tank vessels on October 9, 2006.[2]

The following table shows the original and amended OPA 90 limits of liability by vessel type:

OPA 90 VESSEL LIMITS OF LIABILITY [3, THNSP;4]

| If the vessel is a | The original limit of liability limit was the greater of— | The amended limit of liability is the greater of— |
|---|---|---|
| Tank vessel greater than 3,000 gross tons with a single hull, with double sides only, or with a double bottom only. | $1,200 per gross ton or $10,000,000 | $3,000 per gross ton or $22,000,000. |
| Tank vessel less than or equal to 3,000 gross tons with a single hull, with double sides only, or with a double bottom only. | $1,200 per gross ton or $2,000,000 | $3,000 per gross ton or $6,000,000. |
| Tank vessel greater than 3,000 gross tons with a double hull. | $1,200 per gross ton or $10,000,000 | $1,900 per gross ton or $16,000,000. |
| Tank vessel less than or equal to 3,000 gross tons with a double hull. | $1,200 per gross ton or $2,000,000 | $1,900 per gross ton or $4,000,000. |
| Any vessel other than a tank vessel | $600 per gross ton or $500,000 | $950 per gross ton or $800,000. |

On August 18, 2006, we published a Notice of Policy in the **Federal Register** (71 FR 47737) entitled ''New Oil Pollution Limits of Liability for Vessels—Delaware River Protection Act of 2006 Amendment to the Oil Pollution Act of 1990''. In this notice, we explained:

[1] OPA 90 also imposes evidence of financial responsibility requirements on offshore facilities and deepwater ports, at 33 U.S.C. 2716(c). These regulations, however, only concern the OPA 90 evidence of financial responsibility requirements applicable to vessels under 33 U.S.C. 2716(a).

[2] See, ''New Oil Pollution Limits of Liability for Vessels-Delaware River Protection Act of 2006 Amendment to the Oil Pollution Act of 1990'' (71 FR 47737, August 18, 2006).

[3] Source: 33 U.S.C. 2704(a) as now in effect, and immediately prior to amendment by Pub. L. 109–241, Section 603.

[4] Although, both the amended and original versions of 33 U.S.C. 2704(a) distinguish between vessels on the basis of gross tonnage and whether they are tank vessels, the statute as amended by DRPA Section 603 now also distinguishes between single and double hulled tank vessels.

• That the OPA 90 limits of liability for vessels have been changed effective July 11, 2006 for non-tank vessels, and effective October 9, 2006 for tank vessels;

• The amounts of the new OPA 90 vessel limits;

• That the OPA 90 proof of financial responsibility requirements for vessels at 33 CFR part 138 would stay at existing levels until changed by rulemaking; and

• That a rulemaking project would be initiated to require vessel owners and operators to provide evidence of financial responsibility under 33 CFR part 138 to the amended OPA 90 limits of liability.

As a result of the 2006 changes to the OPA 90 vessel limit of liability provisions, this rulemaking was initiated to ensure the ability of responsible parties to meet their potential liability limit under OPA 90, as specified in 33 U.S.C. 2704, in the event of an incident. In order to provide the necessary consistency between the new OPA 90 vessel limits of liability and the vessel evidence of financial responsibility requirements, we propose to amend the applicable amount provisions for OPA 90 at § 138.80(f)(1).[5]

Section 603(b) of the DRPA also amended 33 U.S.C. 2704(d)(4) of OPA 90, adding a requirement that the President adjust the OPA 90 limits of liability specified in 33 U.S.C. 2704(a) within three years following enactment of DRPA and not less than every 3 years thereafter to reflect significant increases in the Consumer Price Index. The requirement to adjust the OPA 90 limits of liability for vessels and deepwater ports has been delegated to the Director, National Pollution Funds Center, United States Coast Guard. Therefore, to facilitate future updates to the CFR, we propose dividing part 138 of the CFR into two subparts, with the current rule appearing under subpart A, adding a new subpart B to set forth the OPA 90 limits of liability for both vessels and deepwater ports, and deleting the specifically enumerated OPA 90 applicable amounts for vessels from § 138.80(f)(1).

In addition, we propose to eliminate the requirement in § 138.65 that an original Certificate of Financial Responsibility (Certificate or COFR), or an authorized copy thereof, be carried aboard covered vessels. Improved technology now enables the Coast Guard to view vessel COFRs electronically, which is more cost effective than tasking inspectors to view a paper Certificate on board each vessel.

The proposed rule would also increase the COFR application and certification fees found in § 137.130. Existing fee amounts were established in 1994 in the interim rule entitled ''Financial Responsibility for Water Pollution (Vessels)'' (59 FR 34210). A final rule was subsequently published in 1996 entitled ''Financial Responsibility for Water Pollution (Vessels)'' (61 FR 9264) which did not change the fee amounts established in the interim rule. These proposed fee increases approximate the fluctuations to the Consumer Price Index occurring as a result of inflation since 1994.

Finally, we propose a conforming revision to the definition of ''owner'' in § 138.20 to reflect amendments to OPA 90 by the Coast Guard and Maritime Transportation Act of 2004 (Pub. L. 108–293) (the 2004 Act).

## III. Discussion of Proposed Rule

Throughout proposed Part 138, regulatory provisions have been rewritten using plain language when necessary to clarify the rule. These revisions are not intended to change substantive requirements, and are only discussed when helpful to explain substantial revisions resulting from this proposed rule.

*Part 138.* The word ''subpart'' would be substituted for ''part'', as appropriate, throughout to reflect the proposal to divide the rule into two subparts. References to ''appendices to this part'' have been deleted throughout. (See discussion of Appendices A–F below).

Section 138.10. We propose to revise the introductory paragraph to clarify the statutory background of the rule for the reader. The revision includes references to the requirements, in OPA section 1016 and CERCLA section 108, that responsible parties establish and maintain evidence of financial responsibility sufficient to cover specified amounts of liability arising under those acts.

The revised section also reiterates the requirement, in § 138.80 of the existing and proposed regulations, that responsible parties establish and maintain evidence of financial responsibility equal to the total applicable amount. For more information on the total applicable amount, see proposed § 138.80, particularly paragraphs (a) and (f).

*Section 138.15.* We propose removing all of the content of existing § 138.15, entitled ''Implementation Schedule'' and replacing it with the applicability provisions currently located at § 138.12. The language that would be removed from § 138.15 is associated with the phase-in requirements established by the interim rule entitled ''Financial Responsibility for Water Pollution (Vessels)'' (59 FR 34210), which was published in the **Federal Register** on July 1, 1994, and reiterated in a final rule published in the **Federal Register** on March 7, 1996 (61 FR 9264). Because the phase-in was completed on December 27, 1997, this language is obsolete.

*Section 138.15(a)(2).* This part of the proposed rule would correct a typographical error. The current regulation, at § 138.12(a)(2), states that it applies to ''A vessel * * * except—(i) A vessel that is 300 gross tons or less; *and* (ii) A non-self-propelled barge that does not carry oil as cargo or fuel and does not carry hazardous substances as cargo.'' We would revise this section to state ''A vessel * * * except —(i) A vessel that is 300 gross tons or less; *or* (ii) A non-self-propelled barge that does not carry oil as cargo or fuel and does not carry hazardous substances as cargo.'' Correction of this typographical error is necessary to eliminate confusion concerning which vessels are subject to the regulation. Other proposed changes to the wording of current § 138.12 (proposed § 138.15) are editorial clarifications.

*Section 138.20.* The current references in § 138.20(a)(1) to § 138.10(b)(1), and in § 138.20(a)(2) to § 138(b)(2) are incorrect due to a typographical error. They should read §§ 138.10(a) and (b) respectively. The proposed rule would correct this error.

Additionally, the following changes would be made to the definitions in this section:

The proposed revisions to § 138.20 would clarify that modifications to terms defined in OPA 90 and CERCLA apply only for purposes of the subpart A evidence of financial responsibility requirements and do not modify responsible party liability under statute.

Several terms used in this regulation are defined terms in OPA 90 and CERCLA, but are not currently listed in 33 CFR 138.20(a). We therefore propose adding the terms ''claim'', ''liable'', ''liability'', ''offshore facility'', ''owner or operator'', and ''security interest''.

The definition of Certificate would be modified to reflect that all COFRs would be issued by NPFC, and that the COFR will be issued in electronic format. A responsible party may print copies of the COFR for recordkeeping purposes.

The definition of ''Owner'' would be modified to reflect a recent amendment to OPA 90 which states, similar to CERCLA, that an owner does not include a person who, without

[5] This rulemaking would not change the applicable amounts for vessels under CERCLA at 42 U.S.C. 9607(c) and § 138.80(f)(2).

participating in the management of a vessel, holds indicia of ownership primarily to protect the owner's security interest in the vessel.

We also propose adding new definitions for ''applicable amount'', ''day or days'', ''E-COFR'', ''financial guarantor'' and ''responsible party'' to clarify terms used in the current and proposed rule, as follows:

The term ''Applicable amount'' refers to an amount calculated pursuant to either § 138.80(f)(1) (OPA 90) or § 138.80(f)(2) (CERCLA), and would be defined to distinguish the term from the defined term ''Total Applicable Amount''. Technical corrections have been proposed throughout the rule to ensure the two terms are used as intended.

The terms ''day'' or ''days'' would be added to clarify how deadlines are calculated under the rule.

The term ''E-COFR'' would be defined to refer the reader to the web-based process on NPFC's Web site for operators to apply for and renew Certificates.

The term ''financial guarantor'' would be defined to clarify that a financial guarantor is a particular type of guarantor, and is distinct from an insurer, a self-insurer or a surety.

In the definition of ''insurer'', we propose changing ''Coast Guard'' to ''Director, NPFC'' because NPFC has been delegated responsibility for vessel certification.

We also propose to revise the definition of ''Master Certificate'', to make it consistent with § 138.110(a) of the current and proposed rule, by including the word ''lessor'' in the list of eligible persons.

The term ''responsible party'' would be defined by reference to OPA 90 and CERCLA to clarify its meaning when used in the rule. We would also, when appropriate and helpful to improve readability, replace references to owners, operators and demise charterers by the term responsible party.

We propose to amend the definition of ''guarantor'' to clarify, consistent with OPA 90 and CERCLA, that a responsible party is not a guarantor, and to incorporate the newly defined term ''responsible party.''

The Hazardous Material definition of the current rule has a typographical error in its citation of the Federal Water Pollution Control Act. The current regulation references ''33 U.S.C. 1221''. It should read ''33 U.S.C. 1321''. The proposed rule would correct this error.

*Section 138.30.* We propose moving the last sentence of § 138.30(b), which provides that a ''time or voyage charter that does not assume responsibility for the operation of a vessel is not considered an operator,'' to the definition of the term ''Operator''. All other changes to § 138.30 are editorial.

*Section 138.40.* This section of the proposed rule would inform the public where to obtain the forms that now appear in the appendices of part 138.

*Section 138.45.* This section, currently § 138.40 of the rule, would be amended by adding a statement that COFR applications may be submitted electronically using E-COFR found on NPFC's Web site.

*Section 138.50.* The proposed rule would add the words ''for good cause shown'', to clarify the standard the Coast Guard now applies to grant extensions.

*Section 138.60.* The proposed rule would add language referring applicants to the instructions for obtaining COFR application forms at §§ 138.40 and 138.45.

*Section 138.65.* Due to recent technological improvements, the Coast Guard is now able to efficiently enforce these regulations using electronic means. Therefore, this proposed rule would remove the requirement in § 138.65 that hard-copy COFRs be carried aboard vessels. The proposed rule would also provide in this section that COFRs will be issued by NPFC in electronic form. The rule would also provide that a copy of the Certificate may be downloaded from NPFC's web-site. Elsewhere in § 138.140(e) the rule would provide that copies may not be altered, and may not be used following expiration or revocation for anything other than recordkeeping purposes.

*Section 138.70.* The proposed rule would add language to paragraph (a) of this section permitting operators to use the E-COFR Web site for COFR renewal requests. The proposal would also clarify in paragraph (a) that the requirements in § 138.60 requiring that applications be in English and that all monetary terms be expressed in U.S. dollars also apply to requests for renewal.

Additionally, paragraph (c) of this section of the current rule would be removed. The phase-in of the prior financial responsibility regulations was completed on December 27, 1997. Therefore, this paragraph is no longer applicable. For further information concerning the previous phase-in, see the discussion in this preamble of § 138.15.

*Section 138.80(f)(1).* Section 603(b) of DRPA amended 33 U.S.C. 2704(d) by adding a requirement that the President update the limits of liability specified in 33 U.S.C. 2704(a) by regulation within three years following enactment of the 2006 amendments, and preserved the requirement for such updates not less often than every 3 years to reflect significant increases in the Consumer Price Index. This authority to update the limits of liability for vessels and deepwater ports was subsequently delegated to the Coast Guard. To facilitate future updates to the CFR, this paragraph would be amended to inform readers that the OPA 90 evidence of financial responsibility applicable amounts are equal to the limits of liability for vessels referenced in new subpart B.

This approach is proposed to simplify the process of updating vessel OPA 90 financial responsibility applicable amounts and limits of liability. For example, when an adjustment in the OPA 90 limits of liability is required to reflect a change in the Consumer Price Index, only subpart B of the proposed regulations would require revision. In contrast, continuing to state financial responsibility amounts in this section would necessitate amending this section as well as the limits of liability in new subpart B.

The Coast Guard considered the possibility of adding the adjusted OPA 90 limits of liability to § 138.80(f), or removing that paragraph entirely and stating limits of liability and financial responsibility applicable amounts in a new section. The former alternative was not preferred because the current § 138.80(f) also contains provisions concerning the CERCLA evidence of financial responsibility requirements, and a paragraph containing all of these provisions would be unnecessarily confusing. Removal of this paragraph was also not preferred because doing so would unnecessarily entail a reorganization of part 138 to relocate the CERCLA provisions.

The limitations contained in current § 138.80(f)(1) concerning gross tonnage, cargo, jurisdiction and vessel use would be removed from that paragraph, but would continue in force through § 138.15 of the proposed rule.

*Section 138.85.* This new section of the proposed rule would establish an implementation schedule that would apply to the increased applicable amounts in Subpart B of this proposed rule, and whenever the financial responsibility applicable amounts under Subpart B are amended by regulation. This would occur in instances including, but not limited to, future regulatory changes mandated by statute, and when the limits of liability in proposed subpart B of this Part are amended to reflect significant increases in the Consumer Price Index pursuant to 33 U.S.C. 2704(d)(4).

*Sections 138.90, 138.110 and 138.120.* As discussed in this preamble in relation to § 138.65, the proposed rule would remove the requirement to carry the COFR in hard-copy onboard the vessel. Provisions requiring such carriage, as well as requirements for copies of COFRs to be notarized, and for operators to return COFRs to NPFC under certain circumstances are no longer applicable and we propose that they be deleted from these sections. Operators may download copies of COFRs. Elsewhere, however, § 138.140(e) of the rule would continue to provide that the use of altered copies is prohibited, and although copies would no longer need to be returned to NPFC, the rule would add that copies may not be used following expiration or revocation for anything other than recordkeeping purposes.

*Section 138.130.* The proposed rule would add a provision to § 138.130(b) requiring payment with a credit card by those seeking to make fee payments using E-COFR.

In addition § 138.130(c) has been rewritten to clarify when an application fee is required to be paid to the NPFC.

As discussed in this preamble in relation to §§ 138.15 and 138.70, we propose to remove § 138.70(c) of the current rule, and references to it, because it is no longer applicable. References to § 138.70(c) would, therefore, also be deleted from § 138.130.

This proposed rule would also amend § 138.130 to increase the COFR application fees from $150 to $200 and the COFR certification fees from $80 to $100. These proposed fee increases approximate the fluctuations to the Consumer Price Index occurring as a result of inflation since 1994, the year the current fees were established, and are not anticipated to result in significant economic cost to those affected. See the Preliminary Regulatory Evaluation at *http://www.regulations.gov* under docket number USCG 2005–21780 for an analysis of economic impacts associated with these proposed increases.

We also propose amending § 138.130(c) for clarity and to conform the rule to NPFC's policy of waiving application fees when new applications are submitted within 90 days following a revocation or other invalidation of a Certificate.

*Section 138.140.* The proposed rule would revise § 138.140 to clarify its provisions, explain the repercussions of non-compliance and facilitate enforcement of the evidence of financial responsibility requirements of this regulation through electronic methods in order to improve efficiency. Additionally, the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2178) revised 46 U.S.C. App. 91 by substituting the Secretary of Homeland Security for the Customs Service and the Secretary of the Treasury, and that section was recodified at 46 U.S.C. 60105. Accordingly, we propose to update the reference to 46 U.S.C. App. 91 in § 138.140(b).

*Subpart B.* Section 603(b) of the DRPA amended 33 U.S.C. 2704(d)(4) adding a requirement that the President update the limits of liability specified in 33 U.S.C. 2704(a) by regulation within three years following enactment of DRPA, and preserved the requirement for such updates not less often than every 3 years thereafter to reflect significant increases in the Consumer Price Index. This authority to update the limits of liability for vessels and deepwater ports was subsequently delegated to the Coast Guard. To facilitate such updates, § 138.80(f)(1) would be amended to inform readers that the OPA 90 vessel financial responsibility applicable amounts are equal to the limits of liability for vessels referenced in new subpart B. This approach will enable regulatory revision of both the limits of liability and the financial responsibility amounts through amendment of subpart B.

The limits of liability contained in 33 U.S.C. 2704 would be set forth in new subpart B, consisting of new §§ 138.200, 138.210, and 138.220, to facilitate future Consumer Price Index adjustments. As explained in the ''Background and Purpose'' section above, the OPA 90 vessel limits of liability would be set forth in subpart B at the increased amounts pursuant to the DRPA. The limit of liability for the Louisiana Offshore Oil Port would be set forth at the existing amount, $62,000,000, which was established pursuant to 33 U.S.C. 2704(d)(2)(C) by a final rule published in the **Federal Register** on August 4, 1995 (60 FR 39849). The limit of liability for all other deepwater ports would also be set forth at subpart B at the existing amount, $350,000,000, pursuant to 33 U.S.C. 2704(a)(4).

*Appendices A–F.* We propose to delete the appendices of forms from the regulations. Instead, as explained in the preamble discussion of § 138.40, the proposed rule would, where appropriate, refer readers to the forms by form number and would provide street and internet addresses where forms could be obtained.

## IV. Regulatory Evaluation

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analysis based on 13 of these statutes and executive orders.

### *A. Executive Order 12866*

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

A draft Regulatory Evaluation is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. A summary of the Evaluation follows:

There are two regulatory costs that are expected to result from this proposed rule:

*Regulatory Cost 1*: The proposed rule would increase the cost to responsible parties associated with application for and certification of COFRs. This proposed rule would increase the cost per application from $150 to $200 and the cost per certification from $80 to $100. We estimate that there will be 1,600 COFR applications submitted per year and 8,600 COFR certifications submitted per year for the foreseeable future. The aggregated annual increase in cost due to these fee increases would be approximately $252,000 per year.

*Regulatory Cost 2*: The proposed rule would increase the cost associated with establishing financial responsibility under 33 CFR 138. This would occur in two ways: responsible parties using commercial insurance as their method of guaranty would incur higher insurance premiums; and, responsible parties using self-insurance as their method of guaranty would need to seek out and acquire commercial insurance for vessels they operate that would no longer be eligible for self-insurance based on their working capital and net worth.

There are approximately 16,982 vessels using commercial insurance and 823 vessels using self insurance methods of guaranty. The 10-year present value of this regulatory cost at a 3% discount rate would be between $73.8 Million and $83.4 Million. The 10-year present value of this regulatory cost at a 7% discount rate would be between $63.3 Million and $71.9 Million. The ranges reflect two vessel profiles that were developed and analyzed separately to account for the uncertainty, due to data gaps, of when existing single hulled tank vessels would be phased out.

The 10-year present value of the total cost of the proposed rule (Regulatory Cost 1 + Regulatory Cost 2) at a 3% discount rate would be between $76 Million and $85.6 Million. The 10-year present value of the total cost of the proposed rule (Regulatory Cost 1 + Regulatory Cost 2_) at a 7% discount rate would be between $65.2 Million and $73.8 Million.

This proposed rule would result in two benefits: First, the rule would align the financial responsibility amounts for vessels in 33 CFR with the amended statutory limits of liability under OPA 90. This will ensure the ability of responsible parties to meet their maximum liability limit under OPA 90, as specified in 33 U.S.C. 2704, in the event of an incident. Second, the rule would eliminate the burden on owners and operators of maintaining COFRs onboard vessels.

*B. Small Entities*

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

An Initial Regulatory Flexibility Analysis discussing the impact of this proposed rule on small entities is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble.

In this analysis, we researched vessel operator size and revenue data using public and proprietary business databases. We then determined which entities were small based on the U.S. Small Business Administration's criteria as they pertain to business size standards for all sectors of the North American Industry Classification System (NAICS).

There are an estimated 600 small entities that would be affected by this proposed rule. It was found that 82 distinct NAICS codes were represented in the population of small entities (of which 32 contained more than 5 entities). Increases in insurance premiums would result in an average annual cost of $523 per vessel. Increases in self-insurer costs would result in an average annual cost of $7,200 per vessel. Increases in COFR application fees would result in an average annual cost of $12 per vessel.

Of the small entities impacted, 92 percent would experience an annual economic impact that is less than 1 percent of their annual sales. Furthermore, 98 percent of the small entities would experience an economic impact less than 3 percent of their total sales. Two percent would experience an annual economic impact that is equal to or greater than 3 percent of their annual sales and none would experience an annual economic annual impact greater than 10 percent of their annual sales. Based on this analysis, we believe that implementation of this proposed rule would not have a significant economic impact on a substantial number of small entities under 5 U.S.C. 605(b).

At the final rule stage, we may certify this rule as not having a significant economic impact on a substantial number of small entities; consequently, we specifically request comments that inform our decision regarding the economic impact of this rule on small entities.

*C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Benjamin White, National Pollution Funds Center, Coast Guard, telephone 202–493–6863. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

*D. Collection of Information*

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

*Title*: Financial Responsibility for Water Pollution (Vessels) and Limits of Liability.

*Summary of the Collection of Information:* Within 120 days of the effective date of this regulation, operators and guarantors would be required to establish evidence of financial responsibility to the amended applicable amounts in 33 CFR 138.80(f).

This proposed rule would eliminate the existing recordkeeping burden associated with 33 CFR part 138, and revise the current information collection entitled, Financial Responsibility for Water Pollution (Vessels) (Office of Management and Budget Control Number 1625–0046, Approved December 7, 2006).

*Need for Information*: This information collection is necessary to enforce this proposed rule. Without this collection, it would not be possible for the Coast Guard to know which operators were in compliance with the amended financial responsibility amounts of 33 CFR 138.80(f), and which were not. Vessels not in compliance would be subject to the penalties provided under 33 CFR 138.140.

*Proposed Use of Information*: The Coast Guard would use this information to verify that vessel operators have established evidence of financial responsibility to reflect the amended financial responsibility applicable amounts in 33 CFR 138.80(f).

*Description of the Respondents*: Operators and guarantors of vessels that require COFRs under 33 CFR part 138.

*Number of Respondents*: There are approximately 900 United States operators, 9,000 foreign operators of vessels and 100 guarantors that would submit information to the Coast Guard.

*Frequency of Response*: This is a one-time submission that would occur within 120 days of this regulatory change to the financial responsibility applicable amounts. Subsequent submissions that may be required as a result of changes to the Consumer Price Index are not included here because they will be addressed in a future rulemaking to establish procedures for periodic changes to the limits of liability to reflect changes in the Consumer Price Index pursuant to 33 U.S.C. 2704(d)(4).

Also not included here are submissions required under any existing collection of information requirement in part 138.

*Burden of Response*:

Increased burden associated with reporting requirements:

10,000 operators × 1.0 hours per response = 10,000 hours

Reduced burden associated with recordkeeping requirements: 137 hours for recordkeeping

*Estimate of Total Annual Burden*: We used the ''All Occupations'' average hourly wage of $18.21 per hour, found in the May 2005 *National Occupational Employment and Wage Estimates United States*, published by the Department of Labor's Bureau of Labor Statistics, and applied a 43 percent overhead factor to estimate employee benefits to calculate the burdened labor rate. Bureau of Labor Statistics data show that total employee benefits is approximately 30 percent of total compensation. By applying a benefit factor of 43 percent to the hourly wage, we calculate total compensation:

$18.21 per hour + ($18.21 per hour × 43%) = $26 per hour.

We then multiplied the number of net burden hours by the burdened labor rate calculated above.

Increased burden associated with reporting requirements:
10,000 hours × $26 per hour = $260,000
Reduced burden associated with recordkeeping requirements:
137 hours × $26 per hour = $3,562

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

*E. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

*F. Unfunded Mandates Reform Act*

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

*G. Taking of Private Property*

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

*H. Civil Justice Reform*

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

*I. Protection of Children*

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

*J. Indian Tribal Governments*

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

*K. Energy Effects*

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

*L. Technical Standards*

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

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

*M. Environment*

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. A preliminary ''Environmental Analysis Check List'' supporting this preliminary determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. We seek any comments or information that may lead to discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 33 CFR Part 138**

Hazardous materials transportation, Insurance, Oil pollution, Reporting and

recordkeeping requirements, Water pollution control.

**VI. Words of Issuance and Regulatory Text**

For the reasons discussed in the preamble, the Coast Guard proposes to revise 33 CFR part 138 to read as follows:

## PART 138—FINANCIAL RESPONSIBILITY FOR WATER POLLUTION (VESSELS) AND OPA 90 LIMITS OF LIABILITY (VESSELS AND DEEPWATER PORTS)

### Subpart A—Financial Responsibility for Water Pollution (Vessels)

Sec.

138.10 Scope.
138.15 Applicability.
138.20 Definitions.
138.30 General.
138.40 Forms.
138.45 Where to apply for Certificates.
138.50 Time to apply.
138.60 Applications, general instructions.
138.65 Issuance of Certificates.
138.70 Renewal of Certificates.
138.80 Financial responsibility, how established.
138.85 Implementation schedule.
138.90 Individual and Fleet Certificates.
138.100 Non-owning operator's responsibility for identification.
138.110 Master Certificates.
138.120 Certificates, denial or revocation.
138.130 Fees.
138.140 Enforcement.
138.150 Service of process.

### Subpart B—OPA 90 Limits of Liability (Vessels and Deepwater Ports)

Sec.

138.200 Scope.
138.210 Applicability.
138.220 Limits of liability.

**Authority:** 33 U.S.C. 2716, 2716a; 42 U.S.C. 9608, 9609; sec. 7(b), E.O. 12580, 3 CFR, 1987 Comp., p. 198; E.O. 12777, 3 CFR, 1991 Comp., p. 351; E.O. 13286, Sec. 89 (68 FR 10619, Feb. 28, 2003); Section 1512 of the Homeland Security Act of 2002 (Pub. L. 107–296); Department of Homeland Security Delegation Nos. 0170.1 and 5110. Section 138.30 also issued under the authority of 46 U.S.C. 2103, 46 U.S.C. 14302.

## Subpart A—Financial Responsibility for Water Pollution (Vessels)

### § 138.10 Scope.

This subpart sets forth the procedures by which an operator of a vessel must establish and maintain, for itself and for the owners and demise charterers of the vessel, evidence of financial responsibility required by § 1016(a) of the Oil Pollution Act of 1990, as amended (OPA 90) (33 U.S.C. 2716), and Section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA) (42 U.S.C. 9608), equal to the total applicable amount established under this part and sufficient to cover their liability arising under—

(a) Sections 1002 and 1004 of OPA 90 (33 U.S.C. 2702, 2704); and

(b) Section 107 of CERCLA (42 U.S.C. 9607).

### § 138.15 Applicability.

(a) This subpart applies to the operator as defined herein of—

(1) A tank vessel of any size, and a foreign-flag vessel of any size, using the waters of the exclusive economic zone to transship or lighter oil (whether delivering or receiving) destined for a place subject to the jurisdiction of the United States; and

(2) Any vessel using the navigable waters of the United States or any port or other place subject to the jurisdiction of the United States, including a vessel using an offshore facility subject to the jurisdiction of the United States, except—

(i) A vessel that is 300 gross tons or less; or

(ii) A non-self-propelled barge that does not carry oil as cargo or fuel and does not carry hazardous substances as cargo.

(b) For the purposes of financial responsibility under OPA 90, a mobile offshore drilling unit is treated as a tank vessel when it is being used as an offshore facility and there is a discharge, or a substantial threat of a discharge, of oil on or above the surface of the water. A mobile offshore drilling unit is treated as a vessel other than a tank vessel when it is not being used as an offshore facility.

(c) In addition to a non-self-propelled barge over 300 gross tons that carries hazardous substances as cargo, for the purposes of financial responsibility under CERCLA, this subpart applies to a self-propelled vessel over 300 gross tons, even if it does not carry hazardous substances.

(d) This subpart does not apply to operators of public vessels.

### § 138.20 Definitions.

(a) As used in this subpart, the following terms have the meaning as set forth in—

(1) Section 1001 of the Oil Pollution Act of 1990 (Pub. L. 101–380, Title I, § 1001, Aug. 18, 1990, 104 Stat. 486; Pub. L. 105–383, Title III, § 307(a), Nov. 13, 1998, 112 Stat. 3421; Pub. L. 108–293, Title VII, § 703(a), (b), Aug. 9, 2004, 118 Stat. 1069, 1071), respecting the financial responsibility referred to in § 138.10(a): *claim, claimant, damages, discharge, exclusive economic zone, liable, liability, navigable waters, mobile offshore drilling unit, natural resources, offshore facility, oil, owner or operator, person, remove, removal, removal costs, security interest, and United States;* and

(2) Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (Pub. L. 96–510, Title I, § 101, Dec. 11, 1980, 94 Stat. 2767; Pub. L. 96–561, Title II, § 238(b), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 99–499, Title I, §§ 101, 114(b), 127(a), Title V, § 517(c)(2), Oct. 17, 1986, 100 Stat. 1615, 1652, 1692, 1774; Pub. L. 100–707, Title I, § 109(v), Nov. 23, 1988, 102 Stat. 4710; Pub. L. 103–429, § 7(e)(1), Oct. 31, 1994, 108 Stat. 4390; Pub. L. 104–208, Div. A, Title I, § 101(a) [Title II, § 211(b)], Title II, § 2502(b), Sept. 30, 1996, 110 Stat. 3009–41, 3009–464; Pub. L. 104–287, § 6(j)(1), Oct. 11, 1996, 110 Stat. 3400; Pub. L. 106–74, Title IV, § 427, Oct. 20, 1999, 113 Stat. 1095; Pub. L. 107–118, Title II, §§ 211(a), 222(a), 223, 231(a), Jan. 11, 2002, 115 Stat. 2360, 2370, 2372, 2375), respecting the financial responsibility referred to in § 138.10(b): *claim, claimant, damages, environment, hazardous substance, liable, liability, navigable waters, natural resources, offshore facility, owner or operator, person, release, remove, removal, security interest,* and *United States.*

(b) As used in this subpart—

*Acts* means OPA 90 and CERCLA.

*Applicable amount* means an amount of financial responsibility that must be demonstrated under this part, calculated pursuant to Sec. 138.80(f)(1) and subpart B for OPA 90 or 138.80(f)(2) for CERCLA.

*Applicant* means an operator who has applied for a Certificate or for the renewal of a Certificate under this subpart.

*Application* means an ''Application for Vessel Certificate of Financial Responsibility (Water Pollution)'' (Form CG–5585), which can be obtained from the U.S. Coast Guard National Pollution Funds Center as provided in §§ 138.40 and 138.45.

*Cargo* means goods or materials on board a vessel for purposes of transportation, whether proprietary or nonproprietary. A hazardous substance or oil carried solely for use aboard the carrying vessel is not ''Cargo''.

*CERCLA* means title I of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 et seq.).

*Certificant* means an operator who has a current Certificate issued by NPFC under this subpart.

*Certificate* means a ''Vessel Certificate of Financial Responsibility (Water

Pollution)'' issued by the NPFC electronically under this subpart, as provided in § 138.65.

*Day* or *days* means calendar days. If a deadline specified in this subpart falls on a weekend or Federal holiday, the deadline will occur on the next working day. Compliance with a submission deadline will be determined based on the day the submission is received by NPFC.

*Director, NPFC,* means the head of the U.S. Coast Guard National Pollution Funds Center (NPFC).

*E–COFR* means the ''Electronic Certificate of Financial Responsibility'' web-based process located on the NPFC Web site (*http://www.npfc.gov/cofr*), which may be used by operators to apply for and renew Certificates.

*Financial guarantor* means a guarantor who provides a financial guaranty under § 138.80(b)(4), and is distinct from an insurer, a self-insurer or a surety.

*Financial responsibility* means the statutorily required financial ability to meet a responsible party's liability under the Acts.

*Fish tender vessel* and fishing vessel have the same meaning as set forth in 46 U.S.C. 2101.

*Fuel* means any oil or hazardous substance used or capable of being used to produce heat or power by burning, including power to operate equipment. A hand-carried pump with not more than five gallons of fuel capacity, that is neither integral to nor regularly stored aboard a non-self-propelled barge, is not equipment.

*Guarantor* means any person, other than a responsible party, who provides evidence of financial responsibility under the Acts on behalf of a vessel's responsible parties. A responsible party who can qualify as a self-insurer under § 138.80(b)(3) may act as both a self-insurer of vessels owned, operated or demise chartered by the responsible party, and as a financial guarantor for the responsible parties of other vessels under § 138.80(b)(4).

*Hazardous material* means a liquid material or substance that is—

(1) Flammable or combustible;

(2) A hazardous substance designated under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)); or

(3) Designated a hazardous material under the Hazardous Materials Transportation Act, section 104, 46 U.S.C. 5103(a) (1994).

*Incident* means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone.

*Insurer* is a type of guarantor and means one or more insurance companies, associations of underwriters, ship owners' protection and indemnity associations, or other persons, each of which must be acceptable to the Director, NPFC.

*Master Certificate* means a Certificate issued under this subpart to a person who is a builder, repairer, scrapper, lessor, or seller of a vessel and is acting as the vessel's operator.

*Offshore supply vessel* has the same meaning as set forth in 46 U.S.C. 2101.

*OPA 90* means title I of the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.).

*Operator* means a person who is an owner, a demise charterer, or other contractor, who conducts the operation of, or who is responsible for the operation of, a vessel. A builder, repairer, scrapper, lessor, or seller who is responsible, or who agrees by contract to become responsible, for a vessel is an operator. A time or voyage charterer that does not assume responsibility for the operation of a vessel is not an operator for the purposes of this subpart.

*Owner* means any person holding legal or equitable title to a vessel. In a case where a U.S. Coast Guard Certificate of Documentation or equivalent document has been issued, the owner is considered to be the person or persons whose name or names appear thereon as owner. ''Owner'' does not include a person who, without participating in the management of a vessel, holds indicia of ownership primarily to protect the owner's security interest in the vessel.

*Public vessel* means a vessel owned or bareboat chartered by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when the vessel is engaged in commerce.

*Responsible party*, for purposes of OPA 90 financial responsibility has the same meaning as defined at 33 U.S.C. 2701(32), and for purposes of CERCLA financial responsibility means any person who is an owner or operator, as defined at 42 U.S.C. 9601(20), including any person chartering a vessel by demise.

*Self-elevating lift vessel* means a vessel with movable legs capable of raising its hull above the surface of the sea and that is an offshore work boat (such as a work barge) that does not engage in drilling operations.

*Tank vessel* means a vessel (other than an offshore supply vessel, a fishing vessel or a fish tender vessel of 750 gross tons or less that transfers fuel without charge to a fishing vessel owned by the same person, or a towing or pushing vessel (tug) simply because it has in its custody a tank barge) that is constructed or adapted to carry, or that carries, oil or liquid hazardous material in bulk as cargo or cargo residue, and that—

(1) Is a vessel of the United States;

(2) Operates on the navigable waters; or

(3) Transfers oil or hazardous material in a place subject to the jurisdiction of the United States.

*Total applicable amount* means the amount determined under § 138.80(f)(3).

*Vessel* means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

**§ 138.30 General.**

(a) The regulations in this subpart set forth the procedures for an operator of a vessel subject to this subpart to demonstrate that the responsible parties of the vessel are financially able to meet their potential liability for costs and damages in the applicable amounts set forth in this subpart at 138.80(f). Although the owners, operators, and demise charterers of a vessel are strictly, jointly and severally liable under OPA 90 and CERCLA for the costs and damages resulting from each incident or release or threatened release, together they need only establish and maintain evidence of financial responsibility under this subpart equal to the combined OPA 90 and CERCLA limits of liability arising from a single incident and a single release, or threatened release. Only that portion of the total applicable amount of financial responsibility demonstrated under this subpart with respect to—

(1) OPA 90 is required to be made available by a vessel's responsible parties and guarantors for the costs and damages related to an incident where there is not also a release or threatened release; and,

(2) CERCLA is required to be made available by a vessel's responsible parties and guarantors for the costs and damages related to a release or threatened release where there is not also an incident. A guarantor (or a self-insurer for whom the exceptions to limitations of liability are not applicable), therefore, is not required to apply the entire total applicable amount of financial responsibility demonstrated under this subpart to an incident involving oil alone or a release or threatened release involving a hazardous substance alone.

(b) Where a vessel is operated by its owner or demise charterer, or the owner or demise charterer is responsible for its operation, the owner or demise charterer is considered to be the ''operator'' for purposes of this subpart, and must submit the application and requests for renewal for a Certificate. In all other cases, the vessel operator must submit the application or requests for renewal.

(c) For a United States-flag vessel, the applicable gross tons or gross tonnage, as referred to in subparts A and B of this part, is determined as follows:

(1) For a documented U.S. vessel measured under both 46 U.S.C. Chapters 143 (Convention Measurement) and 145 (Regulatory Measurement). The vessel's regulatory gross tonnage is used to determine whether the vessel exceeds 300 gross tons where that threshold applies under the Acts. If the vessel's regulatory gross tonnage is determined under the Dual Measurement System in 46 CFR part 69, subpart D, the higher gross tonnage is the regulatory gross tonnage for the purposes of determining whether the vessel meets the 300 gross ton threshold. The vessel's gross tonnage as measured under the International Convention on Tonnage Measurement of Ships, 1969 (''Convention''), is used to determine the vessel's required applicable amounts of financial responsibility, and limit of liability under section 1004(a) of OPA 90 and section 107 of CERCLA.

(2) For all other United States vessels. The vessel's gross tonnage under 46 CFR part 69 is used for determining the vessel's 300 gross ton threshold, the required applicable amounts of financial responsibility, and limits of liability under section 1004(a) of OPA 90 and section 107 of CERCLA. If the vessel's gross tonnage is determined under the Dual Measurement System, the higher gross tonnage is used in all determinations.

(d) For a vessel of a foreign country that is a party to the Convention, gross tons or gross tonnage, as referred to in subparts A and B of this part, is determined as follows:

(1) For a vessel assigned, or presently required to be assigned, gross tonnage under Annex I of the Convention. The vessel's gross tonnage as measured under Annex I of the Convention is used for determining the 300 gross ton threshold, if applicable, the required applicable amounts of financial responsibility, and limits of liability under section 1004(a) of OPA 90 and under section 107 of CERCLA.

(2) For a vessel not presently required to be assigned gross tonnage under Annex I of the Convention. The highest gross tonnage that appears on the vessel's U.S. Coast Guard Certificate of Documentation or equivalent document and that is acceptable to the Coast Guard under 46 U.S.C. chapter 143 is used for determining the 300 gross ton threshold, if applicable, the required applicable amounts of financial responsibility, and limits of liability under section 1004(a) of OPA 90 and section 107 of CERCLA. If the vessel has no document, or the gross tonnage appearing on the document is not acceptable under 46 U.S.C. chapter 143, the vessel's gross tonnage is determined by applying the Convention Measurement System under 46 CFR part 69, subpart B, or if applicable, the Simplified Measurement System under 46 CFR part 69, subpart E. The measurement standards applied are subject to applicable international agreements to which the United States Government is a party.

(e) For a vessel of a foreign country that is not a party to the Convention, gross tons or gross tonnage, as referred to in subparts A and B of this part, is determined as follows:

(1) For a vessel measured under laws and regulations found by the Commandant to be similar to Annex I of the Convention. The vessel's gross tonnage under the similar laws and regulations is used for determining the 300 gross ton threshold, if applicable, the required applicable amounts of financial responsibility, and limits of liability under section 1004(a) of OPA 90 and section 107 of CERCLA. The measurement standards applied are subject to applicable international agreements to which the United States Government is a party.

(2) For a vessel not measured under laws and regulations found by the Commandant to be similar to Annex I of the Convention. The vessel's gross tonnage under 46 CFR part 69, subpart B, or, if applicable, subpart E, is used for determining the 300 gross ton threshold, if applicable, the required applicable amount of financial responsibility, and the limits of liability under section 1004(a) of OPA 90 and section 107 of CERCLA. The measurement standards applied are subject to applicable international agreements to which the United States is a party.

(f) A person who agrees to act as a guarantor or a self-insurer is bound by the vessel's gross tonnage as determined under paragraphs (c), (d), or (e) of this section, regardless of what gross tonnage is specified in an application or guaranty form submitted under this subpart. Guarantors, however, may limit their liability under a guaranty of financial responsibility to the applicable gross tonnage appearing on a vessel's International Tonnage Certificate or other official, applicable certificate of measurement and will not incur any greater liability with respect to that guaranty, except when the guarantors knew or should have known that the applicable tonnage certificate was incorrect.

**§ 138.40 Forms.**

All forms referred to in this subpart may be obtained from NPFC by requesting them in writing at the address given in § 138.145(a) or by clicking on the ''Forms'' link at the NPFC E-COFR Web site, *http://www.npfc.gov/cofr*.

**§ 138.45 Where to apply for and renew Certificates.**

(a) An operator must file all applications for a Certificate and all requests for renewal of a Certificate, together with fees and evidence of financial responsibility, with the NFPC at the following address: U.S. Coast Guard, National Pollution Funds Center (Cv), 4200 Wilson Boulevard, Suite 1000, Arlington, VA 22203–1804, telephone (202) 493–6780, Telefax (202) 493–6781; or electronically using NPFC's E–COFR web-based process at *http://www.npfc.gov/cofr.*

(b) All requests you have for assistance in completing applications, requests for renewal and other submissions under this subpart, including telephone inquiries, should be directed to the U.S. Coast Guard NPFC at the addresses in paragraph (a) of this section.

**§ 138.50 Time to apply.**

(a) A vessel operator who wishes to obtain a Certificate must submit a completed application form or request for renewal and all required supporting evidence of financial responsibility, and must pay all applicable fees, at least 21 days prior to the date the Certificate is required. The Director, NPFC, may grant an extension of this 21-day requirement for good cause shown.

(b) The Director, NPFC, generally processes applications and requests for renewal in the order in which they are received at the NPFC.

**§ 138.60 Applications, general instructions.**

(a) You may obtain an ''Application for Vessel Certificate of Financial Responsibility (Water Pollution)'' (Form CG–5585) by following the instructions in §§ 138.40 and 138.45.

(b) Your application and all supporting documents must be in English, and express all monetary terms in United States dollars.

(c) An authorized official of the applicant must sign the signature page of the application. The title of the signer must be shown in the space provided on the application. The operator must submit the original signature page of the application to NPFC in hard copy.

(d) The application must be accompanied by a written statement providing the signer the authority to sign, where the signer is not identified as an individual (sole proprietor) applicant, a partner in a partnership applicant, or a director, chief executive officer, or any other duly authorized officer of a corporate applicant.

(e) If, before the issuance of a Certificate, the applicant becomes aware of a change in any of the facts contained in the application or supporting documentation, the applicant must, within 5 business days of becoming aware of the change, notify the Director, NPFC, in writing, of the change.

**§ 138.65 Issuance of Certificates.**

Upon the satisfactory demonstration of financial responsibility and payment of all fees due, the Director, NPFC, will issue a ''Vessel Certificate of Financial Responsibility (Water Pollution)'' in electronic form. Copies of the Certificate may be downloaded from NPFC's E–COFR Web site.

**§ 138.70 Renewal of Certificates.**

(a) The operator of a vessel required to have a Certificate under this subpart must file a written or E–COFR request for renewal of the Certificate at least 21 days, but not earlier than 90 days, before the expiration date of the Certificate. A letter may be used for this purpose. The request for renewal must comply in all other respects with the requirements in § 138.60 concerning applications. The Director, NPFC, may waive this 21-day requirement for good cause shown.

(b) The operator must identify in the request for renewal any changes which have occurred since the original application for a Certificate was filed, and must set forth the correct information in full.

**§ 138.80 Financial responsibility, how established.**

(a) *General.* In addition to submitting an application, requests for renewal and fees, an applicant must submit, or cause to be submitted, evidence of financial responsibility acceptable to the Director, NPFC, in an amount equal to the total applicable amount determined under § 138.80(f). A guarantor may submit the evidence of financial responsibility on behalf of the applicant directly to the Director, NPFC.

(b) *Methods.* An applicant or certificant must establish and maintain evidence of financial responsibility by one or more of the following methods:

(1) *Insurance.* By filing with the Director, NPFC, an ''Insurance Guaranty'' (Form CG–5586) or, when applying for a Master Certificate under § 138.110, a ''Master Insurance Guaranty'' (Form CG–5586–1), executed by not more than four insurers that have been found acceptable by, and remain acceptable to, the Director, NPFC, for purposes of this subpart.

(2) *Surety bond.* By filing with the Director, NPFC, a ''Surety Bond Guaranty'' (Form CG–5586–2), executed by not more than 10 acceptable surety companies certified by the United States Department of the Treasury with respect to the issuance of Federal bonds in the maximum penal sum of each bond to be issued under this subpart.

(3) *Self-insurance.* By filing the financial statements specified in paragraph (b)(3)(i) of this section for the applicant's fiscal year preceding the date of application and by demonstrating that the applicant or certificant maintains, in the United States, working capital and net worth each in amounts equal to or greater than the total applicable amount calculated in accordance with § 138.80(f)(3), based on a vessel carrying hazardous substances as cargo. As used in this paragraph, working capital means the amount of current assets located in the United States, less all current liabilities anywhere in the world; and net worth means the amount of all assets located in the United States, less all liabilities anywhere in the world. For each fiscal year after the initial submission, the applicant or certificant must also submit statements as follows:

(i) *Initial and annual submissions.* An applicant or certificant must submit annual, current, and audited non-consolidated financial statements prepared in accordance with Generally Accepted Accounting Principles, and audited by an independent Certified Public Accountant. These financial statements must be audited in accordance with Generally Accepted Auditing Standards. These financial statements must be accompanied by an additional statement from the Treasurer (or equivalent official) of the applicant or certificant certifying both the amount of current assets and the amount of total assets included in the accompanying balance sheet, which are located in the United States. If the financial statements cannot be submitted in non-consolidated form, a consolidated statement may be submitted if accompanied by an additional statement prepared by the same Certified Public Accountant, verifying the amount by which the applicant's or certificant's—

(A) Total assets, located in the United States, exceed its total (i.e., worldwide) liabilities; and

(B) Current assets, located in the United States, exceed its total (i.e., worldwide) current liabilities. This additional statement must specifically name the applicant or certificant, indicate that the amounts so verified relate only to the applicant or certificant, apart from any other affiliated entity, and identify the consolidated financial statement to which it applies.

(ii) *Semiannual submissions.* When the applicant's or certificant's demonstrated net worth is not at least ten times the total applicable amount of financial responsibility calculated in accordance with § 138.80(f)(3), the applicant's or certificant's Treasurer (or equivalent official) must file affidavits covering the first six months of the applicant's or certificant's current fiscal year. The affidavits must state that neither the working capital nor the net worth have, during the first six months of the current fiscal year, fallen below the applicant's or certificant's required total applicable amount of financial responsibility as determined in accordance with this subpart.

(iii) *Additional submissions.* An applicant or certificant—

(A) Must, upon request of the Director, NPFC, within the time specified in the request, submit additional financial information; and

(B) Who establishes financial responsibility under paragraph (b)(3) of this section must notify the Director, NPFC, within 5 business days of the date the applicant or certificant knows, or has reason to believe, that the working capital or net worth has fallen below the amounts required by this subpart.

(iv) *Time for submissions.* All required annual financial statements must be received by the Director, NPFC, within 90 days after the close of the applicant's or certificant's fiscal year, and all affidavits required by paragraph (b)(3)(ii) of this section within 30 days after the close of the applicable six-month period. The Director, NPFC, may grant an extension of the time limits for filing the annual financial statements, semi-annual affidavits or additional financial information upon written request and for good cause shown. An applicant or certificant seeking an extension of any of these deadlines must set forth the reason for the extension and deliver the request at least 15 days before the annual financial statements, affidavits or additional information are

due. The Director, NPFC, will not consider a request for an extension of more than 60 days.

(v) *Failure to submit.* The Director, NPFC, may deny or revoke a Certificate for failure of the applicant or certificant to submit any statement, data, notification, or affidavit required by paragraph (b)(3) of this section.

(vi) *Waiver of working capital.* The Director, NPFC, may waive the working capital requirement for any applicant or certificant that—

(A) Is a regulated public utility, a municipal or higher-level governmental entity, or an entity operating solely as a charitable, non-profit organization qualifying under section 501(c) Internal Revenue Code. The applicant or certificant must demonstrate in writing that the grant of a waiver would benefit a local public interest; or

(B) Demonstrates in writing that working capital is not a significant factor in the applicant's or certificant's financial condition. An applicant's or certificant's net worth in relation to the amount of its required total applicable amount of financial responsibility and a history of stable operations are the major elements considered by the Director, NPFC.

(4) *Financial Guaranty.* By filing with the Director, NPFC, a ''Financial Guaranty'' (Form CG–5586–3), or, when applying for a Master Certificate, a ''Master Financial Guaranty'' (Form CG–5586–4), executed by not more than four financial guarantors, including but not limited to a parent or affiliate acceptable to the Coast Guard. A financial guarantor must comply with all of the self-insurance provisions of paragraph (b)(3) of this section. In addition, a person who is a financial guarantor for more than one applicant or certificant must have working capital and net worth no less than the aggregate total applicable amounts of financial responsibility calculated in accordance with § 138.80(f)(3) provided as a financial guarantor for each applicant or certificant, plus the total applicable amount required to be demonstrated by a self-insurer under this subpart if the financial guarantor is also acting as a self-insurer.

(5) *Other evidence of financial responsibility.* The Director, NPFC, will not accept a self-insurance method other than the one described in paragraph (b)(3) of this section. An applicant may in writing request that the Director, NPFC, accept a method different from one described in paragraph (b)(1), (2), or (4) of this section to demonstrate evidence of financial responsibility. An applicant submitting a request under this paragraph must submit the request to the Director, NPFC, at least 45 days prior to the date the Certificate is required. The applicant must describe in detail the method proposed, the reasons why the applicant does not wish to use or is unable to use one of the methods described in paragraph (b)(1), (2), or (4) of this section, and how the proposed method assures that the responsible parties for the vessel are able to fulfill their obligations to pay costs and damages in the event of an incident or a release or threatened release. The Director, NPFC, will not accept a method under this paragraph that merely deletes or alters a provision of one of the methods described in paragraph (b)(1), (2), or (4) of this section (for example, one that alters the termination clause of the ''Insurance Guaranty'' (Form CG–5586). An applicant that makes a request under this paragraph must provide the Director, NPFC, a proposed guaranty form that includes all the elements described in paragraphs (c) and (d) of this section. A decision of the Director, NPFC, not to accept a method requested by an applicant under this paragraph is final agency action.

(c) *Forms*—(1) *Multiple guarantors.* Four or fewer insurers (a lead underwriter is considered to be one insurer) may jointly execute an ''Insurance Guaranty'' (Form CG–5586) or a ''Master Insurance Guaranty'' (Form CG–5586–1). Ten or fewer sureties (including lead sureties) may jointly execute a ''Surety Bond Guaranty'' (Form CG–5586–2). Four or fewer financial guarantors may jointly execute a ''Financial Guaranty'' (Form CG–5586–3). If more than one insurer, surety, or financial guarantor executes the relevant form—

(i) Each is bound for the payment of sums only in accordance with the percentage of vertical participation specified on the relevant form for that insurer, surety, or financial guarantor. Participation in the form of layering (tiers, one in excess of another) is not acceptable; only vertical participation on a percentage basis and participation with no specified percentage allocation is acceptable. If no percentage of participation is specified for an insurer, surety, or financial guarantor, the liability of that insurer, surety, or financial guarantor is joint and several for the total of the unspecified portions; and

(ii) The guarantors must designate a lead guarantor having authority to bind all guarantors for actions required of guarantors under the Acts, including but not limited to receipt of designation of source, advertisement of a designation, and receipt and settlement of claims.

(2) *Operator name.* An applicant or certificant must ensure that each form submitted under this subpart sets forth in full the correct legal name of the vessel operator to whom a Certificate is to be issued.

(d) *Direct Action*—(1) *Acknowledgment.* Any evidence of financial responsibility submitted under this subpart must contain an acknowledgment by each insurer or other guarantor that an action in court by a claimant (including a claimant by right of subrogation) for costs or damages arising under the provisions of the Acts, may be brought directly against the insurer or other guarantor. The evidence of financial responsibility must also provide that, in the event an action is brought under the Acts directly against the insurer or other guarantor, the insurer or other guarantor may invoke only the following rights and defenses:

(i) The incident, release, or threatened release was caused by the willful misconduct of the person for whom the guaranty is provided.

(ii) Any defense that the person for whom the guaranty is provided may raise under the Acts.

(iii) A defense that the amount of a claim or claims, filed in any action in any court or other proceeding, exceeds the amount of the guaranty with respect to an incident or with respect to a release or threatened release.

(iv) A defense that the amount of a claim or claims that exceeds the amount of the guaranty, which amount is based on the gross tonnage of the vessel as entered on the vessel's International Tonnage Certificate or other official, applicable certificate of measurement, except when the guarantor knew or should have known that the applicable tonnage certificate was incorrect.

(v) The claim is not one made under either of the Acts.

(2) *Limitation on guarantor liability.* A guarantor that participates in any evidence of financial responsibility under this subpart will be liable because of that participation, with respect to an incident or a release or threatened release, in any proceeding only for the amount and type of costs and damages specified in the evidence of financial responsibility. A guarantor will not be considered to have consented to direct action under any law other than the Acts, or to unlimited liability under any law or in any venue, solely because of the guarantor's participation in providing any evidence of financial responsibility under this subpart. In the event of any finding that liability of a guarantor exceeds the amount of the guaranty provided under this subpart,

that guaranty is considered null and void with respect to that excess.

(e) *Public access to data.* Financial data filed by an applicant, certificant, and any other person is considered public information to the extent required by the Freedom of Information Act (5 U.S.C. 552) and permitted by the Privacy Act (5 U.S.C. 552a).

(f) *Total applicable amount.* The total applicable amount is determined as follows:

(1) The applicable amount under OPA 90 is equal to the applicable vessel limit of liability, which is determined as provided in subpart B of this part.

(2) The applicable amount under CERCLA is determined as follows:

(i) For a vessel over 300 gross tons carrying a hazardous substance as cargo, the greater of $5,000,000 or $300 per gross ton.

(ii) For any other vessel over 300 gross tons, the greater of $500,000 or $300 per gross ton.

(3) The total applicable amount is the applicable amount calculated under paragraph (f)(1) of this section plus the applicable amount calculated under paragraph (f)(2) of this section.

**§ 138.85 Implementation schedule.**

The effective date of the applicable amounts in Subpart B of this part will be [INSERT DATE 90 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **Federal Register**]. In the event an applicable amount in Subpart B is amended by regulation, the effective date of the amended applicable amount will be 90 days after publication of a final rule in the **Federal Register**, unless another date is required by statute and specified in the amending regulation. Each operator of a vessel described in § 138.15, must have established, on or before the effective date of the applicable amount, evidence of financial responsibility acceptable to the Director, NPFC, in an amount equal to or greater than the total applicable amount.

**§ 138.90 Individual and Fleet Certificates.**

(a) The Director, NPFC, issues an individual Certificate for each vessel listed on a completed application or request for renewal when the Director, NPFC, determines that acceptable evidence of financial responsibility has been provided and appropriate fees have been paid, except where a Fleet Certificate is issued under this section or where a Master Certificate is issued under § 138.110. Each Certificate of any type issued under this subpart is issued only in the name of a vessel operator and is effective for not more than 3 years from the date of issue, as indicated on each Certificate. An authorized official of the applicant may submit to the Director, NPFC, a letter requesting that additional vessels be added to a previously submitted application for an individual Certificate. The letter must set forth all information required in item 5 of the application form. The authorized official must also submit, or cause to be submitted, acceptable evidence of financial responsibility, if required, and certification fees for these additional vessels.

(b) An operator of two or more barges that are not tank vessels and that from time to time may be subject to this subpart (e.g., a hopper barge over 300 gross tons when carrying oily metal shavings or similar cargo), so long as the operator of such a fleet is a self-insurer or arranges with an acceptable guarantor to cover, automatically, all such barges for which the operator may from time to time be responsible, may apply to the Director, NPFC, for issuance of a Fleet Certificate.

(c) A person must not make any alteration on any copy of a Certificate issued under this subpart.

(d) If, at any time after a Certificate has been issued, a certificant becomes aware of a change in any of the facts contained in the application or supporting documentation, the certificant must notify the Director, NPFC, in writing within 10 days of becoming aware of the change. A vessel or operator name change or change of a guarantor must be reported by the operator as soon as possible by telefax or other electronic means to the Director, NPFC, and followed by a written notice sent within 3 business days.

(e) Except as provided in § 138.90(f), at the moment a certificant ceases to be the operator of a vessel for any reason, including a vessel that is scrapped or transferred to a new operator, the individual Certificate naming the vessel is void and its further use is prohibited. In that case, the certificant must, within 10 business days of the Certificate becoming void, submit the following information in writing to the Director, NPFC:

(1) The number of the individual Certificate and the name of the vessel.

(2) The date and reason why the certificant ceased to be the operator of the vessel.

(3) The location of the vessel on the date the certificant ceased to be the operator.

(4) The name and mailing address of the person to whom the vessel was sold or transferred.

(f) In the event of the temporary transfer of custody of an unmanned barge certificated under this subpart, where the certificant transferring the barge continues to be liable under the Acts and continues to maintain on file with the Director, NPFC, acceptable evidence of financial responsibility with respect to the barge, the existing individual Certificate remains in effect. A temporary new individual Certificate is not required. A transferee is encouraged to require the transferring certificant to acknowledge in writing that the transferring certificant agrees to remain responsible for pollution liabilities.

**§ 138.100 Non-owning operator's responsibility for identification.**

(a) Each operator that is not an owner of a vessel certificated under this subpart, other than an unmanned barge, must ensure that the original or a legible copy of the demise charter-party (or other written document on the owner's letterhead, signed by the vessel owner, which specifically identifies the vessel operator named on the Certificate) is maintained on board the vessel.

(b) The demise charter-party or other document required by paragraph (a) of this section must be presented, upon request, for examination and copying to a United States Government official.

**§ 138.110 Master Certificates.**

(a) A contractor or other person who is responsible for a vessel in the capacity of a builder, scrapper, lessor, or seller (including a repairer who agrees to be responsible for a vessel under its custody) may apply for a Master Certificate instead of applying for an individual Certificate for each vessel. A Master Certificate covers all of the vessels subject to this subpart held by the applicant solely for purposes of construction, repair, scrapping, lease, or sale. A vessel which is being operated commercially in any business venture, including the business of building, repairing, scrapping, leasing, or selling (e.g., a slop barge used by a shipyard) cannot be covered by a Master Certificate. Any vessel for which a Certificate is required, but which is not eligible for a Master Certificate, must be covered by either an individual Certificate or a Fleet Certificate.

(b) An applicant for a Master Certificate must submit an application form in the manner prescribed by §§ 138.40 through 138.60. An applicant must establish evidence of financial responsibility in accordance with § 138.80, by submission, for example, of an acceptable Master Insurance Guaranty Form, Surety Bond Guaranty Form, Master Financial Guaranty Form, or acceptable self-insurance

documentation. An application must be completed in full, except for Item 5. The applicant must make the following statement in Item 5: ''This is an application for a Master Certificate. The largest tank vessel to be covered by this application is [insert applicable gross tons] gross tons. The largest vessel other than a tank vessel is [insert applicable gross tons] gross tons.'' The dollar amount of financial responsibility evidenced by the applicant must be sufficient to meet the amount required under this subpart.

(c) Each Master Certificate issued by the Director, NPFC, indicates—

(1) The name of the applicant (i.e., the builder, repairer, scrapper, lessor, or seller);

(2) The date of issuance and termination, encompassing a period of not more than 3 years; and

(3) The gross tons of the largest tank vessel and gross tons of the largest vessel other than a tank vessel eligible for coverage by that Master Certificate. The Master Certificate does not identify the name of each vessel covered by the Certificate.

(d) Each additional vessel which does not exceed the respective tonnages indicated on the Master Certificate and which is eligible for coverage by a Master Certificate is automatically covered by that Master Certificate. Before acquiring a vessel, by any means, including conversion of an existing vessel, that would have the effect of increasing the certificant's required applicable amount of financial responsibility (above that provided for issuance of the existing Master Certificate), the certificant must submit to the Director, NPFC, the following:

(1) Evidence of increased financial responsibility.

(2) A new certification fee.

(3) Either a new application or a letter amending the existing application to reflect the new gross tonnage which is to be indicated on a new Master Certificate.

(e) A person to whom a Master Certificate has been issued must submit to the Director, NPFC, every six months beginning the month after the month in which the Master Certificate is issued, a report indicating the name, previous name, type, and gross tonnage of each vessel covered by the Master Certificate during the preceding six-month reporting period and indicating which vessels, if any, are tank vessels.

**§ 138.120 Certificates, denial or revocation.**

(a) The Director, NPFC, may deny a Certificate when an applicant—

(1) Willfully or knowingly makes a false statement in connection with an application for an initial or renewal Certificate;

(2) Fails to establish acceptable evidence of financial responsibility as required by this subpart;

(3) Fails to pay the required application or certificate fees;

(4) Fails to comply with or respond to lawful inquiries, regulations, or orders of the Coast Guard pertaining to the activities subject to the Acts, including this subpart; or

(5) Fails to timely file required statements, data, notifications, or affidavits.

(b) The Director, NPFC, may revoke a Certificate when a certificant—

(1) Willfully or knowingly makes a false statement in connection with an application for an initial or a renewal Certificate, or in connection with any other filing required by this subpart;

(2) Fails to comply with or respond to lawful inquiries, regulations, or orders of the Coast Guard pertaining to the activities subject to this subpart; or

(3) Fails to timely file required statements, data, notifications, or affidavits.

(c) A Certificate is immediately invalid, and considered revoked, without prior notice, when the certificant—

(1) Fails to maintain acceptable evidence of financial responsibility as required by this subpart;

(2) Is no longer the responsible operator of the vessel in question; or

(3) Alters any copy of a Certificate.

(d) The Director, NPFC, will advise the applicant or certificant, in writing, of the intention to deny or revoke a Certificate under paragraph (a) or (b) of this section and will state the reason for the decision. Written advice from the Director, NPFC, that an incomplete application will be considered withdrawn unless it is completed within a stated period, is the equivalent of a denial.

(e) If the intended revocation under paragraph (b) of this section is based on failure to timely file the required financial statements, data, notifications, or affidavits, the revocation is effective 10 days after the date of the notice of intention to revoke, unless, before revocation, the certificant demonstrates to the satisfaction of the Director, NPFC, that the required documents were timely filed or have been filed.

(f) If the intended denial is based on paragraph (a)(1) or (a)(4) of this section, or the intended revocation is based on paragraph (b)(1) or (b)(2) of this section, the applicant or certificant may request, in writing, an opportunity to present information for the purpose of showing that the applicant or certificant is in compliance with the subpart. The request must be received by the Director, NPFC, within 10 days after the date of the notification of intention to deny or revoke. A Certificate subject to revocation under this paragraph remains valid until the Director, NPFC, issues a written decision revoking the Certificate.

(g) An applicant or certificant whose Certificate has been denied under paragraph (a) of this section or revoked under paragraph (b) or (c) of this section may request the Director, NPFC, to reconsider the denial or revocation. The certificant must file a request for reconsideration, in writing, to the Director, NPFC, within 20 days of the date of the denial or revocation. The certificant must state the reasons for reconsideration. The Director, NPFC, may issue a written decision on the request within 30 days of receipt, provided that failure by the Director, NPFC, to issue a decision within 30 days will be deemed an affirmation of a denial or revocation. Unless the Director, NPFC, issues a decision reversing the revocation, a revoked Certificate remains invalid. A decision by the Director, NPFC, affirming a denial or revocation, is final agency action.

**§ 138.130 Fees.**

(a) The Director, NPFC, will not issue a Certificate until the fees set forth in paragraphs (c) and (d) of this section have been paid.

(b) For those using E–COFR, credit card payment is required. Otherwise, fees must be paid in United States currency by check, draft, or postal money order made payable to the ''U.S. Coast Guard''. Cash will not be accepted.

(c) An applicant who submits an application under this subpart must pay a non-refundable application fee of $200 for each application (i.e., individual Certificate, Fleet Certificate, or Master Certificate), except as follows:

(1) An application for an additional (i.e., supplemental) individual Certificate,

(2) An application to amend or renew an existing Certificate, or

(3) An application submitted within 90 days following a revocation or other invalidation of a Certificate.

(d) In addition to the application fee of $200, an applicant must pay a certification fee of $100 for each vessel for which a Certificate is requested. An applicant must pay the $100 certification fee for each vessel listed in, or later added to, an application for an

individual Certificate(s). An applicant must pay the $100 certification fee to renew or to reissue a Certificate for any reason, including, but not limited to, a vessel or operator name change.

(e) A certification fee is refunded, upon receipt of a written request, if the application is denied or withdrawn before issuance of the Certificate. Overpayments of application and certification fees are refunded, on request, only if the refund is for $100 or more. However, any overpayments not refunded will be credited, for a period of 3 years from the date of receipt of the monies by the Coast Guard, for the applicant's possible future use or transfer to another applicant under this subpart.

**§ 138.140 Enforcement.**

(a) Any person who fails to comply with this subpart with respect to evidence of financial responsibility under section 1016 of OPA 90 (33 U.S.C. 2716) is subject to a civil penalty under section 4303(a) of that Act (33 U.S.C. 2716a(a)). In addition, under section 4303(b) of that Act (33 U.S.C. 2716a(b)), the Attorney General may secure such relief as may be necessary to compel compliance with the OPA 90 requirements of this subpart including termination of operations. Further, any person who fails to comply with this subpart with respect to evidence of financial responsibility under section 108(a) of CERCLA (42 U.S.C. 9608(a)), is subject to a Class I administrative civil penalty, a Class II administrative civil penalty or a judicial penalty under section 109 of CERCLA (42 U.S.C. 9609).

(b) The Secretary of the Department in which the U.S. Coast Guard is operating will withhold or revoke the clearance required by 46 U.S.C. § 60105 to any vessel subject to this subpart that has not provided the evidence of financial responsibility required by this subpart.

(c) The Coast Guard may deny entry to any port or place in the United States or the navigable waters of the United States, and may detain at a port or place in the United States in which it is located, any vessel subject to this subpart, which has not provided the evidence of financial responsibility required by this subpart.

(d) Any vessel subject to this subpart which is found operating in the navigable waters without having been issued a Certificate or maintained the necessary evidence of financial responsibility as required by this subpart is subject to seizure by, and forfeiture to, the United States.

(e) Knowingly and willfully using an altered copy of a Certificate, or using a copy of a revoked, expired or voided Certificate for anything other than recordkeeping purposes, is prohibited. If a Certificate is revoked, has expired or is rendered void for any reason, the certificant must cease using all copies of the Certificate for anything other than the operator's own historical recordkeeping purposes.

**§ 138.150 Service of process.**

(a) When executing the forms required by this subpart, each applicant, certificant and guarantor must designate thereon a person located in the United States as its agent for service of process for purposes of this subpart and for receipt of notices of responsible party designations and presentations of claims under the Acts (collectively referred to herein as ''service of process''). Each designated agent must acknowledge the agency designation in writing unless the agent has already furnished the Director, NPFC, with a ''master'' (i.e., blanket) agency acknowledgment showing that the agent has agreed in advance to act as the United States agent for service of process for the applicant, certificant, or guarantor in question.

(b) If any applicant, certificant, or guarantor desires, for any reason, to change any designated agent, the applicant, certificant, or guarantor must notify the Director, NPFC, of the change. If a ''master'' agency acknowledgment for the new agent is not on file with NPFC, the applicant, certificant, or guarantor must furnish to the Director, NPFC, all the relevant information, including the new agent's acknowledgment, required in accordance with paragraph (a) of this section. In the event of death, disability, unavailability, or similar event of a designated agent, the applicant, certificant, or guarantor must designate another agent in accordance with paragraph (a) of this section within 10 days of knowledge of any such event. The applicant, certificant, or guarantor must submit the new designation to the Director, NPFC. The Director, NPFC, may deny or revoke a Certificate if an applicant, certificant, or guarantor fails to designate and maintain an agent for service of process.

(c) If a designated agent cannot be served because of death, disability, unavailability, or similar event, and another agent has not been designated under this section, then service of process on the Director, NPFC, will constitute valid service of process. Service of process on the Director, NPFC, will not be effective unless the server—

(1) Sends the applicant, certificant, or guarantor, as applicable (by registered mail, at the last known address on file with the Director, NPFC), a copy of each document served on the Director, NPFC; and

(2) Attests to this registered mailing, at the time process is served upon the Director, NPFC, indicating that the intent of the mailing is to effect service of process on the applicant, certificant, or guarantor and that service on the designated agent is not possible, stating the reason why.

## Subpart B—OPA 90 Limits of Liability (Vessels and Deepwater Ports)

**§ 138.200. Scope.**

This subpart sets forth the limits of liability for vessels and deepwater ports under Section 1004 of the Oil Pollution Act of 1990 (33 U.S.C. 2704) (OPA 90), as amended, including consumer price index adjustments pursuant to Section 1004(d) of OPA 90 (33 U.S.C. 2704(d)).

**§ 138.210. Applicability.**

This subpart applies to responsible parties for—

(a) Vessels under Section 1001(37) of OPA 90 (33 U.S.C. 2701(37)); and

(b) Deepwater ports under Section 1001(6) of OPA 90 (33 U.S.C. 2701(6)).

**§ 138.220. Limits of liability.**

(a) The limits of liability for responsible parties of vessels under OPA 90, as amended, are—

(1) For a tank vessel greater than 3,000 gross tons with a single-hull, including a single-hull vessel fitted with double sides only or a double bottom only, the greater of $3,000 per gross ton or $22,000,000;

(2) For a tank vessel greater than 3,000 gross tons, other than a vessel referred to in § 138.220(a)(1), the greater of $1,900 per gross ton or $16,000,000.

(3) For a tank vessel less than or equal to 3,000 gross tons with a single-hull, including a single-hull vessel fitted with double sides only or a double bottom only, the greater of $3,000 per gross ton or $6,000,000.

(4) For a tank vessel less than or equal to 3,000 gross tons, other than a vessel referred to in § 138.220(a)(3), the greater of $1,900 per gross ton or $4,000,000.

(5) For any other vessel, the greater of $950 per gross ton or $800,000.

(b) The limits of liability for deepwater ports under OPA 90, as amended, are—

(1) For a deepwater port other than the Louisiana Offshore Oil Port (LOOP), $350,000,000; and

(2) For LOOP, $62,000,000.

Dated: January 23, 2008.

**William Grawe,**

*Acting Director, National Pollution Funds Center, United States Coast Guard.*

[FR Doc. E8–1516 Filed 2–4–08; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2007–1091; FRL–8525–5]**

### Approval and Promulgation of Implementation Plans Kentucky: Tennessee Valley Authority Paradise Facility State Implementation Plan Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a source specific State Implementation Plan (SIP) revision submitted on October 19, 2007, by the Kentucky Division for Air Quality (KDAQ). The purpose of the SIP revision is to remove from the Kentucky State Implementation Plan a previous source-specific revision approved by EPA on August 25, 1989, and relating to the redistribution of sulfur dioxide ($SO_2$) emissions from Tennessee Valley Authority's (TVA's) Paradise Steam Plant located in Muhlenburg County, Kentucky. This proposal includes $SO_2$ limits that are more stringent than the current SIP-approved statewide $SO_2$ limits for electric generating units (EGUs). Consistent with Kentucky Administrative Regulations (KAR) approved into the SIP, affected facilities located in Muhlenberg County are subject to an $SO_2$ emission limit of 3.1 pounds per million British Thermal Units (lbs/mmBTU). The 3.1 lbs/mmBTU limit was approved by EPA in June 24, 1983, as part of Kentucky's control strategy for attaining and maintaining the primary and secondary $SO_2$ national ambient air quality standard (NAAQS) in Muhlenberg County. This SIP revision proposes a limit of 1.2 lbs/mmBTU for all three units with limited bypass emissions of 3.1 lbs/mmBTU for scrubber maintenance on Unit 3.

**DATES:** Written comments must be received on or before March 6, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID Number, ''EPA–R04–OAR–2007–1091,'' by one of the following methods:

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

2. *E-mail: lesane.heidi@epa.gov.*

3. *Fax:* 404–562–9019.

4. *Mail:* ''EPA–R04–OAR–2007–1091,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

*Instructions:* Direct your comments to Docket ID Number, ''EPA–R04–OAR–2007–1091.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' 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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9074. Ms. LeSane can also be reached via electronic mail at *lesane.heidi@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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I. What Action Is EPA Proposing?
II. What is the Background for EPA's Proposed Action?
III. Proposed Action
IV. Statutory and Executive Order Reviews

## I. What Action Is EPA Proposing?

EPA is proposing to approve a source-specific SIP revision submitted by KDAQ on October 19, 2007. The purpose of the SIP revision is to change and update the Kentucky SIP with regard to applicable $SO_2$ emissions limits for the TVA Paradise Plant located in Muhlenberg County, Kentucky. The new proposed limits are 1.2 lbs/mmBTU for all three units with limited bypass emissions of 3.1 lbs/mmBTU during scrubber maintenance on Unit 3. A previous source-specific SIP revision was approved by EPA on August 25, 1989 (54 FR 35326). The proposed change is consistent with Kentucky Revised Statutes Chapter 224.10–100, and associated KAR including 401 KAR 61:015, Appendix B. These KAR, which are SIP-approved, allow for an $SO_2$ emission limit of 3.1 lbs/mmBTU at the TVA Paradise facility. The 3.1 lbs/mmBTU limit described in 401 KAR 61:015 was approved by EPA on June 24, 1983 (48

FR 28988) as part of Kentucky's control strategy for attaining and maintaining the primary $SO_2$ NAAQS in Muhlenberg County. The current source specific revision proposes $SO_2$ limits for TVA Paradise that are more stringent than those approved in August 25, 1989, however, 401 KAR 61:015 would be the backstop (*i.e.*, emissions could not exceed those allowed pursuant to 401 KAR 61:015).

**II. What Is the Background for EPA's Proposed Action?**

The Clean Air Act (CAA) requires EPA to set NAAQS for pollutants considered to be harmful to public health and the environment. The CAA established two types of NAAQS: Primary and secondary NAAQS. Primary NAAQS are set in order to protect public health, including the health of sensitive populations such as asthmatics, children, and the elderly. Secondary NAAQS are set in order to protect public welfare, including protection against visibility impairment, damage to animals, crops, vegetation, and buildings. EPA has established primary and secondary NAAQS for the criteria pollutant $SO_2$. Muhlenberg County, Kentucky, the location of the TVA Paradise facility, is currently designated as attainment for the primary and secondary $SO_2$ NAAQS, as well as all of the other NAAQS.

In 1978, EPA designated Muhlenberg County, Kentucky, as nonattainment for primary and secondary $SO_2$ NAAQS (43 FR 8962, March 3, 1978). In 1979 Kentucky submitted a SIP revision including its $SO_2$ control strategy, which provided for attainment and maintenance of the $SO_2$ NAAQS. As part of that submittal, the control strategy used dispersion modeling (mathematical formulations to characterize the atmospheric processes that disperse a pollutant emitted by a source) to show that more stringent $SO_2$ emission limits at several sources, including the TVA Paradise facility, would be adequate to insure attainment of both the primary and secondary $SO_2$ NAAQS.

Kentucky's 1979 $SO_2$ control strategy SIP submittal included state regulations establishing $SO_2$ emissions limits for steam generating plants in every county. Specifically, 401 KAR 61:015, sets the $SO_2$ limit for each unit within a county depending on the type of fuel used by the unit and the rated heat input capacity for the specific unit. For facilities with a maximum rated heat input capacity of 21,000 BTU or more, like the TVA Paradise facility, the applicable $SO_2$ limit, pursuant to 401 KAR 61:015, is 3.1 lbs/mmBTU on a 24-hour average. In addition to 401 KAR 61:015, the 1979 control strategy submittal also included a compliance schedule for TVA Paradise to achieve the 3.1 lb/mmBTU limit at each unit by September 1, 1982. Pursuant to the terms of a federal private party consent decree (*Tennessee Thoracic Society* v. *Freeman,* Case No. 77–3286, U.S. District Court for the Middle District of Tennessee) negotiated in 1979 and signed in December 1980, the TVA Paradise facility was allowed to meet a limit of 5.2 lbs/mmBTU limit at Unit 3 until December 1, 1983, at which time the facility was required to meet the limit of 3.1 lbs/mmBTU, pursuant to 401 KAR 61.015.

On October 31, 1980, EPA took final action to approve Kentucky's $SO_2$ control strategy SIP, including approval of the 3.1 lb/mmBTU $SO_2$ limit established by 401 KAR 61:015 (45 FR 72153). Subsequently, on June 24, 1983, EPA approved a request by Kentucky to redesignate Muhlenberg County to attainment for the primary $SO_2$ NAAQS (48 FR 28988).

In 1987, TVA requested a redistribution of allowable $SO_2$ emissions at the Paradise facility such that each of its three units would have a specific limit that when considered together, would be equivalent to 3.1 lbs/mmBTU averaged over a 24-hour period (as required by the KAR). The TVA Paradise facility has two units (Units 1 and 2) with an electric generating capacity of approximately 704 megawatts (MW) each, and a third unit (Unit 3) with an electric generating capacity of approximately 1150 MW. The 1987 submittal included an equivalency demonstration that explained how the unit-specific limits were equivalent to the KAR requirement of 3.1 lbs/mmBTU. As described in the 1987 submittal, for Units 1 and 2, the $SO_2$ the emission limit would be 1.2 lbs/mmBTU, with a maximum heat input of 6,305 mmBTU/hour, and for Unit 3, the $SO_2$ emission limit would be 5.4 lbs/mmBTU, with a maximum heat input of 10,390 mmBTU/hour. Kentucky's 1987 submittal also contained a final state operating permit issued to TVA for the Paradise facility (permit number 0–87–012) which included these new limits.

On August 25, 1989, EPA took final action to approve the source-specific SIP revision for TVA Paradise into the Kentucky SIP (54 FR 35326). EPA's approval of that revision was based on EPA's finding that the $SO_2$ limits in addition to the heat input rates, made the redistribution equivalent to the SIP-approved 3.1 lbs/mmBTU limit. TVA's 1987 operating permit included the $SO_2$ limits described in the 1989 SIP revision. The actions summarized above, including the 1989 final action and accompanying equivalency determination are available in the Docket for the current proposed action.

In 1998, EPA approved Kentucky's request to redesignate Muhlenberg County as attainment for the secondary $SO_2$ NAAQS (63 FR 44143, August 18, 1998). Dispersion modeling performed by EPA and Kentucky demonstrated that the existing measures approved in the SIP (including the TVA Paradise source-specific $SO_2$ emissions distribution) were adequate to protect the secondary $SO_2$ NAAQS.

On October 19, 2007, Kentucky submitted to EPA a source-specific SIP revision requesting that the 1989 source-specific redistribution of $SO_2$ emission limits for TVA Paradise be revised to account for new control technology at the facility. Kentucky proposed that the TVA Paradise facility be subject to specific limits discussed below which are more stringent than the backstop of Kentucky's SIP-approved KAR, requiring a 3.1 lbs/mmBTU. The rationale for the 1989 redistribution was the lack of control measures (a scrubber) on Unit 3. TVA has now installed a wet scrubber on Unit 3, and as a result, the 1989 redistribution is no longer necessary for the facility to comply with the SIP-approved 401 KAR 61:015. At this time, Units 1 and 2 are equipped with Venturi-type limestone slurry flue gas desulfurization (FGD) scrubbers, and Unit 3 is equipped with an electrostatic precipitator and a wet limestone FGD scrubber. The facility is now able to meet (and exceed) the requirements of 401 KAR 61:015 without a unit-specific redistribution.

As described by Kentucky in the October 2007 SIP submittal, due to the installation of control technology at the facility, it is now possible for the Paradise facility to meet not only the current KAR, but even further control the facility to meet a lower limit. Therefore, Kentucky proposed that the facility continue to meet an $SO_2$ emissions limit of 1.2 lbs/mmBTU for Units 1 and 2, and also meet a limit of 1.2 lb/mmBTU on Unit 3 when the scrubber is operating. Because Unit 3 has a ''single-module'' scrubber which cannot be operated during maintenance events, Kentucky proposed that the facility meet the SIP-approved KAR limit of 3.1 lb/mmBTU on a 24-hour average during the limited times when the scrubber is bypassed for maintenance. Provisions limiting the number of hours when the scrubber can be by-passed are conditioned in the most recent title V operating permit issued on November 1, 2007, and shall

not exceed 720 hours in any 12-month period. Kentucky's October 2007 source-specific SIP revision therefore proposes $SO_2$ limits for the Paradise facility that are more stringent than the SIP-approved KAR. Kentucky's SIP submittal includes technical support information comparing the limits required by KAR with the current proposed source-specific revision. This information is available in the Docket for this proposed action. The new limits will be included in a CAA title V operating permit.

Consistent with Section 110 of the CAA, EPA is proposing to approve this revision to the Kentucky SIP. The revision would supersede the 1989 source-specific SIP revision for the TVA Paradise facility and subject the facility to the specific $SO_2$ emission limits discussed above.

### III. Proposed Action

EPA is proposing to approve a source-specific SIP revision submitted by KDAQ in October 2007 regarding the $SO_2$ emission limits for the three units at the TVA Paradise Facility. This proposal would supersede the 1989 source-specific SIP revision and subject TVA Paradise to emission limits of 1.2 lbs/mmBTU at Units 1, 2, and 3, except that Unit 3 may meet the limit of 3.1 lbs/mmBTU that is established in 401 KAR 61:015 during the limited times when the Unit 3 scrubber is bypassed for maintenance. Now that TVA has installed the control technology necessary to achieve the KAR limit of 3.1 lbs/mmBTU at all three units of the Paradise facility, the previous redistribution is no longer necessary. This proposed revision is consistent with Section 110 of the CAA because it will continue to provide for attainment and maintenance of the $SO_2$ NAAQS.

### IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely approves Kentucky law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under Kentucky law and does not impose any additional enforceable duty beyond that required by Kentucky law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a Kentucky rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the Commonwealth to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: January 24, 2008

**Russell L. Wright, Jr.,**

*Acting Regional Administrator, Region 4.*

[FR Doc. E8–2089 Filed 2–4–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

**[FRL–8523–8]**

### National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Industrial Waste Control Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 6 is issuing a notice of intent to delete the Industrial Waste Control Superfund Site located in Fort Smith, Arkansas from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Arkansas, through the Arkansas Department of Environmental Quality (ADEQ), have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

In the ''Rules and Regulations'' Section of this **Federal Register**, we are publishing a direct final notice of deletion of the Industrial Waste Control Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the direct final deletion. If we receive no adverse comment(s) on the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw

the direct final notice of deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information see the direct final notice of deletion located in the Rules section of this **Federal Register**.

**DATES:** Comments concerning this Site must be received by March 6, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1983–0002 Notice 4, by one of the following methods:

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

*E-mail: walters.donn@epa.gov.*

*Fax:* 214–665–6660.

*Mail:* Donn Walters, Community Involvement, U.S. EPA Region 6 (6SF–TS), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–6483 or 1–800–533–3508.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–SFUND–1983–0002 Notice 4. EPA 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, disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will automatically be captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information disclosure of which 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 at *http://www.regulations.gov* or in hard copy at the information repositories.

**FOR FURTHER INFORMATION CONTACT:** Shawn Ghose M.S., P.E., Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF–RA), 1445 Ross Avenue, Dallas, TX 75202–2733, *ghose.shawn@epa.gov* (214) 665–6782 or 800–533–3508.

**SUPPLEMENTARY INFORMATION:** For additional information see the Direct Final Notice of Deletion located in the ''Rules'' section of this **Federal Register**.

*Information Repositories:* Repositories have been established to provide detailed information concerning this decision at the following locations: U.S. EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, (214) 665–6617, by appointment only Monday through Friday 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m.; Fort Smith Public Library, 3201 Rogers Avenue, Ft. Smith, AR 72903, (479) 783–0229, Monday through Thursday, 9 a.m. to 9 p.m., 9 a.m. to 6 p.m. Friday, 10 a.m. to 5 p.m. Saturday and 1 p.m. to 5 p.m. Sunday; Arkansas Department of Environmental Quality (ADEQ), 5301 Northshore Drive, North Little Rock, Arkansas 72118, (501) 682–0744, Monday through Friday 8 a.m. to 4:30 p.m.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: September 28, 2007.

**Richard E. Greene,**

*Regional Administrator, EPA Region 6.*

**Editorial Note:** This document was received at the Office of the Federal Register on January 30, 2008.

[FR Doc. E8–1963 Filed 2–4–08; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**[FWS–R6–ES–2008–0013; 1111 FY07 MO–B2]**

## Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Gunnison's Prairie Dog as Threatened or Endangered

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

**ACTION:** Notice of a 12-month petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce our 12-month finding on a petition to list the Gunnison's prairie dog (*Cynomys gunnisoni*) as an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). After a thorough review of all available scientific and commercial information, we find that the species is not threatened or endangered throughout all of its range, but that the portion of the current range of the species located in central and south-central Colorado and north-central New Mexico (the northeastern portion of the range) represents a significant portion of the range where the Gunnison's prairie dog is warranted for listing under the Act. Currently, listing is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. We have assigned a listing priority number (LPN) of 2 to this species, because threats have a high magnitude, and are imminent. We will develop a proposed rule to list the Gunnison's prairie dog in the northeastern (montane) portion of its range as our priorities allow.

**DATES:** This finding was made on February 5, 2008.

**ADDRESSES:** This finding is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/mountain-prairie/species/mammals/gunnisonprairiedog.* Supporting documentation we used to prepare this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Western Colorado Field Office, 764 Horizon Drive, Building B, Grand Junction, CO 81506–3946; telephone (970) 243–2778; facsimile (970) 245–6933. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

**FOR FURTHER INFORMATION CONTACT:** Al Pfister, Field Supervisor, U.S. Fish and Wildlife Service, Western Colorado Field Office (see **ADDRESSES**). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), requires that, for any petition containing substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is—(a) not warranted, (b) warranted, or (c) warranted, but that immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and whether expeditious progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding; that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

## Previous Federal Actions

On February 23, 2004, we received a petition from Forest Guardians and 73 other organizations and individuals requesting that the Gunnison's prairie dog (found in Arizona, Colorado, New Mexico, and Utah) be listed as threatened or endangered.

On July 29, 2004, we received a 60-day notice of intent to sue for failure to complete a finding. On December 7, 2004, an amended complaint for failure to complete a finding for this and other species was filed. We reached a settlement agreement with the plaintiffs, and on February 7, 2006, we published a 90-day finding in the **Federal Register** (71 FR 6241) determining that the petition did not present substantial scientific information indicating that listing the Gunnison's prairie dog species may be warranted.

On August 17, 2006, Forest Guardians and eight other organizations and individuals provided written notice of their intent to sue regarding the determination in the 90-day finding. On December 13, 2006, the plaintiffs filed a complaint challenging the finding. On June 29, 2007, we reached a settlement agreement with the plaintiffs for submittal to the **Federal Register** of a 12-month finding by February 1, 2008. The court adopted the terms and conditions of the agreement on July 2, 2007.

On August 28, 2007, we published a notice initiating the 12-month finding and opening a 60-day public comment period on the Gunnison's prairie dog (72 FR 49245).

## Species Information

A description of the Gunnison's prairie dog is included in the 90-day petition finding (71 FR 6241; February 7, 2006) and in a concise review of the published information by Underwood (2007, pp. 6–13). In addition, we used data in the Western Association of Fish and Wildlife Agencies' (WAFWA) Gunnison's Prairie Dog Conservation Assessment (Seglund *et al.* 2005) to complete much of our analysis in this finding.

The Gunnison's prairie dog has sometimes been divided into two subspecies: *Cynomys gunnisoni gunnisoni* and *C. g. zuniensis* (Hollister 1916, p. 29). We currently regard the Gunnison's prairie dog as a single species because the most recent published analyses (Goodwin 1995, pp. 100, 101, 110; Pizzimenti 1975, pp. 11, 15, 63) do not support subspecies designation. Unpublished research (Hafner 2004, p. 6; Hafner *et al.* 2005, p. 2) indicates that the distribution of mitochondrial DNA (deoxyribonucleic acid) haplotype lineages supports past geographic isolation, followed by limited mixing in regions coincident with the recognized borders of the two purported subspecies. Although this analysis will likely be substantiated through additional research, it is still preliminary and needs to be verified before we can use it as evidence for subspecies designation. For the same reasons, although Gunnison's prairie dogs in montane habitat may be ''markedly separate'' from those in prairie habitat, we are not proposing listing the montane prairie dogs as a distinct population segment (DPS) under our Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722; February 7, 1996). We anticipate that future funding may become available for genetic, taxonomic, and range research to determine whether subspecies or DPS status is valid.

Gunnison's prairie dogs are a colonial species, historically occurring in large colonies over large areas. Colonial behavior offers an effective defense mechanism by aiding in the detection of predators, but it also can play an important role in the transmission of disease (Antolin *et al.* 2002, p. 19; Biggins and Kosoy 2001, p. 911). Complexes of Gunnison's prairie dog colonies (metapopulations) expand or contract over time depending upon various natural factors (such as reproduction, food availability, and disease) and human-caused factors (such as chemical control and shooting). To substantially augment depleted populations or replace populations without human intervention, a metapopulation structure is required across the landscape so that migration between colonies is possible (Gilpin and Soule 1986, p. 24; Clark *et al.* 1982, pp. 574–575; Lomolino and Smith 2001, p. 938).

## Habitat

Gunnison's prairie dog habitat includes level to gently sloping grasslands and semi-desert and montane shrublands, at elevations from 6,000 to 12,000 feet (1,830 to 3,660 meters) (Bailey 1932, p. 125; Findley *et al.* 1975, p. 133; Fitzgerald *et al.* 1994, p. 183; Pizzimenti and Hoffman 1973, p. 1; Wagner and Drickamer 2002, p. 4). Grasses are the most important food item, with forbs, sedges, and shrubs also occasionally used (Pizzimenti and Hoffman 1973, p. 3; Shalaway and Slobodchikoff 1988, p. 840).

Gunnison's prairie dog range can be considered to occur in two separate range portions—higher elevations in the northeast part of the range and lower elevations elsewhere (Bailey 1932, pp. 125–127; Pizzimenti and Hoffman 1973, pp. 1–2; Hall 1981, p. 7; Knowles 2002, p. 4). We refer to these areas as montane and prairie, respectively, throughout the document to differentiate them; however, we recognize that these terms are an oversimplification of the actual habitats present, and describe them in more detail below.

In Figure 1, we provide a map illustrating the division of the general range of the species into the northeastern (montane) and southwestern (prairie) portions. The outer boundary in Figure 1 is referenced from maps depicting the species' gross range (Hollister 1916, p. 24; Pizzimenti and Hoffman 1973, p. 2; Pizzimenti 1975, p. 4; Hall 1981, p. 415; Knowles 2002, p. 6), and from maps of the species' range in Arizona (Hoffmeister 1986, p. 194), Colorado (Armstrong 1972, p. 139; Fitzgerald *et al.* 1994, p. 185), New Mexico (Findley *et al.* 1975, p. 133), and Utah (Durrant 1952, p. 106). An approximate boundary dividing the montane and prairie range portions was established from several maps that recognize discrete range portions for each of the two purported subspecies,

*Cynomys gunnisoni gunnisoni* and *C. g. zuniensis* (Hollister 1916, p. 24; Armstrong 1972, p. 139; Pizzimenti and Hoffman 1973, p. 2; Pizzimenti 1975, p. 4; Hall 1981). Maps that depict the geographic variation in Gunnison's prairie dog mitochondrial DNA in southern Colorado and northern New Mexico (Hafner 2004, p. 6; Hafner *et al.* 2005, p. 2) were used to improve the resolution of the montane and prairie boundary in this region, as these maps provide a boundary based on genetic differences between Gunnison's prairie dogs in the two range portions. Lastly, we used topographic maps to adjust the boundary on a finer scale along the mountain ranges and ridges of southern Colorado and northern New Mexico, because geography partly separates the Gunnison's prairie dog populations and allows limited overlap between the two range portions (Knowles 2002, p. 3; Hafner *et al.* 2005, p. 1).

In summary, the maps we used to delineate the montane and prairie range portions vary in their age, projection, scale, and accuracy, and depict boundaries based on geography, morphological traits of Gunnison's prairie dog populations, and genetic characteristics from Hafner's work (Hafner 2004, p. 6; Hafner *et al.* 2005, p. 2). They contribute to the best available information used to establish the montane and prairie portions of the species' range for further analysis.

**BILLING CODE 4310–55–P**

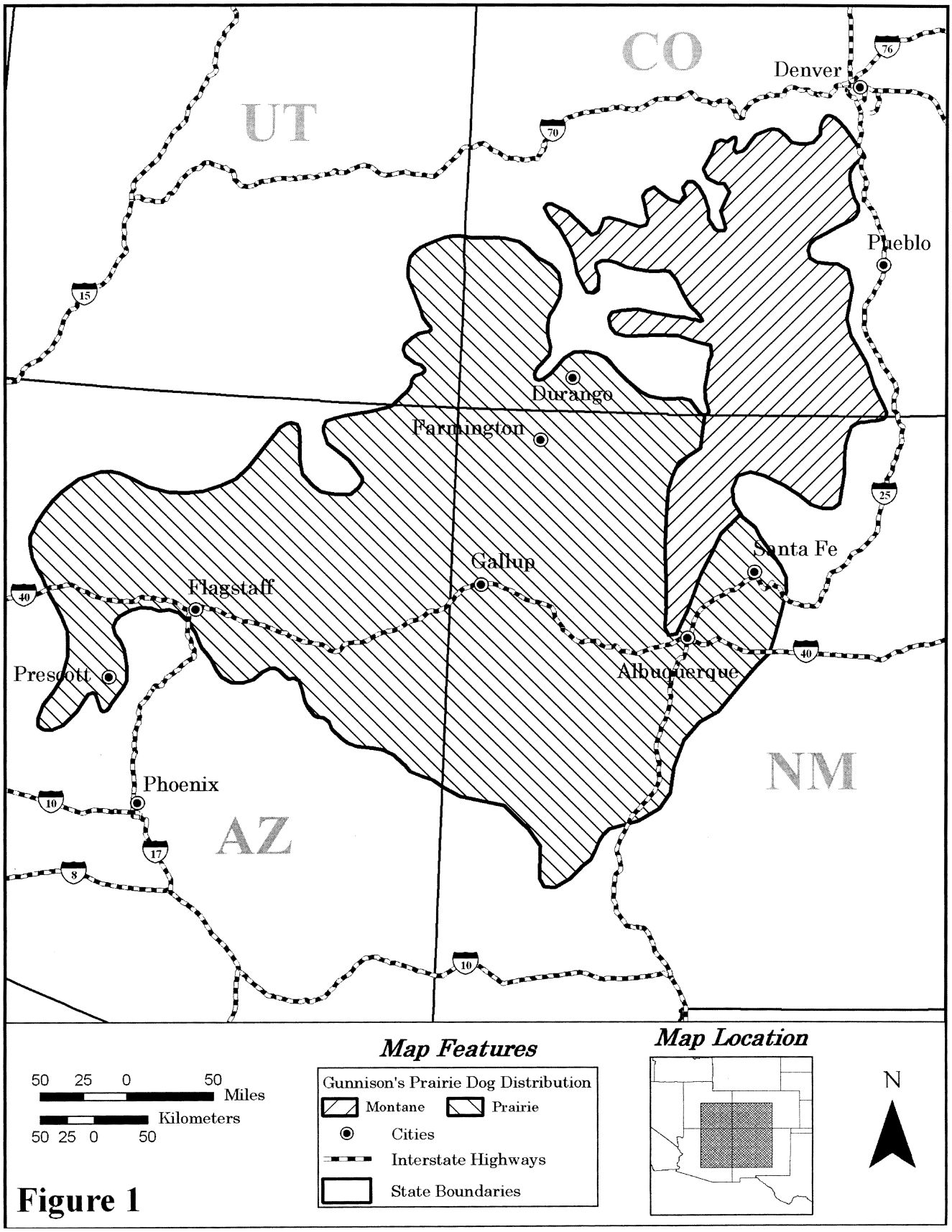


**Figure 1**

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**Montane Habitat**

The northeastern range (central and south-central Colorado, and north-central New Mexico) consists primarily of higher elevation, cooler and more mesic plateaus, benches, and intermountain valleys. We call this portion ''montane'' for ease of reference, and it comprises approximately 40 percent of the total potential habitat within the current range. Gunnison's prairie dogs occupy grass-shrub areas in low valleys and mountain meadows within this habitat (Seglund *et al.* 2005, p. 12). The Gunnison's prairie dogs in this portion of the range are limited by pronounced physiographic barriers (Pizzimenti and Hoffman 1973, p. 1), including the Uncompahgre Plateau and San Juan mountains in Colorado and Utah, and the Sangre de Cristo, San Juan, and Jemez mountain ranges in New Mexico.

**Prairie Habitat**

The southwestern range (southeastern Utah, southwestern Colorado, northwestern New Mexico, and northeastern Arizona) consists primarily of lower elevation, warmer and more xeric plains and plateaus (Bailey 1932, pp. 125–127; Pizzimenti and Hoffman 1973, pp. 1–2; Hall 1981, p. 7; Knowles 2002, p. 4). We call this portion ''prairie'' for ease of reference, and it comprises approximately 60 percent of total potential habitat within the current range. Gunnison's prairie dogs occupy shortgrass and mid-grass prairies within this habitat (Seglund *et al.* 2005, p. 12).

**Distribution, Abundance, and Trends**

The current distribution of the species includes northeastern Arizona; central, south-central, and southwestern Colorado; north-central and northwestern New Mexico; and extreme southeastern Utah (Bailey 1932, pp. 125–127; Pizzimenti and Hoffman 1973, pp. 1–2; Hall 1981, p. 7; Knowles 2002, p. 4) (see Figure 1 above). Limited overlap occurs in the ranges of Gunnison's prairie dogs and black-tailed prairie dogs (*Cynomys ludovicianus*) in New Mexico (Goodwin 1995, p. 101; Sager 1996, p. 1), and Gunnison's prairie dogs and white-tailed prairie dogs (*Cynomys leucurus*) in Colorado (Knowles 2002, p. 5), but we have no evidence that interbreeding is occurring. Currently, 27 percent of potential Gunnison's prairie dog habitat occurs in Arizona, 25 percent in Colorado, 45 percent in New Mexico, and 3 percent in Utah (Seglund *et al.* 2005, p. 83). We used the data in Seglund *et al.* (2005, pp. 82, 85–87) to calculate that approximately 22 percent of the potential habitat occurs on private lands, 12 percent on State lands, 17 percent on Federal lands, and 49 percent on Tribal lands/Bureau of Indian Affairs (BIA). The Tribal lands habitat occurs mostly in Arizona and New Mexico; a large amount of potential habitat is on Navajo lands (Cole, p. 1).

Most estimates of prairie dog populations in the available literature are expressed in terms of area (acres (ac) or hectares (ha)) of occupied habitat rather than in numbers of individuals, most likely because counting individuals is feasible only for small areas (Biggins *et al.* 2006, p. 94). Also, the number of animals present in a locality has been observed to vary with habitat, season, colony age, precipitation, forage, predation, disease, chemical control, shooting, and other factors (Knowles 2002, pp. 7–8); density of individuals typically ranges from 2 to 23 per ac (5 to 57 per ha) (Fitzgerald *et al.* 1994, p. 184). Most prairie dog surveys do not result in a density estimate because of the associated effort and cost. Estimates of Gunnison's prairie dog occupied habitat provide one of the best available and most reasonable means of evaluating the status of the species across its range.

Obtaining estimates of occupied area is itself time-consuming and costly. Ground or aerial mapping of colonies over a predicted habitat range of 23 million ac (9.5 million ha) in 4 States would be required to determine a rangewide estimate of the area occupied by the Gunnison's prairie dog (Seglund *et al.* 2005, pp. 17–19). Recent attempts at less expensive aerial surveys (for example, air photo interpretation) have been limited in their effectiveness when applied to Gunnison's prairie dogs (Johnson *et al.* 2006, p. 3; Seglund *et al.* 2005, pp. 23–24). Whether surveying is performed from the air or on the ground, it is often difficult to accurately and consistently discern colony boundaries (thus introducing error in the area measurements). Older studies did not benefit from technologies such as global positioning systems and geographic information systems (GIS) in mapping colonies. Accuracy suffers when studies are performed over the longer time intervals necessary to visit large range portions, because colony area, location, and persistence on the landscape often change relatively quickly (Wagner *et al.* 2006, p. 335).

In summary, we recognize that different methodologies were used at different times and in different locales to derive the various historical occupied area estimates we obtained for review. These estimates contribute to the best available information, and we consider them comparable for determining long-term population trends, while acknowledging potential error margins on the scale of an order of magnitude.

Since our 90-day finding in 2006, all States within the range of the species have applied occupancy modeling methodology to investigate the habitat occupied by Gunnison's prairie dogs. This is a newer technique that yields estimates of the percentage of random plots occupied across the habitat range under consideration (MacKenzie *et al.* 2002, pp. 2248–2249; MacKenzie *et al.* 2003, pp. 2200–2201). These estimates are statistically based and, therefore, are considered more objective (Andelt *et al.* 2006, pp. 1–2; Colorado Division of Wildlife (CDOW) 2007, p. 19; WAFWA 2007, p. 4).

A drawback is that estimates of percent occupancy by Gunnison's prairie dogs are not directly comparable to estimates of occupied acres (including most historic estimates), because when a random plot is visited, only detection or non-detection (not acres occupied) is recorded by the observers. If mapping is not performed during a site visit, no information about colony or complex size or location is obtained.

The positive aspects of this method are statistical rigor, precision estimates, large-scale application in a single season, and trend analysis if performed over subsequent years. In addition, the results of individual surveys can be interpreted separately to assess prairie dog occupancy and document trends within in specific areas of concern. Although only a single year (2007) of occupancy modeling results are available (with the exception of Colorado data from 2005 and 2007), we used these estimates, along with estimates of occupied areas, to assess the status and trends of the Gunnison's prairie dog in each of the four States.

**Historical Estimates of Abundance**

Historical estimates of Gunnison's prairie dog occupied habitat in Arizona and New Mexico are available from Federal records of early poisoning efforts, such as by the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS). In 1916, approximately 6.6 million ac (2.7 million ha) of Gunnison's prairie dog occupied habitat occurred in Arizona, and 11 million ac (4.4 million ha) occurred in New Mexico (Oakes 2000, pp. 169–171). In our 90-day finding in 2006 (71 FR 6241, February 7, 2006), we calculated historical estimates (circa 1916) for Colorado (6 million ac (2.4 million ha)) and Utah (700,000 ac (284,000 ha)) from prairie dog information in various

publications and reports, because data were not available for these States. By summation, based on the best available information, our rangewide estimate for historic (circa 1916) Gunnison's prairie dog occupied habitat was approximately 24 million ac (9.7 million ha).

In 1961, an estimated 445,000 ac (180,000 ha) of habitat was occupied by Gunnison's prairie dog in Arizona; 116,000 ac (47,000 ha) in Colorado; 355,000 ac (144,000 ha) in New Mexico; and 100,000 ac (41,000 ha) in Utah (Bureau of Sport Fisheries and Wildlife 1961, pp. 1, 5). By summation, the rangewide estimate for Gunnison's prairie dog occupied habitat in 1961 was approximately 1 million ac (405,000 ha). These data suggest that, from 1916 to 1961, Gunnison's prairie dog populations decreased by approximately 93 percent in Arizona, 98 percent in Colorado, 97 percent in New Mexico, and 86 percent in Utah, or by approximately 95 percent rangewide. However, historic declines may not support a conclusive inference that current populations continue to decline.

In summary, empirical data on acres occupied indicate that, between 1916 and 1961, habitat occupied by the Gunnison's prairie dog throughout its range declined from approximately 24,000,000 ac (9,700,000 ha) to approximately 1,016,000 ac (406,400 ha).

**Statewide Estimates of Abundance**

As indicated above, estimates of percent occupancy arrived at through recent occupancy modeling (presence or absence at a random plot) do not equate to acres occupied. The method currently used by States to assess the Gunnison's prairie dog's status, in conjunction with both historic and recent mapping efforts, provides empirical data on percent occupancy of potential habitat. This data is useful as a gross-scale comparison to historical estimates of acres occupied. Both types of data are valid and represent the best available science.

Full occupancy of surveyed habitat would not directly equate to 100 percent of available habitat, but it would provide a gross approximation of occupancy at a larger geographic scale. For the purposes of interpreting the percent occupancy numbers in this document, current State survey efforts utilize a scale from 1 to 100, indicating the percentage of occupied cells surveyed. Because we do not have historical data on percent of habitat occupied or on occupancy rates, we use the current percentage of occupied habitat to compare between habitats that currently appear to have a functional metapopulation structure (prairie) and that do not (montane). For example, the following paragraphs illustrate that Gunnison's prairie dog occupancy in plots sampled in montane habitat is estimated to be approximately 3.6 percent as compared to approximately 18.3 percent in plots sampled in prairie habitat in Colorado. Of the total montane habitat, approximately 85 percent occurs in Colorado.

**Arizona**

In 2007, occupied habitat on non-Tribal lands in Arizona comprised approximately 108,570 ac (40,500 ha) (Underwood 2007, p. 30). No comprehensive data are available from Tribal lands in Arizona, which include 50 percent of the Statewide potential habitat. Therefore, the 2007 estimate for Arizona (Underwood 2007, p. 30) is likely substantially less than what actually exists. Due to a lack of any Tribal estimates since 1961, recent population trends on Tribal lands statewide are unknown, but may have increased over the 1961 estimate of 435,419 ac (176,207 ha). We are unaware of any disproportionate adverse effects to the species on Tribal lands during this interval, and we assume that habitat trends may have followed a similar pattern as on non-Tribal lands. All habitat within Arizona is considered prairie.

**Colorado**

The Colorado Department of Agriculture (CDA 1990, p. A–3) solicited questionnaire responses from farmers and ranchers from which they extrapolated a 1990 estimate of 1,553,000 ac (621,200 ha) of occupied habitat for all 3 species of prairie dogs found in Colorado (Gunnison's, white-tailed, and black-tailed). Based on species occurrence by county, Seglund et al. (2005, p. 26) estimated that 438,876 ac (177,607 ha) were occupied by Gunnison's prairie dogs.

From 2002 to 2005, the Colorado Division of Wildlife (CDOW) interviewed field personnel from CDOW, the Service, the USFS, and the BLM regarding the habitat occupied by Gunnison's prairie dogs in the State. Colonies were mapped on 1:50,000 scale U.S. Geological Survey county sheets and were designated as ''active'' (known to have prairie dogs inhabiting the colony within the last 3 years); ''inactive'' (prairie dogs occurred in the area but have not been present in more than 3 years); or ''unknown'' (prairie dogs were known to occur historically, but current status was unknown). From this effort, CDOW estimated 182,237 ac (72,895 ha) of active colonies; 9,042 ac (3,617 ha) of inactive colonies; and 171,970 ac (68,788 ha) of colonies in unknown status within Colorado (CDOW 2007, p. 3). These data suggest an increase over the historical 1961 estimate of 115,650 ac (46,802 ha) of occupied habitat in Colorado. We have no way of estimating what percent of this difference may be due to different mapping techniques. We believe that the difference is mostly due to an actual increase in prairie dogs, likely within the prairie portion of the range, because data from the montane portion of the range indicate significantly reduced occupancy rates (see additional analysis below). We used area estimates from 2002 to 2005 to compute a Statewide occupancy estimate of 2.1 percent (known active colony area divided by area of potential habitat) (CDOW 2007). However, the occupancy modeling studies performed in 2005 and 2007 in Colorado, including both prairie and montane portions of the range, yielded Statewide occupancy estimates of 7.5 and 8.6 percent, respectively (Andelt *et al.* 2006, p. 15; CDOW 2007, p. 19), and these estimates are considered more reliable.

**Montane and Prairie Habitat in Colorado**

Within Colorado, CDOW has designated individual population areas to identify where Gunnison's prairie dogs exist and where management activities should be focused. The montane portion of the species' range in Colorado is composed of the Gunnison, San Luis Valley, South Park, and Southeast population areas. By using CDOW (2007, p. 28) estimates of potential habitat, we determined that the montane range portion in Colorado comprises about 80 percent (6.9 million of 8.5 million ac (2.8 million of 3.4 million ha)) of the available Gunnison's prairie dog habitat in the State. However, the montane range portion only contains about 40 percent (73,861 of 182,237 ac (29,544 of 72,894 ha)) of the available Gunnison's prairie dog habitat occupied in the State, based on our calculations using CDOW mapped area data (CDOW 2007, p. 3).

The La Plata—Archuleta and Southwest population areas, in the prairie portion of Colorado's Gunnison's prairie dog habitat, comprise about 20 percent of the Gunnison's prairie dog habitat and contain about 60 percent of habitat occupied in the State (CDOW 2007, pp. 3, 19). The higher proportion of occupied habitat in the smaller prairie portion of the State indicates that Gunnison's prairie dogs are more abundant in the prairie habitat area.

The 2005 occupancy modeling studies also indicate a higher proportion of occupancy (16 percent) in the prairie portion of the range in Colorado, and a lower proportion of occupancy (3.2 percent) in the montane portion of the species' range in Colorado (Andelt *et al.* 2006, p. 17; CDOW 2007, p. 19). When the study was repeated over the same plots in 2007, occupancy was again found to be higher (18.3 percent) in the prairie portion and lower (3.6 percent) in the montane range portion in Colorado (CDOW 2007, p. 19).

**New Mexico**

We have no current information on occupied habitat in New Mexico. The best available science is from Bodenchuck (1981 p. 1), who solicited questionnaire responses from agricultural producers in 1981. Respondents reported 107,574 ac (43,567 ha) of Gunnison's prairie dog occupied habitat. Bodenchuck (1981, p. 8) extrapolated a Statewide total of 348,000 ac (141,000 ha) of occupied habitat for the species. Oakes (2000, p. 216) questioned this extrapolation because of possibly faulty assumptions used to derive it. Knowles (2002, p. 22) estimated that 75,000 ac (30,000 ha) of occupied habitat existed in 1982. New Mexico Department of Game and Fish used Digital Orthophoto Quarter Quadrangles to estimate a minimum of 9,108 ac (3,689 ha) of occupied habitat Statewide in 2004 (Seglund *et al.* 2005, p. 23). However, this method appears to be hampered by inaccurate detection of disturbances, time elapsed since photography, time elapsed since ground mapping, temporal changes in prairie dog towns, and other factors (Seglund *et al.* 2005, p. 33). While these estimates have limited accuracy, general use in assessing Statewide occupied habitat indicates that Gunnison's prairie dogs appeared to be decreasing between 1961 and 2004.

**Montane and Prairie Habitat in New Mexico**

New Mexico also includes both montane and prairie habitat. The montane habitat is geographically connected to the montane portion of the Gunnison's prairie dog habitat in Colorado. It comprises about 17 percent of the Gunnison's prairie dog habitat in New Mexico; we do not have accurate data on total acres in New Mexico, and therefore do not provide an acre estimate for the montane portion. We have no data on the percent occupancy in this habitat.

The prairie habitat in New Mexico comprises about 83 percent of the habitat; we do not have accurate data on total acres in New Mexico, and therefore do not provide an acre estimate for the prairie portion. We have no data on the percent occupancy in this habitat.

**Utah**

The Utah Division of Wildlife Resources estimated that 22,000 ac (8,906 ha) of occupied Gunnison's prairie dog habitat existed in Utah in 1968 (Seglund *et al.* 2005, p. 35). Knowles (2002, p. 21) estimated a minimum of 3,678 ac (1,490 ha) of occupied habitat Statewide. The Statewide trend in occupied habitat appears to have decreased from 100,000 ac (40,500 ha) in 1961 (Bureau of Sport Fisheries and Wildlife 1961, p. 5), to 40,000 ac (16,000 ha) in 2007 (Lupis *et al.* 2007, p. 3). The Gunnison's prairie dog occupancy in Utah was estimated to be 15.7 percent in 2007 (Lupis *et al.* 2007, p. 3). We consider all Gunnison's prairie dog habitat in Utah as prairie.

**Summary of Statewide Estimates of Abundance**

We have empirical data on Gunnison's prairie dog occupancy that indicate a large decline in rangewide occupied acres. We also have recent empirical data that indicates percent occupancy within two separate portions of the range is significantly different.

Data on acres occupied indicate that between 1916 and the present, habitat occupied by Gunnison's prairie dogs throughout its range declined from approximately 24,000,000 ac (9,700,000 ha) to between 340,000 and 500,000 ac (136,000—200,000 ha). This represents a rangewide decline of greater than 95 percent.

**Summary of Factors Affecting the Species Rangewide**

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations at 50 CFR 424, set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. In making this finding, we summarize below information regarding the status and threats to the Gunnison's prairie dog in relation to the five factors provided in section 4(a)(1) of the Act.

In making this 12-month finding, we have considered all scientific and commercial information received or acquired between the time of the initial petition (February 23, 2004) and the end of the most recent public comment period (October 29, 2007), and additional scientific information from ongoing species surveys and studies as they became available.

Under section (4) of the Act, we may determine a species to be endangered or threatened on the basis of any of the following five factors: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We evaluated whether threats to the Gunnison's prairie dog may affect its survival. Our evaluation of threats, based on information provided in the petition, available in our files, and available in published and unpublished studies and reports, is presented below.

*A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range*

Agricultural land conversions historically had a significant impact on Gunnison's prairie dog habitat (Knowles 2002, p. 12). Gunnison's prairie dogs have been displaced from some of the more productive valley bottomlands in Colorado and New Mexico (Longhurst 1944, p. 36). Agriculture currently impacts 2,063,930 ac (834,243 ha), or less than three percent, of the Gunnison's prairie dog range (Seglund *et al.* 2005, p. 43). Seglund *et al.* (2005, p. 41) indicate agriculture is not a major rangewide threat because of the small percentage of the range affected, but also because agriculture provides highly productive forage in place of the native arid landscape. Current adverse impacts relate to secondary actions at a local scale, such as prairie dog control (for example, poisoning, shooting) in areas where prairie dogs occupy lands used for agriculture, particularly private lands. We assess shooting under Factor C, poisoning under Factor E, and both in Factor D.

Urbanization also has caused habitat loss for Gunnison's prairie dog. Seglund *et al.* (2005, p. 41) determined that urbanization affects 577,438 ac (233,681 ha) within the range of the species (less than two percent of the range). However, it appears this analysis considered only the direct effects of habitat loss. Urbanization also exerts indirect effects (for example, poisoning and shooting of prairie dogs), extending a human ''disturbance zone'' outward from the actual development footprint.

Lower-density suburban development occurring in the southern Rocky Mountains is scattered and results in a fragmenting of habitats. In Colorado, urban development on the west slope of the Rocky Mountains (montane habitat) is occurring rapidly; 38 percent of Gunnison's prairie dog range is predicted to be impacted by low urban development (less than 40 units per ac;

99 per ha), 6 percent by moderate development (40 to 80 units per ac; 99 to 198 per ha), and 5 percent by high development (fewer than 80 units per ac) between 2000 and 2020 (CDOW 2007, p. 28). We do not have information on the extent of development projected to occur in the other States within the species' range (Utah, Arizona, and New Mexico). Potential threats to Gunnison's prairie dog populations due to urban and suburban development exist, but have not been quantified, in the four cities of Santa Fe and Albuquerque, New Mexico; Flagstaff, Arizona; and Gunnison, Colorado (CDOW 2007, p. 4). In some areas, Gunnison's prairie dogs threatened by urban development have been captured and relocated to preserves or other nearby habitats, mitigating effects to overall population numbers, but not to area of habitat.

Although urban and suburban development exert adverse impacts on Gunnison's prairie dog populations at a local scale, they likely affect less than three percent of the species' range; low density development appears to be compatible with continued use by prairie dogs, due to the offsets provided by lawns and pastures that provide high quality forage (Seglund *et al.* 2005, p. 41).

Noxious weeds can increase in the presence of livestock overgrazing, and a relationship likely exists between overgrazing, *Bromus tectorum* (cheat grass) proliferation, and increased fire frequency and intensity (Seglund *et al.* 2005, p. 43). However, we have no data that quantifies these factors or their correlation with effects to Gunnison's prairie dog populations. The impact of overgrazing on prairie dog populations is contradictory. Some reports have noted that species density is positively correlated with the number of native plants (Slobodichikoff *et al.* 1988, p. 406), and that grazing has decreased forage availability (Seglund *et al.* 2005, p. 42). Other reports have concluded that prairie dog density is positively correlated with an increase in grazing, which simulates the shortgrass-type of prairie environment preferred by prairie dogs (Fagerstone and Ramey 1996, p. 88; Marsh 1984, p. 203, Slobodchikoff *et al.* 1988, p. 406). Considering the conflicting conclusions of published literature, and the lack of large-scale population decreases due to habitat alterations from livestock grazing, we find this is not a significant threat to the Gunnison's prairie dog.

Numerous land parcels within the Gunnison's prairie dog range are leased for oil and gas development (Seglund *et al.* 2005, pp. 36, 42). However, no information is available that quantifies the amount of occupied habitat affected. In a study of white-tailed prairie dogs, Menkens and Anderson (1985, p. 13) concluded that any impact from seismic testing is negligible. However, we acknowledge that oil and gas development is rapidly occurring (Seglund *et al.* 2005, p. 44), and that this potential threat should be considered more closely when more accurate data are available.

Road-related Gunnison's prairie dog mortality exists in proximity to specific population areas. Roads may be increasing due to oil and gas development. However, no studies quantify road mortality of Gunnison's prairie dogs. We have no data indicating that roads are currently threatening the species rangewide, and we conclude that prairie dog populations are able to recover from individual losses due to road mortality.

Conservation principles indicate that smaller, more isolated populations are more vulnerable to extirpation (Barnes 1993, p. 34; Cully 1993, p. 43; Fitzgerald 1970, p. 78; Gilpin and Soule 1986, pp. 30–31; Miller *et al.* 1994, p. 151; Mulhern and Knowles 1995, p. 21; Wilcox and Murphy 1985, p. 883; Wuerthner 1997, p. 464). Lomolino *et al.* (2003, p. 116) found that persistence of Gunnison's prairie dog colonies increased significantly with larger colony size and decreased isolation. However, we found no studies or data that specifically assess the magnitude of the threats discussed under Factor A (agriculture land conversions, urbanization, grazing, roads, and oil and gas leasing) and resulting fragmentation throughout the range of Gunnison's prairie dog habitat.

**Summary of Factor A**

After assessing the best available science on the magnitude and extent of the effects of agricultural land conversion, urbanization, grazing, roads, oil and gas development, and fragmentation of habitat, we find that the destruction, modification, and curtailment of Gunnison's prairie dog's habitat or range are not significant threats. Agriculture, urbanization, roads, and oil and gas development each currently affect a small percentage of Gunnison's prairie dog habitat. Effects of livestock grazing, while widespread, have not resulted in measurable population declines. However, we need more information on the impacts of fragmentation and isolation with regard to persistence of prairie dog populations and on the magnitude of the potential threat posed by increasing oil and gas development.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Gunnison's prairie dogs have been historically subjected to recreational shooting and shooting as a form of pest management on ranch and agricultural land; these practices continue under current State regulations (see Factor D. Inadequacy of Existing Regulatory Mechanisms). Prairie dogs are especially vulnerable to shooting due to their colonial behavior, which facilitates easy access to many individuals at once (Seglund *et al.* 2005, p. 48). Most field studies on the effects of shooting prairie dogs have been carried out on black-tailed prairie dogs, but we consider the results relevant to Gunnison's prairie dogs (CDOW 2007, p. 41). Shooting effects include population reduction and alteration of behavior, such as decreased foraging rates and increased vigilance, which reduce individual prairie dog vigor and result in lower reproductive output (Knowles 1988, p. 54; Reeve and Vosburgh in press, p. 5; Vosburgh 1996, pp. 32–33; Vosburgh and Irby 1998, p. 368; Pauli and Buskirk 2007, pp. 1223–1224).

Recreational shooting can reduce prairie dog population density at specific sites (Knowles 2002, p. 14; Miller *et al.* 1993, p. 91; Vosburgh 1996, pp. 13–14; Vosburgh and Irby 1998, pp. 366–367). Local extirpation of colonies may have occurred in isolated circumstances in the past (Knowles 1988, p. 54). However, increased population growth rates or recovery from very low numbers following shooting also have been reported (Knowles 1988, p. 54; Reeve and Vosburgh in press, p. 7). Recent studies of the effects of shooting on black-tailed prairie dogs appear to contradict the idea that populations quickly rebound from shooting. Reproductive output on colonies subjected to shooting decreased by 82 percent, while control colonies maintained a stable reproductive rate over the same period (Pauli and Buskirk 2007, p. 1228). Therefore, black-tailed prairie dogs do not appear to rebound quickly from shooting.

The International Union for the Conservation of Nature/Species Survival Commission (IUCN/SSC) Conservation Breeding Specialist Group evaluated the effects of shooting mortality on population viability of Gunnison's prairie dogs (CDOW 2007, p. 124). Simulations were run with a shooting closure in place from March 1 through June 14 each year (approximating State closures) and without any closures. Having the closure in place resulted in positive population growth and

negligible risk of extinction, except in scenarios with the highest levels (20 percent) of shooting-based mortality. Simulations run without the seasonal shooting closure in place suggest that when initial population sizes are smaller (less than 250 individuals) and shooting mortality is high (20 percent), a decrease in growth rate and an increase in population extinction risk exist (CDOW 2007, pp. 135–137). Colorado, Utah, and Arizona (outside Tribal lands) have implemented seasonal closures on prairie dog shooting. In Arizona and New Mexico, the Navajo Nation monitors this threat but currently implements no closures on shooting because it finds the level of shooting to be low on its lands (Cole 2007, p. 4).

**Summary of Factor B**

We have determined that shooting continues to be a threat to the Gunnison's prairie dog throughout all of its range and contributes to the decline of the species when combined with the effects of disease (see Factor C below). However, this threat is being monitored and managed in all States and the Navajo Nation, and modeling results suggest seasonal shooting closures implemented in Colorado and Arizona will likely reduce population-level losses. Therefore, we have determined that overutilization for commercial, recreational, scientific, or educational purposes is not a significant threat to the Gunnison's prairie dog.

*C. Disease or Predation*

While prairie dogs are prey to numerous species, including coyotes, badgers, black-footed ferrets, and various raptor species, there is no information available to indicate that predation has an overall adverse effect on the species. Black-footed ferrets have been reintroduced into two locations in Arizona, including the Aubrey Valley, where Gunnison's prairie dog populations appear to be stable.

The Gunnison's prairie dog is, however, affected by sylvatic plague, which occurs in regular outbreaks and causes population declines and extirpations. Plague is an exotic disease foreign to the evolutionary history of North American species (Barnes 1982, p. 238; Barnes 1993, p. 29; Biggins and Kosoy 2001, p. 907). This flea-borne disease, caused by infection with the bacterium *Yersinia pestis,* is shared by humans and other vertebrate animals. Rodents are the primary vertebrate hosts of *Y. pestis,* but other mammals can be infected. *Y. pestis* is transmitted to mammals by bites of infected fleas, direct contact with infected animals, and rarely by inhalation of infectious respiratory droplets from another animal (Gage *et al.* 1995, pp. 695–696). Plague was first observed in wild rodents (termed sylvatic plague) in North America near San Francisco, California, in 1908 and was detected in Gunnison's prairie dogs in the 1930s (Eskey and Hass 1940, p. 6). Plague has subsequently spread so that it now encompasses the entire range of the species (Centers for Disease Control 1998, p. 1; Cully 1989, p. 49; Girard *et al.* 2004, p. 8408). Therefore, it has only been present within the species' range for approximately 70 years, allowing very little time for any resistance to evolve (Biggins and Kosoy 2001, p. 913). Once established in an area, plague becomes persistent and periodically erupts, with the potential to eventually extirpate or nearly extirpate entire colonies (Barnes 1982, p. 255; Barnes 1993, p. 28; Cully 1989, p. 51; Cully *et al.* 1997, p. 711; Fitzgerald 1993, pp. 52–53). The term ''enzootic'' describes plague existing at a less severe level, sometimes referred to as a ''maintenance'' condition, that is present continuously throughout a species' habitat; the term ''epizootic'' describes a severe plague outbreak or amplification transmission cycle (Gage *et al.* 1995, p. 696).

Prairie dogs are highly susceptible to plague, and this susceptibility is thought to be a function of high population densities, abundant flea vectors, and uniformly low resistance (Biggins and Kosoy 2001, p. 913). Gunnison's prairie dogs can experience mortality rates of greater than 99 percent during epizootics, and eradication of populations can occur within one active season (Lechleitner *et al.* 1962, pp. 190–192; Lechleitner *et al.* 1968, p. 736; Rayor 1985, p. 194; Cully 1989, p. 49).

Oral vaccination through consumption of vaccine-laden baits could reduce mortality from plague. Mencher *et al.* (2004, pp. 5504–5505) report protection against plague in black-tailed prairie dogs, elicited through voluntary consumption of a vaccine-laden bait in the laboratory. The vaccine has been shown to be safe in numerous animals including black-footed ferrets, raccoons, skunks, bobcats, cats, dogs, and sheep. However, future field trials are required to test the efficacy on the Gunnison's prairie dog.

Recovery rates of Gunnison's and Utah prairie dog colonies studied 2 years post-epizootic found that Gunnison's prairie dog colonies experienced 100 percent mortality and remained depopulated throughout the study due to the lack of available immigrants (Turner 2001, p. 14). Partial or complete recovery following population reductions due to plague have been reported for both white-tailed and black-tailed prairie dogs (Cully 1993, pp. 40–41), but little to no recovery has been noted in montane Gunnison's prairie dog colony die-offs, even after long periods of time (Capodice and Harrell 2003, pp. 5–7; Cully *et al.* 1997, p. 717; Lechleitner *et al.* 1968, p. 734). Possible long-term consequences of continued plague infection in Gunnison's prairie dog populations may be:

(1) local extirpation of colonies;

(2) reduced colony size;

(3) increased variance in local population sizes, and

(4) increased inter-colony distances (CDOW 2007, p. 43).

The factors that influence interspecific (between species) transmission of plague from mammalian or avian reservoirs (for example, coyotes, raptors, corvids) into prairie dog populations are unclear, but seem to be primarily through fleas that could increase in moister climates (Parmenter *et al.* 1999, p. 818; Rayor 1985, p. 195). However, interspecific transmission does not seem to be a significant factor creating plague epizootics. Plague is now considered enzootic throughout the range of the Gunnison's prairie dog.

The primary factor influencing plague enzootics in Gunnison's prairie dogs is thought to be abundance of fleas within their own colonies. This appears to be correlated with seasonal moisture in specific habitat areas. Plague outbreaks may be triggered by climatic conditions, such as mild winters and moist springs (Parmenter *et al.* 1999, p. 818; Rayor 1985, p. 195). Enscore *et al.* (2002, p. 191) found a close relationship between human plague cases in the southwestern United States and high amounts of late spring (February to March) precipitation (time-lagged 1 and 2 years) and maximum daily summer temperature values in the moderately high range (85 to 90 °F; 29 to 32 °C).

Girard *et al.* (2004, p. 8408) postulated that when resistant hosts of plague encounter a susceptible species that is plague naïve and has a high population density, an epizootic occurs. During epizootic phases, declines in abundance of susceptible species like prairie dogs are observed (Hanson *et al.* 2007, p. 790). The rapid dispersal of the pathogen through an area can be followed by an enzootic phase, a slower transmission cycle that disperses through the lower-density, more resistant hosts remaining from the first cycle. This establishes the disease in stable reservoirs for future emergence

(Girard *et al.* 2004, p. 8413; Gage and Kosoy 2005, pp. 506–509).

Enzootic infection is generally considered characteristic of a stable rodent–flea infectious cycle where host rodents are relatively resistant to the disease. However, Hanson *et al.* (2007, p. 792) found that an unexpectedly high percentage of black-tailed prairie dog colonies in Montana tested positive for plague. They speculate that, under some conditions, black-tailed prairie dogs, rather than acting as resistant hosts, may serve as enzootic hosts or carriers of the pathogen. Plague antibody titers (concentrations in blood) have been found in small numbers of Gunnison's prairie dogs in New Mexico, indicating individual exposure to plague and subsequent recovery (Cully *et al.* 1997, p. 717; Cully and Williams 2001, p. 898). Plague appears to have had little effect on a Gunnison's prairie dog population in Aubrey Valley, Arizona (Wagner and Van Andelt 2007, p. 2). However, little evidence of resistance to plague has been found in any species of prairie dog at this time.

In conducting a Population Viability Analysis on Gunnison's prairie dogs, the IUCN/SSC Conservation Breeding Specialist Group (CDOW 2007, p. 123) hypothesized that in an enzootic scenario, plague operates at a relatively low level each year, thereby increasing average annual rates of mortality above what would occur in a more benign non-enzootic scenario.

Gunnison's prairie dog populations are more susceptible to decline from plague than white-tailed prairie dog populations and are at least as, if not more, susceptible than black-tailed prairie dog populations (Antolin *et al.* 2002, p. 14; Cully 1989, p. 51; Cully and Williams 2001, p. 899; Hubbard and Schmitt 1983, p. 51; Knowles 2002, p. 13; Ruffner 1980, p. 20; Torres 1973, p. 31; Turner 2001, p. iii). Gunnison's prairie dogs commonly forage outside of their home territory, a characteristic that may play a significant role in the susceptibility of the species to plague. The Gunnison's prairie dog may be more susceptible to plague than the black-tailed prairie dog because of the Gunnison's less exclusive territorial behavior (many mix relatively freely throughout adjacent territories) and thereby contribute to the communicability of plague (Hoogland 1999, p. 8).

The Gunnison's prairie dog is also likely more susceptible to plague than the white-tailed prairie dog because the Gunnison's typically occurs at higher densities and is less widely dispersed on the landscape, allowing for more frequent transmission of the disease from one individual to another (Antolin *et al.* 2002, p. 19; Cully 1989, p. 49; Cully and Williams 2001, p. 901; Turner 2001, p. 31). Biggins (2003, p. 6) speculated that if transmission rates for plague are at least partly dependent on host density, prairie dog populations on good quality sites may undergo both larger declines and more rapid recoveries than those on poor sites.

Available literature is inconclusive regarding whether isolation or density of a colony affects the number and frequency of plague outbreaks. Lomolino *et al.* (2003, p. 118) and others (Cully and Williams 2001, p. 901; Miller *et al.* 1993, pp. 89–90) suggested that isolation and fragmentation may provide some protection to prairie dogs from plague by lessening the likelihood of disease transmission. However, this theory no longer applies when plague is enzootic throughout the range of Gunnison's prairie dog (as it appears to be), in which case isolation of colonies reduces the chance of recolonization after extirpation (Wagner and Drickamer 2002, p. 16; Lomolino and Smith 2001, pp. 942–943). In areas where Gunnison's prairie dog colonies are located close to each other (less than 6 miles (mi) (10 kilometers (km) apart), inter-colony dispersal of plague is likely through infected prairie dogs (Girard *et al.* 2004, p. 8412). For colonies separated by long distances or unsuitable habitats, infection may occur due to long-distance dispersal of plague-infected fleas by domestic dogs, coyotes, raptors, or other predators and scavengers (Barnes 1993, p. 34), or plague may already persist as enzootic throughout Gunnison's prairie dog range.

The impacts of plague outbreaks, which lead to the loss of prairie dog colonies of all sizes (Roach *et al.* 2001, p. 956), are magnified by isolation of colonies. Colony growth after an epizootic is mainly the result of recolonization by inter-colony dispersers (Antolin *et al.* 2002, p. 17). Wagner *et al.* (2006, pp. 334–335) studied cycles of extirpation and recolonization in Gunnison's prairie dogs in Arizona, including a large number of colonies over a large geographic area, and found a significant relationship between the persistence of colonies and the persistence of their nearest neighboring colony. Increased isolation decreases the likelihood of recolonization following a plague outbreak if the distance between the infected colony and the next nearest colony is beyond the dispersal capabilities of the species. For example, Lechleitner *et al.* (1962, pp. 195, 197) documented a 1959 plague outbreak in a Gunnison's prairie dog colony in Colorado that killed all members of the colony. Prior to the outbreak, this colony had been continuously occupied for 20 years, despite several poisoning attempts. Two years after the plague outbreak, the colony still had not been recolonized, likely because it was isolated from other colonies by 8 mi (13 km) (Lechleitner *et al.* 1962, p. 187).

Research is underway on the efficacy of insecticides in protecting various prairie dog species from plague. Biggins and Godby (2005, p. 2) hypothesized that if enzootic plague is affecting populations of prairie dogs, an ambitious effort to remove the disease should result in increased survival rates of prairie dogs. Fleas in Utah prairie dog burrows were effectively controlled by annual treatments of the insecticide deltamethrin; fleas were reduced 96 to 98 percent within one month of treatment (Biggins and Godby 2005, p. 5). Studies of the effects of flea control on black-tailed and white-tailed prairie dogs have shown similar results (Biggins 2007). At this time, chemical dusting of individual prairie dog burrows is labor intensive and expensive.

All recent, major Gunnison's prairie dog colony declines documented in published literature have been attributed to plague epizootics. However, the magnitude of the plague threat appears to be different in the montane and prairie portions of the Gunnison's prairie dog range. Population declines in prairie habitat are less dramatic than those in montane habitat; partial recovery or establishment of new colonies have been documented following plague in the prairie range portion, but are rare or absent following plague outbreaks in the montane range.

We reviewed literature on the status of Gunnison's prairie dog populations within the two portions of the range and, specifically, all published and unpublished literature on the effects of plague on prairie dogs. While some studies were not recent, summarizing them below provides background on the responses of Gunnison's prairie dog populations to plague in each portion of the range.

**Effects of Plague in Montane Habitat**

Several well-studied colonies within the montane portion of the Gunnison's prairie dog range have been documented as being extirpated, or nearly so, due to plague. The South Park, Colorado, population area included estimated occupied habitat of 915,000 ac (371,000 ha) in 1945; 74,000 ac (30,000 ha) in 1948; and 42 ac (17 ha) in 2002 (CDOW

2007). This decline was largely due to plague and affected a substantial portion of the species' extant occupied habitat in Colorado (at least 15 percent). A plague event in Saguache County, Colorado, that progressed across seven colonies in 2 years left only scattered individuals surviving in two colonies (Lechleitner *et al.* 1968, p. 734). In Gunnison, Saguache, and Montrose Counties, Colorado, plague also was responsible for a decline from 15,569 ac (6,228 ha) of occupied habitat in 1980, to 770 ac (308 ha) in 2002 (note that Montrose County is in the Southwest population area in prairie habitat) (Capodice and Harrell 2003, pp. 5–7). A complete die-off of a colony due to plague in Chubbs Park, Chaffee County, Colorado, occurred in 1959 (Lechleitner *et al.* 1962, p. 185). In August 1958, the population was stable and healthy, but in 1959 an epizootic spread 2 mi (3 km) within 3 months; prairie dogs continued to be absent from the area in 1960 and 1961, and we have no recent information on the existence of prairie dogs in that location. Plague resulted in the complete loss, over a 2-year period, of a colony in South Park, Colorado (Fitzgerald 1970, pp. 68–69).

Approximately 1,000 to 1,500 Gunnison's prairie dogs were killed by an outbreak of plague in a 148-ac (60-ha) colony in Curecanti National Recreation Area near Gunnison, Colorado, in 1981 (Rayor 1985, p. 194). A few animals survived the disease and Gunnison's prairie dogs were again abundant in the area in 1986 (Cully 1989, p. 49). In 2002, 252 ac (102 ha) of habitat in the Recreation Area were occupied by Gunnison's prairie dog colonies (Capodice and Harrell 2003, p. 23), but the current estimate is 12 ac (4.8 ha) (Childers 2007, p. 2). Colonies within the Recreation Area experienced six plague epidemics between 1971 and 2007. Of the 9 historic Gunnison's prairie dog colonies, 3 are currently active, and 2 act as source populations for the main prairie dog concentration area (Childers 2007, p. 1). If the source colonies die off due to plague, repopulation may not be possible because any other Gunnison's prairie dog populations remaining will be separated by distance (more than 6 mi (10 km)) and impassable geographical features such as rivers and mountains (Lomolino *et al.* 2003, p. 116; Pizzimenti and Hoffman 1973, p. 1).

Recently, plague has been implicated in the loss of several large colonies on BLM land within the Gunnison population area (CDOW 2007, p. 4). A large colony southeast of Gunnison, Colorado, that was very active in 2005, was totally devoid of prairie dogs in 2006 and 2007. Four other large colonies in the same vicinity were active in 2006, but by 2007, no prairie dog activity was observed. Plague is the suspected cause of these extirpations, because of the complete elimination of the prairie dogs with no sign of poisoning (CDOW 2007, p. 4).

Fitzgerald (1993, p. 52) expressed concern about the status of the Gunnison's prairie dog in Colorado, indicating that plague had eliminated many populations, including almost all of the populations in South Park. He also suggested that populations appeared to be in poor condition in the San Luis Valley, and were extirpated from the extreme upper Arkansas River Valley, as well as Jefferson, Douglas, and Lake Counties. These areas comprise most of the Gunnison's prairie dog montane habitat in Colorado.

During 1984 through 1987, a plague event reduced the population of Gunnison's prairie dogs in the Moreno Valley of New Mexico from more than 100,000 individuals to between 250 and 500, a decline of greater than 99 percent (Cully *et al.* 1997, pp. 708–711). Although the growth rate of the remaining population increased following the epizootic, another plague event swept through the area in 1988, and the population in July 1996 was still ''a fraction'' of what it had been in 1984 (Cully *et al.* 1997, p. 718).

Occupancy modeling performed in Colorado in 2005 indicated a lower proportion of occupancy in the montane portion of the species' range within Colorado (3.2 percent) than in the prairie portion within Colorado (16.0 percent) (Andelt *et al.* 2006, p. 17; CDOW 2007, p. 19). When the study was repeated over the same plots in 2007, occupancy was again found to be lower (3.6 percent) in the montane range portion in Colorado than in the prairie portion (18.3 percent) (CDOW 2007, p. 19). The only recent threat responsible for whole population declines and extirpations, as documented in the studies cited in this section, is plague.

The frequency of plague epizootics appears to be high in montane habitat due to moister environmental conditions that are conducive to greater flea densities. The impact of plague epizootics in montane habitat is great because the small, isolated populations cannot recolonize. Within the South Park, Gunnison, and Southeast montane population areas in Colorado, no prairie dog complexes that approach a size considered sustainable exist, and only a few small complexes exist within the San Luis Valley population area (CDOW 2007, pp. 1–17). Without a metapopulation structure, an overall decline in persistence takes place (Lomolino and Smith 2001, p. 942).

The landscape status in the montane portion of Gunnison's prairie dog range is characterized by fewer, smaller colonies that are isolated, and few to no complexes or metapopulation structure. Isolation of populations is related to the montane geography in this portion of the range. Gunnison's prairie dogs occupy low valleys and mountain meadows within this habitat (Seglund *et al.* 2005, p. 12), likely because the short growing season at elevations higher than 10,000 ft (3,048 m) limits forage (Andelt *et al.* 2006, p. 17). In addition, mountain topography minimizes the zone of contact between populations (Knowles 2002, p. 3). At least four mountain ranges within the montane portion of the range act as barriers to Gunnison's prairie dog dispersal (Pizzimenti and Hoffman 1973, p. 1). These factors make the prairie dogs in this habitat highly susceptible to plague-related declines, and we have no evidence of long-term recovery from plague in the montane habitat area.

**Effects of Plague in Prairie Habitat**

The Southwest and the La Plata-Archuleta populations in Colorado are within the prairie portion of Gunnison prairie dog range. The Southwest population comprises the largest population of Gunnison's prairie dogs in Colorado, with an estimated 88,267 ac (35,307 ha) of active colonies. Currently, prairie dogs can be found in nearly any habitat suitable for occupation, although densities are low to very low in native rangeland areas. Plague may be a problem in this area, because periodic die-offs not associated with poisoning or other control measures have been noted by local farmers and ranchers in the past. However, unlike populations in montane habitat within Colorado, these populations appear to rebound from periodic epizootics (CDOW 2007, p. 16).

Populations in the La Plata-Archuleta population area appear to undergo plague outbreaks every 4 to 7 years, which may be limiting some populations (CDOW 2007, p. 7). Occupancy modeling in 2005 and 2007 documented Gunnison's prairie dog occupancy of 17.6 percent and 27.0 percent, respectively, in the Southern Ute Reservation (part of the La Plata-Archuleta population area), and 15.6 percent and 16.3 percent in the Southwest area (CDOW 2007, p. 19). The persistence of these populations, while undergoing repeated plague outbreaks, is likely due to their proximity to other populations within the prairie portion of the species' range

and immigration from those populations.

In Arizona, from 1987 to 2001, an estimated 68 percent reduction in the number of active Gunnison's prairie dog colonies occurred, primarily due to outbreaks of plague (Underwood 2007, p. 18; Wagner and Drickamer 2002, p. 15). However, in the area known as the Coconino Plateau, the area occupied by Gunnison's prairie dogs increased from 2,126 ac (860 ha) in 1992 to 40,942 ac (16,569 ha) in 2007 (Van Pelt 2007, p. 3), suggesting the species can withstand large plague epizootics through colony expansion or recolonization from nearby colonies. In addition, the Aubrey Valley Complex (in northwestern Arizona, the westernmost part of the species' range) has remained stable since at least 1974, despite the presence of plague, and the size of this complex increased from approximately 30,000 ac (12,000 ha) in 1997 (Underwood 2007, p. 23), to 40,000 ac (16,800 ha) in 2005 (Van Pelt 2005, p. 2), to 47,785 ac (19,338 ha) in 2007 (Van Pelt 2007, p. 2). Gunnison's prairie dogs at this site had significantly higher levels of antigens associated with disease-causing pathogens such as plague, the same immune response expected if the prairie dogs had been vaccinated against plague (Wagner and Van Andel 2007, p. 2).

Of 293 colonies surveyed within Gunnison's prairie dog range in Arizona outside of Tribal lands, 57 (19 percent) experienced die-offs during the summers of 2000 and 2001 (Wagner and Drickamer 2002, p. 13). Plague was confirmed as the causative agent for 15 of these 57 colonies but is thought to be the likely cause for them all, because it is the only disease that causes outbreaks with high mortality in prairie dogs (Barnes 1993, p. 34; Wagner and Drickamer 2002, p. 13). During surveys, they also identified the approximate boundaries of two previous plague outbreaks (Wagner and Drickamer 2002, p. 14).

An outbreak occurred over approximately 1,120 square mi (2,900 square km) west of the town of Dilkon, Arizona, on the Navajo Indian Reservation. This outbreak probably occurred in 1995 or 1996 (Wagner and Drickamer 2004, p. 14). Previous surveys in the area documented 45 colonies on 8,649 ac (3,500 ha). Reexamination of these colonies in 2000 and 2001 showed that all but two colonies were inactive. At most of the inactive colonies, burrow entrances were completely closed, and only mounds indicated where they formerly occurred.

An outbreak occurred east of the town of Seligman, Arizona, across approximately 425 square mi (1,100 square km) around 1996. The Arizona Game and Fish Department conducted surveys in this area between 1990 and 1994, and identified 47 active colonies that covered approximately 8,649 ac (3,500 ha). In 1996, die-offs were observed in this area, and the U.S. Centers for Disease Control and Prevention confirmed plague as the cause. Although prairie dog numbers were increasing again in 1998, surveys in 2001 indicated that only 11 of the 47 colonies were active. Possibly another, undocumented, plague outbreak occurred in 1999 or 2000, again reducing the number of individuals (Underwood 2007, p. 19). Despite this persistent plague activity, Gunnison's prairie dogs are becoming reestablished in some areas within the boundaries of the Seligman outbreak (Wagner and Drickamer 2002, pp. 14–15). This apparent resiliency is most likely due to immigration from other colonies in the prairie portion of the species' range.

Plague cycles have been observed in Gunnison's prairie dogs in Utah, and populations have been known to die off and then recover (Lupis *et al.* 2007, p. 32). Because plague testing has not been conducted on Gunnison's prairie dogs in Utah, declines cannot definitively be attributed to the disease (Seglund *et al.* 2005, p. 52). Plague is anticipated to be an ongoing threat to Gunnison's prairie dog populations in Utah at both a localized, and a widespread, scale (Lupis *et al.* 2007, p. 32). The Utah Division of Wildlife Resources recently conducted point surveys and found that occupancy was 15.7 percent. Based on observed occupancy, they estimate that roughly 40,000 ac (16,000 ha) of southeastern Utah were inhabited by Gunnison's prairie dogs in 2007.

Of 65 Gunnison's prairie dog colonies occupied prior to 1984 in west-central New Mexico, 32 (49 percent) were still occupied in 2005 (Luce 2005, p. 4). The active colonies were estimated to cover 5,997 ac (2,399 ha) (Luce 2005, p. 5). The New Mexico Department of Game and Fish recently initiated occupancy modeling surveys similar to those used by CDOW and the Utah Division of Wildlife Resources; however, we currently have no data from that effort.

**Summary of Factor C**

The studies cited above document the serious impact that plague has on Gunnison's prairie dogs. Although plague antibody titers have been found in a few individuals, periodic epizootic plague events generally kill more than 99 percent of an affected population. Whether individual populations recover from these epizootics depends on two main factors: (1) The availability of other source populations to recolonize an area; and (2) the frequency of epizootic outbreaks, which can reduce population numbers more quickly than individual prairie dogs from neighboring colonies can recolonize.

Populations in the more mesic montane areas of Gunnison's prairie dog range appear to have been widely and severely affected by plague. This may be partly due to climatic conditions such as higher levels of spring moisture, which has been shown to increase flea numbers, and in turn, plague outbreaks. Isolation of prairie dog populations does not seem to protect them from the spread of plague, because it appears that plague exists with all parts of the range at some level, and can be spread by wider-ranging animals. The case studies cited in this section indicate that large populations have been repeatedly affected by plague and have shown no substantial recovery over long periods of time—decades in some cases. This has left smaller, more scattered populations throughout the montane range portion and a complete lack of metapopulation structure, with the result that areas affected by plague are less likely to be recolonized by nearby populations. While little information is currently available on prairie dog movement within this montane habitat, its geography (populations are located in valleys between mountainous areas) probably impedes the ability of prairie dogs to recolonize populations. Within this geographic area, CDOW found slightly more than 3 percent occupancy of surveyed plots.

Although documented population declines due to plague outbreaks also occur in the more xeric prairie portions of Gunnison's prairie dog range, evidence shows that many of these populations recover more rapidly from plague epizootics, probably due to the availability of nearby colonizers. This portion of the range has maintained a metapopulation structure that provides source populations for plague-affected populations. The largest population in Arizona, Aubrey Valley in the driest portion of the range, has been increasing in recent years and shows indications of exposure to plague without the devastating effects observed elsewhere. The CDOW data documents approximately 18 percent occupancy within prairie habitat in Colorado. Studies in Utah and west-central New Mexico indicate a historic decline in habitat occupancy of approximately 50 percent (Wright 2007, p. 3; Luce 2005, p. 4), and a greater decline in Arizona (Wagner and Drickamer 2002, p. 11). While this is significant, it is far less

than the declines seen in the montane habitat area; in addition, metapopulation structure continues to exist, and at least one Gunnison's prairie dog complex (Aubrey Valley, Arizona) is exhibiting some resistance to plague epizootics.

The impacts of plague appear to be ongoing with moderate population-level effects when assessed across the entire range of the Gunnison's prairie dog. Within the prairie portion of the range, plague has reduced the number of populations, and is reducing the size of populations, but has not decimated the existing metapopulation structure. Gunnison's prairie dog colonies in prairie habitat exhibit rebound and recovery from plague epizootics in many population areas due to availability of animals from adjacent colonies. So far, plague has resulted in moderate effects to the species in the prairie portion of the range.

Within the montane portion of the range, plague has significantly reduced the number and size of populations, resulting in high effects to the species. Populations within montane habitat have three distinct disadvantages in resisting the effects of plague:

(1) A higher frequency of epizootics due to the moister montane climate that is conducive to higher abundance of fleas that spread plague;

(2) smaller populations that cannot recover in numbers from plague epizootics; and

(3) isolated populations and no metapopulation structure, due to reduced population sizes from past plague epizootics and montane geography, and therefore a significantly limited ability to recolonize.

After assessing the best available science on the magnitude and extent of the effects of plague, we find that the impact of plague in the montane portion of the Gunnison's prairie dog range is significant. However, plague does not rise to a level of being a significant threat to the Gunnison's prairie dog throughout its range.

*D. Inadequacy of Existing Regulatory Mechanisms*

**Local Laws and Regulations**

Approximately 22 percent of potential Gunnison's prairie dog habitat occurs on private lands, and another 30 percent occurs on Tribal lands or lands managed by the Bureau of Indian Affairs (Seglund *et al.* 2005, p. 21). We are not aware of any city, or county ordinances that provide for protection or conservation of the Gunnison prairie dog or its habitat. We recognize that city, county, and Tribal ordinances that address issues such as agricultural lands, transportation, and zoning for various types of land use have the potential to influence the Gunnison's prairie dog or its habitat; for example, zoning that protects open space might retain suitable habitat, and zoning that allows a housing development might destroy or fragment habitat.

Colorado State Statute C.R.S. 30–28–101 exempts parcels of land of 35 ac (14 ha) or more per home from regulation, so county zoning laws in Colorado only restrict developments with housing densities greater than one house per 35 ac (14 ha). This State statute allows some parcels to be exempt from county regulation and may negatively impact some prairie dogs.

**Tribal Laws and Regulations**

Approximately 49 percent of potential Gunnison's prairie dog habitat occurs on Tribal lands (Seglund *et al.* 2005, p. 21). On the Navajo Nation, Gunnison's prairie dog is classified as small game, and a hunting license is required to shoot them (Cole 2007, p. 4). In general, access and permission to hunt on Tribal lands are limited for non-Tribal members as a result of various trespass laws, but access by Tribal members is not limited. We are aware of no seasonal shooting closures in effect on Tribal land. Work on the Navajo Nation Gunnison's Prairie Dog Management Plan, which will incorporate elements of the Arizona, New Mexico, and Utah State plans, is expected to begin immediately after finalization of the Gunnison's prairie dog rangewide inventory (Cole 2007, p. 5). The Navajo Nation allows lethal and non-lethal removal of Gunnison's prairie dogs for agricultural, human health, and safety purposes (Cole 2007, pp. 4, 5)

We are not aware of any other Tribal ordinances that provide for protection or conservation of the Gunnison prairie dog or its habitat. We recognize that Tribal ordinances that address issues such as agricultural lands, transportation, and zoning for various types of land uses have the potential to influence the Gunnison's prairie dog or its habitat; for example, zoning that protects open space might retain suitable habitat, and zoning that allows a housing development might destroy or fragment habitat.

**State Laws and Regulations**

Approximately 12 percent of Gunnison's prairie dog potential habitat occurs on State and Federal lands (Seglund *et al.* 2005, pp. 82). Gunnison's prairie dogs are considered a Species of Greatest Conservation Need in Arizona, a State Sensitive Species in Utah, and have no special conservation status in Colorado or New Mexico. All four States discuss the Gunnison's prairie dog in Comprehensive Wildlife Conservation Strategies (Seglund *et al.* 2005, p. 55) that confer no regulatory mechanisms, but assert that the species is at risk, declining, and deserving of special management consideration.

In Arizona, all prairie dog species are classified as nongame mammals, and a hunting license is required to shoot them (Underwood 2007, p. 27). In 2001, the hunting season for Gunnison's prairie dogs was changed from year-round to an April 1 to June 15 closure that applies to Federal, State, and private lands (Underwood 2007, p. 28).

In Colorado, the Gunnison's prairie dog is classified as a small game species, and take is allowed by rifle, handgun, shotgun, handheld bow, crossbow, pellet gun, slingshot, falconry, and toxicants (CDOW 2007, pp. 41–42). A small game license is required, with the exception of private landowners and their immediate family members or designees, who may take Gunnison's prairie dogs causing damage on their lands. Shooting on public lands is not allowed between March 1 and June 14 (no take is permitted in any season on national wildlife refuges) (CDOW 2007, pp. 41–42). During the open season, no bag or possession limits exist; however, contestants in shooting events may take no more than five prairie dogs per event (CDOW 2007, pp. 41–42). No seasonal shooting closures are in effect on private or Tribal lands.

In New Mexico, Gunnison's prairie dogs may be taken year-round without a permit by residents; non-residents are required to obtain a New Mexico hunting license to shoot prairie dogs within the State (Seglund *et al.* 2005, pp. 31, 32).

In Utah, shooting of Gunnison's prairie dogs is prohibited on public lands from April 1 to June 15, but they may be taken on private lands year-round; no license is required for shooting Gunnison's prairie dogs, and no bag limit exists (Lupis *et al.* 2007, pp. 18–19).

Access and permission to hunt on private and Tribal lands are limited as a result of various trespass laws. All States that provide habitat for Gunnison's prairie dogs allow their removal for agricultural, human health, and safety purposes (Seglund *et al.* 2005, p. 46).

The States within the range of the Gunnison's prairie dog developed a Rangewide Conservation Strategy that provides guidance regarding specific activities to include in individual State plans for prairie dog conservation and

management (Seglund *et al.* 2005, p. 55). All of the States with Gunnison's prairie dog habitat are in the process of developing State Conservation Plans. The four plans are in different phases of development but are scheduled for completion by March 2008. The four States have agreed on a monitoring strategy to determine population trends of Gunnison's prairie dog across their range (Van Pelt 2007, p. 2).

Within Colorado, in the montane portion of the species' range, CDOW has designated individual population areas to identify where Gunnison's prairie dogs exist and where management activities should be focused. This portion of the species' range is comprised of the Gunnison, San Luis Valley, South Park, and Southeast population areas.

The Gunnison population area is approximately 68 percent Federal, and 2 percent State, 30 percent private ownership (CDOW 2007, p. 2). The San Luis Valley population area is approximately 40 percent Federal, 6 percent State, and 54 percent private ownership (CDOW 2007, p. 2). The South Park and Southeast population areas are 34 percent Federal, 7 percent State, and 59 percent private ownership. The large percentage of private lands, where minimal regulatory mechanisms exist, appears to compound the effects of shooting and poisoning in this montane portion of the species' range that is already at lower occupancy than the prairie portion of the species, especially in conjunction with plague for which there are no regulatory or protective mechanisms.

**United States Federal Laws and Regulations**

Federal agencies are responsible for managing approximately 17 percent of Gunnison's prairie dog habitat. The primary Federal agency managing Gunnison's prairie dog habitat is BLM (12 percent); the USFS (4.3 percent), National Park Service (0.5 percent), Department of Defense (0.4 percent), and the Service (0.1 percent) also contribute to management of the species.

**Bureau of Land Management**

The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*) is the primary Federal law governing most land uses on BLM lands. Section 102(a)(8) of FLPMA specifically recognizes wildlife and fish resources as being among the uses for which these lands are to be managed. BLM must consider the needs of wildlife, including general considerations of Gunnison's prairie dogs, when conducting activities in their habitat.

The Gunnison's prairie dog is designated by BLM as a sensitive species in Utah only; therefore, they are not required to provide special protections and mitigation during project and activity planning in Arizona, Colorado, or New Mexico.

BLM's Resource Management Plans (RMPs) are the basis for all of its actions and authorizations involving BLM-administered lands and resources. They establish allowable resource uses; resource condition, goals and objectives to be attained; program constraints and general management practices needed to attain the goals and objectives; general implementation sequences; and intervals and standards for monitoring and evaluating the plan to determine its effectiveness and the need for amendment or revision (43 CFR 1601.0–5(k)).

RMPs provide a framework and programmatic guidance for site-specific activity plans. Site-specific plans address livestock grazing, oil and gas field development, travel management, wildlife habitat management, and other activities. Activity plan decisions normally require National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) analysis.

The BLM has regulatory authority for oil and gas leasing and operating, as provided at 43 CFR 3100 *et seq.* BLM usually incorporates stipulations as a condition of issuing a lease. The BLM's planning handbook has program-specific guidance for fluid minerals (which include oil and gas) that specifies that RMP decision-makers will consider restrictions on areas subject to leasing, including closures, and lease stipulations (BLM 2000, Appendix C, p. 6). The handbook also specifies that all stipulations must have waiver, exception, or modification criteria documented in the plan, and indicates that the least restrictive constraint to meet the resource protection objective should be used (BLM 2000, Appendix C, p. 6). The BLM has regulatory authority to condition drilling permits to include prairie dog conservation stipulations (BLM 2004, pp. 3–60). Some oil and gas leases have a 0.12-mi (0.19-km) stipulation, which allows movement of the drilling area by that distance (BLM 2004). We do not have data to evaluate the effectiveness of BLM's program on prairie dog conservation.

**U.S. Forest Service**

The Gunnison prairie dog is a USFS Sensitive Species in New Mexico and Colorado, where it is considered to be imperiled (USFS 2007, line 135) based on NatureServe rankings (USFS 2004, pp. 60, 64). Management of Federal activities on National Forest System lands is guided principally by the National Forest Management Act (NFMA) (16 U.S.C. 1600–1614, August 17, 1974, as amended). The NFMA specifies that all national forests and grasslands must have a Land and Resource Management Plan (LRMP) (16 U.S.C. 1600) to guide and set standards for natural resource management activities. The NFMA requires the USFS to incorporate standards and guidelines into LRMPs (16 U.S.C. 1600). This has historically been done through a NEPA process. Provisions to manage plant and animal communities for diversity, based on the suitability and capability of a specific land area, are developed in order to meet overall multiple-use objectives.

The 1982 NFMA implementing regulation for land and resource management planning (1982 rule, 36 CFR 219), under which all existing forest plans were prepared, requires the USFS to manage habitat to maintain viable populations of existing native vertebrate species on National Forest System lands (1982 rule, 36 CFR 219.19). A new USFS planning regulation was promulgated on January 5, 2005 (70 FR 1023), and supersedes the 1982 rule. Plans developed under the new regulation are to be more strategic and less prescriptive in nature than those developed under the 1982 planning rule. For example, previous plans might have included a buffer for activities near the nest sites of birds sensitive to disturbance. Under the new regulation, a desired condition description and guidelines will be provided, rather than a set of prescriptive standards that apply to projects. Planning, and decisions for projects and activities, will address site-specific conditions and identify appropriate conservation measures to take for each project or activity. However, this planning regulation was struck down by the U.S. District Court for the Northern District of California on March 30, 2007, and is not currently in use by the USFS. We are uncertain which direction the USFS is implementing for the Gunnison's prairie dog, or whether Gunnison's prairie dog habitat objectives and conservation measures have been incorporated into grazing allotment plans or LRMPs.

**Summary of Factor D**

On a basis on a review of the available existing information, it does not appear that the inadequacy of existing regulatory mechanisms is a significant threat to the Gunnison's prairie dog.

However, the percentage of private lands within the montane portion of the species' range results in a paucity of regulatory mechanisms that potentially result in increased shooting and poisoning, which exacerbate the effects of plague in that portion of its range. At this time, no regulatory mechanisms exist to mitigate the effects of plague.

*E. Other Natural or Manmade Factors*

Poisoning of Gunnison's prairie dogs has historically been documented throughout the species' range, but no evidence indicates that poisoning currently occurs on a broad scale. The WAFWA Gunnison's Prairie Dog Conservation Assessment summarizes poisoning campaigns in the four States (Seglund *et al.* 2005, pp. 56–57). From 1914 to 1964, 2,310,203 ac (934,906 ha) of Gunnison's prairie dog habitat were poisoned in Arizona; 23,178,959 ac (9,380,192 ha) of habitat were poisoned in Colorado; 20,501,301 ac (8,296,582 ha) of habitat were poisoned in New Mexico; and 2,715,930 ac (1,099,098 ha) of habitat were poisoned in Utah. On public lands, poisoning efforts have led to a reduction in occupied habitat, extirpation from local areas, fragmentation, and isolation of colonies. Poisoning in all States became less common after Federal regulation of pesticides was enacted. State and Federal agencies are rarely involved in control efforts unless human health and safety are at risk (Seglund *et al.* 2005, p. 57). Individual landowners may still control prairie dogs on their private property.

No studies indicate that drought has a negative rangewide effect on Gunnison's prairie dogs. Impacts to the Gunnison's prairie dog under predicted future climate change are unclear. A trend of warming in the mountains of western North America is expected to decrease snowpack, hasten spring runoff, and reduce summer flows (IPCC 2007, p. 10). Increased summer heat may increase the frequency and intensity of wildfires (IPCC 2007, p. 14). Given the different climate variables between the montane and prairie geographic areas, populations in prairie habitat may show evidence of effects from climate change earlier than those in montane habitat. While it appears reasonable to assume that Gunnison's prairie dogs may be affected, we lack sufficient certainty on knowing how climate change will affect the species, or the potential changes to the level of threat posed by plague. The most recent literature on climate change includes predictions of hydrologic changes, higher temperatures, and expansion of drought areas, resulting in an upward shift in range for many species (IPCC 2007, pp. 2–5); the higher elevation montane habitat could be essential to future conservation of the Gunnison's prairie dog. We have no knowledge of more detailed climate change information specifically for this montane portion of the Gunnison's prairie dog range.

**Summary of Factor E**

Although poisoning contributed historically to large declines in occupied area of Gunnison's prairie dogs, there is no information available to indicate that poisoning occurs at more than a localized scale today. Poisoning could have a negative effect on small, isolated populations, particularly in conjunction with disease and shooting; therefore, poisoning in the montane area may be more likely to contribute to the decline of the species by further fragmenting the small populations and curtailing recolonization. No information currently indicates that drought negatively affects or is likely to affect the Gunnison's prairie dog throughout its range, or that climate change will affect the species within the foreseeable future. While poisoning of Gunnison's prairie dogs and the effects of climate change in the montane portion of the range are issues important to monitor, we conclude that no other natural or manmade factors are a significant threat to this species, at this time, throughout all or a significant portion of its range.

**Foreseeable Future**

When determining whether a species is in danger of extinction throughout all or a significant portion of its range, or is likely to become in danger of extinction in the foreseeable future, we must define that foreseeable future for the species. We do this on a case-by-case basis, taking into account a variety of species-specific factors such as lifespan, genetics, breeding behavior, demography, threat-projection timeframes, and environmental variability. For the purposes of this finding, we define foreseeable future based on a threat-projection timeframe, because plague is likely to be the single greatest factor contributing to the species' future conservation status, as explained below.

Life history characteristics are of secondary relevance to Gunnison's prairie dog foreseeable future. Gunnison's prairie dogs breed once per year and produce an average litter size of 3.77. They can become sexually mature at 1 year of age, but survivorship is less than 60 percent during their first year (Seglund *et al.* 2005, p. 15). These characteristics are relevant to the species' ability to sustain stable populations in the presence of ongoing, low intensity threats such as predation, poisoning, and shooting. However, we find that the ability of populations to recover from plague epizootics is more relevant to the foreseeable future of the species.

As described under Factor C above, prairie dog populations can experience mortality rates of greater than 99 percent during plague epizootics and can be eradicated within one season due to plague. Recovery rates, which are key to population survival, depend on several factors, including susceptibility to plague, frequency of plague outbreaks, habitat quality, and distance to other colonies available for recolonization. Current data frame our analysis and help us understand what factors can reasonably be anticipated to meaningfully affect the species' future conservation status. We have documented that Gunnison's prairie dog occupancy varies significantly across its range, that susceptibility to extirpation by plague is greater in the montane portion of the species' range, and that metapopulation structure does not exist and recolonization is nearly nonexistent in the montane portion of the range. While we have data indicating that Gunnison's prairie dog numbers and populations have decreased, we currently have no data on which to base rates of decline in any portion of that range, which hinders our ability to determine the foreseeable future for the species. We must estimate the foreseeable future of the Gunnison's prairie dog based on current occupancy and our knowledge of the magnitude of the threat of plague. Plague has been shown to nearly extirpate entire population areas over a span of 3 to 10 years (such as South Park and San Luis Valley in Colorado and Moreno Valley in New Mexico) (Fitzgerald 1993; CDOW 2007; Cully *et al.* 1997) and can extirpate small populations in 1 to 2 years (Fitzgerald 1970; Lechleitner *et al.* 1962; Turner 2001).

Plague has been present within the range of the Gunnison's prairie dog for 70 years (Eskey and Haas 1940, p. 6) and will likely continue to exist within the range in perpetuity, because it remains widespread and strongly entrenched among wild rodent populations in the western United States (Barnes 1993, p. 31). Current information suggests that Gunnison's prairie dog has not developed sufficient immunity to reduce the effects of plague; we anticipate it will not develop such immunity within the foreseeable future. Few records document Gunnison's

prairie dog individuals with plague antibody titers (Cully *et al.* 1997, p. 717; Cully and Williams 2001, p. 898). Individual prairie dogs in the Aubrey Valley of Arizona had antigens that provided an immune response similar to that expected if they had been vaccinated; however, the mechanism is unknown—that is, we do not know whether the response is a result of exposure to plague or is innate (Wagner and Van Andel 2007, p. 2), and we do not know if the number of individual prairie dogs that have antigens are enough to protect whole colonies. We have no documented records of resistance being passed to offspring. More studies and testing need to be conducted on a plague vaccine that has had limited success in laboratory experiments on black-tailed prairie dogs; individual black-tailed prairie dogs have developed antigens to plague in response to the vaccine. The vaccine has not yet been tested on Gunnison's prairie dogs, and even if we had an effective vaccine, we currently have no method of applying it to prairie dog populations.

We do not have sufficient information, such as trend data, on the trajectory of plague to develop a precise definition of foreseeable future. In the 70 years plague has been present in Gunnison's prairie dog habitat: (1) Populations in the montane portion of the range have become isolated and no longer comprise a metapopulation structure; and (2) populations in the prairie portion of the range have maintained a metapopulation structure, but occupancy has been reduced by 50 percent or more. The trajectory of plague effects is difficult to assess, because, as populations are reduced in size or extirpated, the effects of plague multiply at a faster rate. Using the best available information, we find that, if occupied habitat within the prairie portion of the range was reduced by at least 50 percent in 70 years, the species could be facing significant effects within a much shorter timeframe than another 70 years. Our best estimate at this time is that within half that time, another 35 years or fewer, plague may eliminate the metapopulation structure remaining within the prairie portion of the range. Therefore, we find that the foreseeable future of the Gunnison's prairie dog is 35 years. It is possible that Gunnison's prairie dogs may develop immunity to plague, or to rebound in numbers that enable it to withstand cyclic outbreaks of the disease, making the trajectory of plague longer than 35 years. It is also possible that plague will continue on a more rapid trajectory that extirpates populations at a rate we can't anticipate. However, we find that an estimate of 35 years as the foreseeable future of the Gunnison's prairie dog is reasonable, because it focuses this status review on the known effects from plague, and our best assessment that prairie dogs will not soon develop immunity to the disease. We know of no other species that have developed an immunity to plague.

Based on currently available data on the continued presence of plague and its effects, we have determined that the species, rangewide, is not likely to become endangered within the foreseeable future, which we have determined to be the year 2043. However, while some populations in the montane portion of the range have so far persisted, their long-term viability is compromised by the lack of metapopulation structure. In the prairie portion of the range, the many more populations and the metapopulation structure that enable recolonization after plague epizootics, continue to persist, and in our judgment, will continue to persist into the foreseeable future.

**Significant Portion of the Range Analysis**

As required by the Act, we considered the five potential threat factors to assess whether the Gunnison's prairie dog is threatened or endangered throughout all or a significant portion of its range. When considering the listing status of the species, the first step in the analysis is to determine whether the species is in danger of extinction throughout all of its range. If this is the case, then we list the species in its entirety. For instance, if the threats to a species are directly acting on only a portion of its range, but they are at such a large scale that they place the entire species in danger of extinction, we would list the entire species.

We next consider whether any significant portion of the Gunnison's prairie dog range meets the definition of endangered or is likely to become endangered in the foreseeable future (threatened). On March 16, 2007, a formal opinion was issued by the Solicitor of the Department of the Interior, ''The Meaning of 'In Danger of Extinction Throughout All or a Significant Portion of Its Range' '' (DOI 2007). A portion of a species' range is significant if it is part of the current range of the species and is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability of the species to persist.

The first step in determining whether a species is threatened or endangered in a significant portion of its range is to identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. To identify portions that warrant further consideration, we determine whether there is substantial information indicating that (1) the portions may be significant, and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that are unimportant to the conservation of the species, such portions will not warrant further consideration.

If we identify any portions that warrant further consideration, we then determine whether the species is threatened or endangered in any significant portion. If we determine that a portion of the range is not significant, we do not determine whether the species is threatened or endangered there.

The terms ''resiliency,'' ''redundancy,'' and ''representation'' are intended to be indicators of the conservation value of portions of the range. Resiliency of a species allows it to recover from periodic disturbances. A species will likely be more resilient if large populations exist in high-quality habitat that is distributed throughout its range in a way that captures the environmental variability available. A portion of the range of a species may make a meaningful contribution to the resiliency of the species if the area is relatively large and contains particularly high-quality habitat, or if its location or characteristics make it less susceptible to certain threats than other portions of the range. When evaluating whether or how a portion of the range contributes to resiliency of the species, we evaluate the historical value of the portion and how frequently the portion is used by the species, if possible. The range portion may contribute to resiliency for other reasons; for instance, it may contain an important concentration of certain types of habitat that are necessary for the species to carry out its life-history functions, such as breeding,

feeding, migration, dispersal, or wintering.

Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. This concept does not mean that any portion that provides redundancy is per se a significant portion of the range of a species. The idea is to conserve enough areas of the range so that random perturbations in the system only act on a few populations. Therefore, we examine each area based on whether that area provides an increment of redundancy that is important to the conservation of the species.

Adequate representation ensures that the species' adaptive capabilities are conserved. Specifically, we evaluate a range portion to see how it contributes to the genetic diversity of the species. The loss of genetically based diversity may substantially reduce the ability of the species to respond and adapt to future environmental changes. A peripheral population may contribute meaningfully to representation if there is evidence that it provides genetic diversity due to its location on the margin of the species' habitat requirements.

Based on the discussion above, we identified the montane portion of the current range of the Gunnison's prairie dog as warranting further consideration to determine if it is a significant portion of the range that is threatened or endangered. This portion of the range in central and south-central Colorado, and north-central New Mexico, constitutes approximately 40 percent of the current overall range.

**Defining Portions of the Range**

In defining the portion of the current range that we considered further, we relied on range maps produced by mammalogists and geneticists that delineate the boundaries of the montane and prairie portions of the Gunnison's prairie dog's range. We believe the threats to the species are significantly different in the two range portions. The geography of each area differs significantly, affecting the ability of the prairie dog to respond to threats. Unpublished genetic analysis shows differences in Gunnison's prairie dogs between the two areas (Hafner *et al.* 2005, p. 2). This analysis is not yet complete enough to definitively indicate that two separate subspecies exist; however, along with subspecies delineation, the data also point to possible differences in Gunnison's prairie dog adaptations due to physical geography.

We assessed whether we should consider smaller geographic units, such as population areas. Given the best scientific and commercial information available, we found that individual population areas did not meaningfully contribute to the representation, resiliency, or redundancy of the species.

The scale at which we define the range of a particular species, that is, at a relatively coarse or fine scale, depends on the life history of the species, the data available, and the purpose for defining the range.

As with other determinations under the Act, we define the current range on the basis of the best available data. The purpose of defining range (and hence the significant portion of the range) is to set the boundaries of the protections of the Act. Therefore, defining the boundaries too narrowly may lead to the failure to protect some Gunnison's prairie dogs. We have determined that it is appropriate to use a relatively coarse scale to capture all of the areas where the best available data suggests the Gunnison's prairie dog is likely to occur.

The map boundaries in Figure 1 above show the Gunnison's prairie dog range. Discovery of currently existing Gunnison's prairie dog populations outside these boundaries is unlikely. The map boundaries show the significant montane portion, which is inclusive of all areas likely to support Gunnison's prairie dog populations in the montane habitat.

**Significance of the Montane Range**

When Gunnison's prairie dog colonies are well distributed across their current range, which currently includes an estimated 5 percent of the historical range, they are less susceptible to extinction than when colonies are confined to only a portion of their range. The montane habitat within Gunnison's prairie dog range contains populations significant to the overall viability of the species, because they represent:

- Approximately 40 percent of the species' current habitat;
- Populations in unique, higher elevation habitat, and adaptations relevant to this habitat;
- Genetic material substantially unique within the range of the Gunnison's prairie dog (Hafner 2004, p. 6; Hafner *et al.* 2005, p. 2).

The relatively large proportion of the entire range represented by the montane habitat adds a significant number of Gunnison's prairie dog populations widely distributed throughout distinct geographic areas. Losses of populations in montane habitat would affect the representation, resiliency, and redundancy of the species by increasing risk of extirpation by a natural or anthropogenic event, reducing adaptive characteristics to geographical or climatic conditions, and reducing remaining genetic variation.

The most recent literature on climate change includes predictions of hydrologic changes, higher temperatures, and expansion of drought areas, resulting in an upward shift in range for many species (IPCC 2007, pp. 2–5); the higher elevation montane habitat could be essential to future conservation of the Gunnison's prairie dog. These factors lead us to the conclusion that loss of the Gunnison's prairie dog within the montane portion of its range would reduce the ability of the species to persist.

**Status of Montane Range**

If we identify any range portions as significant, we then determine whether the species is threatened or endangered in this significant portion of its range.

**Summary of Factors Affecting the Species Within the Montane Portion of the Range**

We evaluated whether threats to the Gunnison's prairie dog may affect its survival within the montane portion of its range, separately from the entire range. Our evaluation of threats within the montane portion of the range (based on information provided in the petition, available in our files, and available in published and unpublished studies and reports) is presented below.

*A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

Conservation principles indicate that smaller, more isolated populations are more vulnerable to extirpation (Barnes 1993, p. 34; Cully 1993, p. 43; Fitzgerald 1970, p. 78; Gilpin and Soule 1986, pp. 30–31; Miller *et al.* 1994, p. 151; Mulhern and Knowles 1995, p. 21; Wilcox and Murphy 1985, p. 883; Wuerthner 1997, p. 464). Lomolino *et al.* (2003, p. 116) found that persistence of Gunnison's prairie dog colonies increased significantly with larger colony size and decreased isolation. The populations within the montane portion of the range are smaller and more isolated. However, we found no studies or data that specifically assess the magnitude of the threats related to agriculture land conversions, urbanization, grazing, roads, and oil and gas leasing, and resulting fragmentation within the montane portion of Gunnison's prairie dog habitat.

After assessing the best available science on the magnitude and extent of

the effects of agricultural land conversion, urbanization, grazing, roads, oil and gas development, and fragmentation of habitat, we find that the destruction, modification, and curtailment of Gunnison's prairie dog's habitat or range are not significant threats within the montane portion of the range. Agriculture, urbanization, roads, and oil and gas development each currently affect a small percentage of Gunnison's prairie dog habitat. Effects of livestock grazing, while widespread, have not resulted in measurable population declines.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

We have determined that shooting continues to be a threat to the Gunnison's prairie dog within the montane portion of its range and contributes to the decline of the species when combined with the effects of disease (see Factor C below). However, this threat is being monitored and managed by the States of Colorado and New Mexico, and modeling results suggest seasonal shooting closures implemented in Colorado will likely reduce population-level losses. Therefore, we have determined that overutilization for commercial, recreational, scientific, or educational purposes is not a significant threat to the Gunnison's prairie dog within the montane portion of its range.

*C. Disease or Predation*

Several well-studied colonies within the montane portion of the Gunnison's prairie dog range have been documented as being extirpated, or nearly so, due to plague. The South Park, Colorado, population area included estimated occupied habitat of 915,000 ac (371,000 ha) in 1945; 74,000 ac (30,000 ha) in 1948; and 42 ac (17 ha) in 2002 (CDOW 2007). This decline was largely due to plague and affected a substantial portion of the species' extant occupied habitat in Colorado (at least 15 percent). Plague resulted in the complete loss, over a 2-year period, of a colony within the South Park population area (Fitzgerald 1970, pp. 68–69). A plague event in Saguache County, Colorado, that progressed across seven colonies in 2 years left only scattered individuals surviving in two colonies (Lechleitner *et al.* 1968, p. 734). In Gunnison, Saguache, and Montrose Counties, Colorado, plague also was responsible for a decline from 15,569 ac (6,228 ha) of occupied habitat in 1980, to 770 ac (308 ha) in 2002 (note that Montrose County is in the Southwest population area in prairie habitat) (Capodice and Harrell 2003, pp. 5–7). A complete die-off of a colony due to plague in Chubbs Park, Chaffee County, Colorado, occurred in 1959 (Lechleitner *et al.* 1962, p. 185). In August 1958, the population was stable and healthy, but in 1959 an epizootic spread 2 mi (3 km) within 3 months; prairie dogs continued to be absent from the area in 1960 and 1961, and we have no recent information on the existence of prairie dogs in that location.

Approximately 1,000 to 1,500 Gunnison's prairie dogs were killed by an outbreak of plague in a 148–ac (60–ha) colony in Curecanti National Recreation Area near Gunnison, Colorado, in 1981 (Rayor 1985, p. 194). A few animals survived the disease and Gunnison's prairie dogs were again abundant in the area in 1986 (Cully 1989, p. 49). In 2002, 252 ac (102 ha) of habitat in the Recreation Area were occupied by Gunnison's prairie dog colonies (Capodice and Harrell 2003, p. 23), but the current estimate is 12 ac (4.8 ha) (Childers 2007, p. 2). Colonies within the Recreation Area experienced six plague epidemics between 1971 and 2007. Of the 9 historic Gunnison's prairie dog colonies, 3 are currently active, and 2 act as source populations for the main prairie dog concentration area (Childers 2007, p. 1). If the source colonies die off due to plague, repopulation may not be possible because any other Gunnison's prairie dog populations remaining will be separated by distance (more than 6 mi (10 km)) and impassable geographical features such as rivers and mountains (Lomolino *et al.* 2003, p. 116).

Recently, plague has been implicated in the loss of several large colonies on BLM land within the Gunnison, Colorado, population area (CDOW 2007, p. 4). A large colony southeast of Gunnison that was very active in 2005 was totally devoid of prairie dogs in 2006 and 2007. Four other large colonies in the same vicinity were active in 2006, but by 2007, no prairie dog activity was observed. Plague is the suspected cause of these extirpations because of the complete elimination of the prairie dogs with no sign of poisoning (CDOW 2007, p. 4).

Fitzgerald (1993, p. 52) expressed concern about the status of the Gunnison's prairie dog in Colorado, indicating that plague had eliminated many populations, including almost all of the populations in South Park. He also suggested that populations appeared to be in poor condition in the San Luis Valley and were extirpated from the extreme upper Arkansas River Valley, as well as Jefferson, Douglas, and Lake Counties. These areas comprise most of the Gunnison's prairie dog montane habitat in Colorado.

From 1984 through 1987, a plague event reduced the population of Gunnison's prairie dogs in the Moreno Valley of New Mexico from more than 100,000 individuals to between 250 and 500, a decline of greater than 99 percent (Cully *et al.* 1997, pp. 708–711). Although the remaining population rebounded (increased in size to a certain extent) following the epizootic, another plague event swept through the area in 1988, and the population in July 1996 was still only a small fraction of what it had been in 1984 (Cully *et al.* 1997, p. 717).

Occupancy modeling performed for Colorado in 2005 indicated a lower proportion of occupancy in the montane portion of the species' range within Colorado (3.2 percent) than in the prairie portion within Colorado (16.0 percent) (Andelt *et al.* 2006, p. 17; CDOW 2007, p. 19). When the study was repeated over the same plots in 2007, occupancy was again found to be lower (3.6 percent) in the montane range portion in Colorado than in the southwestern portion (18.3 percent) (CDOW 2007, p. 19). The only recent threat responsible for whole population declines and extirpations, as documented in the studies cited in this section, is plague.

The frequency of plague epizootics appears to be high in montane habitat due to moister environmental conditions that are conducive to greater flea densities. The impact of plague epizootics in montane habitat is great because the small, isolated populations cannot recolonize. Within the South Park, Gunnison, and Southeast montane population areas in Colorado, no prairie dog complexes of appreciable size exist, and only a few small complexes exist within the San Luis Valley population area (CDOW 2007, pp. 1–17). Without a metapopulation structure, an overall decline in persistence takes place (Lomolino and Smith 2001, p. 942).

The landscape status in the montane portion of Gunnison's prairie dog range is characterized by fewer, smaller colonies that are isolated, and few to no complexes or metapopulation structure. These factors make the prairie dogs in this habitat highly susceptible to plague-related declines, and we have no evidence of recovery from plague in the montane habitat area.

The studies cited above document the serious impact that plague has on Gunnison's prairie dogs within the montane portion of the range. Although plague antibody titers have been found in a few individuals, periodic epizootic plague events generally kill more than

99 percent of an affected population. Whether individual populations recover from these epizootics depends on two main factors: (1) The availability of other source populations to recolonize an area; and (2) the frequency of epizootic outbreaks, which can reduce population numbers more quickly than individual prairie dogs from neighboring colonies can recolonize.

Populations in the more mesic montane areas of Gunnison's prairie dog range appear to have been widely and severely affected by plague. This may be partly due to climatic conditions, such as higher levels of spring moisture, which has been shown to increase flea numbers, and in turn, plague outbreaks. Isolation of prairie dog populations does not seem to protect them from the spread of plague, because it appears that plague exists with all parts of the range at some level and can be spread by wider-ranging animals. The case studies cited in this section indicate that large populations have been repeatedly affected by plague and have shown no substantial recovery over long periods of time—decades in some cases. This has left smaller, more scattered populations throughout the montane range portion, with the result that areas affected by plague are less likely to be recolonized by nearby populations. While little information is currently available on prairie dog movement within this montane habitat, its geography (populations are located in valleys between mountainous areas) probably impedes the ability of prairie dogs to recolonize populations. Within this geographic area, CDOW found slightly more than 3 percent occupancy of surveyed plots (CDOW 2007, p.19).

Populations within montane habitat have three distinct disadvantages in resisting the effects of plague:

(1) A higher frequency of epizootics due to the moister montane climate that is conducive to higher abundance of fleas that spread plague;

(2) smaller populations that cannot recover in numbers from plague epizootics; and

(3) isolated populations and no metapopulation structure, due to reduced population sizes from past plague epizootics and montane geography, and therefore a significantly limited ability to recolonize.

After assessing the best available science on the magnitude and extent of the effects of plague, we find that plague is significantly impacting the species in the montane portion of its range.

*D. Inadequacy of Existing Regulatory Mechanisms*

On the basis on a review of the available existing information, it does not appear that the inadequacy of existing regulatory mechanisms is a significant threat to the Gunnison's prairie dog. However, the percentage of private lands within the montane portion of the species' range results in a paucity of regulatory mechanisms that potentially result in increased shooting and poisoning, which exacerbate the effects of plague in that portion of its range. At this time, no regulatory mechanisms exist to mitigate the effects of plague.

*E. Other Natural or Manmade Factors*

Poisoning could have a negative effect on small, isolated populations, particularly in conjunction with disease and shooting; therefore, poisoning in the montane area may be more likely to contribute to the decline of the species by further fragmenting the small populations and curtailing recolonization. However, while poisoning bears monitoring, at this time, we conclude that it is not significantly affecting the populations within this portion of the range. No information currently indicates that drought negatively affects, or is likely to affect, the Gunnison's prairie dog within the montane portion of its range, or that climate change will affect the species within the foreseeable future; however, various scenarios are plausible. We conclude that no other natural or manmade factors are a significant threat to this species, at this time, throughout the montane portion of its range.

**Finding**

The information summarized in this status review includes substantial information that was not available at the time of the 90-day petition finding (71 FR 6241, February 7, 2006) and other information we received during the public comment period following the publication of the 90-day finding. This 12-month finding reflects and incorporates information we received during the public comment period or obtained through consultation, literature research, and field visits, and responds to significant issues identified. We determined that the Gunnison's prairie dog does not meet the definition of threatened or endangered throughout its entire range, because, within approximately 60 percent of its range (the prairie habitat in the southwestern portion of its range), the threats (primarily plague) are not of a magnitude that currently puts the species in danger of extinction (endangered), or makes it likely to become endangered within the foreseeable future (threatened). However, we determined that the Gunnison's prairie dog is warranted for listing within the montane portion of its range (approximately 40 percent of the species total range).

The determination of a finding of threatened or endangered involves weighing the magnitude and immediacy of the threats. The cumulative magnitude of threats within the montane portion of the range is high. Immediacy of threats varies geographically across the montane range, but is high in areas of the montane habitat where populations have already been extirpated, primarily the South Park and Southeast population areas.

Within the prairie portion of the Gunnison's prairie dog's range, colonies are subject to the same threats, but at a different magnitude. Plague has the same potential to reduce population size significantly there as in montane habitat, but due to more open geography, an existing metapopulation structure, larger population sizes, and proximity of other colonies, recolonization has been observed. The ability of populations to recolonize relatively quickly enables them to recover more fully between plague enzootics. Ability to recolonize in prairie habitat also enables Gunnison's prairie dog populations to recover from poisoning and shooting, which act to exacerbate the more significant threat from plague. The species' status in this portion of the range is characterized by a metapopulation structure, and larger colonies and complexes that are better able to recover from plague epidemics, to be recolonized after plague epizootics, and even to colonize new areas.

We determined that the Gunnison's prairie dog is warranted for listing within the montane portion of its range (approximately 40 percent of the species total range). We find that threats, primarily plague, exist in the montane portion of their range at a magnitude that make the species likely to become threatened or endangered within the foreseeable future, which we have determined to be the year 2043. We determined that Gunnison's prairie dog populations within the prairie portion of the range continue to be viable due to the functioning metapopulation structure and the apparent resistance to plague epizootics within the Aubrey Valley, Arizona, complex. Therefore, we find that the Gunnison's prairie dog does not warrant listing throughout its

entire range, but that populations within the montane portion of its range are significant to the continued existence of the species and warrants listing in that portion only (see discussion under Significant Portion of the Range Analysis). However, listing the montane Gunnison's prairie dog is warranted but precluded at this time by pending proposals for other species with higher listing priorities based on taxonomic uniqueness (the only species described for the genus), or other species that are not currently listed (see discussion under Preclusion and Expeditious Progress).

If future genetic analyses or taxonomic studies indicate conclusively that two subspecies of Gunnison's prairie dogs exist, this would affect our proposed listing. Instead of defining the montane habitat as a significant portion of the range, we would propose listing the subspecies that exists in that habitat.

Sylvatic plague is the only significant factor affecting the future conservation status of the species. Within the montane portion of the species' range, the threat of plague has greater magnitude, and colony recovery from plague is slow or nonexistent. Distributional data indicate that the species' status in this portion of its range is characterized by lower occupancy, smaller colony sizes, and fragmented and isolated colonies that impede recovery and persistence of populations. Reliable data regarding the status of the Gunnison's prairie dog are predominantly in the form of percent occupancy studies, which indicate significantly lower occupancy in montane habitat (for Colorado, approximately 3.6 percent versus 18.3 percent in prairie habitat). For example, the South Park population area, which comprises nearly 15 percent of the species' habitat in Colorado, is nearly devoid of the species. Within the four montane population areas in Colorado, prairie dog complexes exist within only one, and those complexes are few and small. With little or no metapopulation structure, an overall decline in persistence is apparent in the montane habitat.

Populations within montane habitat have three distinct disadvantages in resisting the effects of plague: (1) A higher frequency of epizootics due to the moister montane climate that is conducive to higher abundance of fleas that spread plague; (2) smaller populations that cannot recover in numbers from plague epizootics; and (3) isolated populations and little or no metapopulation structure, due to reduced population sizes from past plague epizootics and montane geography, and therefore a significantly limited ability to recolonize.

Some lands within the montane range supporting the Gunnison's prairie dog are controlled by Federal or State agencies, or have been set aside as open space by local governments. However, a greater portion of the montane range is private land with fewer regulatory mechanisms in place for conserving prairie dogs.

We found that poisoning and shooting are not significant threats rangewide. While they can have greater impacts on small populations by compounding the effects from the primary threat of plague and further decreasing colony size and fragmenting and isolating colonies, at this time poisoning and shooting do not appear to be occurring at a level that raises concern above that related to plague. Cumulative threats do, however, impede recovery of some populations and imperil others. Where recovery does not occur, Gunnison's prairie dog populations are likely to remain small, fragmented, and susceptible to extirpation.

The following summarizes the key points leading to our finding:

(1) Historic data indicate a decline from 24,000,000 ac (9,700,000 ha) of occupied habitat to between 340,000 and 500,000 ac (136,000 to 200,000 ha).

(2) Recent data indicate that approximately 3.6 percent of potential Gunnison's prairie dog habitat is occupied in the montane portion of the range, as compared to 18.3 percent occupancy in the prairie portion of the range.

(3) The Gunnison's prairie dog occupies two genetically important areas of its range (prairie and montane portions). The two portions have different geographical features and different responses to plague.

(4) Plague has resulted in large reductions in prairie dogs and occupied habitat within both portions of the range. The prairie portion of the range is responding to plague by recolonizing affected populations. Within the montane portion of the range, the plague response is more significant (large population losses, loss of all metapopulation structure, nearly no recolonization occurring, and entire population areas nearly devoid of prairie dogs).

(5) We determined that the Gunnison's prairie dog is warranted for listing in the montane portion because:

(A) The montane portion of the range is significant to the species' viability (it represents approximately 40 percent of the species' habitat; populations are adapted to unique, montane habitat; and these animals are genetically unique).

(B) Loss of Gunnison's prairie dogs in the montane portion would affect:

(i) resiliency of the species, because the montane portion represents approximately 40 percent of the species range, and the small, isolated populations are not likely to rebound after decimation from plague;

(ii) redundancy of the species, because random perturbations are not likely to act equally on both the montane and prairie portions; and

(iii) representation of the species, because the montane population is genetically distinct from the prairie population and the species' remaining genetic diversity would be reduced.

(C) The species is warranted for listing in this portion of the range because:

(i) Occupancy data (3 percent) is significantly lower in the montane range portion.

(ii) The montane portion of the range no longer has a metapopulation structure, and populations reduced by plague have not rebounded; repopulation from nearby populations has been curtailed by distance and geographical barriers.

(iii) The two portions of the range are separated by mountain ranges that almost completely limit prairie dog movement between them.

(iv) Populations within the montane portion of the range are separated from each other by four mountain ranges and several large rivers, which preclude repopulation after plague epizootics.

(v) Some entire population areas within montane range are now nearly devoid of Gunnison's prairie dogs.

(vi) Plague appears to be more prevalent in the montane portion of the range, possibly due to greater flea populations that thrive in moister climates.

We determined that the magnitude of threats affecting the Gunnison's prairie dog in the montane portion of its range is ''high,'' because plague is significantly affecting the remaining small, isolated populations, and plague epizootics can extirpate populations there within a short timeframe (3 to 10 years); metapopulation structure in the prairie portion of the range exists, facilitating recolonization when populations are extirpated. We find that the threat posed by plague is ''imminent'' because plague epizootics are known to be occurring and the effects are measurable. Therefore, pursuant to our September 21, 1983 (48 FR 43098) Listing and Recovery Priority Guidelines, we assign a LPN of 2 to this portion of the species' range.

We reviewed the available information to determine if existing and

foreseeable threats to the Gunnison's prairie dog within montane habitat are of sufficient extent and magnitude to require emergency listing as threatened or endangered. We have determined that an emergency listing is not warranted for this species at this time, because populations are currently not threatened in the prairie portion of the range, and because emergency listing would not lessen the effects from plague, which is the significant threat in the montane portion of the range.

**Preclusion and Expeditious Progress**

Preclusion is a function of the listing priority of a species in relation to the resources that are available and competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted but precluded by higher-priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants or to change the status of a species from threatened to endangered; annual determinations on prior ''warranted but precluded'' petition findings as required under section 4(b)(3)(C)(i) of the Act; proposed and final rules designating critical habitat; and litigation-related, administrative, and program management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. For example, during the past several years, the cost (excluding publication costs) for preparing a 12-month finding, without a proposed rule, has ranged from approximately $11,000 for one species with a restricted range and involving a relatively uncomplicated analysis to $305,000 for another species that is wide-ranging and involving a complex analysis.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds which may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress also put a critical habitat subcap in place in FY 2002 and has retained it each subsequent year to ensure that some funds are available for other work in the Listing Program: ''The critical habitat designation subcap will ensure that some funding is available to address other listing activities'' (House Report No. 107–103, 107th Congress, 1st Session, June 19, 2001). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In FY 2007, we were able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species; we expect to also be able to do this in FY 2008.

Thus, through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress also recognized that the availability of resources was the key element in deciding whether, when making a 12-month petition finding, we would prepare and issue a listing proposal or make a ''warranted but precluded'' finding for a given species. The Conference Report accompanying Public Law 97–304, which established the current statutory deadlines and the warranted-but-precluded finding, states (in a discussion on 90-day petition findings that by its own terms also covers 12-month findings) that the deadlines were ''not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise.''

In FY 2008, expeditious progress is that amount of work that can be achieved with $8,206,940, which is the amount of money that Congress appropriated for the Listing Program at this time (that is, the portion of the Listing Program funding not related to critical habitat designations for species that are already listed). Our process is to make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. The $8,206,940 for listing activities (that is, the portion of the Listing Program funding not related to critical habitat designations for species that already are listed) will be used to fund work in the following categories: compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and program management functions; and high-priority listing actions. The allocations for each specific listing action are identified in the Service's FY 2008 Draft Allocation Table (part of our administrative record). We are working on completing our allocation at this time. More funds are available in FY 2008 than in previous years to work on listing actions that are not the subject of court orders or court-approved settlement agreements.

Our decision that a proposed rule to list the montane portion of the Gunnison's prairie dog is warranted but precluded includes consideration of its listing priority. In accordance with guidance we published on September 21, 1983, we assign an LPN to each candidate species (48 FR 43098). Such a priority ranking guidance system is required under section 4(h)(3) of the Act

(16 U.S.C. 1533(h)(3)). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high vs. moderate to low), immediacy of threats (imminent or non-imminent), and taxonomic status of the species, in order of priority (monotypic genus (a species that is the sole member of a genus), species, subspecies, distinct population segment, or significant portion of the range). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority).

We currently have more than 120 species with an LPN of 2. Therefore, we further rank the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, comprise a list of approximately 40 candidate species (''Top 40''). These 40 candidate species have the highest priority to receive funding to work on a proposed listing determination. To be more efficient in our listing process, as we work on proposed rules for these species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, available staff resources are also a factor in determining high-priority species provided with funding. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, since the listing of the species already affords the protection of the Act and implementing regulations. We assigned the montane portion of the Gunnison's prairie dog an LPN of 5, based on our finding that the species faces threats of high magnitude that are not imminent.

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add or remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. (We note that we do not discuss specific actions taken on progress towards removing species from the Lists because that work is conducted using appropriations for our Recovery program, a separately budgeted component of the Endangered Species Program. As explained above in our description of the statutory cap on Listing Program funds, the Recovery Program funds and actions supported by them cannot be considered in determining expeditious progress made in the Listing Program.) As with our ''precluded'' finding, expeditious progress in adding qualified species to the Lists is a function of the resources available and the competing demands for those funds. Our expeditious progress in FY 2007 in the Listing Program, up to the date of making this finding for the Gunnison's prairie dog, included preparing and publishing the following determinations:

FY 2007 COMPLETED LISTING ACTIONS

| Publication date | Title | Actions | FR pages |
|---|---|---|---|
| 10/11/2006 ..... | Withdrawal of the Proposed Rule To List the Cow Head Tui Chub (*Gila biocolor vaccaceps*) as Endangered. | Final withdrawal, Threats eliminated. | 71 FR 59700–59711 |
| 10/11/2006 ..... | Revised 12-Month Finding for the Beaver Cave Beetle (*Pseudanophthalmus major*). | Notice of 12-month petition finding, Not warranted. | 71 FR 59711–59714 |
| 11/14/2006 ..... | 12-Month Finding on a Petition To List the Island Marble Butterfly (*Euchloe ausonides insulanus*) as Threatened or Endangered. | Notice of 12-month petition finding, Not warranted. | 71 FR 66292–66298 |
| 11/14/2006 ..... | 90-Day Finding for a Petition To List the Kennebec River Population of Anadromous Atlantic Salmon as Part of the Endangered Gulf of Maine Distinct Population Segment. | Notice of 90-day petition finding, Substantial. | 71 FR 66298–66301 |
| 11/21/2006 ..... | 90-Day Finding on a Petition To List the Columbian Sharp-Tailed Grouse as Threatened or Endangered. | Notice of 90-day petition finding, Not substantial. | 71 FR 67318–67325 |
| 12/5/2006 ..... | 90-Day Finding on a Petition To List the Tricolored Blackbird as Threatened or Endangered. | Notice of 90-day petition finding, Not substantial. | 71 FR 70483–70492 |
| 12/6/2006 ..... | 12-Month Finding on a Petition To List the Cerulean Warbler (*Dendroica cerulea*) as Threatened with Critical Habitat. | Notice of 12-month petition finding, Not warranted. | 71 FR 70717–70733 |
| 12/6/2006 ..... | 90-Day Finding on a Petition To List the Upper Tidal Potomac River Population of the Northern Water Snake (*Nerodia sipedon*) as an Endangered Distinct Population Segment. | Notice of 90-day petition finding, Not substantial. | 71 FR 70715–70717 |
| 12/14/2006 ..... | 90-Day Finding on a Petition To Remove the Uinta Basin Hookless Cactus From the List of Endangered and Threatened Plants; 90-Day Finding on a Petition To List the Pariette Cactus as Threatened or Endangered. | Notice of 5-year review, Initiation.<br>Notice of 90-day petition finding, Not substantial.<br>Notice of 90-day petition finding, Substantial. | 71 FR 75215–75220 |
| 12/19/2006 ..... | Withdrawal of Proposed Rule To List *Penstemon grahamii* (Graham's beardtongue) as Threatened With Critical Habitat. | Notice of withdrawal, More abundant than believed, or diminished threats. | 71 FR 76023–76035 |
| 12/19/2006 ..... | 90-Day Finding on Petitions To List the Mono Basin Area Population of the Greater Sage-Grouse as Threatened or Endangered. | Notice of 90-day petition finding, Not substantial. | 71 FR 76057–76079 |
| 1/9/2007 ..... | 12-Month petition finding and Proposed Rule To List the Polar Bear (*Ursus maritimus*) as Threatened Throughout Its Range; Proposed Rule. | Notice of 12-month petition finding, Warranted.<br>Proposed Listing, Threatened .. | 72 FR 1063–1099 |

FY 2007 COMPLETED LISTING ACTIONS—Continued

| Publication date | Title | Actions | FR pages |
|---|---|---|---|
| 1/10/2007 ..... | Endangered and Threatened Wildlife and Plants; Clarification of Significant Portion of the Range for the Contiguous United States Distinct Population Segment of the Canada Lynx. | Clarification of findings ..... | 72 FR 1186–1189 |
| 1/12/2007 ..... | Withdrawal of Proposed Rule To List *Lepidium papilliferum* (Slickspot Peppergrass). | Notice of withdrawal, More abundant than believed, or diminished threats. | 72 FR 1621–1644 |
| 2/2/2007 ..... | 12-Month Finding on a Petition To List the American Eel as Threatened or Endangered. | Notice of 12-month petition finding, Not warranted. | 72 FR 4967–4997 |
| 2/13/2007 ..... | 90-Day Finding on a Petition To List the Jollyville Plateau Salamander as Endangered. | Notice of 90-day petition finding, Substantial. | 72 FR 6699–6703 |
| 2/13/2007 ..... | 90-Day Finding on a Petition To List the San Felipe Gambusia as Threatened or Endangered. | Notice of 90-day petition finding, Not substantial. | 72 FR 6703–6707 |
| 2/14/2007 ..... | 90-Day Finding on a Petition To List *Astragalus debequaeus* (DeBeque milkvetch) as Threatened or Endangered. | Notice of 90-day petition finding, Not substantial. | 72 FR 6998–7005 |
| 2/21/2007 ..... | 90-Day Finding on a Petition To Reclassify the Utah Prairie Dog From Threatened to Endangered and Initiation of a 5-Year Review. | Notice of 5-year review, Initiation.<br>Notice of 90-day petition finding, Not substantial. | 72 FR 7843–7852 |
| 3/8/2007 ..... | 90-Day Finding on a Petition To List the Monongahela River Basin Population of the Longnose Sucker as Endangered. | Notice of 90-day petition finding, Not substantial. | 72 FR 10477–10480 |
| 03/29/2007 ..... | 90-Day Finding on a Petition To List the Siskiyou Mountains Salamander and Scott Bar Salamander as Threatened or Endangered. | Notice of 90-day petition finding, Substantial. | 72 FR 14750–14759 |
| 04/24/2007 ..... | Revised 12-Month Finding for Upper Missouri River Distinct Population Segment of Fluvial Arctic Grayling. | Notice of 12-month petition finding, Not warranted. | 72 FR 20305–20314 |
| 05/02/2007 ..... | 12-Month Finding on a Petition To List the Sand Mountain Blue Butterfly (*Euphilotes pallescens* ssp. *arenamontana*) as Threatened or Endangered with Critical Habitat. | Notice of 12-month petition finding, Not warranted. | 72 FR 24253–24263 |
| 05/22/2007 ..... | Status of the Rio Grande Cutthroat Trout ..... | Notice of Review ..... | 72 FR 28864–28665 |
| 05/30/2007 ..... | 90-Day Finding on a Petition To List the Mt. Charleston Blue Butterfly as Threatened or Endangered. | Notice of 90-day petition finding, Substantial. | 72 FR 29933–29941 |
| 06/05/2007 ..... | 12-Month Finding on a Petition To List the Wolverine as Threatened or Endangered. | Notice of Review ..... | 72 FR 31048–31049 |
| 06/06/2007 ..... | 90-Day Finding on a Petition To List the Yellow-Billed Loon as Threatened or Endangered. | Notice of 90-day petition finding, Substantial. | 72 FR 31256–31264 |
| 06/13/2007 ..... | 12-Month Finding for a Petition To List the Colorado River Cutthroat Trout as Threatened or Endangered. | Notice of 12-month petition finding, Not warranted. | 72 FR 32589–32605 |
| 06/25/2007 ..... | 12-Month Finding on a Petition To List the Sierra Nevada Distinct Population Segment of the Mountain Yellow-Legged Frog (*Rana muscosa*). | Notice of amended 12-month petition finding, Warranted but precluded. | 72 FR 34657–34661 |
| 07/05/2007 ..... | 12-Month Finding on a Petition To List the Casey's June Beetle (*Dinacoma caseyi*) as Endangered With Critical Habitat. | Notice of 12-month petition finding, Warranted but precluded. | 72 FR 36635–36646 |
| 08/15/2007 ..... | 90-Day Finding on a Petition To List the Yellowstone National Park Bison Herd as Endangered. | Notice of 90-day petition finding, Not substantial. | 72 FR 45717–45722 |
| 08/16/2007 ..... | 90-Day Finding on a Petition To List *Astragalus anserinus* (Goose Creek milk-vetch) as Threatened or Endangered. | Notice of 90-day petition finding, Substantial. | 72 FR 46023–46030 |
| 8/28/2007 ..... | 12-Month Finding on a Petition To List the Gunnison's Prairie Dog as Threatened or Endangered. | Notice of Review ..... | 72 FR 49245–49246 |
| 9/11/2007 ..... | 90-Day Finding on a Petition To List Kenk's Amphipod, Virginia Well Amphipod, and the Copepod *Acanthocyclops columbiensis* as Endangered. | Notice of 90-day petition finding, Not substantial. | 72 FR 51766–51770 |
| 9/18/2007 ..... | 12-month Finding on a Petition To List *Sclerocactus brevispinus* (Pariette cactus) as an Endangered or Threatened Species; Taxonomic Change From *Sclerocactus glaucus* to *Sclerocactus brevispinus, S. glaucus*, and *S. wetlandicus*. | Notice of 12-month petition finding for uplisting, Warranted but precluded. | 72 FR 53211–53222 |

In FY 2007, we provided funds to work on proposed listing determinations for the following high-priority species: 3 southeastern aquatic species (Georgia pigtoe, interrupted rocksnail, and rough hornsnail), 2 Oahu plants (*Doryopteris takeuchii, Melicope hiiakae*), 31 Kauai species (Kauai creeper, *Drosophila attigua, Astelia waialealae, Canavalia napaliensis, Chamaesyce eleanoriae, Chamaesyce remyi* var. *kauaiensis, Chamaesyce remyi* var. *remyi, Charpentiera densiflora, Cyanea eleeleensis, Cyanea kuhihewa, Cyrtandra oenobarba, Dubautia imbricata* ssp. *imbricata, Dubautia plantaginea* ssp. *magnifolia, Dubautia waialealae, Geranium kauaiense, Keysseria erici, Keysseria helenae, Labordia helleri, Labordia pumila, Lysimachia daphnoides, Melicope degeneri, Melicope paniculata, Melicope puberula, Myrsine mezii, Pittosporum napaliense, Platydesma rostrata, Pritchardia hardyi, Psychotria grandiflora, Psychotria hobdyi, Schiedea attenuata, Stenogyne kealiae*), 4 Hawaiian damselflies (*Megalagrion nesiotes, Megalagrion leptodemas, Megalagrion oceanicum, Megalagrion*

*pacificum*), and one Hawaiian plant (*Phyllostegia hispida (no common name)*). In FY 2008, we are continuing to work on these listing proposals (we are now including an additional 17 species in the Kauai species proposed listing determination package). In addition, we are continuing to work on several other determinations listed below, which we funded in FY 2007 and are scheduled to complete in FY 2008.

ACTIONS FUNDED IN FY 2007 THAT HAVE YET TO BE COMPLETED

| Species | Action |
|---|---|
| **Actions Subject to Court Order/Settlement Agreement** | |
| Wolverine | 12-month petition finding (remand). |
| Western sage grouse | 90-day petition finding (remand). |
| Rio Grande cutthroat trout | Candidate assessment (remand). |
| **Actions with Statutory Deadlines** | |
| Polar bear | Final listing determination. |
| Ozark chinquapin | 90-day petition finding. |
| Tucson shovel-nosed snake | 90-day petition finding. |
| Gopher tortoise—Florida population | 90-day petition finding. |
| Sacramento valley tiger beetle | 90-day petition finding. |
| Eagle lake trout | 90-day petition finding. |
| Smooth billed ani | 90-day petition finding. |
| Mojave ground squirrel | 90-day petition finding. |
| Gopher Tortoise—eastern population | 90-day petition finding. |
| Bay Springs salamander | 90-day petition finding. |
| Tehachapi slender salamander | 90-day petition finding. |
| Coaster brook trout | 90-day petition finding. |
| Mojave fringe-toed lizard | 90-day petition finding. |
| Evening primrose | 90-day petition finding. |
| Palm Springs pocket mouse | 90-day petition finding. |
| Northern leopard frog | 90-day petition finding. |
| Shrike, Island loggerhead | 90-day petition finding. |
| Cactus ferruginous pygmy owl | 90-day petition finding. |

Our expeditious progress so far in FY 2008 in the Listing Program, includes preparing and publishing the following:

FY 2008 COMPLETED LISTING ACTIONS

| Publication date | Title | Actions | FR Pages |
|---|---|---|---|
| 10/09/2007 | 90-Day Finding on a Petition to List the Black-Footed Albatross (*Phoebastria nigripes*) as Threatened or Endangered. | Notice of 90-day Petition Finding, Substantial. | 72 FR 57278–57283 |
| 10/09/2007 | 90-Day Finding on a Petition To List the Giant Palouse Earthworm as Threatened or Endangered. | Notice of 90-day Petition Finding, Not substantial. | 72 FR 57273–57276 |
| 10/23/2007 | 90-Day Finding on a Petition To List the Mountain Whitefish (*Prosopium williamsoni*) in the Big Lost River, ID, as Threatened or Endangered. | Notice of 90-day Petition Finding, Not substantial. | 72 FR 59983–59989 |
| 10/23/2007 | 90-Day Finding on a Petition To List the Summer-Run Kokanee Population in Issaquah Creek, WA, as Threatened or Endangered. | Notice of 90-day Petition Finding, Not substantial. | 72 FR 59979–59983 |
| 11/08/2007 | Response to Court on Significant Portion of the Range, and Evaluation of Distinct Population Segments, for the Queen Charlotte Goshawk. | Response to Court | 72 FR 63123–63140 |
| 12/13/07 | 12-Month Finding on a Petition To List the Jollyville Plateau salamander (*Eurycea tonkawae*) as Endangered With Critical Habitat. | Notice of 12-month Petition Finding, Warranted but Precluded. | 72 FR 71039–71054 |
| 1/08/08 | 90-Day Finding on a Petition To List the Pygmy Rabbit (*Brachylagus idahoensis*) as Threatened or Endangered. | Notice of 90-day Petition Finding, Substantial. | 73 FR 1312–1313 |
| 1/24/2008 | 12-Month Finding on a Petition To List the Siskiyou Mountains Salamander (*Plethodon stormi*) and Scott Bar Salamander (*Plethodon asupak*) as Threatened or Endangered. | Notice of 12-month Petition Finding, Not Warranted. | 73 FR 4379–4418 |

Our expeditious progress also includes work on listing actions, which we are funding in FY 2008. These actions are listed below. We are conducting work on those actions in the top section of the table under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high priority listing actions, which include at least one or more species with an LPN of 2, available staff resources, and when appropriate,

species with a lower priority if they overlap geographically or have the same threats as the species with the high priority.

ACTIONS ANTICIPATED TO BE FUNDED IN FY 2008 THAT HAVE YET TO BE COMPLETED

| Species | Action |
|---|---|
| **Actions Subject to Court Order/Settlement Agreement** | |
| Bonneville cutthroat trout | 12-month petition finding (remand). |
| **Actions With Statutory Deadlines** | |
| Polar bear | Final listing determination. |
| 3 Southeastern aquatic species | Final listing. |
| *Phyllostegia hispida* | Final listing. |
| Yellow-billed loon | 12-month petition finding. |
| Black-footed albatross | 12-month petition finding. |
| Mount Charleston blue butterfly | 12-month petition finding. |
| Goose Creek milk-vetch | 12-month petition finding. |
| White-tailed prairie dog | 12-month petition finding. |
| Mono Basin sage grouse (vol. remand) | 90-day petition finding. |
| Ashy storm petrel | 90-day petition finding. |
| Longfin smelt—San Fran. Bay population | 90-day petition finding. |
| Black-tailed prairie dog | 90-day petition finding. |
| Lynx (include New Mexico in listing) | 90-day petition finding. |
| Wyoming pocket gopher | 90-day petition finding. |
| Llanero coqui | 90-day petition finding. |
| Least chub | 90-day petition finding. |
| American pika | 90-day petition finding. |
| Dusky tree vole | 90-day petition finding. |
| Sacramento Mts. checkerspot butterfly | 90-day petition finding. |
| Kokanee—Lake Sammamish population | 90-day petition finding. |
| 206 species | 90-day petition finding. |
| 475 Southwestern species | 90-day petition finding. |
| **High Priority Listing Actions** | |
| 31 Kauai species [1] | Proposed listing. |
| 8 packages of high-priority candidate species | Proposed listing. |

[1] Funds used for this listing action were also provided in FY 2007.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

## Conclusion

We will add the montane portion of the Gunnison's prairie dog to the list of candidate species. We intend any listing action for the species to be as accurate as possible by reflecting the best available information. Therefore, we will continue to accept additional information and comments on the status of and threats to this species from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding. If an emergency situation develops that warrants an emergency listing of this species, we will act immediately to provide additional protection.

## References

A complete list of all references cited herein is available upon request from the Western Colorado Field Office (see **ADDRESSES**).

## Author

The primary authors of this document are staff located at the Colorado Field Office (see **ADDRESSES**).

### Authority

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

Dated: January 29, 2008.

**H. Dale Hall,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 08–493 Filed 2–4–08; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[FWS–R8–ES–2008–0014; 92210–1117–0000–B4]**

**RIN 1018–AV05**

## Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Sierra Nevada Bighorn Sheep (Ovis canadensis californiana) and Proposed Taxonomic Revision

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

**ACTION:** Proposed rule; reopening of comment period, notice of availability of draft economic analysis, and amended required determinations.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the proposed designation of critical habitat for the Sierra Nevada bighorn sheep (*Ovis canadensis californiana*) and proposed taxonomic revision under

the Endangered Species Act of 1973, as amended (Act). We also announce the availability of the draft economic analysis (DEA) of the proposed critical habitat designation, and an amended required determinations section of the proposal. The DEA provides information about the pre-designation costs and forecasts post-designation costs associated with conservation efforts for Sierra Nevada bighorn sheep. The DEA estimates potential future costs due to conservation efforts (baseline costs) to be approximately $26.7 million and costs associated solely with the designation of critical habitat (incremental costs) to be approximately $135,000 in undiscounted dollars over a 20-year period in areas proposed as critical habitat. The amended required determinations section provides our determination concerning compliance with applicable statutes and Executive Orders that we have deferred until the information from the DEA of the proposal was available. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated DEA, and the amended required determinations section. Comments submitted during the initial comment period from July 25 to September 24, 2007, on the proposed rule (72 FR 40956), or from October 9 to November 23, 2007, during the reopened comment period on the proposed rule (72 FR 57276) have been incorporated into the supporting for this rulemaking and need not be resubmitted. We will incorporate all comments into the supporting record as part of this comment period, and we will fully consider them when preparing our final determination.

**DATES:** We will accept public comments until March 6, 2008.

**ADDRESSES:** You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R8–ES–2008–0014, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Robert D. Williams, Field Supervisor, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Blvd., Suite 234, Reno, NV 89502–7147; telephone 775–861–6300; or facsimile 775–861–6301. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

**Public Comments**

We will accept written comments and information during this reopened comment period on our proposed critical habitat designation for the Sierra Nevada bighorn sheep and proposed taxonomic revision published in the **Federal Register** on July 25, 2007 (72 FR 40956), our draft economic analysis (DEA) of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as critical habitat under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefits of designation would outweigh threats to the species caused by the designation, such that the designation of critical habitat is prudent.

(2) Specific information on:

- The amount and distribution of Sierra Nevada bighorn sheep habitat,
- What areas occupied at the time of listing that contain features essential to the conservation of the species we should include in the designation and why, and
- What areas not occupied at the time of listing are essential for the conservation of the species and why.

(3) Land-use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the extent to which any State and local environmental protection measures we reference in the DEA may have been adopted largely as a result of the listing of the Sierra Nevada bighorn sheep.

(5) Information on whether the DEA identifies all State and local costs and benefits attributable to the proposed critical habitat designation, and information on any costs or benefits that we have overlooked.

(6) Information on whether the DEA makes appropriate assumptions regarding current practices and any regulatory changes likely if we designate critical habitat.

(7) Information on whether the DEA identifies all costs that could result from the designation and whether you agree with the analysis.

(8) Information on whether the DEA correctly assesses the effect on regional costs associated with any land use controls that may result from the critical habitat designation.

(9) Information on areas that the critical habitat designation could potentially impact to a disproportionate degree.

(10) Economic data on the incremental costs of designating any particular area as critical habitat.

(11) Information on any quantifiable economic benefits of the designation of critical habitat.

(12) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts.

(13) Whether the benefit of excluding any particular area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(14) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Comments submitted during the initial comment period from July 25 to September 24, 2007, on the proposed rule (72 FR 40956), or from October 9 to November 23, 2007, during the reopened comment period on the proposed rule (72 FR 57276) have been incorporated into the supporting for this rulemaking and need not be resubmitted. We will incorporate them into the supporting record as part of this comment period, and we will fully consider them in preparation of our final determination. If you wish to comment, you may send your comments and materials concerning our proposed rule, DEA, or amended required determinations by one of the methods listed in the **ADDRESSES** section. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during the comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will no longer

accept comments you send by e-mail or fax. Please note that we will consider comments we receive after the date specified in the **DATES** section in our final determination.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that we will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparation of the proposal to designate critical habitat, will be available for public inspection on *http://www.regulations.gov,* or by appointment during normal business hours, at the Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502–7147; telephone 775–861–6300. You may obtain copies of the proposed critical habitat rule and the DEA by mail from the Nevada Fish and Wildlife Office or by visiting our Web site at *http://www.fws.gov/nevada.*

**Background**

On December 8, 2005, the Center for Biological Diversity filed a complaint based on the Service's failure to designate critical habitat for this subspecies within the time mandated under the Act (*Center for Biological Diversity* v. *U.S. Fish and Wildlife Service, et al.* Case No. 2:05–CB–02492–DFL–KJM). On June 6, 2006, the Service entered into a settlement agreement with the Center for Biological Diversity to submit a proposed critical habitat designation for this subspecies for publication in the **Federal Register** by July 17, 2007, and to submit a final determination on the proposed critical habitat designation for publication by July 17, 2008. On July 25, 2007, we published a proposed rule to designate critical habitat for the Sierra Nevada bighorn sheep (72 FR 40956), identifying a total of approximately 417,577 acres (168,992 hectares) of land in Tuolumne, Mono, Fresno, Inyo, and Tulare counties, California. In that proposal, we also proposed a taxonomic revision of the listed entity from a distinct population segment to a subspecies (*Ovis Canadensis sierrae*) based on recent published information.

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, in accordance with section 7(a)(2) of the Act.

Under section 4(b)(2) of the Act, we may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of including that particular area as critical habitat, unless failure to designate that specific area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact.

**Draft Economic Analysis**

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. Based on the July 25, 2007, proposed rule to designate critical habitat for the Sierra Nevada bighorn sheep (72 FR 40956), we have prepared a DEA of the proposed critical habitat designation.

The intent of the DEA is to quantify the economic impacts of all potential conservation efforts for the Sierra Nevada bighorn sheep; some of these costs will likely be incurred regardless of whether we designate critical habitat. The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation (incremental impacts) and other conservation-related actions (baseline impacts) for this species over the next 20 years. It also considers past costs associated with conservation of the species from the time it was listed in 2000 (65 FR 20, January 3, 2000), until the year the proposed critical habitat rule was published (72 FR 40956, July 25, 2007).

Activities associated with the conservation of the Sierra Nevada bighorn sheep are likely to primarily impact future domestic sheep grazing, recreation management, and habitat management. Pre-designation (2000 to 2007) impacts associated with species conservation activities in areas proposed for designation are estimated at $11.1 million in 2007 dollars. The DEA forecasts baseline economic impacts in the areas proposed for designation to be approximately $26.7 million (undiscounted dollars) over the next 20 years. The present value of these impacts, applying a 3 percent discount rate, is $20.4 million ($1,370,000 annualized), or $15.1 million ($1,430,000 annualized) using a 7 percent discount rate. The DEA forecasts incremental economic impacts to be approximately $135,000 (undiscounted) over the next 20 years. The present value of these impacts, applying a 3 percent discount rate, is $106,000 ($7,090 annualized), or $80,300 ($7,580 annualized) using a 7 percent discount rate. The cost estimates are based on the proposed designation of critical habitat published in the **Federal Register** on July 25, 2007 (72 FR 40956).

The DEA considers the potential economic effects of actions relating to the conservation of the Sierra Nevada bighorn sheep, including costs associated with sections 4, 7, and 10 of the Act, as well as costs attributable to the designation of critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the Sierra Nevada bighorn sheep in areas containing features essential to the conservation of the species. The DEA considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use).

The DEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private business, and individuals. The DEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the

designation might unduly burden a particular group or economic sector. Finally, the DEA looks retrospectively at costs that have been incurred since the date Sierra Nevada bighorn sheep was listed as endangered (65 FR 20, January 3, 2000) and considers those costs that may occur in the 20 years following the designation of critical habitat. Forecasts of economic conditions and other factors beyond this point would be speculative.

As stated earlier, we solicit data and comments from the public on the DEA, as well as on all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or its supporting documents to incorporate or address new information we receive during this comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided the exclusion will not result in the extinction of the species.

**Required Determinations—Amended**

In our July 25, 2007, proposed rule (72 FR 40956), we indicated that we would defer our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders was available in the DEA. We have now made use of the DEA to make these determinations. In this document we affirm the information in our proposed rule concerning Executive Order (E.O.) 13132; E.O. 12988; the Paperwork Reduction Act; the National Environmental Policy Act; and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments (59 FR 22951). However, based on the DEA data, we revise our required determinations concerning E.O. 12866; the Regulatory Flexibility Act, including the Small Business Regulatory Enforcement Fairness Act; E.O. 13211 (Energy, Supply, Distribution, and Use); E.O. 12630 (Takings); and the Unfunded Mandates Reform Act.

*Regulatory Planning and Review*

In accordance with Executive Order 12866 (E.O. 12866), we evaluate four parameters in determining whether a rule is significant. The four parameters that would result in a designation of significant under E.O. 12866 are:

(a) The rule would 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.

(b) The rule would create inconsistencies with other Federal agencies' actions.

(c) The rule would materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) The rule would raise novel legal or policy issues.

If OMB requests to informally review a rule designating critical habitat for a species, we consider that rule to raise novel legal and policy issues. Because no other Federal agencies designate critical habitat, the designation of critical habitat will not create inconsistencies with other agencies' actions. We use the economic analysis of the critical habitat designation to evaluate the potential effects related to the other parameters of E.O. 12866 and to make a determination as to whether the regulation may be significant under parameter (a) or (c) listed above.

Based on the economic analysis of the critical habitat designation, we have determined that the designation of critical habitat for the Sierra Nevada bighorn sheep will not result in an annual effect on the economy of $100 million or more or affect the economy in a material way. Based on previous critical habitat designations and the economic analysis, we believe this rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. OMB has requested to informally review this rule, and thus this action may raise novel legal or policy issues. In accordance with the provisions of E.O. 12866, this rule is considered significant.

Further, E.O. 12866 directs Federal agencies issuing regulations to evaluate regulatory alternatives (OMB Circular A–4, September 17, 2003). Under Circular A–4, once an agency determines that a regulatory action is appropriate, the agency needs to consider alternative regulatory approaches. Since the designation of critical habitat is a statutory requirement under the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our critical habitat designations, we consider economic impacts, impacts to national security, and other relevant impacts under section 4(b)(2) of the Act. Based on the discretion section 4(b)(2) allows, we may exclude any particular area from the critical habitat designation as long as the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat, and as long as the exclusion will not result in the species' extinction. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or a combination, in a critical habitat designation constitutes our regulatory alternative analysis.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. 802(2)), whenever an agency is required to publish 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). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical

small business firm's business operations.

To determine if the proposed designation of critical habitat for the Sierra Nevada bighorn sheep would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as residential and commercial development. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat affects activities conducted, funded, or authorized by Federal agencies.

If we finalize the proposed critical habitat designation, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our DEA of the proposed critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the Sierra Nevada bighorn sheep and the proposed designation of critical habitat. The analysis is based on the estimated impacts associated with the proposed rulemaking as described in Chapters 2 through 4 and Appendix A of the DEA and evaluates the potential for economic impacts related to three categories: Grazing, recreation management, and habitat management.

The DEA identified one domestic sheep grazing permittee operating in the Humboldt-Toiyabe National Forest, and two resorts and unidentified outdoor pack companies operating in the Humboldt-Toiyabe and the Inyo National Forests that qualify as small businesses that could be impacted due to their activities within areas proposed as critical habitat.

For the one grazing permittee, the DEA estimates a cost of $13,000 associated with conservation activities for the Sierra Nevada bighorn sheep over the next 20 years at a 3 percent discounted rate ($875 annualized). For the two resorts and unidentified outdoor pack companies, the DEA estimates a cost of $2,730 associated with conservation activities for the Sierra Nevada bighorn sheep over the next 20 years at a 3 percent discounted rate ($183 annualized). Incremental impacts are expected only to occur in proposed critical habitat Units 1 and 2. This number of small business entities is not considered a substantial number.

The U.S. Forest Service (USFS) is expected to incur incremental costs as a result of this designation, but it is not considered a small entity by the SBA.

In summary, we have considered whether the proposed rule would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, the proposed rule will not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

*Executive Order 13211—Energy Supply, Distribution, and Use*

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB's guidance for implementing this Executive Order outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to no regulatory action. The DEA finds none of these criteria relevant to this analysis. Thus, based on the information in the DEA, we do not expect Sierra Nevada bighorn sheep conservation activities within proposed critical habitat to lead to energy-related impacts. As such, we do not expect the proposed designation of critical habitat to significantly affect energy supplies, distribution, or use, and a Statement of Energy Effects is not required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 et seq.), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments,'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except as (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

Critical habitat designation does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Designation of critical habitat may indirectly impact non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule would significantly or uniquely affect small governments. As discussed in the DEA, approximately 99 percent of the lands proposed as critical habitat are comprised of lands managed by the Federal government (e.g., USFS, National Park Service (NPS), and Bureau of Land Management (BLM)), which does not qualify as a small government. The Federal government is not considered a small governmental jurisdiction or entity by the Small Business Administration because it services a population exceeding the criteria for a ''small entity.'' Consequently, we do not believe that critical habitat designation would significantly or uniquely affect small

government entities. As such, a Small Government Agency Plan is not required.

*Executive Order 12630—Takings*

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing critical habitat for the Sierra Nevada bighorn sheep in a takings implications assessment. Our takings implications assessment concludes that this proposed designation of critical habitat for the Sierra Nevada bighorn sheep does not pose significant takings implications.

**References Cited**

A complete list of all references cited in the proposed rule is available on *http://www.regulations.gov.*

**Author**

The primary author of this notice is the staff of the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authority**

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

Dated: January 24, 2008.

**David M. Verhey,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E8–1805 Filed 2–4–08; 8:45 am]

**BILLING CODE 4310–55–P**

# Notices

Federal Register
Vol. 73, No. 24
Tuesday, February 5, 2008

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2007–0140]**

### Notice of Request for Revision and Extension of Approval of an Information Collection; Self-Certification Medical Statement

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Revision and extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision and extension of approval of an information collection for self-certification medical statements.

**DATES:** We will consider all comments that we receive on or before April 7, 2008.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0140* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2007–0140, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0140.

*Reading Room:* You may read any comments that we receive on this docket in our reading room. The reading room is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

**FOR FURTHER INFORMATION CONTACT:** For information on self-certification medical statements, contact Ms. Lynn Doetschman, Human Resources Specialist, Human Resources Division, MRPBS, APHIS, 4700 River Road Unit 21, Riverdale, MD 20737; (301) 734–4996. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

**SUPPLEMENTARY INFORMATION:**

*Title:* Self-Certification Medical Statement.

*OMB Number:* 0579–0196.

*Type of Request:* Revision and extension of approval of an information collection.

*Abstract:* The Marketing and Regulatory Programs (MRP) agencies of the U.S. Department of Agriculture facilitate the domestic and international marketing of U.S. agricultural products and protect the health of domestic animal and plant resources. The MRP agencies are the Agricultural Marketing Service (AMS), the Animal and Plant Health Inspection Service (APHIS), and the Grain Inspection, Packers and Stockyards Administration (GIPSA). Resource management and administrative services, including human resource management, for the three MRP agencies are provided by the MRP Business Services unit of APHIS, which is the lead agency in providing administrative support for MRP.

In accordance with 5 CFR part 339, Federal agencies are authorized to obtain medical information from applicants for positions that have approved medical standards. Medical standards may be established for positions for which the duties are arduous or hazardous or require a certain level of health status or fitness.

Certain positions in MRP agencies have medical standards. An example of such a position is the agricultural commodity grader position in AMS. Each year, AMS hires a number of agricultural commodity graders. These employees work under dusty conditions, around moving machinery and slippery surfaces, and in areas with high noise levels. They have direct contact with meat and dairy products, fresh and processed fruits and vegetables, and poultry products intended for human consumption or cotton and tobacco products intended for human use.

The MRP agencies require a self-certification medical statement (SCMP) (MRP–5) from applicants for these positions regarding their fitness for the positions. AMS is expanding the categories of employees who will be required to complete an SCMP. The MRP agencies need this information to determine whether the applicants can perform the duties of the positions. Inability to collect this information would adversely affect the MRP agencies' ability to recruit and hire qualified individuals and carry out their missions.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

(2) Evaluate the accuracy of our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average 0.1666 hours per response.

*Respondents:* Applicants for MRP positions with approved medical standards.

*Estimated annual number of respondents:* 600.

*Estimated annual number of responses per respondent:* 1.

*Estimated annual number of responses:* 600.

*Estimated total annual burden on respondents:* 100 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 30th day of January 2008.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E8–2049 Filed 2–4–08; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Giant Sequoia National Monument Management Plan EIS

**AGENCY:** USDA Forest Service.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Department of Agriculture, Forest Service is preparing an environmental impact statement (EIS) to establish management direction for the land and resources within the Giant Sequoia National Monument (GSNM) created by Presidential Proclamation on april 15, 2000. The Forest Service, as the responsible agency, proposes to amend the Sequoia National Forest Land and Resource Management Plan (FLMP) to provide for the protection of the objects of interest identified in the Proclamation.

**DATES:** The draft EIS for the Giant Sequoia National Monument Management Plan is expected to be available for public comment in the early spring of 2009; the final EIS and Record of Decision (ROD) are expected to be published in the fall of 2009. Soon after the ROD is published, a separate document representing the Management Plan in non-technical language will be published.

**ADDRESSES:** Tina Terrell, Forest Supervisor, USDA Forest Service, Sequoia National Forest, 1839 South Newcomb Street, Porterville, CA 93257.

**FOR FURTHER INFORMATION CONTACT:** Julie Allen, Land Management Planning Staff Officer, Sequoia National Forest, at the address listed above. The phone number is (559) 784–1500. Information regarding the monument and the planning process can also be found on the Giant Sequoia National Monument website located at *http://www.fs.fed.us./r5/sequoia/gsnm.*

**SUPPLEMENTARY INFORMATION:**

#### Background

On April 15, 200, a Presidential Proclamation creating the Giant Sequoia National Monument was signed. The Proclamation designated 327,769 acres within the boundary of the Sequoia National Forest as a National Monument to provide protection for a variety of objects of historic and scientific interest, including giant sequoia trees and their surrounding ecosystem. The plan will provide for and encourage continued public access and use consistent with the purposes of the Giant Sequoia National Monument. A range of alternatives will be analyzed, including the no-action alternative, which is the current management direction.

#### Purpose and Need for Action

The Presidential Proclamation creates a national monument recognizing and protecting forever its unique resources. The proclamation also clearly identifies opportunities for scientific research, interpretation, recreation, and the need for a transportation plan. We are committed to preparing a management plan that is responsive to these needs and opportunities and that cares for the objects of interest as identified in the proclamation.

Within the context of the Proclamation's statement of need, we are committed to developing the proposed action and alternatives to it through a comprehensive, inclusive, collaborative process involving stakeholders. This collaborative process will be facilitated largely by a third party neutral associated with the U.S. Institute for Environmental Conflict Resolution, an organization chartered by Congress for the purpose of resolving multi-party environmental issues and disputes. Because the Giant Sequoia National Monument is a unique treasure of international interest, it deserves the very best planning approach possible. We believe that the very best management will result from this innovative, collaborative approach which taps the knowledge and creative energy of those who know and love the giant sequoias.

In the National Environmental Policy Act (NEPA) process terms, this Notice of Intent initiates the scoping period. We expect the scoping period to last up to one year during which there will be a variety of meetings and workshops. The collaborative process will thereby be the focus, but not the sole means, of this extended scoping period during which the proposed action will be developed and planning issues identified. Notification of scoping activities will be posted on the Web site, *http://www.fs.fed.us/r5/sequoia/gsnm,* and advertised through the media. The collaborative process will continue to play a role through development of the draft and final environmental impact statements.

#### Current Management Direction

Until a new Monument Management Plan is implemented, current management direction for the GSNM includes the Presidential Proclamation, the Sequoia National Forest Land and Resource Management Plan, as amended by the Sierra Nevada Forest Plan Amendment (2001), and the Mediated Settlement Agreement.

#### Commenting

Comments received in response to public scoping or any future solicitation for public comments on a draft EIS, including names and addresses of those who comment, will be considered part of the public record and will be available for public inspection. Comments submitted anonymously will be accepted and considered. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that under the FOIA confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied; the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address.

The comment period on the draft EIS will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes that, at this early stage, it is very important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v.

*NRDC,* 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334 (E.D. Wis. 1980). Because of these court rulings, it is very important that persons interested in this proposed action participate by the close of the 90-day comment period on the draft EIS so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specified as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: January 30, 2008.

**Tina J. Terrell,**

*Forest Supervisor, Sequoia National Forest, USDA Forest Service.*

[FR Doc. 08–489 Filed 2–4–08; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### National Agricultural Statistics Service

### Notice of Intent To Request Approval To Revise and Extend an Information Collection

**AGENCY:** National Agricultural Statistics Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Livestock Slaughter Survey. Revision to burden hours may be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

**DATES:** Comments on this notice must be received by April 7, 2008 to be assured of consideration.

**ADDRESSES:** You may submit comments, identified by docket number 0535–0005, by any of the following methods:

- *E-mail: ombofficer@nass.usda.gov*. Include docket number above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: NASS Clearance Officer, U.S. Department of Agriculture, Room 5336A, Mail Stop 2024, South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: NASS Clearance Officer, U.S. Department of Agriculture, Room 5336A, South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

**FOR FURTHER INFORMATION CONTACT:** Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

**SUPPLEMENTARY INFORMATION:**

*Title:* Livestock Slaughter Survey.

*OMB Control Number:* 0535–0005.

*Approval Expires:* August 31, 2008.

*Type of Request:* Intent to Request Approval to Revise and Extend an Information Collection.

*Abstract:* The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition. The livestock survey program collects information on livestock slaughter. Slaughter data are used to estimate U.S. red meat production and reconcile inventory estimates which provide producers and the rest of the industry with current and future information on market supplies. This data is also used in preparing production, disposition, and income statistics which facilitate more orderly production, marketing, and processing of livestock and livestock products. The livestock program was approved by OMB for a 3-year period in 2005; NASS intends to request that the survey be approved for another 3 years.

*Authority:* These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–113) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995).

*Estimate of Burden:* The Livestock Slaughter Survey includes a weekly survey of 900 Federally Inspected (FI) slaughter plants and monthly/quarterly surveys of approximately 2,000 Non-Federally Inspected (NFI) slaughter facilities. Public reporting burden for this collection of information is estimated to average 7 minutes per response for an estimated annual average burden of 370 minutes per respondent.

*Respondents:* Farmers, USDA inspectors, and custom/state inspected slaughter plants.

*Estimated Number of Respondents:* 2,900.

*Estimated Total Annual Burden on Respondents:* 18,000 hours.

Copies of this information collection and related instructions can be obtained without charge from NASS Clearance Officer, at (202) 720–2448.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information 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.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, January 16, 2008.

**Joseph T. Reilly,**

*Associate Administrator.*

[FR Doc. E8–2041 Filed 2–4–08; 8:45 am]

**BILLING CODE 3410–20–P**

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

### Inviting Applications for Rural Business Opportunity Grants

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Rural Business-Cooperative Service, an Agency within

the Rural Development mission area, announces the availability of grants of up to $50,000 per application from the Rural Business Opportunity Grant (RBOG) program for fiscal year (FY) 2008, to be competitively awarded. For multi-state projects, grant funds of up to $150,000 will be available on a competitive basis. These limits do not apply to specific funding as discussed below.

**DATES:** The deadline for the receipt of applications in the Rural Development State Office is March 31, 2008. The RBOG appropriation for FY 2008 provides specific funding for Native American, Empowerment Zones, Enterprise Communities, and Rural Economic Area Partnerships, and these applications must also be received in the Rural Development State Office by March 31, 2008. The Agency reserves the right to extend this application deadline. Any applications received at a Rural Development State Office after these dates for this type of assistance will not be considered for FY 2008 funding.

**FOR FURTHER INFORMATION CONTACT:** Cindy Mason, Loan Specialist, USDA Rural Development, STOP 3225, Room 6866, 1400 Independence Avenue, SW., Washington, DC 20250–3225. Telephone: (202) 690–1433.

**ADDRESSES:** For further information, entities wishing to apply for assistance should contact a Rural Development State Office to receive copies of the application package. Potential applicants located in the District of Columbia must send their applications to the National Office at:

**District of Columbia**

USDA Rural Development, Specialty Lenders Division, 1400 Independence Avenue, SW., Room 6867, STOP 3225, Washington, DC 20250–3225, (202) 720–1400.

A list of Rural Development State Offices follows:

**Alabama**

USDA Rural Development State Office, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400/TDD (334) 279–3495.

**Alaska**

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7705/TDD (907) 761–8905.

**Arizona**

USDA Rural Development State Office, 230 N. 1st Ave., Suite 206, Phoenix, AZ 85003, (602) 280–8701/TDD (602) 280–8705.

**Arkansas**

USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200/TDD (501) 301–3279.

**California**

USDA Rural Development State Office, 430 G Street, # 4169, Davis, CA 95616–4169, (530) 792–5800/TDD (530) 792–5848.

**Colorado**

USDA Rural Development State Office, 655 Parfet Street, Room E–100, Lakewood, CO 80215, (720) 544–2903/TDD (720) 544–2976.

**Delaware-Maryland**

USDA Rural Development State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3580/TDD (302) 857–3585.

**Florida/Virgin Islands**

USDA Rural Development State Office, 4440 NW 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3400/TDD (352) 338–3499.

**Georgia**

USDA Rural Development State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162/TDD (706) 546–2034.

**Hawaii**

USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380/TDD (808) 933–8321.

**Idaho**

USDA Rural Development State Office 9173 West Barnes Drive, Suite A1 Boise, ID 83709 (208) 378–5600/TDD (208) 378–5644

**Illinois**

USDA Rural Development State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6200/TDD (217) 403–6240.

**Indiana**

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100/TDD (317) 290–3343.

**Iowa**

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663/TDD (515) 284–4858.

**Kansas**

USDA Rural Development State Office, 1303 S.W. First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2700/TDD (785) 271–2767.

**Kentucky**

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300/TDD (859) 224–7422.

**Louisiana**

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7921/TDD (318) 473–7655.

**Maine**

USDA Rural Development State Office, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9160/TDD (207) 942–7331.

**Massachusetts/Rhode Island/Connecticut**

USDA Rural Development State Office, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4300/TDD (413) 253–4590.

**Michigan**

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5190/TDD (517) 324–5169.

**Minnesota**

USDA Rural Development State Office, 375 Jackson Street, Suite 410, St. Paul, MN 55101–1853, (651) 602–7800/TDD (651) 602–3799.

**Mississippi**

USDA Rural Development State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–4316/TDD (601) 965–5850.

**Missouri**

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976/TDD (573) 876–9480.

**Montana**

USDA Rural Development State Office, 900 Technology Boulevard, Suite B, P.O. Box 850, Bozeman, MT 59771, (406) 585–2580/TDD (406) 585–2562.

**Nebraska**

USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, NE 68508, (402) 437–5551/TDD (402) 437–5093.

**Nevada**

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–5146, (775) 887–1222/TDD (775) 885–0633.

**New Jersey**

USDA Rural Development State Office, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7700/TDD (856) 787–7784.

**New Mexico**

USDA Rural Development State Office, 6200 Jefferson Street NE., Room 255, Albuquerque, NM 87109, (505) 761–4950/TDD (505) 761–4938.

**New York**

USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400/TDD (315) 477–6447.

**North Carolina**

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000/TDD (919) 873–2003.

**North Dakota**

USDA Rural Development State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2037/TDD (701) 530–2113.

**Ohio**

USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2400/TDD (614) 255–2554.

**Oklahoma**

USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000/TDD (405) 742–1007.

**Oregon**

USDA Rural Development State Office, 1201 NE Lloyd Blvd., Suite 801, Portland, OR 97232, (503) 414–3300/TDD (503) 414–3387.

**Pennsylvania**

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299/TDD (717) 237–2261.

**Puerto Rico**

USDA Rural Development State Office, IBM Building, Suite 601, 654 Munos Rivera Avenue, San Juan, PR 00918–6106, (787) 766–5095/TDD (787) 766–5332.

**South Carolina**

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163/TDD (803) 765–5697.

**South Dakota**

USDA Rural Development State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1100/TDD (605) 352–1147.

**Tennessee**

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1300.

**Texas**

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700/TDD (254) 742–9712.

**Utah**

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4320/TDD (801) 524–3309.

**Vermont/New Hampshire**

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000/TDD (802) 223–6365.

**Virginia**

USDA Rural Development State Office, 1606 Santa Rosa Road, Suite 238, Richmond, VA 23229–5014, (804) 287–1550/TDD (804) 287–1753.

**Washington**

USDA Rural Development State Office, 1835 Black Lake Boulevard SW., Suite B, Olympia, WA 98512–5715, (360) 704–7740/TDD (360) 704–7760.

**West Virginia**

USDA Rural Development State Office, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4860/TDD (304) 284–4836.

**Wisconsin**

USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600/TDD (715) 345–7614.

**Wyoming**

USDA Rural Development State Office, 100 East B, Federal Building, Room 1005, P.O. Box 11005, Casper, WY 82602–5006, (307) 233–6700/TDD (307) 233–6733.

**SUPPLEMENTARY INFORMATON:**

**Overview**

*Federal Agency:* Rural Business-Cooperative Service.

*Funding Opportunity Type:* Rural Business Opportunity Grants.

*Announcement Type:* Initial announcement.

*Catalog of Federal Domestic Assistance Number:* 10.773.

*Dates:* Application Deadline: Completed applications for these funds must be received in the Rural Development State Office no later than March 31, 2008, to be eligible for FY 2008 grant funding. Applications received after this date will not be eligible for FY 2008 grant funding.

**I. Funding Opportunity Description**

The RBOG program is authorized under section 306(a)(11) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1926(a)(11)). The Rural Development State Offices administer the RBOG program on behalf of USDA Rural Development at the State level. The primary objective of the program is to improve the economic conditions of rural areas. Assistance provided to rural areas under this program may include technical assistance for business development and economic development planning. To ensure that a broad range of communities have the opportunity to benefit from the program, no grant will exceed $50,000, unless it is a multi-State project where funds may not exceed $150,000. As indicated in the summary, these limits do not apply to specified funding for Native American, Empowerment Zones, Enterprise Communities, and Rural Economic Area Partnerships.

Awards are made on a competitive basis using specific selection criteria contained in 7 CFR part 4284, subpart G. Information required to be in the application package include an SF–424, ''Application for Federal Assistance;'' applicant's organizational documents; Scope of Work Narrative; Income Sheet; Balance Sheet or current audit if available; AD–1047, ''Debarment/Suspension Certification;'' AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion;'' AD–1049, ''Certification Regarding Drug-Free Workplace Requirements;'' Restrictions on Lobbying, RD 400–1, ''Equal Opportunity Agreement;'' and RD 400–4, ''Assurance Agreement.'' See 7 CFR 4284.639 for additional application requirements. Information required to be in the application package are contained in 7 CFR part 4284, subpart G. The State Director may assign up to

15 discretionary points to an application, and the Agency Administrator may assign up to 20 additional discretionary points for projects funded from the National Office reserve. Discretionary points awarded by the State Director or Administrator must be based on geographic distribution of funds, special importance for implementation of a strategic plan in partnership with other organizations, or extraordinary potential for success due to superior project plans or qualifications of the grantee. To ensure the equitable distribution of funds, a maximum of two projects from each State that score the greatest number of points based on the selection criteria and discretionary points will be considered by the National Office for funding.

Applications will be tentatively scored by the State Offices and submitted to the National Office for final review and selection.

The National Office will review the scores based on the grant selection criteria and weights contained in 7 CFR part 4284, subpart G. All applicants will be notified by USDA Rural Development of the Agency's decision on the awards.

*Definitions*

The definitions are published at 7 CFR 4284.603.

**II. Award Information**

*Type of Award:* Grant.

*Fiscal Year Funds:* FY 2008.

*Total Funding:* $655,110 for regular RBOG; $990,000 for Native American and $990,000 for Empowerment Zones, Enterprise Communities, and Rural Economic Area Partnerships.

*Approximate Number of Awards:* 13 for regular RBOG and 19 for Native American and 19 Empowerment Zones, Enterprise Communities, and Rural Economic Area Partnerships.

*Average Award:* $50,000.

*Anticipated Award Date:* June 30, 2008.

**III. Eligibility Information**

*A. Eligible Applicants*

Grants may be made to public bodies, nonprofit corporations, Indian tribes on Federal or State reservations and other federally recognized tribal groups, and cooperatives with members that are primarily rural residents and that conduct activities for the mutual benefit of the members.

*B. Cost Sharing or Matching*

Matching funds are not required.

*C. Other Eligibility Requirements*

Applications will only be accepted for projects to assist in promoting sustainable economic development in rural communities.

*D. Completeness Eligibility*

Applications will not be considered for funding if they do not provide sufficient information to determine eligibility or are missing required elements.

**IV. Fiscal Year 2008 Application and Submission Information:**

*A. Address to Request Application Package*

For further information, entities wishing to apply for assistance should contact the Rural Development State Office identified in this notice to obtain copies of the application package.

Applicants are encouraged to submit applications through the Grants.gov Web site at: *http://www.grants.gov*. Applications may be submitted in either electronic or paper format. Users of Grants.gov will be able to download a copy of the application package, complete it off line, and then upload and submit the application via the Grants.gov Web site. Applications may not be submitted by electronic mail.

- When you enter the Grants.gov Web site, you will find information about submitting an application electronically through the site as well as the hours of operation. USDA Rural Development strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov. To use Grants.gov, applicants must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number which can be obtained at no cost via a toll-free request line at 1–866–705–5711.
- You may submit all documents electronically through the Web site, including all information typically included on the application for RBOGs and all necessary assurances and certifications.
- After electronically submitting an application through the Web site, the applicant will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number.
- USDA Rural Development may request that the applicant provide original signatures on forms at a later date.
- If applicants experience technical difficulties on the closing date and are unable to meet the deadline, you may submit a paper copy of your application to your respective Rural Development State Office. Paper applications submitted to a Rural Development State Office must meet the closing date and local time deadline.

Please note that applicants must locate the downloadable application package for this program by the Catalog of Federal Domestic Assistance Number or FedGrants Funding Opportunity Number, which can be found at *http://www.fedgrants.gov.*

In accordance with the Paperwork Reduction Act of 1995, the information collection requirement contained in this Notice is approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0024.

*B. Content and Form of Submission*

An application must contain all of the required elements. Each application received in a Rural Development State Office will be reviewed to determine if it is consistent with the eligible purposes contained in section 306 of the CONACT.

Each selection priority criterion outlined in 7 CFR 4284.639, must be addressed in the application. Failure to address any of the criteria will result in a zero-point score for that criterion and will impact the overall evaluation of the application. Copies of 7 CFR part 4284, subpart G, will be provided to any interested applicant making a request to a Rural Development State Office listed in this notice.

*C. Submission Dates and Times*

*Application Deadline Date:* March 31, 2008.

*Explanation of Deadlines:* Applications for funds must be in the Rural Development State Office by the deadline date.

**V. Application Review Information**

The National Office will score applications based on the grant selection criteria and weights contained in 7 CFR part 4284, subpart G and will select a grantee subject to the grantee's satisfactory submission of the additional items required by 7 CFR part 4284, subpart G and the USDA Rural Development Letter of Conditions.

**VI. Award Administration Information**

*A. Award Notices*

Successful applicants will receive notification for funding from the Rural Development State Office. Applicants must comply with all applicable statutes and regulations before the grant award will be approved. Unsuccessful applications will receive notification by mail.

*B. Administrative and National Policy Requirements*

Additional requirements that apply to grantees selected for this program can be found in the 7 CFR 4284, subpart G.

**VII. Agency Contacts**

For general questions about this announcement, please contact your Rural Development State Office identified in this notice.

*Nondiscrimination Statement:*

''The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender.''

Dated: January 25, 2008.

**Ben Anderson,**

*Administrator, Rural Business-Cooperative Service.*

[FR Doc. E8–2002 Filed 2–4–08; 8:45 am]

**BILLING CODE 3410–XY–P**

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

### Inviting Applications for the Rural Economic Development Loan and Grant Program for Fiscal Year 2008

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This Notice announces the availability of approximately $33.077 million of loan funds under the Rural Economic Development Loan and Grant (REDLG) program for fiscal year (FY) 2008. This notice is being issued to allow applicants sufficient time to leverage financing, submit applications, and give the Agency time to process applications within the current fiscal year. The Agency will publish a subsequent notice identifying the amount of funding received for grants, if any, and the final maximum dollar amount for grant awards. The awards made as a result of this notice are effective for loans made during the fiscal year beginning October 1, 2007, and ending September 30, 2008. REDLG loans and grants are to assist in economically developing rural areas.

**FOR FURTHER INFORMATION CONTACT:** Melvin Padgett, Loan Specialist, USDA Rural Development, STOP 3225, Room 6866, 1400 Independence Avenue, SW., Washington, DC 20250–3225. Telephone: (202) 720–1495, FAX: (202) 720–2213.

**ADDRESSES:** For further information, entities wishing to apply for assistance should contact a Rural Development State Office to receive further information and copies of the application package. A list of Rural Development State Offices follows:

**District of Columbia**

USDA Rural Development, Specialty Lenders Division, 1400 Independence Avenue, SW., STOP 3225, Room 6867, Washington, DC 20250–3225, (202) 720–1400.

**Alabama**

USDA Rural Development State Office, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400/TDD (334) 279–3495.

**Alaska**

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7705/TDD (907) 761–8905.

**Arizona**

USDA Rural Development State Office, 230 N. 1st First Ave., Suite 206, Phoenix, AZ 85003, (602) 280–8701/TDD (602) 280–8705.

**Arkansas**

USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200/TDD (501) 301–3279.

**California**

USDA Rural Development State Office, 430 G Street, # 4169, Davis, CA 95616–4169, (530) 792–5800/TDD (530) 792–5848.

**Colorado**

USDA Rural Development State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (720) 544–2903/TDD (720) 544–2976.

**Delaware-Maryland**

USDA Rural Development State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3580/TDD (302) 857–3585.

**Florida/Virgin Islands**

USDA Rural Development State Office, 4440 NW 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3400/TDD (352) 338–3499.

**Georgia**

USDA Rural Development State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162/TDD (706) 546–2034.

**Hawaii**

USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380/TDD (808) 933–8321.

**Idaho**

USDA Rural Development State Office, 9173 West Barnes Dr., Suite A1, Boise, ID 83709, (208) 378–5600/TDD (208) 378–5644.

**Illinois**

USDA Rural Development State Office, 2118 W. Park Court, Suite A, Champaign, IL 61821, (217) 403–6200/TDD (217) 403–6240.

**Indiana**

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100/TDD (317) 290–3343.

**Iowa**

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663/TDD (515) 284–4858.

**Kansas**

USDA Rural Development State Office, 1303 S.W. First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2700/TDD (785) 271–2767.

**Kentucky**

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300/TDD (859) 224–7422.

**Louisiana**

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7921/TDD (318) 473–7655.

**Maine**

USDA Rural Development State Office, 967 Illinois Avenue, Suite 4, P.O. Box

405, Bangor, ME 04402–0405, (207) 990–9160/TDD (207) 942–7331.

**Massachusetts/Rhode Island/ Connecticut**

USDA Rural Development State Office, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4300/TDD (413) 253–4590.

**Michigan**

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5190/ TDD (517) 324–5169.

**Minnesota**

USDA Rural Development State Office, 375 Jackson Street, Suite 410, St. Paul, MN 55101–1853, (651) 602–7800/TDD (651) 602–3799.

**Mississippi**

USDA Rural Development State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4316/TDD (601) 965–5850.

**Missouri**

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976/TDD (573) 876–9480.

**Montana**

USDA Rural Development State Office, 900 Technology Boulevard, Suite B, P.O. Box 850, Bozeman, MT 59771, (406) 585–2580/TDD (406) 585–2562.

**Nebraska**

USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, NE 68508, (402) 437–5551/TDD (402) 437–5093.

**Nevada**

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–5146, (775) 887–1222/TDD (775) 885–0633.

**New Jersey**

USDA Rural Development State Office, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7700/TDD (856) 787–7784.

**New Mexico**

USDA Rural Development State Office, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109, (505) 761–4950/TDD (505) 761–4938.

**New York**

USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400/TDD (315) 477–6447.

**North Carolina**

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000/TDD (919) 873–2003.

**North Dakota**

USDA Rural Development State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2037/TDD (701) 530–2113.

**Ohio**

USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2400/TDD (614) 255–2554.

**Oklahoma**

USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000/TDD (405) 742–1007.

**Oregon**

USDA Rural Development State Office, 1201 NE Lloyd Blvd., Suite 801, Portland, OR 97232, (503) 414–3300/ TDD (503) 414–3387.

**Pennsylvania**

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299/TDD (717) 237–2261.

**Puerto Rico**

USDA Rural Development State Office, IBM Building, Suite 601, 654 Munos Rivera Avenue, San Juan, PR 00918–6106, (787) 766–5095/TDD (787) 766–5332.

**South Carolina**

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163/ TDD (803) 765–5697.

**South Dakota**

USDA Rural Development State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1100/TDD (605) 352–1147.

**Tennessee**

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1300.

**Texas**

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501. (254) 742–9700/TDD (254) 742–9712.

**Utah**

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4320/TDD (801) 524–3309.

**Vermont/New Hampshire**

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000/TDD (802) 223–6365.

**Virginia**

USDA Rural Development State Office, 1606 Santa Rosa Road, Suite 238, Richmond, VA 23229–5014, (804) 287–1550/TDD (804) 287–1753.

**Washington**

USDA Rural Development State Office, 1835 Black Lake Boulevard SW., Suite B, Olympia, WA 98512–5715, (360) 704–7740/TDD (360) 704–7760.

**West Virginia**

USDA Rural Development State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4860/TDD (304) 284–4836.

**Wisconsin**

USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600/TDD (715) 345–7614.

**Wyoming**

USDA Rural Development State Office, 100 East B, Federal Building, Room 1005, P.O. Box 11005, Casper, WY 82602–5006, (307) 233–6700/TDD (307) 233–6733.

**SUPPLEMENTARY INFORMATION:**

**Overview**

*Federal Agency:* Rural Business-Cooperative Service.

*Funding Opportunity Type:* Rural Economic Development Loans and Grants.

*Announcement Type:* Initial Announcement.

*Catalog of Federal Domestic Assistance Number:* 10.854.

*Dates:* Application Deadline: Completed applications must be received in the State Office as follows: For First and Second Quarters, January 31, 2008, Third Quarter, March 31, 2008, and Fourth Quarter, June 30, 2008.

**I. Funding Opportunity Description**

The Regulations for these programs are at 7 CFR part 4280, subpart A. The primary objective of the program is to promote rural economic development and job creation projects. Assistance provided to rural areas, as defined, under this program may include business startup costs, business expansion, business incubators, technical assistance feasibility studies, advanced telecommunications services and computer networks for medical, educational, and job training services and community facilities projects for economic development. Awards are made on a competitive basis using specific selection criteria contained in 7 CFR 4280, subpart A. Information required to be in the application include an SF–424, ''Application for Federal Assistance;'' a Resolution of the Board of Directors; AD–1047, ''Debarment/Suspension Certification;'' Assurance statement for the Uniform Act; Restrictions on Lobbying, AD 1049; ''Certification Regarding Drug-Free Workplace Requirements;'' Seismic certification (if construction); RD 1940–20, ''Request for Environmental Information;'' RUS Form 7; ''Financial and Statistical Report;'' and RUS Form 7a, ''Investments, Loan Guarantees, and Loans,'' or similar information; and written narrative of project description. Applications will be tentatively scored by the State Offices and submitted to the National Office for review.

*Definitions*

The definitions are published at 7 CFR 4280.3.

**II. Award Information**

*Type of Award:* Loan.

*Fiscal Year Funds:* FY 2008.

*Maximum Anticipated Award:* $740,000.

*Anticipated Award Date:* First and Second Quarters, March 14, 2008, Third Quarter, May 14, 2008, and Fourth Quarter, August 15, 2008.

**III. Eligibility Information**

*A. Eligible Applicants*

*Loans and grants may be made to any entity that is identified by USDA Rural Development* as an eligible borrower under the Rural Electrification Act. In accordance with 7 CFR 4280.13, applicants that are not delinquent on any Federal debt or otherwise disqualified from participation in these program are eligible to apply. An applicant must be eligible under 7 U.S.C. 940c.

*B. Cost Sharing or Matching*

For loans, either the Ultimate Recipient or the Intermediary must provide supplemental funds for the project equal to at least 20 percent of the loan to the Intermediary. For grants, the Intermediary must provide supplemental funds for the project equal to at least 20 percent of the grant to the Intermediary.

*C. Other Eligibility Requirements*

Applications will only be accepted for projects that promote rural economic development and job creation.

*D. Completeness Eligibility*

Applications will not be considered for funding if they do not provide sufficient information to determine eligibility or are missing required elements.

**IV. Fiscal Year 2008 Application and Submission Information:**

*A. Address To Request Application Package*

For further information, entities wishing to apply for assistance should contact the Rural Development State Office identified in this NOFA to obtain copies of the application package.

Applicants are encouraged to submit applications through the Grants.gov Web site at: *http://www.grants.gov.* Applications may be submitted in either electronic or paper format. Users of Grants.gov will be able to download a copy of the application package, complete it off line, and then upload and submit the application via the Grants.gov Web site. Applications may not be submitted by electronic mail.

- When you enter the Grants.gov Web site, you will find information about submitting an application electronically through the site as well as the hours of operation. USDA Rural Development strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov. To use Grants.gov, applicants must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number which can be obtained at no cost via a toll-free request line at 1–866–705–5711.
- You may submit all documents electronically through the Web site, including all information typically included on the application for REDLGs and all necessary assurances and certifications.
- After electronically submitting an application through the Web site, the applicant will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number.
- USDA Rural Development may request that the applicant provide original signatures on forms at a later date.
- If applicants experience technical difficulties on the closing date and are unable to meet the deadline, they may submit a paper copy of your application to your respective Rural Development State Office. Paper applications submitted to a Rural Development State Office must meet the closing date and local time deadline.

Please note that applicants must locate the downloadable application package for this program by the Catalog of Federal Domestic Assistance Number or FedGrants Funding Opportunity Number, which can be found at *http://www.grants.gov*.

In accordance with the Paperwork Reduction Act of 1995, the information collection requirement contained in this Notice is approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0024.

*B. Content and Form of Submission*

An application must contain all of the required elements. Each selection priority criterion outlined in 7 CFR 4280.42(b), must be addressed in the application. Failure to address any of the criteria will result in a zero-point score for that criterion and will impact the overall evaluation of the application. Copies of 7 CFR part 4280, subpart A, will be provided to any interested applicant making a request to a Rural Development State Office listed in this notice.

*C. Submission Dates and Times*

*Application Deadline Date:* First and Second Quarters, January 31, 2008, Third Quarter, March 31, 2008, and Fourth Quarter, June 30, 2008.

*Explanation of Deadlines:* Applications must be in the Rural Development State Office by the deadline dates as indicated above.

**V. Application Review Information**

The National Office will score applications based on the grant selection criteria and weights contained in 7 CFR part 4280, subpart A and will select an Intermediary subject to the Intermediary's satisfactory submission of the additional items required by 7 CFR part 4280, subpart A and the USDA Rural Development Letter of Conditions.

**VI. Award Administration Information**

*A. Award Notices*

Successful applicants will receive notification for funding from the Rural Development State Office. Applicants must comply with all applicable statutes

and regulations before the loan/grant award will be approved. Provided the application requirements have not changed, an application not selected will be reconsidered in three subsequent funding competitions for a total of four competitions. If an application is withdrawn, it can be resubmitted and will be evaluated as a new application.

*B. Administrative and National Policy Requirements*

Additional requirements that apply to Intermediary's selected for this program can be found in the 7 CFR 4280, subpart A.

**VII. Agency Contacts**

For general questions about this announcement, please contact your Rural Development State Office identified in this NOFA.

*Nondiscrimination Statement:*

''The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender.''

Dated: January 29, 2008.

**Ben Anderson,**

*Administrator, Rural Business-Cooperative Service.*

[FR Doc. E8–2001 Filed 2–4–08; 8:45 am]

**BILLING CODE 3410–XY–P**

## DEPARTMENT OF AGRICULTURE

### Rural Telephone Bank

### Rural Telephone Bank Board Meeting

*Time and Date:* 4 p.m., Monday, February 11, 2008.

*Place:* Sheraton New Orleans Hotel, Gallier AB Room, 500 Canal St., New Orleans, LA 70130.

*Status:* Open.

*Matters To Be Considered:* The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to Order
2. Report on the Rural Telephone Bank Dissolution:
   - Secretary's Report.
   - Treasurer's Report.
   - Report on the Dissolution.
3. Reflections on the Rural Telephone Bank.
4. Adjournment and Closing Remarks by Under Secretary Thomas C. Dorr.

*Contact Person for More Information:* Jonathan Claffey, Deputy Assistant Governor and Assistant Secretary, Rural Telephone Bank, (202) 720–9554.

Dated: January 29, 2008.

**James M. Andrew,**

*Governor, Rural Telephone Bank.*

[FR Doc. E8–2042 Filed 2–4–08; 8:45 am]

**BILLING CODE 3410–15–P**

## 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 Rural Development Utilities Programs, hereinafter referred to as Rural Development and/or Agency, invites comments on this information collection for which Rural Development intends to request approval from the Office of Management and Budget (OMB).

**DATES:** Comments on this notice must be received by April 7, 2008.

**FOR FURTHER INFORMATION CONTACT:** Michele L. Brooks, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5168 South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. 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 the Agency is submitting to OMB as a revision to an existing collection. 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, Rural Development Utilities Programs, U.S. Department of Agriculture, STOP 1522, Room 5168, 1400 Independence Ave., SW., Washington, DC 20250–1522. Fax: (202) 720–8435.

*Title:* Accounting Requirements for Electric and Telecommunications Borrowers.

*OMB Control Number:* 0572–0003.

*Type of Request:* Extension of a currently approved collection.

*Abstract:* The Agency believes that this is the minimum record retention requirements needed to carry out its due diligence responsibilities in loan underwriting and maintaining loan security. Agency borrowers should understand that they may be subject to additional record retention requirements imposed by other regulatory authorities such as FERC, FCC, state commissions and IRS.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 2 hours per response.

*Respondents:* Business or other for-profit, Not-for-profit institutions.

*Estimated Number of Respondents and Recordkeepers:* 1,422.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Number of Hours per Recordkeeper:* 50 hours.

*Estimated Total Annual Burden on Respondents:* 2,844 hours.

*Estimated Total Annual Burden on Recordkeepers:* 35,550 hours.

Copies of this information collection can be obtained from MaryPat Daskal,

Program Development and Regulatory Analysis, at (202) 720–7853, Fax: (202) 720–4120.

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: January 30, 2008.

**James M. Andrew,**

*Administrator, Rural Utilities Service.*

[FR Doc. E8–2000 Filed 2–4–08; 8:45 am]

**BILLING CODE 3410–15–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–846]**

### Brake Rotors From the People's Republic of China: Preliminary Results of the 2006–2007 Administrative and New Shipper Reviews and Partial Rescission of the 2006–2007 Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (''the Department'') is currently conducting the 2006–2007 administrative and new shipper reviews of the antidumping duty order on brake rotors from the People's Republic of China (''PRC''). We preliminarily determine that sales have not been made below normal value (''NV'') with respect to certain exporters who participated fully and are entitled to a separate rate in the administrative or new shipper reviews. If these preliminary results are adopted in our final results of these reviews, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the period of review (''POR'') for which the importer-specific assessment rates are above *de minimis*.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

**EFFECTIVE DATE:** February 5, 2008.

**FOR FURTHER INFORMATION CONTACT:** Frances Veith or Blanche Ziv, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4295 or (202) 482–4207, respectively.

**Background**

On April 17, 1997, the Department published in the **Federal Register** the antidumping duty order on brake rotors from the PRC. *See Notice of Antidumping Duty Order: Brake Rotors from the People's Republic of China*, 62 FR 18740 (April 17, 1997) (''*the Order*'').

**New Shipper Review**

On April 18, 2007, Shanghai Tylon Company Ltd. (''Tylon'') requested a new shipper review of the antidumping duty order on brake rotors from the PRC, which has an April anniversary month, in accordance with 19 CFR 351.214(c). In response to the Department's April 24, 2007, request for information, Tylon provided supplemental information on April 27, 2007. On May 25, 2007, the Department initiated a new shipper review of Tylon covering the period April 1, 2006, through March 31, 2007. *See Brake Rotors From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 72 FR 29299 (May 25, 2007). On May 23, 2007, the Department issued a new shipper antidumping duty questionnaire to Tylon.

On July 5, 2007, the Department received Tylon's Sections A, C, and D response. On July 19, 2007, the Department received Tylon's Importer-Specific Questionnaire response. On August 24, 2007, the Department issued a supplemental questionnaire to Tylon, to which we received a response on September 17, 2007. On June 4, 2007, the Department placed on the record of the new shipper review copies of CBP documents pertaining to the shipment of brake rotors from the PRC exported by Tylon to the United States during the POR.[1]

On May 31, 2007, we requested that the Office of Policy issue a surrogate-country memorandum for the selection of the appropriate surrogate countries for this new shipper review.[2] On June 1, 2007, the Office of Policy provided a list of five countries at a level of economic development comparable to that of the PRC for the POR.[3] On June 6, 2007, the Department invited all interested parties to submit comments on surrogate-country selection and to submit publicly available information as surrogate values (''SVs'') for purposes of calculating NV.[4] *See* ''Surrogate Country'' section below. On August 1, 2007, the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers (''petitioner'') submitted publicly available information for use as SVs in the calculation of NV in the 2006–2007 new shipper review. On August 17, 2007, the Department selected India as the most appropriate surrogate country for the purpose of this new shipper review.[5]

On August 23, 2007, Tylon agreed to waive the new shipper review time limits in accordance with 19 CFR 351.214(j)(3), to align the new shipper review with the concurrent 2006–2007 administrative review of the antidumping duty order on brake rotors from the PRC. On August 24, 2007, the Department aligned the new shipper review with the 2006–2007 administrative review of the antidumping duty order on brake rotors from the PRC.[6]

**Administrative Review**

On April 2, 2007, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on brake rotors from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 72 FR 15650 (April 2, 2006).

On April 30, 2007, the Department received timely requests for an administrative review of this antidumping duty order in accordance with 19 CFR 351.213 from the following individual companies: LABEC, Winhere, Haimeng, Hongda, Meita, Wally, and Longkou Dixion Brake System Ltd. (''Dixion''). On April 30,

[1] *See* the Department's memorandum entitled, ''2006–2007 New Shipper Review of Brake Rotors from the People's Republic of China,'' entitled, ''Results of Request for Assistance from U.S. Customs and Border Protection on U.S. Entry Documents,'' dated June 4, 2007.

[2] *See* the Department's memorandum entitled, ''Surrogate-Country Selection: 2006–2007 New Shipper Review of the Antidumping Duty Order on Brake Rotors from the People's Republic of China,'' dated May 31, 2007.

[3] *See* the Department's memorandum entitled, ''New Shipper Review of Brake Rotors from the People's Republic of China (PRC): Request for a List of Surrogate Countries,'' dated June 1, 2007 (''*NSR Policy Memorandum*'').

[4] *See* the Department's letter regarding, ''New Shipper Review of Brake Rotors from the People's Republic of China,'' requesting parties to provide comments on surrogate-country selection and provide surrogate factors-of-production (''FOP'') values from the potential surrogate countries (*i.e.*, India, Sri Lanka, Indonesia, the Philippines and Egypt), dated June 6, 2007.

[5] *See* The Department's memorandum entitled, ''2006–2007 New Shipper Review of the Antidumping Duty Order on Brake Rotors from the People's Republic of China: Selection of a Surrogate Country,'' dated August 17, 2007 (''*NSR Surrogate Country Memorandum*'').

[6] *See* the Department's memorandum, entitled ''2006–2007 Administrative and New Shipper Reviews of the Antidumping Duty Order on Brake Rotors from the People's Republic of China: Alignment of 2006–2007 Administrative and New Shipper Reviews,'' dated August 24, 2007.

2007, the Department also received timely requests for an administrative review of 23 companies (or producer/exporter combinations) [7] from petitioner. As a result of the above-mentioned companies' and petitioner's requests for a review, this administrative review covers 24 companies.

On May 30, 2007, the Department initiated an administrative review of the antidumping duty order on brake rotors from the PRC for 24 individually named firms, for the POR of April 1, 2006, through March 31, 2007.[8] Between May 30 and June 5, 2007, the Department issued letters to all firms named in the AR Initiation Notice requesting: (1) A separate-rate certification or application, and (2) information on the quantity and value (''Q&V'') of sales of subject merchandise to the United States during the POR. Of the 24 companies for which the Department initiated a review, ten companies certified that they had no shipments during the POR, and between June 14 and June 22, 2007,[9] we received requests for a rescission of the review from five of those companies.[10]

[7] The names of these companies or producer/exporter combination are as follows: (1) Longkou Haimeng Machinery Co., Ltd. (''Haimeng''); (2) Qingdao Meita Automotive Industry Co., Ltd. (''Meita''); (3) Laizhou Auto Brake Equipment Factory (''LABEC''); (4) Yantai Winhere Auto-Part Manufacturing Co., Ltd. (''Winhere''); (5) Laizhou Hongda Auto Replacement Parts Co., Ltd. (''Hongda''); (6) Laizhou City Luqi Machinery Co., Ltd. (''Luqi''); (7) Laizhou Wally Automobile Co., Ltd. (''Wally''); (8) Zibo Luzhou Automobile Parts Co., Ltd. (''ZLAP''); (9) Zibo Golden Harvest Machinery Limited Company (''ZGOLD''); (10) Longkou TLC Machinery Co., Ltd. (''TLC''); (11) Longkou Jinzheng Maxhinery Co. (''Jinzheng''); (12) Qingdao Gren Co. (''Gren''); (13) Shenyang Yinghao Machinery Co. (''Yinghao''); (14) Shanxi Zhongding Auto Parts Co., Ltd. (''SZAP''); (15) Shandong Huanri Group Company (''Huanri''); (16) Longkou Qizheng Auto Parts Co. (''Qizheng''); (17) China National Automotive Industry Import & Export Corporation (''CAIEC''), excluding entries manufactured by Shandong Laizhou CAPCO Industry (''CAPCO''); (18) CAPCO, excluding entries manufactured by CAPCO; (19) Laizhou Luyuan Automobile Fittings Co. (''Luyuan''), excluding entries manufactured by Laizhou Luyuan or Shenyang Honbase Machinery Co., Ltd. (''Honbase''); (20) Honbase, excluding entries manufactured by Laizhou Luyuan or Honbase; (21) China National Industrial Machinery Import & Export Corporation (''CNIM''); (22) Xianghe Xumingyuan Auto Parts Co. (''Xumingyuan''); and (23) Qingdao Golrich Autoparts Co., Ltd. (''Golrich'').

[8] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 72 FR 29968 (May 30, 2007) (*''AR Initiation Notice''*).

[9] These ten companies are SZAP, Huanri, Qizheng, CNIM, Xumingyuan, Golrich, CAIEC, CAPCO, Luyuan, and Honbase.

[10] These five companies are Xumingyuan, CAIEC, CAPCO, Luyuan, and Honbase.

*See* ''Preliminary Partial Rescission of 2006–2007 Administrative Review'' section below.

Due to the large number of participating firms subject to this administrative review, and the Department's experience regarding the administrative burden of reviewing each company for which a request was made, the Department exercised its authority to limit the number of mandatory respondents selected for individual review pursuant to section 777A(c)(2) of the Tariff Act of 1930, as amended (''the Act''), by selecting exporters accounting for the largest volume of the subject merchandise that can reasonably be examined. On July 13, 2007, based on reported export volumes of subject merchandise during the POR, the Department selected the two companies accounting for the largest volume of subject merchandise, *i.e.*, Haimeng and Meita, as the two mandatory respondents in this review. The remaining 12 respondents are non-selected respondents.[11] See ''Separate Rates'' section below. On July 16, 2007, we issued antidumping duty questionnaires to Haimeng and Meita.

On May 31, 2007, we requested that the Office of Policy issue a surrogate-country memorandum for the selection of the appropriate surrogate countries for this review.[12] On June 1, 2007, the Office of Policy provided a list of five countries at a level of economic development comparable to that of the PRC for the POR of this review.[13] On June 6, 2007, the Department invited all interested parties to submit comments on surrogate-country selection and to submit publicly available information as SVs for purposes of calculating NV.[14] On August 17, 2007, the Department selected India as the most appropriate surrogate country for this administrative review.[15] *See* ''Surrogate Country'' section below. On August 1, 2007, petitioner submitted publicly available information for use as SVs in the calculation of NV in the administrative review.

On August 28 and October 18, 2007, the Department placed on the record of this review copies of CBP documents pertaining to certain entries of brake rotors from the PRC exported to the United States during the POR.[16] On September 7, 2007, we issued a supplemental questionnaire to Golrich to which we received a response on September 19, 2007.

On September 4, 2007, we received questionnaire responses from Haimeng and Meita. The Department issued supplemental questionnaires to Haimeng and Meita on October 4 and October 23, 2007, respectively. We received supplemental questionnaire responses from Haimeng and Meita on November 9 and November 13, 2007, respectively.

**Period of Review**

The POR is April 1, 2006, through March 31, 2007.

**Scope of the Order**

The products covered by this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (''OEM'') which produces vehicles sold in the United States. (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in

[11] *See* the Department's memorandum entitled, ''2006–2007 Antidumping Duty Administrative Review of Brake Rotors from the People's Republic of China: Selection of Respondents,'' dated July 13, 2007 (*''Respondent Selection Memo''*).

[12] *See* the Department's memorandum entitled, ''Surrogate-Country Selection: 2006–2007 Administrative Review of the Antidumping Duty Order on Brake Rotors from the People's Republic of China,'' dated May 31, 2007.

[13] *See* the Department's memorandum entitled, ''Antidumping Duty Administrative Review of Brake Rotors from the People's Republic of China (PRC): Request for a List of Surrogate Countries,'' dated June 1, 2007 (*''AR Policy Memorandum''*).

[14] *See* the Department's letter regarding, ''New Shipper Review of Brake Rotors from the People's Republic of China,'' requesting parties to provide comments on surrogate-country selection and provide surrogate FOP values from the potential surrogate countries (*i.e.*, India, Sri Lanka, Indonesia, the Philippines and Egypt), dated June 6, 2007.

[15] *See* the Department's memorandum entitled, ''2006–2007 Administrative Review of the Antidumping Duty Order on Brake Rotors from the People's Republic of China: Selection of Surrogate Country,'' dated August 17, 2007 (*''AR Surrogate Country Memorandum''*).

[16] *See* the Department's memorandum entitled, ''2006–2007 Administrative Review of Brake Rotors from the People's Republic of China, Results of Request for Assistance from U.S. Customs and Border Protection on U.S. Entry Documents,'' dated August 28, 2007.

this order are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are currently classifiable under subheading 8708.39.5010 of the *Harmonized Tariff Schedule of the United States* (''HTSUS'').[17] Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

**Separate Rates**

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control, and thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of subject merchandise subject to review in an NME country a single rate unless an exporter can demonstrate that it is sufficiently independent of government control to be entitled to a separate rate. *See, e.g., Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 70 FR 74764, 74766 (December 16, 2005) (unchanged in the final results).

For the administrative review, in order to demonstrate separate-rate status eligibility, the Department normally requires entities, for whom a review was requested, and who were assigned a separate rate in a previous segment of this proceeding, to submit a separate-rate certification stating that they continue to meet the criteria for obtaining a separate rate. For entities that were not assigned a separate rate in the previous segment of a proceeding, to demonstrate eligibility for such, the Department requires a separate-rate application. In this administrative review the 12 entities not selected for individual review (*i.e.*, separate-rate respondents) all submitted separate-rate certifications. The two mandatory respondents (*i.e.*, Haimeng and Meita) and the 12 separate-rate respondents provided company-specific information and each [18] stated that it meets the criteria for the assignment of a separate rate. For the new shipper (*i.e.*, Tylon), a separate-rate analysis is necessary to determine whether the export activities of Tylon are independent from government control.

We considered whether the administrative review respondents and the new shipper referenced above were eligible for a separate rate. The Department's separate-rate status test to determine whether the exporter is independent from government control does not consider, in general, macroeconomic/border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level.[19]

To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of select criteria, discussed below. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588, 20589 (May 6, 1991) (*''Sparklers''*); and *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585, 22586, 22587 (May 2, 1994) (*''Silicon Carbide''*). Under this test, exporters in NME countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control over exports, both in law (*''de jure''*) and in fact (*''de facto''*).

1. Absence of *De Jure* Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR 20589. Haimeng, Meita, and Tylon each placed on the administrative record documents to demonstrate an absence of *de jure* control (*e.g.*, the 1994 ''Foreign Trade Law of the People's Republic of China,'' and the 1999 ''Company Law of the People's Republic of China''). As in prior cases, we analyzed the laws presented to us and found them to establish sufficiently an absence of *de jure* control. *See, e.g., Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 72 FR 102, 105 (January 3, 2007); *Hand Trucks and Certain Parts Thereof from the People's Republic of China; Preliminary Results and Partial Rescission of Administrative Review and Preliminary Results of New Shipper Review,* 72 FR 937, 944 (January 9, 2007). We have no new information in this proceeding which would cause us to reconsider this determination with regard to Haimeng, Meita, and Tylon. Therefore, we believe that evidence on the record supports a preliminary finding of an absence of *de jure* government control with regard to Haimeng, Metia, and Tylon.

The 12 separate-rate respondents Winhere, LABEC, Hongda, Wally, Dixion, Gren, ZLAP, TLC, ZGOLD, Luqi, Yinghao, and Jinzheng each certified that, as with the previous granting period, there is an absence of *de jure* control. Each separate-rate respondent's separate-rate certification, stated, where applicable, that it had no relationship with any level of the PRC government with respect to ownership, internal management, and business operations. In this segment, we have no new information that would cause us to reconsider the previous period's *de jure* control determination with regard to Winhere, LABEC, Hongda, Wally, Dixion, Gren, ZLAP, TLC, ZGOLD, Luqi, Yinghao, and Jinzheng.

2 . Absence of *De Facto* Control

As stated in previous cases, there is evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide*, 59 FR at 22586, 22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

[17] As of January 1, 2005, the HTSUS classification for brake rotors (discs) changed from 8708.39.5010 to 8708.39.5030. As of January 1, 2007, the HTSUS classification for brake rotors (discs) changed from 8708.39.5030 to 8708.30.5030. *See Harmonized Tariff Schedule of the United States (2007) (Rev. 2),* available at *http://www.usitc.gov.*

[18] The non-selected respondents are as follows: LABEC, Winhere, Hongda, Luqi, Wally, ZLAP, ZGOLD, TLC, Jinzheng, Gren, Yinghao, and Dixion.

[19] *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value,* 62 FR 61754, 61758 (November 19, 1997); and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (November 17, 1997).

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a government authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

In these reviews, Haimeng, Winhere, Meita, LABEC, Hongda, Wally, Dixion, Gren, ZLAP, TLC, ZGOLD, Luqi, Yinghao, Jinzheng, and Tylon each asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any government entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, each of these companies' questionnaire responses indicate that its pricing during the POR does not involve coordination among exporters.

Thus, we preliminarily determine that Haimeng, Winhere, Meita, LABEC, Hongda, Wally, Dixion, Gren, ZLAP, TLC, ZGOLD, Luqi, Yinghao, Jinzheng, and Tylon have each met the criteria for the application of a separate rate based on the documentation each of these respondents has submitted on the record of these reviews.[20]

**Preliminary Partial Rescission of 2006–2007 Administrative Review**

With respect to SZAP, Huanri, Qizheng, CNIM, Xumingyuan, Golrich, CAIEC, CAPCO, Luyuan and Honbase, each informed the Department that it did not export the subject merchandise to the United States during the POR in the combinations described below, where applicable. Specifically, (1) SZAP, Huanri, Qizheng, CNIM, Xumingyuan, and Golrich did not export subject merchandise to the United States during the POR; (2) CAIEC did not export brake rotors to the United States that were manufactured by producers other than CAPCO; (3) CAPCO did not export brake rotors to the United States that were manufactured by producers other than CAPCO; (4) Luyuan did not export brake rotors to the United States that were manufactured by producers other than Luyuan or Honbase; and (5) Honbase did not export brake rotors to the United States that were manufactured by producers other than Honbase or Luyuan. In order to corroborate these submissions, we reviewed PRC brake rotor shipment data maintained by CBP. In reviewing the CBP data, we did not find any evidence contradicting SZAP's, Huanri's, Qizheng's, CNIM's, Xumingyuan's, Golrich's, CAIEC's, CAPCO's, Luyuan's and Honbase's claims of no shipments of brake rotors to the United States during the POR.

Based on the record of these reviews, we conclude that SZAP, Huanri, Qizheng, CNIM, Xumingyuan, Golrich, CAIEC, CAPCO, Luyuan and Honbase did not export subject merchandise to the United States during the POR. For the reasons mentioned above, in accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding the administrative review for these exporters in the following specified exporter or exporter/producer combinations: (1) SZAP, (2) Huanri, (3) Qizheng, (4) CNIM, (5) Xumingyuan, (6) Golrich, (7) CAIEC/manufactured by any company other than CAPCO, (8) CAPCO/manufactured by any company other than CAPCO, (9) Luyuan/manufactured by any company other than Luyuan or Honbase, and (10) Honbase/manufactured by any company other than Honbase or Luyuan.

**Bona Fide Sales Analysis—Tylon**

In evaluating whether or not sales are commercially reasonable, and therefore *bona fide*, the Department has considered, *inter alia*, such factors as: (1) The timing of the sale; (2) the price and quantity of the sale; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's-length basis. *See Tianjin Tiancheng Pharmaceutical Co., Ltd.* v. *United States*, 366 F. Supp. 2d 1246 (CIT 2005) (''*TTPC*'') at 9, citing *Am. Silicon Techs.* v. *United States*, 110 F. Supp. 2d 992, 995 (CIT 2000). Therefore, the Department examines a number of factors, all of which may speak to the commercial realities surrounding the sale of subject merchandise. While some *bona fides* issues may share commonalities across various cases, each case is company-specific and the analysis may vary with the facts surrounding each sale. *See, e.g., Certain Preserved Mushrooms for the People's Republic of China: Final Results and Partial Rescission of New Shipper Review and Administrative Reviews*, 68 FR 41304 (July 11, 2003). The weight given to each factor investigated will depend on the circumstances surrounding the sale. *See TTPC*, 366 F. Supp at 1263.

For the reasons stated below, we preliminarily find that Tylon's reported U.S. sales during the POR appear to be *bona fide* sales, as required by 19 CFR 351.214(b)(2)(iv)(c), based on the totality of the facts on the record. Specifically, we find that the quantity or unit prices for Tylon's sales compared to the quantities and unit values of U.S. imports of comparable brake rotors from the PRC during the POR together with the totality of circumstances surrounding the sales at issue indicate the sales were not aberrational. We also examined information placed on the record by Tylon and Tylon's customer for the POR sales, and information developed independently by the Department regarding Tylon's customer for the POR sale and circumstances surrounding the POR sales. We found no evidence that the POR sales under review are not *bona fide* sales.[21] Therefore, for the reasons mentioned above, the Department preliminarily finds that Tylon's U.S. sales during the POR were *bona fide* commercial transactions.

**Non-Market Economy Country**

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 7013 (February 10, 2006). None of the parties to these proceedings has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

[20] *See* the Department's memorandum entitled ''Preliminary Results 2006–2007 Administrative and New Shipper Reviews of the Antidumping Duty Order on Brake Rotors from the People's Republic of China Separate-Rate Analysis for Respondents (Including Exporters Not Being Individually Reviewed),'' dated January 30, 2008 (''*Separate Rate Memo*'').

[21] For further information, *see* the Department's memorandum entitled ''2006–2007 New Shipper Review of the Antidumping Duty Order on Brake Rotors From the People's Republic of China: Bona Fide Analysis of Shanghai Tylon Company Ltd.,'' dated January 30, 2008.

**Surrogate Country**

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer's FOP, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more market economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the ''Normal Value'' section below. *See also*, the Department's memorandum entitled, ''Preliminary Results of the 2006–2007 Administrative and New Shipper Reviews of the Antidumping Duty Order on Brake Rotors From the People's Republic of China: Surrogate Value Memorandum,'' dated January 30, 2008 (''*Surrogate Value Memorandum*'').

The Department determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See NSR Policy Memorandum* and *AR Policy Memorandum.* Customarily, we select an appropriate surrogate country from the policy memorandum based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. In this case, we found that India is at a comparable level of economic development to the PRC; is a significant producer of the subject merchandise (*i.e.*, brake rotors); and has publicly available and reliable data. *See NSR Surrogate Country Memorandum* and *AR Surrogate Country Memorandum.*

Accordingly, we selected India as the primary surrogate country for purposes of valuing the FOPs in the calculation of NV because it meets the Department's criteria for surrogate country selection. *See NSR Surrogate Country Memorandum* and *AR Surrogate Country Memorandum.* We obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in antidumping administrative and new shipper reviews, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

**Fair Value Comparisons**

To determine whether sales of the subject merchandise by Haimeng, Meita, and Tylon to the United States were made at prices below NV, we compared each company's export prices (''EPs'') to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice below, pursuant to section 773 of the Act.

**Export Price**

Because each respondent sold subject merchandise to an unaffiliated purchaser in the United States prior to importation into the United States and use of a constructed-export-price methodology was not otherwise indicated, we used EP in accordance with section 772(a) of the Act. We made the following company-specific adjustments:

*A. Haimeng, Meita, and Tylon*

We calculated EP based on the delivery method reported to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling charges in the PRC, international freight, U.S. duties, and other U.S. customs charges pursuant to section 772(c)(2)(A) of the Act.[22] Where foreign inland freight, foreign brokerage and handling fees, or marine insurance were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate rates from India. *See* ''Factor Valuation'' section below for further discussion of surrogate rates.

In determining the most appropriate SVs to use in a given case, the Department's stated practice is to use review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the POR, and publicly available data. *See e.g., Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 38366 (July 6, 2006), and accompanying *Issues and Decision Memorandum* at Comment 1. The data we used for brokerage and handling expenses fulfill all of the foregoing criteria except that they are not specific to the subject merchandise. There is no information of that type on the record of these reviews. The Department used two sources to calculate an SV for domestic brokerage expenses: (1) Data from the January 9, 2006, public version of the Section C questionnaire response from Kejriwal Paper Ltd. (''Kejriwal'');[23] and (2) data from Agro Dutch Industries Ltd. for the POR February 1, 2004, through January 31, 2005 (*see Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005) (unchanged in final results)). Because these values were not concurrent with the POR of these administrative and new shipper reviews, we adjusted these rates for inflation using the Wholesale Price Indices (''WPI'') for India as published in the International Monetary Fund's *International Financial Statistics*, available at *http://ifs.apdi.net/imf*, and then calculated a simple average of the two companies' brokerage expense data.

Haimeng reported that its U.S. customers purchased ball bearing cup and lug bolts from PRC producers that were delivered to Haimeng in specific quantities free-of-charge, and that the components were then incorporated into models shipped to U.S. customers during the POR. Section 773(c)(3) of the Act states that ''factors of production utilized in producing merchandise include, but are not limited to the quantities of raw materials employed.'' *See, e.g., Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304, 66305 (November 14, 2006) and the accompanying *Issues and Decisions Memorandum* at Comment 9. *See also Certain Preserved Mushrooms From the People's Republic of China: Final Results and Final*

[22] *See* the Department's memorandum entitled, ''2006–2007 Administrative and New Shipper Reviews of the Antidumping Duty Order on Brake Rotors from the People's Republic of China: Analysis of the Preliminary Results Margin Calculation for Shanghai Tylon Company Ltd.,'' dated January 30, 2008 (''*Tylon Calculation Memo*''); the Department's memorandum entitled, ''2006–2007 Administrative and New Shipper Reviews of the Antidumping Duty Order on Brake Rotors from the People's Republic of China: Analysis of the Preliminary Results Margin Calculation for Longkou Haimeng Machinery Co., Ltd.,'' dated January 30, 2008 (''*Haimeng Calculation Memo*''); and the Department's memorandum entitled, 2006–2007 Administrative and New Shipper Reviews of the Antidumping Duty Order on Brake Rotors from the People's Republic of China: Analysis of the Preliminary Results Margin Calculation for Qingdao Meita Automotive Industry Co., Ltd,'' dated January 30, 2008 (''*Meita Calculation Memo*'').

[23] Kejriwal was a respondent in the certain lined paper products from India investigation for which the period of investigation was July 1, 2004, to June 30, 2005. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products From India*, 71 FR 19706 (April 17, 2006) (unchanged in final determination).

*Rescission, in Part, of Antidumping Duty Administrative Review*, 70 FR 54361 (September 14, 2005), and the accompanying *Issues and Decisions Memorandum* at Comment 13. Therefore, to reflect the U.S. customers' expenditures for these items, we adjusted the U.S. price of applicable sales of these models by adding the Indian SV for each component ( *i.e.*, the ball bearing cups and lug bolts) used to the U.S. price of such brake rotors sold to the United States during the POR. For further information, *see Haimeng Calculation Memo*.

**Normal Value**

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department will base NV on FOP because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Therefore, we calculated NV based on FOP in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

For purposes of calculating NV, we valued the PRC FOPs in accordance with section 773(c)(1) of the Act. The FOPs include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used the FOPs reported by respondents for materials, energy, labor, and packing. *See* section 773(c)(3) of the Act.

In examining SVs, we selected, where possible, the publicly available value, which was an average non-export value, representative of a range of prices within the POR or most contemporaneous with the POR, product-specific, and tax-exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China*, 69 FR 75294, 75300 (December 16, 2004) (''*Chlorinated Isocyanurates*'') (unchanged in final determination). For a detailed explanation of the methodology used to calculate SVs, *see Surrogate Value Memorandum.*

Regarding the components supplied free of charge to Haimeng noted above, section 773(c)(3) of the Act states that the ''factors of production include but are not limited to the quantities of raw materials employed.'' Therefore, consistent with the corresponding adjustment to U.S. price discussed above, we valued the ball bearing cups and lug bolts usage amounts reported by Haimeng for specific brake rotor models by using an Indian SV for each input. *See Haimeng Calculation Memo* and *Surrogate Value Memorandum*.

**Factor Valuations**

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by the respondents for the POR. We relied on the factor-specific data submitted by the respondents for the above-mentioned inputs in their questionnaire and supplemental questionnaire responses, where applicable, for purposes of selecting SVs.

To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available Indian SVs (except where noted below). In selecting the SVs, we considered the quality, specificity, and contemporaneity of the data. *See, e.g., Folding Metal Tables and Chairs From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 71 FR 71509 (December 11, 2006), and accompanying *Issues and Decision Memorandum* at Comment 9. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit (''Federal Circuit''). *See Sigma Corp.* v. *United States,* 117 F. 3d 1401, 1408 (Fed. Cir. 1997). Where necessary, we adjusted the SVs for inflation/deflation using the WPI as published on the Reserve Bank of India (''RBI'') Web site, available at *http://www.rbi.org.in*. For a detailed description of all SVs used for respondents, *see* the *Surrogate Value Memorandum*.

Except where discussed below, we valued raw material inputs using April 2006 through March 2007, weighted-average unit import values derived from the Monthly Statistics of the Foreign Trade of India (''MSFTI''), as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India and compiled by the World Trade Atlas (''WTA''), available at <http:www.gtis.com/wta.htm>. The Indian WTA import data is reported in rupees and is contemporaneous with the POR.[24] Indian SVs denominated in Indian rupees were converted to U.S. dollars using the applicable daily exchange rate for India for the POR. See *http://www.ia.ita.doc.gov/exchange/index.html*. Where we could not obtain publicly available information contemporaneous with the POR with which to value factors, we adjusted the SVs for inflation using the WPI for India. See *Surrogate Value Memorandum.*

Furthermore, with regard to the WTA Indian import-based SVs, we have disregarded prices from NME countries[25] and those we have reason to believe or suspect may be subsidized, because we have found in other proceedings that the exporting countries maintain broadly available, non-industry-specific export subsidies and, therefore, there is reason to believe or suspect all exports to all markets from such countries may be subsidized.[26] We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. No. 576 100th Cong., 2. Sess. 590–91 (1988). Rather, the Department was instructed by Congress to base its decision on information that is available to it at the time it is making its determination. Therefore, we exclude export prices from Indonesia, South Korea, Thailand, and India when calculating the Indian import-based SVs. *See Surrogate Value Memorandum*. Finally, we excluded imports that were labeled as originating from an ''unspecified'' country from the average value, because we could not be certain that they were not from either an

[24] See *Surrogate Value Memorandum* at Attachment 1.

[25] The NME countries are Armenia, Azerbaijan, Belarus, Georgia, Kyrgyz Republic, Moldova, PRC, Tajikistan, Turkmenistan, Uzbekistan, and Vietnam.

[26] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of the 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 1953 (Jan. 10, 2001), and accompanying *Issues and Decision Memorandum* at Comment 1; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part,* 66 FR 57420 (Nov. 15, 2001), and accompanying *Issues and Decision Memorandum* at Comment 1; and *China National Machinery Imp. & Exp. Corp.* v. *United States*, 293 F. Supp. 2d 1334, 1339 (CIT 2003), as affirmed by the Federal Circuit, 104 Fed. Appx. 183 (Fed. Cir. 2004).

NME or a country with general export subsidies.

To value electricity, the Department used the 2000 electricity price rates from *Key World Energy Statistics 2003*, published by the International Energy Agency available at *http://www.eia.doe.gov/emeu/international/elecprii.html*. Because this data was not contemporaneous with the POR, we adjusted the average value for inflation using WPI. *See Surrogate Value Memorandum* at Attachment 5.

For direct labor, indirect labor and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries as reported on Import Administration's home page. *See* ''Expected Wages of Selected NME Countries'' (revised January 2007) (available at *http://www.trade.gov/ia/*). For further details on the labor calculation, *see Surrogate Value Memorandum* at Attachment 7. Because the regression-based wage rates do not separate the labor rates into different skill levels or types of labor, we applied the same wage rate to all skill levels and types of labor reported by each respondent.

For packing materials, we used the per-kilogram values obtained from the Indian WTA import data and made adjustments to account for freight costs incurred between the PRC supplier and the respondent. *See Surrogate Value Memorandum* at Attachment 1.

The Department valued truck freight using Indian freight rates published by Indian Freight Exchange available at *http://www.infreight.com.* This source provided daily rates from six major points of origin to six destinations in India for the period April 2005 through October 2005. Because this data was not contemporaneous with the POR, we adjusted the average value for inflation using WPI. We averaged the monthly rates for each rate observation to obtain an SV. *See Surrogate Value Memorandum* at Attachment 8.

Both Meita and Tylon reported that during the manufacturing process, their subject merchandise was transported from each respondent's respective casting facility to their finishing workshops. To value PRC freight for the distance between each respondents' casting facility and the finishing workshop, we used the inland freight SV calculated for inputs shipped by truck, as discussed above. *See Meita Calculation Memorandum* and *Tylon Calculation Memorandum.*

Petitioners submitted financial information for two Indian producers of identical and comparable merchandise: Bosch Chassis Systems India Ltd. (''Bosch'') for the year ending March 31, 2006, and Rico Auto Industries Limited (''Rico'') for the year ending March 31, 2005.[27] Because neither Bosch's nor Rico's financial statements were contemporaneous with the POR, the Department placed on the record of these reviews the public information from Rico's 2006–2007 annual report and Bosch's nine-month (*i.e.*, April through December 2006) annual report[28] to be considered for valuing FOPs.[29]

We preliminarily determine that both Bosch's and Rico's 2006–2007 financial statements are the best available information with which to calculate financial ratios because they appear to be complete, are publicly available, and are contemporaneous with the POR.[30] Therefore, for factory overhead, selling, general, and administrative expenses (''SG&A''), and profit values, consistent with 19 CFR 351.408(c)(4), we used the public information from the 2006–2007 annual reports of Bosch and Rico. From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor, and energy (''ML&E'') costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A. Where appropriate, we did not include in the surrogate overhead and SG&A calculations the excise duty amount listed in the financial reports. For a full discussion of the calculation of these ratios, *see Surrogate Value Memorandum* and its accompanying calculation worksheets at Attachment 6.

To value coking coal, coke, and firewood, we applied SVs using Indian import prices by HTS classification for the POR reported in the MSFTI, and available from WTA. *See Surrogate Value Memorandum* for a full discussion of the calculation of these ratios.

**Currency Conversion**

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank. *See http://www.ia.ita.doc.gov/exchange/index.html.*

**Preliminary Results of Reviews**

As a result of our review, we preliminarily determine that the following margins exist for the period April 1, 2006, through March 31, 2007:

BRAKE ROTORS FROM THE PRC

| Individually Reviewed Exporters 2006–2007 Administrative Review | Weighted-Average Percent Margin (Percent) |
|---|---|
| Longkou Haimeng Machinery Co., Ltd. | 0.03 (*de minimis*). |
| Qingdao Meita Automotive Industry Co., Ltd. | 0 |
| **Separate Rate Applicant Exporters 2006–2007 Administrative Review** | |
| Laizhou Auto Brake Equipment Co., Ltd. | 0 |
| Yantai Winhere Auto-Part Manufacturing Co., Ltd. | 0 |
| Laizhou Hongda Auto Replacement Parts Co., Ltd. | 0 |
| Laizhou City Luqi Machinery Co., Ltd. | 0 |
| Laizhou Wally Automobile Co., Ltd. | 0 |
| Zibo Luzhou Automobile Parts Co., Ltd. | 0 |
| Zibo Golden Harvest Machinery Limited Company. | 0 |
| Longkou TLC Machinery Co., Ltd. | 0 |
| Longkou Jinzheng Machinery Co., Ltd. | 0 |
| Qingdao Gren (Group) Co .... | 0 |
| Shenyang Yinghao Machinery Co. | 0 |
| Longkou Dixion Brake System Ltd. | 0 |
| **2006–2007 New Shipper Review** | |
| Shanghai Tylon Company Ltd | 0 |
| PRC-Wide Rate ..... | Margin (Percent). |
| PRC-Wide Rate ..... | 43.32 |

While the Department has, for these preliminary results, applied the average of the rates calculated for the two mandatory respondents, Haimeng and Meita, to the companies not individually examined, LABEC, Winhere, Hongda, Luqi, Wally, ZLAP,

[27] *See* Petitioners' submission dated August 1, 2007.

[28] In Bosch's nine-month 2006 annual report, it stated that Bosch was changing its financial reporting from a fiscal year to a calendar year, starting January 1, 2007.

[29] *See* the Department's memorandum, entitled, ''2006–2007 Administrative and New Shipper Reviews of the Antidumping Duty Order on Brake Rotors from the People's Republic of China: Surrogate Financial Statements,'' dated January 3, 2007.

[30] *See Brake Rotors From the People's Republic of China: Final Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of the 2005–2006 Administrative Review*, 72 FR 42386, 42389 (August 22, 2007), and the accompanying *Issues and Decision Memorandum* at Comment 2 (*''2005–2006 Brake Rotors''*).

ZGOLD, TLC, Jinzheng, Gren, Yinghao, and Dixion, we invite comments from interested parties regarding the methodology to be used to determine the rate for non-examined companies. Specifically, we invite interested parties to comment on the rate to be applied to the non-examined companies, considering, but not limited to, the following factors: (a) The Department has limited its examination of respondents pursuant to section 777A(c)(2)(B) of the Act, (b) section 735(c)(5) provides that, with some exceptions, the all-others rate in an investigation is to be calculated excluding any margins that are zero, *de minimis* or based entirely on facts available, and (c) the Statement of Administrative Action states that with respect to the calculation of the all-others rate in such cases, ''the expected method will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available. However, if this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods.''

**Disclosure**

We will disclose the calculations used in our analysis to parties to these proceedings within five days of the date of publication of this notice. *See* 19 CFR 351.224(b).

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in these proceedings are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument. Parties are requested to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Additionally, parties are requested to provide its case brief and rebuttal briefs in electronic format (*e.g.*, WordPerfect, Microsoft Word, pdf, etc.). Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. The Department will issue the final results of these reviews, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

**Assessment Rates**

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by these reviews. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of these reviews. In accordance with 19 CFR 351.212(b)(1), for Haimeng, Meita, and Tylon, we calculated an exporter/importer (or customer)-specific assessment rate for the merchandise subject to these reviews. Where the respondent has reported reliable entered values, we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). *See* 19 CFR 351.212(b)(1). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, we will apply the assessment rate to the entered value of the importer's/customer's entries during the review period. *See* 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). *See* 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* ratios based on the estimated entered value. Where an importer (or customer)-specific *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

For the companies receiving a separate rate that were not selected for individual review (*i.e.*, LABEC, Winhere, Hongda, Luqi, Wally, ZLAP, ZGOLD, TLC, Jinzheng, Gren, Yinghao, and Dixion), we will calculate an assessment rate based on the weighted average of the cash deposit rates calculated for the companies selected for individual review pursuant to section 735(c)(5)(B) of the Act. Where the weighted average *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of the new shipper review for all shipments of subject merchandise from Tylon entered or withdrawn from warehouse, for consumption on or after publication date: (1) For subject merchandise manufactured and exported by Tylon, the cash deposit rate will be zero percent; and (2) for subject merchandise exported by Tylon but not manufactured by Tylon, the cash deposit rate will be the PRC-wide rate.

The following cash deposit requirements will be effective upon publication of the final results of the administrative review for all shipments of brake rotors from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for Haimeng, Meita, LABEC, Winhere, Hongda, Luqi, Wally, ZLAP, ZGOLD, TLC, Jinzheng, Gren, Yinghao, and Dixion will be the rates determined in the final results of review (except that if a rate is *de minimis*, *i.e.*, less than 0.50 percent, a zero cash deposit will be required); (2) the cash deposit rate for previously investigated or reviewed PRC and non-PRC exporters who received a separate rate in a prior segment of the proceeding (which were not reviewed in this segment of the proceeding) will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate will be the PRC-wide rate of 43.32 percent; and (4) the cash deposit rate for all non-PRC exporters of subject merchandise which have not received their own rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this

review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative and new shipper reviews and notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.213 and 351.214.

Dated: January 30, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8–2081 Filed 2–4–08; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### International Code Council: The Update Process for the International Codes

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of Code Development Hearings on U.S. Model Building Safety and Fire Prevention Codes, 2009 editions.

**SUMMARY:** The International Code Council (ICC), under whose auspices the International Codes (''I-Codes'') are developed, maintains a process for updating these model codes based on receipt of proposals from interested individuals and organizations. Each of the I-Codes are comprehensively updated and re-published every three years with a supplement released between each edition. The most current versions of the I-Codes are the 2006 editions and the 2007 supplements to the 2006 editions. The 2009 editions of the I-Codes, the subject of this notice, will be released in the first quarter of 2009.

The purpose of this notice is to invite public participation in the Code Development Hearings. At this session, all proposed changes submitted for the family of the 2009 I-Codes will be considered by the respective Code Development Committees, with the assembled body of the International Code Council members also afforded the opportunity to vote via an assembly action. Proposals for consideration at these hearings were received by the August 20, 2007, deadline and were made publically available as an electronic document on November 7, 2007, and as a printed Monograph on December 18, 2007.

The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of ICC is being undertaken as a public service. NIST does not necessarily endorse, approve, or recommend any of the codes or standards referenced in the notice.

*Session Dates:* The Code Development Hearings of the 2007/2008 Code Development Cycle will occur between February 18 and March 1, 2008, at the Palm Springs Convention Center in Palm Springs, California.

The agenda for the hearing as well as updates to the schedule are also posted on the ICC Web site at: *http://www.iccsafe.org.*

**FOR FURTHER INFORMATION CONTACT:** Mike Pfeiffer, PE, Deputy Senior Vice President, Codes and Standards Development at ICC's Chicago District Office, 4051 West Flossmoor Road, Country Club Hills, Illinois 60478; Telephone 888–422–7233, Extension 4338; e-mail *mpfeiffer@iccsafe.org.*

**SUPPLEMENTARY INFORMATION:**

#### Background

The ICC produces a family of codes and standards that are comprehensive, coordinated, and are widely used across the country in the regulation of the built environment. Local, state, and federal agencies use these codes and standards as the basis for developing regulations concerning new and existing construction. ICC's model codes and standards are each developed and maintained through voluntary consensus development processes known as the Governmental Consensus Process. Consistent with the voluntary consensus requirements of the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113), the Governmental Consensus process incorporates a balance of involved interests, ensures due process, provides for conclusion by consensus, the resolution of objections by interested parties, the fair consideration of all public comments, and has a prescribed process for appeal of any action.

The ICC code development process is initiated when proposals from interested persons—supported by written data, views, or arguments—are solicited, received and then published in the Proposed Changes document. This document is distributed a minimum of 30 days in advance of the Code Development Hearings and serves as the agenda for that session.

At the Code Development Hearing the ICC Code Development Committee for each code or subject area of the code considers testimony and takes action on each proposal (Approval, Disapproval, or Approval as Modified). At the conclusion of committee action on each proposal, any member of the public assembly may make a motion for a vote by the ICC members in attendance (''assembly action'') to consider an action different than the committee action. Successful assembly actions on code changes become part of the record of public comments and are considered at the Final Action Hearing. Following the Code Development Hearing, the Report of the Public Hearing is published and identifies the disposition of each proposal, the reason for the committee's action, and successful assembly actions. Any person may provide additional comment on the committee actions in the public comment period following the first hearing. These comments are published and distributed in Final Action Agenda which serves as the agenda for the second public hearing in each cycle.

Proposals which are approved by a vote of the Governmental Members of ICC at the Final Action Hearing are incorporated in either the Supplement or Edition, as applicable, with the next 18-month cycle starting with the submittal deadline for proposals. Proponents of proposals will receive a copy of all documents (Proposed Changes, Report of the Public Hearing and Final Action Agenda). Any interested party may also request a copy, free of charge, by downloading the ''return coupon'' from the ICC Web site at *http://www.iccsafe.org* and forwarding it as directed.

*The 2009 International Codes consist of the following:* International Building Code; International Energy Conservation Code; International Existing Building Code; International Fire Code; International Fuel Gas Code; International Mechanical Code; ICC Performance Code for Buildings and Facilities; International Plumbing Code; International Private Sewage Disposal Code; International Property Maintenance Code; International Residential Code; International Urban-Wildland Interface Code; and International Zoning Code.

Dated: January 31, 2008.

**Richard F. Kayser,**

*Acting Deputy Director.*

[FR Doc. E8–2077 Filed 2–4–08; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF42**

### Marine Mammals; File No. 1021–1658

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; issuance of permit amendment.

**SUMMARY:** Notice is hereby given that Jenifer A. Zeligs-Hurley, Ph.D., Moss Landing Marine Laboratories, 8272 Moss Landing Road, Moss Landing, CA 95039, has been issued a minor amendment to Scientific Research Permit No. 1021–1568, for research on California sea lions (*Zalophus californianus*) and Pacific harbor seals (*Phoca vitulina richardsi*) maintained at the Moss Landing Marine Laboratories.

**ADDRESSES:** The amendment 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.

**FOR FURTHER INFORMATION CONTACT:** Amy Sloan or Tammy Adams, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** The original permit was issued on March 14, 2003 (67 FR 53780), with an expiration date of March 31, 2008. The original permit authorized Dr. Zeligs-Hurley to conduct physiological and veterinary medical studies on California sea lions and harbor seals maintained at Moss Landing Marine Laboratories.

The requested amendment has been granted 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 amendment extends the duration of the permit by 12 months beyond that established in the original permit. The amendment also allows studies with captive California sea lions to evaluate whether a mild underwater electric field can deter them from an area when food is present. No other terms or conditions of the permit were changed.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: January 28, 2008.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E8–2056 Filed 2–4–08; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF43**

### Mid-Atlantic Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Trawl Survey Advisory Panel, composed of representatives from the National Marine Fisheries Service's Northeast Fisheries Science Center (NEFSC), the Mid-Atlantic Fishery Management Council (MAFMC), the New England Fishery Management Council (NEFMC), and several independent scientific researchers, will hold a public meeting.

**DATES:** The meeting will be held on Thursday, February 21, 2008, from 10 a.m. to 6 p.m. and Friday, February 22, 2008, from 8 a.m. to 2 p.m.

**ADDRESSES:** The meeting will be held at the Crowne Plaza, Two Harmon Plaza, Secaucus, NJ 07094; telephone: (201) 348–6900.

*Council address*: Mid-Atlantic Fishery Management Council; 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674–2331.

**FOR FURTHER INFORMATION CONTACT:** Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674–2331, extension 19.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to review the status of the new research vessel FSV Henry B. Bigelow and evaluate survey protocols for the new survey.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 674–2331 extension 18, at least 5 days prior to the meeting date.

Dated: January 30, 2008.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E8–1973 Filed 2–4–08; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF46**

### Pacific Halibut Fishery; Guideline Harvest Levels for the Guided Recreational Halibut Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of guideline harvest level.

**SUMMARY:** NMFS provides notice of Pacific halibut guideline harvest levels (GHLs) for the guided sport charter vessel fishery in the International Pacific Halibut Commission (IPHC) regulatory areas 2C and 3A. The GHLs provide a benchmark harvest level for participants in the charter fishery. This notice is necessary to meet the management and regulatory requirements for the GHLs and to inform the public about the 2008 GHLs for the charter halibut fishery.

**DATES:** The GHLs are effective beginning February 1, 2008, through December 31, 2008. This period is specified by the IPHC as the sport fishing season in all waters of Alaska.

**FOR FURTHER INFORMATION CONTACT:** Julie Scheurer, (907) 586–7356, or email at *julie.scheurer@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** NMFS implemented a final rule to establish GHLs in IPHC regulatory areas 2C and 3A for the harvest of Pacific halibut (*Hippoglossus stenolepis*) by the charter fishery on August 8, 2003 (68 FR

47256). The GHLs are intended to serve as a benchmark harvest level for participants in the charter fishery.

This announcement is consistent with 50 CFR 300.65(c)(2), which requires that GHLs for IPHC regulatory areas 2C and 3A be specified by NMFS and announced by publication in the **Federal Register** no later than 30 days after receiving information from the IPHC. The IPHC annually establishes the constant exploitation yield (CEY) for halibut in IPHC regulatory areas 2C and 3A. Regulations at § 300.65(c)(1) establish the GHLs based on the CEY that is established annually by the IPHC. The CEY established by the IPHC for 2008 is 6,500,000 lb (2,948.4 mt) in Area 2C and 28,960,000 lb (13,136.0 mt) in Area 3A. The corresponding GHLs are 931,000 lb (447.2 mt) in Area 2C, and 3,650,000 lb (1,655.6 mt) in Area 3A. The GHL in Area 2C has been reduced from the 2007 level of 1,432,000 lb (649.5 mt). The GHL for Area 3A did not change.

This is a notice of the GHLs in Areas 2C and 3A for 2008 and does not require any regulatory action by NMFS. If a GHL is exceeded in 2008, NMFS will notify the North Pacific Fishery Management Council (Council) in writing within 30 days of receipt of that information. The Council has proposed management actions to reduce the harvest of Pacific halibut in the Area 2C guided charter vessel fishery to the GHL (72 FR 74257, December 31, 2007). The Secretary of Commerce may issue a final rule after consideration of the 2008 GHL and public comments on the proposed rule.

## Classification

This notice does not require any additional regulatory action by NMFS and does not impose any additional restrictions on harvests by the charter fishery. If a GHL is exceeded in any year, the Council would be notified, but would not be required to take action. This process of notification is intended to provide the Council with information about the level of Pacific halibut harvest by the charter fishery in a given year and could prompt future action.

**Authority:** 16 U.S.C. 773 *et seq.*

Dated: January 30, 2008.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E8–2057 Filed 2–4–08; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

**[Docket No. 080129095–8096–01]**

### Spectrum Sharing Innovation Test-Bed

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce

**ACTION:** Notice of Solicitation of Participation

**SUMMARY:** On June 8, 2006, the Department of Commerce's National Telecommunication and Information Administration (NTIA) published a Notice of Inquiry in the Federal Register seeking public comment on the implementation of the Presidential Spectrum Policy Initiative Spectrum Sharing Innovation Test-Bed (Test-Bed). This Notice of Solicitation of Participation seeks expressions of interest from parties that may be willing to participate in the Test-Bed.

**DATES:** Expressions of interest are due on or before February 29, 2008.

**ADDRESSES:** Expressions of interest should be sent to the attention of Ed Drocella, Office of Spectrum Management, 1401 Constitution Avenue, N.W., Room 6725, Washington DC 20230; by facsimile transmission to (202) 482–4595; or by electronic mail to testbed@ntia.doc.gov.

**FOR FURTHER INFORMATION CONTACT:** Ed Drocella at (202) 482–2608 or edrocella@ntia.doc.gov.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In May 2003, President Bush established the Spectrum Policy Initiative to promote the development and implementation of a United States spectrum policy for the 21st Century.[1] In response to the Spectrum Policy Initiative, the Secretary of Commerce established a Federal Government Spectrum Task Force and initiated a series of public meetings to address policies affecting spectrum use by the federal, state, and local governments, and the private sector. The recommendations resulting from these activities were included in two reports released by the Secretary of Commerce in June 2004.[2] Based on the recommendations contained in these reports, the President directed the federal agencies on November 30, 2004, to plan the implementation of the recommendations contained in the reports.[3]

One of these recommendations stated that NTIA and the Federal Communications Commission (FCC), in coordination with the federal agencies are to establish a Test-Bed to examine the feasibility of increased sharing between federal and non-federal users.[4] Specifically, the Test-Bed recommendation states:

Within two years of this report's publication, NTIA and the FCC should establish a pilot program to allow for increased sharing between federal and non-federal users. NTIA and the FCC should each identify a segment of spectrum of equal bandwidth within their respective jurisdiction for this program. Each segment should be approximately 10 MHz for assignment on a shared basis for federal and non-federal use. The spectrum to be identified for this pilot program could come from bands currently allocated on either an exclusive or shared basis. Two years after the inception of the pilot program, NTIA and the FCC should provide reports outlining the results and suggesting appropriate procedures for expanding the program as appropriate.[5]

The recommendation to establish the Test-Bed recognized that the increased use of spectrum for federal and non-federal communications necessitates increased sharing to benefit both federal and non-federal users of the spectrum.

On June 8, 2006, NTIA published a Notice of Inquiry (NOI) in the Federal Register seeking public comment on issues related to the Test-Bed.[6] The FCC also solicited public comment on issues related to the Test-Bed through a

[1] Presidential Memorandum on Spectrum Policy for the 21st Century, 69 FR 1568 (Jan. 9, 2004), 39 Weekly Comp. Pres. Doc. 726, 727 (May 29, 2003), available at http://www.whitehouse.gov/news/releases/2003/06/20030605-4.html.

[2] Department of Commerce, *Spectrum Policy for the 21st Century - The President's Spectrum Policy Initiative: Report 1 Recommendations of the Federal Government Spectrum Task Force* (June 2004) (''Report 1''); Department of Commerce, *Spectrum Policy for the 21st Century - The President's Spectrum Policy Initiative: Report 2 Recommendations From State and Local Governments and Private Sector Responders* (June 2004) (''Report 2''). These reports are available at http://www.ntia.doc.gov/reports/.

[3] *President's Memorandum on Improving Spectrum Management for the 21st Century*, 49 Weekly Comp. Pres. Doc. 2875 (Nov. 29, 2004).

[4] By this Notice, NTIA is implementing its responsibilities under the President's November 2004 Executive Memorandum. The FCC is also designating spectrum and establishing procedures for the Test-Bed through a public notice. Public Notice, Federal Communications Commission Designates Spectrum and Provides Guidance for Participation in a Spectrum Sharing Innovation Test-Bed, ET Docket No. 06–89.

[5] Report 1, *supra* note 2, Recommendation 11; Report 2, *supra* note 2, Recommendation 6(b).

[6] National Telecommunications and Information Administration, Docket, No. 060602142-6142-01,Notice of Inquiry, 71 FR 33282 (June 8, 2006).

separate Public Notice (PN).[7] There were 14 comments filed in response to the NOI and 16 comments and 9 reply comments filed in response to the PN.[8] In addition, the public comments were reviewed by the Commerce Spectrum Management Advisory Committee (CSMAC), which was established as part the Presidential Spectrum Policy Initiative to advise the Assistant Secretary of Communications and Information, Department of Commerce, on needed reforms to spectrum policies and management to enable the introduction of new spectrum dependent technologies and services.[9] NTIA also sought comments from the Interdepartment Radio Advisory Committee (IRAC).[10] The public responses to the NTIA NOI and FCC PN as well as the comments provided by the CSMAC and the IRAC were used to develop the federal portion of the Test-Bed described below.

## II. Test-Bed Description

**Test-Bed Goal:** To objectively evaluate new technologies to facilitate sharing between federal and non-federal spectrum users. If sharing is successfully demonstrated, the results of the Test-Bed can be used as the basis to establish service rules for the technologies that have operated in the Test-Bed frequency bands.[11]

**Number of Simultaneously Operating Test-Beds:** One.

**Test-Bed Technology:** Equipment employing Dynamic Spectrum Access (DSA) technology.[12]

**Test-Bed Frequency Band:** 410-420 MHz.

**Authorization of Test-Bed Operations:** FCC Part 5 Experimental Radio Service Rules.

**Limitations on Test-Bed Operations:** Frequency and/or geographic limitations may be identified as necessary.

**Protection of Incumbent Spectrum Users:** To address potential interference to incumbent spectrum users the Test-Bed employing DSA equipment will be performed in three phases:

**Phase 1 - Equipment Characterization**. Equipment employing DSA techniques will be sent to the NTIA Institute for Telecommunication Sciences in Boulder, Colorado and characterization measurements of the DSA capabilities in response to simulated environmental signals will be performed.

**Phase 2 - Evaluation of Capabilities**. After successful completion of Phase 1, the DSA capabilities of the equipment in the geographic area of the Test-Bed will be evaluated.

**Phase 3 - Field Operation Evaluation**. After successful completion of Phase 2, the DSA equipment will be permitted to transmit in an actual radio frequency signal environment. An automatic signal logging capability will be used during the operation of the Test-Bed to help resolve interference events if they occur. A point-of-contact will also be established to stop Test-Bed operations if interference is reported.

**Planning and Evaluation of Test-Bed:** A flexible peer review process open to the public will be employed.[13] Federal and non-federal users will have an opportunity to participate in the development of test plans, review status reports, and review the final report on the results of the Test-Bed.

## III. Expressions of Interest

The following criteria will be used to evaluate the DSA technologies proposed for the Test-Bed:[14]

How well does the proposed technology achieve the goal of the Test-Bed?

How readily available is the equipment proposed for the Test-Bed?

How well does the proposed technology explore creative and original concepts in spectrum sharing?

For the proposed technology, can the results of the Test-Bed be disseminated broadly to enhance scientific and technologic understanding?

How well does the proposed technology address the potential impact on the incumbent spectrum user(s)?

Can the proposed technology be adapted for a variety of services and applications, including broadband, military/homeland security, and public safety?

Are there any technical factors that limit the proposed technology to a specific frequency range?

Will the necessary technical support be provided to assure performance of the equipment during the Test-Bed?

On or before February 29, 2008, interested parties wishing to participate in the Test-Bed should submit to the address set forth above, their name, address, phone number, e-mail address and a short description of the DSA technology. After receiving all submissions, NTIA may contact any party that submitted an expression of interest to follow-up on how its DSA technology would meet the above evaluation criteria. NTIA will send via U.S. mail a letter to the selected Test-Bed participants. NTIA will also publish a list of all Test-Bed participants on its website.

Dated: January 30, 2008.

**Kathy D. Smith,**

*Chief Counsel, National Telecommunications and Information Administration.*

[FR Doc. E8–2050 Filed 2–4–08; 8:45 am]

**BILLING CODE 3510–60–S**

[7] Federal Communications Commission, ET Docket No. 06-89, FCC 06-77, Creation of a Spectrum Sharing Innovation Test-Bed, 71 FR 35675 (June 21, 2006).

[8] The complete public comments filed in response to the NOI are available at http://www.ntia.doc.gov. The complete public comments and reply comments filed in response to the PN are available on the FCC Electronic Comment Filing System (ET Docket No. 06-89).

[9] Commerce Spectrum Management Advisory Committee Report: Opportunities Relating to the Spectrum Sharing Test Bed, available at http://www.ntia.doc.gov/osmhome/reports/2007/CSMAC__TestBed__Report.pdf.

[10] The IRAC, consisting of representatives of 20 federal agencies, serves in an advisory capacity to the Assistant Secretary of Commerce for Communications and Information. The IRAC assists the Assistant Secretary in the discharge of responsibilities pertaining to the use of the electromagnetic spectrum.

[11] The subsequent designation of bands where the technologies might be authorized to operate on a permanent basis would be the subject of a separate rulemaking.

[12] Dynamic Spectrum Access technology allows a radio device to (i) evaluate its radio frequency environment using spectrum sensing, geo-location, or a combination of spectrum sensing and geo-location techniques, (ii) determine which frequencies are available for use on a non-interference basis, and (iii) reconfigure itself to operate on the identified frequencies.

[13] There may be certain limitations on the peer review process to take into account the proprietary rights of the developers participating in the Test-Bed. As part of the Test-Bed, NTIA may enter into Cooperative Research and Development Agreements or Joint Project Agreements with the equipment developers.

[14] The NTIA NOI proposed these criteria to evaluate the Test-Bed technologies and they are adopted as evaluation criteria herein.

## COMMISSION OF FINE ARTS

### Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 21 February 2008, at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address, or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10

days before the meeting date. Dated in Washington DC, 29 January 2008.

**Thomas Luebke,**

*AIA, Secretary.*

[FR Doc. 08–482 Filed 2–4–08; 8:45 am]

**BILLING CODE 6330–01–M**

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 08–C0003]**

### Vornado Liquidating Trust for and on Behalf of Vornado Air Circulation Systems, Inc., a Trust, Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which is provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e0). Published below is a provisionally-accepted Settlement Agreement with Vornado Liquidating Trust for and on behalf of Vornado Air Circulation Systems, Inc., a Trust, containing a civil penalty of $500,000.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by February 20, 2008.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 08–C0003, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

**FOR FURTHER INFORMATION CONTACT:** Ronald G. Yelnik, Trial Attorney, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7582.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: January 30, 2008.

**Todd A. Stevenson,**

*Secretary.*

**United States of America Consumer Product Safety Commission, CPSC Docket No. 08–C0003**

**In the Matter of Vornado Liquidating Trust for and on Behalf of Vornado Air Circulation Systems, Inc. a Trust**

*Settlement Agreement and Order*

1. This Settlement Agreement is made by and between the staff (the ''*staff*'') of the U.S. Consumer Product Safety Commission (the ''*Commission*'') and the Vornado Liquidating Trust, a trust acting for and on behalf of Vornado Air Circulation Systems, Inc., a dissolved Kansas corporation, and established for the sole benefit of the corporation's shareholders, in accordance with 16 CFR 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act (''*CPSA*''). This Settlement Agreement and the incorporated attached Order resolve the staff's allegations set forth below.

*The Parties*

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the CPSA, 15 U.S.C. 2051–2084.

3. Vornado Air Circulation Systems, Inc. was a corporation organized and existing under the laws of the State of Kansas, with its principal corporate office located in Andover, Kansas. On December 29, 2006, Vornado Air Circulation Systems, Inc. ceased operations and sold most of its operating assets to a private equity group which formed a new company, Vornado Air LLC, a Delaware company. Vornado Air Circulation Systems, Inc.'s remaining assets and its proceeds from the asset sale were assigned to the Vornado Liquidating Trust, which was established as of December 29, 2006, for the purpose of satisfying Vornado Air Circulation Systems Inc.'s remaining liabilities, including the claims asserted by the Commission which are the subject of this Settlement Agreement. Vornado Air Circulation Systems, Inc. was legally dissolved in September 2007. Vornado Air Circulation Systems, Inc. and the Vornado Liquidating Trust are hereinafter referred to collectively as ''Vornado'' or the ''firm.''

4. At all times relevant herein, Vornado designed, manufactured and sold portable electric heaters, including those that are the subject of this Settlement Agreement and Order.

*Staff Allegations*

5. Between July 1991 and January 2004, Vornado manufactured and sold approximately one million of the subject portable electric heaters, model numbers 180VH®, Intellitemp®, EVH® (collectively, ''*Heaters*'' or ''*Products*''), which were sold at retailers and distributors nationwide as well as through Vornado's Web site, for between $50 and $120.

6. The Heaters are ''consumer product(s)'' and, at the times relevant herein, Vornado was a ''manufacturer'' of ''consumer product(s),'' which were ''distributed in commerce'' as those terms are defined or used in sections 3(a)(1), (4), (11) and (12) of the CPSA, 15 USC 2052(a)(1), (4), (11) and (12).

7. The Heaters are defective because a faulty electrical connection can cause the Product to overheat and stop working, thereby posing a fire hazard to consumers. More specifically, certain of the Heaters are defective and pose a fire hazard to consumers because they contain a faulty crimp involving insulated connectors (''*quick connects*''), a flaw which can cause the Heaters to overheat.

8. Vornado received its first report of an overheating incident in January 1993. By the end of 1993, Vornado knew of at least 22 reports of Heater incidents involving melting, smoking, burning, actual fire or the emission of flame.

9. On or about October 27, 1997, Vornado changed the design of its Heaters to incorporate insulated quick connects on the white wires between the heating element and the switch. The redesigned Heaters were sold from the fall of 1998 through 2003.

10. Although Vornado had received reports of Products overheating prior to the design change described in paragraph 9, the firm asserts that this design change caused the faulty crimp problem which resulted in the majority of the overheating incidents that eventually came to Its attention.

11. After implementing the design change in question, Vornado received many reports of over-heating incidents with the Heaters, some of which involved fires and the emission of flames. These reports continued for several years thereafter.

12. Despite being aware of the information set forth in paragraphs 5 through 11, Vornado did not report to the Commission about the overheating issue involving the heaters until February 20, 2004, and even then only when requested to do so by the Commission staff.

13. By the time of its February 20, 2004 report to the CPSC, Vornado was

aware of at least 300 reports of overheating incidents involving the subject Heaters. More than 100 of these incident reports involved Heaters catching fire and/or emitting flames, while the remainder related to units burning, melting and smoking.

14. Although Vornado had obtained sufficient information to reasonably support the conclusion that the Heaters contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, it failed to inform the Commission of such defect or risk as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. 2064(b)(2) and (3). In failing to do so, Vornado ''knowingly'' violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

15. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Vornado is subject to civil penalties for its failure to report as required under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

*Response of Vornado*

16. Vornado contests and denies the staff's allegations. Vornado asserts that it acted responsibly and reasonably to investigate and respond to incident reports it received involving the Products, including its implementation of a successful product recall in cooperation with the Commission on August 3, 2004. Vornado denies it was aware of facts that arguably could have given rise to a reporting obligation under the CPSA until the time it actually filed a report with the Commission on February 20, 2004. Likewise, the firm denies that any alleged violation of the CPSA's reporting requirements was committed ''knowingly.''

17. Vornado has entered this settlement in order to resolve this claim without the expense and distraction of litigation.

*Agreement of the Parties*

18. The commission has jurisdiction over this matter and over Vornado under the CPSs, 15 U.S.C. 2051–2084.

19. In settlement of the staff's allegations, Vornado agrees to pay a civil penalty of five hundred thousand dollars ($500,000.00) within twenty (20) calendar days of receiving service of the Final Order of the Commission accepting this Settlement Agreement. This payment shall be made by cashier's check payable to the order of the United States Treasury.

20. The parties enter this Settlement Agreement for settlement purposes only. the Settlement Agreement does not constitute an admission by Vornado or a determination by the Commission that Vornado violated the CPSA's reporting requirements.

21. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, the Commission shall place this Agreement and Order on the public record and shall publish it in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the commission does not receive any written requests not to accept the Settlement Agreement and Order within 15 calendar days, the Agreement and Order shall be deemed finally accepted on the 16th calendar day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

22. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Vornado knowingly, voluntarily and completely waives any rights it may have in this matter to the following: (i) An administrative or judicial hearing; (ii) judicial review or other challenge or contest of the commission's actions; (iii) a determination by the Commission as to whether Vornado failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

23. The Commission may publicize the terms of the Settlement Agreement and Order.

24. This Settlement Agreement shall apply to, and be binding upon Vornado and each of its successors and assigns.

25. The commission's Order in this matter is issued under the provisions of the CPSA, 15 U.S.C. 2051–2084, and a violation of the Order may subject those referenced in paragraph 24 above to appropriate legal action.

26. This Settlement Agreement may be used in interpreting the Order Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or to contradict its terms.

27. This Settlement Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, without written agreement thereto executed by the party against whom such amendment, modification, alteration, or waiver is sought to be enforced, and approval by the Commission.

28. If, after the effective date hereof, any provision of this Settelement Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Settlement Agreement and Order, such provision shall be fully severable. The rest of the Settlement Agreement and Order shall remain in full effect, unless the commission and Vornado determine that serving the provision materially changes the purpose of the Settlement Agreement and Order.

The Vornado Liquidating Trust for and on Behalf of Vornado Air Circulation Systems, Inc.

Dated: January 14, 2008.
By: Charles Wear,
*Co-Trustee, 2705 West 112th Street, Leawood, Kansas 66211.*

Dated: January 14, 2008.
By: Kay Reed,
*Co-Trustee, 14021 E. Whitewood, Wichita, Kansas 67230.*

Dated: January 15, 2008.
By Christopher Smith,
*Sonnenschein Nath & Rosenthal LLP, 1301 K Street, NW., Suite 600, East Tower, Washington, DC 20005–3364, Counsel for the Vornado Liquidating Trust.*

U.S. CONSUMER PRODUCT SAFETY COMMISSION.
John Gibson Mullan,
*Assistant Executive Director, Office of Compliance and Field Operations.*

Dated: January 17, 2008.
By: Ronald G. Yelenik,
*Acting Director,*
*M. Reza Malihi,*
*Trial Attorney, Legal Division, Office of Compliance and Field Operations.*

**United States of America Consumer Product Safety Commission, CPSC Docket No. 08–C0003**

**In the Matter of Vornado Liquidating Trust for and on Behalf of Vornado Air Circulation systems, Inc., a Trust**

*Order*

Upon consideration of the Settlement Agreement entered into between the Vornado Liquidating Trust, a trust acting for an on behalf of Vornado Air Circulation Systems, Inc., a dissolved Kansas corporation, and established for the sole benefit of the corporation's shareholders (collectively, ''*Vornado''*), and the staff of the U.S. Consumer Product Safety Commission (the ''*Commission''*), and the Commission having jurisdiction over the subject matter and over Vornado, and it appearing the Settlement Agreement is in the public interest, it is

*Ordered,* that the Settlement Agreement be, and hereby is, accepted; and it is

*Further ordered,* that Vornado shall pay a civil penalty in the amount of five hundred thousand dollars

($500,000.00). This payment shall be made payable to the order of the United States Treasury within twenty (20) calendar days of service of the Final Order of the Commission upon Vornado. Upon the failure of Vornado to make full payment in the prescribed time, interest on the outstanding balance shall accrue and be paid at the federal rate of interest under the provisions of 28 U.S.C. section 1961(a) and (b).

Provisionally accepted and Provisional Order issued on the 30th day of January, 2008.

By Order of the Commission:

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 08–491 Filed 2–4–08; 8:45 am]

**BILLING CODE 6355–01–M**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before April 7, 2008.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 30, 2008.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

**Office of Innovation and Improvement**

*Type of Review:* New.

*Title:* National Writing Project Annual Performance Indicators.

*Frequency:* Annually.

*Affected Public:* Individuals or household; Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 480.

*Burden Hours:* 460.

*Abstract:* The purpose is to implement a data collection and review process for a new annual reporting for Government Performance Results Act (GPRA) purposes for the National Writing Project (NWP) program. These data are necessary to assess the performance of the NWP program in meeting its stated goals and objectives. The data collection will occur in phases over a 2-year period. Although all ED-grantees are required to provide performance data on an annual or periodic basis, the respondents for this data collection are participants in the NWP grant; therefore, their participation in the data collection is voluntary.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3445. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection 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. E8–2067 Filed 2–4–08; 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 March 6, 2008.

**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: January 30, 2008.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

**Office of Postsecondary Education**

*Type of Review:* New.

*Title:* Predominantly Black Institutions Application.

*Frequency:* Annually

*Affected Public:* Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 130.

*Burden Hours:* 4,500.

*Abstract:* This collection of information is gathered electronically by the Department for the purpose of obtaining programmatic and budgetary information needed to evaluate applications and to make funding decisions based on the authorizing statute and the published selection criteria.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

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 3578. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection 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. E8–2069 Filed 2–4–08; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

January 30, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP97–346–029.

*Applicants:* Equitrans, Inc.

*Description:* Equitrans, LP submits the negotiated Rate Schedule FTS Service Agreements with various shippers slated to receive service from Equitrans' Big Sandy Pipeline Project.

*Filed Date:* 01/29/2008.

*Accession Number:* 20080130–0059.

*Comment Date:* 5 p.m. Eastern Time on Monday, February 11, 2008.

*Docket Numbers:* RP01–245–026.

*Applicants:* Transcontinental Gas Pipe Line Corp.

*Description:* Transcontinental Gas Pipe Line Corp submits Pro Forma Sheet 158 et al. to FERC Gas Tariff, Third Revised Volume 1.

*Filed Date:* 01/25/2008.

*Accession Number:* 20080128–0129.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 6, 2008.

*Docket Numbers:* RP08–174–000.

*Applicants:* Quest Pipelines (KPC).

*Description:* Quest Pipelines (KPC) submits Original Sheet 1 et al. to FERC Gas Tariff, Second Revised Volume 1, to be effective 2/1/08.

*Filed Date:* 01/28/2008.

*Accession Number:* 20080129–0034.

*Comment Date:* 5 p.m. Eastern Time on Monday, February 11, 2008.

*Docket Numbers:* RP08–175–000.

*Applicants:* Great Lakes Gas Transmission Limited Partnership.

*Description:* Great Lakes Gas Transmission Limited Partnership submits Fifth Revised Sheet 45A to FERC Gas Tariff, Second Revised Volume 1, to be effective 3/1/08.

*Filed Date:* 01/29/2008.

*Accession Number:* 20080130–0060.

*Comment Date:* 5 p.m. Eastern Time on Monday, February 11, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E8–1972 Filed 2–4–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

January 29, 2008.

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC08–38–000.

*Applicants:* Williams Gas Marketing, Inc., Williams Generation Company—Hazleton.

*Description:* Joint application for authorization under Section 203 of the FPA for disposition of jurisdictional facilities request for confidential treatment and request for expedited action of Williams Gas Marketing, Inc., *et al.*

*Filed Date:* 01/18/2008.

*Accession Number:* 20080125–0178.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 8, 2008.

*Docket Numbers:* EC08–39–000.

*Applicants:* Calpine Corporation and its Public Utilities, LS Power Development, LLC, Luminus Management, LLC.

*Description:* Calpine Corporation submits a joint application for approval required in connection with the proposed distribution of common stock of a reorganized Calpine to LSP Development and Luminus Management, etc.

*Filed Date:* 01/22/2008.

*Accession Number:* 20080125–0180.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 12, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG08–31–000.

*Applicants:* Lockport Energy Associates, LP.

*Description:* Exempt Wholesale Generator Notice of Self Certification of Lockport Energy Associates, LP, under EG08–31.

*Filed Date:* 01/17/2008.

*Accession Number:* 20080117–5048.

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 7, 2008.

*Docket Numbers:* EG08–32–000.

*Applicants:* Grand Ridge Energy, LLC.

*Description:* Grand Ridge Energy, LLC, submits its Notice of Self Certification of Exempt Wholesale Generator Status under EG08–32.

*Filed Date:* 01/22/2008.

*Accession Number:* 20080125–0220.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 12, 2008.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER98–4421–008; ER04–543–004; ER99–791–006; ER99–806–005; ER99–3677–007; ER01–570–008; ER00–2187–003.

*Applicants:* Consumers Energy Company; CMS Energy Resource Management Company; Grayling Generating Station LP; Genesee Power Station, LP; CMS Generation Michigan Power, LLC; Dearborn Industrial Generation, LLC; CMS Distributed Power, LLC.

*Description:* Consumers Energy *et al.* submits a notice of non-material change in status.

*Filed Date:* 01/22/2008.

*Accession Number:* 20080125–0139.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 12, 2008.

*Docket Numbers:* ER03–329–003; ER07–597–003.

*Applicants:* NorthWestern Corporation; Montana Generation, LLC.

*Description:* NorthWestern Corp. and Montana Generation, LLC, submits an amendment to a notice of non-material change in status.

*Filed Date:* 01/18/2008.

*Accession Number:* 20080124–0082.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 8, 2008.

*Docket Numbers:* ER03–534–005.

*Applicants:* Ingenco Wholesale Power, LLC.

*Description:* Ingenco Wholesale Power, LLC, submits a notice of change in status.

*Filed Date:* 01/18/2008.

*Accession Number:* 20080124–0079.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 8, 2008.

*Docket Numbers:* ER03–1398–006.

*Applicants:* South Carolina Electric & Gas Company.

*Description:* South Carolina Electric & Gas Co. submits a Settlement Agreement *et al.*

*Filed Date:* 01/17/2008.

*Accession Number:* 20080125–0146.

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 7, 2008.

*Docket Numbers:* ER06–1280–001; ER00–2181–004; ER02–556–008.

*Applicants:* Hess Corporation; Hess Energy, Inc.; Select Energy, New York, Inc.

*Description:* Hess Corp. *et al.* submits a Notice of Change in Status in compliance with Order 697.

*Filed Date:* 01/23/2008.

*Accession Number:* 20080123–0016.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 13, 2008.

*Docket Numbers:* ER06–1308–004.

*Applicants:* Midwest Independent Transmission System.

*Description:* Midwest Independent Transmission System Operator, Inc., supplements its 11/21/07 filing to include its Withdrawal Fee Recalculation Agreement with E ON US, LLC.

*Filed Date:* 01/18/2008.

*Accession Number:* 20080124–0080.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 8, 2008.

*Docket Numbers:* ER07–809–005.

*Applicants:* Florida Power Corporation.

*Description:* Supplemental motion to withdraw Attachment A to the Contract for Interchange Service of Florida Power Corp.

*Filed Date:* 01/22/2008.

*Accession Number:* 20080124–0083.

*Comment Date:* 5 p.m. Eastern Time on Monday, February 4, 2008.

*Docket Numbers:* ER07–809–004.

*Applicants:* Florida Power Corporation.

*Description:* Motion to withdraw amendments to the 1990 Interconnection Agreement and terminate proceedings of Florida Power Corp.

*Filed Date:* 01/14/2008.

*Accession Number:* 20080122–0185.

*Comment Date:* 5 p.m. Eastern Time on Monday, February 4, 2008.

*Docket Numbers:* ER08–331–001.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc. submits an amendment to its 12/13/07 Initial Filing of an executed Service Agreement for Network Integration Transmission Service.

*Filed Date:* 01/24/2008.

*Accession Number:* 20080125–0145.

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 14, 2008.

*Docket Numbers:* ER08–387–001.

*Applicants:* Atlantic Renewables Projects II LLC.

*Description:* Atlantic Renewable Projects II LLC submits an amendment to its market-based rate application.

*Filed Date:* 01/23/2008.

*Accession Number:* 20080125–0140.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 13, 2008.

*Docket Numbers:* ER08–400–001.

*Applicants:* CalPeak Power-El Cajon LLC.

*Description:* CalPeak Power-El Cajon LLC submits an amendment to its 12/31/07 filing of a Must-Run Service Agreement with California Independent System Operator Corp.

*Filed Date:* 01/23/2008.

*Accession Number:* 20080125–0141.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 13, 2008.

*Docket Numbers:* ER08–442–000.

*Applicants:* Cambridge Electric Light Company.

*Description:* Cambridge Electric Light Company *et al.* submits notices of cancellation for its market-based rate tariffs, FERC Electric Tariff, First Revised Volume 10, to become effective 1/1/07.

*Filed Date:* 01/14/2008.

*Accession Number:* 20080118–0057.

*Comment Date:* 5 p.m. Eastern Time on Monday, February 4, 2008.

*Docket Numbers:* ER08–471–000.

*Applicants:* Entergy Services, Inc.
*Description:* Entergy Gulf States Louisiana, LLC submits a notice of termination of Interconnection and Operating Agreement etc. with Citgo Petroleum Corp.
*Filed Date:* 01/23/2008.
*Accession Number:* 20080125–0142.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 13, 2008.

*Docket Numbers:* ER08–472–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Southwest Power Pool, Inc. submits revised pages concerning its OATT reimplementing changes to pricing zone rates to be effective 2/1/08.
*Filed Date:* 01/23/2008.
*Accession Number:* 20080125–0143.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 13, 2008.

*Docket Numbers:* ER08–473–000.
*Applicants:* ISO New England, Inc.
*Description:* ISO New England Inc. *et al.* submits an amendment of Governing Law Provisions to the Study Agreements of Schedule 22 etc.
*Filed Date:* 01/24/2008.
*Accession Number:* 20080125–0144.
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 14, 2008.

*Docket Numbers:* ER08–474–000.
*Applicants:* ISO New England Inc.
*Description:* ISO New England, Inc. and the New England Power Pool Participants Committee submits revised tariff sheets and supporting testimony of Marc D. Montalvo, reproposed revisions to Market Rule 1.
*Filed Date:* 01/25/2008.
*Accession Number:* 20080128–0013.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 15, 2008.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES08–25–000.
*Applicants:* Aquila, Inc.
*Description:* Aquila, Inc.'s Application for Authorization of Issuance of Notes and Debt with Maturity of One Year or Less.
*Filed Date:* 01/22/2008.
*Accession Number:* 20080122–5012.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 12, 2008.

Take notice that the Commission received the following public utility holding company filings:

*Docket Numbers:* PH08–16–000.
*Applicants:* Milliken & Company.
*Description:* Notice of Material Change in Facts of Milliken & Company.
*Filed Date:* 01/02/2008.
*Accession Number:* 20080102–5027.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 23, 2008.

*Docket Numbers:* PH08–17–000.
*Applicants:* E.ON North America Holdings LLC.
*Description:* E.ON North America Holdings LLC's Waiver Notification on FERC–65B and filed a corrected version.
*Filed Date:* 01/17/2008.
*Accession Number:* 20080117–5046 & 20080117–5049.
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 7, 2008.

*Docket Numbers:* PH08–19–000.
*Applicants:* ITC Holdings Corp.
*Description:* FERC Form 65 B, Waiver Notification of ITC Holdings Corp.
*Filed Date:* 01/22/2008.
*Accession Number:* 20080122–5033.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 12, 2008.

*Docket Numbers:* PH08–20–000.
*Applicants:* Cerberus Capital Management, L.P.
*Description:* FERC Form 65 B, Waiver Notification of Cerberus Capital Management, L.P.
*Filed Date:* 01/22/2008.
*Accession Number:* 20080122–5187.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 12, 2008.

Take notice that the Commission received the following PURPA 210(m)(3) filings: —

*Docket Numbers:* QM08–3–000.
*Applicants:* Alliant Energy Corporate Services, Inc., Wisconsin Power & Light Co., Interstate Power & Light Company.
*Description:* Application for authorization to terminate the Mandatory Purchase Obligation of power from qualified facilities over twenty megawatts on a service territory-wide basis, pursuant to section 292.310(a).
*Filed Date:* 01/25/2008.
*Accession Number:* 20080125–5140.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 22, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E8–1996 Filed 2–4–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Southwestern Power Administration

### White River Minimum Flows—Determination of Federal and Non-Federal Hydropower Impacts

**AGENCY:** Southwestern Power Administration, DOE.

**ACTION:** Notice of Public Review and Comment.

**SUMMARY:** Section 132 of Public Law 109–103 (2005) authorized and directed the Secretary of the Army to implement alternatives BS–3 and NF–7, as described in the White River Minimum Flows Reallocation Study Report, Arkansas and Missouri, dated July 2004.

The law states that the Administrator, Southwestern Power Administration (Southwestern), shall determine any impacts on electric energy and capacity generated at Federal Energy Regulatory Commission (FERC) Project No. 2221 caused by the storage reallocation at Bull Shoals Lake. Further, the licensee

of Project No. 2221 shall be fully compensated by the Corps of Engineers for those impacts on the basis of the present value of the estimated future lifetime replacement costs of the electrical energy and capacity at the time of implementation of the White River Minimum Flows project.

The law also states that losses to the Federal hydropower purpose of the Bull Shoals and Norfork Projects shall be offset by a reduction in the costs allocated to the Federal hydropower purpose. Further, such reduction shall be determined by the Administrator of Southwestern on the basis of the present value of the estimated future lifetime replacement cost of the electrical energy and capacity at the time of implementation of the White River Minimum Flows project.

Assuming a January 1, 2011, date of implementation, Southwestern has made a draft determination that the present value of the estimated future lifetime replacement costs of the electrical energy and capacity at FERC Project No. 2221 is $21,363,700. Southwestern has made a draft determination that the present value of the estimated future lifetime replacement costs of the electrical energy and capacity for Federal hydropower is $41,584,800.

**DATES:** The consultation and comment period will begin on the date of publication of this **Federal Register** notice and will end March 6, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Robbins, Director, Division of Resources and Rates, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6680, *george.robbins@swpa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Discussion

Originally established by Secretarial Order No. 1865 dated August 31, 1943, Southwestern is an agency within the U.S. Department of Energy which was created by an Act of the U.S. Congress, entitled the Department of Energy Organization Act, Pub. L. No. 95–91 (1977). Southwestern markets power from 24 multi-purpose reservoir projects with hydroelectric power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the states of Arkansas, Missouri, Oklahoma, and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana.

Southwestern developed projected energy and capacity losses for the Bull Shoals and Norfork projects and FERC Project No. 2221, including additional losses related to the reallocation for minimum flows as appropriate. Currently, the calculated credit due to Federal hydropower is $41,584,800, and the calculated compensation due to the licensee of FERC Project No. 2221 is $21,363,700. The values were calculated on the basis of the present value of the estimated future lifetime replacement cost of the electrical energy and capacity assuming an implementation date of January 1, 2011, for the White River Minimum Flows project. The final calculation will depend on the official date of implementation as specified by the Corps of Engineers and the value of the specified parameters in effect at that time.

Section 132 of Public Law 109–103 (2005) authorized alternative BS–3 at Bull Shoals, as described in the White River Minimum Flows Reallocation Study Report, Arkansas and Missouri, dated July 2004. Under the authorized plan for the Bull Shoals project, the storage for minimum flows will be reallocated from the flood control pool with provisions to maintain the current yield of the hydropower storage. The current seasonal pool plan will be superimposed on the new top of conservation pool. The additional downstream releases for minimum flows will be accomplished by generating with one of the main units at a low, inefficient rate. Since the current hydropower yield will be maintained, there will be no loss of marketable capacity or peaking energy at Bull Shoals. The annual energy loss, 23,855 megawatt-hours (MWh) per year of off-peak energy, will be the result of making the required minimum downstream releases by generating energy at a much lower plant efficiency and at a time when the energy is not needed to fulfill Federal peaking energy contracts. Operating a main unit at the lower efficiency will also increase the average maintenance costs at the project by an estimated $68,000 per year.

Section 132 of Public Law 109–103 (2005) authorized alternative NF–7 at Norfork, as described in the White River Minimum Flows Reallocation Study Report, Arkansas and Missouri, dated July 2004. Under the authorized plan for the Norfork project, one-half of the storage for minimum flows will be reallocated from the flood control pool and the other half from hydropower storage. The reallocation portion from the flood control storage is similar to that at Bull Shoals in that the hydropower storage yield for that portion is maintained and the existing seasonal pool plan will be superimposed on the new top of conservation pool. However, the releases will be spilled through a siphon with no energy generated from the water. Although there is no marketable capacity loss associated with the flood control storage reallocation, there is an off-peak energy loss. The reallocation from the hydropower storage does reduce the yield available to hydropower and will directly impact the marketable capacity and on-peak energy available at Norfork. The annual energy loss at Norfork associated with the reallocation is 6,762 MWh of off-peak energy and 6,762 MWh of on-peak energy, for a total annual energy loss of 13,524 MWh. The marketable capacity loss is 3.93 megawatts (MW).

FERC Project No. 2221, the non-Federal hydroelectric project at Powersite Dam, will be directly affected by the minimum flow plan. The normal top of conservation pool will be raised five feet at Bull Shoals, the project immediately downstream of Powersite Dam. The pool level increase at Bull Shoals will reduce the amount of gross head (headwater elevation minus the tailwater elevation) available for generation at the non-Federal project at Powersite Dam. The reduction in gross head will result in an annual energy loss of 5,792 MWh of on-peak energy and 2,853 MWh of off-peak energy, or an annual total energy loss of 8,645 MWh. Also associated with the loss of gross head, there will be a capacity loss of 3.00 MW at the project.

## II. Procedural and Regulatory Review Requirements

### *A. Review Under Executive Order 12866*

Southwestern has an exemption from centralized regulatory review under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735, October 4, 1993. Accordingly, this notice of draft determination was not reviewed by OMB under the Executive Order.

### *B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. This draft determination is not a rulemaking.

### *C. Review Under the Paperwork Reduction Act*

No new information or record keeping requirements are imposed by this draft determination. Accordingly, no OMB

clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

*D. Review Under the National Environmental Policy Act of 1969*

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Southwestern has determined that this draft determination is not addressed under DOE NEPA Implementing Procedures and Guidelines for Power Marketing Administrations, and no further action is required.

*E. Review Under Executive Order 13132*

Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Southwestern is not formulating or implementing policies or regulations that preempt State law or that have federalism implications. Executive Order 13132 does not apply.

*F. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3, (a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Federal agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Federal agencies to determine whether the regulations meet the applicable standard in section 3(a) and section 3(b), or it is unreasonable to meet one or more of them. Southwestern is not reviewing existing regulations or promulgating new regulations. Executive Order 12988 does not apply.

*G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4 (1995)) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and tribal governments, and the private sector. Southwestern has determined that the Unfunded Mandates Reform Act of 1995 does not apply to the draft determination.

*H. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 (112 Stat 2681–528) of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277, (1998)) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This draft determination is not a rule. Therefore, Section 654 (112 Stat 2681–528) of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277, (1998)) does not apply.

*I. Review Under the Treasury and General Government Appropriations Act, 2001.*

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3316 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by the Office of Management and Budget (OMB). OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). Southwestern has reviewed this notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*J. Review Under Executive Order 13211*

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as: (1) Any action by an agency that promulgated or is expected to lead to promulgation of a final rule; (2) is a significant regulatory action under Executive Order 12866, or any successor order; and (3) is likely to have significant adverse effect on the supply, distribution, or use of energy, or is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This draft determination is not an energy action. Executive Order 13211 does not apply.

**III. Public Review and Comment Procedures**

Opportunity is presented for interested parties to receive copies of the Draft Report detailing Southwestern's determination of the Federal and non-Federal hydropower impacts. If you desire a copy of the report, submit your request to Mr. George Robbins, Director, Division of Resources and Rates, Southwestern Power Administration, One West Third, Tulsa, OK 74103, (918) 595–6680.

Written comments on Southwestern's determination are due on or before March 6, 2008. Comments should be submitted to George Robbins, Director, Division of Resources and Rates, Southwestern, at the above-mentioned address for Southwestern's offices.

Southwestern will review and address the written comments, making any necessary changes to the draft determination. The Administrator will then submit the final determination to the Corps of Engineers.

Dated: January 30, 2008.

**Jon Worthington,**

*Administrator.*

[FR Doc. E8–2085 Filed 2–4–08; 8:45 am]

**BILLING CODE 6450–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–R05–OAR–2007–0653; FRL–8525–4]**

## Adequacy Status of the Metro-East St. Louis, IL, Submitted 8-Hour Ozone Attainment Demonstration and State Implementation Plan for Transportation Conformity Purposes

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of adequacy.

**SUMMARY:** In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budgets (MVEBs) for 8-hour ozone in Metro-East St. Louis (Madison, Monroe, St. Clair, and Jersey Counties), Illinois, are adequate for conformity purposes. As a result of our finding, Metro-East St. Louis must use the MVEBs from the 8-hour ozone attainment demonstration and state implementation plan (SIP) submitted on July 2, 2007, for future conformity determinations.

**DATES:** This finding is effective February 20, 2008.

**FOR FURTHER INFORMATION CONTACT:** Anthony Maietta, Life Scientist, Criteria Pollutant Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *Maietta.anthony@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, whenever ''we'', ''us'' or ''our'' is used, we mean EPA.

## Background

Today's action is simply an announcement of a finding that we have already made. EPA Region 5 sent a letter to the Illinois Environmental Protection Agency on December 19, 2007, stating that the 2008 and 2009 MVEBs in Metro-East St. Louis are adequate. Illinois submitted the budgets on July 2, 2007, as part of the 8-hour ozone attainment demonstration for this area. This submittal was announced on EPA's conformity Web site, and received no comments: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm,* (once there, click on ''What SIP submissions are currently under EPA adequacy review?'').

The 2008 and 2009 MVEBs, in tons per day (tpd), for volatile organic compounds (VOC) and oxides of nitrogen ($NO_x$) for Metro-East St. Louis (Madison, Monroe, St. Clair, and Jersey Counties) are as follows:

| | 2008 MVEB (tpd) | 2009 MVEB (tpd) |
|---|---|---|
| VOC | 14.27 | 13.44 |
| $NO_X$ | 34.87 | 31.94 |

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). We have described our process for determining the adequacy of submitted SIP budgets in our July 1, 2004, preamble starting at 69 FR 40038, and we used the information in these resources while making our adequacy determination. Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

The finding and the response to comments are available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

**Authority:** 42 U.S.C. 7401–7671 q.

Dated: January 24, 2008.

**Margaret Guerriero,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E8–2084 Filed 2–4–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OECA–2007–0052 FRL–8525–3]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Epoxy Resin and Non-Nylon Polyamide Production (Renewal); EPA ICR Number 1681.06, OMB Control Number 2060–0290

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

**DATES:** Additional comments may be submitted on or before March 6, 2008.

**ADDRESSES:** Submit your comments, referencing docket ID number EPA–HQ–OECA–2007–0052, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 9, 2007 (72 *FR* 10735), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2007–0052, which is available for public viewing online at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center 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 Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains

copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

*Title:* NESHAP for Epoxy Resin and Non-Nylon Polyamide Production (Renewal).

*ICR Numbers:* EPA ICR Number 1681.06, OMB Control Number 2060–0290.

*ICR Status:* This ICR is scheduled to expire on February 29, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* The National Emission Standards for Hazardous Air Pollutants (NESHAP) were proposed on May 16, 1994, and promulgated on March 8, 1995. This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR part 63, subpart W, regulating hazardous air pollutants from process vents, storage vessels, wastewater systems and equipment leaks. The standards require mandatory recordkeeping and reporting to document process information related to the source's ability to comply with the standards. This information is used by the Agency to identify sources subject to the standards and to insure that the maximum achievable control technology is being properly applied. Section 112 of the Clean Air Act, as amended in 1990, requires that EPA establish standards to limit emissions of hazardous air pollutants (HAPs) from stationary sources. The sources subject to these provisions emit the HAPs epichlorohydrin, and in lesser amounts, hydrochloric acid and methanol. In the Administrator's judgment, hazardous air pollutant emissions in this industry cause or contribute to air pollution that may be reasonably expected to endanger public health or welfare. Respondents are owners or operators of new and existing facilities that manufacture polymers and resins from epichlorohydrin. Source categories include basic liquid epoxy resin (BLR) producers and producers of epichlorohydrin-modified non-nylon polyamide resins, also known as wet strength resins (WSR).

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart W and 40 CFR part 63, subpart A, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

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 Number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 214 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Epoxy resin and non-nylon polyamide production.

*Estimated Number of Respondents:* 7.

*Frequency of Response:* Semiannually, quarterly and initially.

*Estimated Total Annual Hour Burden:* 3,853.

*Estimated Total Annual Cost:* $252,711, which is comprised of $0 annualized Capital Startup costs, $9,000 in annual Operating and Maintenance (O&M) costs, and $243,711 annual Labor costs.

*Changes in the Estimates:* There is no change in the labor hours or cost in this ICR compared to the previous ICR. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Secondly, the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden.

Since there are no changes in the regulatory requirements and there is no significant industry growth, the labor hours and cost figures in the previous ICR are used in this ICR and there is no change in burden to industry.

Dated: January 29, 2008.

**Sara Hisel-McCoy,**

*Director, Collection Strategies Division.*

[FR Doc. E8–2088 Filed 2–4–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–RCRA–2007–1127, FRL–8525–8]**

## Agency Information Collection Activities; Proposed Collection; Comment Request; Requirements for Generators, Transporters, and Waste Management Facilities Under the RCRA Hazardous Waste Manifest System; EPA ICR No. 0801.16; OMB Control No. 2050–0039

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on May 31, 2008. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before April 7, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2007–1127, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail*: *rcra-docket@epa.gov*.

- *Fax:* 202–566–9744.
- *Mail:* RCRA Docket (5305T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* 1301 Constitution Ave., NW., Room 3334, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–RCRA–2007–1127. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

**FOR FURTHER INFORMATION CONTACT:** Bryan Groce, Office of Solid Waste, (mail code 5302P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8750; fax number: 703–308–8433; e-mail address: *groce.bryan@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**How Can I Access the Docket and/or Submit Comments?**

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2007–1127, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for RCRA Docket is (202) 566–0270.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

**What Information Is EPA Particularly Interested in?**

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

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

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

**What Should I Consider When I Prepare My Comments for EPA?**

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**What Information Collection Activity or ICR Does This Apply to?**

*Affected entities:* Entities potentially affected by this action are business or other for-profit, not-for-profit institutions, farms, as well as state, local or tribal governments.

*Title:* Requirements for Generators, Transporters, and Waste Management Facilities Under the RCRA Hazardous Waste Manifest System.

*ICR numbers:* EPA ICR No. 0801.16, OMB Control No. 2050–0039.

*ICR status:* This ICR is currently scheduled to expire on May 31, 2008. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* The Resource Conservation and Recovery Act (RCRA), as amended, establishes a national program to assure that hazardous waste management practices are conducted in a manner that is protective of human health and the environment. EPA's authority to require compliance with the manifest system stems primarily from RCRA section 3002(a)(5). This section

mandates a hazardous waste manifest ''system'' to assure that all hazardous waste generated is designated for and arrives at the appropriate treatment, storage, and disposal facility. An essential part of this manifest system is the Uniform Hazardous Waste Manifest (Form 8700–22A). The manifest is a tracking document that accompanies the waste from its generation site to its final disposition. The manifest lists the wastes that are being shipped and the final destination of the waste. The manifest system is a self-enforcing mechanism that requires generators, transporters, and owner/operators of treatment, storage, and disposal facilities to participate in hazardous waste tracking. In addition, the manifest provides information to transporters and waste management facility workers on the hazardous nature of the waste, identifies wastes so that they can be managed appropriately in the event of an accident, spill, or leak, and ensures that shipments of hazardous waste are managed properly and delivered to their designated facilities.

*Burden Statement:* The annual public reporting and record keeping burden for this collection of information is estimated to average 1.52 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

*Estimated total number of potential respondents:* 131,803.

*Frequency of response:* Per Waste Shipment.

*Estimated total average number of responses for each respondent:* 13.37.

*Estimated total annual burden hours:* 3,264,991.

*Estimated total annual costs:* $152,600,000. This includes an estimated burden cost of $150,000,000 for labor and an estimated cost of $2,600,000 for capital investment and maintenance and operational costs.

**What Is the Next Step in the Process for This ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: January 25, 2008.

**Matthew Hale,**

*Director, Office of Solid Waste.*

[FR Doc. E8–2093 Filed 2–4–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–RCRA–2006–0796; FRL–8524–4]**

**RIN 2050–AE81**

## Notice of Data Availability on the Disposal of Coal Combustion Wastes in Landfills and Surface Impoundments; Reopening of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Data Availability; Reopening of Comment Period.

**SUMMARY:** The Environmental Protection Agency (EPA) is reopening the comment period for the Notice of Data Availability (NODA) entitled ''Notice of Data Availability on the Disposal of Coal Combustion Wastes in Landfills and Surface Impoundments.'' This NODA announces the availability of new information and data concerning the management of coal combustion wastes (CCW) in landfills and surface impoundments that will be used by the Agency to inform its decisionmaking regarding its Regulatory Determination for CCW disposed of in landfills and surface impoundments. This NODA was published on August 29, 2007 (72 FR 49714), and the comment period was scheduled to close on November 27, 2007. However, a number of environmental groups requested additional time to respond to the issues raised in the NODA and its accompanying documents. Consequently, the Agency extended the comment period an additional 60 days to January 28, 2008 (72 FR 57572). The same group of commenters then requested a short amount of additional time to finish gathering information that they believe is necessary to complete their comments. Therefore, we are reopening the comment period from the date of publication of this notice to close on February 11, 2008.

**DATES:** The comment period is reopened from the date of publication of this notice to close on February 11, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2006–0796, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to: *rcra-docket@epa.gov*, Attention Docket ID No. EPA–HQ–RCRA–2006–0796. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.
- *Fax:* Comments may be faxed to 202–566–9744. Attention Docket ID No. EPA–HQ–RCRA–2006–0796.
- *Mail:* Send two copies of your comments to Notice of Data Availability on the Disposal of Coal Combustion Wastes in Landfills and Surface Impoundments, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Attention Docket ID No. EPA–HQ–RCRA–2006–0796.
- *Hand Delivery:* Deliver two copies of your comments to the Notice of Data Availability on the Disposal of Coal Combustion Wastes in Landfills and Surface Impoundments Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Attention Docket ID No. EPA–HQ–RCRA–2006–0796. Such deliveries are only accepted during the docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–RCRA–2006–0796. EPA's policy is that all comments

received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* We also request that interested parties who would like information they previously submitted to EPA to be considered as part of this action, identify the relevant information by docket entry numbers and page numbers. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Alexander Livnat, Office of Solid Waste (5306P), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, telephone (703) 308–7251, e-mail address *livnat.alexander@epa.gov.* For more information on this rulemaking, please visit *http://www.epa.gov/epaoswer/other/fossil/index.htm/.*

**SUPPLEMENTARY INFORMATION:** The NODA that is the subject of this notice, and which was published in the **Federal Register** on August 29, 2007 (72 FR 49714), announces the availability of new information and data contained in three documents that the Agency is requesting public comments on, concerning the management of CCW in landfills and surface impoundments. The three documents that the Agency is requesting comments on are: A joint U.S. Department of Energy (DOE) and EPA report entitled, Coal Combustion Waste Management at Landfills and Surface Impoundments, 1994–2004; a draft risk assessment conducted by EPA on the management of CCW in landfills and surface impoundments; and EPA's damage case assessment. The Agency is soliciting comments on the extent to which the damage case information, the results of the risk assessment, and the new liner and ground water monitoring information from the DOE/EPA report should affect the Agency's decisions. EPA is also requesting direct comment on the draft risk assessment document to help inform a planned peer review. In addition, the Agency has included in the docket to the NODA a rulemaking petition submitted by a number of citizens' groups, as well as two approaches regarding the management of CCW, one prepared by the electric utility industry and the other prepared by a number of citizens' groups. The Agency will consider all the information provided through the NODA, the comments and new information submitted on the NODA, as well as the results of a subsequent peer review of the risk assessment, as it continues to follow-up on its Regulatory Determination for CCW disposed of in landfills and surface impoundments.

The comment period for the NODA was scheduled to close on November 27, 2007. However, a number of environmental groups requested that EPA extend the comment period by 75 days, noting that additional time was needed in order to comment meaningfully on the information contained in the NODA and to perform extensive analysis on several documents, some of which are highly technical. The commenters also noted that, due to the length and complexity of the draft risk assessment (*Human and Ecological Risk Assessment of Coal Combustion Wastes*), it would be necessary to engage expert review that will consequently increase the time necessary to prepare their comments.

EPA believed that the 90-day public comment period originally established was reasonable. However, since the Agency will be considering all the information provided through the comments and new information submitted on the NODA, as well as the results of a subsequent peer review of the risk assessment, we believed it was important that commenters have adequate time to analyze the data noticed in the NODA so that they may provide informed and meaningful comments to the Agency. Therefore, we decided to extend the comment period by 60 days, thereby extending the comment period to 150 days. We believed an additional 60 days was adequate for commenters to analyze the data noticed in the NODA and available in the docket to the NODA. Because the 60-day extension would have ended on January 26, 2008, which is a Saturday, the comment period was extended until the following Monday, January 28, 2008.

The same group of commenters, noted above, requested a short amount of additional time to finish gathering information that is necessary to complete their comments. We believe this request is reasonable given the nature and volume of materials provided for comment; therefore, we are reopening the comment period from the date of publication of this notice to close on February 11, 2008.

Dated: January 29, 2008.

**Susan Parker Bodine,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. E8–2063 Filed 2–4–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8525–6]**

## Adaptation for Climate-Sensitive Ecosystems and Resources Advisory Committee (ACSERAC)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of a public conference call meeting; correction.

**SUMMARY:** The EPA indicated that reports being reviewed by the ACSERAC would be incorporated into a scientific assessment to be published by the U.S. Climate Change Science Program and that the public would have a chance to review and comment on the scientific assessment in April 2008. The availability of the scientific assessment for public review and comment is incorrect.

**FOR FURTHER INFORMATION CONTACT:** Joanna Foellmer, Designated Federal Official, ACSERAC, by telephone: 703–347–8508, by e-mail: *foellmer.joanna@epa.gov,* by fax: 703–347–8694, or by regular mail: Joanna Foellmer, ORD/NCEA (Mail Code 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

**Correction**

In the **Federal Register** of January 7, 2008, in FR Doc. E8–17, on page 1221, in the second column, change the last complete sentence to read:

The CCSP expects that the scientific assessment will be completed by May 31, 2008. The scientific assessment will undergo an external peer review consistent with the OMB peer review guidance for a Highly Influential Scientific Assessment (HISA). For details on the scientific assessment review please go to: *http://www.cio.noaa.gov/itmanagement/prplans/ID102.html.*

Dated: January 25, 2008.

**Michael W. Slimak,**

*Acting Deputy Director, National Center for Environmental Assessment.*

[FR Doc. E8–2091 Filed 2–4–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8525–2]**

### Gulf of Mexico Program Citizens 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 meeting of the Gulf of Mexico Program (GMP) Citizens Advisory Committee (CAC).

For information on access or services for individuals with disabilities, please contact Gloria Car, U.S. EPA, at (228) 688–2421 or *car.gloria@epa.gov.* To request accommodation of a disability, please contact Gloria Car, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

**DATES:** The meeting will be held on Wednesday, February 27 from 8:30 a.m. to 5 p.m. and Thursday, February 28, 2008, from 8:30 a.m. to 12 p.m.

**ADDRESSES:** The meeting will be held at the Louisiana Universities Marine Consortium, DeFelice Marine Center, 8124 Highway 56, Chauvin, LA 70344.

**FOR FURTHER INFORMATION CONTACT:** Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

**SUPPLEMENTARY INFORMATION:** The proposed agenda includes the following topics: Gulf of Mexico Alliance Updates; Discussions of Citizens Advisory Committee involvement in Gulf Alliance activities; Presentation on Sustainable Fisheries in Agriculture; Presentation on Hypoxia in the Gulf Coast; Citizens Advisory Committee membership status; Field trip to a USDA facility to examine coastal sugarcane production practices and to the Terrebonne Levee & Conservation District to review hurricane and flood protection measure in the coastal Louisiana area.

The meeting is open to the public.

Dated: January 29, 2008.

**Gloria D. Car,**

*Designated Federal Officer.*

[FR Doc. E8–2096 Filed 2–4–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FR1–8525–7]**

### Human Impacts of Climate Change Advisory Committee (HICCAC)

**AGENCY:** Notice of a public conference call meeting; Correction.

**SUMMARY:** The EPA indicated that reports being reviewed by the HICCAC would be incorporated into a scientific assessment to be published by the U.S. Climate Change Science Program and that the public would have a chance to review and comment on the scientific assessment in April 2008. The availability of the scientific assessment for public review and comment is incorrect.

**FOR FURTHER INFORAMTION CONTACT:** Joanna Foellmer, Designated Federal Official, HICCAC, by telephone: 703–347–8508, by e-mail: *foellmer.joanna@epa.gov,* by fax: 703–347–8694, or by regular mail: Joanna Foellmer, ORD/NCEA (Mail Code 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

**Correction**

In the **Federal Register** of January 7, 2008, in FR Doc. 38–22, on page 1222, in the second column, change the last two sentences before the *Public Participation* section to read:

The CCSP expects that the scientific assessment will be completed by May 31, 2008. The scientific assessment will undergo an external peer review consistent with the OMB peer review guidance for a Highly Influential Scientific Assessment (HISA). For details on the scientific assessment review please go to: *http://www.cio.noaa.gov/itmanagement/prplans/ID102.html.*

January 25, 2008.

**Michael W. Slimak,**

*Acting Deputy Director, National Center, for Environmental Assessment.*

[FR Doc. 08–492 Filed 2–4–08: 8:45 am]

**BILLING CODE 6560–60–M**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collection of information titled: Notice of Branch Closure (3064–0109).

**DATES:** Comments must be submitted on or before April 7, 2008.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods. All comments should refer to the name of the collection:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719) or Christopher Siderys (202–898–8736), Paperwork Clearance Officer, Room F–1064, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the OMB desk officer for the *FDIC:* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Leneta G. Gregorie or Christopher Siderys, at the address identified above.

**SUPPLEMENTARY INFORMATION:**

Proposal to renew the following currently approved collections of information:

*Title:* Notice of Branch Closure.

*OMB Number:* 3064–0109.

*Frequency of Response:* On occasion.

*Affected Public:* Insured depository institutions.

*Estimated Number of Respondents:* 1,768.

*Estimated Time per Response:* 2.2 hours.

*Total Annual Burden:* 3,836 hours.

*General Description of Collection:* An institution proposing to close a branch must notify its primary regulator no later than 90 days prior to the closing. Each FDIC-insured institution must adopt policies for branch closings. This collection covers the requirements for notice, and for policy adoption.

**Request for Comment**

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodologies 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 information collection 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 the information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, DC, this 30th day of January, 2008.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. E8–1994 Filed 2–4–08; 8:45 am]

**BILLING CODE 6714–01–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 applications 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 March 3, 2008.

**A. Federal Reserve Bank of St. Louis** (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166–2034:

*1. Cabool State Bank Employee Stock Ownership Plan*; to acquire an additional 2 percent, for a total of 31.39 percent, of the voting shares of Cabool Bancshares, Inc., and thereby indirectly acquire voting shares of Cabool State Bank, all of Cabool, Missouri.

**B. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

*1. Andrews Holding Company*, Andrews, Texas; to acquire 100 percent of the voting shares of Kent County State Bank, Jayton, Texas.

Board of Governors of the Federal Reserve System, January 31, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E8–2035 Filed 2–4–08; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 21, 2008.

**A. Federal Reserve Bank of St. Louis** (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166–2034:

*1. Evolve Financial Group, Inc.*, Cordova, Tennessee; to acquire 100 percent of the voting shares of AFS Investment Advisors, Inc., Austin, Texas, and thereby engage in investment advisory activities, pursuant to section 225.28(b)(6)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, January 31, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E8–2036 Filed 2–4–08; 8:45 am]

**BILLING CODE 6210–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of

Health and Human Services (HHS) announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS), Executive Subcommittee.

*Time and Date:* February 6, 2008 8:30 a.m.–5 p.m.; February 7, 2008 8:30 a.m.–12 p.m.

*Place:* The L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

*Status:* Open.

*Purpose:* The NCVHS Executive Subcommittee will hold a day and a half meeting to review the past year's accomplishments and conduct strategic planning for the coming year. On the first day, the Subcommittee will review their 2007 activities; discuss current and anticipated health data needs, as well as marketing and dissemination of the Committee's products. On the morning of the second day the Subcommittee will discuss collaborative activities with the Board of Scientific Counselors at the National Center for Health Statistics, the plans for updating the 21st Century Health Statistics, and the upcoming NCVHS 60th anniversary.

*Contact Person For More Information:* Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: January 28, 2008.

**James Scanlon,**

*Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.*

[FR Doc. 08–478 Filed 2–4–08; 8:45 am]

**BILLING CODE 4151–05–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS).

*Time and Date:* February 20, 2008, 9 a.m.–3 p.m.; February 21, 2008, 8:30 a.m.–2 p.m.

*Place:* Hilton Garden Inn Hotel, 815 14th Street, NW., Washington, DC 20005, Tel: 202–783–7800.

*Status:* Open.

*Purpose:* At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the Committee will hear updates from the Department by the Data Council and the Centers for Medicare and Medicaid Services (CMS). They will also work on letters to the HHS Secretary on sensitive information in the electronic health record and surge capacity of hospitals. There will also be an update from the HHS Office of the National Coordinator for Health Information in Technology.

On the morning of the second day the Committee will continue the discussions on the letters on sensitive information in the electronic health record and surge capacity, and hear an update on the International Classification of Diseases (ICD–10.) There will also be a briefing from the American Health Information Management Associations (AHIMA) and the American Medical Informatics Association (AMIA). In the afternoon updates from the subcommittees on current and planned activities are scheduled. The remainder of the time will be spent discussing future agenda items and Committee administrative operations.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions can be schedules for late in the afternoon of the first day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

*Contact Person For More Information:* Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: January 28, 2008.

**James Scanlon,**

*Deputy Assistant Secretary for Planning and Evaluation (SDP), Office of the Assistant Secretary for Planning and Evaluation.*

[FR Doc. 08–479 Filed 2–4–08; 8:45 am]

**BILLING CODE 4151–05–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–08AL]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

The Natural History of Spina Bifida in Children Pilot Project—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Spina Bifida (SB) is one of the most common birth defects, affecting approximately 2 per 10,000 live births in the United States annually. To date, there are no U.S. population-based cohort studies or programs on the natural history of SB. This is of importance because persons with SB often experience condition-specific difficulties and secondary conditions that detrimentally affect several aspects of their lives. The long-term purpose of this project is to increase the knowledge about the natural history of Spina Bifida

by prospectively studying children who were born with this potentially disabling condition. We estimate to enroll approximately 40 parents with a child with Spina Bifida ages 3-, 4-, or 5-years of age, and 20 of the children of these forty parents. The data to be collected will relate to medical concerns prevalent among individuals with Spina Bifida in the areas of neurology/neurosurgery, urology, and orthopedics; development and learning; nutrition and physical growth; mobility and functioning; general health; and family demographics. Families interested in participating can choose between participating in a phone survey (no more than 40 minutes) or an in-person assessment (no more than 2 hrs). For families who participate in the in-person assessment, (estimated to be twenty of the forty families); the child will also be invited to participate in a child-appropriate assessment. Data will also be collected on the actual recruitment process. Results from the project will be evaluated and disseminated to provide guidance for states that are interested in following children with Spina Bifida prospectively. The proposed project is the initial step to document the development, the health status, and the onset of complications among children with SB in order that effective interventions may be identified that will ameliorate the course of this complex, multi-system condition. Long-term results will help determine if it would be beneficial to systematically screen children with Spina Bifida for certain health related, educational and developmental problems that these children are at an increased risk of experiencing and at what age such a screening should be performed.

There will be no cost to the respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

| Respondents | Number of respondents | Number of responses per respondent | Average burden per response (in minutes) | Total burden hours |
|---|---|---|---|---|
| Parents (phone survey) | 20 | 1 | 40/60 | 13 |
| Parents (in-person assessment) | 20 | 1 | 2 | 40 |
| Child (in-person assessment) | 20 | 1 | 1 | 20 |
| Total | | | | 73 |

Dated: January 25, 2008.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E8–1993 Filed 2–4–08; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 72 FR 67308, dated November 28, 2007) is amended to reflect the title change for the Division of Nutrition, Physical Activity, and Obesity Prevention, National Center for Chronic Disease Prevention and Health Promotion, Coordinating Center for Health Promotion, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the title for the *Division of Nutrition, Physical Activity, and Obesity Prevention (CUCH)* and insert the Division of Nutrition, Physical Activity, and Obesity (CUCH).

Dated: January 28, 2008.

**Joseph Henderson, M.P.A.,**

*Acting Chief Operating Officer, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 08–486 Filed 2–4–08; 8:45 am]

**BILLING CODE 4160–18–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–N–0051] (formerly Docket No. 2007N–0422)**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Application for Participation in the Medical Device Fellowship Program

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by March 6, 2008.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0551. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley Jr.,Office of the Chief Information Officer (HFA–250), Food and Drug Administration,5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Application for Participation in the Medical Device Fellowship Program; (OMB Control Number 0910–0551)—Extension

Sections 1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394 of title 5 of the United States Code, authorize Federal agencies to rate applicants for Federal jobs. Collecting applications for the Medical Device Fellowship Program will allow FDA's Center for Devices and Radiological Health (CDRH) to easily and efficiently elicit and review

information from students and health care professionals who are interested in becoming involved in CDRH activities. The process will reduce the time and cost of submitting written documentation to the agency and lessen the likelihood of applications being misrouted within the agency mail system. It will assist the agency in promoting and protecting the public health by encouraging outside persons to share their expertise with CDRH.

In the **Federal Register** of November 9, 2007 (72 FR 63614), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimate of the burden for this collection of information is as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 5 U.S.C. Section/ FDA Form No. | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 1104, 1302, 3301, 3304, 3320, 3361, 3393, 3394/ Form No. 3608 | 250 | 1 | 250 | 1 | 250 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based these estimates on the number of inquiries that have been received concerning the program and the number of requests for application forms over the past 3 years.

Dated: January 30, 2008.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E8–2068 Filed 2–4–08; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–N–0048] (formerly Docket No. 2007N–0182)**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Information Program on Clinical Trials for Serious and Life-Threatening Diseases: Maintaining a Databank

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Information Program on Clinical Trials for Serious and Life-Threatening Diseases: Maintaining a Databank'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of October 19, 2007 (72 FR 59295), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0459. The approval expires on January 31, 2011. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain*.

Dated: January 30, 2008.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E8–2076 Filed 2–4–08; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–N–0050]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Device Tracking

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for the tracking of medical devices.

**DATES:** Submit written or electronic comments on the collection of information by April 7, 2008.

**ADDRESSES:** Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration,5600 Fishers Lane, Rockville, MD 20857, 301 827–1472.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites

comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Medical Devices; Device Tracking—21 CFR Part 821 (OMB Control Number 0910–0442)—Extension**

Section 211 of the Food and Drug Administration Modernization Act (FDAMA) (Public Law 105–115) became effective on February 19, 1998. FDAMA amended the previous medical device tracking provisions under Section 519(e)(1) and (2) of the Federal Food, Drug, and Cosmetic Act (the act) 21 U.S.C. 360i(e)(1) and (2) and were added by the Safe Medical Devices Act of 1990 (SMDA) (Public Law 101–629). Unlike the tracking provisions under SMDA which required tracking of any medical device meeting certain criteria, FDAMA allows FDA discretion in applying tracking provisions to medical devices meeting certain criteria, and provides that tracking requirements for medical devices can be imposed only after FDA issues an order. In the **Federal Register** of February 8, 2002 (67 FR 5943), FDA issued a final rule which conformed existing tracking regulations to changes in tracking provisions effected by FDAMA under part 821 (21 CFR part 821).

Section 519(e)(1) of the act, as amended by FDAMA, provides that FDA may require by order, that a manufacturer adopt a method for tracking a class II or III medical device, if the device meets one of the three following criteria: (1) The failure of the device would be reasonably likely to have serious adverse health consequences, (2) the device is intended to be implanted in the human body for more than 1 year (referred to as a ''tracked implant''), or (3) the device is life-sustaining or life-supporting (referred to as a ''tracked l/s-l/s device'') and is used outside a device user facility.

Tracked device information is collected to facilitate identifying the current location of medical devices and patients possessing those devices, to the extent that patients permit the collection of identifying information. Manufacturers and FDA (where necessary), use the data to: (1) Expedite the recall of distributed medical devices that are dangerous or defective and (2) facilitate the timely notification of patients or licensed practitioners of the risks associated with the medical device.

In addition, the regulations include provisions for: (1) Exemptions and variances; (2) system and content requirements for tracking; (3) obligations of persons other than device manufacturers, e.g., distributors; records and inspection requirements; (4) confidentiality; and (5) record retention requirements.

Respondents for this collection of information are medical device manufacturers, importers, and distributors of tracked implants or tracked l/s-l/s devices used outside a device user facility. Distributors include multiple and final distributors, including hospitals.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | No. of Respondents | Annual Frequency of Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 821.2 and 821.30(e) | 4 | 1 | 4 | 12 | 48 |
| 821.25(a) | 1 | 1 | 1 | 76 | 76 |
| 821.25(d) | 22 | 1 | 22 | 2 | 44 |
| 821.30(a) and (b) | 17,000 | 72 | 1,222,725 | 0.1666 | 203,706 |
| 821.30(c)(2) | 1 | 1 | 1 | 28 | 28 |
| 821.30(d) | 17,000 | 15 | 259,186 | 0.1666 | 43,180 |
| Total | | | | | 247,082 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED AVERAGE ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency of Recordkeeping | Total Annual Records | Hours per Record | Total Hours |
|---|---|---|---|---|---|
| 821.25(b) | 229 | 46,260 | 10,593,433 | 0.2899 | 3,071,036 |
| 821.25(c) | 229 | 1 | 229 | 63.0 | 14,430 |
| 821.25(c)(3) | 229 | 1,124 | 257,454 | 0.2899 | 74,636 |
| TOTAL | | | | | 3,160,102 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The annual hourly reporting burden for respondents involved with medical device tracking is estimated to be 247,082 hours, and the annual recordkeeping burden for these respondents is estimated to be 3,160,102

hours. These figures have been rounded up. The burden estimates cited in tables 1 and 2 of this document are based primarily upon the data and methods provided in FDA's assessment for fiscal year (FY) 1999 entitled ''A Cost Assessment of Medical Device Tracking.'' Using implantation procedures from the National Center for Health Statistics, FDA applied a 2-percent annual growth rate to estimate the number of procedures for tracked implant devices for FY1997 through FY2006. This assessment also used unit shipment data in combination with various growth rates to estimate annual sales distribution for the tracked l/s-l/s devices over the same time period. In addition, the assessment also estimated the burden on industry for developing and maintaining tracking systems for these medical devices for FY1997 through FY2006.

For the annual recordkeeping burden, the number of respondent medical device manufacturers subject to device tracking is estimated to be 229 and is based on data from FDA's manufacturers database. FDA issued tracking orders to 20 additional medical device manufacturers during the time period for FY2002 through FY2004. Under § 821.25(c), the additional medical device manufacturers collectively bear a one-time recordkeeping burden of 10,560 hours to develop a medical device tracking system. FDA's estimate of 17,000 medical device distributor respondents contained in this assessment, are derived from Dun & Bradstreet sources on medical equipment wholesalers, retailers, home care dealers, and rental companies. Health Forum, an American Hospital Association Company, provided statistics on hospitals.

Please note that on January 15, 2008, the FDA Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic submissions will be accepted by FDA through FDMS only.

Dated: January 30, 2008.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E8–2078 Filed 2–4–08; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2008N–0016]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Additional Listing Information for Medical Device Registration and Listing

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits public comments on the reporting and recordkeeping burden associated with the paperwork requirements under § 807.31 (21 CFR 807.31), which requires device establishments to retain and, upon FDA's specific request, submit certain additional listing information.

**DATES:** Submit written or electronic comments on the collection of information by April 7, 2008.

**ADDRESSES:** Submit electronic comments on the collection of information to: *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Additional Listing Information for Medical Device Registration and Listing—21 CFR 80.31; (OMB Control Number 0910–0387)—Extension**

The Food and Drug Administration Amendments Act of 2007 (the 2007 Amendments), enacted September 27, 2007, requires that device establishment registrations and listings under 21 U.S.C. 360(p) (including the submission of updated information), be submitted to the Secretary of Health and Human Services (the Secretary) by electronic means, unless the Secretary grants a request for waiver of the requirement because the use of electronic means is not reasonable for the person requesting the waiver. See section 224 of the 2007 Amendments. The 2007 Amendments provides for an October 1, 2007, effective date by which FDA expects approximately 30,000 establishments to begin registering. FDA is seeking OMB approval for the information collected by electronic means. Registration by electronic means for device establishments will mean replacement of FDA Forms 2891 and 2891a, ''Registration of Device Establishment'' and FDA Form 2892 ''Medical Device Listing,'' with electronic versions. However, for OMB approval of the extension request for this collection of

information, FDA is revising the scope to address only the reporting and recordkeeping requirements by non-electronic means as described in this document and set forth under § 807.31 for '' Additional Listing Information.'' To reflect the revised scope of this collection of information, FDA has modified the title.

Under § 807.31(a) through (d), each owner or operator is required to maintain an historical file containing the labeling and advertisements in use on the date of initial listing, and in use after October 10, 1978, but before the date of initial listing. The owner or operator must maintain in the historical file any labeling or advertisements in which a material change has been made anytime after initial listing, but may discard labeling and advertisements from the file 3 years after the date of the last shipment of a discontinued device by an owner or operator. Along with the recordkeeping requirements, under § 807.31(e), the owner or operator must be prepared to submit to FDA copies of : (1) All device labeling, (2) all device labeling and representative advertising, or (3) only representative package inserts, depending upon whether the device is subject to the regulatory controls under Sections 514 or 515 of Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d and 360e, respectively), or restrictions imposed by 21 CFR 801.109 or otherwise by section 520(e) of the act.

The information collected under these provisions is used by FDA to identify: (1) Firms subject to FDA's regulations, (2) geographic distribution in order to effectively allocate FDA's field resources for these inspections, and (3) the class of the device that determines the frequency of inspection. As a result, when complications occur with a particular device or component, all manufacturers of similar or related devices can easily be identified.

The likely respondents to this information collection are domestic and foreign device establishments who must register and submit a device list to FDA, e.g., establishments engaged in the manufacture, preparation, propagation, compounding, assembly, or processing of medical devices intended for human use and commercial distribution.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | No. of Respondents | Annual Frequency of Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 807.31(e) | 200 | 1 | 200 | .50 | 100 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency of Recordkeeping | Total Annual Records | Hours per Record | Total Hours |
|---|---|---|---|---|---|
| 807.31(a) through (d ) | 16,200 | 4 | 64,800 | .50 | 32,400 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The annual respondent reporting burden for device establishment registrations and listing is estimated to be 100 hours and the annual respondent recordkeeping burden is estimated to be 32,400 hours. The estimates cited in tables 1 and 2 of this documet are based primarily on the annual FDA accomplishment report, which includes actual FDA registration and listing data derived for fiscal year (FY) 2006. These estimates are also based on FDA estimates of FY 2006 data from current systems and conversations with industry and trade association representatives. FDA anticipates reviewing annually, 200 historical files.

Please note that on January 15, 2008, the FDA Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic submissions will be accepted by FDA through the FDMS only.

Dated: January 30, 2008.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E8–2079 Filed 2–4–08; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review: Comment Request Questionnaire Cognitive Interview and Pretesting (ARP/DCCPS/NCI)

*Summary:* Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on November 26, 2007 (Vol. 72, No. 226, p. 65969) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Proposed Collection: Title:* Questionnaire Cognitive Interview and Pretesting. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The purpose of the data collection is to conduct cognitive interviews, focus groups, Pilot household interviews, and experimental research in laboratory and field settings, both for applied questionnaire evaluation and more basic research on response errors in surveys. The most common evaluation method is the cognitive interview, in which a questionnaire design specialist interviews a volunteer participant. The interviewer administers the draft survey questions as written, but also probes the participant in depth about interpretations of questions, recall processes used to answer them, and adequacy of response categories to express answers, while noting points of confusion and errors in responding. Interviews are generally conducted in small rounds of 10–15 interviews. When possible, cognitive interviews are conducted in the survey's intended

mode of administration. Cognitive interviewing provides useful information on questionnaire performance at minimal cost and respondent burden. Similar methodology has been adopted by other federal agencies, as well as by academic and commercial survey organizations. There are no costs to respondents other than their time. *Frequency of Response:* Once. *Affected Public:* Individuals or households.

| Type of respondents | Project | Estimated number of respondents | Estimated number of responses per respondent | Average burden hours per response | Estimated annual burden hours requested |
|---|---|---|---|---|---|
| Questionnaire Development Volunteers. | (1) Survey questionnaire development. | 200 | 1 | 1.25 (75 minutes) | 250.0 |
| General Volunteers | (2) Research on the cognitive aspects of survey methodology. | 100 | 1 | 1.25 (75 minutes) | 125.0 |
| Computer User Volunteers | (3) Research on computer-user interface design. | 100 | 1 | 1.25 (75 minutes) | 125.0 |
| Household Interview Volunteers | (4) Pilot Household interviews | 200 | 1 | 0.5 (30 minutes) | 100.0 |
| Total | | 600 | | | 600.0 |

The estimated total annual burden hours requested is 600. There are no annualized costs to respondents. The annualized costs to the Federal Government are estimated at $264,000 and include cost of NCI staff to plan, conduct, and analyze outcomes of questionnaire development, $50 payment of pretest participants, contracting for pretesting activities and research, travel costs, and additional materials needed to conduct and recruit participants for the research. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Direct Comments to OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Gordon Willis, PhD., Cognitive Psychologist, Applied Research Program, DCCPS, NCI/NIH, 6130 Executive Blvd., MSC 7344, EPN 4005, Bethesda, MD 20892 or call non-toll-free number 301–594–6652 or e-mail your request, including your address to: *willis@mail.nih.gov.*

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: January 28, 2008.

**Vivian Horovitch-Kelley,**

*NCI Project Clearance Liaison, National Institutes of Health.*

[FR Doc. E8–2029 Filed 2–4–08; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Biomedical Imaging and Bioengineering; 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 Biomedical Imaging and Bioengineering Special Emphasis Panel MRI Imaging.

*Date:* March 5, 2008.

*Time:* 12 p.m. to 3 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:* Ruixia Zhou, PhD, Scientific Review Officer, 6707 Democracy Boulevard, Democracy Two Building, Suite 957, Bethesda, MD 20892, (301) 496–4773, *zhour@mail.nih.gov.*

Dated: January 29, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 08–481 Filed 2–4–08; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form I–129, Revision of an Existing Information Collection; Comment Request

**ACTION:** 60-Day Notice of Information Collection Under Review: Form I–129, Petition for Nonimmigrant Worker; OMB Control Number 1615–0009.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of

1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until April 7, 2008.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please add the OMB Control Number 1615–0009 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

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

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

*Overview of this information collection:*

(1) *Type of Information Collection: Revision of a currently approved information collection.*

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker.

(3) *Agency form number, if any and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–129. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as brief abstract: Primary:* Individuals or households. This form is used by an employer to petition for aliens to come to the U.S. temporarily to perform services, labor, and training or to request extensions of stay or changes in nonimmigrant status for nonimmigrant workers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 368,948 responses at 2.75 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,014,607 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp*.

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529; telephone number 202–272–8377.

Dated: January 31, 2008.

**Stephen Tarragon,**

*Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. E8–2055 Filed 2–4–08; 8:45 am]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–921–08–1320–EL–P; NDM 97633]**

### Notice of Coal Lease Application—NDM 97633—BNI Coal Limited

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Notice.

**SUMMARY:** This is Notice of BNI Coal Limited Coal Lease Application NDM 97633 for certain coal resources within the Center Mine. The land included in Coal Lease Application NDM 97633 is located in Oliver County, North Dakota, and is described as follows:

T. 142 N., R. 84 W., 5th P. M.
Sec. 20: N½, SW¼;
Sec. 32: N½1/4, SW1/4NW1/4, NW1/4SW1/4 The 640.00 acre tract contains an estimated 17.1 million tons of recoverable coal reserves.

The application will be processed in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181, *et seq.*), and the implementing regulations at 43 CFR 3400. A decision to allow leasing of the coal reserves in said tract will result in a competitive lease sale to be held at a time and place to be announced through publication pursuant to 43 CFR 3422.

**SUPPLEMENTARY INFORMATION:** BNI Coal Limited is the lessee and operator of Coal Leases NDM 043848, NDM 62073, and NDM 95104 at the Center Mine. The entire area included within this lease application lies within the Center Mine BNCR–9702 permit area.

The area applied for would be mined as an extension of the Center Mine and would utilize the same methods as those currently being used. The lease being applied for can extend the life of the mine by about 4 years, and enable recovery of coal that might never be mined if not mined as a logical extension of current pits.

*Notice of Availability:* The application is available for review between the hours of 9 a.m. and 4 p.m. at the Bureau of Land Management, Montana State Office, 5001 Southgate Drive, Billings, Montana 59101, and at the Bureau of Land Management, Dakotas District Office, whose address is 2933 Third Avenue West, Dickinson, North Dakota, 58601–2619, between the hours of 8 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Spurgin, Coal Coordinator, at telephone 406–896–5080, Bureau of Land Management, Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669.

Dated: January 30, 2008.

**Edward L. Hughes,**

*Acting Chief, Branch of Solid Minerals.*

[FR Doc. E8–2083 Filed 2–4–08; 8:45 am]

**BILLING CODE 4310–$$–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM–940–08–1420–BJ]**

### Notice of Filing of Plats of Survey; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication.

**SUPPLEMENTARY INFORMATION:**

**New Mexico Principal Meridian, New Mexico**

The plat, representing the dependent resurvey and survey for Township 11 North, Range 2 East, accepted September 28, 2007, for Group 976 New Mexico.

The plat, representing the dependent resurvey and subdivision of section for Township 10 South, Range 25 East,

accepted August 28, 2007, for Group 940 New Mexico.

The plat, in two sheets representing the dependent resurvey and survey for Township 10 North, Range 3 West, accepted May 14, 2007, for Group 1042 New Mexico.

The plat, in four sheets representing the dependent resurvey and survey for Township 9 North, Range 3 West, accepted May 14, 2007, for Group 1042 New Mexico.

The plat, representing the dependent resurvey and subdivision of section 18 for Township 14 North, Range 9 East, accepted May 24, 2007, for Group 1063 New Mexico.

The plat, representing the dependent resurvey and survey for Township 23 North, Range 10 East, accepted June 7, 2007, for Group 1060 New Mexico.

The plat, representing the dependent resurvey and subdivision of section 12 for Township 131 North, Range 2 West, accepted April 13, 2007, for Group 1020 New Mexico.

The plat, representing the dependent resurvey for Township 3 South Range 12 West, accepted June 7, 2007, for Group 932 New Mexico.

The plat, representing the dependent resurvey and subdivision of sections for Township 5 North, Range 19 West, accepted May 11, 2007, for Group 1051 New Mexico.

The plat, in five sheets, representing the dependent resurvey and survey for Township 28 North, Range 8 West, accepted June 11, 2007, for Group 931 New Mexico.

The plat, in two sheets representing the dependent resurvey and subdivision of section 17 for Township 6 South, Range 26 East, accepted October 30, 2007, for Group 981 New Mexico.

The plat, representing the dependent resurvey and subdivision of sections for Township 5 South, Range 25 East, accepted October 30, 2007, for Group 981 New Mexico.

**Indian Meridian, Oklahoma**

The plat, representing the dependent resurvey and subdivision of section 16 for Township 24 North, Range 7 East, accepted October 19, 2007, for Group 147 Oklahoma.

The supplemental plat representing Township 10 North, Range 24 East, accepted October 11, 2007, Oklahoma.

The supplemental plat representing the dependent resurvey and survey for Township 9 North, Range 6 East, accepted September 7, 2007, for Group 148 Oklahoma.

The plat, representing the dependent resurvey and subdivision of section for Township 25 North, Range 2 East, accepted June 27, 2007, for Group 136 Oklahoma.

The plat, representing the dependent resurvey and subdivision of section for Township 1 South, Range 2 West, accepted May 31, 2007, for Group 151 Oklahoma.

The plat, representing the dependent resurvey and subdivision of section 4, for Township 24 North, Range 7 East, accepted June 25, 2007, for Group 146 Oklahoma.

The plat, representing the dependent resurvey and subdivision of section 14 for Township 3 South, Range 7 West, accepted April 13, 2007, for Group 156 Oklahoma.

The plat, representing the dependent resurvey and subdivision of section for Township 19 North, Range 22 East, accepted April 25, 2007, for Group 145 Oklahoma.

The plat, in two sheets representing the dependent resurvey and subdivision of section 8 for Township 15 North, Range 11 West, accepted October 23, 2007, for Group 158 Oklahoma.

The plat, representing the dependent resurvey for Township 8 South, Range 23 East, accepted October 23, 2007, for Group 165 Oklahoma.

The plat, representing the dependent resurvey for Township 8 North, Range 6 East, accepted November 8, 2007, for Group 168 Oklahoma.

The plat, representing the dependent resurvey and subdivision of section 13 for Township 1 south, Range 6 West, accepted October 31, 2007, for Group 154 Oklahoma.

The plat, representing the dependent resurvey and subdivision of section 18 for Township 17 North, Range 11 West, accepted October 17, 2007, for Group 139 Oklahoma.

**Sixth Principal Meridian, Kansas**

The plat, representing the dependent resurvey and survey for Township 1 South, Range 19 East, accepted August 27, 2007, for Group 28 Kansas.

The plat, representing the dependent resurvey and survey for Township 33 South, Range 41 West, accepted January 15, 2008, for Group 30 Kansas.

**Texas**

The plat, representing the dependent resurvey and survey for Block P.M.C. EL & RR Railway Survey accepted June 20, 2007 for Group 9 Texas.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed.

A person or party who wishes to protest against any of these surveys must file a written protest with the New Mexico State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty days after the protest is filed.

**FOR FURTHER INFORMATION CONTACT:** These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, and P.O. Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained from this office for a minimum recovery fee.

Dated: January 23, 2008.

**Jay M. Innes**

*Acting Chief Cadastral Surveyor, New Mexico.*

[FR Doc. 08–484 Filed 2–4–08; 8:45 am]

**BILLING CODE 4310–FB–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–921–03–1320–EL; COC–072168]**

### Notice of Invitation for Coal Exploration License Application, Bowie Resources, LLC. COC–072168; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Invitation for Coal Exploration License.

**SUMMARY:** Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended, by section 4 of the Federal Coal Leasing Amendments Act of 1976, Stat. 1083, 30 U.S.C. 201(b), and to the regulations adopted as 43 Code of Federal Regulations (CFR), part 3410, all interested parties are hereby invited to participate with Bowie Resources, LLC, on a pro rata cost sharing basis in a program for the exploration of unleased coal deposits owned by the United States of America in Delta County, Colorado:

T 12 S, R 91, 6th P.M. in Delta County, Colorado.
Sec. 27, S2, NW1/4, S2NE;
Containing 560 acres.

**DATES:** Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management (BLM) and Bowie Resources, LLC, as provided in the **ADDRESSES** section below, no later than 30 days after publication of this invitation in the **Federal Register**.

**ADDRESSES:** Copies of the exploration plan and license application (serialized

under the number of COC–072069) are available for review during normal business hours in the public room of the BLM State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the Uncompahgre Field Office, 2505 South Townsend Avenue, Montrose, Colorado 81401. The written notice to participate in the exploration plan should be sent to both Kurt M. Barton, CO–921, Solid Minerals Staff, Division of Energy, Lands and Minerals, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215; and, Collin Stewart, Bowie Resources, LLC, P.O. Box 483, Paonia, CO 81428.

**SUPPLEMENTARY INFORMATION:** This coal exploration license will be issued by the BLM. The exploration program is fully described and is being conducted pursuant to an exploration plan approved by the BLM. The plan may be modified to accommodate the legitimate exploration needs of persons seeking to participate. This notice of invitation to participate was published in The Delta County Independent, once a week for two consecutive weeks during the month of February 2008, and in the **Federal Register**. The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1 (c)(1).

**Kurt M. Barton,**

*Solid Minerals Staff, Division of Energy, Lands and Minerals.*

[FR Doc. E8–2032 Filed 2–4–08; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–923–1310–FI; WYW163874]**

### Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

**SUMMARY:** Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from El Camino Resources, Inc. for competitive oil and gas lease WYW163874 for land in Niobrara County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

**SUPPLEMENTARY INFORMATION:** The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW163874 effective August 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

**Julie L. Weaver,**

*Land Law Examiner, Branch of Fluid Minerals Adjudication.*

[FR Doc. E8–2045 Filed 2–4–08; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Rescind 1990 Cruise Ship Management Policy, Glacier Bay National Park & Preserve, Alaska

**AGENCY:** National Park Service, Interior.

**ACTION:** Rescind 1990 Cruise Ship Management Policy, Glacier Bay National Park & Preserve, Alaska.

**SUMMARY:** Effective with publication of this public notice, the National Park Service (NPS) has rescinded a policy concerning management of cruise ships in Glacier Bay National Park & Preserve which was originally published in the **Federal Register** on May 31, 1990 (FR, Vol. 55, No. 105, page 22108, 5/31/1990, FR Doc. 9012551). In summary, the policy was intended to increase opportunities for competitive award of cruise ship use days into Glacier Bay and to enhance visitor opportunities to select from a wider variety of cruise ship operations. These objectives were to be accomplished under the 1990 policy primarily by limiting the transferability of concession permits for cruise ship tours in Glacier Bay, limiting the scope of a preference in renewal of concessions permits that would otherwise apply, and granting additional renewal preferences.

However, in 1998, the Congress revised and reconfirmed the management of NPS concession contract authorizations through the NPS Concessions Management Improvement Act of 1998, Public Law 105–391, November 13, 1998. This law does not permit the continued implementation of most of the operative provisions of the 1990 policy such that the policy can no longer be implemented to achieve its objectives. Accordingly, the NPS has rescinded the 1990 policy. However, NPS does intend to continue to encourage the award of multiple concession contracts to different operators for Glacier Bay cruise operations so as to enhance visitor choices in visiting Glacier Bay by cruise ship. This will be accomplished primarily by limiting the number of cruise ship use days permitted under applicable cruise ship concessions contracts, thereby increasing the number of concession contracts available for award.

**DATES:** February 5, 2008.

**FOR FURTHER INFORMATION CONTACT:** Kevin Apgar, Concession Program Manager, Alaska Region, telephone: (907) 644–3361, e-mail at *Kevin_Apgar@nps.gov*, or National Park Service, Attn. Kevin Apgar, 240 West 5th Avenue, Anchorage, AK 99501.

Dated: December 27, 2007.

**Daniel N. Wenk,**

*Deputy Director, National Park Service.*

[FR Doc. E8–2095 Filed 2–4–08; 8:45 am]

**BILLING CODE 4312–HX–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Folsom Lake State Recreation Area and Folsom Power House State Historic Park General Plan/Resource Management Plan

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of Availability of the Draft Environmental Impact. Statement/ Environmental Impact Report (EIS/EIR) and notice of public meeting.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and the California Department of Parks and Recreation (State Parks) as lead agencies have made available for public review and comment a joint Draft EIS/ EIR for the Folsom Lake State Recreation Area and Folsom Power House State Historic Park General Plan/

Resource Management Plan (GP/RMP). The Draft EIS/EIR describes and presents the environmental effects of four alternatives, including no action, for future use of the project area for recreation and resource protection and management. The purpose of the public meeting is to provide the public with an opportunity to comment on environmental issues addressed in the Draft EIS/EIR. Written comments will be accepted from individuals and organizations on the Draft EIS/EIR.

**DATES:** Two public hearings will be held:

- Wednesday, March 5, 2008, 7 to 9 p.m., Granite Bay, CA.
- Tuesday, March 11, 2008, 7 to 9 p.m., Folsom, CA.

Submit written comments on the Draft EIS/EIR (see **ADDRESSES** Section) on or before March 24, 2008.

**ADDRESSES:** The public hearings will be held at:

- Granite Bay at the Cavitt Junior High School gymnasium, 7200 Fuller Drive, Granite Bay, CA 95746.
- Folsom at Folsom Middle School auditorium, multi-purpose room, 500 Blue Ravine Road, Folsom, CA 95630.

Send written comments on the Draft EIS/EIR to: Jim Micheaels, Staff Park and Recreation Specialist, State Parks, 7806 Folsom-Auburn Road, Folsom, CA 95630.

Send requests for a compact disk or a bound copy of the Draft EIS/EIR to Jim Micheaels, State Parks, at the above address; *telephone:* 916–988–0513.

Copies of the Draft GP/RMP and EIS/EIR will be available for review at: *http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?PROJECT_ID=543* and at the State Parks Web site at *http://www.parks.ca.gov/?page_id=22322*.

See Supplementary Information Section for locations where copies of the Draft EIS/EIR are available for public review.

**FOR FURTHER INFORMATION CONTACT:** Laura Caballero, Natural Resources Manager, Reclamation, at 916–989–7172; or Jim Micheaels, Staff Park and Recreation Specialist, State Parks, at 916–988–0513.

**SUPPLEMENTARY INFORMATION:** The GP/RMP is being prepared for the Folsom Lake State Recreation Area through a cooperative agreement between Reclamation and State Parks.

This planning activity encompasses approximately 20,000 acres of publicly accessible water and land owned by Reclamation and managed by State Parks' Gold Fields District. The GP/RMP will be the primary management document for the park unit, providing a defined purpose, vision, long-term goals, and management guidelines. It will be used by State Parks as a framework for guiding decision-making related to future development potential, on-going management, and public use of the Folsom Lake State Recreation Area.

The GP/RMP attempts to enhance and expand the recreation opportunities while also providing more active protection and management of natural and cultural resources. The GP/RMP is intended to be implemented over an extended period as determined by both user demand and need. To do so, the GP/RMP provides both park wide goals and guidelines relating to natural, cultural and visual resources, water quality, circulation, visitor services, interpretation and operations as well as direction for specific zones of the park. The GP/RMP designates 34 geographic management zones, with 12 on Lake Natoma and 22 on Folsom Lake. Each zone has a specific management emphasis and is designated with one of five land use designations: Recreation-High, Recreation-Medium, Conservation, Preservation, or Administration.

The preferred alternative includes 12 recreation zones, 17 conservation zones, 3 preservation zones, and 2 administration zones. Based on this area, the management emphasis is for recreation on 91% of the aquatic area and 20% of the land area, and conservation on 74% of the land area and 9% of the aquatic area; however, it will ultimately be the responsibility of State Parks and the Parks and Recreation Commission and Reclamation to select a preferred plan for adoption, once the environmental review processes have been completed.

The EIS/EIR is a program-level analysis of the potential environmental impacts associated with adoption of the GP/RMP. The GP/RMP is intended to be predominantly self-mitigating through implementation of GP/RMP policies and management strategies, and the EIS/EIR will also include measures intended to reduce the adverse effects of the GP/RMP.

Copies of the Draft EIS/EIR are available for public review at the following locations:

- California State Parks, Folsom Lake SRA Office, 7806 Folsom Auburn Road, Folsom, CA 95630.
- Sacramento Central Library, 828 I Street, Sacramento, CA 95542.
- Folsom Public Library, Georgia Murray Building, 411 Stafford Street, Folsom, CA 95630.
- El Dorado County Main Library, 345 Fair Lane, Placerville, CA 95667.
- Placer County Library, Auburn Branch, 350 Nevada Street, Auburn, CA 95603.
- Placer County Library, Granite Bay Branch, 6475 Douglas Boulevard, Granite Bay, CA 95746.

If special assistance is required at the public hearings, please contact Ms. Laura Caballero at 916–989–7172 (e-mail: *lcaballero@mp.usbr.gov*). Please notify Ms. Caballero as far in advance of the hearings as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified.

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 18, 2007.

**Richard M. Johnson,**

*Acting Regional Director, Mid-Pacific Region.*

[FR Doc. E8–2071 Filed 2–4–08; 8:45 am]

**BILLING CODE 4310–MN–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Final Public Meeting for Reclamation's Managing for Excellence Project

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Bureau of Reclamation is holding a workshop to inform the public about the close-out of the *Managing for Excellence* project. The meeting to be held will inform the public about the results of the *Managing for Excellence* action plan and seek final public input and feedback.

**DATES:** February 29, 2008, 1 p.m. to 3 p.m.

**ADDRESS:** Monte Carlo Resort and Casino, 3770 Las Vegas Blvd. South, Las Vegas, Nevada 89109.

**FOR FURTHER INFORMATION CONTACT:** Debbie Byers at 303–445–2790.

**SUPPLEMENTARY INFORMATION:** *Managing for Excellence*—An Action Plan for the 21st Century Bureau of Reclamation, outlined a process and timeframe for the project which identified and addressed the specific 21st Century challenges Reclamation must meet to fulfill its mission to manage, develop, and protect

water and related resources in an environmentally and economically sound manner in the interest of the American public. The project examined Reclamation's core capabilities and the agency's ability to respond to both expected and unforeseeable future needs in an innovative and timely manner. For more information regarding the project, Action Plan, and specific actions being taken, please visit the *Managing for Excellence* Web site at *http://www.usbr.gov/excellence.*

**Registration**

Although you may register the day of the workshop beginning at 12 p.m., we highly encourage you to register prior to the date of the meeting online at *http://www.usbr.gov/excellence,* or by phone at 303–445–2935.

Dated: January 18, 2008.

**Kris D. Polly,**

*Deputy Commissioner—External and Intergovernmental Affairs, Washington Office.*

[FR Doc. E8–1995 Filed 2–4–08; 8:45 am]

**BILLING CODE 4310–MN–P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Notice of Proposed Information Collection for 1029–0055

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collection of information in 30 CFR 877—Rights of Entry.

**DATES:** Comments on the proposed information collection must be received by April 7, 2008, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Room 202–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request contact John A. Trelease, at (202) 208–2783, or electronically at *jtrelease@osmre.gov.* You may also review the collection request at *http://www.reginfo.gov/public/do/PRAMain.*

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies an information collection that OSM will be submitting to OMB for extension. This collection is contained in 30 CFR 877.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents and costs. OSM will request a 3-year term of approval for this information collection activity. Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

*Title:* 30 CFR 877—Rights of Entry.

*OMB Control Number:* 1029–0055.

*Summary:* This regulation establishes procedure for non-consensual entry upon private lands for the purpose of abandoned mine land reclamation activities or exploratory studies when the landowner refuses consent or is not available.

*Bureau Form Number:* None.

*Frequency of Collection:* Once.

*Description of Respondents:* State abandoned mine land reclamation agencies.

*Total Annual Responses:* 12.

*Total Annual Burden Hours:* 24.

*Total Annual Non-wage Costs:* $1,080 for publication costs.

Dated: January 30, 2008.

**John R. Craynon,**

*Chief, Division of Regulatory Support.*

[FR Doc. 08–490 Filed 2–4–08; 8:45 am]

**BILLING CODE 4310–05–M**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–447 (Final) and 731–TA–1116 (Final)]**

### Circular Welded Carbon-Quality Steel Pipe From China

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of the final phase of countervailing duty and antidumping investigations.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–447 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigation No. 731–TA–1116 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized and less-than-fair-value imports from China of circular welded carbon-quality steel pipe, provided for in subheadings 7306.30.10, 7306.30.50, 7306.50.10, 7306.50.50, 7306.19.10, and 7306.19.51 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**EFFECTIVE DATE:** January 10, 2008.

**FOR FURTHER INFORMATION CONTACT:** Joanna Lo (202–205–1888), Office of Investigations, U.S. International Trade

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as ''certain welded carbon quality steel pipes and tubes, of circular cross-section, and with an outside diameter of 0.372 inches (9.45 mm) or more, but not more than 16 inches (406.4 mm), whether or not stenciled, regardless of wall thickness, surface finish (*e.g.*, black, galvanized, or painted), end finish (*e.g.*, plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (*e.g.*, ASTM, proprietary, or other), generally known as standard pipe and structural pipe (they may also be referred to as circular, structural, or mechanical tubing).

The scope of this investigation does not include: (a) Pipe suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces and feedwater heaters, whether or not cold drawn; (b) mechanical tubing, whether or not cold-drawn; (c) finished electrical conduit; (d) finished scaffolding; (e) tube and pipe hollows for redrawing; (f) oil country tubular goods produced to API specifications; and (g) line pipe produced to only API specifications.''

Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

**SUPPLEMENTARY INFORMATION:**

*Background.*—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of circular welded carbon-quality steel pipe, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on June 7, 2007, by Allied Tube & Conduit, Sharon Tube Company, IPSCO Tubulars, Inc., Western Tube & Conduit Corporation, Northwest Pipe Company, Wheatland Tube Co., *i.e.*, the Ad Hoc Coalition For Fair Pipe Imports From China, and the United Steelworkers (collectively, the ''petitioners'') on behalf of the domestic industry producing circular welded carbon-quality steel pipe.

*Participation in the investigations and public service list.*—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report.*—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on April 29, 2008, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on May 13, 2008, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 7, 2008. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 9, 2008, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

*Written submissions.*—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is May 6, 2008. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 20, 2008; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before May 20, 2008. In addition, comments on the Department of Commerce's final determinations with respect to subject imports from China will be permitted; parties and non-parties should file such comments (not to exceed 10 pages in length) on or before June 2, 2008. On June 16, 2008, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information by noon on June 18, 2008, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published

pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 31, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8–2053 Filed 2–4–08; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–449 and 731–TA–1118–1121 (Final)]**

## Light-Walled Rectangular Pipe and Tube From China, Korea, Mexico, and Turkey

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of the final phase of countervailing duty and antidumping duty investigations.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase countervailing duty investigation No. 701–TA–449 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of light-walled rectangular pipe and tube, currently provided for in subheading 7306.61.50 of the Harmonized Tariff Schedule of the United States,[1] that are alleged to be subsidized by the Government of the People's Republic of China. The Commission also hereby gives notice of the scheduling of the final phase antidumping investigation Nos. 731–TA–1118–1121 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China, Korea, Mexico, and Turkey of light-walled rectangular pipe and tube, currently provided for in subheading 7306.61.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**EFFECTIVE DATE:** January 28, 2008.

**FOR FURTHER INFORMATION CONTACT:** Russell Duncan (202–708–4727; *russell.duncan@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

**SUPPLEMENTARY INFORMATION:**

*Background.*—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of light-walled rectangular pipe and tube, and that such products from China, Korea, Mexico, and Turkey are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on June 27, 2007, by the following firms: Allied Tube and Conduit, Harvey, IL; Atlas Tube, Plymouth, MI; California Steel and Tube, City of Industry, CA; Ex-L-Tube, Kansas City, MO; Hannibal Industries, Los Angeles, CA; Leavitt Tube Company LLC, Chicago, IL; Maruichi American Corporation, Sante Fe Springs, CA; Searing Industries, Rancho Cucamonga, CA; Southland Tube, Birmingham, AL; Vest Inc., Los Angeles, CA; Welded Tube, Concord, Ontario (Canada); and Western Tube and Conduit, Long Beach, CA.

*Participation in the investigations and public service list.*—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report.*—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on March 28, 2008, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Friday, April 11, 2008, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 4, 2008. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 9, 2008, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7

[1] Prior to February 3, 2007, the merchandise subject to these investigations was properly classified under subheading 7306.60.50 of the Harmonized Tariff Schedule of the United States.

business days prior to the date of the hearing.

*Written submissions.*—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is Friday, April 4, 2008. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is Friday, April 18, 2008; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before April 18, 2008. On May 6, 2008, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 8, 2008, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. In addition, comments on the Department of Commerce's final determinations with respect to subject imports from China and Korea will be permitted based on a schedule to be issued by the Commission no later than the publication in the **Federal Register** of such determinations by the Department of Commerce. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 Fed. Reg. 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 31, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8–2052 Filed 2–4–08; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–454 and 731–TA–1144 (Preliminary)]**

## Welded Stainless Steel Pressure Pipe From China

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of countervailing duty and antidumping duty investigations and scheduling of preliminary phase investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase countervailing duty investigation No. 701–TA–454 (Preliminary) and antidumping duty investigation No. 731–TA–1144 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of welded stainless steel pressure pipe, provided for in subheadings 7306.40.50 and 7306.40.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of China, and sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in these investigations in 45 days, or in this case by March 17, 2008. The Commission's views are due at Commerce within five business days thereafter, or by March 24, 2008.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

**EFFECTIVE DATE:** January 30, 2008.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—These investigations are being instituted in response to a petition filed on January 30, 2008, by Bristol Metals (Bristol, TN), Felker Brothers Corp. (Marshfield, WI), Marcegaglia USA Inc. (Munhall, PA), Outoukumpu Stainless Pipe, Inc. (Schaumburg, IL), and the United Steel Workers of America (Pittsburgh, PA).

*Participation in the investigations and public service list.*—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation

upon the expiration of the period for filing entries of appearance.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference.*—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on February 21, 2008, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Elizabeth Haines (202–205–3200) not later than February 15, 2008, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

*Written submissions.*—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before February 26, 2008, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 Fed. Reg. 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: January 31, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8–2054 Filed 2–4–08; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2008–0001]**

### Grain Handling Facilities; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comment.

**SUMMARY:** OSHA solicits public comment concerning its proposal to extend OMB approval of the information collection requirements specified in the Standard on Grain Handling Facilities (29 CFR 1910.272).

**DATES:** Comments must be submitted (postmarked, sent, or received) by April 7, 2008.

**ADDRESSES:** *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, 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, or courier service:* When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2008–0001, U.S. Department of Labor, Occupational Safety and Health Administration, 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. to 4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2008–0001). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

*Docket:* To read or download comments 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 (including this **Federal Register** notice) 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 website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:** Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et*

*seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The Standard specifies a number of paperwork requirements. The following sections describe who uses the information collected under each requirement as well as how they use it. The purpose of the requirements is to reduce employees' risk of death or serious injury while working in grain handling facilities.

Paragraph (d) of the Standard requires the employer to develop and implement an emergency action plan so that employees will be aware of the appropriate actions to take in the event of an emergency.

Paragraph (e)(1) requires that employers provide training to employees at least annually and when changes in job assignment will expose them to new hazards.

Paragraph (f)(1) requires the employer to issue a permit for all hot work. Under paragraph (f)(2) the permit shall certify that the requirements contained in 1910.272(a) have been implemented prior to beginning the hot work operations and shall be kept on file until completion of the hot work operation.

Paragraph (g)(1)(i) requires the employer to issue a permit for entering bins, silos, or tanks unless the employer or the employer's representative is present during the entire operation. The permit shall certify that the precautions contained in paragraph (g) have been implemented prior to employees entering bins, silos or tanks and shall be kept on file until completion of the entry operations.

Paragraph (g)(1)(ii) requires that the employer deenergize, disconnect, lockout and tag, block-off or otherwise prevent operation of all mechanical, electrical, hydraulic, and pneumatic equipment which presents a danger to employees inside grain storage structures.

Paragraphs (i)(1) and (i)(2) require the employer to inform contractors performing work at the grain handling facility of known potential fire and explosion hazards related to the contractor's work and work area and to explain to the contractor the applicable provisions of the emergency action plan.

Paragraph (j)(1) requires the employer to develop and implement a written housekeeping program that establishes the frequency and method(s) determined best to reduce accumulations of fugitive grain dust on ledges, floors, equipment, and other exposed surfaces.

Under paragraph (m)(1), the employer is required to implement preventive maintenance procedures consisting of regularly scheduled inspections of at least the mechanical and safety control equipment associated with dryers, grain stream processing equipment, dust collection equipment including filter collectors, and bucket elevators. Paragraph (m)(3) requires a certification be maintained of each inspection. Paragraph (m)(4) requires the employer to implement procedures for the use of tags and locks which will prevent the inadvertent application of energy or motion to equipment being repaired, serviced, or adjusted.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Grain Handling Facilities (29 CFR 1910.272). The Agency is requesting to reduce its current burden hour estimate associated with this Standard from 73,572 hours to 70,355 hours for a total reduction of 3,217 hours. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

*Type of Review:* Extension of a currently approved collection.

*Title:* Grain Handling Facilities Standard (29 CFR 1910.272).

*OMB Number:* 1218–0206.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 19,121.

*Total Responses:* 1,343,420.

*Estimated Time per Response:* Varies from 1 minute (.02 hour) to maintain certification records to 3 hours to modify action plans/housekeeping programs/tag and lock procedures.

*Total Burden Hours:* 70,355.

*Estimated Cost (Operation and Maintenance):* $0.

## IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (Fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2008–0001). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

**V. Authority and Signature**

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, on January 30, 2008.

**Edwin G. Foulke, Jr.,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. E8–2060 Filed 2–4–08; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2007–0087]**

### Standard on Commercial Diving Operations; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comment.

**SUMMARY:** OSHA solicits public comment concerning its proposal to extend OMB approval of the information collection requirements specified in its Standard on Commercial Diving Operations (29 CFR part 1910, subpart T).

**DATES:** Comments must be submitted (postmarked, sent, or received) by April 7, 2008.

**ADDRESSES:** *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, 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, or courier service:* When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2007–0087, U.S. Department of Labor, Occupational Safety and Health Administration, 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. to 4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2007–0087). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

*Docket:* To read or download comments 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 (including this **Federal Register** notice) 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 website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:** Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The Subpart contains a number of paperwork requirements. The following paragraphs describe these requirements.

*Section 1910.401(b).* Allows employers to deviate from the requirements of the Subpart to the extent necessary to prevent or minimize a situation that is likely to cause death, serious physical harm, or major environmental damage (but not situations in which purely economic or property damage is likely to occur). They must notify the OSHA Area Director within 48 hours of taking such action; this notification must describe the situation responsible for the deviation and the extent of the deviation from the requirements. On request of the Area Director, employers must submit this information in writing.

*Sections 1910.410(a)(3) and (a)(4).* Paragraph (a)(3) requires employers to train all dive team members in cardiopulmonary resuscitation and first aid (i.e., the American Red Cross standard course or equivalent), while paragraph (a)(4) specifies that employers train dive team members exposed to hyperbaric conditions, or who control exposure of other employees to such conditions, in diving-related physics and physiology.

*Sections 1910.420(a).* Under paragraph (a), employers must develop and maintain a safe practices manual and make it available to each dive team member at the dive location. In addition, for each diving mode used at the dive location, the manual must contain: Safety procedures and checklists for diving operations; assignments and responsibilities of the dive team members; equipment procedures and checklists; and emergency procedures for fire, equipment failures, adverse environmental conditions, and medical illness and injury.

*Section 1910.421(b).* Under this provision, employers are to keep at the dive location a list of telephone or call numbers for the following emergency facilities and services: An operational decompression chamber (if such a chamber is not at the dive location); accessible hospitals; available physicians and means of emergency transportation; and the nearest U.S. Coast Guard Rescue Coordination Center.

*Section 1910.421(f).* Requires employers to brief dive team members

on the diving-related tasks they are to perform, safety procedures for the diving mode used at the dive location, any unusual hazards or environmental conditions likely to affect the safety of the diving operation, and any modifications to operating procedures necessitated by the specific diving operation. Before assigning diving-related tasks, employers must ask each dive team member about their current state of physical fitness, and inform the member about the procedure for reporting physical problems or adverse physiological effects during and after the dive.

*Section 1910.421(h).* If the diving operation occurs in an area capable of supporting marine traffic and occurs from a surface other than a vessel, employers are to display a rigid replica of the international code flag ''A'' that is at least one meter in height so that it is visible from any direction; the employer must illuminate the flag during night diving operations.

*Section 1910.422(e).* Employers must develop and maintain a depth-time profile for each diver that includes, as appropriate, any breathing gas changes or decompression.

*Sections 1910.423(b)(1)(ii) through (b)(2).* Requires the employer to: Instruct the diver to report any physical symptoms or adverse physiological effects, including symptoms of decompression sickness (DCS); advise the diver of the location of a decompression chamber that is ready for use; and alert the diver to the potential hazards of flying after diving. For any dive outside the no-decompression limits, deeper than 100 feet, or that uses mixed gas in the breathing mixture, the employer must also inform the diver to remain awake and in the vicinity of the decompression chamber that is at the dive location for at least one hour after the dive or any decompression or treatment associated with the dive.

*Section 1910.423(d).* Paragraph (d)(1) specifies that employers are to record and maintain the following information for each diving operation: The names of dive-team members; date, time, and location; diving modes used; general description of the tasks performed; an estimate of the underwater and surface conditions; and the maximum depth and bottom time for each diver. In addition, for each dive outside the no-decompression limits, deeper than 100 feet, or that uses mixed gas in the breathing mixture, paragraph (d)(2) requires the employer to record and maintain the following information for each diver: Depth-time and breathing gas profiles; decompression table designation (including any modifications); and elapsed time since the last pressure exposure if less than 24 hours or the repetitive dive designation. Under paragraph (d)(3), if the dive results in DCS symptoms, or the employer suspects that a diver has DCS, the employer must record and maintain a description of the DCS symptoms (including the depth and time of symptom onset) and the results of treatment.

*Section 1910.423(e).* Requires employers to assess each DCS incident by: Investigating and evaluating it based on the recorded information, consideration of the past performance of the decompression profile used, and the diver's individual susceptibility to DCS; taking appropriate corrective action to reduce the probability of a DCS recurrence; and, within 45 days of the DCS incident, preparing a written evaluation of this assessment, including any corrective action taken.

*Sections 1910.430(a), (b)(4), (c)(1)(ii), (c)(3)(i), (f)(3)(ii), and (g)(2). Description of the requirements.* Paragraph (a) contains a general requirement that employers must record by means of tagging or a logging system any work performed on equipment, including any modifications, repairs, tests, calibrations, or maintenance performed on the equipment. This record is to include a description of the work, the name or initials of the individual who performed the work, and the date they completed the work.

Paragraphs (b)(4) and (c)(1)(iii) require employers to test two specific types of equipment, including, respectively: The output of air compressor systems used to supply breathing air to divers for air purity every six months by means of samples taken at the connection to the distribution system; and breathing-gas hoses at least annually at one and one-half times their working pressure. Under paragraph (c)(3)(i), employers must mark each umbilical (i.e., separate lines supplying air and communications to a diver, as well as a safety line, tied together in a bundle), beginning at the diver's end, in 10-foot increments for 100 feet, then in 50-foot increments. Paragraph (f)(3)(ii) mandates that employers regularly inspect and maintain mufflers located in intake and exhaust lines on decompression chambers. According to paragraph (g)(2), employers are to test depth gauges using dead-weight testing, or calibrate the gauges against a master reference gauge; such testing or calibration is to occur every six months or if the employer finds a discrepancy larger than two percent of the full scale between any two equivalent gauges. Employers must make a record of the tests, calibrations, inspections, and maintenance performed on the equipment specified by these paragraphs in accordance with section 1910.430(a).

*Sections 1910.440(a)(2) and (b).* Under paragraph (a)(2) of this provision, employers must record any diving-related injuries or illnesses that result in a dive-team member remaining in hospital for at least 24 hours. This record is to describe the circumstances of the incident and the extent of any injuries or illnesses.

Paragraph (b) of this provision regulates the availability of the records required by the Subpart, including who has access to these records, the retention periods for various records, and, in some cases, the final disposition of the records. Under paragraph (b)(1), employers must make any record required by the subpart available, on request, for inspection and copying to an OSHA compliance officer or to a representative of the National Institute for Occupational Safety and Health (NIOSH). Paragraph (b)(2) specifies that employers are to provide employees, their designated representatives, and OSHA compliance officers with exposure and medical records generated under the Subpart in accordance with § 1910.1020 (''Access to employee exposure and medical records''); these records include safe practices manuals, depth-time profiles, diving records, DCS incident assessments, and hospitalization records. This paragraph also mandates that employers make equipment inspection and testing records available to employees and their designated representative on request.

According to paragraph (b)(3), employers must retain these records for the following periods: Safe practices manuals, current document only; depth-time profiles, until completing the diving record or the DCS incident assessment; diving records, one year, except five years if a DCS incident occurred during the dive; DCS incident assessments, five years; hospitalization records, five years; and equipment inspections and testing records, current tag or log entry until the employer removes the equipment from service. Paragraphs (b)(4) and (b)(5) specify the requirements for disposing of these records. Under paragraph (b)(4), employers are to forward any record with an expired five-year retention period to NIOSH. Paragraph (b)(5) states that employers who cease to do business must transfer records without unexpired retention dates to the successor employer who will retain them for the required period; however, if the employers cease to do business without

a successor employer, they must transfer the records to NIOSH.

**II. Special Issues for Comment**

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

**III. Proposed Actions**

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Commercial Diving Operations (29 CFR part 1910, subpart T). The Agency is requesting to retain its current burden hour total of 205,397 associated with this Subpart; however, it is adding a cost of $2,765 for employers to transfer records to the National Institute for Occupational Safety and Health. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

*Type of Review:* Extension of a currently approved collection.

*Title:* Standard on Commercial Diving Operations (29 CFR part 1910, subpart T).

*OMB Number:* 1218–0069.

*Affected Public:* Business or other for-profits.

*Number of Respondents:* 3,000.

*Frequency:* On occasion; annually.

*Average Time per Response:* Varies from 3 minutes (.05 hour) to replace the safe practices manual to 1 hour to develop a new manual.

*Estimated Total Burden Hours:* 205,397.

*Estimated Cost (Operation and Maintenance):* $2,765.

**IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions**

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (Fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2007–0087). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the website, and for assistance in using the Internet to locate docket submissions.

**V. Authority and Signature**

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, on January 30, 2008.

**Edwin G. Foulke, Jr.,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. E8–2061 Filed 2–4–08; 8:45 am]

**BILLING CODE 4510–26–P**

## NUCLEAR REGULATORY COMMISSION

**[NUREG–1855]**

### ''Guidance on the Treatment of Uncertainties Associated with PRAs In Risk-Informed Decision Making, Draft Report for Comment''

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability of NUREG–1855, ''Guidance on the Treatment of Uncertainties Associated with PRAs in Risk-Informed Decision Making, Draft Report for Comment,'' and request for public comment.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is announcing the availability of and is seeking comments on NUREG–1855, ''Guidance on the Treatment of Uncertainties Associated with PRAs in Risk-Informed Decision Making, Draft Report for Comment.''

**DATES:** Comments on this document should be submitted by March 28, 2008. Comments received after that date will be considered to the extent practical. To ensure efficient and complete comment resolution, comments should include references to the section, page, and line numbers of the document to which the comment applies, if possible.

**ADDRESSES:** Members of the public are invited and encouraged to submit written comments to Michael Lesar, Chief, Rulemaking, Directives, and Editing Branch, Office of Administration, Mail Stop T6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments attention to Michael Lesar, 11545 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Comments may also be sent electronically to *NRCREP@nrc.gov*.

This document, NUREG–1855, is available at the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html under Accession No. ML072990412* on the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/nuregs/docs4comment.html*; and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. The PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4205; fax (301) 415–3548; e-mail *PDR@NRC.GOV*.

**FOR FURTHER INFORMATION, CONTACT:** Mary Drouin, Division of Risk Assessment, Office of Nuclear

Regulatory Research, telephone (301) 415–6675, e-mail *mxd@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

**NUREG–1855, ''Guidance on the Treatment of Uncertainties Associated With PRAs in Risk-Informed Decision Making, Draft Report for Comment.'' December 2007**

This NUREG provides guidance on how to treat uncertainties associated with probabilistic risk assessment (PRA) in risk-informed decision making. The objectives of this guidance include fostering an understanding of (1) the uncertainties associated with PRA, (2) the impact of the uncertainties on the results of the PRA, and (3) the uncertainties in the context of the decision making. The guidance in this document focuses on the use of PRA insights and results and ways to address the associated uncertainties. Consequently, the scope of the guidance contained in this report is limited to addressing the uncertainties associated with the use of the results of risk models.

In implementing risk-informed decision making, the U.S. Nuclear Regulatory Commission expects that appropriate consideration of uncertainty will be given in analyses and interpretation of findings. Such consideration should include using a program of monitoring, feedback, and corrective action to address significant uncertainties. To meet this objective, it is necessary to understand the role that PRA results play in the context of the decision process. Defining the context includes providing an overview of the risk-informed decision making process itself.

With the context defined, the characteristics of a risk model and, in particular, a PRA need to be understood. This understanding includes a recognition of the different forms of uncertainty which include aleatory and epistemic. A PRA, as a probabilistic model already characterizes aleatory uncertainty. The focus of this document is epistemic uncertainty. Therefore, guidance is given on identifying and describing the different types of sources of epistemic uncertainty including the different ways that they are treated. The different types of epistemic uncertainty include parameter, model, and completeness uncertainties.

The final part of the guidance includes addressing the uncertainty in PRA results in the context of risk-informed decision making and, in particular, the interpretation of the results of the uncertainty analysis when comparing PRA results with the acceptance criteria established for a specified application. In addition, guidance is provided for addressing the other elements contributing to completeness uncertainty in risk-informed decision making (*e.g.*, unknown phenomena that have not been recognized or factors that have been identified but for which there is no agreed on method for addressing them in PRAs).

The Electric Power Research Institute (EPRI), in parallel with the NRC, has been developing guidance documents on the treatment of uncertainties. The activities of the NRC and EPRI are meant to be complementary.

The NRC is seeking public comment in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to developing this document is available to the NRC staff. This document is issued for comment only and is not intended for interim use. The NRC will review public comments received on the document, incorporate suggested changes as necessary, and issue the final NUREG–1855 for use.

Dated at Rockville, Maryland, this 18th day of January, 2008.

For the U.S. Nuclear Regulatory Commission.

**Christiana H. Lui,**

*Director, Division of Risk Analysis, Office of Nuclear Regulatory Research.*

[FR Doc. E8–2082 Filed 2–4–08; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Sunshine Federal Register Notice

**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission.

**DATE:** Weeks of February 4, 11, 18, 25, March 3, 10, 2008

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of February 4, 2008**

*Thursday, February 7, 2008*

12:55 p.m.
Affirmation Session (Public Meeting)
a. Final Rule—10 CFR 2.311 ''Interlocutory Review of Rulings on Requests for Hearings/Petitions to Intervene, Selection of Hearing Procedures, and Requests by Potential Parties for Access to SUNSI and Safeguards Information'' (RIN 3150–A108).
b. Final Rule—Regulatory Improvements to the Nuclear Materials Management and Safeguards System (RIN 3150–AH85).

**Week of February 11, 2008—Tentative**

*Monday, February 11, 2008*

12:55 p.m.
Affirmation Session (Public Meeting) (Tentative)
a. Final Rule—10 CFR Part 73 ''Safeguards Information Protection Requirements'' (RIN 3150–AH57) (Tentative).

1 p.m.
Discussion of Security Issues (Closed—Ex. 1).

**Week of February 18, 2008—Tentative**

*Tuesday, February 19, 2008*

10:30 a.m.
Meeting with the National Academies Radiation Source Use and Replacement Study Committee (Closed—Ex. 1).

*Wednesday, February 20, 2008*

9:30 a.m.
Periodic Meeting on New Reactor Issues, Part 1 (Public Meeting) (Contact: Donna Williams, 301–415–1322).

1:30 p.m.
Periodic Meeting on New Reactor Issues, Part 2 (Public Meeting) (Contact: Donna Williams, 301–415–1322).

This meeting, parts 1 and 2, will be webcast live at the Web address—*http://www.nrc.gov.*

**Week of February 25, 2008—Tentative**

There are no meetings scheduled for the Week of February 25, 2008.

**Week of March 3, 2008—Tentative**

There are no meetings scheduled for the Week of March 3, 2008.

**Week of March 10, 2008—Tentative**

There are no meetings scheduled for the Week of March 10, 2008.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you

need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, *TDD:* 301–415–2100, or by e-mail at *REB3@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: January 31, 2008.

**R. Michelle Schroll,**

*Office of the Secretary.*

[FR Doc. 08–512 Filed 2–1–08; 10:37 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon written request, copies available from: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17Ac3–1(a); SEC File No. 270–96; OMB Control No. 3235–015; Form TA–W(1669); SEC File No. 270–96; OMB Control No. 3235–0151.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Subsection (c)(4)(B) of Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) authorizes transfer agents registered with an appropriate regulatory agency (''ARA'') to withdraw from registration by filing with the ARA a written notice of withdrawal and by agreeing to such terms and conditions as the ARA deems necessary or appropriate in the public interest, for the protection of investors, or in the furtherance of the purposes of Section 17A.

In order to implement Section 17A(c)(4)(B) of the Exchange Act the Commission, on September 1, 1977, promulgated Rule 17Ac3–1(a) (17 CFR 240.17Ac3–1(a)) and accompanying Form TA–W (17 CFR 249b.101). Rule 17Ac3–1(a) provides that notice of withdrawal from registration as a transfer agent with the Commission shall be filed on Form TA–W. Form TA–W requires the withdrawing transfer agent to provide the Commission with certain information, including: (1) The locations where transfer agent activities are or were performed; (2) the reasons for ceasing the performance of such activities; (3) disclosure of unsatisfied judgments or liens; and (4) information regarding successor transfer agents.

The Commission uses the information disclosed on Form TA–W to determine whether the registered transfer agent applying for withdrawal from registration as a transfer agent should be allowed to deregister and, if so, whether the Commission should attach to the granting of the application any terms or conditions necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of Section 17A of the Exchange Act. Without Rule 17Ac3–1(a) and Form TA–W, transfer agents registered with the Commission would not have a means for voluntary deregistration when necessary or appropriate to do so.

Respondents file approximately 50 TA–Ws with the Commission annually. A Form TA–W filing occurs only once, when a transfer agent is seeking deregistration. Since the form is simple and straightforward, the Commission estimates that a transfer agent need spend no more than 30 minutes to complete a Form TA–W. Therefore, the total average annual burden to covered entities is approximately 25 hours of preparation and maintenance time.

In view of the ready availability of the information requested by Form TA–W, its short and simple presentation, and the Commission's experience with the filers, we estimate that approximately 30 minutes is required to complete Form TA–W, including clerical time. Approximately 80 percent of these are completed by the transfer agent or its employees and approximately 20 percent are completed by an outside filing agent. In either case, we estimate a cost of approximately $35 for each 30 minutes. Therefore, the total average annual cost burden is approximately $1,750.

Written 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 60 days of this notice.

Dated: January 28, 2008.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–1966 Filed 2–4–08; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57238; File No. 4–429]**

### Joint Industry Plan; Order Approving Joint Amendment No. 25 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage Relating to Response Time for Certain Orders Sent Through the Linkage

January 30, 2008.

### I. Introduction

On November 9, 2007, November 13, 2007, November 23, 2007, November 28, 2007, and November 29, 2007, the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Incorporated (''CBOE''), the International Securities Exchange, LLC (''ISE''), the NYSE Arca, Inc. (''NYSE Arca''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') (collectively, ''Participants''), respectively, filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule

[1] 15 U.S.C. 78k–1.

608 thereunder[2] an amendment (''Joint Amendment No. 25'') to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'').[3] In Joint Amendment No. 25, the Participants propose to reduce (i) the amount of time a member must wait after sending a Linkage Order[4] to another market before the member[5] can trade through that market and (ii) the time frame within which a Participant must respond to a Linkage Order after receipt of that Linkage Order. On December 4, 2007, the Commission summarily put into effect Joint Amendment No. 25 on a temporary basis not to exceed 120 days and solicited comment on Joint Amendment No. 25 from interested persons.[6] The Commission received no comments on Joint Amendment No. 25. This order approves Joint Amendment No. 25.

## II. Description of the Proposed Amendment

In Joint Amendment No. 25, the Participants proposed to reduce the amount of time a member must wait after sending a Linkage Order to another market before the member can trade through that market. The Participants proposed to decrease this time period from 5 seconds to 3 seconds. The Participants also proposed to reduce the time frame in which a Participant must respond to a Linkage Order from 5 seconds to 3 seconds after receipt of that Linkage Order.

## III. Discussion and Commission Findings

The Commission previously determined, pursuant to Rule 608 under the Act,[7] to put into effect summarily on a temporary basis not to exceed 120 days, the changes to the Linkage Plan detailed above in Joint Amendment No. 25.[8] After careful consideration of Joint Amendment No. 25, the Commission finds that approving Joint Amendment No. 25 is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that Joint Amendment No. 25 is consistent with Section 11A of the Act[9] and Rule 608 of Regulation NMS thereunder[10] in that it is in the public interest, for the protection of investors, and the maintenance of fair and orderly markets. The Commission believes that reducing the time required by a Participant to respond to a Linkage Order and the amount of time a member sending a Linkage Order must wait before trading through a nonresponsive Participant should facilitate the more timely execution of orders across the options exchanges.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 11A of the Act[11] and Rule 608 thereunder,[12] that Joint Amendment No. 25 is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–2058 Filed 2–4–08; 8:45 am]

**BILLING CODE 8011–01–P**

[2] 17 CFR 242.608.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (''Linkage'') proposed by Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, Pacific Exchange, Inc. (n/k/a NYSE Arca), and BSE 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).

[4] *See* Section 2(16) of the Linkage Plan. For the purposes of this Joint Amendment No. 25 only, references to ''Linkage Orders'' herein pertain to P/A Orders and Principal Orders. For definitions of ''P/A Order'' and ''Principal Order,'' *see* Section 2(16)(a) and (b) of the Linkage Plan, respectively.

[5] The term ''member,'' as used herein, includes NYSE Arca OTP Holders and OTP Firms and Boston Options Exchange (''BOX'') Options Participants. *See* NYSE Arca Rules 1.1(q) and 1.1(r) and Chapter I, Sec. 1(a)(40) of BOX Rules, respectively.

[6] *See* Securities Exchange Act Release No. 56893, 72 FR 70353 (December 11, 2007).

[7] 17 CFR 242.608.

[8] *See* supra note 6.

[9] 15 U.S.C. 78k–1.

[10] 17 CFR 242.608.

[11] 15 U.S.C. 78k–1.

[12] 17 CFR 242.608.

[13] 17 CFR 200.30–3(a)(29).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57233; File No. SR–OPRA–2007–05]**

## Options Price Reporting Authority; Order Approving an Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information To Adopt New Form of Rider to OPRA's Vendor Agreement for Use by Television Companies That Wish To Disseminate OPRA Data

January 30, 2008.

## I. Introduction

On December 6, 2007, the Options Price Reporting Authority (''OPRA'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan'').[3] The proposed OPRA Plan amendment would adopt a new form of Television Dissemination Rider to OPRA's Vendor Agreement for use by television companies that wish to disseminate current OPRA Data via a passive scrolling or ticker television display (''Rider''). OPRA's Fee Schedule would be modified to incorporate the fee that OPRA would charge for the dissemination of OPRA Data in the manner discussed below. The proposed OPRA Plan amendment was published for comment in the **Federal Register** on December 13, 2007.[4] The Commission received no comment letters in response to the Notice. This order approves the proposed OPRA Plan amendment.

## II. Description of the Proposal

Presently, a company that disseminates current OPRA Data to third parties is a ''Vendor'' for OPRA's purposes, and is therefore required to sign OPRA's Vendor Agreement. Furthermore, OPRA's Vendor Agreement states that any person that receives current OPRA Data from a Vendor is a ''Subscriber'' and requires the Vendor to cause each of its Subscribers to agree to a Subscriber Agreement, either with the Vendor for the benefit of OPRA, or directly with OPRA. OPRA is proposing a new Rider to state that this requirement would not apply to persons that receive OPRA Data in the form of a passive scrolling or ticker television display.

The new Rider would also state that the reporting requirements in the Vendor Agreement that enable OPRA to verify the Vendor's fees would not apply to television dissemination of OPRA Data. Instead, the Rider would set

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder (formerly Rule 11Aa3–2). *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at *http://www.opradata.com.*

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The six participants to the OPRA Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, Inc., the NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc.

[4] *See* Securities Exchange Act Release No. 56926 (December 7, 2007), 72 FR 70907 (''Notice'').

out requirements that are intended to elicit only the information that OPRA would need in order to verify the fees paid by a television company for television dissemination.

In addition, to accommodate the possibility that some owners of the indexes that OPRA disseminates may not wish to grant television companies the right to disseminate their indexes separately from the dissemination of related options market data, the new Rider would include language providing OPRA with the ability to grant permission to Vendor television companies to display index values separately from the dissemination of related options market data, and to revoke that permission. OPRA would treat all television companies that sign Riders identically with respect to permission to display index values. However, if OPRA revokes permission to display particular index values separately from the dissemination of related options market data, and, as a consequence, the television company Vendor no longer wishes to display OPRA Data values and to pay fees for doing so, language in the Rider would allow the television company Vendor to terminate the Rider and its Vendor Agreement, or only the Rider, effective as of the date that the index values cease to be available to the television company Vendor.[5]

Furthermore, Section 2 of the Rider would require a television company Vendor to display a legend on its television display at least three times a day. OPRA represents that the form of the legend would be the same as the legend required by the Consolidated Tape Association (''CTA'') for its counterpart Network A service, and the requirement with respect to the display of the legend would be the same as the CTA requirement.[6]

Finally, OPRA proposes to charge a fee for the dissemination via television of current OPRA Data on the basis of the number of ''thousands of households reached'' by the Vendor television company's programming.[7] OPRA represents that this metric is widely used in the television industry and is used by CTA for its counterpart service.

## III. Discussion

After careful review, the Commission finds that the proposed OPRA Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[8] Specifically, the Commission finds that the proposed OPRA Plan amendment is consistent with Section 11A of the Act[9] and Rule 608 thereunder[10] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and to remove impediments to, and perfect the mechanism of, a national market system.

The Commission believes the new Rider to allow television companies to disseminate current OPRA data via a passive scrolling or ticker television display is consistent with, and would further one of the principal objectives for the national market system set forth in Section 11A(a)(1)(C)(iii) of the Act[11] because it would help to assure the availability of information with respect to options information to brokers, dealers, and investors. Furthermore, the Commission believes that the proposed OPRA Plan amendment provides for an equitable allocation of reasonable fees for the dissemination via television of current OPRA Data.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 11A of the Act,[12] and Rule 608 thereunder,[13] that the proposed OPRA Plan amendment (SR–OPRA–2007–05) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–1997 Filed 2–4–08; 8:45 am]

**BILLING CODE 8011–01–P**

[5] Any Vendor has the right under paragraph 1(c) of the Rider to terminate the Rider, and under paragraph 19(d) of the OPRA form of Vendor Agreement to terminate the Vendor Agreement, in each case without cause upon thirty days written notice. The termination right essentially provides comfort to a television company Vendor that, if an index ceases to be available to the Vendor on less than thirty days notice, the Vendor may terminate either the Rider alone or the Rider and Vendor Agreement on the date the index ceases to be available.

[6] *See* the CTA form of Exhibit C to its form Agreement for Receipt and Use of Consolidated Network A Data and NYSE Market Data for ''Cable Broadcasts.''

[7] Specifically, OPRA plans to charge a fee of $.50 per 1,000 households reached. *See* proposed ''Television Display Fee'' on the OPRA Fee Schedule.

[8] In approving this proposed OPRA Plan Amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78k–1.

[10] 17 CFR 242.608.

[11] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[12] 15 U.S.C. 78k–1.

[13] 17 CFR 242.608.

[14] 17 CFR 200.30–3(a)(29).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57230; File No. SR–OPRA–2007–03]**

## Options Price Reporting Authority; Order Granting Permanent Approval to an Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information, as Modified by Amendment No. 1 Thereto, To Modify Various Provisions of the OPRA Plan and the OPRA Fee Schedule To Reflect the Elimination of Separate Fees for Access to Market Data Concerning Foreign Currency Options

January 29, 2008.

## I. Introduction

On October 9, 2007, the Options Price Reporting Authority (''OPRA'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan'').[3] The proposed OPRA Plan amendment would amend various provisions of the OPRA Plan in order to reflect the elimination of the separate fees for access to market data concerning Foreign Currency Options (''FCOs'') that currently apply to certain FCOs traded on the Phlx. The OPRA Fee Schedule would similarly be revised to reflect the elimination of the separate FCO service access fees. On November 14, 2007, OPRA submitted Amendment No. 1 to the proposal.[4] On December 11, 2007, OPRA submitted a revised version of Exhibit II to Amendment No. 1 to the proposal, which it requested to be

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder (formerly Rule 11Aa3–2). *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at *http://www.opradata.com.*

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The six participants to the OPRA Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, Inc. (''ISE''), the NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc. (''Phlx'').

[4] Amendment No. 1 replaced the original filing in its entirety.

substituted for the original version of Exhibit II.[5]

On December 12, 2007, the Commission issued notice of and approved the proposal, as amended, on a temporary basis not to exceed 120 days, and solicited comment on the proposal.[6] The Commission received no comment letters in response to the Temporary Approval Order. This order approves the proposed OPRA Plan amendment, as modified by Amendment No. 1, on a permanent basis.

## II. Description of the Proposal

Effective March 14, 1995, the OPRA Plan was amended to authorize the imposition of separate, unbundled access charges for market information pertaining to FCOs.[7] Subsequently, effective January 1, 1996, separate access charges for market information were imposed by OPRA, and subject to the exception described below, such separate charges have remained in effect since that time.[8] More recently, OPRA adopted a temporary exception to the separate FCO access fees for ''new'' FCOs first listed on any exchange on or after December 6, 2005, pursuant to which access to market information pertaining to such securities has been included within OPRA's basic information service, and has required payment only of OPRA's basic service access fees.[9] This temporary exception, which is set forth in Section VIII(c)(iii) of the OPRA Plan, was scheduled to expire by its terms on December 31, 2007, at which time, absent extension, all FCOs would become subject to separate FCO service access fees.[10]

Presently, OPRA states that certain classes of FCOs traded on the Phlx are subject to the separate FCO access fees, while other classes of FCOs traded on that exchange (those first listed on or after December 6, 2005) are subject to OPRA's basic service access fees. Further, the ISE is the only other exchange currently trading FCOs, where all of the FCOs were listed subsequent to December 6, 2005, and thus are subject only to OPRA's basic service access fees.

Recently, the Phlx informed OPRA that it has ceased listing new series of physical delivery FCOs to replace expiring series, and instead provides a market for foreign currency derivative securities through the listing of new classes of U.S. dollar-settled FCOs, sometimes referred to as World Currency Options. Under the current OPRA Plan, access to market data concerning all options, including the new U.S. dollar-settled FCOs, as well as individual equity options and cash-settled index options, is subject to OPRA's basic service access fees.[11]

OPRA proposes this amendment in order to maintain the same fee structure after the temporary exception for FCOs would otherwise have expired at the end of 2007. Trading in existing classes of physical delivery FCOs on the Phlx would be restricted to closing transactions until the last outstanding class expires on March 14, 2008, if the remaining positions in these classes are not closed out sooner. Accordingly, by that date, if not sooner, there would no longer be any physical delivery FCOs traded on the Phlx that would be subject to the existing separate FCO service access fees. At that time, access to market data for all options, including U.S. dollar-settled FCOs and all other FCO securities, would require payment only of OPRA's basic service access fees.

With respect to the FCOs traded on the ISE, OPRA notes that, unless the OPRA Plan is amended to eliminate the separate access fees for FCOs, upon the expiration of the temporary exception, FCOs traded on the ISE would have become subject to the separate FCO service access fees. In order to avoid subjecting FCO subscribers to what for them would be a new, additional, access fee for continued access to FCO market information, OPRA states that the ISE joined with the Phlx in requesting OPRA to amend the OPRA Plan to reflect the elimination of these separate fees.

Under the proposed amendment, the OPRA Plan would treat FCOs in exactly the same manner in which it now treats index options. Specifically, similar to index options, the OPRA Plan would continue to provide for a separate FCO accounting center and a framework for the possible future imposition of a separate access fee when and if authorized by the parties that provide a market in those securities, subject to satisfying the requirements of the Act.

Because the proposed amendment cannot become effective until the elimination by expiration or by closing transaction of the last remaining open position in physical delivery FCOs traded on Phlx that are subject to the separate FCO service access fees, which could be as late as March 14, 2008, and because it is necessary to retain the temporary exception from the separate FCO service access charges until these separate charges no longer apply, OPRA proposes to extend the temporary exception, currently scheduled to expire on December 31, 2007, until as late as March 14, 2008. Accordingly, this proposed amendment includes an extension of the temporary exception provided for in Section VIII(c)(iii) of the OPRA Plan until such time as there is no longer any open interest in physical delivery FCOs traded on the Phlx that are subject to the separate FCO service access fees. In no event will this be later than March 14, 2008. In accordance with the proposed OPRA Plan amendment, the Phlx will advise OPRA when that last remaining open interest no longer exists, so that the separate FCO service access fees and the temporary exception can be removed from the OPRA Plan effective as of that time.

## III. Discussion

After careful review, the Commission finds that the proposed OPRA Plan amendment, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder.[12] Specifically, the Commission finds that the proposed OPRA Plan amendment is consistent with Section 11A of the Act[13] and Rule 608 thereunder[14] in that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets, and to remove impediments to, and perfect the mechanism of, a national market system.

The Commission believes that it is appropriate for the proposed OPRA Plan amendment to preserve the status quo and extend the deadline set forth in Section VIII(c)(iii) of the OPRA Plan

[5] The revised Exhibit II made technical changes to the original and corrected an outdated reference to the ''NASD,'' which is now called ''FINRA.''

[6] *See* Securities Exchange Act Release No. 56949 (December 12, 2007), 72 FR 71720 (December 18, 2007) (''Temporary Approval Order'').

[7] *See* Securities Exchange Act Release No. 35487 (March 14, 1995), 60 FR 14984 (March 21, 1995) (File No. S7–8–90).

[8] *See* Securities Exchange Act Release No. 36613 (December 20, 1995), 60 FR 67144 (December 28, 1995) (SR–OPRA–95–5).

[9] *See* Securities Exchange Act Release Nos. 52901 (December 6, 2005), 70 FR 74061 (December 14, 2005) (SR–OPRA–2005–03) and 55049 (January 5, 2007), 72 FR 1568 (January 12, 2007) (SR–OPRA–2006–02).

[10] Pursuant to the Temporary Approval Order, this deadline was extended on a temporary basis not to exceed 120 days.

[11] In the case of U.S. dollar-settled FCOs, the fee reflects the temporary exception described above, whereas in the case of equity and index options, it is because OPRA has never adopted separate access fees for its index option service, but instead has made index options subject to the same basic service access fees that apply to equity options.

[12] In approving this proposed OPRA Plan Amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78k–1.

[14] 17 CFR 242.608.

until such time as there is no longer any open interest in physical delivery FCOs traded on the Phlx that are subject to the separate FCO service access fee. In addition, the Commission believes that OPRA's proposal to amend various provisions of the OPRA Plan and the OPRA Fee Schedule to eliminate the separate fees for access to market data concerning FCOs that currently apply to certain FCOs traded on the Phlx is appropriate in light of the Phlx's decision to cease listing new series of physical delivery FCOs to replace expiring series. Accordingly, the Commission believes that it is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanism of, a national market system to approve the proposed amendment to the OPRA Plan on a permanent basis.

**IV. Conclusion**

*It is therefore ordered,* pursuant to Section 11A of the Act,[15] and Rule 608 thereunder,[16] that the proposed OPRA Plan amendment (SR–OPRA–2007–03), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on a permanent basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–1998 Filed 2–4–08; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57231; File No. SR–CBOE–2007–152]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendments No. 1, 2, and 3 Relating to a Hybrid Agency Liaison (''HAL'') Step-Up Rebate and Pass-Through of Certain Linkage Related Costs

January 30, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by CBOE. On January 16, 2008, CBOE filed Amendment No. 1 to the proposed rule change. On January 23, 2008, CBOE filed Amendment No. 2 to the proposed rule change, and on January 28, CBOE filed Amendment No. 3 to the proposed rule change.[3] CBOE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member 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**

CBOE proposes to: (i) Establish a HAL step-up rebate, and (ii) pass through to members certain costs related to Intermarket Option Linkage (''Linkage'') Principal orders. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

HAL Step-Up Rebate

HAL is a system for automated handling of electronically received orders that are not automatically executed upon receipt by the Hybrid Trading System (''Hybrid''). CBOE Rule 6.14 governs the operation of the HAL system.

Orders received by the HAL system are electronically exposed to all CBOE market-makers appointed to the relevant option class, as well as to all members acting as agent for orders at the top of the Exchange's book in the relevant option series. This exposure and a subsequent allocation period (together, the ''HAL auction'') afford crowd members an opportunity to match the away national best bid or offer (''NBBO'') price. If any portion of an exposed order remains unexecuted at the end of a HAL auction, then the remaining order would be booked if it is a limit order that is not marketable, or, if marketable, routed to the exchange showing the NBBO via Linkage.

In order to provide an incentive to market makers to execute orders at CBOE, versus routing orders away via Linkage, the Exchange proposes to establish a program whereby the Exchange would provide a rebate to market-makers that ''step-up'' and trade all or part of certain orders on the HAL system. Specifically, the Exchange will rebate to a market-maker $.20 per contract against transaction fees generated from a transaction on the HAL system in a penny pilot class, provided that at least 80% of the market-maker's quotes in that class (excluding quotes in LEAPS series) in that same month were on one side of the NBBO. Market-makers not meeting this 80% criteria would not be eligible to receive a rebate. The Exchange believes the HAL rebate will allow market-makers to compete better for order flow in the penny pilot classes.

Pass-Through of Linkage P Order Costs

Pursuant to Section 21 of the CBOE Fees Schedule, the Exchange provides certain rebates and credits to Designated Primary Market-Makers (''DPMs'') for fees they incur related to the execution of outbound Principal orders (''P orders'') on behalf of orders that are for the account of a broker-dealer (*i.e.*, ''B'' and ''F'' origin codes).

The Exchange proposes to amend this program in two respects. First, the

[15] 15 U.S.C. 78k–1.

[16] 17 CFR 242.608.

[17] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 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 January 28, 2008, the date on which the Exchange filed Amendment No. 3. See 15 U.S.C. 78s(b)(3)(C).

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

Exchange proposes to expand the program to apply to any non-customer order underlying a P order.[6] Second, in order to recover the significant costs of this program, the Exchange proposes to pass through to the member that originated the underlying order the total amount of the credits paid by the Exchange to the DPM under the program (*i.e.*, away exchange transaction fee, and OCC, clearing firm and Sales Value fees). The Exchange represents that members seeking to send orders to the Exchange that are not routed away through the Linkage (thereby avoiding any pass-through Linkage charges) may do so by marking orders sent to CBOE with an Immediate or Cancel (''IOC'') designation. IOC orders are not routed to other market centers, instead if they cannot be executed on CBOE they are cancelled.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act[7] in general and furthers the objectives of section 6(b)(4)[8] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE 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 neither solicited nor received comments on the proposal.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(2)[10] thereunder because it establishes or changes a due, fee, or other charge applicable only to a member. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2007–152 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–2007–152. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of CBOE.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–152 and should be submitted on or before February 26, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–2059 Filed 2–4–08; 8:45 am]

**BILLING CODE 8011–01–P**

[6] The Exchange is expanding the application of the P order program due to the fact that HAL now processes market-maker orders in addition to broker-dealer orders.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–(f)(2).

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57229; File No. SR–ISE–2008–09]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To Amend Exchange Rules Related to the Imposition of Fines for Minor Rule Violations

January 29, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 18, 2008, 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 prepared substantially by the 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**

The Exchange proposes to amend ISE Rule 1614, ''Imposition of Fines for Minor Rule Violations,'' to add summary fines for violations of ISE Rule 1100, ''Exercise of Options Contracts.'' The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the ISE's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to add a summary fine schedule pursuant to its Minor Rule Violation Plan (''MRVP'') that will apply to any member who fails to submit to the Exchange in a timely manner, pursuant to ISE Rule 1100 (or a regulatory information circular issued pursuant to ISE Rule 1100), ''Advice Cancel'' or exercise instruction relating to the exercise or nonexercise of a noncash-settled equity option. The Exchange believes that imposing the fine levels specified with respect to both individual members and member organizations, and providing for a rolling 24-month surveillance period, will serve as an effective deterrent to such violative conduct.

In addition, the Exchange, as a member of the Intermarket Surveillance Group, as well as certain other self-regulatory organizations (''SROs''), executed and filed with the Commission, on October 29, 2007, a final version of an Agreement pursuant to Section 17(d) of the Act (the ''17d–2 Agreement'').[3] As set forth in the 17d–2 Agreement, the SROs have agreed that their respective rules concerning the filing of Expiring Exercise Declarations (also referred to as Contrary Exercise Advices) are common rules. As a result, the proposal to amend the ISE's MRVP will further result in consistency in sanctions among the SROs that are signatories to the 17d–2 Agreement concerning Contrary Exercise Advice violations.[4]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; and to protect investors and the public interest in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Additionally, the Exchange believes that the proposed rule change will promote consistency in minor rule violations and respective SRO reporting obligations as set forth pursuant to Rule 19d–1(c)(2) under the Act,[7] which governs minor rule violation plans.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

ISE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposal.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2008–09 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–2008–09. 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 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–2008–09 and should be submitted on or before February 26, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–1970 Filed 2–4–08; 8:45 am]

**BILLING CODE 8011–01–P**

[3] *See* letter to Richard Holley, Senior Special Counsel, Division of Trading and Markets, Commission, from Nyieri Nazarian, Assistant General Counsel, American Stock Exchange LLC (''Amex''), dated October 29, 2007.

[4] *See* Amex Rule 590.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 240.19d–1(c)(2).

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57223; File No. SR–NYSE–2007–110]**

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change as Modified by Amendment No. 1 Thereto To Amend Listing Fees for Structured Products, Short-Term Securities, and Debt Securities

January 29, 2008.

On November 28, 2007, New York Stock Exchange, LLC (the ''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend listing fees for structured products, short-term securities, and debt securities. On December 17, 2007, NYSE filed Amendment No. 1 to the proposed rule change. The Commission published the proposed rule change for comment in the **Federal Register** on December 27, 2007.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

The Exchange's proposal would amend Section 902 of the Listed Company Manual to alter the Exchange's listing fees applicable to structured products, short-term securities, and debt securities. The proposal would not amend the listing fees applicable to equity securities of operating companies.

Annual fees for structured products (Section 902.05) and short-term securities (Section 902.06) are currently a minimum of $5,000 per year. Under the proposal, the Exchange would charge a supplement to the 2008 Annual Fees for the period from February 1, 2008, until year end. An issuer that would pay less than $15,000 in Annual Fees for 2008 would be required to pay a supplemental amount equal to the difference between its Annual Fee and $15,000. For 2009 and thereafter, the Exchange would increase the minimum annual fee to $15,000. Annual fees would not be increased for short-term warrants to purchase equity securities (which would continue to be subject to a $5,000 minimum annual fee) and such warrants would not be subject to the supplemental payment for 2008.

The Exchange currently applies the debt securities fee schedule set forth in Section 902.08 to securities listed under Section 703.19 and traded on NYSE Bonds. The proposed rule change would amend Section 902.08 to impose a flat initial listing fee of $15,000 on all structured products (including short-term securities) listed under Section 703.19 and traded on NYSE Bonds. Currently, NYSE-listed companies and their affiliates pay no fees on structured products that trade on NYSE Bonds; the new proposed $15,000 initial listing fee would apply to all structured products listed on NYSE Bonds going forward. Section 902.08 would also be amended to impose a $15,000 initial listing fee on securities listed under the debt standard of Section 102.03 in place of the current fees. Debt listed under Section 102.03 of NYSE equity issuers and affiliated companies and of issuers exempt from registration under the Exchange Act would continue to be exempt from listing fees.

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 an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission also finds that the proposal is consistent with Section 6(b)(4) of the Act,[6] which requires the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities. The Commission notes that no comments were filed in this matter.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSE–2007–110), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–1968 Filed 2–4–08; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 56984 (December 18, 2007), 72 FR 73392.

[4] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57232; File No. SR–NYSE–2008–08]**

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Listed Company Manual Section 806.01 (Change of Specialist Unit Upon Request of Company)

January 30, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 22, 2008, the New York Stock Exchange LLC (''NYSE'' 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 Exchange. The Exchange has designated the proposed rule change as ''non-controversial'' under Section 19(b)(3)(A)(iii)[3] of the Act and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Listed Company Manual Section 806.01 to eliminate the mediation procedure required when a listed company requests a change of its specialist firm.

The text of the proposed rule changes is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

**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. The text of these statements may be examined at the places specified in Item IV below. NYSE 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

Through this filing, the NYSE seeks to amend Listed Company Manual Section 806.01 to eliminate the mediation procedure required when a listed company requests a change of its specialist firm.

Current Operation of Section 806.01

Listed Company Manual Section 806.01 currently provides that a listed company (or issuer) must file written notice with the Corporate Secretary of the Exchange in order to request a change of the specialist firm assigned to trade its security.[5] The NYSE currently notifies the subject specialist firm that a Change of Specialist Mediation will commence, and a copy of the issuer's written notice is provided to the specialist firm.[6] The specialist firm then has two weeks from receipt of the notice of the listed company's request to submit a written response to the Exchange's Corporate Secretary.[7] The Corporate Secretary provides copies of the listed company's notice and any response submitted by the specialist firm to the Exchange's New Listings & Client Service Division and to the Regulatory Group.[8] The Regulatory Group reviews the notice from the listed company and any specialist response to consider any regulatory issues.[9]

Concurrent with the regulatory review, the Exchange facilitates a mediation of the issues that have arisen between the listed company and the specialist firm by appointing a committee of senior members of the Exchange's constituency, including at least one floor broker representative from the Exchange's Board of Executives (''BOE''), one BOE investor representative, and one BOE listed company representative.[10] The Committee meets with both the listed company and the specialist firm to mediate the matters indicated in the listed company's notice.[11] During the mediation process, the listed company may file with the Exchange's Corporate Secretary its desire to remain with the specialist firm and conclude the mediation.[12]

If the issues have not been resolved within three months after the Specialist Response Date, the listed company may file written notice signed by the company's chief executive officer that it wishes to proceed with the change of its specialist firm.[13] Once the listed company confirms its request to change its specialist firm after the mediation period, the security will be put up for reallocation as soon as practicable, in accordance with Exchange Rule 103B.[14]

Proposed Changes to Mediation Process

The Exchange seeks to simplify the existing procedures for reallocating securities based upon the request of the listed company by eliminating the mediation process contained in Section 806.01 as described above.

NYSE proposes to amend Section 806.01 to permit a listed company that seeks to change the specialist firm responsible for making a market in its security to simply file a written notice with the Exchange's Corporate Secretary requesting the change. The notice should include the reasons for the change. The Exchange's Corporate Secretary will provide copies of the notice to NYSE Regulation, Inc. (''NYSER'') and the Exchange's Global Corporate Client Group. Upon receipt of the notice, the Exchange would proceed to reallocate the security in accordance with the procedures of Exchange Rule 103B.

The proposed amendment would retain the mechanism for NYSER to review such requests or refer the matter for consideration of the relevant regulatory issues to the NYSER Board of Directors. NYSE also proposes to amend Section 806.01 to reflect the current structure of NYSER.

The Exchange believes that the management of the business relationship between a specialist firm and its listed company is more appropriately left to direct communications between the specialist firm and the listed company. Currently, specialist firms maintain corporate relations groups that serve to provide listed companies with information and act as liaisons between the listed company and the specialist firm. Listed company concerns are usually first raised with the specialist firms in this forum. Once the listed company has taken the affirmative step to formally request reallocation, it is clear that further mediation will not be productive. The Exchange therefore seeks to promote a more efficient administration of the NYSE reallocation process by allowing the listed companies to proceed directly to reallocation without a required intervention period by the Exchange.

Finally, within Section 806.01, the Exchange seeks to change the word ''unit,'' as it relates to specialist corporate entities, to the word ''firm.''[15] The Exchange believes that the word ''firm'' more accurately describes the specialist corporate entity.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[16] that an Exchange have rules that are 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

[5] Listed Company Manual Section 806.01(a).

[6] Listed Company Manual Section 806.01(b).

[7] Listed Company Manual Section 806.01(b).

[8] Listed Company Manual Sections 806.01(a) and (b).

[9] Listed Company Manual Section 806.01(c) provides that the Regulatory Group may refer the matter for review by the Regulatory Oversight Committee. In the event of review by the Regulatory Oversight Committee, no change of specialist firm may occur until the Regulatory Oversight Committee makes its final determination. *See id.* In February 2006, after NYSE's business combination with Archipelago Holdings, Inc., the Exchange's Regulatory Group was incorporated as a separate not-for-profit entity, NYSE Regulation, Inc., with an independent board of directors. *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–05–77). Pursuant thereto, the oversight functions performed by the Regulatory Oversight Committee are now vested in the Board of Directors of NYSE Regulation, Inc. (''NYSER Board of Directors''). *See id.*

[10] Listed Company Manual Section 806.01(c) and (d). Pursuant to the NYSE's business combination with Archipelago Holdings, Inc., the BOE was dissolved. Duties previously assigned to the BOE were generally assumed by the Executive Floor Governors. *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–05–77).

[11] Listed Company Manual Sections 806.01(d) and (e).

[12] Listed Company Manual Section 806.01(f).

[13] Listed Company Manual Section 806.01(g). The specialist firm has two weeks from receipt of the notice of the listed company's request to change firms to submit a written response to the Exchange's Corporate Secretary. *See* Listed Company Manual Section 806.01(b). The last day of that two-week period is referred to as the ''Specialist Response Date.'' *See id.*

[14] Listed Company Manual Section 806.01(g).

[15] For other Sections of the Listed Company Manual, the Exchange will change references to specialist ''units'' as those Sections are updated.

[16] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change 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*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and subparagraph (f)(6) of Rule 19b–4 thereunder.[18]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[19] However, Rule 19b–4(f)(6)(iii)[20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has satisfied the five-day prefiling requirement.[21] In addition, the Exchange has requested that the Commission waive the 30-day pre-operative delay and designate the proposed rule change to become 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 it would allow the Exchange to immediately implement this proposal and would simplify the existing procedures for reallocating securities based upon the request of the listed company by eliminating the mediation process contained in Section 806.01. The Commission designates the proposal to become effective and operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2008–08 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–NYSE–2008–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–08 and should be submitted on or before February 26, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–1999 Filed 2–4–08; 8:45 am]

**BILLING CODE 8011–01–P**

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] *Id.*

[21] *Id.*

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57220; File No. SR–NYSEArca–2008–08]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Pertaining to the Imposition of Fines for Minor Rule Violations

January 29, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 18, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially 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 NYSE Arca Rule 6.24, ''Exercise of Option Contracts,'' and NYSE Arca Rule 10.12, ''Minor Rule Plan.'' The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

NYSE Arca Rule 6.24 contains special procedures that apply to the exercise of options on the last business day before expiration. The Exchange proposes to amend NYSE Arca Rule 6.24 to: (i) Add a reference to new terminology; (ii) make minor revisions to the procedures related to exercising option contracts; (iii) amend Commentary .08 of NYSE Arca Rule 6.24 to authorize the Exchange to sanction an OTP Holder or OTP Firm that fails to follow NYSE Arca Rule 6.24, pursuant to the Minor Rule Plan (''MRP''); and (iv) add the recommended sanctions to the MRP contained in NYSE Arca Rule 10.12. The proposed changes are described briefly below.

An option holder desiring to exercise or not exercise expiring options must either: (i) Take no action and allow exercise determinations to be made in accordance with the Options Clearing Corporation's (''OCC'') Ex-by-Ex procedures, where applicable; or (ii) submit a Contrary Exercise Advice (''CEA'') to the Exchange. A CEA is a communication to either: (i) not exercise an option that would be automatically exercised under OCC's Ex-by-Ex procedure, or (ii) exercise an option that would not be automatically exercised under OCC's Ex-by-Ex procedure. A CEA is also referred to within the options industry as an Expiring Exercise Declaration (''EED''). While the form itself may be called by a different name, the purpose and procedure for submitting an EED is identical to that of a CEA. The Exchange proposes adding a parenthetical reference to EEDs within NYSE Arca Rule 6.24.

An OTP Holder or OTP Firm that manually submits a CEA to the Exchange does so by completing a form and putting it in the Exchange's Contrary Exercise Advice Box. Going forward, the Exchange will discontinue the use of the Contrary Exercise Advice Box; and instead, an OTP Holder or OTP Firm will submit a CEA directly to a designated representative of the Exchange's Options Surveillance Department.

Commentary .08 to NYSE Arca Rule 6.24 provides that the failure of any OTP Holder to follow the provisions contained in this rule may be referred to the Ethics and Business Conduct Committee (''EBCC'') and result in the assessment of a fine, which may include, but is not limited to, the disgorgement of potential economic gain obtained or loss avoided by the subject exercise. Referral to the EBCC involves a formal disciplinary proceeding. NYSE Arca proposes to add a provision to Commentary .08 that would authorize the Exchange to sanction an OTP Holder or OTP Firm that fails to follow NYSE Arca Rule 6.24, pursuant to the MRP. The Exchange would retain the authority to refer violators to the EBCC for formal disciplinary proceedings.

The Exchange also proposes adding the phrase ''or OTP Firm'' to Commentary .08 to NYSE Arca Rule 6.24. The Exchange has always intended to apply NYSE Arca Rule 6.24 equally to both OTP Holders and OTP Firms. The addition of OTP Firms will codify the original intent of NYSE Arca Rule 6.24.

Under this proposal, violators of NYSE Arca Rule 6.24 may be subject to MRP fines based on the number of violations occurring within a rolling 24-month period. An individual OTP Holder would be subject to a fine of $500 for the first offense, $1,000 for the second offense, and $2,500 for the third offense. An OTP Firm would be subject to a $1,000 fine for the first offense, $2,500 for the second offense, and $5,000 for a third offense.[3] A list of the proposed fines would be added to the MRP fine schedule in NYSE Arca Rule 10.12. The MRP provides a reasonable means of addressing rule violations that do not necessarily rise to the level of requiring formal disciplinary proceedings, while also providing a greater flexibility in handling certain violations. Adopting a provision that would allow the Exchange to sanction violators under the MRP by no means minimizes the importance of compliance with NYSE Arca Rule 6.24. The Exchange believes that the violation of any of its rules is a serious matter. The addition of a sanction under the MRP simply serves to add an additional method for disciplining violators of NYSE Arca Rule 6.24. The Exchange would continue to conduct surveillance with due diligence and make its determination, on a case by case basis, whether a fine under the MRP is appropriate, or whether a violation should be subject to formal disciplinary proceedings.

In addition, the Exchange, as a member of the Intermarket Surveillance Group (''ISG''), as well as certain other self-regulatory organizations (''SRO'') executed and filed on October 29, 2007 with the Commission, an Agreement pursuant to Section 17(d) of the Act (the ''17d–2 Agreement'').[4] As set forth in the 17d–2 Agreement, the SROs have agreed that their respective rules concerning the filing of CEAs are common rules. As a result, the proposal to add CEA/EED violations to the NYSE Arca MRP will further result in consistency in sanctions among the SROs that are signatories to the 17d–2 Agreement concerning CEA/EED violations.

NYSE Arca Rule 10.12(h)(33) and Rule 10.12(k)(i)(33) are presently designated as ''Reserved.'' The Exchange proposes to use these reserved rule numbers for new NYSE Arca Rule 10.12(h)(33), which would reference CEA/EED violations pursuant to Rule 6.24, and new NYSE Arca Rule 10.12(k)(i)(33), which would include the recommended fines for CEA/EED violations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change will strengthen its ability to carry out its oversight responsibilities as an SRO and reinforce its surveillance and enforcement functions. Additionally, the Exchange believes that the proposed rule change will promote consistency in minor rule violations and respective SRO reporting obligations as set forth pursuant to Rule 19d–1(c)(2) under the

[3] The Exchange, in its discretion, processes subsequent violations, after the third violation, according to NYSE Arca Rule 10.4. *See* NYSE Arca Rule 10.12(h), n.1.

[4] *See* letter to Richard Holley, Senior Special Counsel, Division of Trading and Markets, Commission, from Nyieri Nazarian, Assistant General Counsel, American Stock Exchange LLC (''Amex''), dated October 29, 2007.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

Act,[7] which governs minor rule violation plans.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NYSE Arca does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposal.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–08 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–08. 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–NYSEArca–2008–08 and should be submitted on or before February 26, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–1967 Filed 2–4–08; 8:45 am]

**BILLING CODE 8011–01–P**

[7] 17 CFR 240.19d–1(c)(2).

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57227; File No. SR–NYSEArca–2008–12]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Pricing Information for Components Underlying Currency-Linked Securities

January 29, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 17, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(III)(1), which sets forth the Exchange's initial listing criteria for Currency-Linked Securities,[3] to permit the listing and trading of Currency-Linked Securities where the pricing information for one or more currencies comprising the Currency Reference Asset is the generally accepted forward price for the currency exchange rate in question. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.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. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(III)(1) to permit the listing of Currency-Linked Securities where the pricing information for some or all of the components of the Currency Reference Asset is the generally accepted forward price for the currency exchange rate in question. The ability for an issuer to use forward pricing information under proposed NYSE Arca Equities Rule 5.2(j)(6)(B)(III)(1)(b) for any component of a Currency Reference

[3] Currency-Linked Securities are securities that provide for payment at maturity of a cash amount based on the performance of one or more currencies, or options or currency futures or other currency derivatives or Currency Trust Shares (as defined in NYSE Arca Equities Rule 8.202), or a basket or index of any of the foregoing (''Currency Reference Asset''). *See* NYSE Arca Equities Rule 5.2(j)(6).

Asset would be restricted to the following currencies, based on high volumes of forward contract transactions in such currencies: U.S. Dollar, Euro, Japanese Yen, British Pound Sterling, Swiss Franc, Canadian Dollar, Australian Dollar, Brazilian Real, Chinese Renminbi, Czech Koruna, Danish Krone, Hong Kong Dollar, Hungarian Forint, Indian Rupee, Indonesian Rupiah, Korean Won, Mexican Peso, Norwegian Krone, New Zealand Dollar, Philippine Peso, Polish Zloty, Russian Ruble, Swedish Krona, South African Rand, Singapore Dollar, Taiwan Dollar, Thai Baht or New Turkish Lira. The volume in these currencies is as follows: [4]

FX FORWARD AVERAGE DAILY VOLUME IN MILLIONS USD

| Currency | 2001 | 2004 | 2007 | Average |
|---|---|---|---|---|
| U.S. Dollar | 110,795 | 170,357 | 289,435 | 190,196 |
| Euro | 54,327 | 88,243 | 137,391 | 93,320 |
| Japanese Yen | 33,257 | 47,135 | 61,453 | 47,282 |
| British Pound Sterling | 16,826 | 31,338 | 46,274 | 31,479 |
| Swiss Franc | 6,637 | 11,307 | 21,186 | 13,043 |
| Canadian Dollar | 4,335 | 8,947 | 15,280 | 9,521 |
| Australian Dollar | 5,416 | 9,788 | 20,463 | 11,889 |
| Brazilian Real | 1,259 | 1,072 | 5,259 | 2,530 |
| Chinese Renminbi | 55 | 811 | 4,572 | 1,813 |
| Czech Koruna | 96 | 253 | 1,432 | 594 |
| Danish Krone | 888 | 1,347 | 2,841 | 1,692 |
| Hong Kong Dollar | 3,055 | 2,221 | 6,022 | 3,766 |
| Hungarian Forint | 28 | 308 | 1,357 | 564 |
| Indian Rupee | 428 | 1,531 | 5,815 | 2,591 |
| Indonesian Rupiah | 103 | 267 | 1,292 | 554 |
| Korean Won | 1,671 | 6,048 | 10,013 | 5,911 |
| Mexican Peso | 673 | 1,716 | 4,594 | 2,328 |
| Norwegian Krone | 1,187 | 2,543 | 6,498 | 3,409 |
| New Zealand Dollar | 579 | 1,462 | 6,639 | 2,893 |
| Philippine Peso | 73 | 232 | 1,123 | 476 |
| Polish Zloty | 439 | 483 | 2,644 | 1,189 |
| Russian Ruble | 52 | 253 | 1,253 | 519 |
| Swedish Krona | 3,207 | 4,158 | 8,543 | 5,303 |
| South African Rand | 825 | 1,122 | 3,458 | 1,802 |
| Singapore Dollar | 825 | 1,242 | 2,962 | 1,676 |
| Taiwan Dollar | 603 | 2,798 | 4,724 | 2,708 |
| Thai Baht | 231 | 490 | 847 | 523 |
| New Turkish Lira | 164 | 239 | 535 | 313 |
| Total (divided by 2) | 125,018 | 199,858 | 337,956 | 220,944 |

The Exchange states that the total amount of contracts reflected in the chart above is divided by two because each contract is denominated in two currencies. For example, one contract will reflect cross rates in two currencies: U.S. Dollar against Euro, Singapore Dollar against New Turkish Lira, etc. The daily notional turnover for the currency forward contracts reflected in the chart above ranged from US$535 million to US$289 billion in April 2007.

In addition, the forward price will be used for pricing purposes only to the extent that the Currency Reference Asset is based on the forward price. In the event a Currency Reference Asset is based on the forward price, and the forward price becomes unavailable due to a holiday, the spot price may be used for calculating the price of the component(s) comprising the Currency Reference Asset. The pricing information of such Currency Reference Asset on the following business day must be the forward price. The Exchange states that this exception will permit certain hedged products that use forward pricing information to use the spot price, which is quoted in the United States, when the forward price, which is derived from the spot price, is unavailable due to a foreign holiday.

[4] See Bank for International Settlements (''BIS''), *Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity in April 2007,* Statistical Annex Tables—Foreign Exchange Markets (2007) (''2007 BIS Report''); BIS, *Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity in April 2004,* Statistical Annex Tables—Foreign Exchange Markets (2004); and BIS, *Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity in April 2001,* Statistical Annex Tables—Foreign Exchange Markets (2001).

The Exchange states that the foreign exchange market is predominantly an over-the-counter (''OTC'') market with no fixed location, and it operates 24 hours a day, five days a week. London, New York, and Tokyo are the principal geographic centers of the worldwide foreign exchange market, with approximately 58% of all foreign exchange business executed in the United Kingdom, United States, and Japan. Other smaller markets include Singapore, Zurich, and Frankfurt.[5] There are three major types of transactions in the traditional foreign exchange markets: spot transactions, outright forwards, and foreign exchange swaps. ''Forward'' trades are transactions involving the exchange of two currencies at a rate agreed on the date of the contract for value on delivery (cash settlement) at some time in the future. These trades account for 12% of the reported daily volume. Forward rates are quoted among dealers in premiums or discounts from the spot rate.[6] The premium or discount is measured in ''points'' that represent the interest rate differential between two currencies for the period of the forward, converted into foreign exchange.[7] The generally accepted forward price is calculated as follows:[8]

$$\text{Forward Rate} = \text{Spot Rate} \times \frac{1 + \text{Terms Currency Interest Rate} \times \text{Forward Days/Interest Rate Year}}{1 + \text{Base Currency Interest Rate} \times \text{Forward Days/Interest Rate Year}}$$

$$\text{Points} = \text{Forward Rate} - \text{Spot Rate}$$

The Exchange states that the OTC foreign currency market is a very liquid market. In 2007, the average daily spot turnover accounted for over US$1 trillion, and the average daily forward turnover accounted for US$362 billion.[9] In addition to liquidity, the Exchange states that the forward market is extremely transparent. Bloomberg, Reuters, and other major market information providers disseminate quotes for the forward market provided by OTC market makers.

The Exchange notes that most trading in the global OTC foreign currency markets is conducted by regulated financial institutions such as banks and broker-dealers. In addition, in the United States, the Foreign Exchange Committee of the New York Federal Reserve Bank has issued Guidelines for Foreign Exchange Trading, and central-bank sponsored committees in Japan and Singapore have published similar best practices guidelines. In the United Kingdom, the Bank of England has published the Non-Investment Products Code, which covers foreign currency trading. The Financial Markets Association, the members of which include major international banking organizations, has also established best practices guidelines called the Model Code.[10] Participants in the U.S. OTC market for foreign currencies are generally regulated by their oversight regulators. For example, participating banks are regulated by the banking authorities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange states that it has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–12 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

[5] *See generally* Securities Exchange Act Release No. 55268 (February 9, 2007), 72 FR 7793 (February 20, 2007) (SR–NYSE–2007–03) (providing background and information relating to the foreign exchange markets).

[6] *See* Sam Y. Cross, Federal Reserve Bank of New York, *All About . . . the Foreign Exchange Market in the United States*, at 38 (1998) (available at *http://www.newyorkfed.org/education/addpub/usfxm*).

[7] *See id.*

[8] *See id.*

[9] *See* 2007 BIS Report (Table 1), *supra* note 4.

[10] *See supra* note 5.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–12 and should be submitted on or before February 26, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–1969 Filed 2–4–08; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57226; File No. SR–NYSEArca–2008–03]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, Relating to Rules 5.3 and 5.4 To Enable Listing and Trading of Options on Multiple Fund and Inverse Fund Shares

January 29, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 8, 2008, NYSE Arca, Inc. (the ''Exchange''), through its wholly-owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission hereby provides notice of filing of the proposed rule change and approves the proposed rule change on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise NYSE Arca Rules 5.3 and 5.4 to enable listing and trading on the Exchange of options on Multiple Fund Shares and Inverse Fund Shares. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to revise NYSE Arca Rules 5.3 and 5.4 to enable the listing and trading on the Exchange of options on Multiple Fund Shares[3] and Inverse Fund Shares.[4] Multiple and Inverse Fund Shares differ from traditional exchange-traded fund shares (''Exchange-Traded Fund Shares'' or ''Fund Shares'') in that they do not merely correspond to the performance of a given index, but rather attempt to match a multiple or inverse of such underlying index performance. Currently, Multiple Fund Shares issued by ProShares Trust and Rydex ETF Trust trade on the Exchange pursuant to unlisted trading privileges (''UTP'') under NYSE Arca Equities Rule 5.2(j)(3).[5]

In order to achieve investment results that provide either a positive multiple or inverse of the benchmark index, Multiple Fund Shares or Inverse Fund Shares may hold a combination of financial instruments, including among other things: stock index future contracts; options on futures; options on securities and indices; equity caps, collars and floors; swap agreements; forward contracts; repurchase agreements; and reverse repurchase agreements (the ''Financial Instruments''). The underlying portfolios of Multiple Fund Shares generally will hold at least 85% of their assets in the component securities of the underlying relevant benchmark index. The remainder of any assets is devoted to Financial Instruments that are intended to create the additional needed exposure to such underlying index necessary to pursue its investment objective. Normally, 100% of the value of the underlying portfolios of Inverse Fund Shares will be devoted to Financial Instruments and money market instruments, including U.S. government securities and repurchase agreements (the ''Money Market Instruments''). Currently, NYSE Arca Rule 5.3(g) provides securities deemed appropriate for options trading shall include shares or other securities that are traded on a national securities exchange and are defined as an ''NMS Stock'' under Rule 600 of Regulation NMS, and that (i) represent an interest in a registered investment company organized as an open-end management investment company, a unit investment trust or a similar entity which holds securities constituting or otherwise based on or representing an investment in an index or portfolio of securities, or (ii) represent interests in a trust or similar entity that holds a specified non-U.S. currency deposited with the trust or a similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on the deposited U.S. currency, if any, declared and paid by the trust; or (iii) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Multiple Fund Shares seek to provide investment results, before fees and expenses, that correspond to a specific multiple of the percentage performance on a given day of a particular foreign or domestic stock index.

[4] Inverse Fund Shares seek to provide investment results, before fees and expenses, that correspond to the inverse (opposite) of the percentage performance on a given day of a particular foreign or domestic stock index by a specified multiple.

[5] *See* Securities Exchange Act Release Nos. 56763 (November 7, 2007), 72 FR 94103 (November 14, 2007) (SR–NYSEArca–2007–81); 56601 (October 2, 2007), 72 FR 57625 (October 10, 2007) (SR–NYSEArca–2007–79); 55125 (January 18, 2007), 72 FR 3462 (January 25, 2007) (SR–NYSEArca–2006–87); 54026 (June 21, 2006), 71 FR 36850 (June 28, 2006) (SR–PCX–2005–115).

managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (''Commodity Pool Units'').

The Exchange proposes to amend Rule 5.3(g) to expand the type of options eligible for listing and trading to include options based on Multiple Fund Shares and Inverse Fund Shares that may hold or invest in any combination of securities, Financial Instruments and/or Money Market Instruments. Multiple Fund Shares and Inverse Fund Shares will continue to otherwise satisfy the listing standards in Rule 5.3(g). In addition, the Exchange proposes minor amendments to Rule 5.3(g)(1)(B).

As set forth in proposed NYSE Arca Rule 5.3(g), Multiple Fund Shares and Inverse Fund Shares must be traded on a national securities exchange and must be an ''NMS stock'' as defined under Rule 600 of Regulation NMS. In addition, Multiple Fund Shares and Inverse Fund Shares must meet either: (i) The criteria and guidelines for underlying securities set forth in Rule 5.3(a) and (b); or (ii) be available for creation or redemption each business day in cash or in kind from or through the issuing trust, investment company, commodity pool or other issuer at a price related to the net asset value. In addition, the issuing trust, investment company, commodity pool, or other issuer is obligated to issue Fund Shares in a specified aggregate number even though some or all of the investment assets needed to be deposited have not been received by the issuing trust, investment company, commodity pool, or other issuer, provided the authorized creation participant has undertaken to deliver the investment assets as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer of the Fund Shares which underlie the option as described in the Fund Shares' prospectus; and (iii) for Commodity Pool Units, the Exchange has entered into a comprehensive surveillance sharing agreement with the marketplace or marketplaces with last sale reporting that represent(s) the highest volume in such commodity futures contracts on the specified commodities or non-U.S. currency, which are utilized by the national securities exchange where the underlying Commodity Pool Units are listed and traded.

The current continuing or maintenance listing standards for options on Exchange Traded Fund Shares will continue to apply.

The Exchange proposes to amend NYSE Arca Rule 5.4 to indicate that the index or portfolio may consist of securities, Financial Instruments and/or Money Market Instruments. Under the applicable continued listing criteria in Rule 5.4, options on Exchange-Traded Fund Shares may be subject to the suspension of opening transactions as follows: (1) Non-compliance with Rule 5.4(k)(1)–(4); (2) following the initial 12-month period beginning upon the commencement of trading of the Exchange-Traded Fund Shares, there are fewer than 50 record and/or beneficial holders of the Exchange-Traded Fund Shares for 30 or more consecutive days; (3) the value of the index or portfolio of securities, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts, options on physical commodities and/or Financial Instruments and Money Market Instruments on which the Exchange-Traded Fund Shares are based is no longer calculated or available; or (4) such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable. Additionally, the Exchange-Traded Fund Shares will not be deemed to meet the requirement for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Multiple Fund Shares or Inverse Fund Shares, if the Fund Shares are halted from trading on their primary market or if the Fund Shares are delisted in accordance with the terms of NYSE Arca Rule 5.4(k).

The Exchange represents that the expansion of the types of investments that may be held by Multiple Fund Shares or Inverse Fund Shares under Rule 5.3(g) will not have any effect on the rules pertaining to position and exercise limits [6] or margin.[7]

The Exchange represents that its existing surveillance procedures applicable to trading in options are adequate to properly monitor the trading in Multiple Fund Shares options and Inverse Fund Shares Options.

2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

*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 purpose 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 written comments on the proposed rule change.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–03 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–03. 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

[6] *See* NYSE Arca Rules 5.49 and 6.9.

[7] *See* NYSE Arca Rule 5.25.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–03 and should be submitted on or before February 26, 2008.

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*Surveillance*

The Commission notes that the Exchange has represented that its existing surveillance procedures applicable to trading options are adequate to properly monitor trading in Multiple Fund Shares options and Inverse Fund Shares options. In addition, the Exchange represented that the expansion of the types of investments that may be held by Multiple Fund Shares or Inverse Fund Shares under NYSE Arca Rules 5.3(g) and 5.4 will not have any effect on the rules pertaining to position and exercise limits [12] or margin.[13]

*Listing and Trading Options on Fund Shares*

The Commission notes that, pursuant to the proposed rule change, the Exchange represented that the current continuing or maintenance listing standards for options on Exchange Traded Fund Shares will continue to apply. These provisions include requirements regarding initial and continued listing standards, suspension of opening transactions, and trading halts. Proposed amended NYSE Arca Rule 5.3(g), would require that Multiple Fund Shares and Inverse Fund Shares be traded on a national securities exchange and must be an ''NMS stock'' as defined under Rule 600 of Regulation NMS.[14]

The Commission believes that this proposal is necessary to enable the Exchange to list and trade options on Multiple Fund Shares and Inverse Fund Shares such as those currently issued by ProShares Trust and Rydex ETF Trust that trade on the Exchange pursuant to unlisted trading privileges under NYSE Arca Equities Rule 5.2(j)(3).[15] The Commission believes that the ability to trade options on the Multiple and Inverse Fund Shares will provide investors with additional risk management tools. The Commission further believes that the proposed amendment to the Exchange's listing criteria for options on Exchange Traded Fund Shares will ensure that the Exchange will be able to list options on the Funds of the ProShares Trust and Rydex ETF Trust as well as other Multiple Fund Shares or Inverse Fund Shares that may be introduced in the future, thereby affording investors greater investment choices.

The Commission finds good cause for approving this proposal before the 30th day after the publication of notice thereof in the **Federal Register**. The Commission notes that it has previously approved substantially similar proposals by other national securities exchanges.[16] The Commission presently is not aware of any regulatory issue that should cause it to revisit those findings or would preclude the listing and trading of the options on Multiple Fund and Inverse Fund Shares on the Exchange. Accelerating approval of this proposed rule change would allow the options on Multiple Fund and Inverse Fund Shares to be listed on the Exchange without undue delay and continuously traded without interruption, to the benefit of investors.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSEArca–2008–03) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–1986 Filed 2–4–08; 8:45 am]

**BILLING CODE 8011–01–P**

[10] 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).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* NYSE Arca Rules 5.49 and 6.9.

[13] *See* NYSE Arca Rule 5.25.

[14] 17 CFR 242.600(b)(47).

[15] *See supra* note 5.

[16] *See* Securities Exchange Act Release Nos. 56871 (November 30, 2007), 72 FR 68924 (December 6, 2007) (approving SR–ISE–2007–87 on an accelerated basis); 56715 (October 29, 2007), 72 FR 62287 (November 2, 2007) (approving SR–CBOE–2007–119 on an accelerated basis); 56650 (October 12, 2007), 72 FR 59123 (October 18, 2007) (SR–Amex–2007–35).

[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. 34–57221; File No. SR–NYSEArca-2008–11]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Fees Applicable to Certain Exchange Traded Funds and Rebates for Tape B Securities

January 29, 2008.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b-4 thereunder,[2] notice is hereby given that on January 16, 2008, NYSE Arca, Inc. (''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 Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b-4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, proposes to amend the section of its Schedule of Fees and Charges for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b-4(f)(2).

Exchange Services (the ''Fee Schedule'') that applies to: (1) Orders submitted to the Exchange by ETP Holders [5] for (i) equity securities listed on the American Stock Exchange, LLC or any regional securities exchange (''Tape B Securities'') or (ii) Exchange Traded Funds (''ETFs'') listed on the New York Stock Exchange, LLC (''NYSE''); and (2) fees assessed by the Exchange for certain connectivity applications. While changes to the Fee Schedule pursuant to this proposal are effective upon filing, this filing applies the changes retroactively to January 1, 2008. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and on the Exchange's Internet Web site at *http://www.nyse.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. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposed rule change is to amend the relevant section of its Fee Schedule that applies to rebates provided to ETP Holders that submit orders which provide liquidity on NYSE Arca Equities for equity securities listed on the American Stock Exchange, LLC, or any regional stock exchange, commonly referred to as Tape B Securities. Currently, ETP Holders must qualify to receive the rebates for Tape B Securities by meeting criteria specified within the Fee Schedule. These criteria, based on trade volume submitted to NYSE Arca Equities in Tape B securities by an ETP Holder, designate initial and ongoing requirements in order for the ETP Holder to meet and maintain their eligibility to receive the rebates. Paid monthly,[6] the rebate represents an estimated fifty percent (50%) of the tape revenue credit received from the Consolidated Tape Association (''CTA'') by the Exchange for the eligible transactions [7] of Tape B securities executed by the ETP Holder. Tape revenue received by the Exchange for transactions submitted by ETP Holders that do not meet the eligibility criteria for the Tape B rebates is not shared with such ETP Holders.

As NYSE Arca Equities no longer believes such criteria, or limiting the eligibility for such rebates, to be appropriate, the Exchange proposes to remove the criteria in their entirety and provide fifty percent (50%) of the estimated tape revenue credit to all ETP Holders which submit limit orders for Tape B securities that provide liquidity for the NYSE Arca Equities Book. Payment of the rebates will continue on a monthly basis. While changes to the Fee Schedule pursuant to this proposal will be effective upon filing, the changes will be implemented retroactively to January 1, 2008 for billing purposes of the Exchange.

With this filing, the Exchange also makes clarifying amendments to the Fee Schedule to reflect the transfer of all ETFs previously listed on the NYSE to NYSE Arca Equities. The transfer, announced by the NYSE in 2007, was completed by its deadline of December 31, 2007. Therefore, references to fees, credits or rebates specific to ETFs listed on the NYSE are obsolete.

Additionally, the current charge of $300 listed for subscription of the RealTick® financial software, operated by Townsend Analytics (''TAL'') and offered to ETP Holders by the Exchange is not appropriate in light of the various options that ETP Holders may select to receive. Depending on the RealTick® package an ETP Holder elects to receive, the charge may be greater or lesser than the current listed charge of $300. For this reason, NYSE Arca Equities proposes to clarify that all fees assessed to an ETP Holder for each RealTick® workstation to which they subscribe shall be fees incurred by the Exchange from TAL, for providing such services, and passed through to the ETP Holder. There will be no change to the fees payable by ETP Holders for the use of the RealTick® software as a result of this amendment.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4) of the Act,[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using its facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) [10] of the Act and Rule 19b–4(f)(2) [11] thereunder because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca-2008–11 on the subject line.

[5] *See* NYSE Arca Equities Rule 1.1(n).

[6] Although the rebates for Tape B securities are paid by the Exchange to ETP Holders on a monthly basis, these revenues are received by the Exchange from the CTA quarterly. As a result, the Exchange provides an estimated monthly payment to ETP Holders for eligible transactions submitted for Tape B securities based on information available and/or previous monies received from the CTA.

[7] Rebates for Tape B securities are applicable to limit orders submitted by ETP Holders that are residing in the NYSE Arca Equities Book and that execute against inbound marketable orders.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b-4(f)(2).

*Paper Comments*

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca-2008–11 and should be submitted on or before February 26, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–1987 Filed 2–4–08; 8:45 am]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

### Public Federal Regulatory Enforcement Fairness Hearing; Region IX Regulatory Fairness Board

The U.S. Small Business Administration (SBA) Region IX Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a National Regulatory Fairness Hearing on Tuesday, February 5, 2008, at 10 a.m. The forum is open to the public and will take place at the San Francisco Chamber of Commerce Board Room, 235 Montgomery Street, 12th Floor, San Francisco, CA 94104. The purpose of the meeting is for Business Organizations, Trade Associations, Chambers of Commerce and related organizations serving small business concerns to report experiences regarding unfair or excessive Federal regulatory enforcement issues affecting their members.

Anyone wishing to attend or to make a presentation must contact Gary Marshall, in writing or by fax in order to be placed on the agenda. Gary Marshall, Business Development Specialist, SBA, San Francisco District Office, 455 Market Street, 6th Floor, San Francisco, CA 94105–2420, phone (415) 744–6771 and fax (202) 481–2018, e-mail: *Gary.marshall@sba.gov.*

For more information, see our Web site at *www.sba.gov/ombudsman.*

**Cherylyn H. Lebon,**

*Committee Management Officer.*

[FR Doc. E8–2003 Filed 2–4–08; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Public Notice 6090]**

### Notice of Receipt of Application for a Presidential Permit to Construct, Operate, and Maintain a New Border Crossing Facility on the U.S.-Canada Border at Buffalo, New York and Fort Erie, Ontario

**SUMMARY:** The Department of State hereby gives notice that, on January 15, 2008, it received an application for a Presidential Permit to authorize the construction, operation, and maintenance of a new border crossing facility on the U.S.-Canada border at Buffalo, NY and Fort Erie, Ontario. The proposed new crossing, a vehicular bridge across the Niagara River, would be approximately one and one half miles north of the existing Peace Bridge across the Niagara River and would connect to existing roads via an interchange with State Route 198 (Scajaquada Expressway) leading to Interstate Route 190 (I–190, the Niagara Section of the New York State Thruway). The application was filed by the Ambassador Niagara Signature Bridge Group (ANSBG). According to the application, ANSBG is an unincorporated unit of the Detroit International Bridge Company (DIBC), a Michigan corporation. As stated in the application, DIBC, along with a related Canadian corporation, the Canadian Transit Company (CTC), own and operate the Ambassador Bridge across the Detroit River, connecting Detroit, Michigan and Windsor, Ontario and DIBC and CTC are ultimately owned by Manuel J. and Matthew T. Maroun.

The Department of State's jurisdiction over this application is based upon Executive Order 11423 of August 16, 1968, as amended, and the International Bridge Act of 1972, 33 U.S.C. 535, et seq. As provided in E.O. 11423, the Department is circulating this application to relevant Federal and State agencies for review and comment. Under E.O. 11423 and the International Bridge Act, the Department has the responsibility to determine, taking into account input from these agencies and other interested stakeholders, whether this proposed border crossing is in the U.S. national interest.

**DATES:** Interested members of the public are invited to submit written comments regarding this application on or before April 28, 2008 to Ms. Eleanore Fox, Officer for Border Affairs, via e-mail at *WHACAN@state.gov* or by mail at WHA/CAN—room 3917, Department of State, 2201 C Street NW., Washington, DC 20520.

**FOR FURTHER INFORMATION CONTACT:** Ms. Eleanore Fox, Officer for Border Affairs, via e-mail at *WHACAN@state.gov* or by mail at WHA/CAN—room 3917, Department of State, 2201 C Street NW., Washington, DC 20520. General information about Presidential Permits is available on the Internet at *http://www.state.gov/p/wha/rt/permit.*

**SUPPLEMENTARY INFORMATION:** This application and related environmental documents are available for review in the Office of Canadian Affairs, Department of State, during normal business hours.

Dated: January 31, 2008.

**Alex Lee,**

*Director, Office of Canadian Affairs, Department of State.*

[FR Doc. E8–2080 Filed 2–4–08; 8:45 am]

**BILLING CODE 4710–29–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Final Federal Agency Actions on Proposed Highway in California

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Limitation on Claims.

**SUMMARY:** This notice announces actions taken by the California Department of Transportation (Caltrans) pursuant to its assigned responsibilities under 23 U.S.C. 327, as well as certain Federal

[12] 17 CFR 200.30–3(a)(12).

agencies, are final within the meaning of 23 U.S.C.139(l)(1). The actions relate to a proposed highway project, Freeman Gulch Four-Lane project between post miles 45.9 to 62.3 along State Route 14 in Kern County, State of California. Those actions grant approvals for the project.

**DATES:** By this notice, the FHWA, on behalf of Caltrans, is advising the public of final actions subject to 23 U.S.C. 139(*l*)(1). These actions have been taken by Caltrans pursuant to its assigned responsibilities under 23 U.S.C. 327, as well as by certain Federal agencies. A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before August 4, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** Sarah Gassner, Senior Environmental Planner, Caltrans, 2015 E. Shields Avenue #100, Fresno, CA 93726; weekdays 8 a.m. to 5 p.m. (Pacific time); telephone (559) 243–8243; e-mail: *sarah_gassner@dot.ca.gov*.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that Caltrans, pursuant to its assigned responsibilities under 23 U.S.C. 327, and certain Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following State Route 14 project in the State of California. The Freeman Gulch Four-Lane project would improve safety within the 16.4-mile project limits and provide four-lane route continuity along the entire length of State Route 14. The project is located in Kern County and proposes to convert the existing two-lane conventional highway into a four-lane divided controlled access expressway from 0.8 mile north of Redrock Inyokern Road to 2.2 miles south of the junction with U.S. Highway 395.

The actions by Caltrans and certain Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) for the project, approved by Caltrans on October 3, 2007. The EA/FONSI, and other project records are available by contacting Caltrans at the address provided above.

This notice applies to Caltrans and certain Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to the following Federal environmental statutes and Executive orders:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; and Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Landscape and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wetlands and Water Resources:* Safe Drinking Water Act [42 U.S.C. 300(f) –300(j)(6)]; and Wetlands Mitigation [23 U.S.C. 103(b)(6)(m) and 133(b)(11)].

5. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; and Migratory Bird Treaty Act [16 U.S.C. 703–712].

6. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469c]; Archaeological Resources Protection Act of 1979 [16 U.S.C. 470aa *et seq.*]; and Native American Graves Protection and Repatriation Act [25 U.S.C. 3001–3013].

7. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act [7 U.S.C. 4201–4209]; and The Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended.

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986; and Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O.12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of the Cultural Environment; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; and E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(*l*)(1).

Issued on: January 29, 2008.

**Nancy Bobb,**

*Director, State Programs, Federal Highway Administration, Sacramento, California.*

[FR Doc. E8–2031 Filed 2–4–08; 8:45 am]

**BILLING CODE 4910–RY–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

### Release of Waybill Data

The Surface Transportation Board has received a request from Martin Associates (WB993–1—1/25/08), for permission to use certain data from the Board's Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

*For Further Information Contact:* Mac Frampton, (202) 245–0317.

**Anne K. Quinlan,**

*Acting Secretary.*

[FR Doc. E8–2072 Filed 2–4–08; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0379]**

### Proposed Information Collection (Time Record (Work-Study Program); 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 verify the actual number of hours worked by a work-study claimant.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before April 7, 2008.

**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. 2900–0379'' 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) 461–9769 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:* Time Record (Work-Study Program), VA Form 22–8690.

*OMB Control Number:* 2900–0379.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Training establishments complete VA Form 22–8690 to report the number of work-study hours a claimant has completed. When a claimant elects to receive an advance payment, VA will advance payment for 50 hours, but will withhold benefits (to recoup the advance payment) until the claimant completes 50 hours of service. If the claimant elects not to receive an advance payment, benefits are payable when the claimant completes 50 hours of service. VA uses the data collected to ensure that the amount of benefits payable to a claimant who is pursuing work-study is correct.

*Affected Public:* State, Local or Tribal Governments, Individuals or households, Business or other for-profit, Not-for-profit institutions, and Federal Government.

*Estimated Annual Burden:* 9,167 hours.

*Estimated Average Burden Per Respondent:* 5 minutes.

*Frequency of Response:* On occasion.

*Estimated Annual Responses:* 110,010.

*Estimated Number of Respondents:* 31,612.

Dated: January 23, 2008.

By direction of the Secretary:

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E8–2033 Filed 2–4–08; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0262]**

### Proposed Information Collection (Designation of Certifying Official(s)); 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 for information needed to identify individuals authorized to certify reports on behalf of an educational institution or job training establishment.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before April 7, 2008.

**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. 2900–0262'' 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) 461–9769 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:* Designation of Certifying Official(s), VA Form 22–8794.

*OMB Control Number:* 2900–0262.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Educational institutions and job training establishments complete VA Form 22–8794 to provide the name of individuals authorized to certify reports on student enrollment and hours worked on behalf of the school or training facility. VA will use the data collected to ensure that education benefits are not awarded based on reports from someone other than the designated certifying official.

*Affected Public:* State, Local or Tribal Government, Business or other for-profit, and Not for-profit institutions.

*Estimated Annual Burden:* 533 hours.

*Estimated Average Burden per Respondent:* 10 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 3,200.

Dated: January 28, 2008.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E8–2034 Filed 2–4–08; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0601]**

### 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 refinance a delinquent VA-guaranteed loan with a lower interest rate.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before April 7, 2008.

**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. 2900–0086'' 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) 461–9769 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:* Loan Guaranty: Requirements for Interest Rate Reduction Refinancing Loans.

*OMB Control Number:* 2900–0601.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* A veteran may refinance an outstanding VA guaranteed, insured, or direct loan with a new loan at a lower interest rate provided that the veteran still owns the property used as security for the loan. The new loan will be guaranteed only if VA approves it in advance after determining that the borrower, through the lender, has provided reasons for the loan deficiency, and has provided information to establish that the cause of the delinquency has been corrected, and qualifies for the loan under the credit standard provisions.

*Affected Public:* Business or other for profit.

*Estimated Annual Burden:* 25 hours.

*Estimated Annual Burden Per Respondent:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 50.

Dated: January 25, 2008.

By direction of the Secretary:

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E8–2037 Filed 2–4–08; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–New (VA Form 1465–1)]**

### Agency Information Collection (Nation-wide Customer Satisfaction Surveys) Under OMB Review

**AGENCY:** Veterans Health 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 Health Administration (VHA), Department of Veterans Affairs, will submit 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 includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before March 6, 2008.

**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–New (VA Form 1465–1)'' in any correspondence.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–New (VA Form 1465–1).''

**SUPPLEMENTARY INFORMATION:**

*Title:* Nation-wide Customer Satisfaction Surveys, VA Forms 1465–1 through 1465–4.

*OMB Control Number:* 2900–New (VA Form 1465–1).

*Type of Review:* New collection.

*Abstract:* The purpose of the Survey of Health Experience of Patients (SHEP) Survey is to systematically obtain information from VA patients to identify problems or complaints that need attention and to improve the quality of health care services delivered to veterans. Data will be use to measure improvement toward the goal of matching or exceeding the non-VA external benchmark performance in providing quality health care services to veterans.

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 October 24, 2007, at pages 60406–60407.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:*

a. HCAHPS plus Inpatient Core–Long Form, VA Form 10–1465–1—2,500 hours.

b. HCAHPS plus Inpatient Core–Short Form, VA Form 10–1465–2—16,875 hours.

c. Outpatient Long Form, VA Form 10–1465–3—9,802 hours.

d. Outpatient Short Form, VA Form 10–1465–4—67,573 hours.

*Estimated Average Burden Per Respondent:*

a. HCAHPS plus Inpatient Core–Long Form, VA Form 10–1465–1—20 minutes.

b. HCAHPS plus Inpatient Core–Short Form, VA Form 10–1465–2—15 minutes.

c. Outpatient Long Form, VA Form 10–1465–3—25 minutes.

d. Outpatient Short Form, VA Form 10–1465–4—20 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:*

a. HCAHPS plus Inpatient Core–Long Form, VA Form 10–1465–1—7,500.

b. HCAHPS plus Inpatient Core–Short Form, VA Form 10–1465–2—67,500.

c. Outpatient Long Form, VA Form 10–1465–3—23,524.

d. Outpatient Short Form, VA Form 10–1465–4—202,720.

Dated: January 25, 2008.

By direction of the Secretary:

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E8–2038 Filed 2–4–08; 8:45 am]

**BILLING CODE 8320–01–P**

Federal Register

**Tuesday,**

**February 5, 2008**

## Part II

# Department of Health and Human Services

**Administration for Children and Families**

**45 CFR Parts 261, 262, 263, and 265**

**Reauthorization of the Temporary Assistance for Needy Families (TANF) Program; Final Rule**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### 45 CFR Parts 261, 262, 263, and 265

**RIN 0970–AC27**

### Reauthorization of the Temporary Assistance for Needy Families (TANF) Program

**AGENCY:** Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Final rule.

**SUMMARY:** This final rule implements changes to the Temporary Assistance for Needy Families (TANF) program required by the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109–171). The DRA reauthorized the TANF program through fiscal year (FY) 2010 with a renewed focus on work, program integrity, and strengthening families through healthy marriage promotion and responsible fatherhood. On June 29, 2006, ACF published an interim final rule implementing the required statutory changes with a 60-day comment period that ended on August 28, 2006. We have considered all comments received during this period and made necessary changes as reflected in this final rule.

**EFFECTIVE DATE:** October 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Robert Shelbourne, Director, Division of State TANF Policy, Office of Family Assistance, ACF, at (202) 401–5150.

**SUPPLEMENTARY INFORMATION:** On June 29, 2006, the Administration for Children and Families published an interim final rule implementing key provisions of the Deficit Reduction Act of 2005. The DRA required States to implement certain work requirements effective October 1, 2006, among which were including families with an adult receiving assistance in a separate State program funded with qualified State maintenance-of-effort expenditures (SSP–MOE) in the work participation rates and revising the base year of the caseload reduction credit from FY 1995 to FY 2005. The law also directed us to issue regulations to ensure consistent measurement of work participation rates, including defining work activities, determining the circumstances under which a parent who resides with a child who is a recipient of assistance should be required to participate in work activities, and requiring States to establish and maintain work participation verification procedures. Congress also explicitly permitted HHS to issue an interim final rule, implicitly recognizing that States may have to revise practices once final regulations were published. Under the interim final rule, States were able to begin planning and implementing necessary changes to their TANF programs and procedures under the new requirements. Under this final rule States are accountable for moving more families to self-sufficiency and independence.

**Comment Overview**

We provided a 60-day comment period, during which interested parties could submit comments in writing by mail or electronically. During this period, we also held five listening sessions across the country in which State and local officials, legislators and key associations representing them could provide oral comments that were officially recorded and considered in developing this final rule.

We received 470 letters of comment on the interim final rule, representing State human service agencies, State legislators, national associations, advocacy and disability groups, community and faith-based organizations, Indian Tribes and Tribal organizations, educators, and the general public. Most commenters addressed several provisions of the interim final rule. Some comments favored the rule, for example: ''Overall the regulations are very positive and set the correct tone that countable activities need to meet the new federal definitions and be verified.'' But, in general, most commenters had mixed views, supporting some provisions and opposing others. A significant number of commenters expressed concerns about statutory provisions of the DRA or of existing law, over which we have no regulatory discretion. Others expressed concerns about the policies reflected in the rule. In response to these comments, ACF is committed to working with states, particularly with regard to TANF adult recipients living with disabilities, to explore additional approaches and innovative efforts to promote and support their employment.

As discussed in more detail throughout this preamble, the final rule includes a number of important changes to address these policy concerns. These include: Allowing time spent in a bachelor's degree program to count as vocational educational training; allowing up to an hour of unsupervised homework time for each hour of class time in all educational activities; expanding State flexibility by converting the six-week limit on job search and job readiness assistance to an hourly equivalent; adding the flexibility for a State to exclude a parent who is a recipient of Social Security Disability Insurance (SSDI) benefits from the definition of a work-eligible individual, as is the case with a recipient of Supplemental Security Income (SSI); clarifying that excused holidays are limited to 10 days in a year; and enhancing State flexibility by allowing a State to account for ''excused hours'' rather than an ''excused day.'' We have summarized the public comments and our response to them throughout sections III through VIII of this final rule.

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## I. The Statutory Framework: TANF and the Deficit Reduction Act of 2005

Enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Pub. L. 104–193), the TANF program is a Federal block grant to States designed to provide temporary assistance while moving recipients into work and self-sufficiency. States must help recipients find work and meet work participation rates and other critical program requirements to avoid financial penalties. States have broad flexibility to design and operate their TANF programs and to determine eligibility criteria and the benefits and services that families receive to achieve the four program purposes:

(1) To provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) To end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) To prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for

preventing and reducing the incidence of these pregnancies; and

(4) To encourage the formation and maintenance of two-parent families.

PRWORA initially authorized TANF through September 30, 2002. Congress then funded TANF through a series of short-term extensions until the Deficit Reduction Act of 2005 reauthorized the program through FY 2010 with a renewed focus on work, program integrity, and strengthening families through marriage promotion and responsible fatherhood. Signed into law by President Bush on February 8, 2006, the DRA maintained State flexibility and many provisions of PRWORA, but included important changes to improve the effectiveness of the TANF program.

Some comments on the interim final rule reflected a misunderstanding of the Deficit Reduction Act confusion over which original provisions of TANF Congress retained, which ones it changed, what Congress directed the Department to do by regulation, and how HHS exercised this regulatory authority in the interim final rule. This section explains these distinctions.

The Deficit Reduction Act retained nearly all of the TANF provisions enacted in the original welfare reform law. For example, the law retained the requirement that 50 percent of all families with an adult participate in the 12 allowable work activities for specified hours each week and that 90 percent of two-parent families similarly participate for certain, specified hours. The hourly work participation requirements that adults must achieve to count in the State's work participation rates also did not change. This requires a single custodial parent with a child younger than six to participate for at least an average of 20 hours a week and for all others to participate for at least an average of 30 hours a week to count in the overall participation rate. Similarly, two-parent families must participate for at least an average of 35 hours a week (or an average of 55 hours a week if federally-funded child care is provided) to count in the two-parent participation rate.

The DRA maintained the penalty associated with failing to meet these work requirements. As a result, we made no changes to the regulatory process associated with a State's failure to meet the work participation rate requirement in the interim final or final rule.

Further, the Deficit Reduction Act maintained provisions related to the TANF purposes, State plan requirements, use of grants, administrative provisions, prohibitions, appeals of adverse decisions, Tribal TANF, waivers, charitable choice, application of relevant Federal civil rights laws, and the limitation on Federal authority. Our charge from Congress was to regulate in accordance with the changes made by the Deficit Reduction Act, via an interim final rule if appropriate. Since none of these provisions changed in the statute, the associated regulatory provisions did not change in either the interim final or this final rule.

Congress also made few changes in reauthorizing TANF funding. The law retained the $16.5 billion per year capped entitlement for State Family Assistance Grants and funding for the Contingency Fund. It extended the Supplemental grants for the 17 States with historic low grants per poor person and/or high population growth in the amount of $319 million through FY 2008. Mandatory child care funding was increased by $1 billion over five years. The law eliminated provisions for Federal loans, the High Performance Bonus and the Illegitimacy Reduction Bonus and replaced them with a $150 million-a-year research, demonstration, and technical assistance fund for competitive grants to strengthen family formation, promote healthy marriages, and support responsible fatherhood. The Deficit Reduction Act also expanded a State's ability to meet its maintenance-of-effort (MOE) requirement. A State may now count expenditures that provide certain non-assistance, pro-family activities to anyone, without regard to financial need or family composition, if the expenditure is reasonably calculated to prevent and reduce the incidence of out-of-wedlock births (TANF purpose three) or encourage the formation and maintenance of two-parent families (TANF purpose four).

The new law did make several key statutory changes and also required HHS to promulgate rules in several areas. The statute added separate State program cases receiving assistance funded with qualified State maintenance-of-effort expenditures (SSP–MOE) to the calculation of the work participation rates. This is a new requirement of law, not within the discretion of our regulatory authority. Thus, regardless of how commenters viewed this statutory provision, we could not change it by regulation. The DRA continues to exclude any solely-State-funded (SSF) program, that is, one for which it does not claim the State expenditures as MOE under the TANF program. If a State established a SSF, such cases would not be included in the calculation of a State's work participation rates or subject to other program requirements.

The Deficit Reduction Act also changed the base year of the calculation of the caseload reduction credit from FY 1995 to FY 2005. While the statutory work participation rates did not change, recalibrating the caseload reduction credit has the effect of increasing the work participation requirements. For most States, we estimate that in FY 2007 the overall work participation requirement will be between 40 and 50 percent, depending upon the amount of caseload reduction they had over the course of FY 2006 compared to the new baseline of FY 2005.

Congress required HHS to do a number of things through regulation:

- To define the meaning of each of the 12 countable work activities specified in PRWORA, primarily because a U.S. Government Accountability Office (GAO) study (GAO–05–821) reported that there was great variation in State definitions of work activities. As a result, State participation rates were not comparable. Of the activities, the underlying statute also specified which nine activities count toward meeting the first 20 hours of a 30-hour average weekly requirement; we refer to them as ''core activities.'' Any additional hours needed to meet the requirement can come from any of three ''non-core activities'' or from core activities. Under the statute, non-core activities may not count as core activities.
- To clarify who is a work-eligible individual. In addition to families with an adult receiving TANF assistance, who were already a part of the work participation rates, the DRA required us to include such families receiving assistance under a separate State program and to specify the circumstances under which a parent who resides with a child who is a recipient of assistance should be included in the work participation rates.
- To ensure that State internal control procedures result in accurate and consistent work participation information. Each State must establish and maintain work participation verification procedures that are based on regulations promulgated by the Secretary.
- To establish a process for a new penalty in the event that a State fails to establish and maintain adequate procedures to verify reported work participation data.

**II. Regulatory Principles and Provisions**

To address these new statutory provisions and requirements of the Deficit Reduction Act, the final rule:

1. *Defines each of the 12 countable work activities.* Defining work activities is necessary for consistent measurement and will ensure an equitable and level playing field for the States. Because the statute provides 12 distinct activities, we have tried to define them as mutually exclusive, while still leaving flexibility for States to address the critical needs of families.

2. *Defines the term ''work-eligible individual.''* Generally a ''work-eligible individual'' is: (1) An adult (or minor child head-of-household) receiving assistance under TANF or a separate State program; or (2) a non-recipient parent living with a child receiving assistance. The definition excludes the following non-recipient parents: a minor parent who is not the head-of-household, a non-citizen who is ineligible to receive assistance due to his or her immigration status, or, at State option on a case-by-case basis, a recipient of Supplemental Security Income (SSI) benefits. In addition, the term excludes some parents, whether they are recipients or not: a parent providing care for a disabled family member living in the home, if there is medical documentation to support the need for the parent to remain in the home to provide that care; and, at State option on a case-by-case basis, a parent who is a recipient of Social Security Disability Insurance (SSDI) benefits. We exclude these parents because they either cannot work legally or we believe it would be inappropriate to require them to work.

3. *Clarifies that a State may count only actual hours of participation.* Under the original TANF rule, some States reported scheduled hours of participation, which created an inconsistency among States and reduced incentives to ensure that individuals actually participated for assigned hours. Under the final rule, we clarify that each State must report only actual hours of participation; nevertheless, for individuals in unpaid work activities, we permit States to count up to 10 days of holidays and an additional 80 hours excused absences. To reduce the documentation burden on both employers and workers, we also permit States to report projected hours of employment on the basis of prior, documented actual hours of work. Similarly, to reduce the documentation burden on both educational providers and participants in an educational activity, we also allow States to count up to one hour of unsupervised homework time for each hour of class time.

4. *Recalibrates the caseload reduction credit by updating the base year from FY 1995 to FY 2005.* As under PRWORA, the credit excludes caseload changes due to changes in Federal law or State eligibility criteria since the base year.

5. *Requires each State to establish and maintain work participation verification procedures through a Work Verification Plan.* Each State must: (1) Determine which work activities may count for participation rate purposes; (2) determine how to count and verify reported hours of work; and (3) identify who is a work-eligible individual. The State must also develop and use internal controls to ensure compliance with its procedures and submit them in a complete Work Verification Plan to the Secretary for approval.

6. *Establishes a new penalty for failure to comply with work verification procedures.* The final rule specifies that if a State fails to establish or comply with its work participation verification procedures and fails to correct the compliance deficiency, we will impose a penalty of between one and five percent of the State Family Assistance Grant (SFAG). The rule outlines the criteria under which we will impose this penalty and explains how a State may claim reasonable cause or submit a corrective compliance plan to correct the violation and avoid the penalty.

7. *Allows additional pro-family expenditures to count toward a State's maintenance-of-effort (MOE) requirement.* The final rule allows a State to count expenditures on certain pro-family activities without regard to financial need or family composition, if the expenditure is reasonably calculated to prevent and reduce the incidence of out-of-wedlock births (TANF purpose three), or encourage the formation and maintenance of two-parent families (TANF purpose four), as long as they meet all applicable MOE requirements and limitations. States receiving Healthy Marriage or Responsible Fatherhood grants may count State expenditures for any required match toward the State's TANF MOE requirement, provided the expenditure also meets all applicable MOE requirements and limitations.

Based on the consideration of all timely comments, this final rule reflects adopted changes to 45 CFR Parts 261, 262, 263, and 265 of the interim final rule of June 29, 2006. The comments and changes are discussed in the preamble. Changes to these parts appear in sections IV to VII of this document.

As in the interim final rule, the term ''we'' is used throughout the regulatory text and preamble to mean the Secretary of the Department of Health and Human Services (HHS) or the following individuals or agencies acting on his behalf: the Assistant Secretary for Children and Families, the Regional Administrators for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families. The term ''Act'' refers to the Social Security Act. We use the terms ''Deficit Reduction Act of 2005,'' ''Deficit Reduction Act,'' ''DRA,'' or ''Pub. L. 109–171'' when we refer to the new law. States, the Territories, and the District of Columbia are all subject to the TANF requirements, but a reference to States means this entire group. Except as otherwise noted, we use the term ''TANF'' to refer to TANF and any SSP–MOE programs in a State.

## III. Cross-Cutting Issues

Many commenters raised general or cross-cutting issues about the overall impact of the interim final rule or the impact on specific populations. We address these issues in this section, followed by comments on each section of the interim final rule.

### *A. Individuals With Disabilities*

*Comment:* Many commenters maintained that the interim final rule would hamper State efforts to design programs appropriate for people with disabilities and discourage them from addressing their needs. Commenters expressed concern that States would be much less likely to invest the resources needed to provide the services that families with disabilities need if they are not able to count those families toward the work participation rates.

Some commenters recommended that we broaden work activity definitions to accommodate the participation of people with disabilities. Others urged us to permit lower hourly standards as an accommodation. Otherwise, they recommended that we exclude clients with disabilities from the definition of a work-eligible individual.

*Response:* We recognize that many individuals with disabilities are capable of participating in productive work activities and encourage States to explore these capabilities, rather than focusing on their limitations. In fact, in the preamble to the interim final rule, we encouraged States to provide self-sufficiency opportunities to individuals with disabilities and to engage them in appropriate work activities. We offered concrete examples, such as specialized work experience sites, that would provide and demonstrate the skills and experience needed to obtain employment. However, given the concern expressed by commenters on this critical issue, we intend to expand our technical assistance efforts in

identifying and sharing effective models that have been developed by vocational rehabilitation agencies and the entire disability community.

Under the TANF statute, the work participation rate calculations generally include all families with an adult receiving assistance. When Congress replaced the Aid to Families with Dependent Children (AFDC) program with TANF, it eliminated a number of statutory exemptions related to incapacity, temporary illness, and age. There was no suggestion in PRWORA that the activities or hours that count toward the work participation rate should vary for clients with disabilities. By limiting the maximum participation rate to 50 percent, Congress recognized that some individuals would not be able to satisfy the full requirements. However, we believe States should work with and provide services to individuals, whether they can participate for enough hours to count toward the work participation rates or not. Because families with adults receiving Federal assistance are subject to time limits, it is important for States to serve the entire caseload so that all recipients progress toward self-sufficiency. States should also provide needed accommodations that can help all individuals reach their full potential.

We believe the regulation provides States with increased flexibility and incentives to work with people with disabilities. In the definition of ''work-eligible individual'' in § 261.2, we give States the option of either including or excluding parents who receive SSI or SSDI benefits and whose children are TANF recipients. If the parent works enough to count in the rate, the State can include the family, but it is not disadvantaged if the parent receiving SSI or SSDI cannot work. In the final rule, we allow States to adjust prior reported data and to back out of the participation denominator any appropriate family with a work-eligible individual whose application for SSI or SSDI was approved retroactively, as long as the adjustment is within the allowable reporting time frame for the fiscal year. Also, we have reaffirmed in the final rule that a parent needed in the home to care for a disabled family member is also excluded from the participation rate.

*Comment:* Many commenters suggested that the interim final rule makes it difficult for States to meet the work requirements and to comply with the Americans with Disabilities Act (ADA) of 1990 and Section 504 of the Rehabilitation Act of 1973.

*Response:* We recognize and underscore that States must continue to comply with relevant civil rights laws, including the ADA and Section 504 of the Rehabilitation Act of 1973 (Section 504). We believe that this final rule gives States several ways to count activities that they would be legally required to provide under the ADA and Section 504. It is also important to note that a State may be legally obligated to provide a reasonable accommodation/modification under the ADA and Section 504 even if it will not receive credit toward its Federal work activity requirements for the accommodation/modification. As identified in the preamble of the interim final rule, HHS developed and will develop additional technical assistance related to the application of civil rights laws in the TANF context. Existing tools may be found at the HHS Office for Civil Rights (OCR) Web site at *http://www.hhs.gov/ocr/tanf.* Among other help, the webpage includes guidance entitled ''Prohibition Against Discrimination on the Basis of Disability in the Administration of TANF,'' which addresses the application of the ADA and Section 504 in the TANF context, the legal requirements of ensuring equal access, reasonable accommodations/modifications, nondiscriminatory operational methods, and includes a discussion of promising practices. Complaints alleging violations of these requirements are not infrequent. OCR currently has open TANF complaints, many of which allege that States are denying TANF applicants and beneficiaries with disabilities equal access and/or not providing reasonable accommodations/modifications. Such complaints are often resolved by a State agreeing to implement effective and comprehensive screening and assessment of TANF applicants and beneficiaries.

We were also trying to make one other key point. It is discriminatory to deny a person with a disability the right to participate in or benefit from the aid, benefit, or service provided by a public entity. The benefits and services provided must be equal to those provided to others, and as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as those provided to others. Services, programs, and activities must be administered in the most integrated setting appropriate to the needs of qualified individuals with disabilities. Separate or different aids, benefits, or services are permitted, but only when necessary to ensure that they are as effective as those provided to others. Persons with disabilities must also have the option of declining to accept a particular accommodation. Thus, State agencies must offer people with disabilities an equal right to participate in programs instead of automatically exempting them from participation requirements.

The Supreme Court, in *School Board of Nassau County* v. *Arline* noted, ''* * * society's accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment.'' 480 U.S. 273, 284 (1987).

Provisions of the ADA and the Rehabilitation Act prohibit exclusion and segregation of individuals with disabilities and the denial of equal opportunities enjoyed by others, based on, among other things, assumptions, patronizing attitudes, fears, and stereotypes about individuals with disabilities. Public agencies are required to ensure that their actions are based on facts applicable to individuals and not on assumptions as to what a class of individuals with disabilities can or cannot do.

The ADA covers individuals who vary widely in the severity of their disability, degree of disadvantage, capabilities, and skills, and their appropriate path to self-sufficiency and independence must be assessed on an individual basis, just like everyone else. It is exactly for these reasons that Congress chose not to exclude individuals with disabilities from the participation requirements and the benefits and results that accrue to working individuals and families. We believe that potential danger lies in altered expectations and opportunities, in automatic exemptions, and in exclusions from integrated requirements and services designed to lead to self-sufficiency and independence. TANF agencies must provide programs in the most integrated setting appropriate to the needs of people with disabilities. Agencies should take steps to ensure that individuals with disabilities can participate in all programs and services for TANF clients, not just those programs and services that are designed solely for people with disabilities. In addition, TANF agencies must ensure equal access to programs and services for TANF clients. In ensuring equal access, it is critical that TANF agencies have comprehensive and effective screening and assessment tools in place.

Clearly, a State must provide appropriate accommodations and services when necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, the service, program, or activity, and the opportunity to request such accommodations and services.

States can and must make necessary accommodations in the number of hours and types of activities they require, if needed. But, accommodations that enable clients to work are clearly just as critical. States must ensure that individuals with disabilities are not excluded from services, programs and activities because buildings are inaccessible, and these include the buildings of contractors and providers. Agencies must also provide accommodations to individuals with disabilities, at no additional cost, where necessary to ensure effective communication with individuals with hearing, vision, or speech impairments. (Accommodations include but are not limited to such services or devices as qualified interpreters, assistive listening headsets, television captioning and decoders, telecommunications devices for the deaf [TDDs], videotext displays, readers, taped texts, materials in Braille, and large print materials.)

*Comment:* One commenter suggested, ''Employment of individuals with mental illness should be a top priority for policy makers at all levels of government. Unfortunately, due to stigma, organizational, financial and other barriers, employment is often a low priority, if it is a priority at all. It's doubtful that the Interim Final Rules, as currently drafted, will result in greater work opportunities for people with psychiatric disabilities.''

*Response:* We agree that employment of individuals with disabilities should be a priority, and this Administration has made it a priority for all executive agencies. President Bush, in announcing his ''New Freedom Initiative'' in 2001, stated, ''Every American should have the opportunity to participate fully in society and engage in productive work. Unfortunately, millions of Americans with disabilities are locked out of the workplace because they are denied the tools and access necessary for success.'' The number of recipients with disabilities who are currently working significantly understates both the capability and desire of people with disabilities to work. Under significant work participation requirements, States will need to expand preparatory and employment options for individuals with disabilities. We will continue to work closely with our colleagues in the Substance Abuse and Mental Health Services Administration, the Social Security Administration, and the disability community to enhance services to all people with disabilities.

*Comment:* One commenter noted that the preamble to the interim final rule often encouraged States to engage individuals with disabilities but that the rule did not offer practical ways to assist States in doing so. The commenter urged us to ensure that the final rule includes better mechanisms to allow all TANF recipients with disabilities to meet work participation requirements.

*Response:* We agree that TANF agencies need to find more effective ways to engage people with disabilities in their caseloads than many have used in the past. Increased efforts should be pursued in a number of areas. For some States, TANF agencies need to re-engage with State rehabilitation agencies to use their proven knowledge and expertise to address the barriers individuals with disabilities face and to help them enter the workplace. Much needs to be done to overcome negative stereotypes and misperceptions among the public. Job developers need to educate employers, since research shows that working individuals with disabilities are very effective employees. Agencies need to improve their marketing of the advantages and benefits of work to individuals with disabilities, while ensuring that benefits, such as medical coverage, are sustained.

In the first 10 years of the TANF program, there has been inadequate attention to engaging individuals with disabilities in work; however, few States raised concerns to us about their ability to serve people with disabilities during this period. Oftentimes, individuals with disabilities face challenges in entering the workforce and pose challenges to State agencies trying to help them enter the workforce. Sometimes, a disability is debilitating enough that a person cannot work. Federal programs such as SSI and SSDI serve such people. But for many others, a disabling condition does not preclude the possibility and the rewards of work, even if it creates challenges.

It is precisely for this reason that we have not categorically removed individuals with disabilities from the definition of work-eligible individual. Individuals who happen to have disabilities should be afforded the same opportunities to engage in work—to find work-related training, work experience, and employment—as those who do not have a disability. By keeping such individuals in the work participation rate, as they have been since the inception of TANF, States have an added incentive to address the needs of people with disabilities.

We look forward to working with States in this area through our technical assistance efforts and anticipate disseminating information about promising approaches to helping individuals with disabilities and establishing linkages between organizations serving the needs of individuals with disabilities. ACF will use its Welfare Peer Technical Assistance Network to disseminate information on promising practices for serving individuals with disabilities. In addition, ACF will work with States to explore additional approaches and innovative efforts to promote and support the employment of TANF adult recipients living with mental, intellectual and physical disabilities.

*Comment:* Many commenters urged us to permit ''deeming'' for individuals with disabilities. They recommended that we allow States to count recipients who participate in accordance with an employment plan that includes accommodations for disabilities as having met required hours to count in the participation rate. They stressed that this would give States an incentive to engage such individuals to their greatest ability. Similarly, they urged us to let States count recipients who miss scheduled hours of work participation because they were caring for a family member with a disability. They suggested that, in the same way that we permit ''deeming'' to respond to the requirements of the Fair Labor Standards Act, we should allow lesser hours of participation to count for the full required number of hours when needed to make accommodations required under the ADA.

*Response:* We agree with the commenters' concerns that individuals with disabilities should have appropriate accommodations in their work assignments and believe this regulation provides States with more flexibility and incentives to work with people with disabilities than they have ever had previously. As we noted in response to earlier comments, the TANF work participation rates have always included people with disabilities. States can and must make necessary accommodations in the number of hours and types of activities they require of individuals with disabilities.

As noted earlier, ACF is committed to working with States to explore additional approaches and innovative efforts to promote and support the employment of TANF recipients living with disabilities. As we work with States, we will begin to get a better understanding of the potential promises and logistical challenges of all such approaches.

With respect to individuals caring for people with disabilities, the regulation makes two accommodations. First, the definition of a work-eligible individual excludes a parent caring for a disabled family member living in the home, as long as there is medical documentation

to support the need for that parent to remain in the home to care for the disabled family member. Second, the regulation gives States credit for excused absences for all work-eligible individuals in unpaid work activities. Thus, if a State excuses an individual who misses time because she must care for a disabled family member, the State could count those missed hours as actual participation, within the limits the regulation sets out. Please refer to § 261.60 for further discussion of excused absences.

*B. Domestic Violence*

*Comment:* Some commenters asserted that the interim final rule conflicted with the Family Violence Option (FVO). One commenter noted, ''The regulations are also silent on how domestic violence services are allowed and how domestic violence cases are treated.'' Another commenter asserted, ''Women need time to effectively remove the barriers that have prevented them from obtaining quality employment.'' Another suggested that ''the limited time allowed in job search and job readiness for barrier removal activities is inflexible and should not apply to family violence victims.''

*Response:* Existing provisions in the law address work participation rate issues for States dealing with victims of domestic violence. A State that elects the Family Violence Option under Section 402(a)(7) of the Social Security Act must screen and identify victims of domestic violence, refer such individuals to services and, if needed, waive participation and other program requirements for as long as necessary to escape domestic violence. The rules at Part 260, Subpart B allow States to grant good cause domestic violence waivers to victims of domestic violence that waive various program requirements, including work requirements. States have broad flexibility in determining which program requirements to waive and for how long. Although these recipients remain in the work participation rate calculation, there may be some activities that meet one of the work activity definitions that would make them countable toward the participation rate. If a State fails to meet a work participation rate, we will determine that it had reasonable cause if the State can demonstrate that it failed to meet the rate due to granting federally recognized good cause domestic violence waivers. In this circumstance, we would recalculate the work participation rate taking out any families in which individuals received a federally recognized good cause domestic violence waiver of work participation requirements.

We believe the 1999 TANF final rule regarding the treatment of victims of domestic violence ensures services and waivers for victims and provides adequate ''reasonable cause'' reduction or elimination of penalties for States. Consequently, we did not propose revision to Part 260, Subpart B in the interim final rule; therefore, general concerns related to rules on victims of domestic violence are outside the scope of this rulemaking.

*C. General Topics*

- Alternative Measures of Performance

*Comment:* Several commenters suggested shifting the focus of participation from process to outcome measures. One commenter found that the existing participation rates were too limited for purposes of assessing State performance measuring comparability across States. The commenter suggested that we use alternative measures of program success, including measures related to poverty, the employment rates of current and former recipients, and the completion rates for applicants and recipients enrolled in education and training programs. One commenter recommended continuing the High Performance Bonus outcome measures, even though bonuses are no longer available under the DRA. Another commenter urged work participation credit for those families who get jobs and work their way off welfare.

*Response:* We do not have the regulatory discretion to replace the existing work participation rate requirements with alternative, performance-based measures. Nevertheless, we do continue to track several of the outcome measures from the high performance bonus.

- Negative Consequences and Challenging Standards of Participation

*Comment:* Several commenters suggested that the interim final rule makes it more difficult for States to design effective programs to move families from welfare to work. Some commenters predicted that States may adopt punitive approaches to reduce the denominator for the work participation rate.

Some commenters suggested that we do not appreciate the need for flexibility and the difficulty of meeting a 50-percent overall participation rate. As an example, one commenter thought that we failed to recognize ''the reality that reaching a 50 percent participation rate is difficult in large part because of the many legitimate reasons why a recipient may not meet the full hourly participation requirements in any particular month, including illness, temporary gaps between work components, and family emergencies such as trying to forestall an eviction, the need to find new housing, the need to care for an ill relative who may not live with the recipient, or the need to attend to a domestic violence issue.'' One commenter said that the rules ''would steadily diminish state flexibility through the imposition of rigid federal mandates.'' Another stated, ''The new regulations have eliminated the states' ability to be flexible in determining what they may assess for countable work activities when in reality the needs of the particular participants and states vary vastly.''

*Response:* We do appreciate the difficulty in engaging a large and varied client population in countable work activities for enough hours to meet the work participation rate. Instilling the work habits and providing the supports that different families need to engage in work is a challenge that all States must strive to achieve. We have given serious consideration to the commenters' concerns and would like to point out certain aspects of statute as well as others of the TANF rule that help States achieve the work participation rate. There are several categories of individuals that continue to be excluded from the calculation of the work participation rate under the new law. One of the largest is the State option to disregard, on a case-by-case basis, single-custodial-parent families caring for a child under the age of one year. A State may also disregard a family subject to a work-related sanction for up to three months in the preceding 12 months. In addition, the interim final rule allowed States to exclude from the definition of ''work-eligible individual'' parents caring for a disabled family member living in the home. Our excused absence policy addresses concerns related to hours missed due to short-term illnesses or emergencies. Finally, States have a special reasonable cause provision if they miss the work participation rate because they serve a large number of families dealing with domestic violence issues.

Also, we would like to emphasize that when States cannot count the participation of some individuals in certain activities because they do not meet one of the work activity definitions or because the hours of participation are not sufficient, the States should still serve these individuals. The requirements and expectations for each family should be set by the State taking into consideration the needs of the family, obligations under the ADA and

Section 504 of the Rehabilitation Act of 1973, and program goals. Thus, in any individual case, a State may require fewer hours of an adult than needed to count toward the Federal participation rate and that family will not help the State meet its work participation rate. Similarly, a State may, and many do, require more hours of an adult than needed to count the family in the participation rate. Moreover, States continue to have the flexibility to allow families to engage in broader and different activities from those that count for the Federal participation rate.

We are convinced that States can and will meet these challenges, thus dramatically improving the lives of families. We also believe that the standards must be challenging to ensure that the maximum number of recipients move toward self-sufficiency. This conviction is based on the well-documented results and achievements made by States in response to PRWORA. We believe the DRA provides the appropriate steps and direction for the next phase of welfare reform.

We are confident that, under the new rule, States that operate effective and efficient welfare-to-work programs will be able to satisfy their work participation rate standards and enhance the services to clients at the same time.

• Partial Credit

*Comment:* Several commenters suggested that we should give States partial or pro rata credit for individuals who are engaged in work activities for some hours, but not enough to be included in the work participation rate calculation. One commenter pointed out that this would avoid the current ''all-or-nothing'' standard and would permit some individuals who have limitations to be credited with participating. Another maintained that partial credit is not prohibited, even if the rules do not specifically allow it.

*Response:* Neither PRWORA nor the DRA provided for counting partial participation of a case in meeting the work participation rates; either the adult meets the requirements for being ''engaged in work'' and the family counts in the rate or the adult does not meet the hours requirement and the State does not get credit for that family in the participation rate. We remind readers that the regulations at §§ 261.22(d)(1) and 261.24(d)(1) do provide the flexibility of counting a partial month of assistance as a month of participation if a work-eligible individual is engaged in work for the minimum average number of hours in each full week that the family receives assistance in that month. Please refer to the regulatory text of those sections and to the preamble discussion in the original TANF rule at 64 FR 17771. In addition, the excused absence policy described in § 261.60(b) allows a State to receive credit for short-term excused absences and allows some families that would otherwise fall short of the minimum hourly requirements to count in the participation rate.

• Increased Costs

*Comment:* Some commenters suggested that the new regulations would require States to increase participation in work activities, which would raise program costs. This, in turn, they thought, would force States to curtail services because TANF is a fixed block grant.

*Response:* The dramatic decline in welfare caseloads since the 1996 welfare reform has produced savings that far exceed any additional costs from new work requirements. More specifically, TANF funding, measured on a per TANF family basis, was $9,100 in 1996 (inflation-adjusted) compared to $15,977 in 2007 (projected), an increase of $6,877 per family, or 76 percent. While we recognize that States have dramatically extended work services and support benefits to low-income working families, and pre-kindergarten care and education to children that are not receiving ''assistance,'' we believe that States have sufficient resources to allocate among priority programs while implementing these new requirements.

• Child Care Needs

*Comment:* Some commenters thought that there was not enough child care funding to pay for the added costs associated with implementing the work requirements under the Deficit Reduction Act of 2005, particularly for child care for non-recipient parents.

*Response:* Since 1996, Federal child care funding through the Child Care and Development Fund (CCDF) has more than doubled—from $2.2 billion in FY 1996 to $4.8 billion in FY 2005. HHS data on Federal and State child care spending in just three programs—TANF, CCDF, and the Social Services Block Grant (SSBG)—show that spending increased by nearly 225 percent between FY 1996 and FY 2005, from $3.6 billion to $11.5 billion. The Deficit Reduction Act increases Federal child care funding in the CCDF from $4.8 billion to $5 billion, effective FY 2006. In addition to increasing child care funding, the Deficit Reduction Act fully funds TANF at $16.5 billion per year for five years. With significantly lower caseloads than in 1996, we believe that States should have adequate funding to provide needed child care under the Deficit Reduction Act requirements.

• Monitoring

*Comment:* Several commenters suggested that the rule imposes rigid monitoring and reporting requirements. Some expressed concern that frequent demands for proof of participation could overburden providers or cause families to lose assistance.

*Response:* We believe that the rule simply clarifies what has always been the expectation of law, of the original TANF rule, and of the requirements of 45 CFR part 92: That a State should report only actual participation that it has adequately documented and verified. As a result of numerous single audit findings questioning the validity of participation rates, we decided to clarify this expectation in the rule so that States may avoid potential penalties. In addition, for the four activities involving paid employment, which historically have represented the bulk of State work participation, we have substantially reduced the burden on clients, employers, and States by allowing the reporting of projected actual hours of participation for up to six months based on current, documented hours of work.

• Consultation

*Comment:* One commenter stated that we did not consult Tribes about the interim final rule and that Tribes were expressly discouraged from providing input because the rule was directed at States and was not intended to impact Tribal TANF programs directly.

*Response:* The rulemaking process included a period for public comment on the interim final rule. Tribes as well as other organizations and individuals were free to express their opinions and to offer advice on the rule. Several Tribes and Tribal Organizations took the opportunity to submit comments, which we have addressed in the preamble to this final rule. Further, ACF representatives actively participated in a National Summit on State and Tribal TANF in July 2006, at which State and Tribal representatives discussed the provisions of the DRA and the interim final rule in detail and expressed comments. The National Alliance of Tribal TANF, one of the Summit sponsors, summarized these comments and formally submitted them to us. They are also addressed in this preamble.

*D. Tribal TANF*

*Comment:* One commenter observed that Tribal TANF programs could be adversely affected by States that fail to meet the work participation rates because the funds that States transfer are critical to the operation of Tribal TANF programs. This commenter also

expressed concern that funding and regulatory changes to State TANF programs will negatively affect various Tribal programs.

*Response:* State MOE funding plays an important role for Tribal TANF programs. We will continue to encourage States to support the Tribal TANF grantees with MOE funding; however, the decision to provide MOE funding rests solely with the States. States may also impose conditions on Tribal TANF programs on the use of State MOE funds. Primarily, the Federal role regarding State MOE is to ensure that States expend the required amount of funds in compliance with requirements. (For a more detailed discussion of Federal policy on MOE funds provided to Tribal TANF programs, please see our Policy Announcement, TANF–ACF–PA–00–4 dated November 27, 2000.)

We do not think it is likely that State TANF agencies will reduce MOE funding for Tribal TANF programs. If a State does fail a work participation rate, it must meet an 80 percent MOE requirement. States that meet the work participation rates need only spend at the 75 percent MOE level. Any State that may potentially fail either the overall or two-parent participation rate needs to ensure that it has expended 80 percent of its historic level of spending, a five percentage point increase for many States. In addition to the need to expend additional MOE funds, we have heard no State indicate that it is contemplating any reductions in providing funding to Tribal TANF programs.

*Comment:* A few commenters expressed concern that restrictions imposed by this regulation could create an influx of Tribal clients moving to areas in which Tribal TANF programs exist, thereby increasing the costs to these programs. Because Tribal funding is based on 1994 caseload data, Tribes have substantially limited ability to renegotiate effectively for increased funding.

*Response:* We understand the commenters' concerns; however, we have seen no evidence that this rule will prompt Tribal members to move into areas served by a Tribal TANF program or that such a potential influx would exceed the 1994 caseload level. In fact, if States effectively implement the DRA provisions, we expect further caseload declines.

*Comment:* One commenter expressed opposition to any attempt to extend these regulations to the Tribal TANF program regulations.

*Response:* As we noted in the preamble to the interim final rule, the regulatory changes promulgated in response to the enactment of the DRA only apply to States, the District of Columbia, and the Territories of Guam, Puerto Rico, the Virgin Islands, and American Samoa. We are not planning to amend the Tribal TANF program regulations at 45 CFR part 286 to comport with these DRA 2005 final rules.

## IV. Part 261—Ensuring That Recipients Work

*Section 261.2 What Definitions Apply to This Part?*

This section of the regulation defines work activities and work-eligible individuals. Section 407(d) of the Social Security Act specifies 12 separate and distinct activities. Under the original TANF rule, we chose not to define these work activities to provide maximum program design flexibility to States. We simply listed the 12 work activities in 45 CFR 261.30 in the order they appear in the Act. As GAO found, this led to disparities in State definitions of work activities that resulted in inconsistent work participation measurement and undermined the principle of equitable treatment. In particular, States with narrow definitions were at a disadvantage in meeting the participation requirements compared to States with broader definitions. In addition, the GAO report (GAO–05–821) raised concerns that some States integrated activities to avoid various statutory limitations on some TANF work activities, such as the six-week time limit on counting hours spent in job search and job readiness assistance.

The Deficit Reduction Act of 2005 required HHS to promulgate regulations to ensure consistent measurement of work participation rates. The law specifically required us to determine whether an activity of a recipient of assistance may be treated as a work activity. Thus, in the interim final rule, we defined each of the countable work activities to promote consistency in the measurement of work participation rates and to maintain the integrity of the work participation rates. By defining work activities, we ensure that all States are judged on the same basis that is, that there is a level playing field.

Our definitions follow the order of the list of work activities in section 407(d) of the Social Security Act. For ease of reference, we refer to the nine work activities that count for the first 20 hours of required work or the corresponding 30-hour requirement for two-parent families (or 50-hour requirement for two-parent families receiving federally subsidized child care) as ''core'' activities and the three activities that can only count as participation after the core requirement is met as ''non-core'' activities.

We were guided by four basic principles in developing the work activity definitions in this final rule.

First, we attempted to define each work activity in a common sense way. If a particular activity was not explicitly listed in the statute, we attempted to see if it could fit under one of the 12 activities listed in law. For example, treatment, counseling, and rehabilitation activities, in our judgment, fit best under job search and job readiness assistance, when such activity prepares an individual for work. However, we could not add wholesale categories of work activities to the 12 listed in the law. Our task was to specify whether and where certain activities fit within these already existing statutory categories.

Second, we defined each activity to focus on work and help move families to self-sufficiency. Work activities should help individuals develop the skills necessary to become job ready and go to work. We do not want families to exhaust their time-limited benefits and discover that they are not prepared to support themselves.

Third, we tried, as far as possible, to make the definitions mutually exclusive of one another. Since Congress created 12 distinct activities, we wanted to bring meaning to them as distinct activities.

Fourth, we made supervision an explicit part of each definition. For programs to be successful, it is important that the case manager or provider knows what each person is supposed to be doing and that he or she is accountable on a timely basis for ensuring that the client actually performs such assigned tasks.

Comments and Responses on Cross-Cutting Issues for Work Definitions

We received many comments on this section of the interim final rule. Some comments applied to multiple activities or applied generally to defining the activities at all. We respond to those cross-cutting comments in this section and have grouped the comments and our responses by topic for the ease of the reader. We respond to comments that focus more narrowly on a specific definition in the discussion of each activity below.

General Topics

*Comment:* Some commenters wrote that the work activity definitions in the interim final rule narrowed the range of what States can count toward their work

participation rates and recommended giving States more flexibility in defining work activities. One commenter recommended allowing States to develop their own definitions.

*Response:* The DRA directed HHS to define work activities to achieve greater consistency among States. For some States, the new definitions may narrow countable activities, but we believe they actually expand them in other States. For example, under the original rule, some States counted substance abuse and mental health treatment as community service or as job search and job readiness assistance. Some States did not count these activities at all, even if a substantial number of individuals participated in such treatment. Our new definitions make substance abuse treatment, mental health treatment, or rehabilitation activities an explicit part of job search and job readiness assistance. This will allow all States to count individuals participating in these activities and thus could actually increase work participation rates in these States. In general, we believe the work activity definitions specified in the interim final rule were reasonable and consistent with the goals of the TANF program, and thus we have retained them, with appropriate modification, in the final rule. As a practical matter, we do not believe that these definitions have a restrictive effect on what most States currently count because the dominant activity in most States has traditionally been unsubsidized employment, an activity whose definition most commenters did not find restrictive.

*Comment:* Several commenters expressed the view that the emphasis on mutually exclusive activities restricts State flexibility in developing cost-effective programs by making it more difficult for them to ''blend'' program activities. The commenters recommended that we make the definitions more ''flexible'' and permit program approaches that integrate and combine activities under one work activity definition.

*Response:* Programs that combine work with training or other services have shown promise in helping TANF recipients make the transition to the labor force and move toward self-sufficiency. We believe that the final rule gives States the flexibility to operate programs of blended activities. Section 407(d) of the Act specifies 12 separate and distinct activities. Thus, we have tried to define each activity to have a specific and distinct meaning, but it was not always possible to make them mutually exclusive. In fact, some types of activities can be categorized under more than one work activity definition. For example, many of the training activities counted under vocational educational training can also count under job skills training directly related to employment and education directly related to employment. The former is a core work activity that is limited to 12 months in a lifetime, whereas the latter are non-core activities that can only count once the core activity requirement has been met.

*Comment:* Some commenters maintained that the most effective welfare-to-work programs included a variety of employment and education and training activities. In their opinion, mutually exclusive definitions would discourage States from combining work activities. Moreover, they maintained that doing so would require separate tracking of each activity and impose an added administrative burden. In addition, because some activities, such as job search and job readiness assistance and vocational educational training, have statutory limitations on their duration, the commenters thought that States might be reluctant to include these activities in a broader program that blends activities because it would limit the long-term use of those activities. Commenters urged us to allow States to combine activities and report all participation under one activity. Several commenters suggested that States should be allowed to count an individual participating in more than one activity in the activity that makes up the majority of the hours of participation. For example, many of these commenters recommended that we allow States to count a limited number of hours of job search or training as part of another activity, such as work experience, if the other activity represents the majority of the hours of participation.

*Response:* We strongly support State programs that combine activities and believe that our definitions fit well with such blended programs. It is important that States report the hours of participation for each work activity in the appropriate category to ensure that the data are comparable across States. If an individual has exhausted the time allowed to count an activity, it does not prevent a State from continuing to combine it with other activities; it only affects what a State can report toward the participation rates. We note that a policy that allows some activities to count within others based on standards such as what constitutes a ''significant majority'' of hours would still require States to track the hours of each activity separately to determine which activity is the primary activity. Thus, combining the activities would not achieve the suggested administrative simplification.

*Comment:* Many commenters expressed general support for education activities or for the ability to count a wider array of educational activities. Several commenters asserted that the regulations will limit access to education and training, and were concerned that this would hinder client access to higher paying jobs and undermine their efforts to become self-sufficient. For those with limited basic skills and language difficulties, some commenters proposed expanding the definitions of various core activities to increase opportunities of countable participation. Commenters also suggested that we expand the definition of vocational educational training to include education directed at achieving a baccalaureate or advanced degree.

*Response:* We appreciate the value of education and training for all individuals. Some recipients need to develop skills to become employable; others benefit from education and training in order to advance in the workplace. While we cannot add educational categories to the explicit 12 activities listed in the TANF statute, we believe that our definitions permit considerable flexibility to provide a range of education and training services to TANF families. Under vocational educational training, we permit a variety of postsecondary education activities, including associate degree programs, instructional certificate programs, industry skill certifications, and other course work. In addition, the definition of job skills training directly related to employment permits virtually all vocational educational training activities to count under that component as well. States may choose this activity for those individuals who have exhausted their 12-month limit on vocational educational training or to conserve these months for those who have sufficient additional participation in other core work activities. Remedial education and ESL can count under vocational educational training, if they are a necessary and regular part of the work activity, and also can count under education directly related to employment. States have considerable flexibility to mix and match work activities so that they can count a wide range of activities. Although the interim final rule did not permit States to count participation in baccalaureate or advanced degree programs in vocational educational training, we have been persuaded by commenters to allow such participation and have changed the definition accordingly.

*Comment:* Some commenters thought that the new work activity definitions ''do not allow for the singular economic, cultural, and geographic circumstances'' that characterize some States. For example, they pointed out that the rural nature of some communities makes it difficult to serve some work-eligible individuals, both because the range of activities may be limited and also because various documentation and supervision standards are hard to apply.

*Response:* We are sympathetic to concerns related to serving remote areas and areas where employment opportunities are limited due to high unemployment or other conditions. However, the statute does not make any allowance for such factors in the calculation of work participation rates, except that it limits the maximum overall rate to 50 percent. Under one of TANF's predecessor programs, the Job Opportunities and Basic Skills Training (JOBS) program, States could exempt individuals living in remote areas, but Congress chose not to continue this exemption when it enacted TANF in 1996. The law does provide penalty relief, though, if a State can demonstrate that high unemployment or regional recession caused or contributed to its failure to meet the work participation rates. Readers should refer to §§ 261.51(d) and 262.5 of this chapter for more information on penalty relief.

*Comment:* Some commenters suggested that the work activity definitions exceeded our legal authority. One commenter noted, ''Many states have used more expansive definitions over the past 10 years, and HHS has never suggested that they were in violation of the statute.'' Another commenter asserted that there is ''no statutory basis to impose a mutually exclusive list of definitions to what Congress said should be viewed as a whole.'' Some commenters contended that specific regulatory provisions were not consistent with the statute.

*Response:* The Deficit Reduction Act of 2005 specifically required us to determine ''whether an activity * * * may be treated as a work activity. * * *'' We believe the interim final rule was consistent with Congressional and statutory intent. We did not intend to suggest that States were in violation of the prior statute and rules. Rather, Congress saw a need for uniform definitions and the rule provides them.

*Comment:* Some commenters wrote that aspects of our definitions were not necessary because they were not required by the statute, for example, the limitation that only supervised homework can count.

*Response:* The statute is generally silent on what we should include in most definitions. In defining the work activities, we found it necessary to specify what can count as part of an activity and the conditions that must be met to ensure that actual participation in the activity occurs and thus keep definitions consistent across States.

*Comment:* One commenter urged us to count as part of a work activity the time it takes to travel to and from the work or training site. The commenter thought this was particularly important in rural areas that are isolated and lack public transportation.

*Response:* Travel time to and from work sites does not count toward the participation rates. We chose not to count commuting time to and from a work site because commuting is not ''engaging'' in the activity for which the State gets credit and because this approach is analogous to the work world, since most employees receive no pay for the time it takes them to commute to their jobs. However, we do allow a State to count the time an individual spends in job search and job readiness assistance traveling between multiple interviews. Please refer to the preamble discussion of that work activity for more detail in this area.

Daily Supervision

*Comment:* Several commenters asked for clarification regarding the daily supervision requirement for unpaid work activities. Several commenters objected to the requirement that job search and job readiness assistance include daily supervision because they said it is a costly and time-consuming requirement. These commenters generally noted that the time and resources spent on daily supervision should be focused on providing direct services to help families move toward self-sufficiency. Several commenters suggested that we limit the requirement so that ''someone with responsibility for oversight of the individual's participation had contact with the recipient, and that the supervision does not have to be done by the TANF agency itself or an employment services contractor.'' Some commenters recommended eliminating the requirement altogether.

*Response:* We agree with many of these points and would like to clarify this requirement. Daily supervision means that a responsible party has daily responsibility for oversight of the individual's participation, not necessarily daily, in-person contact with the participant. The goal of such supervision is to ensure that individuals are participating and making progress in their assigned activities. A work site sponsor, classroom instructor, contracted service provider, community-based provider, job search instructor, treatment provider, or even a TANF agency employee could fulfill that role. In addition, the supervision need not involve in-person contact, but can be by telephone or electronic contact where those methods are suitable.

Daily supervision as described above is a central part of the final rule. It ensures that individuals who participate in work activities make progress in their assigned activities. Supervision is part of everyday life in paid employment, despite the cost and time involved, because it provides value. We should expect no less for all TANF work activities.

*Comment:* One commenter asked for clarification regarding whether ''supervision is only required on days when an individual is scheduled to participate,'' noting that it would not make sense to require supervision on the other days.

*Response:* We agree and have clarified the final rule to indicate that supervision is only required for days when an individual is scheduled to participate.

Distance Learning Activities

*Comment:* Several commenters asked whether time spent in distance learning programs could count toward the work participation rates. They noted that this was particularly important in rural areas and that some programs keep track of the time individuals spend on a computer in ways that participants cannot change.

*Response:* We agree that distance learning is an important way for some families to gain the skills needed to move toward self-sufficiency. We will count time spent in distance learning to the extent that such programs otherwise meet the work activity definitions and include supervision. A State should explain in its Work Verification Plan how it will provide supervision and monitor hours of participation in distance learning.

Good or Satisfactory Progress

Under the definitions in the interim final rule, two of the TANF work activities involving education required that participants make ''good or satisfactory progress'' in order for their hours of participation to count: Education directly related to employment and satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence (GED). The preamble to the

interim final rule explained that this includes a standard of progress developed by the educational institution or program in which the individual was enrolled. It also said that good or satisfactory progress should be judged by both a qualitative measure of progress, such as grade point average, as well as a quantitative measure, such as a time frame within which a participant is expected to complete such education. We expressed interest in receiving comments that describe other possible criteria or definitions for what constitutes making ''good or satisfactory progress.''

*Comment:* Several commenters observed that the preamble to the interim final rule described ''good or satisfactory progress'' somewhat differently for the two activities to which it applied. In the case of ''education directly related to employment'' we wrote that the standard could be developed by either the education institutions or the program. For ''satisfactory attendance at secondary school,'' we allowed the State or the educational institution/program to set the standard. The commenters asked for clarification of this policy and recommended a wide variety of approaches for setting ''good or satisfactory progress'' standards. Some commenters urged us to leave the standards to educational institutions and programs, while others recommended that States establish them. A number of commenters also proposed giving States the flexibility to choose to establish either or both qualitative and quantitative measures.

Several commenters cautioned that the criteria for ''good or satisfactory progress'' should not discourage placing individuals with barriers in education, noting that they may require more time and help in meeting such standards. They suggested that the standards should include appropriate accommodations for individuals with disabilities. Other commenters recommended that we eliminate the requirement of ''good or satisfactory progress'' because many individuals with learning disabilities are often not identified by State agencies and fall through the cracks.

Some commenters recommended creating good cause exceptions for those facing unusual or unexpected circumstances that prevented them from making progress as expected. Good cause exceptions, they maintained, would prevent States from being penalized when individuals participate for the required number of hours but are unable to progress due to various circumstances. Another commenter asked us to clarify that States would not be retroactively denied credit toward the participation rate because a client participated for the required hours but failed to make adequate progress.

One commenter noted that the interim final rule did not specify the frequency with which ''good or satisfactory progress'' should be verified and commented that some measures of progress, such as grade point average, may not be available until the end of a quarter or semester. The commenter also explained that some educational programs, such as Adult Basic Education, may not have testing that produces grades to calculate a grade point average. The commenter recommended that States use ''subjective performance evaluations provided by the instructor to demonstrate progress * * * that simply indicate if academic performance was unsatisfactory or satisfactory.''

*Response:* The commenters raised many compelling points. We believe that the easiest way to accommodate these concerns is simply to delete the requirement for ''good or satisfactory progress'' from the definitions of education directly related to employment and satisfactory attendance at secondary school or in a course of study leading to a GED. Although we believe such standards are valuable and should be part of any educational activity, based on the input from commenters, we have determined that the appropriate standards can vary based on too many circumstances to mandate their inclusion in these two activities. Educational institutions are generally in the best position to establish standards of progress, but they may not make separate determinations of progress based on the circumstances of individuals, a role a caseworker might best perform. Therefore, the final rule gives States flexibility in deciding whether to set standards of ''good or satisfactory progress'' and, if they do, to develop the standards that are best suited for their clients.

Assessment

*Comment:* Several commenters recommended that the definition of various work activities include the assessment of participants' skills.

*Response:* Our work activity definitions permit assessment of an individual's suitability for a particular work activity.

*Section 261.2(b) Unsubsidized Employment*

In the interim final rule, we defined unsubsidized employment as full-or part-time employment in the public or private sector that is not subsidized by TANF or any other public program. We did not change the definition in the final rule. We have responded to comments concerning self-employment activities in the discussion of § 261.60(c).

*Comment:* Commenters found our definition of unsubsidized employment to be appropriate.

*Response:* We agree and have retained the same definition in the final rule.

*Sections 261.2(c) and (d) Subsidized Private Sector Employment and Subsidized Public Sector Employment*

In the interim final rule, we defined both subsidized private sector employment and subsidized public sector employment as employment for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing a recipient. We described three possible subsidized employment program approaches: (1) To use TANF funds that would otherwise be paid as assistance to reimburse some or all of an employer's costs; (2) to rely on a third party as the employer of record during the trial employment period, like a temporary staffing agency; and (3) to develop ''supported work'' programs for individuals with disabilities.

In the final rule, we made a minor wording change to the definitions of each of these activities, substituting the word ''individual'' for ''recipient.'' We made this change both for consistency with other definitions and to make clear that these activities are allowable for any work-eligible individual.

*Comment:* Several commenters asked whether participation in various supportive activities, such as substance abuse treatment, mental health treatment, and rehabilitation activities could count as subsidized private sector or public sector employment. These and other activities are often integrated as part of a supported work program, transitional jobs program, or other subsidized employment activity.

*Response:* Hours of participation in various supportive activities can count if they are integrated parts of subsidized employment. This means that, in order to count, the individuals must be paid for all of the hours they participate in such activities. For example, some transitional jobs programs are structured to include direct work and 10 to 15 hours of barrier removal or other activities, including mental health and substance abuse treatment, job search, and training. Participants are paid wages for all hours of participation. Otherwise, if the individuals are not paid while participating in these

activities, the participation should be reported as a blend of subsidized employment and another appropriate activity. Most likely this would be job search and job readiness assistance, but could be another activity.

*Comment:* Several commenters noted that some individuals assigned to subsidized employment soon have earnings that are sufficient to make them ineligible for assistance. They asked whether such individuals could continue to count in the numerator of the participation rate.

*Response:* Although we understand the commenters' concern, the work participation rate calculations include only families with a ''work-eligible individual.'' (Please refer to the discussion of § 261.2(n) for more detailed information about the definition of ''work-eligible individual.'') If a State wants to count a family participating in subsidized employment that is ineligible for a regular assistance payment, it could create and pay an alternative assistance grant. The State could then count the family toward the rate. Of course, since the family retains assistance, this would not generate a caseload reduction credit, as might be the case otherwise.

*Comment:* Several commenters asked whether employers would be required to hire and retain individuals engaged in subsidized employment once the subsidy period ended. The preamble guidance to the interim final rule stated, ''At the end of the subsidy period, the employer is expected to retain the participant as a regular employee without receiving a subsidy.'' Some commenters explained that many transitional jobs programs place participants in short-term subsidized employment to provide experience, training, and guidance that enable that individual to obtain unsubsidized employment elsewhere, even though it may not result in a permanent position with the same employer. Other commenters recommended that we limit the expectation of continued employment to private sector employers to avoid creating a ''revolving door'' of subsidized employees.

*Response:* The preamble language in this regard was a suggestion, not a requirement. We continue to caution that States should not allow employers to recycle TANF recipients in subsidized employment slots simply to reduce their competitive labor costs. The positions should lead to ongoing, stable employment or prepare individuals for such employment.

*Comment:* Several commenters asked whether they must limit the duration of subsidized employment positions. They noted that the preamble to the interim final rule suggested ''that States generally limit the duration of subsidized employment programs to six to twelve months.''

*Response:* The limited duration is a recommendation, not a requirement. Longer placements may be appropriate, for example, in supported employment of individuals with disabilities or for other participants based on their individual circumstances, economic conditions, or other factors.

*Comment:* One commenter noted, ''Congress listed public and private sector subsidized employment as separate work activities; therefore it is reasonable to have different expectations depending on the sector of the employer.'' In particular, the commenter suggested that it may be appropriate to limit the duration of the employment subsidy to private sector employers ''where there is an expectation of continued employment with that employer,'' but that such limits should not be placed on public sector (and non-profit) employment.

*Response:* We agree that durational limits help ensure that the primary benefit of the subsidy is to the employee, but do not see the need to apply different standards to the private and public sectors. We leave it to States to determine such limits regardless of whether they apply to private sector or public sector employment.

*Comment:* One commenter recommended that States describe in their Work Verification Plans how a subsidized employment program will lead to unsubsidized employment ''where there is an expectation of continued employment with the same employer, and how the program will avoid displacement of current workers.''

*Response:* We agree that the ultimate goal of subsidized employment is to move the individual to unsubsidized employment and off welfare. However, the purpose of the Work Verification Plan is to ensure that States report participation data that is consistent with the law and regulations and that States adequately verify the accuracy of that participation data. The Work Verification Plan does require States to describe how their services and programs meet the definition of a work activity.

There is a statutory prohibition on displacement for all work activities in section 407(f) of the Act and the existing regulatory provision at § 261.70. Thus, we do not believe the Work Verification Plan needs to include this information.

*Comment:* One commenter recommended that HHS ''design the payment structure'' to reflect the range of services offered under subsidized employment.

*Response:* We believe the details of program design should be left to the States because the circumstances of individuals and the effectiveness of program activities may vary based on a number of factors.

*Section 261.2(e) Work Experience*

In the interim final rule, we defined work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available, as a work activity performed in return for welfare that provides an individual with an opportunity to acquire the general skills, training, knowledge, and work habits necessary to obtain employment. We reminded readers that work experience participants continue to receive their TANF grants and that they do not receive wages or compensation by virtue of participating in the activity. Nonetheless, they may be considered employees for the purpose of the Fair Labor Standards Act (FLSA), which means that they must be compensated at no less than the higher of the Federal or State minimum wage.

*Comment:* Several commenters suggested that work experience could sometimes be considered a ''paid'' activity. Others thought that the definition should exclude the phrase ''performed in return for welfare.''

*Response:* We considered these views carefully but chose to retain the definition of work experience we published in the interim final rule, keeping it as an unpaid activity to distinguish it from the four ''paid'' activities that already exist. In our view, the purpose of work experience is to gain the skills needed to acquire a paid position. States that have work experience programs that involve the payment of wages should reclassify them as subsidized employment or on-the-job training. The fact that there may be an employer-employee relationship in a work experience assignment, triggering the minimum wage requirements of the FLSA, does not make the work activity ''paid.'' Rather, the individual is receiving compensation from the family's TANF grant in lieu of wages.

*Comment:* Several commenters asked us to clarify that not all work experience activities are subject to the FLSA. One commenter asked for clarification on who the employer is with respect to work experience positions—the State or the work site sponsor (if other than the State). The commenter was unsure

because the State provides worker's compensation.

*Response:* It is the responsibility of the Department of Labor to determine whether or not the FLSA applies to an activity and who the employer is. We recommend that readers direct any questions regarding the FLSA to the Wage and Hour Division of the U.S. Department of Labor at 1–866–4–USWAGE, TTY 1–877–889–5627 or the following Web site: *http://www.dol.gov/esa/whd/flsa/index.htm.*

*Comment:* Several commenters asked whether the definition of work experience precludes a State from counting a participant who combines unsubsidized employment with work experience because the statutory language limits work experience to situations where ''sufficient private sector employment is not available.'' In addition, the interim final rule defined the purpose of work experience as improving the employability ''of those who cannot find unsubsidized employment.''

*Response:* The statutory language does not prevent States from using work experience for those who are in paid employment. We recognize that there may be circumstances in which an individual's employment is not sufficient to meet the work activity requirement and a State may place such an individual in another work activity. In this circumstance, work experience could be appropriate because sufficient employment may not be available for ''full-time'' work. Although we cannot strike the statutory phrase, ''if sufficient private sector employment is not available,'' we are clarifying that ''sufficient'' means enough for full-time employment.

*Comment:* Several commenters recommended that the definition of work experience (and community service) include ''background checks and assessment of participants'' skills as they related to a job site and required by a specific work experience slot.''

*Response:* Our definition permits background checks and the on-site assessment of an individual's suitability for a particular work experience slot. States must assess each recipient of assistance over 18 years of age or who has not finished high school (or the equivalent).

*Comment:* Some commenters suggested that we consider training, education, and vocational educational training to be part of work experience. They noted that the preamble discussion of community service programs in the interim final rule offered a rationale for providing training within that activity, citing the example of an individual assigned to clerical support who needs to attend a computer training class. They suggested that a similar provision should apply to work experience and that we should expand it to include other forms of educational or vocational educational training activities.

*Response:* States may wish to supplement work experience with training, but we do not believe that formal training, education, and vocational educational training programs should be considered part of work experience. Work experience is defined as work performed in return for welfare and is intended to provide an individual with an opportunity to acquire the general skills, knowledge, and work habits necessary to obtain employment. We make an exception in community service because that activity involves a service that is of direct benefit for the community and limited training may count if it is an integral part of the activity. We have deleted the reference to ''training'' in the definition of ''work experience'' to clarify this point, as that reference referred to training in general workplace skills, not to formal instruction that can be provided through other TANF work activities.

*Comment:* Several commenters asked whether short periods of job search and job readiness assistance or vocational educational training could be embedded and counted within work experience. These commenters suggested that such programs are more effective than work experience alone and that not permitting such embedded activities to count would discourage States from combining work experience with activities designed to move TANF recipients into unsubsidized jobs. Other commenters contended that ESL should be included as part of work experience because the ability to speak English is a prerequisite for employment.

*Response:* As we have noted before, we fully support State efforts to integrate and combine work activities. Reporting hours of work separately for the different activities should not impede a State's ability to offer integrated services or encourage individuals to combine activities. We attempted to define activities so that they are mutually exclusive because the law provides 12 distinct activities, so in general, including activities that meet one of the other work activity definitions would be inappropriate, particularly in the case of activities with established limitations in statute, i.e., job search and job readiness assistance and vocational educational training. ESL is an educational activity that can count under vocational educational training, if it is a necessary and regular part of the work activity, and also can count under education directly related to employment. However, we note that States can count short absences from various activities to participate in, for example, a job search activity under the excused absence policy (described in § 261.60(b) of this chapter). In addition, as we describe in the section on job search and job readiness assistance, we give States greater flexibility to count sporadic hours of participation in job search and job readiness assistance without triggering a full week in that activity that would otherwise count against its durational limits.

*Comment:* One commenter recommended that we require States to ''consider TANF workers as employees of the state, eligible therefore for all state employee benefits and covered by all worker protection statutes.''

*Response:* The DRA did not change the worker protections or employee benefits available to work activity participants, so the final rule does not make any changes to existing policy in this regard. The original TANF rule clarified that, notwithstanding specific language limiting the scope of the TANF rules, TANF programs are subject to Federal employment and non-discrimination laws. These protections continue to apply under the final rule. Since there is no statutory basis for a requirement such as the commenter suggested, we do not believe we have the authority to require TANF workers to be considered employees of the State. State law generally governs whether an individual must be considered an employee or may be considered an employee for purposes of State employee benefits. Also, the worker protection statutes themselves define the situations that they cover, many of which apply to individuals participating in TANF work activities.

*Comment:* One commenter asked for clarification that work experience positions could be created with private sector employers. The commenter stated that this would expand the number of placement opportunities and the chances for individuals to transition into unsubsidized employment.

*Response:* Work experience positions may be created with public sector, private sector, community-based, faith-based, or nonprofit employers or work site sponsors.

*Section 261.2(f) On-the-Job Training*

In the interim final rule, we defined on-the-job training (OJT) as training in the public or private sector that is given to a paid employee while he or she is

engaged in productive work and that provides knowledge and skills essential to the full and adequate performance of the job. In the preamble to the interim final rule we invited comments on whether the definition of OJT should be broadened ''beyond paid employment to include other aspects of training.''

*Comment:* Several commenters suggested that we expand the definition to include unpaid training, such as occupational training, basic skills remediation, and English language instruction, as well as pre-employment skill upgrading. Several commenters noted that many employers provide both on-site and off-site training to employees. The commenters maintained that including unpaid training positions would help ensure that recipients receive needed work skills and would simplify reporting. Other commenters recommended including unpaid internships or externships, arguing that participants would have an opportunity to learn in a work setting that could lead to employment opportunities.

*Response:* We considered all of these suggestions carefully in writing the final rule. Ultimately, we chose not to expand OJT to include unpaid training activities. We made this decision because, first, we could not reconcile the notion of unpaid training with being ''on-the-job,'' and second, such unpaid training can count under a variety of other work activities, including vocational educational training and job skills training directly related to employment. We think this is the most common-sense way to bring meaning to the 12 distinct work components. Regarding the location of training, we would like to emphasize that paid training, whether provided off-site or at the work site, fits the definition of OJT.

*Comment:* Several commenters recommended expanding the definition of OJT to include training for prospective employees in addition to paid employees.

*Response:* We have not included training for prospective employees under OJT because they are not yet ''on-the-job.'' Instead, such training could count under other work activities, including vocational educational training or job skills training directly related to employment, depending on the nature of the training.

*Comment:* Several commenters recommended including barrier-removal activities in OJT if integrated into the program.

*Response:* We fully support the use of barrier-removal activities for individuals who need these services. States may generally include such services as part of a job search and job readiness assistance activity. Also, such activities can count as unsubsidized or subsidized employment if the individual is paid during the time of participation in such activities.

*Comment:* Several commenters asked whether an employer was expected to hire an OJT participant, based on the statement in the preamble: ''Upon satisfactory completion of the training, we expect the employer to retain the participant as a regular employee. * * *''

*Response:* The preamble language was a suggestion, not a requirement. As with subsidized employment, we expect employers to provide training, guidance, and direction to help employees obtain unsubsidized employment, whether with the employer providing the training or with another employer. As long as the position is designed to lead to unsubsidized employment, the activity would meet the primary goal of the program.

*Section 261.2(g) Job Search and Job Readiness Assistance*

In the interim final rule, we defined job search and job readiness assistance as the act of seeking or obtaining employment, preparation to seek or obtain employment, including life skills training, and substance abuse treatment, mental health treatment, or rehabilitation activities for those who are otherwise employable. Such treatment or therapy must be determined to be necessary and certified by a qualified medical or mental health professional. We retained the general framework of the definition in the final rule, but deleted the requirement that an individual be ''otherwise employable'' because the term was confusing and raised concerns that it could potentially deny treatment to those who have a disability or face multiple barriers to employment. We also deleted the term ''certified'' because it too created some confusion. The final rule requires that there must be a documented need for treatment or therapy determined necessary by a qualified medical, substance abuse, or mental health professional.

The preamble to this section of the interim final rule also defined a ''week'' for purposes of counting no more than six weeks per fiscal year (or 12 weeks, for qualifying States) of job search and job readiness assistance, no more than four of which may be consecutive. We explained that the most commonly understood and simplest way to answer this question was to use the ordinary definition of a week: seven consecutive days, regardless of which day participation starts. We received many comments on this provision. Most commenters contended that six weeks was not enough time to help individuals with barriers to employment. Many others urged us to consider an hourly equivalent to these limitations to increase State flexibility.

In order to respond adequately to the comments we received, we determined that it was necessary to include § 261.34, which specifies the limitations on counting job search and job readiness assistance, in this final rule, despite the fact that it was not in the interim final rule. Based on these comments, we have adopted an hourly equivalent for purposes of the six-week (or 12-week) limit, giving States more flexibility to provide job search and job readiness assistance services, especially when such services are only needed for a few hours per week. We describe the policies on these limitations in more detail in the discussion of § 261.34, but also respond to comments on this topic here.

For the ease of the reader, we have grouped the comments and our responses by topic within this section.

Treatment of Barrier Removal Activities

*Comment:* Many commenters welcomed the inclusion of substance abuse treatment, mental health treatment, and rehabilitation activities as countable activities. However, many commenters also expressed concerns about limiting these specific activities to the category of job search and job readiness assistance alone, an activity that can count for only six weeks in a fiscal year (or 12 weeks, for qualifying States). They said that these barriers to work are prevalent among the TANF population and that States need more time to address them than the durational limits allow. A number of commenters recommended that we allow these activities to count under community service, job skills training directly related to employment, or education directly related to employment.

*Response:* Under the final rule, we generally limit the counting of substance abuse treatment, mental health treatment, and rehabilitation activities to the job search and job readiness assistance activity. In defining work activities, we tried to determine whether such services appropriately fit in any work component. The statute does not specifically name substance abuse treatment, mental health treatment, and rehabilitation activities as work activities or even otherwise refer to these services. Because these are activities designed to make somebody work-ready, we count them as job

readiness activities. We realize this means that counting participation in these activities is limited to six weeks (or 12 weeks, for qualifying States) in the preceding 12-month period, of which no more than four weeks may be consecutive, but this was the only category where it made sense to include them. However, if a portion of substance abuse treatment, mental health treatment, or rehabilitation service meets a common-sense definition of another work activity, then the hours of participation in that activity may count under the appropriate work category, such as work experience. In addition, if hours in unsubsidized, subsidized private sector, and subsidized public sector employment include treatment or rehabilitation services, a State may count those paid hours under that work category.

Because counting participation in job search and job readiness assistance is time-limited by statute, we caution States to assess carefully the use of treatment, counseling, and rehabilitation activities so that they count participation in these activities only when they are needed to prepare recipients for work.

*Comment:* Several commenters objected to the requirement that a qualified medical or mental health professional must determine when treatment or therapy is necessary. One commenter maintained that it could discourage some individuals from acknowledging the presence of such barriers and delay or prevent the State from addressing them. In addition, the commenter thought that the certification process would pose an administrative burden for the States.

*Response:* Substance abuse treatment, mental health treatment, and rehabilitation activities are important activities that can help individuals overcome serious barriers to employment. We eliminated the requirement for a ''certification'' but we believe that States must document the need for such treatment or therapy by a qualified medical, substance abuse, or mental health professional to ensure that a proper diagnosis is made and an effective remedy is prescribed.

Otherwise Employable

*Comment:* Several commenters recommended that substance abuse treatment, mental health treatment, and rehabilitation activities should not be limited to those who are ''otherwise employable.'' They suggested that such a limitation may be a violation of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 because States could use it to deny such treatment to those who have a disability or face multiple barriers to employment. The commenters noted that such individuals may need a broad range of services beyond job search and job readiness, such as subsidized employment or vocational educational rehabilitation, before they are employable. One commenter suggested that individuals who are not ''otherwise employable'' should be excluded from the definition of a ''work-eligible individual.'' Some commenters also claimed that the determination of who would be employable and who would not would create an added administrative burden. Finally, they noted that job search and job readiness assistance is already limited to six weeks per fiscal year and that this language was more restrictive than needed and could discourage States from providing these kinds of services to individuals facing barriers to work.

*Response:* We think the commenters raised reasonable concerns. We never intended the phrase ''otherwise employable'' to exclude individuals who need more than one form of service or training before they could become employed from counting via participation in mental health or substance abuse treatment or rehabilitation activities. Our intention was to ensure that the necessary services that work-ready individuals may require were delivered in a logical and sequential fashion. Too frequently, an applicant or new recipient is automatically assigned to job search and job readiness assistance, regardless of the needs identified in the client's initial assessment or in the individual responsibility plan. Because the counting of this activity is time-limited by statute, we wanted to ensure that such services were available and appropriately provided at the time they would do the most good in preparing for and finding work for participants. However, we agree that this phrase may be confusing or could be misconstrued. Thus, we have deleted it from the final rule; however, we still encourage States to develop and deliver services based on the individual needs of clients, rather than in automatic sequential steps.

Domestic Violence Activities

*Comment:* Some commenters recommended that we expand the definition of job search and job readiness assistance to include participation in domestic violence resolution activities. One commenter suggested that we should classify such activities as ''rehabilitation activities.'' The commenter noted that victims of domestic violence often require job readiness activities akin to rehabilitation activities to transition to self-sufficiency, citing the following examples of domestic violence resolution activities: ''having to relocate due to the violence, apply for court orders of protection, attend court hearings, address children's needs for trauma counseling or other supports, attend counseling and support groups at a domestic violence program, meet with case managers at domestic violence programs, etc.'' One commenter explained that these were important activities that were apparently consciously omitted from the interim final rule. Another recommended allowing a certified domestic violence professional to certify the need for such activities. A number of commenters indicated that counting domestic violence resolution activities would address a problem noted in the preamble to the interim final rule, notably the concern that ''States have been less effective in placing clients with multiple barriers in work, including * * * those subject to domestic violence.'' They contended that the limitations of job search and job readiness assistance ''exacerbate the difficulty victims have in participating and advancing towards financial stability.''

*Response:* We fully support the efforts of States to identify victims of domestic violence and to assist them in accessing appropriate services to abate ongoing violence, to recover from physical and emotional trauma, and to help children cope with the effects of domestic violence. In the original TANF rule, all of Part 260, Subpart B was devoted to the special provisions for victims of domestic violence. Those rules are unchanged and continue to offer the same protections they have since their promulgation. The interim final rule did not make modifications to that part of the regulation, in part because it was outside the scope of our interim final rule authority, but also because we stand by those protections. We continue to encourage States to adopt the Family Violence Option (FVO), to implement comprehensive strategies to identify and serve domestic violence victims, and to grant federally recognized good cause domestic violence waivers where victims need them.

Many domestic violence resolution activities should already meet the definition of job search and job readiness assistance because they accomplish the very goal of that work component: To help individuals go to work. Any domestic violence service that directly relates to preparing for

employment could be considered a job readiness activity. A State should describe the activities it will offer in its Work Verification Plan and explain how it prepares someone for employment. If the State provides domestic violence services as ''rehabilitation activities,'' they should be included in a service plan developed by a trained individual and must be designed to lead to work. We note that few States counted domestic violence resolution activities under the original rules, despite the flexibility they had to do so.

In addition, as we noted in the cross-cutting issues section of this preamble, existing provisions in the law address work participation rate issues for States dealing with victims of domestic violence. In particular, section 402(a)(7) of the Social Security Act and the rules at Part 260, Subpart B allow States to grant good cause domestic violence waivers to victims of domestic violence. States have broad flexibility to determine which program requirements to waive and for how long. Although these families remain in the work participation rate calculation, there may be some activities that meet one of the work activity definitions that would make them countable toward the participation rate. If a State fails to meet a work participation rate, we will determine that it had reasonable cause if the State can demonstrate that its failure was due to granting federally recognized good cause domestic violence waivers. As a matter of course, when we determine the amount of a penalty for failure to meet the work participation rate requirements, we recalculate the work participation rate taking out any families in which individuals received a federally recognized good cause domestic violence waiver of work requirements. This may result in no penalty or a reduction in the penalty associated with failure to meet the work participation rate. Please refer to § 261.51 for more information about the formula for calculating the work participation rate penalty.

*Comment:* One commenter asserted that the interim final rule conflicted with the Family Violence Option in Federal law, which provides for waivers of requirements that would place victims of domestic violence at increased risk. The commenter added, ''As those situations are going to have to be determined on a case-by-case basis, the limited time for barrier removal activities is inflexible and should not apply to barrier removal for family violence victims.''

*Response:* As the commenter noted, a State that elects the FVO must screen and identify victims of domestic violence, refer such individuals to services and, if needed, waive participation and other program requirements for as long as necessary to escape domestic violence. However, in providing this option to States, Congress did not remove such families from the denominator of the participation rate during the period of the domestic violence waiver. We believe the original rules concerning victims of domestic violence explained above ensure services and waivers for victims and provide necessary ''reasonable cause'' reduction or elimination of penalties for States.

Other Activities

*Comment:* Some commenters recommended expanding the definition of job readiness to include activities such as English as a Second Language (ESL) and remedial education—activities that the preamble to the interim final rule indicated would not be countable. Other commenters suggested new activities, such as behavioral health services and parenting skills training.

*Response:* As we indicated in the preamble to the interim final rule, only programs that involve seeking and preparing for work can meet the definition of job search and job readiness assistance. Although some of the activities commenters recommended are valuable and may be medically appropriate, they do not constitute work or direct preparation for work. Some activities meet the definition of one of the other 11 work activities. For example, ESL would more closely fit the definition of education directly related to employment and should be counted under that activity.

*Comment:* One commenter expressed appreciation for ''the ability to count the time spent in a substance abuse treatment facility or halfway house doing work activities such as preparing meals, housecleaning, or scheduling group activities.'' The commenter suggested extending this to ''persons living in supported residential facilities for both mental health and domestic violence reasons.''

*Response:* We do not distinguish between countable work activities based on whether an individual lives in a residential facility or not. As long as the activity fits within an approved definition, it can count for participation rate purposes.

*Comment:* Several commenters indicated that six weeks may not be long enough for a homeless person to find a job, implying that looking for housing might be a job readiness activity.

*Response:* We appreciate the added challenges that homeless individuals face in entering and participating in the workforce. We encourage States to develop strategies that best meet the needs of their various client populations, including the homeless. Although a person with stable housing may have an easier time finding a job and performing well on the job, the act of looking for a home is not an employment activity. A job search and job readiness assistance activity must have a direct connection to improving employability or finding employment.

*Comment:* One commenter suggested that we allow travel time required to complete job search activities to count. Travel is an integral part of job search, the commenter explained, as clients go from one interview to another, especially in large metropolitan or rural areas.

*Response:* A State may count travel time between interviews as part of a job search and job readiness assistance activity, but not the travel time to the first job search interview or the time spent returning home after the last one. We make this distinction so that it is consistent with the treatment of other work activities and analogous to the work world, since most employees receive no pay for the time it takes them to commute to and from their jobs.

Using Job Interviews as Proxy for Hours

*Comment:* Several commenters urged allowing States to use a job application as a proxy for a standard set of hours of participation, *e.g.*, completing one application or going on one interview would constitute two hours of participation. They contended that this approach is easier to administer and more consistent with existing State practice.

*Response:* While we sympathize with the commenters'' desire to minimize administrative burdens, we believe the most effective welfare-to-work programs incorporate close supervision and careful monitoring. This allows program administrators to track actual hours. Thus, we explicitly require States to report the actual hours of participation for each work activity. The rule does not allow a State to report estimated hours of participation based on the number of job search contacts an individual makes.

Four-, Six-, and 12-Week Limits

*Comment:* Several commenters suggested eliminating the six-week and other durational limits on job search and job readiness assistance because six weeks is not sufficient to address the

barriers faced by some recipients. Some commenters suggested limiting such extensions to those with short-term disabilities that need more than six weeks of treatment.

*Response:* The six-week and other durational limitations are statutory and cannot be changed through regulation.

*Comment:* Several commenters recommended not counting participation in job search and job readiness activities against the various durational limits under certain circumstances, including situations in which the participant does not have enough hours to count in the work participation rate or has enough hours to count in the rate without counting the hours in job search and job readiness assistance. Some commenters noted that States could simply fail to report such hours so as to avoid triggering the durational limits or report them under the category ''Other Work Activities'' on the TANF and SSP-MOE Data Reports, which reflects the hours of participation but does not apply them in determining the work participation rates or the durational limits. The commenters noted, however, that this would understate their true level of participation and could be construed as violating the ''complete and accurate'' data reporting standard. Instead, they recommended allowing States to submit this information, but not to count participation if it were not needed to meet the work participation rate.

*Response:* We understand the commenters'' concerns regarding the durational limits on job search and job readiness assistance, but these limits are set forth in the statute and we do not have the legal authority to ignore hours of participation reported under this activity. We strongly encourage States to report hours of job search and job readiness assistance that they do not wish to count toward the participation rate (and thus count against the various limits that apply to that activity) under the category ''Other Work Activities'' on their data reports, rather than to fail to report them at all because using the ''Other'' category gives better information on the overall engagement levels of individuals, even though those hours do not contribute to State achievement in the work participation rates. However, we do not consider either using the category ''Other Work Activities'' or failing to report such hours at all as a violation of the requirement for complete and accurate data.

Converting Weeks to Hours for the Six-Week (or 12-Week) Limit

*Comment:* Several commenters contended that the definition of a week in the interim final rule was too rigid. It specified that even one hour of participation in job search and job readiness assistance triggered a week for the six-week (or 12-week) limit on the activity. They suggested defining a week in terms of countable hours for job search and job readiness assistance, that is, an hourly equivalent of six weeks. For example, one commenter recommended that we define six weeks as 120 hours for a single custodial parent with a child under six years of age and 180 hours for all other work-eligible individuals. This recommendation was based on the fact that such families need an average of 20 and 30 hours, respectively, to count toward the overall work participation rate. The commenters asserted that an hourly conversion would give States more flexibility to structure work activities to meet the needs of the participants.

*Response:* In defining work activities and related terms, we had to balance legitimate practical concerns with statutory language. The statute limits job search and job readiness assistance to six weeks (or, under certain conditions, 12 weeks), with no more than four consecutive weeks. These limitations were specifically included, in large part because, under the former JOBS program, unstructured and ongoing job search was the primary or only activity for many participants. We share the commenters'' interest in increasing State flexibility and have redefined a ''week'' of job search and job readiness assistance for the six-week (or 12-week) limit based on the average number of hours required for an individual's family to count in the overall work participation rate. For this purpose, one week equals 20 hours for a work-eligible individual who is a single custodial parent with a child under six years of age and equals 30 hours for all other work-eligible individuals. Thus, six weeks of job search and job readiness assistance equates to 120 hours for the first group and 180 hours for all others. For those months in which a State can count 12 weeks of this activity, these limits are 240 hours and 360 hours, respectively. To ensure consistency with other provisions in this rule, we have modified the requirements under § 261.34 to make these limits apply to the preceding 12-month period, rather than each fiscal year. For example, the statute allows States to disregard from the work participation rate calculation families that have been subject to a work-related sanction for up to three months in ''the preceding 12-month period.'' Similarly, this same time frame is used for the ''excused absence'' policy.

Defining a week in this way allows States to provide job search and job readiness assistance activities incrementally and stretched over an entire year or in six actual weeks, depending upon how the State chooses to structure its particular work program for an individual. Defining a week in this manner is consistent with Congressional intent because it provides an overall cap on the amount of job search and job readiness assistance that States can count as work participation, while still giving States the ability to provide recipients with meaningful job search and job readiness assistance activities.

Counting Sporadic/Episodic Periods of Job Search and Job Readiness Assistance

*Comment:* Some commenters objected to counting limited periods of participation in job search and job readiness assistance as a full week of participation in the activity. They contended that this would discourage States from engaging individuals in this activity or sending them on job interviews. They suggested giving States flexibility to integrate short periods of participation in this activity with other countable activities. They noted that even a single hour of job search reported in a week would ''constitute a full week for purposes of the limitation [on counting job search and job readiness assistance].'' They maintained, ''The statutory time limit on these activities was designed to prevent clients from being left to languish indefinitely in unproductive job search, not to create barriers to helping recipients move into unsubsidized employment after participating in other services.'' Several commenters suggested alternative methods of counting job search and job readiness assistance. One commenter recommended excluding ''weeks in which less than half of the hours of countable participation are from job search and job readiness assistance.'' Some commenters used terms like ''significant majority'' to refer to the hours needed to constitute the primary activity.

*Response:* We understand the concern that an individual participating for one hour in job search and job readiness assistance could use up an entire week of this limited activity. By defining six weeks as 120 hours for a single custodial parent of a child under age six or 180 hours for all other work-eligible

individuals (and 12 weeks as 240 hours or 360 hours, respectively) States can now engage individuals for limited periods of time without using a entire week for purposes of the six-or 12-week limit. This approach provides sufficient flexibility for States to structure their job search and job readiness assistance activities and obviates the need for alternative methods, such as excluding weeks in which a minority of hours of participation come from job search and job readiness assistance activities. Moreover, States continue to have the flexibility to conserve these weeks by reporting sporadic hours under ''Other Work Activities'' on the TANF Data and SSP-MOE Data Reports (though these hours would not count toward the participation rates) or to count such hours under our excused absence policy as part of another countable activity. Please refer to § 261.60 for more detail about excused absences.

Flexibility in Counting Hours of Participation

*Comment:* Several commenters suggested giving States the flexibility to count hours of participation in job search and job readiness assistance as a non-core activity without triggering any of the durational limitations on this activity, if the individual meets the core hours participation requirement through some other activity. The commenters explained that this would not undermine the core activity requirement, but would allow some individuals to benefit from additional time spent in a job search and job readiness assistance activity. Also, several commenters suggested that, if we use an hourly equivalent, then any hours that exceed the 20 or 30 hours per week required to meet the participation rate should not count against the hourly limitation on this activity.

*Response:* We do not have the statutory authority to disregard hours of participation in job search and job readiness assistance if the hours are counted toward the calculation of the work participation rate. Moreover, ''core activity'' is simply a term we use to indicate that hours of participation in that activity can count toward the first 20 hours of participation; an activity does not become ''non-core'' once an individual meets the core requirement and durational limits do not cease to apply to them. Of course, once a family meets the minimum hours required to count in the work participation rate, a State may assign an individual to whatever activity it chooses, including job search and job readiness assistance. However, any hours reported under this activity count toward the six-week limit. We encourage States to report hours of participation that they do not wish to have counted against the durational limits under the category ''Other Work Activities'' on their TANF Data and SSP-MOE Data Reports, which reflects the hours of participation but does not apply them in determining the work participation rates. This would also apply to hours that are beyond the TANF statutory requirements to count toward the participation rates. In fact, under the final rule, a State should report only those hours of job search and job readiness assistance that are needed to meet the work requirements, because reporting ''extra'' hours would not help a State meet the rate and would draw down the time-limited hours for the six-week (or 12-week) limit. In contrast, under the interim final rule, it did not matter whether a State reported one hour or 40 hours for an individual—either would trigger a week toward the durational limits. We have written the rule this way to give States the most flexibility possible while maintaining the spirit of the law.

We would also like to point out that States have the additional flexibility to count short absences from various activities to participate in a job search activity under the excused absence policy (described in § 261.60(b) of this chapter).

Defining Four Consecutive Weeks

*Comment:* As with the six-week (or 12-week) limit, some commenters suggested converting the four-week limit to an hourly equivalent.

*Response:* In the final rule, we have modified this definition. For the six-week (or 12-week) limit on counting participation in job search and job readiness assistance, we define a week as 20 hours for a work-eligible individual who is a single custodial parent of a child under six years of age and as 30 hours for all other work-eligible individuals. However, for the limit of no more than four consecutive weeks of job search and job readiness assistance we have retained the definition in the interim final rule: seven consecutive days. In other words, any hours of participation in job search and job readiness assistance during the course of a seven-day period triggers a week for the four-week limit. Once an individual has four consecutive weeks of participation, that individual's participation in job search and job readiness assistance may not count for one week, i.e., seven consecutive days.

In order to bring meaning to the statutory language, we had to interpret ''four consecutive weeks'' in this manner. Under the hourly conversion the rule permits for the total limitation on job search and job readiness assistance, a State could meet this limit while counting hours over the course of multiple calendar weeks. However, because the four-week limit is specifically a ''consecutive'' week restriction, we think an hourly conversion in this instance would not meet the very clear bounds set by Congress. If we used an hourly accrual system here, it might take many calendar weeks to reach 80 or 120 hours and they would in no way be ''consecutive.'' Thus, we think it is reasonable to use the more rigorous definition of a week in this context to meet the legislative requirement but incorporate overall flexibility in counting job search and job readiness assistance hours.

We would also like to address the concern that the limit of counting no more than four consecutive weeks of participation in this activity would lead States to disrupt treatment regimens for individuals who need short periods of substance abuse treatment, mental health treatment, or rehabilitation activities each week. We stress that this limitation applies to what a State may count for participation purposes, not on what an individual can or should do; thus, the law does not require an individual to take a week's break from an activity, but does constrain what the State may report for that week. The requirements and expectations for each family should be set by the State taking into consideration the needs of the family, obligations under the ADA and Section 504 of the Rehabilitation Act of 1973, and program goals, as opposed to what counts for participation rate purposes. While we cannot remove this statutory limit, we suggest that States have several options in how to treat such situations. We urge States to consider these options carefully to take full advantage of the flexibility in the law and our final rule in this area. If an individual has sufficient hours from other activities or other weeks in the month, the State will be able to count that individual's family in the participation rate without worrying about the fifth consecutive week in treatment. A State could consider using the excused absence policy, which, under the final rule is also available as an hourly equivalent, to accommodate short periods of treatment. In addition, given that the overall work participation rate is never more than 50 percent of the caseload and likely less, we do not anticipate a significant impact on the ability of States to meet the work

participation rate because of the four consecutive weeks limitation.

Three or Four Days as a Week of Participation

*Comment:* Several commenters contended that the statute requires that participation in job search and job readiness assistance should not be considered a week unless it is for more than four days in a seven-day period. One commenter explained that section 407(c)(A)(2)(ii) allows a State to count, not more than once per individual, participation in job search and job readiness activities ''for 3 or 4 days during a week'' as having participated for the week. The commenter contended that the ''clear implication'' of this was that an individual would have to participate for more than four days during a seven-day period to count as a week.

*Response:* There are several possible interpretations of the statute's reference to a week. In the interim final rule, we defined a week as seven consecutive days. We disagree with the commenter's interpretation that the statute requires all other weeks of job search and job readiness to consist of more than four days of participation in the activity. However, these comments led us to reexamine the meaning of a week under the various limitations of this activity, including the ''3 or 4 day'' provision. We have concluded that this provision allows a State to apply the average hours that an individual participates during three or four days to the remaining days in the week. In this context, we consider a week to be five days rather than seven, because the standard work week is a five-day week. We used a seven-day standard in other contexts to account for the fact that typical week includes five working days and two weekend days.

To illustrate this policy, consider the following example. If an individual participated an average of five hours per day in job search and job readiness assistance for three days in a week, a State could assume that such individual participated the same five hours the remaining two days of that week and thus, a State could assume and count total participation of 25 hours in this activity for that week. In our example, this would also use up 25 hours of the client's hourly limitation under the six-week limit for job search and job readiness assistance.

Qualifying for 12 Weeks

*Comment:* Several commenters asked for clarification regarding how a State can qualify to count up to 12 weeks of participation in job search and job readiness assistance per fiscal year due to high unemployment or by qualifying as a ''needy State.'' Several commenters suggested that HHS clarify that a State that qualifies in one month qualifies for the extended counting of job search and job readiness assistance for the entire year.

*Response:* A State with an unemployment rate that is at least 50 percent greater than the national rate or that qualifies as a ''needy State'' may count up to 12 weeks of participation in job search and job readiness assistance in the preceding 12-month period. Prior to publication of this final rule, the regulation applied the 6- or 12-week limit on a fiscal year basis, but under this final rule we now use the preceding 12-month period as the basis for this durational limit to make it more consistent with the treatment of other work participation rate related provisions. Program Instruction TANF–ACF–PI–2006–04 explains the criteria to qualify for 12 weeks, how a State finds out if it does, and in which months it can count extended participation in job search and job readiness assistance. The Program Instruction is available at: *http://www.acf.hhs.gov/programs/ofa/pi-ofa/pi200604.htm.*

*Comment:* One commenter asked for clarification regarding whether a State actually had to access the Contingency Fund before counting up to 12 weeks of participation in job search and job readiness assistance.

*Response:* No, a State does not have to receive contingency funds to count 12 weeks of participation. If a State qualifies to receive contingency funds for a month, it may also count 12 weeks of job search and job readiness assistance for that month. Please refer to Program Instruction TANF–ACF–PI–2006–04 available at: *http://www.acf.hhs.gov/programs/ofa/pi-ofa/pi200604.htm.*

*Section 261.2(h) Community Service Programs*

In the interim final rule, we defined community service programs as structured programs in which TANF recipients perform work for the direct benefit of the community under the auspices of public or nonprofit organizations. We limited community service programs to projects that serve a useful community purpose and those that are designed to improve the employability of recipients. These two criteria were and continue to be important because we do not want someone to reach the time limit and discover that the family is no longer eligible for a cash benefit under the TANF program but the adult is no more employable than when he or she started in community service.

We made a technical change to the wording of the definition in the final rule to clarify that all work-eligible individuals can count for participation in this activity. The language in the interim final rule limited it to TANF recipients only.

*Comment:* The preamble of the interim final rule described the purpose of community service as improving the employability ''of recipients not otherwise able to obtain employment.'' Several commenters asked whether this precluded a State from counting a participant who combined paid employment with community service.

*Response:* The preamble was not meant to preclude States from using community service for those who are employed. We recognize that there may be circumstances in which an individual's employment is not sufficient to count for participation and a State would need to place such an individual in another work activity to count the family for that month. In such a circumstance, community service could be appropriate because sufficient employment may not be available for full-time work.

*Comment:* One commenter asked us to clarify that the term ''program'' does not preclude self-initiated community service activities.

*Response:* Self-initiated community service activities can count as long as they are approved by the State, described in the Work Verification Plan, and meet the two key elements of the definition, i.e., that they provide a direct benefit to the community and improve the employability of the participant.

*Comment:* Several commenters recommended that we expand the definition of community service to include barrier removal activities such as substance abuse treatment, mental health treatment, rehabilitation activities, and domestic violence counseling and related services. Otherwise, they insisted, States will discontinue providing these services. These commenters contended that counting these activities under job search and job readiness assistance is too restrictive and does not permit States to provide these services in a meaningful way.

*Response:* Community service activities must meet the two key elements of the activity's definition, i.e., that they provide a direct benefit to the community and improve the employability of the participant. Generally, they would not include activities that primarily benefit a family or the individual participant, such as

substance abuse treatment, mental health and rehabilitation activities, and family violence counseling. While these activities are important and beneficial, they are not primarily directed to benefiting the greater community. Moreover, we believe that States can provide treatment services in meaningful ways under our rules. We refer readers to the preamble discussion of the definition of job search and job readiness assistance.

*Comment:* One commenter recommended that we count a range of non-traditional work activities as community service in remote areas with high unemployment. This would include traditional subsistence hunting and fishing activities, as well as other culturally relevant activities. The commenter explained that hunting and fishing affect the community because, they emphasize, ''a significant element of cultural and spiritual values that emphasize collective efforts in harvesting and sharing of the harvest throughout the community.'' The commenter also noted that these activities ''promote self-sufficiency by reducing reliance on non-traditional foods that are imported at high cost. * * *'' The commenter added that these and other activities ''strengthen and reinforce cultural and community values that, in the long term, benefit individuals and families.''

*Response:* Various non-traditional activities may count if they meet the definition of one of TANF's 12 activities. It is possible, for example, that some of the activities described would meet the definition of community service programs, if the items produced are shared by the community and collected as part of a structured and supervised activity. Although we sympathize with the commenter about difficulties presented by high unemployment and remoteness, we do not have the authority to add new activities. And, as we explained earlier in the preamble, the statute does not make any allowance for such factors, except that it limits the maximum overall work participation rate to 50 percent. Whereas TANF's predecessor program, AFDC, allowed States to exempt individuals living in remote areas, the TANF law did not continue this exemption.

*Comment:* Several commenters asked us to clarify whether or not all community service activities are subject to the FLSA.

*Response:* The determination of whether or not the FLSA applies to an activity is a decision for the Department of Labor. We recommend that readers direct any questions regarding the FLSA to the Wage and Hour Division of the U.S. Department of Labor at 1–866–4–USWAGE, TTY 1–877–889–5627 or the following Web site: *http://www.dol.gov/esa/whd/flsa/index.htm.*

*Comment:* Several commenters maintained that ''caring for a disabled family member'' should be considered community service, if it includes activities designed to improve the employability of participants. They contended that, in some cases, caring for a disabled family member could prepare individuals for jobs or ''home health care certification or nursing credits through partnerships with community colleges.'' In such circumstances, the commenter recommended that we allow States to count the individual in the numerator and the denominator. This, they suggested, would make the policy similar to the treatment of parents receiving Supplemental Security Income (SSI) benefits in our definition of a work-eligible individual. Another commenter added that counting parents caring for a disabled family member as community service reduces public costs by keeping some individuals out of a nursing home.

*Response:* Caring for a disabled family member cannot count as a community service program, even if it improves the employability of the caregiver, because the activity does not provide a direct benefit to the community. However, to the extent that the activity is part of a certification or degree program, it could likely count under another activity, such as vocational educational training or job skills training directly related to employment. We have no data on whether counting caring for a disabled family member as a community service activity would reduce some public costs, but we note that the policy in the final rule allowing a State to exclude families in which a parent is caring for a disabled family member from the denominator of the work participation rate calculation would likely have a similar effect on public costs.

*Comment:* One commenter questioned the requirement that community service must involve work for the direct benefit of the community. The commenter added, ''No other TANF activity has such a requirement.'' The commenter disagreed with our interpretation that the term ''program'' following the listing of community service in the statute meant that the activity should involve structure and supervision.

*Response:* We adopted what we believe is a common-sense definition that limits community service programs to projects that serve a useful community purpose. We agree that no other TANF activity has such a requirement, but that is because the primary purpose of the other activities is to help individuals move toward self-sufficiency. Although that is also an objective of this activity, we give meaning to the term ''community service.'' The DRA directed the Secretary of Health and Human Services to define work activities, suggesting that, while Congress did not have a specific definition in mind, it deferred to the Department's judgment. Moreover, we believe all 12 TANF activities should have structure and supervision, regardless of whether the term ''program'' is used in the name of the activity.

*Comment:* Several commenters questioned the need for community service to improve the employability of participants. One commenter found that the interim final rule's definitions of work experience and community service are substantially similar and violate the principle of ''mutually exclusive'' activities. The commenter recommended making a distinction between these activities by removing the requirement that community service be designed to promote employability.

*Response:* Under our definitions, the principal distinction between work experience and community service programs is that the latter activity must serve a useful community purpose. We believe that participation in a community service program should improve the employability of recipients to prevent an individual from reaching the time limit without becoming more employable than when he or she started in that program. We have therefore retained this feature of the definition in the final rule.

*Comment:* One commenter objected to the ''daily supervision'' requirement for TANF work activities with respect to community service, arguing that some community service activities are ''intrinsically difficult to supervise,'' such as Big Brother/Big Sister programs or visiting the elderly.

*Response:* In response to comments, we have revised the regulatory language relating to daily supervision in the final rule. As described in the preamble to § 261.2, ''Daily supervision means that a responsible party has daily responsibility for oversight of the individual's participation, not necessarily daily, in-person contact with the participant.'' Thus, many organized community service programs could meet this criterion. However, all community service programs must be structured programs that provide a direct benefit to the community and improve the employability of the participant. It is unclear whether the

programs the commenter describes meet all of these criteria.

*Comment:* One commenter said, ''Very few community service sites are equipped to handle either large numbers of volunteers for the 20 or 30 hours required for a primary activity or in our rural areas, to provide the supervision.''

*Response:* Many community service providers have programs that meet our definition of community service for the number of hours required to satisfy the work participation requirements. If an individual's hours fall short of the minimum hours needed, a State should be prepared to find time in another activity to make up the shortfall. This is not different from past TANF policy.

*Section 261.2(i) Vocational Educational Training*

In the interim final rule, we defined vocational educational training (not to exceed 12 months with respect to any individual) as organized educational programs that are directly related to the preparation of individuals for employment in current or emerging occupations requiring training other than a baccalaureate or advanced degree.

Postsecondary Education

*Comment:* Several commenters recommended expanding the definition of vocational educational training to include postsecondary education. One commenter asked that we specify that an associate degree program is a countable vocational activity.

*Response:* The definition of vocational educational training in the interim final rule already permitted a wide range of postsecondary educational activities, including programs that consist of both academic and vocational for-credit course work. Completion of these programs can provide an associate of arts (AA), associate of science (AS), or associate of applied science (AAS) degree in fields defined as vocational. Common fields of study include: business, computer and information science, health-related professions, communication technologies, personal services, protective services, construction, automotive technology, and transportation. Associate degree programs can take two or more years to complete. Because they generally combine coursework with actual work, some portion could count as vocational educational training, while some could count as on-the-job training (if paid) or work experience (if unpaid). The only type of postsecondary education that was excluded in the interim final rule was education directed at receiving a baccalaureate or advanced degree, which the final rule permits.

*Baccalaureate Degrees*

*Comment:* Several commenters objected to the definition of vocational educational training because it specifically excluded education directed at receiving a baccalaureate or advanced degree. They recommended striking the phrase ''requiring training other than a baccalaureate or advanced degree.'' They explained that people with baccalaureate degrees, on average, earn significantly more than those with a high school diploma. In addition, they noted that the number of individuals likely to be enrolled in such programs would be small and States should therefore have the flexibility to determine whether or not to count them. Others suggested that we make an exception to the restriction on counting participation in a baccalaureate or advanced degree program where the client is 12 months away from completing such a degree because the earnings gain from completing the degree would increase the chances of permanently leaving welfare.

*Response:* We agree with the commenters and have expanded the definition of vocational educational training. In the interim final rule, we searched for other Federal definitions, especially in the U.S. Department of Education, of vocational education and related terms. In particular, we examined the regulatory definition of vocational education governing the Carl D. Perkins Vocational and Applied Technology Act (34 CFR 400.4(b)). That definition provided for a range of educational and training programs preparing individuals for employment ''in current or emerging occupations requiring other than a baccalaureate or advanced degree.'' However, since the publication of the interim final rule, this terminology has changed. The Carl D. Perkins Career and Technical Education Improvement Act of 2006 (Pub. L. 109–270) was signed into law on August 12, 2006. The new law changed the definition of ''vocational education,'' now called ''career and technical education,'' to eliminate the restriction against participation in a baccalaureate, master's or doctoral degree program.

In view of these changes and the comments we received, we are expanding the definition of vocational educational training to include organized educational programs that lead to a baccalaureate or advanced degree. We continue to caution that, given the statutory 12-month limitation on participation in vocational education, States can only count one year of participation in vocational educational training for any individual toward the work participation rate. Education leading to a baccalaureate or advanced degree also counts under job skills training directly related to employment (a non-core activity), as long as it is directly related to a specific job or occupation.

*Comment:* Several commenters thought that the preamble to the interim final rule was inaccurate when it stated, ''the TANF program was not intended to be a college scholarship program for postsecondary education.'' The commenters noted that TANF provided broad flexibility in use of TANF funds, including funds for higher education.

*Response:* We agree that expenditures for higher education are allowable uses of funds, even under the interim final rule. In addition, under the final rule, participation in a baccalaureate or advanced degree program can count toward the work participation rate.

Remedial/ESL

*Comment:* Several commenters expressed support for the inclusion of basic skills education as a component of vocational educational training. However, some expressed concern because the preamble indicated that it would count only if it were of ''limited duration.'' These commenters noted that participation in vocational educational training is, by definition, of limited duration—12 months in a lifetime. They also noted that some programs combine basic skills education and vocational training for the entire duration of the program. They recommended eliminating the restriction related to the duration of this component.

*Response:* We agree that there may be circumstances in which some individuals require basic skills education as an ongoing and regular part of the vocational educational training activity. As a result of these comments, we have reconsidered our stance on the ''limited duration'' requirement set forth in the preamble to the interim final rule. Therefore, basic skills education may count as vocational educational training as long as it is a necessary or regular part of the vocational educational training. Each State should describe in its Work Verification Plan how it integrates basic skills education into its definition of vocational educational training and how it will ensure that vocational training remains the primary focus of the program.

*Comment:* Some commenters asked for clarification regarding whether ESL could be integrated into vocational educational training in the same way that ''basic skills'' training can be. They

explained that ESL may be a prerequisite for employment and that it is especially important due to the increase in the number of immigrants. As with basic skills training, they contended that there should be no limit on counting participation in this activity, as long as the individual has not exhausted the 12 months that this activity can count in total.

*Response:* As we noted in the response above with respect to basic skills education, ESL can also be integrated within a vocational educational training activity as long as it is a necessary or regular part of the vocational educational training. The State need not demonstrate that the training is of limited duration as long as it integral to the vocational education, not a stand-alone program. Each State should describe in its Work Verification Plan how it integrates ESL or other language instruction into its definition of vocational educational training and how it will ensure that vocational training remains the primary focus of the program. For example, a vocational educational training provider could provide a statement indicating that a participant in an otherwise approved vocational educational training activity requires such instruction to participate in the program and that such instruction is integrated into the activity.

*Comment:* Some commenters suggested that we allow States to adopt a range of approaches to providing vocational educational training programs, including programs that ''frontload'' these activities for those who are not ready for the vocationally-oriented training. They pointed out that after a few months of intensive instruction, participants can improve their basic skills to take full advantage of a vocational educational training program. Thus, they recommended that we consider these activities to qualify if they are part of a sequence of activities leading to a vocational educational training activity, even if the initial period of participation involves no vocationally-oriented training.

*Response:* We do not believe that a sequenced approach fits within a definition of vocational educational training. Although basic skills education and English language instruction may help prepare individuals for vocational educational training, the programs must be provided in combination with vocational instruction. Otherwise, the definition of this activity would essentially permit any stand-alone educational activities to count in this category. Stand-alone educational activities may count as either education directly related to employment or job skills training directly related to employment.

*Comment:* Some commenters suggested amending the definition of vocational educational training to include adult basic education and ESL even if they do not prepare individuals for a specific job. They asserted that such basic skills are needed to compete in the workplace and are crucial for making an individual more employable. For example, one commenter urged us to count English language instruction as vocational educational training when an individual needs such instruction to succeed in the workplace. Some commenters indicated that this was especially important for refugees, noting that it is very difficult for refugees who do not speak English to become employed.

*Response:* We understand the commenters' concerns, but we do not believe it would be appropriate to expand the definition of vocational educational training to allow these stand-alone activities. They may count as either education directly related to employment or job skills training directly related to employment. We believe that Congress intended these activities to count as non-core activities. When Congress created TANF, it listed 12 allowable work activities. Of these, nine were what we refer to as ''core activities'' that count toward meeting the first 20 hours of a 30-hour average weekly requirement. The only educational activity among these was vocational educational training. Since neither Congress nor the U.S. Department of Education included basic education and ESL as part of its definition of vocational education, we believe it is clear that these activities must be part of one of the three non-core educational activities.

*Comment:* One commenter suggested that we consider pursuit of a high school diploma, such as GED testing, to be vocational educational training. The commenter noted that such participation is consistent with the definition of the activity in the interim final rule, which defined this activity as ''organized educational programs that are directly related to the preparation of individuals for employment in current and emerging occupations * * *.''

*Response:* We do not agree that such education should count as vocational educational training. Even when vocational education is provided in high school, minor parents attending high school in a vocational education track count as participating in ''satisfactory attendance in secondary school or in a course of study leading to a certificate of general equivalence.'' This avoids triggering the 12-month lifetime limit on participation in vocational educational training. For older adults, pursuit of a high school degree or GED would more appropriately be classified as education directly related to employment.

*Comment:* Several commenters asked whether vocational rehabilitation activities were considered ''vocational educational training.''

*Response:* We would consider vocational rehabilitation activities that are organized educational programs directly related to preparing individuals for employment in current or emerging occupations to be vocational educational training. Any vocational rehabilitation activities that do not meet these criteria might meet the definition for job search and job readiness assistance or job skills training directly related to employment and should count under those activities, as appropriate.

Other Training

In the preamble to the interim final rule, we asked for comments on how States currently implement their vocational educational training programs and whether we should broaden the definition we used in the interim final rule. We noted that the current definition of vocational educational training ''could overlap with other TANF work activities that provide training, including on-the-job training and job skills training.''

*Comment:* One commenter cautioned us not to narrow the definition of vocational educational training just to distinguish it from on-the-job training or job skills training. The commenter pointed out, ''it is easy to imagine the same training being provided under vocational educational training as that provided by an employer through on-the-job training or job skills training directly related to employment, particularly for lower-skilled TANF participants.''

*Response:* We agree and have not narrowed the definition. The allowable overlap among various work activities can help States structure their programs to maximize learning opportunities for participants. In particular, many forms of vocational educational training may take two or more years to complete, beyond the 12-month lifetime limit under the program. By carefully structuring participation, States can count participation under several of the existing work activities. For example, obtaining a degree to become a licensed practical nurse usually takes about two years to complete and usually involves a combination of classroom instruction and clinical activities. Clinical training

in a hospital or other setting could count as work experience or community service because if, in the course of their training, individuals are providing a service to the community through a hospital or an elderly center, such participation would meet the definition of those activities. If participants are paid, they might count under unsubsidized employment or on-the-job training. Once they have met the core activity requirement through these activities, additional classroom instruction could be reported under job skills training directly related to employment.

Specific Occupation

*Comment:* Several commenters did not believe we should limit the definition of vocational educational training to ''activities that give individuals the knowledge and skills to perform a *specific occupation*—as opposed to more generally preparing them to become more employable in a range of occupations.'' The commenters contended that basic and remedial education should count as vocational educational training.

*Response:* Basic and remedial education clearly fall under the category of education directly related to employment, and so cannot serve as a stand-alone activity under vocational educational training. However, as we explained in the preamble to the interim final rule, such education can count as part of vocational educational training as an embedded activity as long as it is a necessary and regular part of the program.

*Comment:* Several commenters contended that the description of vocational educational training in the preamble to the interim final rule unnecessarily limited it to specific occupations. They maintained that this was not good policy and that it was not consistent with the TANF statute, noting that some activities in the statute included the phrase ''directly related to employment,'' but that vocational educational training was not one of them. They urged that, on this basis, we expand the definition to include training and education activities that were not related to a specific occupation, but that improve employability more generally.

*Response:* Our definition of vocational educational training was originally based on the Department of Education's description of the term. This definition clearly related the term to educational programs directly related to employment in ''current or emerging occupations.'' However, this does not mean that the activity is limited to a specific job, but rather to a broadly defined job category.

12-Month Limit

*Comment:* One commenter suggested that time spent in vocational educational training should only count against the 12-month limit ''when hours in this activity, either alone or in combination with hours from other activities, enable a recipient to meet the work rates. If an individual does not have the overall necessary hours to meet the rate, time spent in this activity should not count against the 12-month limit.''

*Response:* The statute places a lifetime 12-month limit on participation in vocational educational training. As with durational limits for job search and job readiness assistance, we do not have the statutory authority to disregard hours of participation reported in this category from counting against the lifetime 12-month limit. We encourage States to include hours of work participation in this category that do not count toward the work participation rates under the category ''Other Work Activities'' on their TANF and SSP–MOE Data Reports or to count such hours under our excused absence policy as part of another countable activity. Please refer to § 261.60 for further discussion of excused absences.

Deeming

*Comment:* Several commenters suggested that individuals who attend vocational educational training programs be ''deemed'' to meet the work rate as long as they are full-time students and are making satisfactory progress. One commenter also suggested options for dealing with less than full-time participation, including a proportional counting methodology.

*Response:* The interim final rule made explicit a long-standing ''actual hours'' standard and we retain that policy in the final rule. We do not deem full participation simply because someone is a full-time student and makes good or satisfactory progress. However, the final rule allows States to count up to one hour of unsupervised homework for each hour of classroom time. Thus, as a practical matter, many individuals who attend school full-time would, in fact, satisfy the work participation standards.

*Section 261.2(j) Job Skills Training Directly Related to Employment*

In the interim final rule, we defined job skills training directly related to employment as training or education for job skills required by an employer to provide an individual with the ability to obtain employment or to advance or adapt to the changing demands of the workplace. Job skills training can include customized training to meet the needs of a specific employer or it can be general training that prepares an individual for employment. This can include literacy instruction or language instruction when such instruction is explicitly focused on skills needed for employment or combined in a unified whole with job training.

*Comment:* Several commenters suggested that the interim final rule defined this activity too narrowly by excluding ''barrier removal activities such as substance abuse counseling and treatment, mental health services, and other rehabilitative activities.'' The commenters asserted that these activities should be considered like other training activities because they are needed to prepare an individual for employment. One commenter contended that because barrier removal activities were not explicitly excluded from the definition of job skills training directly related to employment, it is within our authority to interpret this activity to include them.

*Response:* As we indicated in the preamble to the interim final rule, we tried to look for appropriate categories for each activity. We explained that it would not be appropriate to include barrier removal activities, such as substance abuse counseling and treatment, mental health services, and other rehabilitative activities under the category of job skills training directly related to employment. Under our definitions, barrier removal activities are job readiness activities, not job skills training directly related to employment. States continue to enjoy flexibility to serve individuals, but in some cases are limited in what they can count. We encourage States to work with individuals with multiple barriers, but they should keep in mind that the definition of job skills training focuses on education or training that is designed specifically to help individuals move into employment.

*Section 261.2(k) Education Directly Related to Employment, in the Case of a Recipient Who Has Not Received a High School Diploma or a Certificate of High School Equivalency*

In the interim final rule, we defined education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency, as education related to a specific occupation, job, or job offer. This definition included courses designed to provide the knowledge and skills for specific occupations or work

settings, but may also include adult basic education and ESL. Where required as a prerequisite for employment by employers or occupations, this activity may also include education leading to a GED or high school equivalency diploma.

We made a minor change to the wording of this definition in the final rule, adding the words ''work-eligible'' before ''individual.'' We made this change both for consistency with other definitions and to make clear that this activity is allowable for any work-eligible individual. Although the statutory name of the activity refers to a ''recipient'' who has not received a high school diploma or certificate of equivalency, we think that a work-eligible individual who is not a recipient of assistance could also participate in this activity and have those hours count for participation rate purposes.

*Comment:* One commenter noted that the situation of immigrants and refugees who hold a high school diploma from overseas but do not have an American high school diploma or GED should warrant an exception to the requirement that individuals not have these credentials as a prerequisite for participating in the activity. The commenter explained, ''These individuals may lack the skills and credentials employers require from native high school graduates.'' The commenter urged a clarification that such individuals could participate in this activity and that such participation include English language instruction.

*Response:* The statute limits participation in this activity to individuals who have not received a high school diploma or a certificate of high school equivalency. We recognize that some individuals may have received a high school diploma from other countries that may not be directly comparable with an American high school diploma. Moreover, it would be difficult for TANF agencies to verify whether or not individuals have or have not obtained degrees or credentials from overseas. We therefore give States the flexibility to determine on a case-by-case basis whether such individuals qualify for this activity. A State that uses this option should describe in its Work Verification Plan how it will make such a determination.

*Comment:* One commenter recommended that we allow States to deem individuals who make ''good or satisfactory progress'' as having met ''the minimum hours of independent study recommended by the educational program.'' Those with unsatisfactory performance would receive credit for only the verified and documented hours of classroom time.

*Response:* States must report actual hours of participation. We have eliminated the requirement for ''good or satisfactory progress'' as part of the Federal definition of this work activity. We encourage States to monitor progress using both qualitative and quantitative measures, but do not impose a specific standard. Please refer to the cross-cutting issues related to the definitions at the beginning of this section of the preamble for further discussion of this issue.

*Comment:* Several commenters recommended allowing this activity to count for high school graduates or those with a certificate of high school equivalency, but who score low on reading or math assessments.

*Response:* We do not have the statutory authority to expand the scope of this activity to include those with a high school degree or a certificate of high school equivalency.

*Section 261.2(l) Satisfactory School Attendance at a Secondary School or in a Course of Study Leading to a Certificate of General Equivalence, in the Case of a Recipient Who Has Not Completed Secondary School or Received Such a Certificate*

In the interim final rule, we defined this activity to mean regular attendance, in accordance with the requirements of the secondary school or course of study, at a secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate. The former is aimed primarily at minor parents still in high school, whereas the latter could apply to recipients of any age. Unlike ''education directly related to employment,'' this activity is not restricted to those for whom obtaining a GED is a prerequisite for employment. However, it may not include other educational activities, such as adult basic education or language instruction unless they are linked to attending a secondary school or a GED program.

As in education directly related to employment, we made a minor change to the wording of this definition in the final rule, replacing ''recipient'' with ''work-eligible individual.'' We made this change both for consistency with other definitions and to make clear that this activity is allowable for any work-eligible individual. Again, although the statutory name of the activity refers to a ''recipient'' who has not received a high school diploma or certificate of general equivalence, we think that a work-eligible individual who is not a recipient of assistance could also participate in this activity and have those hours count for participation rate purposes.

*Comment:* One commenter noted that with respect to ''good or satisfactory progress'' for this activity to count, the standard ''must'' include both a qualitative and quantitative measure of progress.

*Response:* We have eliminated the requirement for ''good or satisfactory progress'' as part of the Federal definition of this work activity. We encourage States to monitor progress using both qualitative and quantitative measures, but do not impose a specific standard. Please refer to the cross-cutting issues related to the definitions at the beginning of this section of the preamble for further discussion of this issue.

*Section 261.2(m) Providing Child Care Services to an Individual Who Is Participating in a Community Service Program*

In the interim final rule, we defined providing child care services to an individual who is participating in a community service program as providing child care to enable another TANF recipient to participate in a community service program. In the final rule, we have clarified that this is an unpaid activity and must be a structured program designed to improve the employability of individuals who participate in it. Alternatively, if an individual receives payment for providing child care, the State should report that individual's hours as unsubsidized employment.

*Comment:* One commenter recommended counting providing child care for a TANF recipient in community service as extending to two-parent families in which one parent stays home with the children while the other participates in community service. The commenter stated that children that have more time with their parents, especially during their early years, have better outcomes. This would also reduce public costs for child care and other services.

*Response:* We agree that parental time with children is extremely important. However, in a two-parent family, one parent cannot count as participating by providing child care for his or her own child while the other parent participates in community service because the activity neither involves supervision nor helps the parent providing child care prepare for employment.

*Comment:* Several commenters noted that it would be difficult to apply a daily supervision standard for an

individual who is participating as a child care provider for a TANF recipient in community service. Some of the commenters recommended counting this activity as self-employment and allowing States to develop methods for projecting a typical number of hours per week.

*Response:* We have clarified in the final rule that this activity is both unpaid and structured to improve an individual's employability. The degree of supervision and methods for reporting hours would depend on how the State structures this activity. Because it is an unpaid activity, projecting hours would not be appropriate.

*Comment:* One commenter recommended expanding the definition of the activity to include providing child care not only to a TANF recipient in community service, but also to someone in a MOE-funded program.

*Response:* We agree with the commenter that this activity should include providing child care for a recipient of TANF or SSP–MOE assistance in community service.

*Section 261.2(n) Work-Eligible Individual*

The DRA required us to include families receiving assistance under a separate State program (SSP) in the work participation rates if the funding for those programs is counted towards the State's maintenance-of-effort (MOE) requirement, and to specify the circumstances under which a parent living with a child receiving assistance should be included in the work participation rates.

In the interim final rule, we used the new term *work-eligible individual* to describe anyone whose participation in work activities is required in the calculation of the work participation rate. We drew the term from the heading to the statutory provision requiring us to include families receiving assistance under a SSP–MOE program and to specify the circumstances under which a parent residing with a child recipient of assistance should be included in the work participation rates.

We have made modifications to the definition of a work-eligible individual, but we have not changed our general approach to who is included in the final rule. We continue to define a work-eligible individual as either: (1) An adult (or minor child head-of-household) *receiving assistance* under TANF or a separate State program; or (2) a *non-recipient parent* living with a child receiving assistance. There continue to be exclusions that apply specifically to the non-recipient parents and others that apply more broadly to the definition.

As under the interim final rule, a non-recipient parent living with a child receiving assistance is *not* a work-eligible individual if the parent is: A minor parent who is not a head-of-household; a non-citizen who is ineligible to receive assistance due to his or her immigration status; or, at State option on a case-by-case basis, a recipient of Supplemental Security Income (SSI) benefits. We deleted the phrase ''or spouse of the head-of-household'' in the minor parent exclusion of the interim final rule because such individuals are not required to participate when they do receive assistance. Thus, only a minor parent who is the head of household is required to be included in the participation rate, whether she is receiving assistance or is a non-recipient. We have also added a case-by-case exclusion for recipients of Aid to the Aged, Blind, or Disabled under Title XVI of the Social Security Act, which, in the Territories of Puerto Rico, Guam, and the Virgin Islands, is analogous to SSI. 42 U.S.C. 1381 note *et seq.*

More broadly, the definition excludes a parent, whether or not a recipient of assistance, who is caring for a disabled family member living in the home. The State must provide medical documentation to support the need for the parent to remain in the home to care for the disabled family member. We have eliminated the interim final rule provision that permitted a parent to be excluded only if the disabled family member *did not attend school on a full-time basis.* We have also added a State option to exclude on a case-by-case basis a parent who is a recipient of Social Security Disability Insurance (SSDI) benefits. As with a parent caring for a child with a disability, the SSDI exclusion applies regardless of whether the parent receives TANF or not.

As in the interim final rule, we do not consider an adult in a family served under an approved Tribal TANF program using State MOE funding to be a work-eligible individual, unless the State includes the family in calculating work participation rates, as permitted under § 261.25.

Unless excluded for one of the reasons outlined above, the term work-eligible individual includes all non-recipient parents living with a child receiving assistance and all adult recipients of assistance.

We received many comments suggesting that we exclude additional groups of individuals from the definition of a work-eligible individual. We considered each of these suggestions carefully as we developed the final rule. We appreciate the concerns the commenters raised, both about a State's ability to engage certain groups of individuals and about the appropriateness of encouraging States to engage other individuals in work by including them in the work participation calculation. We address these concerns below.

*Comment:* Some commenters asked us to clarify that non-parental caretakers in child-only cases continue to be excluded from the work participation rate calculation. One commenter recommended excluding all non-parental caretakers, even those ''who were sufficiently needy that they qualified for TANF.'' The commenter asserted that not excluding them could discourage non-parental caretakers from taking custody of children.

*Response:* Child-only cases in which a parent does not reside with the child, such as when a grandparent cares for the grandchildren, do not include work-eligible individuals. In such cases, the grandparents or other non-parental caretakers are not recipients of assistance themselves and thus do not meet the first part of the work-eligible individual definition. Neither do they meet the second part of the definition because they are not non-recipient *parents* living with recipient children. If a grandparent or other caretaker does receive assistance, then that adult would be a work-eligible individual; we do not have the authority to exclude non-parental caretaker relatives receiving assistance from the work participation rate calculation. The DRA limited our authority to determine whether a *parent* living with a child receiving assistance should be included or excluded from the work participation rate. Cases where a caretaker relative receives assistance have been included in the work participation rate since the inception of TANF and continue to be under the final rule.

*Comment:* Some commenters wanted us to exclude fugitive felons and parole violators from the definition of work-eligible individual; others contended that convicted drug felons and those ineligible because of past fraud should not be work-eligible individuals. They maintained that States are prohibited from using TANF dollars or counting State MOE dollars for serving these felons and thus it is unfair to require their inclusion in the work participation rate calculation.

*Response:* Similar to a parent that incurs a work sanction, a case in which a parent is a fugitive felon, parole violator, or a drug felon is subject to a reduced grant by virtue of the behavior

of that parent. We think it would be inappropriate to treat such cases differently from parents who abide by the law. More importantly, we strongly believe that it is in the best interest of the children in such families if States engage the parents in work activities, helping them off welfare and out of poverty. Thus, we have not made the suggested changes.

We would also like to clarify a State's limitations and flexibility with regard to funding fugitive felons, drug felons, and individuals convicted of fraudulently misrepresenting residence. Fugitive felons and parole violators may not, by statute, receive federally funded ''assistance,'' as defined at 45 CFR 260.31. An individual who is convicted of fraudulently misrepresenting his or her place of residence in order to receive assistance simultaneously from two or more States may not, by statute, receive federally funded ''assistance'' for ten years after his or her conviction. That includes ''assistance'' paid with pure Federal funds or with commingled State and Federal funds. That individual may receive ''assistance'' using segregated State TANF funds or separate State program funds. He or she may also receive non-assistance benefits, i.e., benefits that are outside the regulatory definition of ''assistance,'' such as non-recurrent benefits that do not extend beyond four months or supportive services for the employed. An individual convicted of a drug felony may not, by statute, receive TANF-funded ''assistance,'' regardless of whether the funds are all Federal, commingled Federal and State, or segregated State funds, unless the State opts out of or limits the duration of the prohibition by passing a State law; however, that individual may receive ''assistance'' using separate State program MOE funds and may receive TANF-funded non-assistance benefits. Thus, while restrictions apply, there are opportunities to use TANF or certain MOE funds to support the family and engage the individuals in work.

We remind readers that the law does not prohibit spending Federal or State funds on an individual who commits ''an intentional program violation.'' States may choose to impose such penalties against individuals who commit program fraud, or for other reasons, but they are not prohibited from spending Federal funds on these cases.

*Comment:* A couple of commenters urged us to exclude for a limited time period from the definition of work-eligible individual refugees and certain other legal immigrants who cannot speak English, have little education, and low levels of literacy. The commenters explained that it may take time to improve their English proficiency to a level that enables them to participate fully in the labor market.

*Response:* We have not excluded refugees from the definition of work-eligible individual. TANF recipients who happen to be refugees should be treated like other TANF recipients. States should determine the most appropriate activities, which may be English language skills or a combination of language training and other services, and then engage the clients in those activities to the greatest extent possible. We refer readers to the discussion of vocational educational training, which clarifies that we have modified the definition of that activity to permit ESL to count for the entire 12 months that the activity may count under the law, as long as the language training is a necessary or regular part of the vocational educational training.

*Comment:* A few commenters urged us to exclude from the definition of ''work-eligible'' all parents who are not in the assistance unit. Some asserted that not doing so creates an incentive to impose full-family sanctions and ignores the impact such policies have on children.

*Response:* We did not exclude all parents who are not in the assistance unit because Congress specifically directed HHS to specify the circumstances under which a parent residing with a child who is a recipient of assistance should be included in the work participation rates. Since parents who were themselves recipients of assistance were already part of the rates (other than those subject to either of two special statutory exclusions), it was apparent that Congress intended us to look at families in which the parent did not receive TANF assistance but the child did. In addition, as we explained in the preamble to the interim final rule, we considered in turn each type of family in which a parent resides with a child recipient of assistance to determine whether it was appropriate to include that group of families in the calculation of the work participation rates. We believe that our definition appropriately focuses on those parents who can benefit from work activities and whose participation will help move the family into employment and out of poverty.

We appreciate the commenters' concern about the well-being of families in which the adult is subject to a sanction. We note that States have other options when a family refuses to comply with work requirements. A State that does not wish to use a full-family sanction need not do so.

We repeat that not all ''work-eligible individuals'' are required to engage in work for a specified number of hours. The State still determines what each individual must do in accordance with its laws and policies. The definition of a work-eligible individual defines the denominator, and is a guideline of who should be engaged in work activities. We believe that our definition creates reasonable expectations of States. But, Congress established an overall work participation rate of 50 percent. This leaves room for a State to decide if an individual should be excused from work requirements, whether because of a disability, lack of access to transportation, the need for other services, or some other reason, regardless of whether they are in the assistance unit or not.

*Comment:* Some commenters asserted specifically that adults whose needs are removed from the assistance unit due to a sanction should not be considered work-eligible individuals, because the family's grant has already been reduced and it is difficult to get such adults to comply with the work requirements.

*Response:* To ensure consistent treatment, we believe it is appropriate to include all of the sanctioned parents of child-only cases in the definition of ''work-eligible individual.'' A State may either reduce the grant by a fixed percentage or fixed dollar amount or remove the needs of the adult; only the latter approach results in a child-only case. In the interim final rule, we clarified specifically why we included as work-eligible individuals sanctioned cases in which the adult's needs are removed from the case due to a work-related sanction, but the child continues to receive assistance. The effect on a family's grant of removing a parent's needs from the assistance unit is similar to the effect of a fixed percentage or dollar amount sanction. Yet, under the original TANF rule, these cases without an adult were excluded from the calculation of work participation rates as child-only cases. Cases in which the grants were reduced by a fixed percentage or dollar amount due to a work-related sanction were, by law, excluded for a maximum of only three months in a 12-month period. The final rule treats all cases with a work-related sanction in the same manner.

*Comment:* Some commenters recommended excluding the non-recipient parents of children who continue receiving assistance after their parents have received 60 months of Federal assistance. One commenter explained that States cannot require

such parents to participate and, as a result, including them would lower work participation rates. Another stated that, because the State can no longer assist the parent with TANF funds, it is unfair to impose a work requirement.

*Response:* The final rule continues to include as work-eligible individuals parents that are no longer included in the assistance unit because they have exhausted their time-limited benefits, but for whom the State has chosen to extend benefits on behalf of their children. We made this decision for several reasons. First and foremost, it provides an incentive for States to work with every case right from the beginning. Then, clients can preserve as much of their time-limited benefit as possible. Second, we are very concerned about the negative consequences for children living in families with reduced benefits for long periods. The adults in families whose needs have been removed from the grant are the most likely to be ignored. They face long-term poverty and other negative consequences because States are no longer helping them acquire work skills and find employment. Third, we do not believe the only alternative to including such families in the work participation rate is to impose a full-family sanction and ignore the family completely. One alternative for those who reached the Federal time limit is to use the law's flexibility to provide Federal assistance to up to 20 percent of the caseload via a hardship extension. If a family still needs help after 60 months, then the hardship extension is the Federal safety net designed for that very purpose. Finally, we included parents that have reached the time limit because we think it is the best way to make the participation rates consistent across States, one of our charges under the law.

We also remind readers that States have considerable flexibility in deciding which families to assist with Federal versus State funds, even when it comes to families reaching the 60-month time limit. The time limit applies only to families receiving Federal or commingled funds, not to all funds. A State could use either segregated or separate State funds to assist families that have received 60 months of Federal assistance.

*Comment:* A couple of commenters maintained that the definition of work-eligible individuals should not include persons served in a separate State program funded with MOE dollars who would not be eligible for TANF, including non-qualified non-citizens. Some commenters suggested that States should decide whether or not to include as work-eligible individuals non-citizens receiving SSP assistance so as not to penalize a State for humanitarian efforts.

*Response:* We appreciate the concerns that the commenters expressed for State flexibility in deciding which families to assist through separate State programs. However, we include these non-qualified individuals because the participation rates are based on all adults who receive assistance, either in the TANF program or in a SSP. Since these non-qualified non-citizens receive assistance, they are included by the statute. As with other non-recipient parents included as work-eligible individuals, we believe that the children in such families will be better off if States engage the parents in work activities, helping them increase their incomes and move off welfare.

*Comment:* A number of commenters suggested we give States the option to exclude an individual served under SSDI or under a State-funded disability program from the definition of work-eligible individual. The commenters reasoned that our rationale for including SSI recipients on a case-by-case basis applied equally well to non-recipient parents served by these other disability programs.

*Response:* We agree with the arguments the commenters made with respect to SSDI recipients. Unlike SSI recipients, SSDI recipients often are also TANF recipients; therefore, we have modified the rule to allow a State to exclude on a case-by-case basis a parent who is recipient of SSDI from the definition of work-eligible individual.

We did not find the commenters' arguments as persuasive with respect to State disability programs. Because State disability determinations and eligibility could vary so widely from one jurisdiction to the next, we think that making this exclusion would not meet our mandate to make the work participation rates more consistent. Rather, we think it more appropriate to rely on a Federal standard of disability for the purpose of excluding parents from the definition of work-eligible individual.

*Comment:* Many commenters urged us to exclude from the definition cases in which a parent's SSI or SSDI application is pending a decision (including the appeal of an adverse decision). Some suggested that we should exclude applicants who meet the disability standard. They argue that parents whose disabilities are sufficiently grave to qualify them for SSI or SSDI but do not yet receive it would have as much difficulty working as someone whose application has been approved. Commenters also urged us to exclude individuals who would qualify for SSI or SSDI but for the durational requirements of those programs, *i.e.*, that the physical or mental impairment can be expected to result in death or has lasted or can be expected to last for a continuous period of at least 12 months.

*Response:* We appreciate that individuals with disabilities may have limitations in their ability to work. When the limitations are severe enough, an individual may qualify for and receive SSI or SSDI. However, applying for either program is no guarantee that the Social Security Administration (SSA) will find that the applicant meets its definition of disability and will approve the application. In fact, the majority of initial applicants are denied benefits. The SSI and SSDI approval process involves not just a simple determination that an individual suffers from a disability on an approved list, but also a determination that the individual cannot engage in any substantial gainful activity. We believe that a Federal standard of disability is appropriate to ensure consistency in excluding parents from the definition of work-eligible individual. Since SSI and SSDI applicants have not yet met that standard, the regulation does not exclude them from the definition of work-eligible individual. However, as we explain later, States may retroactively exclude adults in these families from the TANF Data and SSP–MOE Data Reports once they are approved for SSI or SSDI benefits and thus are no longer considered to be work-eligible individuals. This partly addresses the concerns raised by the commenters.

We do want to clarify the status of TANF parents who ''meet the SSI or SSDI criteria for severity.'' In some cases, SSA makes a presumptive disability determination for SSI or SSDI benefits, based on the nature of an applicant's impairment and other considerations. In such a case, SSA pays expedited benefits while the applicant awaits a final decision. These individuals are in fact receiving SSI or SSDI benefits and thus the State would have the option to include or exclude them from the definition of work-eligible individual. If subsequently, SSA denies the application, the individual would no longer be receiving SSI or SSDI benefits and thus would qualify as a work-eligible individual.

Parents in TANF cases who do not qualify for SSI or SSDI due to the durational requirements are not excluded from the definition of work-eligible individual because they do not receive benefits under those programs. It is not appropriate to exclude them, due

to the temporary nature of their disabilities. For example, States should prepare an individual who is recovering from an accident or heart attack for work, examples several commenters cited as temporary disabilities. The participation rate that Congress established provides ample room for States to exempt individuals with temporary illnesses or incapacities from participating in work activities. Indeed, under TANF's predecessor program, JOBS, States could exempt individuals who were ill or temporarily incapacitated, but the 1996 TANF law did not include these exemptions.

*Comment:* Many commenters asked us to permit States to exclude applicants for SSI or SSDI from the definition of work-eligible individual retroactively back to the date of their applications once those applications are approved. They explained that the SSI/SSDI disability determination process can be lengthy and, once a determination is made, benefits are paid retroactively for earlier months.

*Response:* We agree with many of the comments and, within limits, have amended the rule to allow States to revise work participation data—including information on which individuals are or are not work-eligible—after initially reporting it. Quarterly TANF and SSP–MOE Data Reports are due within 45 days of the end of the quarter. States are free to, and often do, revise data relating to previous quarters within the fiscal year. Because a State is not liable for a reporting penalty until the end of the quarter after the end of a fiscal year, a State may, until December 31, submit its final data for the previous fiscal year. Thus, a State that learns that a former work-eligible individual has been approved for SSI or SSDI and for whom prior State TANF or SSP–MOE benefits are reimbursed may revise its data for that individual by December 31 for the months in the preceding fiscal year in which the individual received benefits under one of those programs. If the individual's application for SSI or SSDI predates the beginning of the previous fiscal year, the State could not revise data back to the date of application because only data from the previous fiscal year may be revised by December 31. Please refer to § 265.7(b) for further discussion of the timing for revising work participation and caseload data and to §§ 265.4 and 265.8 for more information on when quarterly reports are due and when penalties apply.

*Comment:* Some commenters recommended giving States longer than until December 31 to amend TANF and SSP–MOE Data Reports for determining work-eligible individual status due to the lengthy approval process for disability benefits. One commenter suggested that we give States until the point at which we finalize the participation rate calculations for a fiscal year. Another suggested March 31, six months after the end of the fiscal year, as an appropriate deadline.

*Response:* While it is true that disability determinations can be lengthy, we have clarified that the deadline for retransmitting data is December 31 because after that date, States are liable for data reporting penalties.

*Comment:* One commenter urged us to exclude recipients of the programs offered by ''209(b) States'' from the definition of work-eligible individual in the same way we do SSI recipients. The commenter contended that those programs have criteria that are stricter than SSI and thus should also be excluded.

*Response:* The designation ''209(b) State'' refers to a mechanism by which the State determines eligibility for Medicaid, not eligibility for SSI or any other disability program. Most States, known as ''1634 States,'' provide automatic Medicaid coverage for recipients of SSI, but they have the option of continuing to apply standards that predated the SSI program and are more restrictive than those of the SSI program. Those States are called ''209(b) States,'' a reference to a provision in the 1972 law that created the SSI program. While such a State may have more restrictive criteria for Medicaid, this provision does not affect eligibility for SSI in the State and thus has no bearing on our definition of work-eligible individual.

*Comment:* One commenter urged us to clarify that supported work for individuals with disabilities (as discussed in the preamble concerning subsidized employment) is a countable activity for work-eligible individuals receiving SSI or SSDI whom the State opts to include in the work participation rate.

*Response:* Any activity that can count toward the work participation rate for other work-eligible individuals can also count for SSI and SSDI recipients whom the State opts to include, including those participating in a supported work program for individuals with disabilities. Except where the statute explicitly imposes a restriction (*e.g.*, for certain educational activities), we do not limit countable activities to any subset of work-eligible individuals.

*Comment:* One commenter thought the way we structured the definition of work-eligible individual with respect to SSI recipients was inequitable because it subjects individuals to the requirements of both TANF and SSI. The commenter maintained that by including SSI recipients within the definition of a work-eligible individual and allowing States to exclude them on a case-by-case basis we created an inequity. The commenter urged us to exclude all such individuals as a class and allow States to include them on a case-by-case basis.

*Response:* We think the commenter misunderstood the purpose of this provision. First, the definition of work-eligible individual only includes a SSI recipient when a State opts to include such an individual. A State must make a choice in each case and report data on the case accordingly. Because there is a child receiving assistance, a TANF case exists and the State must report data on that family, including information on the work status of the adult or adults in the family. No case is automatically included; the State reports the data to us for each case. Second, the rule does not subject individuals to the requirements of both SSI and TANF. Presumably, a State would not choose to include a SSI recipient as a work-eligible individual unless that individual had sufficient hours of work to allow the family to count in the numerator of the participation rate. Moreover, this option does not subject the SSI recipient to additional rules of the TANF program. The family is already subject to the applicable rules of TANF, because a child is receiving assistance. The SSI parent has no further work obligation because the State chooses to use the hours that individual works in the participation rate calculation.

*Comment:* Some commenters recommended that we exclude from the definition of work-eligible individual those ''who are refugees, asylees, or legal permanent residents who may qualify for TANF or MOE-funded assistance but are ineligible for SSI based on their immigration status.''

*Response:* While some refugees and asylees are in fact eligible to receive SSI under current law, we do not believe the recommendation to exclude parents ineligible for SSI due to their immigration status is practical. Because these parents are ineligible for SSI, the Social Security Administration will not process their disability determinations. We, therefore, cannot ascertain whether or not they would have met the appropriate disability standards and qualified for SSI.

*Comment:* One commenter urged us to provide the same exclusion for recipients of Title XVI benefits (Aid to

the Aged, Blind or Disabled in the Territories) as we do for SSI recipients.

*Response:* We agree with the commenter and have modified the rule accordingly.

*Comment:* A couple of commenters thought our approach to individuals with disabilities and the definition of a work-eligible individual did not make sense. They pointed out that we exclude a parent caring for a disabled family member living in the home but not the disabled family member that needs full time care.

*Response:* The exclusion for a parent caring for a disabled family member living in the home primarily affects cases in which a parent cares for a disabled child. Obviously, a disabled child would not be subject to work requirements. While in some cases the disabled family member may be a second parent, we did not want to broaden the exclusions from the work participation rates beyond those that already exist in the statute.

*Comment:* One commenter objected to the way the work-eligible individual definition addressed two-parent families in which one parent has a disability. The commenter pointed out that if the State finds that a parent has a disability but the individual does not yet receive SSI or SSDI, the family would not be part of the two-parent participation rate but would be included in the overall rate. If there is medical documentation to support it, the parent without a disability will be exempted from the work-eligible category because she is needed in the home to care for a disabled family member. However, the family would still be in the work participation rate because the parent with a disability would still be a work-eligible individual obligated to engage in work for 30 hours per week to count for participation.

*Response:* We believe the final rule addresses most of the commenter's concerns. This is a confusing area because one provision relates to disability in general and is a State determination, and another relates specifically to qualifying for SSI or SSDI, a Federal determination. If a State finds that one parent in a two-parent family has a disability then, by statute, the family comes out of the two-parent work participation rate. If the parent that the State found to have a disability does not receive SSI or SSDI, then he or she would continue to be a work-eligible individual, just as a single parent waiting for SSI or SSDI determination would be, and the family would continue to be part of the overall rate. In all other respects, the two-parent family is treated the same way as the single-parent family for determining whether the parents are work-eligible individuals. If both parents receive either SSI or SSDI, then both would be excluded from the definition of a work-eligible individual. As we noted above, within limits States may retroactively revise their data when individuals meet SSI or SSDI criteria.

*Comment:* Several commenters recommended that we exclude parents on TANF who are caregivers of family members with disabilities, regardless of whether the family member with a disability lives in the same home as the parent. The commenters explained that the burden of providing care for family members living elsewhere may be just as great or greater.

*Response:* The purpose of the TANF program is to enable parents or relatives to care for children ''living in the home'' and to take necessary steps to become self-sufficient. While we appreciate the burden that having a family member outside the home that needs care places on a family, the TANF program is not designed to provide such care. Parents of TANF families face significant challenges to care for everyone in their immediate household, and to prepare for or maintain employment that will allow them to provide for their family. Given these critical responsibilities and the time-limited nature of TANF assistance, we do not agree that parents should be excluded from the definition of a work-eligible individual in order to provide care for someone outside the home.

*Comment:* Some commenters also suggested that we exclude from the definition of work-eligible individual extended family members such as aunts, uncles, and grandparents who were both receiving assistance and caring for a disabled family member.

*Response:* We are sympathetic to the situation of non-parental relatives who are both receiving assistance and caring for a disabled family member. The statute (section 407(i)(1)(A)(i)(IV) of the Act) only gives us the authority to determine ''the circumstances under which a *parent* who resides with a child who is a recipient of assistance should be included in the work participation rates''; thus, a non-parental relative who receives assistance must be a work-eligible individual. Since we do not have the authority to exclude non-parents from the participation rate, this provision only excludes *parents* caring for a disabled family member living in the home. A relative would only be a work-eligible individual if he or she received TANF assistance (the first part of the work-eligible individual definition) or were a parent of another child recipient of assistance (the second part of the definition).

*Comment:* Many commenters took issue with the fact that the exclusion under the interim final rule for parents caring for a disabled family member living in the home applied only when the family member with a disability did not attend school full-time. Some said that parents with children with disabilities in school should be treated the same as other TANF participants who must care for a disabled family member not in school. They pointed out that children with severe disabilities often cannot attend school regularly due to medical care needs, even if they are enrolled full time. Others noted that after-school care and care during school holidays (especially the summer) is difficult to find for children with disabilities, even if they attend school on a full-time basis. Some asked us to modify the exclusion so that a parent would not be ''work-eligible'' if the child's disability-related needs prevent the parent from working. Another proposed that we give the State the option to include the hours of such a parent in the work participation rate on a case-by-case basis, based on criteria it set out in its Work Verification Plan. Some asked for clarification regarding whether the exclusion applied to children with disabilities who are full-time students but must be tutored at home or are home-schooled.

*Response:* We appreciate the difficulties of caring for a disabled family member, even when he or she is enrolled in school full time. The commenters raised many compelling arguments about the need for a parent's care even when a family member with a disability goes to school full time. Based on these comments, we have expanded the exclusion to apply when a family member's disability requires care-giving that prevents the parent from working, whether or not the family member is enrolled or attending school. Please refer to § 261.2(n)(2)(i). Our intent had been to ensure that only parents who would be unavailable during working hours because they were caring for family members would be excluded from the definition. To that end, we have also revised the medical documentation requirement, which is now included in the regulation itself (also at § 261.2(n)(2)(i)). Medical documentation must show that a parent caring for a disabled family member cannot engage in work because he or she is needed in the home to provide that care. Thus, under the final rule, any parent caring for a disabled family member will not be considered ''work-eligible'' as long as there is

documentation to show that it is medically necessary for the parent to provide the care and, as a result, cannot engage in work. We believe the policy in the final rule will be both simpler to administer and more equitable.

The rule does not permit parents who have such medical documentation to be included in the participation rate calculation on a case-by-case basis if they are working. If a medical professional has documented that the parent needs to be in the home to care for a disabled family member, then we believe it is inappropriate for these parents to be working. Thus, there is no need for a case-by-case option. Clearly, if the medical status of the disabled family member or the living arrangements of the family changes, the State should then report the parent as a work-eligible individual and engage the parent in work. States should regularly reassess the status of excluded parents who are caring for disabled family members. Closely monitoring family situations will enable parents, who are no longer needed in the home, to gain the skills and work experience that leads to independence.

We would like to stress that this exclusion for a parent caring for a disabled family member does not absolve the State of its responsibility to help TANF recipients find appropriate child care, including care for children with disabilities. We recognize that the special care that some children with disabilities need may be less available and may be more expensive. States should take these considerations into account as they develop and budget for their child care programs. A State may not exclude a child who has a disability from available child care, if doing so would prevent the parent from gaining needed skills, finding work, and moving the family out of dependency.

*Comment:* One commenter recommended that the definition of work-eligible individual allow for the exclusion of individuals who are unable to participate in activities for the required number of hours due to a disability.

*Response:* The regulation does not exclude such individuals from the definition of work-eligible. We refer readers to the discussion of individuals with disabilities in the cross-cutting issues section that appears earlier in this preamble.

**Subpart B—What Are the Provisions Addressing State Accountability?**

PRWORA required States to meet two separate work participation rates—the overall rate that has been 50 percent since FY 2002 and the two-parent rate of 90 percent since FY 1999. A State that fails to meet the required participation rates is subject to a monetary penalty. The Deficit Reduction Act of 2005 retained the 50-percent participation requirement overall and the 90-percent requirement for two-parent families, but included families in separate State programs in the calculation of the respective work participation rates.

In the interim final rule, we modified the provisions of this subpart to reflect the new statutory requirements to include separate State program families, as well as the requirement to determine when to include non-recipient parents residing with children who receive TANF assistance in the calculation of the work participation rates. We did so using the new definition of ''work-eligible individual'' discussed in detail in the preamble to § 261.2(n) of this part.

*Section 261.20 How will we hold a State accountable for achieving the work objectives of TANF?*

Under the interim final rule, as under the original TANF rule, this summary section outlined how we held a State accountable for meeting work requirements. We did not receive comments on this section and have made no changes to it in the final rule.

*Section 261.21 What overall work rate must a State meet?*

This section of the interim final rule incorporated in regulatory text the statutory requirement for a State to achieve an overall work participation rate of 50 percent, minus any caseload reduction credit to which it is entitled. We did not receive comments on this section and have made no changes to it in the final rule.

*Section 261.22 How will we determine a State's overall work rate?*

The Deficit Reduction Act of 2005 modified the work participation rate calculation to include families with an adult or minor child head-of-household in SSP-MOE programs and required us to determine the circumstances under which a family in which a parent residing with a child receiving TANF should be included in the calculation. The interim final rule modified the prior language in this section to reflect the new calculation and adopted the use of the term ''work-eligible individual'' for that purpose. It also continued the policy established under prior rules of allowing a State to count a family that received assistance for only a partial month in the work participation rate if a work-eligible individual is engaged in work for the minimum average number of hours in each full week that the family receives assistance.

We corrected one typographical error but made no other changes to the regulatory text of this section.

*Comment:* One commenter asked for clarification regarding whether the addition of families in separate State programs was effective in FY 2006 or FY 2007.

*Response:* Families receiving assistance through a separate State program are added effective FY 2007. While the interim final rule as a whole took effect with its publication on June 29, 2006, all the provisions relating to the work participation rate—including the revised caseload reduction credit, the new work definitions, and the revisions to which cases are part of the calculation itself—take effect in FY 2007 (October 1, 2006), the first fiscal year that begins after the law and regulations came into existence.

*Comment:* One commenter asked us to exclude families residing in Alaska Native villages from the work participation rate calculation, due to ''the state's unique circumstances and the challenges inherent in serving needy families in Alaska's most remote and economically depressed communities.''

*Response:* The law does disregard from the 60-month time limit on the receipt of Federal assistance any months that an adult receives assistance while living in Indian country or in an Alaska Native Village where at least 50 percent of the adults are not employed. We do not have the authority under the statute to make a similar exclusion from the work participation rate calculation.

*Comment:* One commenter asked us to exclude from the denominator families ''during their first 30 days of eligibility.'' The commenter noted that it takes several weeks to process an application, as well as additional time to learn program requirements and develop a work plan. ''It is unrealistic to expect that this process can be completed quickly enough for new participants to engage in sufficient hours of work activities during their initial 30 days to meet the work participation rate.'' Another commenter stated that the rule does not provide a State option to count participation for families that receive an initial partial month of assistance.

*Response:* As we noted in the preamble to the original TANF final rule, ''* * * we cannot simply decide that some period of time for which an individual receives assistance—such as time prior to assignment in a work activity or a partial month of assistance—should not be considered a

period of assistance and therefore exclude the individual's family from the participation rate for that month. On the contrary, if a family receives assistance for any portion of a month, then we must include the family in the denominator of the participation rate for that month. * * *'' (See 64 FR 17774.) However, §§ 261.22(d) and 261.24(d) do provide the flexibility to count a partial month of assistance as a month of participation if a work-eligible individual is engaged in work for the minimum average number of hours in each full week that the family receives assistance in that month.

*Comment:* One commenter suggested that, if a State opts to count in the work participation rate a family in which a parent receives SSI (or SSDI), we should allow the State to exclude the family from the denominator of the rate, counting it only in the numerator.

*Response:* We do not think we should include any family in the numerator that we do not also include in the denominator. To do so would skew the participation rate. The State has the flexibility to decide on a case-by-case basis whether to include it or exclude it, but any case that the State wants to count in the numerator must also be in the denominator.

*Comment:* A couple of commenters asked about the meaning of § 261.22(b)(2), which permits a State to exclude from the work participation rate calculation for up to three months in a 12-month period a case that is subject to a penalty for refusing to work. Specifically, the commenters wanted clarification on whether ''subject to a penalty'' means the State has reduced or terminated a family's grant or whether it could refer to a family that the State has notified of its intent to penalize but whose benefits it has not yet reduced or terminated. After notification, the commenters pointed out that due process or conciliation period requirements in the State often cause a lag of one or two months before the State actually reduces or terminates the family's grant. The commenters explained that, if we use the former interpretation, as we have when asked by States for policy clarification, then States that impose a full-family sanction ''receive little practical value from this provision'' compared to States that impose a penalty by reducing a family's grant.

*Response:* This rule does not change our long-standing interpretation of when a family is ''subject to a penalty.'' During a conciliation or notice period, before the State actually reduces or terminates the family's grant, a family is not ''subject to a penalty.'' Before that time, the family is at risk of a penalty but not subject to it. We think this is the most reasonable interpretation of the statute. In the original TANF rule, we included the following language at § 261.22(b)(3): ''If a family *has been sanctioned* for more than three of the last 12 months, we will not exclude it from the participation rate calculation.'' (Emphasis added.) Further, in the interim final rule, we reiterated this concept in § 261.22(b)(2) as well, specifying that ''if a family with a work-eligible individual *has been penalized* for refusal to participate in work activities for more than three of the last 12 months, we will not exclude it from the participation rate calculation.'' (Emphasis added.) In both instances, this language makes clear that the State must actually have imposed the penalty before we exclude the family from the participation rate calculation.

We have applied this interpretation since the beginning of TANF because it encourages a State to take action to resolve the problem that led to the sanction in the first place. If we were to consider a family ''subject to a penalty'' when the State had merely notified the family of the possibility that it would reduce or terminate benefits, it could benefit from disregarding the family from the participation rate regardless of whether it provides services to address barriers to employment or works to resolve a dispute.

With respect to the effect of our interpretation of this provision on a State that chooses to impose a full-family sanction instead of reducing the family's benefits, our interpretation treats the period before actual imposition of a sanction in the same way for all States, regardless of whether a State's policy choice is for a full or partial sanction. If a State chooses a full-family sanction, then the family is removed from the work participation calculation indefinitely and as a result benefits from an indefinitely smaller denominator.

*Comment:* One commenter asked for clarification on ''whether the 'other sanctioned' individuals who now will be considered work-eligible participants will have the same exclusion from the count for three months out of twelve as those sanctioned for participation failure.''

*Response:* If the family of a work-eligible individual is subject to a penalty for refusing to work, the State may exclude that family from the work participation calculation for that month as long as the family has not been penalized for more than three of the last 12 months. If the family's sanction is for a different cause, such as failure to cooperate with child support enforcement, then the case stays in the work participation rate.

*Comment:* We received a comment concerning §§ 261.22(c)(1) and (c)(2). The first section provides a State with the option not to require a single custodial parent of a child under age one to engage in work and the second allows it to disregard such a family from the work participation rate. The commenter noted, ''The preamble to the final TANF regulations in the April 12, 1999 **Federal Register** indicates that these two provisions are not dependent on each other, but rather, a state can exclude such a case from the work participation rate calculation without having to exclude it from engaging in work activities.'' The commenter urged us to include the same clarification in this preamble to avoid any confusion.

*Response:* The commenter is correct that the preamble to the original TANF rule clarified that point. We wrote, ''Based on the comments and after reexamining the statutory provision, we agree that we need not link the State's option not to require a single custodial parent of a child under 1 to work to the exclusion of such parents from the rate calculations. The State can make separate decisions about exempting and excluding a family from its rate. The statute describes a certain individual, that is, 'a single custodial parent caring for a child who has not attained 12 months of age' and then separately indicates that 'such an individual' may be disregarded in calculating the participation rates. We have rewritten the regulation to allow disregard of a family with such an individual, since the rates actually measure families and not individuals.'' The overall framework of this provision did not change in this rule, including the distinct natures of these two points.

*Section 261.23 What two-parent work rate must a State meet?*

This section of the interim final rule incorporated in regulatory text the statutory requirement for a State to achieve a two-parent work participation rate of 90 percent, minus any caseload reduction credit to which it is entitled. We did not receive comments on this section and have made no changes to it in the final rule.

*Section 261.24 How will we determine a State's two-parent work rate?*

This section of the rule is analogous to § 261.22 but applies to the two-parent rather than the overall work participation rate. The interim final rule modified the calculation of the two-parent rate to include families served in

SSP–MOE programs. The Deficit Reduction Act, as we noted before, required us to determine the circumstances under which a family in which a parent living with a child receiving TANF should be included in the work participation rates, which we did in the definition of ''work-eligible individual'' in § 261.2(n). The interim final rule provided a minimum definition of a two-parent family for the two-parent work participation rate calculation.

We made no changes to this section in the final rule.

*Comment:* One commenter asked for clarification regarding whether the addition of two-parent families in separate State programs was effective in FY 2006 or FY 2007.

*Response:* Two-parent families receiving assistance through a separate State program are added effective FY 2007. While the interim final rule as a whole took effect with its publication on June 29, 2006, all the provisions relating to the work participation rate including the revised caseload reduction credit, the new work definitions, and the revisions to which cases are part of the calculation itself take effect in FY 2007 (October 1, 2006), the first fiscal year that begins after the law and regulations came into existence.

*Comment:* One commenter stated that when a two-parent family is included in the overall participation rate it is counted as if it were two separate households, rather than as a single family or household and thought that was unfair, because ''all the benefits in being a married or stable two-parent family are lost.''

*Response:* The overall participation rate includes each family once. A two-parent family counts in the overall rate in the same way that any other family does: based on the hours of participation of one work-eligible individual. If the second parent has hours of participation, those count only toward the two-parent participation rate, which, by statute, can combine the hours of both parents.

*Section 261.25 Do we count Tribal families in calculating the work participation rate?*

We would like to clarify existing policy with respect to counting Tribal families in the State TANF work participation rate. During our listening tour sessions around the country, it came to our attention that some readers may not fully understand the requirements of this section of the rule.

In the preamble to the original TANF regulation, we explained that a State has the option to include or exclude families receiving assistance under a Tribal TANF or Tribal Native Employment Works (NEW) program from the denominator of the State TANF participation rates. But to count any family in the numerator of the *State's* participation rate for a month, the family must meet the standards for counting a family in the *State* rate, both with respect to hours of participation and countable activities. We went on to stress that this was true regardless of whether the family received assistance under a State TANF program, a Tribal TANF program, or a Tribal NEW program.

This standard continues to apply under the final TANF rule. To count toward a State's participation rate, the family must meet the standards of that rate. Therefore, if a Tribe offers activities that meet the definition of countable State work activities and engages individuals for the requisite hours to meet the State rate, the State may choose on a case-by-case basis to include such families in the calculation of the State's participation rate. However, if the Tribal program defines and includes countable activities that do not meet the work activity or work-eligible individual definitions of this final rule, such activities may not count toward the State's participation rate. Of course, any family that the State wishes to count in the numerator must also be included in the denominator.

We received few comments on this section and have not changed the regulatory text from the interim final rule.

*Comment:* A couple of commenters took issue with the phrase ''at State option'' in this section of the rule, arguing that the State cannot opt to include Tribal TANF families without the consent of the Tribe. The commenters thought that the wording ignored Tribal sovereignty and they urged us to change it.

*Response:* This regulatory wording comes from section 407(b)(4) of the Act and remains unchanged from the original TANF rule. While the law and regulations give States the option to include Tribal TANF or Tribal NEW participants in the State work participation rates, Tribal sovereignty is not at issue because States will need to confer with Tribes to know whether individuals are participating in activities and meeting standards that comport with the requirements of the State's work participation rate. This provision does not give States control over Tribal programs or governments. A State cannot opt to include families unless they are already participating in accordance with State TANF participation standards. If the Tribe's program does not meet that standard, the State simply would not be able to opt to include those families.

*Comment:* One commenter pointed out that the Federal regulations governing Tribal TANF and NEW programs allow flexibility in defining work activities and the hours of participation. State TANF programs working with Tribal populations not covered by the Tribal TANF or NEW programs do not have the same flexibility. The commenter thought this was inequitable and urged us to grant States the same flexibility when providing services to American Indians living on reservations.

*Response:* We do not have the authority to implement the commenter's suggestion. The difference between State and Tribal TANF work participation requirements is statutory. Section 412(c) of the Social Security Act allows Tribal TANF programs to negotiate work activities and hours of participation, whereas section 407 of the Act, which specifies State work requirements, does not permit such flexibility.

## Subpart C—What Are the Work Activities and How Do They Count?

The interim final rule did not change the structure of this subpart but did make some important additions to §§ 261.31 and 261.32. In particular, the rule added provisions to allow States to ''deem'' participation in core hours when the minimum wage laws of the Fair Labor Standards Act (FLSA) preclude an individual that works the maximum allowed from participating for all of the required core hours. The final rule maintains this basic policy of the interim final rule but we have modified the regulatory text in response to comments.

*Section 261.31 How many hours must a work-eligible individual participate for the family to count in the numerator of the overall rate?*

We received many comments relating both directly and indirectly to this subpart of the regulations.

Dozens of readers offered comments about individuals with disabilities, urging us to provide relief in the hours they must engage in work activities and generally to structure the regulations to encourage States to work with the people with disabilities. We refer readers to the cross-cutting issues section of this preamble for an overarching discussion of how the regulations address the needs of individuals with disabilities. We

respond to specific issues related to hours of participation for people with disabilities in that cross-cutting section as well. We have grouped the comments and our responses by topic for the ease of the reader.

We received numerous comments about the provisions in the interim final rule that permit a State to ''deem'' participation when an individual is restricted by the minimum wage laws from engaging in sufficient hours to meet the core hours requirements of the participation rates.

The interim final rule allowed States to ''deem core hours'' for TANF families with a work-eligible individual participating in work experience or community service who works the maximum number of hours permitted under the minimum wage requirements of the Fair Labor Standards Act (FLSA), but still falls short of the core hours requirement. The final rule continues this general policy. As in the interim final rule, it limits deeming to States that combine TANF (or SSP–MOE) and food stamp benefit amounts when calculating maximum hours. A State can achieve this by adopting the mini-Simplified Food Stamp Program (mini-SFSP), an option that simply permits States to count the value of food stamps in determining maximum hours. In accordance with the FLSA and the applicable regulations at 29 CFR 531.29–531.32 and guidance issued by the Department of Labor (DOL) this can include facilities such as child care and transportation subsidies but might include other subsidies. We recommend that any questions regarding the FLSA should be directed to Office of the Assistant Secretary for Policy, Office of Compliance Assistance Policy. Their Web site is: *http://www.dol.gov/compliance.*

Food Stamp Issues

*Comment:* Several commenters raised questions about what is involved to implement a food stamp workfare program and questioned why it is necessary.

*Response:* To ''deem core hours,'' the preamble of the TANF interim final rule required States to adopt a food stamp workfare program and conform TANF and Food Stamp Program (FSP) exemption policies under the SFSP. Since then, we have been informed by the Food and Nutrition Service (FNS) at the U.S. Department of Agriculture that neither of these is necessary. A mini-SFSP alone allows a State to count the value of food stamps with the TANF (or SSP–MOE) benefit in determining the maximum number of hours permitted under the FLSA. The TANF work experience or community service program then automatically serves in place of the food stamp workfare program.

*Comment:* Several commenters asked about the preamble guidance that said the SFSP ''must be structured to match food stamp exemptions to those of the TANF program so that work requirements could be applied to as many work-eligible individuals as possible.'' One commenter suggested that we ''clarify that states do not need to make parents of young children *mandatory* Food Stamp Employment and Training (FSET) participants in order to include food stamp benefits in the calculation of countable hours and qualify them for the deeming provision.'' The commenter noted that the FSP exempts parents with children under six years of age from mandatory participation and that changing the food stamp exemptions to match those of the TANF program would require States to impose food stamp sanctions on such parents when they do not comply with TANF's work requirements.

*Response:* Since the publication of the interim final rule, the FNS has explained that a State can create a mini-SFSP that will allow it to count the value of food stamps toward this FLSA calculation but that it does not need to conform the exemption for the age of youngest child between food stamps and TANF or expand the use of food stamp sanctions. For additional information see the Food and Nutrition Service's Web site at: *http://www.fns.usda.gov/fsp/whats_new.htm.* Under the heading, ''What's New,'' item 25 for Fiscal Year 2006 provides a sample letter for States to request a mini-SFSP and additional questions and answers on implementing the mini-SFSP.

*Comment:* Several commenters asked whether the SFSP is required.

*Response:* Yes, a State must implement at least a mini-SFSP in order to combine food stamp and TANF (or SSP–MOE) benefits for the purpose of calculating maximum hours. ACF intended to allow States to qualify for deeming only if they combine food stamp and TANF benefits. The State should notify FNS of its desire to implement a mini-SFSP that replaces the FSP work obligation rules with TANF rules. A State that has not implemented a mini-SFSP cannot deem core hours for participation rate purposes, but must still combine TANF with allowable facilities, in accordance with applicable DOL guidance and regulations in order to maximize the number of work hours permitted under the FLSA. Allowable facilities usually include child care and transportation subsidies, but might include other subsidies. We recommend that any questions regarding the FLSA should be directed to Office of the Assistant Secretary for Policy, Office of Compliance Assistance Policy. Their Web site is: *http://www.dol.gov/compliance.*

*Comment:* Some commenters objected to the requirement to include food stamp benefits in the calculation of the number of hours needed to satisfy the work participation rate. They asserted that this undermined State flexibility and created inequities because some families would have to work off a food stamp grant, while others would not, because of variations in circumstances, such as the receipt of child support and family size. Some contended that including food stamp benefits in the requirement was punitive.

*Response:* We considered the comments carefully but have retained the requirement to include food stamp benefits in order to deem core hours of participation. The main effect of the commenters' recommendation would be to reduce the number of hours that a State could require an individual to participate in work activities while still counting in the work participation rate. We believe that participation in work activities is crucial for families to move from dependence on public support to increased self-sufficiency. Further reducing the hours required is contrary to the goals of the TANF program. We do not believe that the policy generates inequities, because the number of hours that a family must participate to count in the work participation rate is directly based on the value of the combined benefits, up to a maximum. If a family has a reduced work obligation because of deeming, it is because that family receives less support from the government than a family with a higher work obligation—just as someone who works fewer hours in paid employment earns less than someone who works more hours at the same wage.

The new policy is not intended to be punitive. Rather, it gives States the opportunity to count a family in the participation rate with fewer hours of real participation than the State would otherwise need. We adopted the policy so that a State would not have to place an individual in another core activity once that individual worked the maximum hours possible under the FLSA rules. This makes it more likely, not less likely, that a person would meet the participation rates.

*Comment:* Several commenters asked whether the SFSP provisions apply to

families receiving assistance through a separate State program.

*Response:* FNS does not distinguish between TANF and SSP–MOE programs; therefore, the mini-SFSP provisions can apply to a SSP. As long as a State combines a family's SSP–MOE grant with its food stamp allotment, we will permit deeming in a SSP in the same way as we do TANF.

Fair Labor Standards Act (FLSA) Issues

*Comment:* One commenter asked ACF to approach the Department of Labor (DOL) to specify the benefits package a State can use in the FLSA calculation and requested that the list of such benefits include child care and transportation costs. Another commenter recommended that we include other Federal benefit programs, such as subsidized housing assistance and Medicaid.

*Response:* The determination of whether or not the FLSA applies to an activity and which benefits must be used in the minimum wage calculation are matters that must be resolved by each State with the Department of Labor. The final rule does not require the inclusion of these benefits for the purpose of deeming core hours. We chose not to require States to include these benefits because doing so would further complicate the calculation of deemed core hours. We recommend that any broader questions regarding the FLSA should be directed to the Office of the Assistant Secretary for Policy, Office of Compliance Assistance Policy. Their Web site is: *http://www.dol.gov/compliance.*

FLSA Deeming Issues

*Comment:* Several commenters recommended that we expand the deeming policy from satisfying the core work activity requirement to the entire work requirement. The commenters were concerned that even if some individuals were deemed to meet the 20-hour requirement, they would not be able to find other activities to meet the remaining 10 hours needed to satisfy the average weekly participation requirements. Some commenters asserted that requiring additional participation in non-core activities would create logistical and transportation problems for TANF administrators and families alike. They also noted that it may be difficult to find programs that offer additional activities for an average of just 10 hours per week.

*Response:* We adopted the deeming policy so that States would be able to count participants toward the core activity requirement if they participated in a work experience or community service activity as much as permitted under the FLSA rules. Work experience and community service programs are often reserved for individuals who have difficulty participating in TANF's other core work activities. In the absence of the deeming policy, work experience and community service participants who were prevented by the FLSA from meeting the core hours requirement and could not find paid employment would have to participate in vocational educational training or job search and job readiness assistance to count them in the rate. But, oftentimes States are reluctant to engage individuals in these activities when they need only a few hours to count because they are subject to durational limits. We chose not to expand deeming to the required non-core hours because many of these participants can benefit from one of TANF's non-core activities, primarily either job skills training directly related to employment or education directly related to employment. A State would not have to engage a client in only 10 hours per week of the non-core activity. If a program and an individual's needs call for more hours, the State could still place the individual in that program.

We would also like to point out that allowing States to deem does not impose any new or additional logistical or transportation problems. On the contrary, the new deeming policy provides additional flexibility and in doing so significantly reduces logistical and transportation problems. For example, a family with a 20-hour requirement that the State deems under this provision will count with just one activity. Under prior rules, the State would have had to find that family another core activity.

*Comment:* One commenter asked whether the deeming policy could apply in Puerto Rico because it does not participate in the Food Stamp Program and thus cannot adopt a SFSP.

*Response:* The final rule permits deeming in States that have adopted the SFSP. Puerto Rico operates the Nutrition Assistance Program which is funded by a block grant in lieu of the Food Stamp Program. This block grant provides sufficient flexibility so that the value of food stamps, or their equivalent, could count without the need for the SFSP. Therefore, Puerto Rico may deem core hours, when necessary, as long as it counts the value of Nutritional Assistance Program benefits in determining the individual's work obligation.

*Comment:* One commenter asked if our reference to the 30 or 50 hours for two-parent families was a mistake in drafting the regulation.

*Response:* The reference to the 30 or 50 hours is not a mistake. Under the statute, the core hours requirement for the two-parent rate is 30 or 50 hours, depending on whether or not the family receives federally subsidized child care.

Child Support Collections and the FLSA Minimum Wage

*Comment:* Several commenters suggested that we remind States that the TANF assistance benefit used in the FLSA calculation must be the net amount of assistance provided after subtracting from the benefit the amount of any current child support collection retained by the State and Federal governments to offset the cost of providing that assistance.

*Response:* We agree. In determining the maximum number of hours of work experience and/or community service that may be required of a recipient to meet the minimum wage requirements of the FLSA, States should calculate the amount of assistance net of any child support collections received in the month and retained to reimburse the State or Federal government for the current month's assistance payment.

Under the community work experience provisions of the former JOBS program, the portion of child support collection, if any, used to reimburse the amount of AFDC was explicitly excluded by law. Section 482(f)(1)(B)(i) of the Social Security Act outlining the minimum wage formula specified that ''* * * (and the portion of a recipient's aid for which the State is reimbursed by a child support collection shall not be taken into account in determining the number of hours that such individual may be required to work).''

This prior provision of law is no longer in effect, but we believe that States should use the amount of assistance, net of the retained child support collection so that they do not require a parent to ''work off'' assistance amounts that the non-custodial parent has repaid. We are not specifying the operational procedure that States must follow to determine the benefit amount, net of retained child support. Under the prior law, States generally used one of two approaches. Under retrospective budgeting, States used the income less child support collections received in the budget month to determine the benefit amount used to calculate the work experience obligation for the payment month. Under prospective budgeting, States used the ''best estimate'' of income less child support collections for the month, based on prior experience. This works better in wage

withholding cases where regular child support collections may be predicted.

The Deficit Reduction Act of 2005 created incentives to States to send more child support collected on behalf of families on TANF to the families themselves in both current and former assistance cases. Beginning October 1, 2009, or as early as October 1, 2008, at State option, a State may elect to pay the family a portion of the assigned support obligation. The State will not be required to pay to the Federal Government the Federal share of the ''excepted portion'' of such collections if the State pays the excepted portion to the family and disregards it in determining TANF assistance. The ''excepted portion'' may not exceed $100 per month, or in the case of a family that includes two or more children, $200 per month.

Under this new DRA provision, the State should *not* deduct the State and Federal portions of assigned support collections that it ''passes-through'' to the family in calculating the ''net'' payment to the family that can be counted in determining the number of hours an individual can be required to work. For example, if a family with two children receives $500 in TANF and the State collects assigned child support in the amount of $250 and elects to ''pass-through'' $150 to the family, the ''net'' payment that can be counted for FLSA purposes would be $400. *See* OCSE–AT–07–05 for further information concerning pass-through payments in former as well as current assistance cases. The State could also, of course, claim its share of the pass-through toward its MOE requirement.

Other ''Deeming'' Issues

*Comment:* Several commenters proposed expanding the ''deeming'' concept to work-eligible individuals who work the maximum number of hours allowed by a doctor to receive full credit for their participation. Other commenters recommended that we allow States to deem individuals who are working ''as many hours as their medically documented reasonable accommodation plans allow as meeting the federal work requirement.'' Another commenter suggested that States be ''allowed to count recipients who participate in work activities for the number of hours required under an employment plan that includes accommodations for disabilities (or accommodations based on a recipient's need to care for a family member with a disability) as having met the federally required number of hours of participation.'' The commenter went on to note that this approach is consistent with the treatment of families in work experience or community service who were working ''less than the minimum number of hours to satisfy the participation rates.'' The commenters asserted that these options would encourage States to do more to engage these individuals.

*Response:* We extended the deeming option to participants in work experience and community service because the FLSA provisions may actually prevent a State from meeting the ''core'' work requirement using these two activities. We did not extend the deeming option to other groups because we believe that Congress, in setting the maximum 50 percent participation rate, recognized that some families might not be able to work the full hours required. We encourage States to continue to work with these families to help move them to work and self-sufficiency. Our final rule does allow States to exclude recipients of Federal disability programs and those caring for a disabled family member from the definition of work-eligible individual. For more discussion of how the rules affect individuals with disabilities, readers should refer to the cross-cutting issues section at the beginning of this preamble.

*Section 261.32 How many hours must a work-eligible individual participate for the family to count in the numerator of the two-parent rate?*

We did not receive any comments that were directed strictly at this section of the regulations; however, the comments that we addressed in the previous section, § 261.31 of this subpart, often applied equally to this section. We refer readers to the discussion there and to the preamble about the definition of work-eligible individual in § 261.2 of this subpart for further discussion of counting two-parent families toward the two-parent participation rate.

*Section 261.34 Are there any limitations in counting job search and job readiness assistance toward the participation rates?*

In the interim final rule, we did not make any changes to the various limitations in counting job search and job readiness assistance. Indeed, we did not include this section of the TANF rules in the interim final rule at all. After reviewing the comments we received, we have concluded that it is necessary to include this section in order to clarify how States should apply the various limits on counting job search and job readiness assistance.

In the final rule, we define a week for each of the limits in this section. For the six-week (or 12-week) limit on participation in job search and job readiness assistance, we define one week as 20 hours for a work-eligible individual who is a single custodial parent with a child under six years of age and as 30 hours for all other work-eligible individuals. Thus, six weeks of job search and job readiness assistance equates to 120 hours for the first group and 180 hours for all others. For those months in which a State can count 12 weeks of this activity, these limits are 240 hours and 360 hours, respectively.

To make this section more consistent with other work participation rate provisions, we modified the six-week (or 12-week) limit to apply to ''the preceding 12-month period,'' rather than to a fiscal year. We also define ''four consecutive weeks'' and clarified the provision that allows an individual who participates in job search and job readiness assistance for ''3 or 4 days during a week'' to count ''as a week of participation in the activity.''

**Subpart D—How Will We Determine Caseload Reduction Credit for Minimum Participation Rates?**

PRWORA created a caseload reduction credit that reduces the required work participation rate that a State must meet for a fiscal year by the percentage that a State reduces its overall caseload in the prior fiscal year compared to its caseload under the Title IV-A State plan in effect in FY 1995. The calculation excludes reductions due to Federal law or to State changes in eligibility criteria. The Deficit Reduction Act of 2005 recalibrates the credit by changing the base year to FY 2005.

We received only a handful of comments relating to subpart D. We made one change to the regulatory text in § 261.42 and we also clarified our policy with respect to excluding ''excess MOE'' in § 261.43. We explain both of these below.

*Section 261.40 Is there a way for a State to reduce the work participation rates?*

*Comment:* A few commenters questioned the effective date of the regulations governing the caseload reduction credit with the recalibrated base year. They asked us to clarify that the original base year of FY 1995 applies to the FY 2006 credits and that the new base year of FY 2005 applies to the FY 2007 credits.

*Response:* The commenters are correct that we will not use the new base year of FY 2005 until we calculate the FY 2007 caseload reduction credits. For that year's credits, we will compare FY 2005 to FY 2006 to determine the

caseload reduction credit to which States are entitled. The FY 2005 base will apply from that point forward. While the interim final rule as a whole took effect with its publication on June 29, 2006, all the provisions relating to the work participation rates—including the revised caseload reduction credit, the new work definitions, and the revisions to which cases are part of the calculation itself—take effect in FY 2007 (beginning October 1, 2006), the first fiscal year that begins after the law and regulations came into existence.

*Comment:* One commenter suggested that we allow the caseload reduction credit to apply in ''real time,'' as opposed to applying it ''backward-looking'' as it currently does. The commenter contended that rewarding a State for ''present reductions'' would give it an incentive to keep working to reduce the caseload rather than ''resting on past laurels.''

*Response:* The statute establishes the structure of the caseload reduction credit and thus is beyond our authority to change. We think that Congress chose to update the base year of the calculation for precisely the reason that the commenter noted, finding it no longer appropriate to reward a State in its participation rate for caseload declines it achieved many years earlier.

*Section 261.41 How will we determine the caseload reduction credit?*

This section of the interim final rule specified the method that we use for calculating the caseload reduction credit. In the final rule, we corrected two typographical errors in paragraph (c) that erroneously referred to ''the FY 2005 comparison-year'' caseload when they should have read ''the FY 2005 base-year'' caseload.

*Comment:* One commenter requested clarification of the data a State should report to establish the FY 2005 base-year caseload for two-parent families in which one parent receives TANF and the other does not. The commenter stated, ''The interim final rule defines a non-recipient parent living with a child receiving assistance as a work-eligible individual. Under this definition, single-parent households with non-recipient second parents will be included in the two-parent caseload.'' The commenter suggested that the FY 2005 baseline include these two-parent cases to ensure caseloads are comparable when calculating caseload reduction credit.

*Response:* The commenter raises a valid point. Under this rule, the minimum definition of a two-parent family has changed. Since the old definition applied to FY 2005, a State submitting a caseload reduction report based on the two-parent caseload would have caseload data based on the old definition for FY 2005 and the new one for the comparison-year caseload. We have changed the rule at § 261.40(d) to provide for adjusting data in this kind of situation. To correct such an inconsistency, a State may adjust its FY 2005 two-parent caseload data as part of its caseload reduction report. A State that wishes to make such an adjustment should explain in its report how it arrived at the adjusted number. Please refer to the instructions to form ACF–202, the Caseload Reduction Report, for further information.

*Section 261.42 Which reductions count in determining the caseload reduction credit?*

*Comment:* A couple of commenters noted that we deleted part of this section that listed types of eligibility changes a State might make and for which it cannot receive a caseload reduction credit. One thought this deletion was inadvertent; another believed that the language remains relevant as States consider new program designs. All commenters urged us to restore the language.

*Response:* We have restored the language in the final rule. We had removed the text in the interim final rule because it was strictly illustrative and we thought States had enough experience with the caseload reduction credit to know the types of changes in eligibility criteria that they need to include on the caseload reduction report. We also did not want to suggest that the list in the original rule was exhaustive; States must report all changes in eligibility between the base year and the comparison year. However, since commenters found the language particularly useful, we restored the language with the clarification that the list is not comprehensive.

*Comment:* One commenter urged us to permit eligibility changes that increase the caseload to count for credit above and beyond offsetting the effect of changes that decrease the caseload. The commenter reasoned that, since we had established the offset by regulation, rather than implementing a statutory provision, we have authority to expand it in this way. Further, the commenter suggested that failing to do so would be fundamentally unfair.

*Response:* It is our longstanding policy to permit caseload expansions from eligibility changes to offset changes that decrease the caseload. We originally established this policy to allow the caseload reduction credit to reflect a more accurate picture of the change in the caseload. However, we have never allowed caseload increases to do more than offset decreases, in other words, to credit a State for greater caseload reduction than it actually experienced. The interim final rule incorporated that policy in § 261.42(a)(3) and the final rule retains that provision.

*Section 261.43 What is the definition of a ''case receiving assistance'' in calculating the caseload reduction credit?*

When we published the interim final rule, this section remained largely unchanged from the original TANF rules. Subsection (a) explains that we calculate the caseload reduction credit using cases that receive assistance, either TANF or SSP–MOE assistance. In the final rule we have made minor wording changes to this subsection to remove extraneous language and thereby improve the clarity and understanding of exactly which cases are included in the calculation. We have made no substantive change in the definition of cases used in the calculation.

Subsection (b) allows a State to exclude from the caseload reduction credit calculation cases on which the State has spent ''excess MOE,'' that is, MOE in excess of the amount it needs to meet its MOE requirement. If a State applies this provision, for the comparison-year caseload we would use the sum of the State average monthly TANF and SSP–MOE assistance caseloads, minus cases whose receipt of assistance is attributable solely to MOE funds in excess of the State's 80- or 75-percent MOE requirement. Since the publication of the interim final rule, this ''excess MOE'' provision has drawn considerable attention. In our listening sessions across the country, it was a topic of considerable discussion and also elicited formal comments on the interim final rule. Prior to issuing these rules, only one State had ever made use of it since its inception in the original TANF regulation.

Because of this new interest in the excess MOE provision, we thought it would be helpful to specify the methodology for calculating excess MOE and have revised this subsection to incorporate the specifics of this calculation. If a State wishes to have us take its excess MOE spending into account in the caseload reduction credit calculation, it needs to follow this methodology as part of its Caseload Reduction Report (form ACF–202).

One problem in calculating excess MOE is that a given dollar of MOE spending cannot track to a given case.

Since the caseload reduction credit considers only cases receiving ''assistance'' and not all cases, it is nonetheless important to develop an approach for determining the share of State spending on assistance that is in excess of its MOE requirement. Some methodologies would over-represent the amount of spending on ''assistance'' that was indeed excess MOE. For example, a methodology that assumed that all spending on two-parent families came from excess MOE would, in effect, artificially manipulate the credit, especially the two-parent credit. Therefore, we think that the only fair and reasonable approach is to consider average costs per case when determining how many cases were funded with excess MOE and thus should be excluded from the caseload reduction credit calculation. In fact, the only method we have approved prior to this final rule used average costs per case.

Our method divides the total TANF (Federal and State) and SSP–MOE spending on assistance for the comparison year by the State's average monthly assistance caseload (combined TANF and SSP–MOE) for the comparison year to arrive at an average annual assistance cost per case for the fiscal year. The method then computes total spending on assistance as a percentage of total spending. We use total spending because spending with Federal and State MOE funds on assistance are largely interchangeable. If we based the calculation solely on MOE funds, the size of the credit would vary not based on the amount of excess State MOE spending, but rather on the distribution of assistance spending between State MOE and Federal funds. We then subtract the required 80 percent of historic State expenditures (80-percent MOE requirement) from the State's actual MOE expenditures and multiply the remaining ''excess MOE'' by the percentage of spending on assistance. Finally, we divide this excess MOE spending on assistance by the average annual assistance spending per case to determine how many cases were funded with excess MOE. If the excess MOE calculation is for a separate two-parent caseload reduction credit, we multiply the number of assistance cases funded with excess MOE by the average monthly percentage of two-parent cases in the State's total (TANF plus SSP–MOE) average monthly caseload. All financial figures in the methodology must agree with data reported on the State's ACF–196 TANF Financial Report and all caseload data must agree with information reported on the ACF–199 TANF Data Report and ACF–209 SSP–MOE Data Report.

The following example illustrates our methodology. In this example we are calculating a FY 2007 caseload reduction credit, which will reduce the State's FY 2007 required participation rate, and thus the comparison year is FY 2006. Assume that the State's total MOE for FY 2006 equals $100 million and its Federal spending in FY 2006 equals $175 million for a combined total of $275 million. Of this amount, total spending on assistance (combined Federal and State) equals $110 million. This means spending on assistance equals 40 percent of total spending ($110 million divided by $275 million). The State's combined TANF and SSP–MOE average monthly caseload, as reported on the TANF Data and SSP–MOE Data Reports for FY 2006, equals 20,000. Therefore, the average spending on assistance per case equals $5,500 ($110 million divided by 20,000). The State's 80-percent MOE requirement equals $80 million, so it spent $20 million above that level. Of that ''excess MOE,'' we attribute that $8 million, or 40 percent, to assistance spending. Finally, we divide that $8 million by the average assistance spending of $5,500 per case to conclude that 1,455 of 20,000 average monthly cases were funded with excess MOE and should be subtracted from the FY 2006 caseload in the caseload reduction credit calculation.

We require the use of 80 percent MOE rather than 75 percent because the statutory requirement is for 80 percent MOE spending unless a State meets the work participation requirements for the year. If a State meets both participation rates for the comparison year, and thus its required MOE drops to 75 percent, it may revise its caseload reduction credit to reflect the lower required MOE level. It is possible that we will already have that information for the comparison when we calculate the caseload reduction credit; if so and the State met both rates, we will use 75 percent at that time.

We have revised the Caseload Reduction Report (form ACF–202) to include a new worksheet and made some other changes to the form to assist a State in claiming excess MOE as part of the caseload reduction credit.

*Comment:* Several commenters noted that we retained the provision that allows a State that spends MOE funds in excess of its required level to report for the caseload reduction credit only the pro rata share of cases receiving assistance that is required to meet the basic MOE requirements. The commenters urged us to retain the provision in the final rule.

*Response:* The final rule does retain the provision allowing a State to receive caseload reduction credit for excess MOE spending. During our listening tour for the interim final rule, we expressed doubts about this provision and suggested that we might not retain it. Our concerns were and remain that: (1) The provision has not proved effective in encouraging States to spend additional MOE funds, as most States spend only to the level required; and (2) the interaction between this provision and the new flexibility in the DRA concerning the types of expenditures that can count for MOE, particularly that a State can spend MOE on non-needy families, could result in large, artificial caseload reduction credits.

We do want to clarify that, if a State uses this provision and receives caseload reduction credit for excess MOE spending, it may not subsequently revise its reported financial data to reduce the level of State MOE expenditures for which it received such credit and replace those expenditures with Federal ones. It would be inherently unfair to credit a State for expenditures of State funds that it later reports did not come from State funds.

*Section 261.44 When must a State report the required data on the caseload reduction credit?*

*Comment:* One commenter asked us to put back language that the interim final rule deleted stating that we would issue the caseload reduction credits by March 31 of the fiscal year to which the credit applied. The commenter stated, ''We understand that negotiations sometimes result in the notification to an individual state being delayed past this date, but think it is important that states have the general expectation that the information be received by March 31.''

*Response:* We did not make the change in the final rule that the commenter recommended. We deleted the March 31 date that was part of the original TANF rule because, after many years of experience with the caseload reduction credit, we did not find that it served a useful purpose. Moreover, there is no statutory basis for this or any other specific issuance date. Nevertheless, we will continue to endeavor to issue the credits within the fiscal year to which they apply.

**Subpart F—How Do We Ensure the Accuracy of Work Participation Information?**

The Deficit Reduction Act of 2005 requires HHS to issue rules that ensure

the consistent measurement of work participation rates, including information with respect to: (1) Determining whether the activities of a recipient of assistance may be treated as a work activity; (2) establishing uniform methods for reporting hours of work of a recipient of assistance; (3) identifying the types of documentation needed by the State to verify reported hours of work; and (4) specifying the circumstances under which a parent who resides with a child who is a recipient of assistance should be included in the work participation rates.

We received many comments about this subpart. Several readers offered general comments about the increased burden that the interim final rule placed on administrators and clients, particularly with respect to reporting actual hours and documenting participation in work activities. Others provided specific comments and suggestions, which we address below.

*Section 261.60 What hours of participation may a State report for a work-eligible individual?*

The interim final rule made explicit in regulation our long-standing policy of counting only actual hours of participation and not scheduled hours. It required that each State have in place a system for determining whether the hours it reports for the participation rates correspond to hours in which work-eligible individuals actually participate in work activities. The final rule continues this same actual hours standard.

In conjunction with the actual hours policy, the interim final rule also introduced to the regulations the concept of giving States credit for excused absences for TANF participation in unpaid activities. Under the interim final rule, a State could define and count reasonable short-term, excused absences for days missed due to holidays and a maximum of 10 additional days of excused absences in any 12-month period, no more than two of which may occur in a month. To count an excused absence as actual hours of participation, the individual must have been scheduled to participate in a countable work activity for the period of the absence that the State reports as participation.

In the final rule, we have clarified the holidays policy, limiting it to 10 days in a year. Because we did not specify in the interim final rule the number of holidays, States proposed counting widely varied holidays in their Work Verification Plans, some proposing impossibly long lists of the days they would excuse and count toward the participation rates. We realized that we had not provided adequate guidance in the regulation and that, as written in the interim final rule, the holidays policy would not meet the spirit of our mandate to make work participation rate calculations consistent across States. We deliberated at length about the appropriate number, considering the number granted on average by private companies, the average number of State paid holidays, and the number of Federal holidays. Ultimately, we chose to limit it to 10 to be consistent with the number of Federal holidays. Each State must designate the days that it wishes to count as holidays for those in unpaid activities in its Work Verification Plan. It may designate no more than 10 such days. The State is free to excuse an individual on other days for religious or other reasons, but it may not count other days for participation rate purposes as holidays. It may also exercise the additional excused absences policy.

During our listening tour and in written comments many people expressed misgivings about the way we structured credit for additional excused absences. Many urged us to permit a State to implement an hourly equivalent to the 10 days, since individuals sometimes need to be excused for only a portion of a day. Others thought that the number of additional excused days was insufficient and objected to the restriction on counting no more than two per month.

In writing the final rule, we struck a balance between our responsibility to ensure State accountability for the work participation rates in the law and giving States participation credit for occasional absences due to circumstances beyond an individual's control. We were persuaded by the comments that excused hours makes more sense than excused days because some situations require an individual to be absent for only part of a day. The final rule permits a State to count up to 80 hours of additional excused absences in a year for each work-eligible individual. It may not report more than 16 of these hours in any month. As in the interim final rule, the State must describe its excused absence policy (including holidays) in its Work Verification Plan.

Readers should note that we have modified the title of this section for clarity of comprehension. We think it should now be more readily apparent that this section addresses the hours that can count for participation, while § 261.61 speaks to documentation requirements to support hours of participation, and § 261.62 specifies how States should verify the hours that they report and document.

In keeping with this clarification, this section of the final rule incorporates the provision permitting a State to report projected hours of employment for up to six months on the basis of current, documented actual hours of work. In the interim final rule, this provision appeared in § 261.61. We have made no change to the text of the provision but moved it to this section because it fit better under the rubric of reporting hours than it did under documenting hours.

This section of the interim final rule also specified the hours that a State could count for self-employed individuals. The final rule does not change this provision.

Finally, the interim final rule limited the counting of homework and study time for individuals participating in vocational educational training or any other educational work activity to supervised settings. The final rule allows a State to count unsupervised homework time, subject to certain limitations.

Reporting Hours of Each Activity Separately

*Comment:* In conjunction with comments we received about our effort to draft mutually exclusive definitions of work activities, a number of commenters objected to the requirement to report actual hours for each activity separately. They maintained that separate tracking would discourage States from combining work activities and would impose an added administrative burden. They urged us to allow States to combine activities and report all participation under one activity. For example, one commenter suggested that we allow States to count an individual's hours from several activities in the activity that ''constitutes the majority of the hours of participation.''

*Response:* We strongly support State programs that combine activities. Having States report hours for each work activity in the appropriate category will help ensure that the data are comparable across States. Reporting participation by activity is required by section 411 of the Social Security Act and does not prevent a State from creating integrated programs. Moreover, a policy that allows some activities to count within others based on standards such as what constitutes a ''significant majority'' of hours would still require States to track the hours of each activity separately to determine which activity is the primary activity. Thus, combining the activities for purposes of reporting hours of participation would not

achieve the suggested administrative simplification.

The main effect of these recommendations would be to allow States to bypass statutory limitations on counting participation in certain activities, most notably the six-week limit on job search and job readiness assistance and the lifetime 12-month limit on vocational educational training, or to count educational activities during core hours.

Actual Hours versus Scheduled Hours

*Comment:* Some commenters recommended we allow States to report scheduled hours. One commenter thought that we should allow school districts to count scheduled hours with excused absences for good cause because it would ''benefit the client and these districts.'' Another maintained that requiring a State to develop a ''system for reporting/counting of actual hours instead of scheduled hours is an unfunded mandate.'' Another commenter wrote that it will ''require a significant investment of program resources in activities and systems to measure the number of actual hours of participation.''

*Response:* Our current policy simply extends the previous policy. Under TANF, States have always been required to report actual hours and not scheduled hours. Although the regulations did not explicitly state it, the instructions to the TANF Data Report (Form ACF–199, transmitted via Program Instruction TANF-ACF-PI–99–3, dated October 27, 1999) state, ''For each work activity in which an adult or minor child head-of-household participates, States are to collect *actual* hours of participation for each week in the report month. * * *'' Thus, States should already have had systems in place to capture and report actual hours of participation.

Holidays and Additional Excused Absences

*Comment:* Some commenters thought that 10 days per year (a maximum of two days per month) of excused absences beyond holidays was not sufficient to accommodate the needs of TANF recipients. One commenter thought that our policy was ''not a commonly accepted or reasonable standard.'' Commenters asserted that low-income, single parents often needed extra time to deal with court or agency mandated appointments, school appointments, meetings with child protective caseworkers, and caring for sick children, as well as to attend to personal needs that arise. Several commenters wrote that it is ''unreasonable to require caregivers to ignore emergencies or fail to take handicapped children to the doctor during work hours when the doctor is available so that the State can get credit for their participation in a work requirement.'' Some recommended specific standards to replace the excused absence policy described in the interim final rule (e.g., up to 120 hours per year, with a maximum of 30 hours per month, or 2 days per month but 24 days per year), while others suggested we allow unlimited excused absences as long as States can ''verify the reason for excused absence'' and it is in their approved Work Verification Plans.

Some commenters argued that there should be exceptions to the excused absence policy for specified reasons. They recommended that we grant extensions for various reasons, such as job interviews, meetings required by other governmental agencies (e.g., child welfare, child support, schools, courts, or other assistance programs), and illness, either of the participant or the participant's child. They suggested that we count these absences toward participation without limit and not as part of the regular excused absence allotment because such appointments are beyond the control of the individual and, in some cases, it is not possible to make up the hours for some activities because they do not fit a provider's schedule. A number of commenters suggested that we use the providers'' definition of holidays and other excused absences for individuals in education and training programs, as long as they make satisfactory progress.

*Response:* The TANF work participation rate has always been based on actual hours. Congress did not include an excused absence policy, in part because the hourly standard has always been well below the customary 40-hour work week; it is 20 hours per week for a single-parent family with a child under six years of age. As a result, most individuals already had a built-in excused absence policy of 10 to 20 hours per week. This gives States the flexibility to work around hours that a client misses and to allow the individual to make them up where feasible. Notably, it also means that TANF clients have more time to address the kinds of issues the commenters raised than many non-TANF, low-income, working parents.

The interim final rule expanded this statutory flexibility by including holidays and up to 10 additional days per year (no more than two days per month) of excused absences to count as participation, a first in the history of the TANF program. Now, under the final rule, we have expanded flexibility further to excuse up to 10 holidays and up to 80 additional hours of excused absences in a year, not more than 16 of which can be reported in a month.

Equally important, we remind readers that there is a distinction between the allowances a State or service provider may choose to make for an individual and the participation allowances we are granting to States in excused absences. The State determines how many hours an individual must engage in work and what it considers a good cause excuse for missing those hours. The law and regulations determine what a State gets credit for in the work participation rate. We established the limits on excused absences based on a reasonable standard derived from common employment practices. Nevertheless, those limits on counting for participation do not preclude States from excusing additional absences without penalty to the individual.

*Comment:* Some commenters thought that our excused absence policy conflicted with ''the intent and spirit of the Family Violence Option (FVO) by punishing individuals who have experienced domestic violence.''

*Response:* For the first time under TANF, we have given States participation credit for allowing clients to address emergencies. Rather than conflicting with the FVO, the excused absence policy provides another avenue, in addition to granting program waivers, for States to respond to needs of victims of domestic violence.

*Comment:* Many commenters recommended that the regulations count as excused absences hours missed due to the disability of an adult TANF recipient or due to caring for a family member with a disability. For example one commenter stated, ''Disabilities and responsibility for caring for a disabled person clearly result in an overall greater frequency of absences from work activities than would otherwise be necessary.'' One commenter noted that the standard excused absence policy on which the interim final rule is based makes exceptions for disability-related absences. The commenter explained that ''employers are actually required by the federal Family Medical Leave Act to allow individuals to take up to three months of leave if related to the employee's health or the employee's need to care for an ill family member.'' The commenter recommended that we allow States ''to count all excused absences related to verified medical purposes.''

*Response:* We have addressed the commenters'' concerns about the need for excused absences due to caring for a child with a disability by excluding

such individuals from the definition of work-eligible individual. Please refer to the preamble discussion of § 261.2(n) for more detail about the definition of a work-eligible individual.

With respect to the Family and Medical Leave Act, States must comply with its mandate that ''eligible employees'' are entitled to 12 weeks of unpaid leave during any 12 month period for reasons of childbirth, adoption, in order to care for an ailing family member, or a serious health condition that impedes the employee from performing her job. 29 U.S.C. § 2612(a)(1). The term ''eligible employee'' is defined at 29 U.S.C. § 2611(2). The State's responsibility to comply with the FMLA does not expand the hours of excused absence for which the State can get credit under the TANF work participation rate. We anticipate that a State would give a good cause exception from any State work requirement to an individual who is entitled to leave under the FMLA during such a period of leave, but the family would still be included in the calculation of the participation rate. For further information regarding how to comply with the FMLA, we refer readers to the Department of Labor and the applicable statutes and regulations.

*Comment:* Several commenters stated that our excused absence policy would ''reduce State credit'' toward meeting the work participation rates. Another asserted that our policy would ''not only hurt States'' efforts to meet the work rates, but will mean that the work participation rates themselves give policymakers and the public an inaccurate picture of the extent to which recipients are actively engaged in work activities.''

*Response:* We would like to stress again that allowing States to count excused absences in the participation rates does not hurt State efforts to meet the work participation rates or ''reduce State credit''; it does exactly the opposite. This is a policy of expanded credit, where prior rules did not count excused absences. We appreciate that some readers think we should have expanded credit even further, but we crafted an excused absence policy we think is reasonable and derived from common employment practices.

*Comment:* Many commenters recommended changing the standard from a daily one to an hourly one. They argued that this would more closely approximate typical employment policies where those who miss work typically take off some number of hours rather than a full day. They thought that a policy of daily excused absences would reduce incentives for individuals to participate in work activities before or after required appointments because such participation would not affect their countable hours of participation. Most commenters recommended converting our 10-day excused absence policy for purposes of the participation rate to 80 hours of excused absences in any 12-month period, no more than 16 of which they could use in a month. One commenter emphasized that a day should be ''fixed at 8 hours, regardless of the number of hours a participant is required to participate.'' Otherwise, a single day's absence could consume more than one day's worth of excused absences.

*Response:* We agree that excusing hours rather than days gives greater flexibility and more closely approximates a work experience. As we noted above, we considered several approaches for converting days to hours. The final rule permits up to 80 hours of excused absences for a work-eligible individual in a 12-month period, no more than 16 of which may be reported in a month.

*Comment:* Some commenters objected to the two-day per month limit on counting excused absences. One commenter argued that this did not reflect employment practices in the real world and that States should be allowed to count individuals for as many excused absences as needed in a given month, up to the total allowed for the year.

*Response:* We realize that some employers may permit employees to take more than two excused absence days (or the hourly equivalent) per month. However, most employers also require employees to accrue these days (or hours). It may take a full year for an employee to earn the equivalent of 10 days of leave, so, as a practical matter, the amount of leave many new employees are entitled to is restricted as well. More important, however, is that this policy applies only to what States can count, not to what they can allow for individual participants as a matter of policy. Also, since most TANF recipients face participation requirements of either 20 or 30 hours per week, there is room to make up the missed hours, which would not be so easy for someone working full-time.

*Comment:* Several commenters suggested that we extend the excused absence policy to individuals participating in paid as well as unpaid activities. They noted that many low-income workers do not receive paid leave for holidays or other absences. In addition, they argued that this holds many of those who are working to a higher standard than those in unpaid activities.

*Response:* We considered extending the excused absence policy to give States credit for individuals in paid employment, but ultimately decided to retain the policy in our interim final rule. As a practical matter, the State would already be getting credit for the client's hours of work, including excused absences, whether paid or not, because a State can project the hours of participation for individuals in paid employment for up to six months (based on documented, actual hours).

*Comment:* One commenter asked for clarification regarding the activity under which it should count excused absences it grants to allow an individual to search for a job. The commenter asked whether such an excused absence should count as job search and job readiness assistance or as part of the activity from which the individual was excused.

*Response:* States should report hours of excused absences as hours of participation in the activity from which the individual was excused. For example, if an individual were participating in a community service program but needed to be excused for two hours to go to a job interview, the State should report those excused hours as hours of community service, not as hours of job search and job readiness assistance.

*Comment:* Several commenters expressed concern over the fact that some excused absences may not be verified until after the State submits its participation data. They recommended allowing States to correct attendance records retroactively to reflect excused absences up until the date on which the data report becomes final.

*Response:* Because a State is not liable for a reporting penalty until the end of the quarter after the end of a fiscal year, a State has until December 31 to submit its final data for the previous fiscal year.

Projecting Hours of Employment

*Comment:* One commenter recommended allowing States to project hours in certain non-employment activities for up to three months ''based on a history of successful participation.'' The commenter stated that this would reduce stigma and the burden of attendance sheets.

*Response:* We have allowed projected reporting of actual hours of participation in paid work activities because an employer has both a fiscal interest and a stewardship responsibility to ensure that employees work for the hours of pay. A similar situation does not exist in the other

activities; therefore, we have not adopted this suggestion.

Self-Employment Hours

*Comment:* Several commenters proposed allowing States to project employment hours for up to six months for individuals who are self-employed. They argued that these approaches recognize the inherent challenges of verifying the hours of self-employment.

*Response:* The option to project hours of participation for a maximum of six months does apply to self-employment. Self-employment is a form of unsubsidized employment and therefore may be projected for up to six months based on prior, documented hours of actual employment.

*Comment:* Some commenters expressed concern because the regulations limit the hours a State can count for self-employed recipients to the number derived by dividing the individual's self-employment income (gross income less business expenses) by the Federal minimum wage. They explained that some types of self-employment take time before income is generated. Another commenter noted that some types of self-employment are affected by seasonal factors, so that income is only generated in some months, even though the work is ongoing. They recommended various approaches that would take into account hours needed to prepare for employment and sporadic work schedules, including criteria based on self-attestation, earnings, and preparation time.

*Response:* We think the best approach for calculating hours of self-employment is to rely on the net income (gross income minus business expenses) of the individual. We adopted this method because States already calculate net income when determining the eligibility of the self-employed for TANF benefits and thus our approach minimizes the administrative burden on States. We do not believe it is necessary to modify the rule to address these suggestions. The regulation allows a State to ''propose an alternative method of determining self-employment in its Work Verification Plan.'' This description should indicate how the State plans to monitor and supervise this activity to ensure that it reports actual hours and that the self-employment progresses to the point where the individual can effectively earn more than the minimum wage. We will not approve alternative plans that provide for an individual's self-reporting of participation without additional verification. We believe the rule's provision for approximating hours using the Federal minimum wage is a reasonable approach and minimizes administrative burdens.

*Comment:* One commenter suggested that the calculation of hours for self-employment be based on the higher of the applicable Federal or State minimum wage.

*Response:* The final rule retains the calculation based on the Federal minimum wage. We consciously chose the Federal minimum wage because it allows States with higher State minimum wages to count more hours of employment than if the calculation were based on the higher of the two. This also provides consistency in the treatment of self-employment hours across States.

Homework Time

*Comment:* Several commenters suggested that limiting homework or study time to supervised settings does not reflect the way educational programs work. They noted that most adult education and training programs require significant out-of-class homework and study time, but, unlike secondary school where supervised ''study halls'' are common, many postsecondary programs do not have supervised study settings. They explained that students who do not finish their homework cannot make satisfactory progress and successfully complete their courses of study; thus, they maintained, a supervised homework policy is not necessary. In addition, they thought that requiring formal study periods creates administrative burdens on educational institutions and increases program costs related to providing supervision and child care for parents who must stay longer in study sessions rather than completing the work at home. Finally, commenters contended that singling TANF recipients out for special study sessions might increase stigma by identifying them as welfare recipients. Some commenters did not like the implication of the preamble language, saying that it suggested that TANF participants in educational activities cannot be trusted to complete homework assignments and to study the material as needed to succeed in the training or educational program.

Several commenters emphasized the administrative value of having an easy way to determine the number of hours of participation that can count for homework. They noted that most educational programs have a ''rule of thumb'' for the number of homework hours associated with each class hour and suggested that State education agencies can assist TANF programs in assessing the appropriate number of homework or study hours. Commenters proposed a wide range of ratios of class time to homework time, generally ranging from a half hour to two hours of homework time for every hour of class time.

Some commenters expressed concern that the daily supervision requirement for unpaid work activities would mean that program administrators or some other responsible third-party would have to monitor homework on a daily basis.

*Response:* We agree with many of these comments. In § 261.60(e) of the final rule, we have expanded State flexibility in counting homework time. The rule now permits a State to count supervised homework time and up to one hour of unsupervised homework time for each hour of class time. Total homework time counted for participation cannot exceed the hours required or advised by a particular educational program. It was never our intent in the interim final rule to have an individual participate in more hours of supervised homework than the program actually requires, but the rule was not explicit on this point. Where the State opts to count homework time, it must document what the homework or study expectations of the program are to ensure it does not exceed those hours.

*Section 261.61 How must a State document a work-eligible individual's hours of participation?*

This section of the interim final rule described the documentation standards that a State must meet for its work participation data. In particular, it included an explicit requirement that a State verify through documentation in the case file all hours of participation that it reports. It also specified the types of documentation we expected a State to require for each activity. The preamble to the interim final rule stated that a State may not report data to us on the basis of ''exception reporting'' where it assumes that clients participate in all scheduled hours unless it receives a report to the contrary from a service provider.

The interim final rule also permitted States to report projected actual hours of unsubsidized or subsidized employment or OJT for up to six months at a time on the basis of prior, documented actual hours of work. Although this section did not address the frequency of documentation for other activities, the preamble to § 261.62 of this subpart explained that we expected a State's Work Verification Plan to describe the documentation it uses to monitor participation and ensure that it reports actual hours of participation. We explained that we were establishing a

range of documentation guidelines that vary by type of activity. We expected job search and job readiness assistance to be documented daily and other unpaid work activities to be documented no less than every two weeks.

In the final rule we have reiterated our position that all hours of participation must be reported affirmatively and supported by documentation in the case file, but we no longer require daily documentation of job search and job readiness assistance or biweekly documentation of other unpaid work activities. All paid activities must include written documentation of hours of employment. Wage stubs and other employer-produced documents are the best sources of verifiable documentation of paid hours. All unpaid activities should rely on written, signed documents to support hours of participation. Generally, documents verifying actual hours of participation should include: the participant's name; actual hours of participation; the name of the work site supervisor, educational provider, or other service provider; and the name and phone number of the person verifying hours.

We also moved the provision permitting projection of hours that was formerly at § 261.61(c) to § 261.60(c) because it fit better under the rubric of reporting hours than it did under documenting hours. However, we have incorporated in this section a provision specifying the documentation standards when a State projects hours of employment. We have also explained that the documentation for homework must include a statement about the amount of homework or study time advised by the particular educational program. Finally, we reorganized the section for clarity.

Documenting All Hours of Participation

*Comment:* Several commenters objected to the interim final rule's prohibition on the use of ''exception reporting.'' They explained that this is not the same as reporting scheduled hours and noted that many States have contracts with providers that include exception reporting and that such reporting ''reduces the administrative burden of reporting while maintaining accountability.''

*Response:* We continue to believe that a State should affirmatively determine that an individual participates in an activity in order to count such participation toward the work participation rates. Exception reporting systems may operate effectively in automated or well-documented reporting situations; however, we prohibited their use on the basis of concerns raised by single audits. Without an adequate system of recordkeeping or documentation, it is impossible to determine whether reports are appropriately filed when a client fails to show up or meet the day's participation requirements.

Documenting Paid Employment

*Comment:* Most commenters supported the interim final rule's provision allowing States to project actual hours of employment for up to six months based on current, documented actual hours of unsubsidized employment, subsidized employment, and OJT. Most commenters appreciated that this significantly reduced the burden on employers and recipients and was less stigmatizing for recipients. One commenter noted that the description of this provision at § 261.61(b) seemed to limit this policy to ''unsubsidized employment,'' rather than all forms of paid employment.

*Response:* We have retained this provision in the final rule and clarified that the documentation requirements described apply to all forms of paid employment, whether unsubsidized or not.

Documenting Unpaid Activities

*Comment:* Some commenters said that the rules impose rigid monitoring and burdensome reporting requirements for individuals in unpaid activities. One commenter asserted, ''Frequent demands for proof of participation subject families to loss of assistance.'' Another commenter explained, ''The goal of these requirements is to ensure that the data reported about work participation is accurate, not to create administrative burdens on recipients that create barriers to participation and aid receipt for families.''

*Response:* We believe the final rule provides a reasonable balance between the need for accurate information and the burden inherent in documenting hours of participation. For example, under the final rule, we allow States to count an hour of unsupervised homework time for each hour of class time, thereby reducing the reporting and monitoring requirements for those individuals in various educational activities. Moreover, while the rule does require States to document participation through methods beyond client self-reporting, these have been requirements all along. We appreciate that such procedures may pose challenges in some situations, but they serve to substantiate actual hours of participation and protect the State in the event of an audit.

*Comment:* Many commenters opposed the daily and two-week documentation requirements. They noted that the statute requires States to report information on a monthly basis and recommended that documentation requirements conform to the same monthly time frame. They suggested that the standards of documenting participation ''daily'' and ''every two weeks'' in the interim final rule were ''too prescriptive and will be onerous for activity providers and local TANF program administrators.'' They observed, ''Increasing reporting requirements will force providers to dedicate additional resources to data tracking, often at the risk of depleting resources from another program function such as case management. The more time staff must spend compiling data, the less time they have to assist clients.'' In addition, several commenters asked for clarification regarding the specifics of what must be in the case file, including whether each file must include a hard copy of all individual attendance records. The commenters recommended allowing States to ''create a central or electronic file that would meet the purpose of documenting attendance.''

*Response:* We agree with the commenters and have changed our policy accordingly. The documentation must be available in the case file to support all the actual hours of participation it claims in the monthly work participation data it reports. A State should describe in its Work Verification Plan the documentation it uses to monitor participation and ensure that it reports actual hours of participation. This may include electronic records.

*Comment:* One commenter asked us to ''clarify that, while job search and job readiness participation must be supervised and recorded daily, the documentation of participation does not need to be submitted to the State agency more frequently than monthly.''

*Response:* We agree with this comment. While supervision of participation must occur on a daily basis, States report monthly participation data for job search and job readiness assistance with all other participation data and the documentation in the case file must support what the State reports.

*Comment:* Several commenters asked us to clarify the types of documentation needed to substantiate homework time.

*Response:* The final rule allows a State to count up to one hour of unsupervised homework for each hour

of class time, if the educational program calls for such homework time. The only documentation that is required for unsupervised homework time is a statement from the educational program indicating the amount of homework required. For supervised homework, we require this same documentation along with a time sheet or record of attendance signed by the individual supervising the activity.

*Comment:* One commenter urged us to use the same verification standards for self-employment as we allow for other forms of employment. Another commenter noted that States have developed a variety of mechanisms for monitoring self-employment and that ''all or nearly all of these mechanisms rely on various types of self-reporting by the participant.'' The commenter asserted that ''the issue is not self-reporting, but rather the type of self-reporting documentation and level of detailed required,'' expressing concern that additional verification requirements would impose a significant administrative burden on States.

*Response:* We believe a different standard is warranted because self-employment is not analogous to other forms of employment. With self-employment, there is no pay stub, no supervisor, and no employer whose interests are distinct from the employee. It is because self-employment differs so dramatically from other forms of employment that we required States to explain in their Work Verification Plans how they will document hours of work and preclude the use of self-reporting.

*Section 261.62 What must a State do to verify the accuracy of its work participation information?*

The interim final rule described the requirements for a Work Verification Plan. Although some commenters expressed concern about the burden associated with meeting these requirements and the timeframe for doing so, we did not change the final rule. We explained that States should already have verification, documentation, and internal control procedures in place to support the work participation data they report and that the new requirements should not pose a significant administrative burden.

*Comment:* We received several comments concerning the burden the Work Verification Plan and the underlying documentation and verification requirements placed on States.

*Response:* States should already have verification, documentation, and internal control procedures in place to support the work participation data they report. The Work Verification Plan requirements reflect the Congressional mandate in the DRA that States report to us in a Work Verification Plan what those procedures are. This should not represent an undue burden for States.

*Comment:* One commenter recommended that we avoid recreating a quality control system as we ensure State compliance with the work verification requirements of the DRA. The commenter expressed concern that such a system could focus State efforts more on reducing documentation errors than on helping recipients enter the workforce.

*Response:* One goal of TANF is to enable recipients to prepare for and enter employment leading to self-sufficiency. Documentation and verification requirements should never detract from that goal. However, accurate documentation is key to determining whether States are meeting this goal. We think we have structured a rule that minimizes the burden of documentation while meeting our responsibility to be good stewards of Federal funds and programs.

*Comment:* One commenter urged us to correct regulatory language that requires States to describe how they determine the number of countable hours of self-employment under each countable work activity. The commenter noted that this appeared to be a drafting error, since self-employment cannot count under all the activities.

*Response:* The commenter is correct and we have modified the rule accordingly. States must only describe how they determine self-employment hours under unsubsidized employment. Nevertheless, the Work Verification Plan must describe how the State determines countable hours for each activity.

*Comment:* One commenter noted there was ''Insufficient time for states to retool and meet new requirements by October 1, 2006. New documentation, monitoring, and reporting requirements place heavy burdens on caseworkers, providers, and our state's computer tracking system. States were informed of the interim rules and new requirements on June 29, 2006.''

*Response:* For many States, the Work Verification Plan that was due on October 1, 2006, was a description of longstanding documentation, verification, and internal control systems and did not require new procedures. We do not have the authority to modify the statutory deadline for States to submit the Work Verification Plan; however, we have delayed imposition of a penalty for failure to maintain adequate documentation, verification, or internal controls until FY 2008.

*Comment:* Several commenters suggested that States use information contained in the National Directory of New Hires (NDNH) not only for the purpose of tracking work participation rates, but also for additional purposes. For example, one commenter suggested that we require States to use NDNH information to identify circumstances in which actual hours of work change. Another commenter recommended that we make each State's NDNH match results available to all States for comparison purposes.

*Response:* While we appreciate these recommendations, the uses of the NDNH are restricted by law. The law prohibits the use or disclosure of information in the NDNH, as well as information resulting from NDNH comparisons, except as expressly provided. The use of NDNH information for verification of work participation purposes is a permissible use, as it is a program responsibility of the State TANF agency. Matches for this purpose may occur only to the extent and with the frequency that the Secretary of HHS determines to be effective in assisting States to carry out their responsibilities under the TANF program. Access to confidential information in the NDNH is restricted to authorized persons and the use of such information is limited to authorized purposes. Any misuse of NDNH information is subject to penalty.

*Comment:* One commenter questioned the benefit of using NDNH data to calculate work participation rates. The commenter stated that a pilot in two urban counties of one State indicated that NDNH data were not useful for the intended purpose, because not all employers provided NDNH data and the data pertain to new employees only, not ongoing employment. The commenter urged us to acknowledge that the NDNH is not a panacea.

*Response:* We agree that the NDNH has limitations in contributing to work participation data, particularly because it does not collect the number of hours of employment. However, we would like to note that the NDNH does contain quarterly wage data about individuals engaged in ongoing employment, as well as information about newly hired employees, which the State may not be able to obtain as quickly and efficiently from any other source. The Federal Office of Child Support Enforcement, which manages the NDNH, is committed to working closely with State TANF agencies to help agencies understand the NDNH and how the data may be used for optimal results. To conduct a data match between its data

and NDNH data, for purposes of verifying work participation, a State TANF agency must enter into a written Memorandum of Understanding (MOU) with the Federal Office of Child Support Enforcement. The MOU addresses the terms and conditions governing the data match and the security measures required for safeguarding NDNH match results. NDNH data may only be used for certain narrowly defined purposes, including assisting States in carrying out their responsibility under the federally-funded TANF program to establish and maintain work participation procedures. NDNH data may not be used to determine eligibility in State MOE or solely State-funded programs.

*Section 261.63 When is the State's work verification plan due?*

In accordance with the Deficit Reduction Act of 2005, our interim final rule required each State to submit an interim Work Verification Plan that included procedures for validating reported work activities to the Secretary no later than September 30, 2006. A State must submit revisions requested by the Department within 60 days of receipt of our request, and must submit and operate under an approved Work Verification Plan no later than September 30, 2007. If a State modifies its verification procedures for TANF or SSP–MOE work activities or internal controls for ensuring a consistent measurement of the work participation rate, then the State must submit for approval an amended Work Verification Plan by the end of the quarter in which the State modifies the procedures or internal controls. We have retained these provisions in the final rule.

We received no comments on this section, so we have not made any substantive changes to the provision.

*Section 261.64 How will we determine whether a State's work verification procedures ensure an accurate work participation measurement?*

The DRA added a new penalty to section 409(a)(15) of the Social Security Act for a State that fails to establish or maintain adequate work participation verification procedures. The interim final rule outlined the two-part penalty. First, a State will be liable for a penalty if it fails to submit an interim Work Verification Plan by September 30, 2006, and a plan that we have approved by September 30, 2007. Second, effective October 1, 2007, States must maintain adequate internal controls and verification procedures to ensure that reported work participation data is accurate.

We will use the single audit under OMB Circular A–133 in conjunction with other reviews, audits, and data to determine whether the State's controls and procedures result in accurate data. A State must maintain case documentation and pertinent findings of its verification process for use by the single audit or other reviews.

Readers should note that we revised the title of this section and of § 261.65 of this part to be more concise.

*Comment:* We received a couple of comments that expressed concern over the burden imposed by maintaining case file documentation and findings until a single audit is resolved.

*Response:* The DRA and our interim final rule did not change the record retention and record access rules that apply to TANF. These separate rules are in 45 CFR 92.42. These requirements apply to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or sub-grantees. Records must be retained for three years, or longer, if any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period. If extended, records must be retained until all issues have been resolved. We issued Program Instruction TANF–ACF–PI–2003–1, dated January 28, 2003, to clarify the start date of the three-year record retention period for Federal TANF funds and State MOE expenditures. For Federal TANF awards, the record retention period starts on the day the grantee submits its final expenditure report showing that all the funds awarded in the particular Federal fiscal year have been expended. For State MOE expenditures, the record retention period starts on the day the State submits its final expenditure report for a Federal fiscal year.

*Comment:* One commenter asked whether HHS or the single audits will use a threshold or a specified percentage to determine whether the State had inadequate controls and procedures for accurate work participation data.

*Response:* As under the original rule, we will not impose a penalty based on isolated failures to document and verify work participation information reported to HHS. We will impose a penalty if the audit or review identifies a systemic problem or weakness. To ensure that our conclusion is not based on incorrect information, it is critically important for States to dispute ''questioned'' audit findings and refute the allegation with appropriate documentation. States also have the opportunity to dispute our penalty finding, to claim reasonable cause, and to submit a corrective compliance plan to correct the deficiency.

*Comment:* One commenter expressed concern that a State that submits participation data for the universe of cases would be at a disadvantage in an audit or review compared to a State that submits sample data. The commenter suggested that ''States reporting on all participants be allowed to pull their own samples for audit based on general ACF guidelines.''

*Response:* Auditors must follow prescribed procedures for conducting audits regardless of whether the State submits universe or sample data. They use the sample standards of the American Institute of Certified Public Accountants (AICPA) and the GAO auditing standards. In addition, we provide them with a compliance supplement to guide their review of our programs.

*Section 261.65 Under what circumstances will we impose a work verification penalty?*

Under our interim final rule, the penalty amount is based on the State's degree of noncompliance and is equal to an amount of not less than one percent and not more than five percent of the State's adjusted SFAG. We will impose the maximum penalty of five percent if a State fails to submit its interim Work Verification Plan by the due date of September 30, 2006, or if it fails to revise its procedures based on Federal guidance and submit the complete plan by September 30, 2007. This is because the State will not have complied with the fundamental requirement to establish a Work Verification Plan. But, States must also implement the procedures. If we determine that a State fails to maintain adequate documentation, verification, and internal control procedures, we will impose a penalty based on the number of years of noncompliance, i.e., one percent of the adjusted SFAG for the first year, two percent for the second year, three percent for the third year until a maximum of five percent is reached. If, after any failure, a State demonstrates effective work verification procedures for two consecutive years, then we will consider any future failure to be the first occurrence.

Readers should note that we revised the title of this section and of § 261.64 of this part to be more concise.

We only received a few comments on this section of the interim final rule. The comments mainly concerned the distinction between this penalty and the penalty for failing the work participation rate(s) and the criteria that a State must meet to comply with the

work verification requirements for any given year.

*Comment:* One commenter asked whether the work verification penalty applies if a State operates its work participation verification system poorly.

*Response:* If we determine that any of the State's procedures is inadequate, a penalty could result. Once a State has an approved Work Verification Plan, the penalty is based on whether the internal controls and verification procedures ensure consistent and accurate work participation rates. A State's system of internal controls and verification procedures includes a whole array of activities, such as: ensuring that it counts only work activities that are consistent with the Federal definitions; verifying and monitoring actual hours of participation; identifying work-eligible individuals; and validating the accuracy of the data reported. All of these factors contribute to an effective internal control system.

*Comment:* Some commenters asked us to clarify the distinction between the penalty for failure to meet the work participation rate and the work verification penalty.

*Response:* These are two completely separate penalties established by the statute. A State could meet its required work participation rates and still risk imposition of the work verification penalty as a result of inadequate work verification procedures and/or internal control procedures. Similarly, a State could fail a work participation rate but meet the work verification requirements. We expect States to review and monitor their processes and procedures regularly to ensure the accuracy of the data used in calculating the work participation rates.

*Comment:* Several commenters asked about the criteria that a State must meet to be found in compliance with the work verification requirements for any given year. For example, one commenter inquired whether a State must be error-free or, alternatively, required to stay below a specific threshold. The commenter also asked whether a State that responded to errors appropriately and timely in an agreed-upon manner would be considered to be in compliance.

*Response:* States must maintain adequate documentation, verification, and internal control procedures to ensure the accuracy of the data used in calculating the work participation rates. We will determine through audits or other reviews whether the State has adequate controls. Our penalty determinations will be made only after fully considering the auditor's findings, the State's reply, if any, to the auditor's findings, and any other reports, audits, and data sources, as appropriate. We will also consider the controls the State has in place and actions the State takes to review and to address any problems so that the State's work verification procedures and internal controls are working properly. We will not impose a penalty based on non-systemic errors.

*Comment:* Some commenters suggested alternative penalty structures, finding the structure in the interim final rule to be too severe. For example, one commenter suggested that ''ACF apply a 2nd or subsequent year penalty only for the repetition of an error penalized in the 1st year. In other words, if ACF determined that a state's internal control procedures were inadequate and imposed a 1% penalty in the 1st year, and then found that the state did not maintain adequate documentation in the 2nd year, the 2nd year penalty would again be 1% since it involved a separate error. Any penalty should be lifted after the state has complied with the work verification procedures for one full year, not two.''

*Response:* While we understand the commenter's concern, the work verification requirements were imposed by Congress to ensure that States implement procedures to ensure accurate and consistent work participation data. We also note that the requirement to document and verify work participation information is not new. States were always required to comport with the accurate and complete data standard at § 265.7 under the existing regulations. Our penalty structure represents a reasonable, graduated approach, increasing only by the number of years of failure (degree of noncompliance). We do not believe it would be appropriate to treat a subsequent year of failure for another reason as if the prior failure had not occurred. Therefore, we have not accepted this recommendation.

**V. Part 262—Accountability Provisions—General**

The DRA added an additional penalty at section 409(a)(15) of the Social Security Act for States that fail to establish or comply with work participation verification procedures. The interim final rule clarified that if a State failed to comply, we would reduce the adjusted SFAG payable for the immediately succeeding fiscal year by not less than one percent and not more than five percent. A State that fails to meet the work verification requirements may claim reasonable cause or submit a corrective compliance plan under the procedures described in §§ 262.4–262.7 of this chapter. If we impose the penalty, we will reduce the SFAG payable for the immediately succeeding fiscal year.

*Section 262.1 What penalties apply to States?*

We received no comments on this section, so we have made no changes to the provision.

*Section 262.2 When do the TANF penalty provisions apply?*

The penalty for failing to establish and submit a Work Verification Plan takes effect on October 1, 2006. The penalty for failing the ongoing requirement to maintain adequate work verification procedures takes effect on October 1, 2007.

*Comment:* Several commenters noted that many States will not have time to legislate the changes needed to comply with the new rules by October 1, 2006, and urged ACF to withhold penalties until States have a reasonable amount of time to pass legislation. For example, one commenter noted that, in order for the State to comply fully with the requirements may take both legislative and automation changes. Since that State's legislature does not meet until January 2007, the commenter encouraged ACF to take these factors into consideration.

*Response:* We are sensitive to the fact that some States must make both legislative and automation changes to implement the new DRA requirements. There are several recourses available to States to avoid or mitigate financial penalties. Under this rule, we have delayed the imposition of a penalty for inadequate work verification procedures until FY 2008 as one way to address this concern. Under prior, continuing law and regulations, there are a number of remedies available to a State that is potentially liable for a penalty. If we issue a penalty notice to a State, the State may submit a reasonable cause argument outlining the specific legislative provisions that it needed and the impact of the delay in getting such provisions through the legislative process. We will consider granting a reasonable cause exception if a State can demonstrate that it was impossible to meet the requirements absent such legislation. Also, the State may submit a corrective compliance plan to meet the requirements at a future time. This will allow States additional implementation time. We look forward to working cooperatively with States to help them operate effective programs, ensuring that they can submit timely, accurate data and avoid financial penalties.

*Section 262.3 How will we determine if a State is subject to a penalty?*

In the interim final rule, we explained that we would use the single audit under OMB Circular A–133 in conjunction with other reviews, audits, and data sources to assess whether the State maintained adequate controls and procedures to ensure accurate data are reported to calculate work participation rates.

We received no comments on this section, so we have made no changes to the provision.

*Section 262.6 What happens if a State does not demonstrate reasonable cause?*

*Comment:* A significant number of commenters proposed that we grant reasonable cause exemptions to States that have not completed a legislative session since the publication of the interim final TANF regulations on June 29, 2006, both for failure to meet the work participation rates and failure to maintain adequate work verification procedures. One commenter contended that elements of the Work Verification Plan will require more staff, resources, and additional system support than are currently funded within the State's existing budget. Others suggested that the rule should provide ''phase-in time'' to comply with the new requirements or to respond to delays in adjusting the participation requirements or adding parents to the requirements.

*Response:* We do not have the authority to adjust or modify the statutory participation requirements or rates. While we recognize that this rule may impose new requirements on States, few of them require actual legislative action. With respect to work verification requirements, our rule permits the Work Verification Plan to be phased-in over time and to be revised in future months. But, to give meaning to the participation rate requirements, the State must have adequate procedures and internal controls in place by October 1, 2007. The State may amend its Work Verification Plan at any time during the course of the fiscal year in accordance with § 261.63(c) of this chapter. While we have not created an automatic reasonable cause exemption, any State that fails the work participation requirements or work verification requirements may avail itself of the penalty resolution process described in §§ 262.4–262.7 of this chapter. This allows a State to outline the basis of its request for a reasonable cause exception for failing to meet a requirement, including the argument that lack of timely State legislation caused it to fail to meet the requirement.

## VI. Part 263—Expenditures of State and Federal TANF Funds

*Subpart A—What Rules Apply to a State's Maintenance of Effort?*

Section 263.2 What kinds of State expenditures count toward meeting a State's basic MOE expenditure requirement?

The Deficit Reduction Act of 2005 retained the same MOE spending levels required in PRWORA; however, it also added a new provision, ''Counting of Spending on Certain Pro-Family Activities'' at section 409(a)(7)(B)(I)(V) of the Social Security Act. We included this provision in § 263.2(a)(4) of the interim final rule to allow States to count non-assistance expenditures on pro-family activities if the expenditure is reasonably calculated to prevent and reduce the incidence of out-of-wedlock pregnancies (TANF purpose three), or to encourage the formation and maintenance of two-parent families (TANF purpose four). Under this provision, non-assistance, pro-family expenditures for benefits and services were not limited to ''eligible'' families (as defined in § 263.2(b)), which under prior rules, was a limitation on all MOE spending. Instead, States could claim qualified pro-family expenditures for non-assistance benefits and services provided to or on behalf of an individual or family, regardless of financial need or family composition.

In developing the final rule, based on comments we received, we reconsidered the scope of the pro-family claiming provision. We have concluded that ''Counting of Spending on Certain Pro-Family Activities'' within TANF purposes three or four means counting of non-assistance expenditures on only the activities enumerated in the healthy marriage promotion and responsible fatherhood section of the DRA (sections 403(a)(2)(A)(iii) and 403(a)(2)(C)(ii) of the Act)—unless a limitation, restriction or prohibition under this subpart applies. For other allowable expenditures within TANF purposes three or four, States may only claim toward their MOE requirement the portion expended for or on behalf of eligible families. We have amended the pro-family claiming provision at § 263.2(a)(4) to specify which non-assistance, pro-family expenditures within TANF purposes 3 or 4 are *not* limited to eligible families.

With the exception of the pro-family claiming provision discussed above, States must continue to limit the provision of all other MOE-funded assistance and non-assistance benefits to eligible families as defined at § 263.2(b), regardless of the TANF purpose. We remind readers that Federal TANF assistance is also limited to eligible families, regardless of the TANF purpose.

Congress also created new TANF discretionary funding streams (Grants for Healthy Marriage Promotion and Responsible Fatherhood) in the DRA. These funds are in Title IV–A, sections 403(a)(2)(A)(iii) and 403(a)(2)(C)(ii) of the Social Security Act. Under MOE, States may count qualified expenditures that are made as a condition of receiving Federal funds under Title IV–A toward their MOE requirement. For FY 2006, Healthy Marriage Promotion and Responsible Fatherhood grantees had to contribute a matching share of the total approved costs of a project as a condition of receiving any of the Federal discretionary funds. Thus, a State may count these State expenditures, when made on allowable activities under the Healthy Marriage Promotion and Promoting Responsible Fatherhood programs, toward its MOE requirement, unless a limitation, restriction, or prohibition under this subpart applies. This provision is outlined in § 263.2(g).

The regulations at 45 CFR part 92 on matching or cost-sharing requirements permit States to count toward their MOE requirement qualified, non-Federal, cash or in-kind expenditures by a third party. For example, this may include Healthy Marriage and Responsible Fatherhood providers in a State. As set forth in the policy announcement, TANF–ACF–PA–2004–01, dated December 1, 2004, and repeated in the interim final rule at § 263.2(e), we require an agreement in writing between the State and any third party allowing the State to count such expenditures toward its MOE requirement. This policy was initially explained in a policy announcement, TANF–ACF–PA–2004–01, dated December 1, 2004 and repeated the policy in the interim final rule at § 263.2(e).

*Comment:* We received several comments of concurrence and appreciation for clarifying these provisions. One commenter asked us to clarify whether ''pro-family'' expenditures are limited to TANF eligible families, or whether it is broader and may include other low-income families. Other commenters wondered whether countable expenditures for activities like pre-K or after-school programs fall under the new pro-family claiming provision.

*Response:* When Congress created the expanded pro-family spending provision, it limited the provision to ''certain pro-family activities.'' Moreover, it created this new provision

as part of the section of the DRA titled ''Grants for Healthy Marriage Promotion and Responsible Fatherhood.'' In reevaluating our rule to respond to these comments, we have concluded that this placement signaled Congressional intent that ''certain'' pro-family activities means the healthy marriage promotion and responsible fatherhood activities it described in this section of the DRA. Thus, the final rule limits pro-family activities for the purposes of this new provision to the healthy marriage activities listed in section 403(a)(2)(A)(iii) of the Act and the responsible fatherhood activities listed in section 403(a)(2)(C)(ii) of the Act, unless a limitation, restriction, or prohibition under this subpart applies to any such activity. These are the only expenditures within TANF purposes three or four that are *not* limited to eligible families.

We recognize that this additional claiming provision became effective on October 1, 2005 (FY 2006). We further recognize that, since publication of the interim final rule, States may have been claiming toward their MOE requirement a whole array of non-assistance expenditures—e.g., after-school programs, pre-K programs, college scholarship programs—as a result of this new provision. This is because we presented this new claiming provision in the interim final rule in a general way. As a result, we have advised States that, until we publish the final rule, they may draw their own reasonable conclusions as to the sort of pro-family expenditure within TANF purpose three or four to claim under this new provision. Therefore, this amended provision will be effective with the effective date of this final rule.

In summary, with the exception of the pro-family, non-assistance expenditures described above, States may only claim toward their MOE requirement expenditures for or on behalf of eligible families. We remind readers that an eligible family is a financially needy family that consists of, at a minimum, a child living with a caretaker relative or consists of a pregnant woman. Please see § 263.2(b) for further information on eligible families.

*Section 263.5 When do expenditures in State-funded programs count?*

Due to an oversight on our part, we did not include this section in the interim final rule. It addresses the MOE ''new spending'' limitation in section 409(a)(7)(B)(i)(II) of the Social Security Act, which continues to apply. States may only count, for MOE purposes, expenditures in pre-existing State or local programs that exceed the amount expended in such programs during FY 1995. The original TANF rule provides that the new spending amount is determined by comparing total FY 1995 expenditures in the pre-existing program with total qualified expenditures for or on behalf of eligible families during the current fiscal year. The State may claim the excess, if any, toward its MOE requirement. This new spending limitation does not apply to expenditures under State or local programs that had been previously authorized and allowable under the State's former title IV–A programs in effect as of August 21, 1996.

*Comment:* A commenter noted an inconsistency between § 263.2 of the interim final regulations and this ''new spending'' section. One allows States to claim as MOE, expenditures for pro-family activities, regardless of whether a family is financially ''eligible'' or not, but, the ''new spending'' test still refers only to ''eligible'' families. The commenter suggested that the new spending calculation needed to be changed to count qualified, pro-family, non-assistance expenditures within TANF purposes three or four.

*Response:* We agree with the commenter. This was an oversight. We have amended the new spending provision at § 263.5(b). The amount of expenditures that may be claimed for MOE purposes is limited to the amount by which total current fiscal year expenditures for certain non-assistance, pro-family activities within TANF purposes three or four exceed total State expenditures in the program during FY 1995. Readers should refer to the discussion of § 263.2 for more detail on counting these pro-family expenditures.

Section 263.6 What kinds of expenditures do not count?

As we stated in the preamble of the interim final regulations, the Deficit Reduction Act of 2005 did not change the prohibition at section 409(a)(7)(B)(iv)(IV) of the Social Security Act. This provision prohibits States from counting expenditures made ''as a condition of receiving Federal funds *''other than under this part''* toward its TANF MOE requirement. Because paragraph (c) of our original rule did not accurately reflect this prohibition, we corrected it to say that the prohibition only applies to expenditures that a State makes as a condition of receiving Federal funds under another program that is not in Part IV–A of the Act. States may count the non-Federal share of expenditures on allowable activities under the healthy marriage promotion or promoting responsible fatherhood programs in sections 403(a)(2)(A)(iii) or 403(a)(2)(C)(ii) of the Act, unless a limitation, restriction or prohibition under this subpart applies.

We received no comments on this section; thus, it has been retained without change in the final rule.

**VII. Part 265—Data Collection and Reporting Requirements**

Section 411(a) of the Social Security Act imposes specific data reporting requirements on States to provide information about program effectiveness and to assure State accountability for key requirements, including work participation. Section 411(a)(7) permits the Secretary to prescribe such regulations as may be necessary to define the data elements required in the reports mandated by section 411(a). The Deficit Reduction Act of 2005 added these same data collection requirements for cases receiving assistance in separate State programs.

*Section 265.1 What does this part cover?*

We received no comments on this section and made no changes to it in the final rule.

*Section 265.2 What definitions apply to this part?*

We received no comments on this section and made no changes to it in the final rule.

*Section 265.3 What reports must the State file on a quarterly basis?*

*Section 265.3(b) TANF Data Report*

We have made some changes to the TANF Data Report—Section one. In order to implement the policy on deeming core hours for the overall work participation rate and the two-parent work participation rate, we are adding two data elements to the TANF Data Report—Section one. The new data elements are: (1) ''Number of Deemed Core Hours for the Overall Rate''; and (2) ''Number of Deemed Core Hours for the Two-Parent Rate.'' Tennessee is the only State with an ongoing 1115 welfare reform waiver and the waiver ends on June 30, 2007. Thus, we are removing two data elements from the TANF Data Report—Section One that we no longer need. The data elements are: (1) ''Additional Work Activities Permitted Under Waiver Demonstration''; and (2) ''Required Hours of Work Under Waiver Demonstration.''

*Comment:* One commenter stated that we require extensive and detailed disaggregated data in the TANF Data Report—Section One, including individual social security numbers, and commented that collecting social

security numbers does not serve any useful research purpose. The commenter expressed concern for the privacy of individuals and further suggested that we should be collecting data on the well-being of children.

*Response:* Collecting social security numbers is an existing requirement. We have been collecting the social security numbers for TANF family members since October 1999. This information is protected by the safeguards under the Privacy Act. The TANF recipient social security numbers are encrypted during data transmission, maintained in a secure location and use and access to them is limited. We have found them very useful in our research, especially as it relates to the use of the National Directory of New Hires database to assess the impact of welfare reform on TANF recipients using such measures as job entry, job retention, and earnings gain. We do not have statutory authority to collect additional data on the well-being of children; the statute limits the data that the Department can collect.

*Comment:* One commenter requested that we make the new data file layouts and caseload reduction forms available as quickly as possible due to the reprogramming needs of our State reporting. The commenter further requested that, following the sorting of participation reports, we give States a spreadsheet showing which participants did not meet the participation rates so that they can better manage participation and address particular areas of need.

*Response:* We already have made the data file layouts and caseload reduction credit forms, based on the interim final rule, available to the States in a timely manner. We will also make available to States any changes to these forms based on the final rule as quickly as possible. We have in the past made available and will continue to make available in the future a file showing on a case-by-case basis which families are counted as participating and which ones are not, upon request from a State.

*Comment:* One commenter noted that the adult work participation activities fields in Section 1 of the TANF Data Report did not have enough significant digits to determine whether someone meets the work participation requirements. The commenter wrote, ''If a person participates for 1 or 2 hours a month in an activity, the field for that activity will contain average weekly hours of 0. Those 1 or 2 monthly hours, in combination with other countable activities may result in successful participation. For example, 2 monthly hours in Work Experience plus 83 monthly hours in Unsubsidized Employment result in 85 monthly hours, or 19.6 total average weekly hours. That rounds to 20 average weekly hours. That is successful participation for a single parent with a child less than age 6. This case should be in the numerator and denominator of the overall work participation rate. However, under current reporting protocol, this case is not included in the numerator because the sum of the individual activities is only 19.''

*Response:* If we use more significant digits to collect the data, there would be no need to round the final result to the nearest whole number. The commenter is using the 4.33 weeks per month. The 2 hours converts to 0.4618 hours per week and the 83 hours converts to 19.1686 hours per week. If we had collected the data with two digits after the decimal place, the State would have reported 0.46 and 19.17 hours per week. The sum would be 19.63 hours per week, which is less than the 20 hours per week required. Requiring States to report the average hours per week of participation with more digits would increase reporting burden and not provide us with an additional benefit.

*Section 265.3(d) SSP–MOE Data Report*

We received no comments on this subsection of the regulation.

*Section 265.4 When are quarterly reports due?*

We received no comments on this section, so we have made no changes to the provision in the final rule.

*Section 265.7 How will we determine if the State is meeting the quarterly reporting requirements?*

Although the interim final rule did not include this section of the TANF regulations, we have added it to this final rule in order to respond to requests we received as part of the comment period to clarify the period of time during which States may revise work participation and caseload data.

The original TANF regulations at § 265.7(b) defined the ''complete and accurate'' standard for reporting disaggregated data for the TANF Data Report. In describing this standard in the preamble to that April 12, 1999 final rule, we recognized the necessity for States to revise their quarterly data submissions occasionally. In practice, a number of States submit revised data after each quarterly submittal up to the due date for the final data submittal for the fourth quarter data for a fiscal year, i.e., December 31. We have decided to amend these final DRA regulations to recognize this practice. We are taking this action for two reasons. First, we want States to provide us with complete and accurate data and we recognize that States often receive data from a variety of sources that require correction of submitted quarterly data. Second, we define a ''work-eligible individual'' under rule at § 261.2(n)(iii) to exclude at State option a recipient of Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI). States have informed us that the SSI/SSDI application approval process is lengthy. We have advised States that they can remove retroactively work-eligible individuals that they included in the quarterly data submittal for a fiscal year who subsequently are approved for SSI or SSDI, so long as the data correction occurs by the end of the reporting for the fiscal year, i.e., December 31.

*Section 265.8 Under what circumstances will we take action to impose a reporting penalty for failure to submit quarterly and annual reports?*

We received no comments on this section, so we have made no changes to the provision in the final rule.

**VIII. Paperwork Reduction Act of 1995**

This final rule contains information collection requirements that have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Under this Act, no persons are required to respond to a collection of information unless it displays a valid OMB control number. If you have any comments on these information collection requirements, please submit them to OMB within 30 days. The address is: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: ACF/HHS Desk officer.

This final rule incorporates our response to comments regarding the reporting burden that we received in response to the interim final rule and Paperwork Notice we published on June 29, 2006. The rule requires States to submit a TANF Data Report, SSP–MOE Data Report, Work Verification Plan, and, if a State wants to request a caseload reduction credit, a Caseload Reduction Report. In addition, States must provide documentation in support of the caseload reduction credit, work verification, and the reasonable cause/corrective compliance documentation processes.

We considered comments by the public on these collections of information in:

- Evaluating whether the collections are necessary for the proper performance of our functions, including

whether the information will have practical utility;

- Evaluating the accuracy of our estimate of the burden of the collections of information, including the validity of methodology and assumptions used, and the frequency of collection;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., the electronic submission of responses.

We received only two comments from one individual specifically addressing the hour burden stated in the interim final rule. The commenter believed that we understated the burden associated with these new data reporting requirements, especially with respect to work verification requirements. In calculating the additional burden associated with the preparation and submission of State data verification procedures, we considered that States already had procedures in place to comport with the complete and accurate requirements under § 265.7 of the regulations.

The commenter also thought that we were requiring an unnecessary paper burden when electronic reporting would suffice. The commenter stated that § 261.61(a) of the interim final rule would, for example, require for 50 job search participants the copying and filing of 50 separate daily attendance sheets into individual case files, while a central or electronic file would meet the purpose of documenting attendance. We did not intend to preclude the use of a central or electronic file. States may use these kinds of files as long as they are available for the single audit and other reviews. Our burden estimates in the interim final rule took this into consideration.

In addition to considering the comments, we also made some changes to the TANF Data Report based on the need to implement the deeming of core hours in the final rule. As discussed in § 265.3, we are adding only two new data elements. Some burden hours will be required for programming of the State systems, but actual additional reporting burden hours should be minimal. In addition, total burden will be slightly offset by elimination of two data elements related to waivers. We estimate that the net additional burden averaged out over a period of a year will result in a net increase of eight hour per quarter per respondent for each of the two data reports. We show the adjustment in the following table.

The estimated burden hours for these information collections are:

| Instrument or requirement | Number of respondents | Yearly submittals | Average burden hours per response | Final rule total annual burden hours | Interim rule total annual burden hours |
|---|---|---|---|---|---|
| Preparation and Submission of Data Verification Procedures—§§ 261.60—261.63 | 54 | 1 | 640 | 34,560 | 34,560 |
| Caseload Reduction Documentation Process, ACF–202—§§ 262.4, 262.6, & 262.7; § 261.51 | 54 | 1 | 120 | 6,480 | 6,480 |
| Reasonable Cause/Corrective Compliance Documentation Process—§§ 262.4, 262.6, & 262.7; § 261.51 | 54 | 2 | 240 | 25,920 | 25,920 |
| TANF Data Report—Part 265 | 54 | 4 | 2,201 | 475,416 | 473,688 |
| SSP–MOE Data Report—Part 265 | 29 | 4 | 714 | 82,824 | 82,824 |

*Estimated total burden hours:* 625,200.

Copies of an information collection may be obtained by e-mailing the ACF Reports Clearance Officer at *robert.sargis@acf.hhs.gov* or 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.

## IX. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This rule will affect primarily the 50 States, the District of Columbia, and certain Territories. Therefore, the Secretary certifies that this final rule will not have a significant impact on small entities.

## X. Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this final rule is consistent with these priorities and principles. These regulations primarily implement statutory changes to TANF included in the Deficit Reduction Act of 2005.

## XI. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If an agency must prepare a budgetary impact statement, section 205 requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule consistent with the statutory requirements. Section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted.

The Department has determined that this final rule, in implementing the new statutory requirements, would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. The DRA maintains the basic funding structure and flexibility of the TANF program. For the next five years, the TANF block grant provides States with $16.5 billion in Federal funds and requires States to expend around $11 billion a year in State Maintenance of Effort (MOE) funds. Along with available, unobligated TANF balances, we believe States have adequate resources to achieve the DRA requirements. Fixed funding for States is based on welfare spending at the time of historic high caseloads, which have been reduced by half. States retain wide latitude to design their programs, to establish

eligibility criteria, benefit levels and the type of services and benefits to provide to TANF clients.

The Department estimates that between FYs 2008 and 2012, States will incur penalties of $62 million due to failure to meet work requirements. Our estimate assumes that most States will meet the work participation rates through a renewed focus on work and internal control systems. We do not anticipate assessing penalties under new requirements until FY 2009. States may also claim reasonable cause or enter into a corrective compliance process to eliminate or reduce the penalty amount. We estimate issuing penalties amounting to $0 in FY 2008, $20 million in FY 2009, $19 million in FY 2010, $19 million in FY 2011, and $4 million in FY 2012. Accordingly, we have not prepared a budgetary impact statement or prepared a plan for informing impacted small governments.

**XII. Congressional Review**

This regulation is not a major rule as defined in 5 U.S.C. Chapter 8.

**XIII. Assessment of Federal Regulations and Policies on Families**

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may negatively affect family well being. The Department has conducted this assessment and concluded that these final rules will not have a negative impact on family well being. This final rule promotes activities leading to work and self-sufficiency for low-income families and will thus have a positive impact on family well being.

**XIV. Executive Order 13132**

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. Consistent with Executive Order 13132, we specifically solicited comment from State and local government officials in the interim final rule. In addition, in concert with the National Governors Association (NGA), the American Public Human Services Association (APHSA), the National Conference of State Legislators (NCSL), and the National Association of Counties (NACo), we held five ''listening sessions'' across the country to which State and local executive and legislative officials were invited. During the ''listening sessions,'' ACF outlined the statutory and regulatory provisions associated with the DRA and offered the opportunity for attendees to ask questions and to submit comments which were recorded and considered in the final rule.

We seriously considered all comments in developing the final rule. We considered and carefully assessed each of the options and suggestions of commenters. In the end, we adopted those suggestions that we believe promote effective programs leading to self-sufficiency, while also reducing inconsistency in work measures. At the same time, the policies reflected in the final rule provide enough flexibility to States to address the varying needs and characteristics of TANF clients, including those with disabilities. To count and verify allowable work activities, States are offered guidelines that permit different types of documentation based on the type of work activity.

**List of Subjects in 45 CFR Parts 261, 262, 263, and 265**

Administrative practice and procedure, Day care, Employment, Grant programs—social programs, Loan programs—social programs, Penalties, Public assistance programs, Reporting and recordkeeping requirements, Vocational education.

Dated: January 29, 2008.

**Daniel C. Schneider,**

*Acting Assistant Secretary for Children and Families.*

Approved: January 29, 2008.

**Michael O. Leavitt,**

*Secretary of Health and Human Services.*

■ For the reasons stated in the preamble, the interim final rule amending 45 CFR chapter II published on June 29, 2006, (71 FR 37454) is confirmed as final with the following changes:

## PART 261—ENSURING THAT RECIPIENTS WORK

■ 1. The authority citation for part 261 continues to read as follows:

**Authority:** 42 U.S.C. 601, 602, 607 and 609.

■ 2. Revise § 261.2 to read as follows:

**§ 261.2 What definitions apply to this part?**

(a) The general TANF definitions at §§ 260.30 through 260.33 of this chapter apply to this part.

(b) *Unsubsidized employment* means full-or part-time employment in the public or private sector that is not subsidized by TANF or any other public program.

(c) *Subsidized private sector employment* means employment in the private sector for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing an individual.

(d) *Subsidized public sector employment* means employment in the public sector for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing an individual.

(e) *Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available* means a work activity, performed in return for welfare, that provides an individual with an opportunity to acquire the general skills, knowledge, and work habits necessary to obtain employment. The purpose of work experience is to improve the employability of those who cannot find unsubsidized full-time employment. This activity must be supervised by an employer, work site sponsor, or other responsible party on an ongoing basis no less frequently than once in each day in which the individual is scheduled to participate.

(f) *On-the-job training* means training in the public or private sector that is given to a paid employee while he or she is engaged in productive work and that provides knowledge and skills essential to the full and adequate performance of the job.

(g) *Job search and job readiness assistance* means the act of seeking or obtaining employment, preparation to seek or obtain employment, including life skills training, and substance abuse treatment, mental health treatment, or rehabilitation activities. Such treatment or therapy must be determined to be necessary and documented by a qualified medical, substance abuse, or mental health professional. Job search and job readiness assistance activities must be supervised by the TANF agency or other responsible party on an ongoing basis no less frequently than once each day in which the individual is scheduled to participate.

(h) *Community service programs* mean structured programs and embedded activities in which individuals perform work for the direct benefit of the community under the auspices of public or nonprofit organizations. Community service programs must be limited to projects that serve a useful community purpose in fields such as health, social service, environmental protection, education, urban and rural redevelopment, welfare, recreation, public facilities, public safety, and child care. Community service programs are designed to improve the employability of individuals not otherwise able to obtain

unsubsidized full-time employment, and must be supervised on an ongoing basis no less frequently than once each day in which the individual is scheduled to participate. A State agency shall take into account, to the extent possible, the prior training, experience, and skills of a recipient in making appropriate community service assignments.

(i) *Vocational educational training (not to exceed 12 months with respect to any individual)* means organized educational programs that are directly related to the preparation of individuals for employment in current or emerging occupations. Vocational educational training must be supervised on an ongoing basis no less frequently than once each day in which the individual is scheduled to participate.

(j) *Job skills training directly related to employment* means training or education for job skills required by an employer to provide an individual with the ability to obtain employment or to advance or adapt to the changing demands of the workplace. Job skills training directly related to employment must be supervised on an ongoing basis no less frequently than once each day in which the individual is scheduled to participate.

(k) *Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency* means education related to a specific occupation, job, or job offer. Education directly related to employment must be supervised on an ongoing basis no less frequently than once each day in which the work-eligible individual is scheduled to participate.

(l) *Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate* means regular attendance, in accordance with the requirements of the secondary school or course of study, at a secondary school or in a course of study leading to a certificate of general equivalence, in the case of a work-eligible individual who has not completed secondary school or received such a certificate. This activity must be supervised on an ongoing basis no less frequently than once each day in which the individual is scheduled to participate.

(m) *Providing child care services to an individual who is participating in a community service program* means providing child care to enable another TANF or SSP recipient to participate in a community service program. This is an unpaid activity and must be a structured program designed to improve the employability of individuals who participate in this activity. This activity must be supervised on an ongoing basis no less frequently than once each day in which the individual is scheduled to participate.

(n)(1) *Work-eligible individual* means an adult (or minor child head-of-household) receiving assistance under TANF or a separate State program or a non-recipient parent living with a child receiving such assistance unless the parent is:

(i) A minor parent and not the head-of-household;

(ii) A non-citizen who is ineligible to receive assistance due to his or her immigration status; or

(iii) At State option on a case-by-case basis, a recipient of Supplemental Security Income (SSI) benefits or Aid to the Aged, Blind or Disabled in the Territories.

(2) The term also excludes:

(i) A parent providing care for a disabled family member living in the home, provided that there is medical documentation to support the need for the parent to remain in the home to care for the disabled family member;

(ii) At State option on a case-by-case basis, a parent who is a recipient of Social Security Disability Insurance (SSDI) benefits; and

(iii) An individual in a family receiving MOE-funded assistance under an approved Tribal TANF program, unless the State includes the Tribal family in calculating work participation rates, as permitted under § 261.25.

■ 3. Revise subpart B to part 261 to read as follows:

## Subpart B—What Are the Provisions Addressing State Accountability?

Sec.

261.20 How will we hold a State accountable for achieving the work objectives of TANF?
261.21 What overall work rate must a State meet?
261.22 How will we determine a State's overall work rate?
261.23 What two-parent work rate must a State meet?
261.24 How will we determine a State's two-parent work rate?
261.25 Does a State include Tribal families in calculating the work participation rate?

### § 261.20 How will we hold a State accountable for achieving the work objectives of TANF?

(a) Each State must meet two separate work participation rates in FY 2006 and thereafter, one—the two-parent rate based on how well it succeeds in helping work-eligible individuals in two-parent families find work activities described at § 261.30, the other—the overall rate based on how well it succeeds in finding those activities for work-eligible individuals in all the families that it serves.

(b) Each State must submit data, as specified at § 265.3 of this chapter, that allows us to measure its success in requiring work-eligible individuals to participate in work activities.

(c) If the data show that a State met both participation rates in a fiscal year, then the percentage of historic State expenditures that it must expend under TANF, pursuant to § 263.1 of this chapter, decreases from 80 percent to 75 percent for that fiscal year. This is also known as the State's TANF ''maintenance-of-effort'' (MOE) requirement.

(d) If the data show that a State did not meet a minimum work participation rate for a fiscal year, a State could be subject to a financial penalty.

(e) Before we impose a penalty, a State will have the opportunity to claim reasonable cause or enter into a corrective compliance plan, pursuant to §§ 262.5 and 262.6 of this chapter.

### § 261.21 What overall work rate must a State meet?

Each State must achieve a 50 percent minimum overall participation rate in FY 2006 and thereafter, minus any caseload reduction credit to which it is entitled as provided in subpart D of this part.

### § 261.22 How will we determine a State's overall work rate?

(a)(1) The overall participation rate for a fiscal year is the average of the State's overall participation rates for each month in the fiscal year.

(2) The rate applies to families with a work-eligible individual.

(b) We determine a State's overall participation rate for a month as follows:

(1) The number of TANF and SSP-MOE families that include a work-eligible individual who meets the requirements set forth in § 261.31 for the month (i.e., the numerator), divided by,

(2) The number of TANF and SSP–MOE families that include a work-eligible individual, minus the number of such families that are subject to a penalty for refusing to work in that month (i.e., the denominator). However, if a family with a work-eligible individual has been penalized for refusal to participate in work activities for more than three of the last 12 months, we will not exclude it from the participation rate calculation.

(3) At State option, we will include in the participation rate calculation families with a work-eligible individual that have been penalized for refusing to work no more than three of the last 12 months.

(c)(1) A State has the option of not requiring a single custodial parent caring for a child under age one to engage in work.

(2) At State option, we will disregard a family with such a parent from the participation rate calculation for a maximum of 12 months.

(d)(1) If a family receives assistance for only part of a month, we will count it as a month of participation if a work-eligible individual is engaged in work for the minimum average number of hours in each full week that the family receives assistance in that month.

(2) If a State pays benefits retroactively (i.e., for the period between application and approval of benefits), it has the option to consider the family to be receiving assistance during the period of retroactivity.

**§ 261.23 What two-parent work rate must a State meet?**

Each State must achieve a 90 percent minimum two-parent participation rate in FY 2006 and thereafter, minus any caseload reduction credit to which it is entitled as provided in subpart D of this part.

**§ 261.24 How will we determine a State's two-parent work rate?**

(a)(1) The two-parent participation rate for a fiscal year is the average of the State's two-parent participation rates for each month in the fiscal year.

(2) The rate applies to two-parent families with two work-eligible individuals. However, if one of the parents is a work-eligible individual with a disability, we will not consider the family to be a two-parent family; i.e., we will not include such a family in either the numerator or denominator of the two-parent rate.

(b) We determine a State's two-parent participation rate for the month as follows:

(1) The number of two-parent TANF and SSP–MOE families in which both parents are work-eligible individuals and together they meet the requirements set forth in § 261.32 for the month (i.e., the numerator), divided by,

(2) The number of two-parent TANF and SSP–MOE families in which both parents are work-eligible individuals during the month, minus the number of such two-parent families that are subject to a penalty for refusing to work in that month (the denominator). However, if a family with a work-eligible individual has been penalized for more than three months of the last 12 months, we will not exclude it from the participation rate calculation.

(3) At State option, we will include in the participation rate calculation families with a work-eligible individual that have been penalized for refusing to work no more than three of the last 12 months.

(c) For purposes of the calculation in paragraph (b) of this section, a two-parent family includes, at a minimum, all families with two natural or adoptive parents (of the same minor child) who are work-eligible individuals and living in the home, unless both are minors and neither is a head-of-household.

(d)(1) If the family receives assistance for only part of a month, we will count it as a month of participation if a work-eligible individual in the family (or both work-eligible individuals, if they are both required to work) is engaged in work for the minimum average number of hours in each full week that the family receives assistance in that month.

(2) If a State pays benefits retroactively (i.e., for the period between application and approval of benefits), it has the option to consider the family to be receiving assistance during the period of retroactivity.

**§ 261.25 Do we count Tribal families in calculating the work participation rate?**

At State option, we will include families with a work-eligible individual that are receiving assistance under an approved Tribal family assistance plan or under a Tribal work program in calculating the State's participation rates under §§ 261.22 and 261.24.

■ 4. Revise § 261.31 to read as follows:

**§ 261.31 How many hours must a work-eligible individual participate for the family to count in the numerator of the overall rate?**

(a) Subject to paragraph (d) of this section, a family with a work-eligible individual counts as engaged in work for a month for the overall rate if:

(1) He or she participates in work activities during the month for at least a minimum average of 30 hours per week; and

(2) At least 20 of the above hours per week come from participation in the activities listed in paragraph (b) of this section.

(b) The following nine activities count toward the first 20 hours of participation: unsubsidized employment; subsidized private-sector employment; subsidized public-sector employment; work experience; on-the-job training; job search and job readiness assistance; community service programs; vocational educational training; and providing child care services to an individual who is participating in a community service program.

(c) Above 20 hours per week, the following three activities may also count as participation: job skills training directly related to employment; education directly related to employment; and satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence.

(d)(1) We will deem a work-eligible individual who participates in a work experience or community service program for the maximum number of hours per month that a State may require by dividing the combined monthly TANF or SSP–MOE grant and food stamp allotment by the higher of the Federal or State minimum wage to have participated for an average of 20 hours per week for the month in that activity.

(2) This policy is limited to States that have adopted a Simplified Food Stamp Program option that permits a State to count the value of food stamps in determining the maximum core hours of participation permitted by the FLSA.

(3) In order for Puerto Rico, which does not have a traditional Food Stamp Program, to deem core hours, it must include the value of food assistance benefits provided through the Nutrition Assistance Program in the same manner as a State must include food stamp benefits under subsection (d)(1).

■ 5. Revise § 261.32 to read as follows:

**§ 261.32 How many hours must work-eligible individuals participate for the family to count in the numerator of the two-parent rate?**

(a) Subject to paragraph (d) of this section, a family with two work-eligible parents counts as engaged in work for the month for the two-parent rate if:

(1) Work-eligible parents in the family are participating in work activities for a combined average of at least 35 hours per week during the month, and

(2) At least 30 of the 35 hours per week come from participation in the activities listed in paragraph (b) of this section.

(b) The following nine activities count for the first 30 hours of participation: unsubsidized employment; subsidized private-sector employment; subsidized public-sector employment; work experience; on-the-job training; job search and job readiness assistance; community service programs; vocational educational training; and providing child care services to an individual who

is participating in a community service program.

(c) Above 30 hours per week, the following three activities may also count for participation: job skills training directly related to employment; education directly related to employment; and satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence.

(d)(1) We will deem a family with two work-eligible parents in which one or both participates in a work experience or community service program for the maximum number of hours per month that a State may require by dividing the combined monthly TANF or SSP–MOE grant and food stamp allotment by the higher of the Federal or State minimum wage to have participated for an average of 30 hours per week for the month in that activity.

(2) This policy is limited to States that have adopted a Simplified Food Stamp Program option that permits a State to count the value of food stamps in determining the maximum core hours of participation permitted by the FLSA.

(3) In order for Puerto Rico, which does not have a traditional Food Stamp Program, to deem core hours, it must include the value of food assistance benefits provided through the Nutrition Assistance Program in the same manner as a State must include food stamp benefits under paragraph (d)(1) of this section.

(e)(1) Subject to paragraph (f) of this section, if the family receives federally funded child care assistance and an adult in the family does not have a disability or is not caring for a child with a disability, then the work-eligible individuals must be participating in work activities for an average of at least 55 hours per week to count as a two-parent family engaged in work for the month.

(2) At least 50 of the 55 hours per week must come from participation in the activities listed in paragraph (b) of this section.

(3) Above 50 hours per week, the three activities listed in paragraph (c) of this section may also count as participation.

(f)(1) We will deem a family with two work-eligible parents in which one or both participates in a work experience or community service program for the maximum number of hours per month that a State may require by dividing the combined monthly TANF or SSP–MOE grant and food stamp allotment by the higher of the Federal or State minimum wage to have participated for an average of 50 hours per week for the month in that activity.

(2) This policy is limited to States that have adopted a Simplified Food Stamp Program option that permits a State to count the value of food stamps in determining the maximum core hours of participation permitted by the FLSA.

(3) In order for Puerto Rico, which does not have a traditional Food Stamp Program, to deem core hours, it must include the value of food assistance benefits provided through the Nutrition Assistance Program in the same manner as a State must include food stamp benefits under paragraph (d)(1) of this section.

■ 6. Revise § 261.34 to read as follows:

**§ 261.34 Are there any limitations in counting job search and job readiness assistance toward the participation rates?**

Yes. There are four limitations concerning job search and job readiness assistance.

(a) Except as provided in paragraph (b) of this section, an individual's participation in job search and job readiness assistance counts for a maximum of six weeks in the preceding 12-month period.

(b) If the State's total unemployment rate is at least 50 percent greater than the United States' total unemployment rate or if the State meets the definition of a ''needy State'', specified at § 260.30 of this chapter, then an individual's participation in job search and job readiness assistance counts for a maximum of 12 weeks in that 12-month period.

(c) For purposes of paragraphs (a) and (b) of this section, a week equals 20 hours for a work-eligible individual who is a single custodial parent with a child under six years of age and equals 30 hours for all other work-eligible individuals.

(d) An individual's participation in job search and job readiness assistance does not count for a week that immediately follows four consecutive weeks in which the State reports any hours of such participation in the preceding 12-month period. For purposes of this paragraph a week means seven consecutive days.

(e) Not more than once for any individual in the preceding 12-month period, a State may count three or four days of job search and job readiness assistance during a week as a full week of participation. We calculate a full week of participation based on the average daily hours of participation for three or four days and will prorate participation at that level for the remaining one or two days to determine the total hours for a five-day week. Any prorated hours of participation must be included in the calculation of total hours permitted under the limitation in this section.

■ 7. Revise subpart D to part 261 to read as follows:

## Subpart D—How Will We Determine Caseload Reduction Credit for Minimum Participation Rates?

Sec.

261.40 Is there a way for a State to reduce the work participation rates?
261.41 How will we determine the caseload reduction credit?
261.42 Which reductions count in determining the caseload reduction credit?
261.43 What is the definition of a ''case receiving assistance'' in calculating the caseload reduction credit?
261.44 When must a State report the required data on the caseload reduction credit?

**§ 261.40 Is there a way for a State to reduce the work participation rates?**

(a)(1) If the average monthly number of cases receiving assistance, including assistance under a separate State program (as provided at § 261.42(b)), in a State in the preceding fiscal year was lower than the average monthly number of cases that received assistance, including assistance under a separate State program in that State in FY 2005, the minimum overall participation rate the State must meet for the fiscal year (as provided at § 261.21) decreases by the number of percentage points the prior-year caseload fell in comparison to the FY 2005 caseload.

(2) The minimum two-parent participation rate the State must meet for the fiscal year (as provided at § 261.23) decreases, at State option, by either:

(i) The number of percentage points the prior-year two-parent caseload, including two-parent cases receiving assistance under a separate State program (as provided at § 261.42(b)), fell in comparison to the FY 2005 two-parent caseload, including two-parent cases receiving assistance under a separate State program; or

(ii) The number of percentage points the prior-year overall caseload, including assistance under a separate State program (as provided at § 261.42(b)), fell in comparison to the FY 2005 overall caseload, including cases receiving assistance under a separate State program.

(3) For the credit calculation, we will refer to the fiscal year that precedes the fiscal year to which the credit applies as the ''comparison year.''

(b)(1) The calculations in paragraph (a) of this section must disregard caseload reductions due to requirements of Federal law and to changes that a

State has made in its eligibility criteria in comparison to its criteria in effect in FY 2005.

(2) At State option, the calculation may offset the disregard of caseload reductions in paragraph (b)(1) of this section by changes in eligibility criteria that increase caseloads.

(c)(1) To establish the caseload base for FY 2005 and to determine the comparison-year caseload, we will use the combined TANF and Separate State Program caseload figures reported on the Form ACF–199, TANF Data Report, and Form ACF–209, SSP–MOE Data Report, respectively.

(2) To qualify for a caseload reduction, a State must have reported monthly caseload information, including cases in separate State programs, for FY 2005 and the comparison year for cases receiving assistance as defined at § 261.43.

(d)(1) A State may correct erroneous data or submit accurate data to adjust program data or to include unduplicated cases within the fiscal year.

(2) We will adjust both the FY 2005 baseline and the comparison-year caseload information, as appropriate, based on these State submissions.

(e) We refer to the number of percentage points by which a caseload falls, disregarding the cases described in paragraph (b) of this section, as a caseload reduction credit.

**§ 261.41 How will we determine the caseload reduction credit?**

(a)(1) We will determine the overall and two-parent caseload reduction credits that apply to each State based on the information and estimates reported to us by the State on eligibility policy changes using application denials, case closures, or other administrative data sources and analyses.

(2) We will accept the information and estimates provided by a State, unless they are implausible based on the criteria listed in paragraph (d) of this section.

(3) We may conduct on-site reviews and inspect administrative records on applications, case closures, or other administrative data sources to validate the accuracy of the State estimates.

(b) In order to receive a caseload reduction credit, a State must submit a Caseload Reduction Report to us containing the following information:

(1) A listing of, and implementation dates for, all State and Federal eligibility changes, as defined at § 261.42, made by the State since the beginning of FY 2006;

(2) A numerical estimate of the positive or negative average monthly impact on the comparison-year caseload of each eligibility change (based, as appropriate, on application denials, case closures or other analyses);

(3) An overall estimate of the total net positive or negative impact on the applicable caseload as a result of all such eligibility changes;

(4) An estimate of the State's caseload reduction credit;

(5) A description of the methodology and the supporting data that a State used to calculate its caseload reduction estimates; and

(6) A certification that it has provided the public an appropriate opportunity to comment on the estimates and methodology, considered their comments, and incorporated all net reductions resulting from Federal and State eligibility changes.

(c)(1) A State requesting a caseload reduction credit for the overall participation rate must base its estimates of the impact of eligibility changes on decreases in its comparison-year overall caseload compared to the FY 2005 overall caseload baseline established in accordance with § 261.40(d).

(2) A State requesting a caseload reduction credit for its two-parent rate must base its estimates of the impact of eligibility changes on decreases in either:

(i) Its two-parent caseload compared to the FY 2005 base-year two-parent caseload baseline established in accordance with § 261.40(d); or

(ii) Its overall caseload compared to the FY 2005 base-year overall caseload baseline established in accordance with § 261.40(d).

(d)(1) For each State, we will assess the adequacy of information and estimates using the following criteria: Its methodology; Its estimates of impact compared to other States; the quality of its data; and the completeness and adequacy of its documentation.

(2) If we request additional information to develop or validate estimates, the State may negotiate an appropriate deadline or provide the information within 30 days of the date of our request.

(3) The State must provide sufficient data to document the information submitted under paragraph (b) of this section.

(e) We will not calculate a caseload reduction credit unless the State reports case-record data on individuals and families served by any separate State program, as required under § 265.3(d) of this chapter.

(f) A State may only apply to the participation rate a caseload reduction credit that we have calculated. If a State disagrees with the caseload reduction credit, it may appeal the decision as an adverse action in accordance with § 262.7 of this chapter.

**§ 261.42 Which reductions count in determining the caseload reduction credit?**

(a)(1) A State's caseload reduction credit must not include caseload decreases due to Federal requirements or State changes in eligibility rules since FY 2005 that directly affect a family's eligibility for assistance. These include, but are not limited to, more stringent income and resource limitations, time limits, full family sanctions, and other new requirements that deny families assistance when an individual does not comply with work requirements, cooperate with child support, or fulfill other behavioral requirements.

(2) At State option, a State's caseload reduction credit may include caseload increases due to Federal requirements or State changes in eligibility rules since FY 2005 if used to offset caseload decreases in paragraph (a)(1) of this section.

(3) A State may not receive a caseload reduction credit that exceeds the actual caseload decline between FY 2005 and the comparison year.

(4) A State may count the reductions attributable to enforcement mechanisms or procedural requirements that are used to enforce existing eligibility criteria (e.g., fingerprinting or other verification techniques) to the extent that such mechanisms or requirements identify or deter families otherwise ineligible under existing rules.

(b) A State must include cases receiving assistance in separate State programs as part of its FY 2005 caseload and comparison-year caseload. However, if a State provides documentation that separate State program cases overlap with or duplicate cases in the TANF caseload, we will exclude them from the caseload count.

**§ 261.43 What is the definition of a ''case receiving assistance'' in calculating the caseload reduction credit?**

(a) The caseload reduction credit is based on decreases in caseloads receiving TANF- or SSP-MOE-funded assistance (other than those excluded pursuant to § 261.42).

(b)(1) A State that is investing State MOE funds in excess of the required 80 percent or 75 percent basic MOE amount need only include the pro rata share of caseloads receiving assistance that is required to meet basic MOE requirements.

(2) For purposes of paragraph (b)(1) of this section, a State may exclude from the overall caseload reduction credit calculation the number of cases funded

with excess MOE. This number is calculated by dividing annual excess MOE expenditures on assistance by the average monthly expenditures on assistance per case for the fiscal year,

(i) Where annual excess MOE expenditures on assistance equal total annual MOE expenditures minus the percentage of historic State expenditures specified in paragraph (v) of this section, multiplied by the percentage that annual expenditures on assistance (both Federal and State) represent of all annual expenditures, and

(ii) Where the average monthly assistance expenditures per case for the fiscal year equal the sum of annual TANF and SSP–MOE assistance expenditures (both Federal and State) divided by the average monthly sum of TANF and SSP–MOE caseloads for the fiscal year.

(iii) If the excess MOE calculation is for a separate two-parent caseload reduction credit, we multiply the number of cases funded with excess MOE by the average monthly percentage of two-parent cases in the State's total (TANF plus SSP–MOE) average monthly caseload.

(iv) All financial data must agree with data reported on the TANF Financial Report (form ACF–196) and all caseload data must agree with data reported on the TANF Data and SSP–MOE Data Reports (forms ACF–199 and ACF–209).

(v) The State must use 80 percent of historic expenditures when calculating excess MOE; however if it has met the work participation requirements for the year, it may use 75 percent of historic expenditures.

**§ 261.44 When must a State report the required data on the caseload reduction credit?**

A State must report the necessary documentation on caseload reductions for the preceding fiscal year by December 31.

■ 8. Revise subpart F to part 261 to read as follows:

## Subpart F—How Do We Ensure the Accuracy of Work Participation Information?

Sec.

261.60 What hours of participation may a State report for a work-eligible individual?
261.61 How must a State document a work-eligible individual's hours of participation?
261.62 What must a State do to verify the accuracy of its work participation information?
261.63 When is the State's Work Verification Plan due?
261.64 How will we determine whether a State's work verification procedures ensure an accurate work participation measurement?
261.65 Under what circumstances will we impose a work verification penalty?

**§ 261.60 What hours of participation may a State report for a work-eligible individual?**

(a) A State must report the actual hours that an individual participates in an activity, subject to the qualifications in paragraphs (b) and (c) of this section and § 261.61(c). It is not sufficient to report the hours an individual is scheduled to participate in an activity.

(b) For the purposes of calculating the work participation rates for a month, actual hours may include the hours for which an individual was paid, including paid holidays and sick leave. For participation in unpaid work activities, it may include excused absences for hours missed due to a maximum of 10 holidays in the preceding 12-month period and up to 80 hours of additional excused absences in the preceding 12-month period, no more than 16 of which may occur in a month, for each work-eligible individual. Each State must designate the days that it wishes to count as holidays for those in unpaid activities in its Work Verification Plan. It may designate no more than 10 such days. In order to count an excused absence as actual hours of participation, the individual must have been scheduled to participate in a countable work activity for the period of the absence that the State reports as participation. A State must describe its excused absence policies and definitions as part of its Work Verification Plan, specified at § 261.62.

(c) For unsubsidized employment, subsidized employment, and OJT, a State may report projected actual hours of employment participation for up to six months based on current, documented actual hours of work. Any time a State receives information that the client's actual hours of work have changed, or no later than the end of any six-month period, the State must re-verify the client's current actual average hours of work, and may report these projected actual hours of participation for another six-month period.

(d) A State may not count more hours toward the participation rate for a self-employed individual than the number derived by dividing the individual's self-employment income (gross income less business expenses) by the Federal minimum wage. A State may propose an alternative method of determining self-employment hours as part of its Work Verification Plan.

(e) A State may count supervised homework time and up to one hour of unsupervised homework time for each hour of class time. Total homework time counted for participation cannot exceed the hours required or advised by a particular educational program.

**§ 261.61 How must a State document a work-eligible individual's hours of participation?**

(a) A State must support each individual's hours of participation through documentation in the case file. In accordance with § 261.62, a State must describe in its Work Verification Plan the documentation it uses to verify hours of participation in each activity.

(b) For an employed individual, the documentation may consist of, but is not limited to pay stubs, employer reports, or time and attendance records substantiating hours of participation. A State may presume that an employed individual participated for the total number of hours for which that individual was paid.

(c) The State must document all hours of participation in an activity; however, if a State is reporting projected hours of actual employment in accordance with § 261.60(c), it need only document the hours on which it bases the projection.

(d) For an individual who is self-employed, the documentation must comport with standards set forth in the State's approved Work Verification Plan. Self-reporting by a participant without additional verification is not sufficient documentation.

(e) For an individual who is not employed, the documentation for substantiating hours of participation may consist of, but is not limited to, time sheets, service provider attendance records, or school attendance records. For homework time, the State must also document the homework or study expectations of the educational program.

**§ 261.62 What must a State do to verify the accuracy of its work participation information?**

(a) To ensure accuracy in the reporting of work activities by work-eligible individuals on the TANF Data Report and, if applicable, the SSP–MOE Data Report, each State must:

(1) Establish and employ procedures for determining whether its work activities may count for participation rate purposes;

(2) Establish and employ procedures for determining how to count and verify reported hours of work;

(3) Establish and employ procedures for identifying who is a work-eligible individual;

(4) Establish and employ internal controls to ensure compliance with the procedures; and

(5) Submit to the Secretary for approval the State's Work Verification Plan in accordance with paragraph (b) of this section.

(b) A State's Work Verification Plan must include the following:

(1) For each countable work activity:

(i) A description demonstrating how the activity meets the relevant definition at § 261.2;

(ii) A description of how the State determines the number of countable hours of participation; and

(iii) A description of the documentation it uses to monitor participation and ensure that the actual hours of participation are reported;

(2) A description of the State's procedures for identifying all work-eligible individuals, as defined at § 261.2;

(3) A description of how the State ensures that, for each work-eligible individual, it:

(i) Accurately inputs data into the State's automated data processing system;

(ii) Properly tracks the hours though the automated data processing system; and

(iii) Accurately reports the hours to the Department;

(4) A description of the procedures for ensuring it does not transmit to the Department a work-eligible individual's hours of participation in an activity that does not meet a Federal definition of a countable work activity; and

(5) A description of the internal controls that the State has implemented to ensure a consistent measurement of the work participation rates, including the quality assurance processes and sampling specifications it uses to monitor adherence to the established work verification procedures by State staff, local staff, and contractors.

(c) We will review a State's Work Verification Plan for completeness and approve it if we believe that it will result in accurate reporting of work participation information.

**§ 261.63 When is a State's Work Verification Plan Due?**

(a) Each State must submit its interim Work Verification Plan for validating work activities reported in the TANF Data Report and, if applicable, the SSP–MOE Data Report no later than September 30, 2006.

(b) If HHS requires changes, a State must submit them within 60 days of receipt of our notice and include all necessary changes as part of a final approved Work Verification Plan no later than September 30, 2007.

(c) If a State modifies its verification procedures for TANF or SSP–MOE work activities or its internal controls for ensuring a consistent measurement of the work participation rate, the State must submit for approval an amended Work Verification Plan by the end of the quarter in which the State modifies the procedures or internal controls.

**§ 261.64 How will we determine whether a State's work verification procedures ensure an accurate work participation measurement?**

(a) We will determine that a State has met the requirement to establish work verification procedures if it submitted an interim Work Verification Plan by September 30, 2006 and a complete Work Verification Plan that we approved by September 30, 2007.

(b) A ''complete'' Work Verification Plan means that:

(1) The plan includes all the information required by § 261.62(b); and

(2) The State certifies that the plan includes all the information required by § 261.62(b) and that it accurately reflects the procedures under which the State is operating.

(c) For conduct occurring after October 1, 2007, we will use the single audit under OMB Circular A–133 in conjunction with other reviews, audits, and data sources, as appropriate, to assess the accuracy of the data filed by States for use in calculating the work participation rates.

**§ 261.65 Under what circumstances will we impose a work verification penalty?**

(a) We will take action to impose a penalty under § 262.1(a)(15) of this chapter if:

(1) The requirements under §§ 261.64(a) and (b) have not been met; or

(2) We determine that the State has not maintained adequate documentation, verification, or internal control procedures to ensure the accuracy of the data used in calculating the work participation rates.

(b) If a State fails to submit an interim or complete Work Verification Plan by the due dates in § 261.64(a), we will reduce the SFAG payable for the immediately succeeding fiscal year by five percent of the adjusted SFAG.

(c) If a State fails to maintain adequate internal controls to ensure a consistent measurement of work participation, we will reduce the adjusted SFAG by the following percentages for a fiscal year:

(1) One percent for the first year;

(2) Two percent for second year;

(3) Three percent for the third year;

(4) Four percent for the fourth year; and,

(5) Five percent for the fifth and subsequent years.

(d) If a State complies with the requirements in this subpart for two consecutive years, then any penalty imposed for subsequent failures will begin anew, as described in paragraph (c) of this section.

(e) If we take action to impose a penalty under §§ 261.64(b) or (c), we will reduce the SFAG payable for the immediately succeeding fiscal year.

## PART 263—EXPENDITURES OF STATE AND FEDERAL TANF FUNDS

■ 9. The authority citation for part 263 continues to read as follows:

**Authority:** 42 U.S.C. 604, 607, 609, and 862a.

■ 10. Revise § 263.2 to read as follows:

**§ 263.2 What kinds of State expenditures count toward meeting a State's basic MOE expenditure requirement?**

(a) Expenditures of State funds in TANF or separate State programs may count if they are made for the following types of benefits or services:

(1) Cash assistance, including the State's share of the assigned child support collection that is distributed to the family, and disregarded in determining eligibility for, and amount of the TANF assistance payment;

(2) Child care assistance (see § 263.3);

(3) Education activities designed to increase self-sufficiency, job training, and work (see § 263.4);

(4) Any other use of funds allowable under section 404(a)(1) of the Act including:

(i) Nonmedical treatment services for alcohol and drug abuse and some medical treatment services (provided that the State has not commingled its MOE funds with Federal TANF funds to pay for the services), if consistent with the goals at § 260.20 of this chapter; and

(ii) Pro-family healthy marriage and responsible fatherhood activities enumerated in part IV–A of the Act, sections 403(a)(2)(A)(iii) and 403(a)(2)(C)(ii) that are consistent with the goals at §§ 260.20(c) or (d) of this chapter, but do not constitute ''assistance'' as defined in § 260.31(a) of this chapter; and

(5)(i) Administrative costs for activities listed in paragraphs (a)(1) through (a)(4) of this section, not to exceed 15 percent of the total amount of countable expenditures for the fiscal year.

(ii) Costs for information technology and computerization needed for tracking or monitoring required by or under part IV–A of the Act do not count towards the limit in paragraph (5)(i) of this section, even if they fall within the definition of ''administrative costs.''

(A) This exclusion covers the costs for salaries and benefits of staff who develop, maintain, support, or operate the portions of information technology or computer systems used for tracking and monitoring.

(B) It also covers the costs of contracts for the development, maintenance, support, or operation of those portions of information technology or computer systems used for tracking or monitoring.

(b) With the exception of paragraph (a)(4)(ii) of this section, the benefits or services listed under paragraph (a) of this section count only if they have been provided to or on behalf of eligible families. An ''eligible family'' as defined by the State, must:

(1) Be comprised of citizens or non-citizens who:

(i) Are eligible for TANF assistance;

(ii) Would be eligible for TANF assistance, but for the time limit on the receipt of federally funded assistance; or

(iii) Are lawfully present in the United States and would be eligible for assistance, but for the application of title IV of PRWORA;

(2) Include a child living with a custodial parent or other adult caretaker relative (or consist of a pregnant individual); and

(3) Be financially eligible according to the appropriate income and resource (when applicable) standards established by the State and contained in its TANF plan.

(c) Benefits or services listed under paragraph (a) of this section provided to a family that meets the criteria under paragraphs (b)(1) through (b)(3) of this section, but who became ineligible solely due to the time limitation given under § 264.1 of this chapter, may also count.

(d) Expenditures for the benefits or services listed under paragraph (a) of this section count whether or not the benefit or service meets the definition of assistance under § 260.31 of this chapter. Further, families that meet the criteria in paragraphs (b)(2) and (b)(3) of this section are considered to be eligible for TANF assistance for the purposes of paragraph (b)(1)(i) of this section.

(e) Expenditures for benefits or services listed under paragraph (a) of this section may include allowable costs borne by others in the State (e.g., local government), including cash donations from non-Federal third parties (e.g., a non-profit organization) and the value of third party in-kind contributions if:

(1) The expenditure is verifiable and meets all applicable requirements in 45 CFR 92.3 and 92.24;

(2) There is an agreement between the State and the other party allowing the State to count the expenditure toward its MOE requirement; and,

(3) The State counts a cash donation only when it is actually spent.

(f)(1) The expenditures for benefits or services in State-funded programs listed under paragraph (a) of this section count only if they also meet the requirements of § 263.5.

(2) Expenditures that fall within the prohibitions in § 263.6 do not count.

(g) State funds used to meet the Healthy Marriage Promotion and Responsible Fatherhood Grant match requirement may count to meet the MOE requirement in § 263.1, provided the expenditure also meets all the other MOE requirements in this subpart.

■ 11. Amend § 263.5 by revising paragraph (b) to read as follows:

**§ 263.5 When do expenditures in State-funded programs count?**

* * * * *

(b) If a current State or local program also operated in FY 1995, and expenditures in this program would not have been previously authorized and allowable under the former AFDC, JOBS, Emergency Assistance, Child Care for AFDC recipients, At-Risk Child Care, or Transitional Child care programs, then countable expenditures are limited to:

(1) The amount by which total current fiscal year expenditures for or on behalf of eligible families, as defined in § 263.2(b), exceed total State expenditures in this program during FY 1995; or, if applicable,

(2) The amount by which total current fiscal year expenditures for pro-family activities under § 263.2(a)(4)(ii) exceed total State expenditures in this program during FY 1995.

## PART 265—DATA COLLECTION AND REPORTING REQUIREMENTS

■ 12. The authority citation for part 265 continues to read as follows:

**Authority:** 42 U.S.C. 603, 605, 607, 609, 611, and 613.

■ 13. Amend § 265.7 by revising paragraph (b) to read as follows:

**§ 265.7 How will we determine if the State is meeting the quarterly reporting requirements?**

* * * * *

(b) For a disaggregated data report, ''a complete and accurate report'' means that:

(1) The reported data accurately reflect information available to the State in case records, financial records, and automated data systems, and include correction of the quarterly data by the end of the fiscal year reporting period;

(2) The data are free from computational errors and are internally consistent (e.g., items that should add to totals do so);

(3) The State reports data for all required elements (i.e., no data are missing);

(4)(i) The State provides data on all families; or

(ii) If the State opts to use sampling, the State reports data on all families selected in a sample that meets the specification and procedures in the TANF Sampling Manual (except for families listed in error); and

(5) Where estimates are necessary (e.g., some types of assistance may require cost estimates), the State uses reasonable methods to develop these estimates.

* * * * *

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Federal Register

Tuesday,
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# Part III

# The President

## Proclamation 8220—American Heart Month, 2008

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# Presidential Documents

**Title 3—**

**The President**

**Proclamation 8220 of February 1, 2008**

## American Heart Month, 2008

**By the President of the United States of America**

**A Proclamation**

Heart disease is the number one killer of both men and women in the United States. As we observe American Heart Month, we renew our commitment to raising awareness of the serious impact of cardiovascular disease, and we encourage all citizens to take steps to help prevent it.

By exercising regularly, avoiding tobacco, limiting consumption of alcohol, following a nutritious diet, and monitoring high blood cholesterol and high blood pressure, we all can work to decrease the chances of developing cardiovascular disease. I urge all Americans to take advantage of regular screenings and consult their doctors about how to reduce their personal risk for heart disease.

In 2002, the National Heart, Lung, and Blood Institute, coordinating with other Federal agencies and national organizations, established the national campaign ''The Heart Truth'' to raise awareness among women of the dangers of cardiovascular disease. Today, more Americans are aware that it is the leading cause of death. The National Ambassador of ''The Heart Truth'' campaign, First Lady Laura Bush, continues to lead the Federal Government's efforts to send the urgent message to women about their risk for heart disease. Through this campaign, millions of women across the country have come to recognize the red dress as an important reminder to make healthy choices for their heart and encourage others to do the same.

During American Heart Month, we express our gratitude to the dedicated medical professionals, researchers, and others whose tireless efforts help save lives and make a difference for countless Americans. As we work together to fight this deadly disease, we recognize that every person can take action to reduce his or her risk for heart disease and make the decision to live a healthier life.

In acknowledgement of the importance of the ongoing fight against cardiovascular disease, the Congress, by Joint Resolution approved December 30, 1963, as amended (77 Stat. 843; 36 U.S.C. 101), has requested that the President issue an annual proclamation designating February as ''American Heart Month.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim February 2008 as American Heart Month, and I invite all Americans to participate in National Wear Red Day on February 1, 2008. I also invite the Governors of the States, the Commonwealth of Puerto Rico, officials of other areas subject to the jurisdiction of the United States, and the American people to join me in recognizing and reaffirming our commitment to fighting cardiovascular disease.

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

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# Reader Aids

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**Animal and Plant Health Inspection Service**

Imported Fire Ant; Additions to the List of Quarantined Areas; published 2-5-08

**COMMERCE DEPARTMENT**

**Industry and Security Bureau**

Wassenaar Arrangement Plenary Agreement Implementation:

Categories 1, 3, 6 and 7 of the Commerce Control List; Wassenaar Reporting Requirements; published 2-5-08

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:

Georgia; published 12-7-07

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Oral Dosage Form New Animal Drugs:

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**HOMELAND SECURITY DEPARTMENT**

**Coast Guard**

Security Zone:

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**Agricultural Marketing Service**

Spearmint oil produced in Far West; comments due by 2-15-08; published 12-17-07 [FR 07-06075]

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

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**H.R. 4986/P.L. 110–181**

National Defense Authorization Act for Fiscal Year 2008 (Jan. 28, 2008; 122 Stat. 3)

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