Federal Register

5–29–08 Thursday
Vol. 73 No. 104 May 29, 2008

Pages 30727–31014

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov.*

**The seal of the National Archives and Records Administration authenticates the Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

**How To Cite This Publication:** Use the volume number and the page number. Example: 73 FR 12345.

**Postmaster:** Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

## SUBSCRIPTIONS AND COPIES

**PUBLIC**

**Subscriptions:**

| | |
|---|---|
| Paper or fiche | **202–512–1800** |
| Assistance with public subscriptions | **202–512–1806** |
| **General online information** | **202–512–1530; 1–888–293–6498** |

**Single copies/back copies:**

| | |
|---|---|
| Paper or fiche | **202–512–1800** |
| Assistance with public single copies | **1–866–512–1800 (Toll-Free)** |

**FEDERAL AGENCIES**

**Subscriptions:**

| | |
|---|---|
| Paper or fiche | **202–741–6005** |
| Assistance with Federal agency subscriptions | **202–741–6005** |

**FEDERAL REGISTER WORKSHOP**

**THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT**

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WHEN: Tuesday, June 10, 2008
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

# Contents

**Federal Register**

Vol. 73, No. 104

Thursday, May 29, 2008

**Agricultural Marketing Service**
RULES
User Fees for 2008 Crop Cotton Classification Services to Growers, 30734–30736

**Agriculture Department**
*See* Agricultural Marketing Service
*See* Natural Resources Conservation Service
*See* Rural Housing Service

**Air Force Department**
NOTICES
Intent to Prepare an Environmental Impact Statement:
Expansion of the Powder River Complex Near Ellsworth AFB, SD, 30903

**Centers for Disease Control and Prevention**
NOTICES
Meetings:
Subcommittee for Dose Reconstruction Reviews, Advisory Board on Radiation and Worker Health, 30942

**Centers for Medicare & Medicaid Services**
NOTICES
Meetings:
Reconsideration of Disapproval of Texas State Plan Amendment (SPA 07-020), 30942–30943
Privacy Act; Systems of Records, 30943–30949

**Civil Rights Commission**
NOTICES
Meetings:
New Jersey Advisory Committee, 30880–30881
Meetings; Sunshine Act, 30881

**Coast Guard**
RULES
Safety Zone:
Hatteras Boat Parade and Firework Display, Trent River, New Bern, NC, 30773–30775
Special Local Regulations for Marine Events:
Severn River, College Creek, Weems Creek and Carr Creek, Annapolis, MD, 30771–30773
PROPOSED RULES
Safety Zone; Gulf of Mexico - Johns Pass, FL, 30868–30870
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 30959–30960

**Commerce Department**
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration

**Comptroller of the Currency**
NOTICES
Illustrations of Consumer Information for Hybrid Adjustable Rate Mortgage Products, 30997–31005

**Consumer Product Safety Commission**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 30883–30884

**Defense Department**
*See* Air Force Department
NOTICES
36(b)(1) Arms Sales Notification, 30884–30898
Revised Non-Foreign Overseas Per Diem Rates, 30898–30902

**Education Department**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 30903–30904
Revision of the Federal Need Analysis Methodology for the 2009-2010 Award Year:
Federal Pell Grant et al., 30904–30908

**Employment and Training Administration**
NOTICES
Certification Regarding Eligibility to Apply for Worker Adjustment Assistance, etc.
Saint-Gobain Vetrotex America Including On-Site Leased Workers, etc., Wichita Falls, TX, 30976
Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance, etc., 30976–30978
Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance, etc., 30978–30979
Termination of Investigation:
Carm Newsome Hosiery Inc., Fort Payne, AL, 30979
CCC Associates Eurocast Division, Montgomery, AL, 30979
Maco Steel, Inc., Belmont, MI, 30979
Mitsubishi Kagaku Imaging Corp., Chesapeake, VA, 30980
Stark Candy Company, Pewaukee, WI, 30980
Wyeth Co., Andover, MA; Cambridge, MA, 30980

**Employment Standards Administration**
NOTICES
Proposed Revision of the Approval of Information Collection Requirements, 30980–30981

**Energy Department**
*See* Federal Energy Regulatory Commission
NOTICES
Environmental Impact Statements; Availability, etc.:
Solar Energy Development, 30908–30912

**Environmental Protection Agency**
RULES
Method 207 - Pre-Survey Procedure for Corn Wet-Milling Facility Emission Sources, 30775–30782
PROPOSED RULES
Approval and Promulgation of Implementation Plans:
Variance Determination for Particulate Matter from a Specific Source in the State of New Jersey, 30873–30875
Method 207 - Pre-Survey Procedure for Corn Wet-Milling Facility Emission Sources, 30870–30873
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 30917–30919

**Executive Office of the President**
*See* Presidential Documents

**Federal Aviation Administration**

**RULES**

Airworthiness Directives:
- Boeing Model 727 Airplanes, 30763–30765
- Boeing Model 737 600, 700, 700C, 800, 900, and 900ER Series Airplanes, 30760–30763
- Boeing Model 757 Airplanes, 30755–30760
- Boeing Model 777 200, 200LR, 300, and 300ER Series Airplanes, 30737–30743
- Dornier Model 328-100 and -300 Airplanes, 30752–30755
- Fokker Model F.28 Mark 0070 and Mark 0100 Airplanes, 30749–30752
- McDonnell Douglas Model 717-200 Airplanes, 30743–30745
- McDonnell Douglas Model 717-200 Airplanes; Model DC-9-10 Series Airplanes; Model DC-9-20 Series Airplanes, et al., 30746–30749
- McDonnell Douglas Model DC-10-10F, DC-10-30F (KC-10A and KDC-10), DC-10-40F, MD-10-10F, and MD-10-30F et al. Airplanes, 30765–30767

Modification of Restricted Areas R-5314A, B, C, D, E, F, H, and J; and Revocation of Restricted Area R-5314G; Dare County Range, NC, 30767–30769

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments, 30769–30770, 31012–31014

**PROPOSED RULES**

Proposed Establishment of Class E Airspace:
- Eek, AK, 30822–30823
- Venetie, AK, 30820–30822

Proposed Establishment of Class E Airspace; Withdrawal:
- White Hills, AK, 30823–30824

Proposed Revision of Class E Airspace:
- Gulkana, AK, 30828–30829
- Kake, AK, 30825–30826
- Kivalina, AK, 30827–30828
- Prospect Creek, AK, 30824–30825
- Red Dog, AK, 30829–30831

**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 30992–30994

Approval of Finding of No Significant Impact on an Environmental Assessment:
- Quad City International Airport, Moline, IL, 30994

Meetings:
- Special Committee 215 Aeronautical Mobile Satellite (Route) Services Next Generation Satellite Services and Equipment, 30994–30995

Noise Exposure Map:
- Fort Worth Alliance Airport, Fort Worth, TX, 30995
- Monterey Peninsula Airport, Monterey, CA, 30996

**Federal Communications Commission**

**RULES**

Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, 30789

**PROPOSED RULES**

Promoting Diversification of Ownership in the Broadcasting Services; Correction, 30875

**NOTICES**

Auction of AWS-1 and Broadband PCS Licenses Rescheduled, 30919–30938

Charter Renewal:
- WRC-11 Advisory Committee, 30938

**Federal Deposit Insurance Corporation**

**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 30938–30940

Illustrations of Consumer Information for Hybrid Adjustable Rate Mortgage Products, 30997–31005

**Federal Emergency Management Agency**

**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 30960–30961

Major Disaster and Related Determinations:
- Arkansas, 30961

Major Disaster Declaration:
- Arkansas, 30961
- Indiana, 30962
- Maine, 30962
- Mississippi, 30962
- Oklahoma, 30962–30963

Major Disaster Declarations:
- Kentucky, 30963
- Oklahoma, 30963–30964

**Federal Energy Regulatory Commission**

**NOTICES**

Annual Change in the Producer Price Index for Finished Goods, 30912

Combined Notice of Filings, 30912–30915

Request Under Blanket Authorization:
- Natural Gas Pipeline Co. of America LLC., 30915–30916
- Tennessee Gas Pipeline Co., 30916–30917

Workshop on Regulatory Compliance, 30917

**Federal Maritime Commission**

**NOTICES**

Agreements Filed, 30940

Ocean Transportation Intermediary License Applicants, 30940–30941

**Federal Reserve System**

**PROPOSED RULES**

Fair Credit Reporting Risk-Based Pricing Regulations; Correction, 30814–30818

**NOTICES**

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies, 30941

Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 30941–30942

Illustrations of Consumer Information for Hybrid Adjustable Rate Mortgage Products, 30997–31005

**Federal Trade Commission**

**PROPOSED RULES**

Fair Credit Reporting Risk-Based Pricing Regulations; Correction, 30814–30818

**Fish and Wildlife Service**

**NOTICES**

Proposed Low Effect Habitat Conservation Plan for Maintenance and Operations on the Calnev 8-Inch and 14-Inch Pipelines, Cajon County, CA, 30965–30966

**Food and Drug Administration**

**PROPOSED RULES**

Requirements for Pregnancy and Lactation Labeling:
- Content and Format of Labeling for Human Prescription Drug and Biological Products, 30831–30868

NOTICES
Determination of Regulatory Review Period for Purposes of Patent Extension:
LUCENTIS, 30949–30950
Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications, 30950–30951

**Foreign Assets Control Office**
NOTICES
Changes to Identifying Information of Entity Designated on May 15, 2008, Pursuant to Executive Order 1312978, 31005

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

**Homeland Security Department**
*See* Coast Guard
*See* Federal Emergency Management Agency
NOTICES
Collection of Alien Biometric Data upon Exit from the United States at Air and Sea Ports of Departure:
United States Visitor and Immigrant Status Indicator Technology Program, 30958–30959

**Housing and Urban Development Department**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 30964–30965

**Indian Affairs Bureau**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 30966–30967

**Interior Department**
*See* Fish and Wildlife Service
*See* Indian Affairs Bureau
*See* Land Management Bureau
*See* National Park Service
*See* Reclamation Bureau

**Internal Revenue Service**
NOTICES
Meetings:
Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel, 31005–31006

**International Trade Administration**
NOTICES
Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review:
Folding Metal Tables and Chairs from the People's Republic of China, 30881
Final Results of Antidumping Duty Administrative Review and Rescission in Part:
Certain Forged Stainless Steel Flanges from India, 30881–30883

**Labor Department**
*See* Employment and Training Administration
*See* Employment Standards Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 30975

**Land Management Bureau**
NOTICES
Environmental Impact Statements; Availability, etc.:
Solar Energy Development, 30908–30912

**Maritime Administration**
RULES
Determination of Availability of Coastwise-Qualified Launch Barges, 30783–30789

**National Council on Disability**
NOTICES
Meetings:
Youth Advisory Committee (Teleconference), 30981

**National Credit Union Administration**
PROPOSED RULES
Incidental Powers, 30818–30820
NOTICES
Illustrations of Consumer Information for Hybrid Adjustable Rate Mortgage Products, 30997–31005

**National Institutes of Health**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 30951–30952
Availability for Licensing:
Government-Owned Inventions, 30952–30954
Meetings:
Center for Scientific Review, 30954–30955
National Center on Minority Health and Health Disparities, 30955
National Institute of Allergy and Infectious Diseases, 30956
National Institute Of Dental & Craniofacial Research, 30957
National Institute of Mental Health, 30956–30957
National Institute on Aging, 30957–30958
National Institute on Alcohol Abuse and Alcoholism, 30955–30957
Vitamin Methodology Workshop; Correction, 30958

**National Oceanic and Atmospheric Administration**
RULES
Fisheries Off West Coast States:
Coastal Pelagic Species Fisheries; Annual Specifications, 30811–30813
Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 19, 30790–30811
PROPOSED RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Groundfish Fisheries in the Gulf of Alaska, 30875–30876
Recordkeeping and Reporting, 30876–30879

**National Park Service**
NOTICES
Intent to Repatriate Cultural Items:
University of New Hampshire, Durham, NH, 30967–30968
Inventory Completion:
Hastings Museum of Natural and Cultural History, Hastings, NE, 30968–30969
Human Remains in the Possession of the Bernice Pauahi Bishop Museum, Honolulu, HI; Correction, 30969
Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA, 30969–30972
Texas Archeological Research Laboratory, University of Texas at Austin, Austin, TX, 30972–30973

Notice of Inventory Completion:
Effigy Mounds National Monument, Harpers Ferry, IA, 30973
Oregon State University, Department of Anthropology, Corvallis, OR, 30973–30974

**Natural Resources Conservation Service**
**NOTICES**
Finding of No Significant Impact; Pohick Creek Watershed Dam No. 3, Fairfax County, VA, 30880

**Personnel Management Office**
**RULES**
Nonforeign Area Cost-of-Living Allowance Rates; Puerto Rico and Hawaii County, HI, 30727–30734

**Presidential Documents**
**PROCLAMATIONS**
*Special observances:*
National Hurricane Preparedness Week (Proc. 8261), 31007–31010

**Reclamation Bureau**
**NOTICES**
Opening an Area to Off Road Vehicle Use:
Belle Fourche Reservoir, SD, 30974–30975

**Rural Housing Service**
**NOTICES**
Expiring Expanded Rural Area Definition, 30880

**Securities and Exchange Commission**
**NOTICES**
Application:
Matrix Capital Group, Inc. and Matrix Defined Trusts, 30981–30984
Slick Enterprises, Inc., 30984–30985
Joint Industry Plan; Filing and Order Approving on a Temporary Basis Amendment, etc., 30985–30986
Order of Suspension of Trading:
e.Spire Communications et al., 30986–30987
Self-Regulatory Organizations; Proposed Rule Changes:
International Securities Exchange, LLC, 30987–30988
Philadelphia Stock Exchange, Inc., 30988–30990
The NASDAQ Stock Market LLC, 30990–30992

**Small Business Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 30992

**Thrift Supervision Office**
**RULES**
Prohibited Service at Savings and Loan Holding Companies Extension of Expiration Date of Temporary Exemption, 30736–30737
**NOTICES**
Illustrations of Consumer Information for Hybrid Adjustable Rate Mortgage Products, 30997–31005

**Transportation Department**
*See* Federal Aviation Administration
*See* Maritime Administration
**NOTICES**
Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Week Ending January 25, 2008), 30992

**Treasury Department**
*See* Comptroller of the Currency
*See* Foreign Assets Control Office
*See* Internal Revenue Service
*See* Thrift Supervision Office

**Veterans Affairs Department**
**NOTICES**
Meetings:
Advisory Committee on Women Veterans, 31006
Clinical Science Research and Development Service Cooperative Studies Scientific Evaluation Committee, 31006

---

**Separate Parts In This Issue**

**Part II**
Executive Office of the President, Presidential Documents, 31007–31010

**Part III**
Transportation Department, Federal Aviation Administration, 31012–31014

---

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

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

## CFR PARTS AFFECTED IN THIS ISSUE

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


**3 CFR**

**Proclamations:**

8261 ..... 31013

**5 CFR**

591 ..... 30727

**7 CFR**

28 ..... 30734

**12 CFR**

585 ..... 30736

**Proposed Rules:**

222 ..... 30814

721 ..... 30818

**14 CFR**

39 (9 documents) ..... 30737, 30743, 30746, 30749, 30752, 30755, 30760, 30763, 30765

73 ..... 30767

97 (2 documents) ..... 30769, 31008

**Proposed Rules:**

71 (8 documents) ..... 30820, 30822, 30823, 30824, 30825, 30827, 30828, 30829

**16 CFR**

**Proposed Rules:**

698 ..... 30814

**21 CFR**

**Proposed Rules:**

201 ..... 30831

**33 CFR**

100 ..... 30771

165 ..... 30773

**Proposed Rules:**

165 ..... 30868

**40 CFR**

51 ..... 30775

**Proposed Rules:**

51 ..... 30870

52 ..... 30873

**46 CFR**

389 ..... 30783

**47 CFR**

73 ..... 30789

**Proposed Rules:**

73 ..... 30875

**50 CFR**

648 ..... 30790

660 ..... 30811

**Proposed Rules:**

679 (2 documents) ..... 30875, 30876

# Rules and Regulations

Federal Register
Vol. 73, No. 104
Thursday, May 29, 2008

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

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

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 591

**RIN 3206–AL28**

### Nonforeign Area Cost-of-Living Allowance Rates; Puerto Rico and Hawaii County, HI

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is changing the cost-of-living allowance (COLA) rates received by certain white-collar Federal and U.S. Postal Service employees in Puerto Rico and Hawaii County, HI. The changes are the result of interim adjustments OPM calculated based on relative Consumer Price Index differences between the cost-of-living allowance areas and the Washington, DC, area. OPM is also making an additional one-time adjustment to the Puerto Rico COLA rate based on the impact of the new sales tax in Puerto Rico. This regulation increases the COLA rate for Puerto Rico to 13 percent and the COLA rate for Hawaii County, HI, to 18 percent.

**DATES:** *Effective date:* June 30, 2008.

*Implementation date:* First day of the first pay period beginning on or after June 30, 2008.

**FOR FURTHER INFORMATION CONTACT:** J. Stanley Austin, (202) 606–2838; fax: (202) 606–4264; or e-mail: *COLA@opm.gov*.

**SUPPLEMENTARY INFORMATION:** Section 5941 of title 5, United States Code, authorizes Federal agencies to pay cost-of-living allowances (COLAs) to white-collar Federal and U.S. Postal Service employees stationed in Alaska, Hawaii, Guam and the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands (USVI). Executive Order 10000, as amended, delegates to the Office of Personnel Management (OPM) the authority to administer nonforeign area COLAs and prescribes certain operational features of the program. OPM conducts living-cost surveys in each allowance area and in the Washington, DC, area to determine whether, and to what degree, COLA area living costs are higher than those in the DC area.

As required by section 591.223 of title 5, Code of Federal Regulations, OPM conducts COLA surveys in the Alaska, Pacific, and Caribbean areas on a 3-year rotating basis, and in the Washington, DC, area on an annual basis. OPM sets the COLA rate for each area based on the results of these surveys. For areas not surveyed during a particular year, OPM computes interim adjustments to COLA rates based on the relative change in the Consumer Price Index (CPI) for the COLA area compared with the Washington, DC, area. (See 5 CFR 591.224–591.226.)

OPM adopted the COLA survey methodology pursuant to the stipulation for settlement in *Caraballo et al.* v. *United States*, No. 1997–0027 (D.V.I.), August 17, 2000. *Caraballo* was a class-action lawsuit in which the plaintiffs contested the prior methodology OPM used to determine COLA rates. In the *Caraballo* settlement, the parties agreed that if the Government adopted and maintained certain changes in the COLA program, the plaintiffs would be barred from bringing suit over these issues. The stipulation for settlement is available on OPM's Web site at *http://www.opm.gov/oca/cola/settlement.asp*.

Before the settlement, the parties entered into a memorandum of understanding under which they engaged in a cooperative process to study living-cost and compensation issues. The research was exhaustive and covered essentially all aspects of the COLA program. A summary of that research is available at *http://www.opm.gov/oca/cola/research.asp*.

Exhibit A of the *Caraballo* settlement agreement lists 26 ''Safe Harbor Principles'' that outline the changes to which the parties agreed. These principles formed the basis for a new COLA methodology, which OPM incorporated into its regulations. In developing these regulations, OPM consulted with the Survey Implementation Committee, which was established under the *Caraballo* settlement and is composed of representatives of the parties in *Caraballo*. The Survey Implementation Committee in turn consulted with the Technical Advisory Committee, which was also established under the *Caraballo* settlement and is composed of three economists with expertise in living-cost comparisons. OPM published proposed regulations incorporating the new methodology in the **Federal Register** for notice and comment on November 9, 2001, at 66 FR 56741, and a final rule on May 3, 2002, at 67 FR 22339. The Survey Implementation Committee and the Technical Advisory Committee worked closely with OPM in preparing for and implementing the 2002, 2003, and 2004 COLA surveys.

On September 12, 2007, at 72 FR 52169, OPM published a **Federal Register** notice conveying the results of the 2006 interim adjustments for the Pacific and Caribbean COLA areas. We did not compute interim adjustments for the Alaska COLA areas because we surveyed Alaska in 2006. The interim adjustments indicated that, except for Hawaii County and Puerto Rico, the COLA rates for the Pacific and Caribbean COLA areas were set at the appropriate levels. For Hawaii County, the adjustments indicated an increase in the COLA rate from 17 percent to 18 percent. For Puerto Rico, the adjustments indicated an increase in the COLA rate from 10.5 percent to 11 percent.

On September 6, 2007, at 72 FR 51200, OPM proposed to further increase the Puerto Rico COLA rate to 13 percent to account for the impact on prices of the new Puerto Rico sales tax. This increase supersedes the 1 percent reduction previously proposed by OPM on October 27, 2006, at 71 FR 63176, which was based on the 2005 Caribbean survey results.

### Discussion of Comments

We address comments received in response to the 2007 proposed rule on the rate increases in Puerto Rico and Hawaii County, HI, in this section. We also received comments in response to the 2006 proposed rule to reduce the COLA rate in Puerto Rico. Although the rate reduction will not be implemented, we also respond to these comments in this section.

**2007 Proposed Rate Increases**

*Rising Living Costs*

We received 253 comments in response to the 2007 proposed rate increases in Puerto Rico and Hawaii County, HI. Most of the commenters in Puerto Rico said they support the proposed increase in the Puerto Rico COLA rate; however, many commenters believed the increase should be higher than proposed. A number of commenters cited a rise in the Consumer Price Index produced by the Puerto Rico Department of Labor and Human Resources and other indicators as a basis for a higher COLA rate.

As required by section 5941 of title 5, U.S. Code, we compare living costs in the COLA areas with living costs in the Washington, DC, area to determine COLA rates. We survey the prices of over 240 items to use in the cost comparisons. The comparisons result in indexes that reflect how COLA area prices measure against DC area prices over a given period of time. The comparisons result in indexes that do not necessarily correspond to rising (or falling) prices in the COLA areas. For instance, if living costs in a COLA area rise, but living costs in the DC area rise more sharply, the COLA rate for the area would decrease. Conversely, if COLA area living costs decrease, but DC area living costs decrease more sharply, the COLA rate for the area would increase.

This regulation increases the COLA rate in Puerto Rico from 10.5 percent to 13 percent based partially on the relative change in the 2006 CPI for Puerto Rico compared with the Washington, DC, area and partially to account for the new sales tax implemented after the 2005 survey. While this change provides a 2.5 percent increase in the COLA rate for Federal employees in Puerto Rico, the actual change from the 2005 survey index of 103.32 (3 percent) to the adjusted index of 112.94 (13 percent) correlates to an effective increase of 10 percent. (The 3-percent COLA rate indicated by the 2005 surveys was to be implemented in annual 1-percentage-point reductions.)

We used the CPI produced by the Puerto Rico Department of Labor and Human Resources for the 2006 interim adjustment for Puerto Rico. The Puerto Rico Department of Labor and Human Resources has since revised its methodology for producing the CPI. This change in producing the CPI does not affect the COLA index used for the Puerto Rico rate increase implemented in this regulation, but likely will affect future Puerto Rico interim adjustment comparisons.

A number of commenters noted that certain costs have increased since OPM conducted the survey. They cited the cost of gasoline, housing, utilities, airline tickets, grocery items, medical needs, automobile expenses, various fees and taxes, and other items. Several commenters believed we should survey more frequently. We recognize that prices for various items will increase in the COLA areas and/or the DC area between surveys. We collect prices in each survey area every 3 years on a rotating basis according to a schedule agreed upon by the parties in the *Caraballo* settlement. As noted previously, we adjust area price indexes in non-survey years based on the relative change in the CPI for the COLA area compared with the CPI for the Washington, DC, area.

One commenter said OPM should survey the cost of water, gas, electricity, and telephone utilities. We survey each of these items. We published a list of the items we surveyed in the Caribbean and DC areas in appendix 3 of the 2005 Caribbean Survey Report at 71 FR 63197.

*Puerto Rico Sales Tax*

Several commenters believed OPM did not fully account for coverage of the new Commonwealth and municipio sales tax, particularly with grocery items. We proposed a one-time adjustment to the Puerto Rico COLA index based on the sales tax, which had not yet been captured by the COLA surveys or reflected in the CPI adjustments. We obtained information on the applicability of the sales tax from the Puerto Rico Department of the Treasury (Hacienda). Using this information, we applied the sales tax to covered survey items to determine an aggregate indicator of the impact of the tax on the Puerto Rico COLA index. The index increased by 1.9 points, translating to a COLA rate increase of 2 percent. We did not attempt to account for variations in tax coverage by municipio as these variations would likely have an inconsequential effect on the index. Similarly, we did not account for price reductions for survey items no longer subject to the general excise tax because the effect would also likely be inconsequential. In the future, the sales tax will be added to the prices we survey and will be reflected in the Puerto Rico CPI used for the interim adjustments.

One association advocated making the Puerto Rico increase retroactive to November 5, 2007, the effective date of the new sales tax. Paragraph (d) of section 553 of title 5, U.S. Code, requires that regulations be issued with an effective date at least 30 days after publication. The *Caraballo* settlement agreement requires that we publish rate changes pursuant to section 553.

*Recruitment and Retention*

One commenter said the current economy in Puerto Rico is likely causing recruitment and retention problems. OPM is concerned about the Government's ability to recruit and retain a well-qualified workforce and notes that the Government has several pay authorities that are available to address recruitment and retention problems. Among these are special salary rates and recruitment, retention, and relocation incentives. OPM's Web site at *http://www.opm.gov/oca/pay/index.asp* provides information on pay authorities to assist in agency recruitment and retention efforts.

*Locality Pay*

Several commenters noted their opposition to an Administration legislative proposal that would transition employees in the COLA areas to locality pay over a 7-year period. The commenters said a change to locality pay would lead to a decrease in net salaries in Puerto Rico because locality pay is subject to income tax. The proposed legislation would reduce COLAs by 85 percent of the added locality pay amount to help offset (by 15 percent) the tax liability of locality pay, but would not relieve employees of their total tax responsibility. Unlike with COLAs, all Federal employees, whether in the COLA areas or the 48 contiguous States and Washington, DC, must pay income tax on locality pay. Under the proposed legislation, a change to locality pay would also eliminate future COLA rate reductions and increases, confer retirement credit where the COLA did not, and provide higher pay potential not restricted by the 25-percent cap that applies to COLA rates.

*Taxes*

A number of commenters noted that the Puerto Rico income tax is higher than the Federal income tax paid by employees in other areas. By law, we must compare living costs in the COLA areas with living costs in the Washington, DC, area to determine the COLA rates for the areas. In the DC area, employees pay Federal income tax, State income tax (Virginia and Maryland), city income tax (DC), local income tax (Maryland counties), and personal property tax (Virginia counties). Employees in all areas have varying tax obligations depending on income, dependents, deductions, and other factors. Because of the complexity

involved, we do not attempt to determine the aggregate income tax liability for employees in the COLA areas and the DC area for comparison purposes. The extent to which the total tax burden may be higher in a COLA area than in the DC area is covered by the adjustment factor we add to the price index for each COLA area pursuant to the *Caraballo* settlement agreement.

*Rate Variations*

A number of commenters said Hawaii and the U.S. Virgin Islands have a similar economic situation to Puerto Rico, but have higher COLA rates. One commenter thought that costs in Puerto Rico justified the same 25 percent COLA received by employees in Alaska and Hawaii. Two commenters said that prices are higher in Puerto Rico because items must be imported. There are innumerable economic influences that affect prices in an area, including poverty rate, housing vacancy rate, availability of goods and services, competition, and importation costs. We survey using the same methodology and essentially the same marketbasket in all areas. We survey the final cost to the consumer of items and services in each area. The final cost includes any overhead, transportation and shipping costs, taxes, competition, and other price influences. Additionally, we survey catalog prices for a number of items and include in the price the costs for shipping, sales tax, and excise tax, which are often higher in the COLA areas relative to the Washington, DC, area.

We use this data to compare living costs in the COLA areas with living costs in the DC area. The surveys and subsequent interim adjustments have indicated a 25-percent COLA rate for the U.S. Virgin Islands and 3 of the 4 allowance areas in Hawaii, but a 10-percent rate for Anchorage, AK, a 19-percent rate for Fairbanks, AK, and a 20-percent rate for Juneau, AK. The Anchorage COLA index is below the index for Puerto Rico. Actual COLA rates are currently higher in Alaska because the *Caraballo* settlement established rates based on historical levels in the areas. The COLA rates in Alaska remain higher than indicated by OPM's surveys because we may reduce rates by no more than 1 percent in a 12-month period. We have published at 73 FR 772 a proposed second rate reduction, from 24 to 23 percent, for Anchorage, Fairbanks, and Juneau.

One commenter described how his living costs increased on moving to Puerto Rico from Texas. As noted earlier, section 5941 of title 5, U.S. Code, requires that we compare living costs in Puerto Rico with living costs in the Washington, DC, area to set the Puerto Rico COLA rate. We do not conduct cost-of-living surveys in other areas of the continental United States.

*Housing Costs*

Two commenters noted the high cost of housing in safe neighborhoods and high mortgage rates in Puerto Rico. As stipulated by the *Caraballo* settlement, we use rental equivalence to determine shelter costs in the COLA areas. We discuss the rental survey, including neighborhood selection, later in this section.

*Hawaii County*

Two commenters said there should be separate COLA rates for the east (Hilo) and west (Kona) sides of the island of Hawaii because prices in these areas are not equal. There are communities in each of the nonforeign COLA areas (and in the DC area) that are more expensive than other communities within the same COLA area. It is not feasible or practical to segment each of these communities, many of which share numerous economic characteristics, into independent survey areas with separate COLA rates. For this reason, we do not plan to split Hawaii County into two separate COLA areas. However, we remain open to a mutual recommendation on this issue from the COLA Advisory Committees in Hilo and Kona.

**2006 Proposed Reduction**

We received 204 comments in response to the 2006 proposed reduction in the Puerto Rico COLA rate published at 71 FR 63176. Although the increase implemented by these regulations supersedes the 2006 proposed reduction, we respond to the comments we received in the discussion that follows.

*Increasing Costs*

Many of the commenters said OPM should not reduce COLA rates because Puerto Rico living costs were increasing. As noted previously, section 5941 of title 5, U.S. Code, requires that we measure costs in the COLA areas against costs in the Washington, DC, area to determine COLA rates. We increase the COLA rate if the difference in living costs between the COLA area and the DC area increases and reduce the rate if the difference in living costs between the COLA area and the DC area decreases. As provided by 5 CFR 591.228(c), we reduce COLA rates by no more than 1 percentage point in a 12-month period.

A number of commenters referred to publications or other surveys showing high or rising costs in Puerto Rico, indicating the COLA rate should be set higher. We measure costs using the methodology stipulated in the *Caraballo* settlement and cannot comment on the methodology used by other publications and surveys. We conduct on-site surveys in each survey area and collect more than 4,600 prices on over 240 items representing typical consumer purchases. We collect prices at over 900 outlets, including grocery, hardware, electronics, and department stores, as well as automobile dealers, doctors, dentists, insurance companies, and many other providers of goods and services. We collect these prices in both the COLA and DC areas to use in the price comparisons that determine each area's COLA rate.

Numerous commenters noted that certain costs increased after OPM conducted the 2005 survey and that the survey data were outdated. They cited the cost of gasoline, housing, utilities, grocery items, medical needs, various fees and taxes, and other items. Many commenters requested that OPM survey again. As noted previously, we recognize that prices for items may increase in the COLA areas and/or the DC area between surveys. We collect prices in each survey area every 3 years on a rotating basis according to a schedule agreed upon by the parties in the *Caraballo* settlement. As stipulated in the settlement, we adjust COLA rates annually between surveys based on the relative change in the CPI for the COLA area as compared with the Washington, DC, area. We discuss this adjustment in the notice on the 2006 interim adjustments published at 72 FR 52169. These adjustments are designed to account for price fluctuations between surveys. The 2006 interim adjustment calculation raised the Puerto Rico index, making the proposed COLA rate reduction no longer necessary.

*New Sales Tax*

We received a number of comments on the new sales tax in Puerto Rico. As we discussed previously, we are implementing an adjustment to account for the impact of the sales tax as part of the rate increase to 13 percent.

*Rate Change Delay*

One agency commented on the delay in implementing COLA rate adjustments. As set out in the *Caraballo* settlement, we survey each COLA area on a triennial basis and make interim adjustments based on CPI changes in the years between surveys. We also may make adjustments based on special

circumstances, such as with the Puerto Rico sales tax adjustment. While we make efforts to implement COLA rate adjustments in a timely fashion, we must follow the rulemaking procedures mandated by the Administrative Procedure Act (section 553 of title 5, U.S. Code) and various other statutory and regulatory requirements before implementing any rate change. These requirements largely determine the interval for making a rate change effective.

*Comparison With DC*

The same agency also commented on the use of Washington, DC, as the basis for COLA living-cost comparisons. While the agency conceded that this requirement is in statute (section 5941 of title 5, U.S. Code), it observed that the DC area has become more expensive over time, resulting in less variance between the DC and COLA areas. Because the requirement to use Washington, DC, as the basis for comparison is mandated in the statute that authorizes COLAs, we do not have authority to address this issue by regulation.

*COLA/Locality Pay*

The agency also raised the issue of replacing the nonforeign area COLA with locality pay. The Federal Employees Pay Comparability Act of 1990 authorizes locality pay only for Federal employees in the contiguous 48 States and Washington, DC. We do not have authority to address this issue by regulation. However, as noted earlier in this section, the Administration has submitted proposed legislation for consideration by Congress that would convert employees from COLAs to locality pay over time.

*Recruitment, Relocation, and Retention Incentives*

The agency noted that reductions in COLA rates may require greater use of discretionary authorities, such as recruitment, relocation, and retention incentives. As noted previously, OPM's Web site at *www.opm.gov/oca/pay/index.asp* provides information on pay authorities to assist in agency recruitment and retention efforts.

*Employee Involvement*

One commenter believed OPM did not conduct the survey in Puerto Rico with local Federal employees. The commenter indicated that OPM should have surveyed a sample of Puerto Rico Federal employees. We conduct on-site price surveys of a marketbasket of goods and services representing typical consumer purchases as prescribed by the *Caraballo* settlement. Observers from the Puerto Rico COLA Advisory Committee, which is composed of current Federal employees who live in Puerto Rico, accompanied the OPM data collectors during the non-rental price survey. Before the 2005 Caribbean survey, we established a COLA Advisory Committee in each of the survey areas. As described in 5 CFR 591.243, each Committee is composed of approximately 12 agency and employee representatives from the survey area and two representatives from OPM. We held 3-day meetings with the COLA Advisory Committees in each area to be surveyed to plan the COLA surveys. During the 2005 survey, the Committee members assisted OPM staff in collecting non-rental data, and after the survey the Committee members had the opportunity to review all of the survey results, including the results of the rental survey. Although COLA Advisory Committee members helped plan the rental survey and had the opportunity to review the rental survey results in detail, Committee members did not participate in the rental data collection as observers.

*Rental Surveys*

One local union in Puerto Rico offered extensive comments on the Puerto Rico rental survey. The union disputed the overall veracity, reliability, and adequacy of the rental data collected in Puerto Rico. The union claimed OPM knowingly and willfully harmed Puerto Rico employees through the fashion in which it collected, evaluated, analyzed, and utilized the rental data in Puerto Rico. The union and many other commenters asserted that OPM's actions did not conform to the *Caraballo* settlement or Safe Harbor Principles 5 (regarding quality and quantity comparisons), 18 (regarding the hedonic housing model and rental equivalence), and 22A (regarding survey plans and methodology).

As noted previously, the *Caraballo* settlement prescribed the methodology we use to conduct COLA surveys and set COLA rates. The settlement stipulates that OPM use a rental equivalence approach to estimate shelter costs and a hedonic regression approach to compare housing of similar quality. The Technical Advisory Committee economists worked with OPM and the Survey Implementation Committee to develop methodologies for the rental equivalence and hedonic regression processes. The settlement agreement did not require OPM to use a particular method to collect rental data; however, OPM provided its draft rental data collection specifications and procedures to the Survey Implementation Committee and Technical Advisory Committee for review and comment.

We contracted for the services of a company with an outstanding depth of experience in rental data collection to survey rental properties in the COLA areas for the 2004 through 2007 surveys. The contractor collected the data in essentially the same manner in all areas. Using parameters defined by OPM, the contractor collected rental data on-site in Puerto Rico from March 13 through May 5, 2005. Following its survey of the Caribbean areas, the contractor surveyed the Washington, DC, area. The contractor delivered the rental survey data to OPM in June 2005. We manually reviewed the rental data and performed various computer-based quality assurance checks on the rental database. We believe the 2005 rental survey was in full conformance with the settlement agreement and was stringently conducted under the rental equivalence and hedonic regression methodology mutually developed by the Survey Implementation Committee, Technical Advisory Committee, and OPM.

The union further maintained the rental data did not accurately reflect the areas or types of housing units where Federal employees live. The union said that only a small percentage of the rental observations in Puerto Rico were in areas where the median income level equals or exceeds the local average Federal salary. The union also said OPM and the Technical Advisory Committee invented new categories of housing units, ''apartments in home'' and ''other,'' almost exclusively for Puerto Rico. The union said these two categories of housing units were substandard and not representative of where Federal employees live.

We used data from the 2000 census that show the number of Federal employees and the number of housing units by municipio to determine which locations to survey and how many samples the rental survey contractor should attempt to collect in each location. We allocated more samples to locations that have a large number of Federal employees and a large number of housing units and fewer samples to locations that have a small number of Federal employees and housing units. If the location had no Federal employees, we excluded the location from the survey.

We held a 3-day meeting with the Puerto Rico COLA Advisory Committee on January 18–20, 2005, to plan the 2005 Puerto Rico rental and non-rental surveys. At the meeting, we shared with the Committee a map that showed the

rental survey locations and the requested number of samples from each location. At the Committee's request, we agreed to further refine the survey locations using zip codes where practical. We did this for the San Juan, Carolina, and Bayamon municipios.

We also collect information that reflects the quality of neighborhoods and use additional information from the Bureau of the Census to introduce supplementary variables to the hedonic regressions that indicate neighborhood quality. To do this, we identify the census tract in which each rental observation is found and then add variables, such as median income, percent of school-age persons, and percent of people in the area with B.A. degrees or higher, to the hedonic regressions. Those variables that prove to be statistically significant and increase the precision of the rent index are used in the final hedonic regression equation.

In the 2005 hedonic regression analysis, we tested whether median income or median income paired with median income squared should be included in the equation. We found that median income was not a statistically significant variable at the 99.9 confidence level and dropped it from the hedonic regression.

The variable ''Type of Unit'' has eight subcategories: (1) Detached house, (2) duplex, (3) triplex, (4) townhouse/row house, (5) in-home apartment, (6) walk-up apartment, (7) high rise apartment, and (8) other. An ''in-home apartment'' is usually in a structure one to three stories tall with generally four or five units within the structure. Sometimes the original structure is a large, older home that has been converted to apartments. In other cases, the original structure may have been a triplex or quadplex. These units were found only in Puerto Rico and the U.S. Virgin Islands—none were found in the DC area. We tested the effect of dropping all in-home apartments in Puerto Rico in the final hedonic regression equation. The net result was a slight increase in the Puerto Rico rent index from 63.49 to 63.95, which had an inconsequential effect on the final survey living-cost index.

Units classified as ''Other'' are apartments in larger buildings that are not duplexes, triplexes, high rise apartments, typical walk-up apartment complexes, or in-home apartments. These were found mainly in Puerto Rico. In consultation with the Technical Advisory Committee, we collapsed ''Type of Unit'' into three subcategories: (1) Apartments of any kind, (2) townhouse/row house/duplex/triplex, and (3) detached house. ''Collapsing'' means combining two or more variables or subcategories within a variable. We generally do this when the variable or subcategory parameter estimates are similar and doing so improves the accuracy of the survey area parameter estimates. We assigned units classified as ''in-home apartment'' and ''other'' to the ''apartments of any kind'' subcategory. We then used hedonic regressions to compare the COLA area rents with DC area rents, while holding quality and quantity constant.

The union claimed OPM did not exercise any supervision over the contractor's data collection and accepted all data submitted by the contractor. We engaged a number of controls on the rental data furnished by the contractor. We established the specifications and locations for the rental survey in the contract and provided that payment would be made only for properties meeting the specifications. We required progress reports, shortfall reports, and other documentation during the course of the rental survey. As noted previously, we performed quality assurance checks on the data delivered by the contractor, including manually comparing property data against the property photograph(s) and sketch. We mapped the properties using longitude and latitude coordinates to verify geographic locations. Additionally, we provided the rental data to Puerto Rico agency and union representatives on the Puerto Rico COLA Advisory Committee for evaluation and comment.

*Disparate Treatment*

The union stated that OPM treated Puerto Rico COLA employees in a disparate fashion because of national origin and without regard to unique linguistic and cultural differences. The union cited misspellings in the rental data as evidence that the data collectors encountered a serious language barrier.

OPM and the rental contractor respect linguistic and cultural differences in Puerto Rico. Both OPM and the contractor assigned Spanish-speaking data collectors, some of whom were former residents of Puerto Rico, to the price and rental surveys. In addition, OPM arranged for observers from the Puerto Rico COLA Advisory Committee, which is composed of current Federal employees who live in Puerto Rico, to accompany the data collectors surveying non-rental prices. The rental data contained some misspellings in business names and street addresses, but the overall rental data were high-quality and fulfilled the COLA survey specifications for rental prices in Puerto Rico. Misspellings in names and addresses did not affect the rental prices used to determine the rent index.

We conduct COLA surveys the same in all areas using the methodology prescribed by the *Caraballo* settlement. The rental survey contractor similarly does not vary its approach for collecting rental data in the COLA areas. To the extent cultural differences in Puerto Rico affect prices, the survey accounts for such differences. Additionally, we add 7 points to the Puerto Rico COLA index to account for other costs that may be influenced in part by local or cultural differences. For the rental surveys, we note that cultural differences likely explain variations in advertising methods (e.g., more rent-by-owner signs in Puerto Rico) and the quantities of certain housing types (such as in-home apartments) between Puerto Rico and the DC area. We discuss these variations elsewhere in this section.

The union said that OPM made significant changes to the Alaska and Pacific rental surveys based on the union's comments, but did not employ the changes in the 2005 Caribbean rental survey. We made refinements in the hedonic regression analysis, including adding listing source and self identification refusal as variables based on the union's comments, but applied all changes uniformly to the 2005, 2006, and 2007 surveys. We also initiated trial observation of the rental survey in the 2006 Alaska survey based on the union's comments; however, as we note in the discussion that follows, we plan to extend the trial period through the 2008 Caribbean survey.

*Rental Survey Observers*

The union believed OPM should have allowed observers from the Puerto Rico COLA Advisory Committee to accompany the contractor on the 2005 rental surveys in Puerto Rico. We permitted observers from the COLA Advisory Committees to accompany OPM data collectors conducting the non-rental price surveys beginning with the 2002 Caribbean surveys, but did not similarly arrange for observers to accompany the contractor conducting the rental surveys. The union originally requested that we permit observers for the 2005 rental surveys during a pre-survey meeting of the Puerto Rico COLA Advisory Committee on January 18, 2005. At that time, the contract for the rental surveys did not provide for observers. We determined there was not sufficient time to consider and resolve various issues (e.g., higher contract costs, logistical problems, and possible conflict of interest), establish ground rules for observers, and issue a contract

modification before the scheduled 2005 rental data collection. Although we could not provide for rental survey observers in 2005, we did arrange for the contractor to meet with the Puerto Rico COLA Advisory Committee and answer questions regarding the data collection process.

Following the 2005 rental surveys, we negotiated with the contractor to permit rental survey observers on a trial basis. We have extended the trial observation period through the 2008 Caribbean surveys so that all COLA area committees will have an opportunity to observe, but not otherwise participate in, the rental data collection process.

Rental survey observations enable COLA Advisory Committee members to see how the contractor collects rental data in the field. To maintain survey integrity, we instruct the observers not to attempt to advise, direct, or influence the data collectors. Committee members have an opportunity to participate in setting the rental survey parameters in the pre-survey meeting. Regardless of whether committee members observe the collection, we provide the collected rental data to the committee for review and comment.

The union said that OPM did not provide the Puerto Rico COLA Advisory Committee truthful and/or accurate information regarding the rental contractor's work hours. OPM had noted the contractor's late work hours as one of the impediments to permitting Committee members to observe the rental survey. The union said that because the photographs of the rental units were taken during daylight hours, the contractor could not have worked evenings and/or nights. We would not have found photographs taken in the dark acceptable, so are not surprised that the contractor arranged to photograph the units in the daylight. We note that dawn to dusk in Puerto Rico is approximately 6 a.m. to 7 p.m. in April. We have since negotiated to permit Committee members to observe the rental survey during normal work hours.

*Manual Data Review*

The union said OPM's difficulties in providing the Puerto Rico COLA Advisory Committee with a printed copy of the rental data meant OPM could not have conducted a manual review, because this would have required a printed copy. We received a printed copy of the rental data from the rental survey contractor and used this for our manual review. We did not provide the contractor copy to the Puerto Rico COLA Advisory Committee, but instead elected to print a new copy from our electronic database. We did this because the contractor's copy did not reflect the changes we made following our manual and automated reviews; the pictures and sketches on the copy we produced were larger, which we believed made it easier to see details; copying the contractor's two-sided forms on a copier was less reliable than printing from the rental database; and we added census tract information to the rental database, which was not on the contractor's copy. We encountered initial difficulties in printing the copy from our database, but we resolved the problem and were able to provide a copy to the COLA Advisory Committee.

*Data Quality*

The union stated that OPM did not follow the established protocol for developing a reliable hedonic regression model. The union said OPM should have reviewed the rental data, verified the accuracy of the data, eliminated unverifiable data, and determined that the remaining data were not sufficient to support a reliable hedonic model. The union further said OPM and the Technical Advisory Committee knowingly ran statistical programs over the deficient data and that OPM and the Technical Advisory Committee should have known that the rental data were not of comparable quality and therefore not fit to support a reliable hedonic regression model. The union said a process must be developed whereby an adequate sample of accurate, verifiable, and comparable rental data is utilized before any hedonic regression to adjust for quality differences is made.

The current process provides ample accurate, verifiable, and comparable rental data to determine rental equivalence. In the 2005 Caribbean survey, the sample consisted of over 400 rental observations in Puerto Rico and over 900 observations in the Washington, DC, area. To assure the data were accurate, we conducted various automated and manual reviews as described earlier in this section. To enable data to be verified, we obtained housing unit addresses, geographic coordinates, and photographs, which we reviewed and provided to the Puerto Rico COLA Advisory Committee. To assure comparability, we employed hedonic regression analysis as described in the 2005 Caribbean survey report at 71 FR 63184. The Technical Advisory Committee economists developed the hedonic regression model in consultation with OPM and the Survey Implementation Committee in accordance with the *Caraballo* settlement and Safe Harbor Principle 18.

*Data Verification*

The union said OPM knew most of the data were not verifiable because names and addresses of information sources were not provided. Approximately 17 percent of the 2005 rental observations in Puerto Rico were from sources who refused to provide self-identifying information, and no observations in the DC area were from such sources. COLA rental surveys are voluntary; therefore, OPM cannot require the source to provide self-identifying information. In reviewing the rental data, we found no indication that the information was misrepresented or collected in an unacceptable manner. The contractor provided the address, geographic coordinates (longitude and latitude), and a photograph for each unit, among other information. We believe this information is sufficient for verification.

We also analyzed whether source refusals to provide self-identifying information had a statistically significant influence on rental rates in Puerto Rico. We added self-identification refusal as a variable in the hedonic regression analysis. The hypothesis was that properties belonging to or managed by individuals who refused to provide self-identifying information would rent for less than equivalent properties where the source provided self-identifying information. We found that self-identification refusal was not a statistically significant variable. This means that whether or not the source provided self-identifying information did not appear to have an influence on rental rates. Therefore, we see no reason to exclude observations where self-identifying information is withheld.

The union said the data also were not verifiable because a high percentage of the Puerto Rico rental samples were obtained by ''drive-by'' observations and supplemented later from the contractor's non-local headquarters office. A ''drive-by'' property is one that is advertised by a sign posted on the property. The contractor collects information from five types of sources: local newspaper/publication, Internet, agent/broker, drive-by/sign posted, and other. The contractor collected data from all types except ''other'' in both Puerto Rico and the DC area, but the distribution of observations by listing source type varied by area.

The contractor often finds properties with ''For Rent'' signs while driving through rental survey neighborhoods. If the property appears to meet contract specifications, the contractor takes photographs of the unit, records

measurable and visual observations, and notes the telephone number and other contact information provided on the ''For Rent'' sign. The contact can be a private individual, but in the DC area, the ''For Rent'' signs often provide the name of a property management company. The contractor then calls the point of contact, either locally or from its non-local headquarters, and obtains the rest of the required information about the rental unit. We do not require the contractor to document these calls separately because the provided survey data fully documents the information collected.

To determine whether listing source influenced rental rates, we added listing source as a variable in the hedonic regression analysis. We found that the variable was statistically significant, but that it raised the standard error of the survey area parameter estimates. Therefore, we did not use listing source as a variable in the final hedonic regression equation.

*Addressing Union Concerns*

The union stated it consistently notified OPM of its concerns with the rental survey and data collection, but OPM did not make a serious attempt to acknowledge, recognize, and address the many valid issues the union raised. We received several letters from the union regarding rental survey issues in response to two proposed COLA rate reductions in Puerto Rico. We replied to each of the union's concerns in detailed letters and also addressed its concerns in final regulations published in the **Federal Register** on August 2, 2006 (71 FR 43897). We again address the union's concerns in this discussion.

*Rental Survey Support*

The union criticized OPM for consistently supporting the contractor's work with respect to the 2005 rental survey. We support the 2005 COLA rental and non-rental surveys because the surveys were conducted in accordance with the methodology prescribed by the *Caraballo* settlement and developed in full collaboration with the Survey Implementation Committee and the Technical Advisory Committee economists. The contractor supplied rental data that fulfilled the contract specifications set by OPM for acquiring sufficient data to determine rental equivalency under the settlement methodology.

*Substitutions*

The union claimed OPM accepted endless substitutions of housing units in Puerto Rico from the contractor, allowing the introduction of bias to the housing sample. This is not correct. The contract prescribed the order in which the contractor would attempt to collect the data and specified the steps the contractor would take if it were unable to collect the requested number of observations within a class in a listed location. The contract allowed the contractor to do this without our direct supervision or involvement so that the rental survey could be conducted within a relatively short timeframe and because we did not have superior knowledge about what was available for rent in the local rental market. Although we were not involved in the substitution process, we received required reports that showed how the contractor allocated the shortfalls. The following is a brief description of how the contract addressed substitutions.

We determined the Puerto Rico sample size mainly based on the number of observations a contractor could reasonably be expected to collect within the survey time period. Next, we used information from the 2000 Census to distribute the samples in Puerto Rico by zip code among the locations where Federal employees live. We used the same approach in the DC area and in the U.S. Virgin Islands.

Within each location, we asked the contractor to collect information on the following six classes of housing: Class A—four bedroom, single family unit not to exceed 3200 square feet; Class B—three bedroom, single family unit not to exceed 2600 square feet; Class C—two bedroom, single family unit not to exceed 2200 square feet; Class D—three bedroom apartment unit not to exceed 2000 square feet; Class E—two bedroom apartment unit not to exceed 1800 square feet; Class F—one bedroom apartment unit not to exceed 1400 square feet. In most cases, we distributed the location target sample among the class on an equal basis, although sometimes we varied the class distribution based on the projected distribution within the location.

In designing the rental specifications, we recognized it was unlikely that a contractor would be able to find observations that exactly corresponded to the target distribution in the contract. Therefore, we established a process in the contract that enables the contractor to adjust the distribution throughout the survey by successively redistributing the shortfall according to a series of rules. The shortfall was the difference between the target amount and what was actually found.

At the lowest level, the contract distribution specified the target amount for a housing class within a location in a survey area. If the contractor could not find that amount, the contractor allocated the shortfall to the next most similar housing class within the location. For example, if we asked the contractor to collect six Class A observations in a location but the contractor could only find four, the contractor assigned the shortfall to the next most similar housing class within that location, and repeated the process. By the time the contractor had completed surveying the location, if it still had a shortfall, the contract required the contractor to allocate that shortfall among the observations in the next location. For example, if the target amount for a particular location was 36 but the contractor could only collect 30, the contract required the contractor to distribute the shortfall among the housing classes in the next location.

In the last step, if the contractor was unable to collect the number of samples requested for the survey area, the contractor was required to distribute the shortfall to the next survey area listed in the contract. In the case of the 2005 survey, the contractor obtained 445 of the requested maximum 480 samples in Puerto Rico, so it redistributed 35 samples to the Washington, DC, area.

*Hedonic Regressions*

The union also claimed the hedonic regressions performed by OPM and the Technical Advisory Committee to arrive at the 2005 housing index for Puerto Rico were inaccurate and invalid. The methodology we used to produce the rent indexes was an objective, multi-step process by which we eliminated variables that were not statistically significant. As required by Safe Harbor Principle 18 of the *Caraballo* settlement, we use hedonic regressions to analyze the rental data. We do not use a ''matched-model'' approach; i.e., we do not compare the price of a 1,000 square foot, 3-bedroom apartment in a COLA area with the same size 3-bedroom apartment in the DC area. Hedonic regressions are a type of multiple regression, which is a commonly used mathematical process that describes how one or more things—the independent variables—affect something else—the dependent variable. The regression results show the influence, on average, of each independent variable on the dependent variable while holding all of the other independent variables constant.

We use the logarithm of rent as the dependent variable. This is a commonly used approach and was recommended by the Technical Advisory Committee economists. The independent variables we use are various rental unit characteristics. Variables may be

continuous—like square footage, number of bedrooms, or number of bathrooms—or class variables, like external condition (good, fair, etc.), availability of air conditioning (yes, no), or the particular COLA survey area in which the rental unit is located. The resulting hedonic regression allows OPM to hold rental unit characteristics constant between the COLA area and the Washington, DC, area while comparing rents. In other words, we use hedonic regressions to compare rents for non-identical but comparable rental units by holding quality and quantity constant, to the extent practical. It is not practical to survey every characteristic of a rental unit. For example, we do not collect information on floor coverings, size and types of windows, color of bathroom fixtures, and size of closets. Instead, working with the Survey Implementation Committee, Technical Advisory Committee, and COLA Advisory Committees, we identified over 80 characteristics that seem likely to have an influence on rental prices. Similarly, it is not desirable from a statistical standpoint to use all 80-plus characteristics in the hedonic regressions. Therefore, OPM and the Technical Advisory Committee, in consultation with the Survey Implementation Committee, developed objective procedures to determine which rental unit characteristics to include in the regression equation.

*Home Purchase Costs*

One commenter believed OPM should survey home purchase costs instead of rental value. Under the *Caraballo* settlement, the parties agreed to adopt a rental equivalence approach similar to the one the Bureau of Labor Statistics uses for the Consumer Price Index. Rental equivalence compares the shelter value (rental value) of owned homes, rather than total owner costs, because the latter are influenced by the investment value of the home (i.e., what homeowners hope to realize as a profit when they sell their homes). As a rule, living-cost surveys do not compare how consumers invest their money.

**Executive Order 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will affect only Federal agencies and employees.

**List of Subjects in 5 CFR Part 591**

Government employees, Travel and transportation expenses, Wages.

Office of Personnel Management.

**Linda M. Springer,**

*Director.*

■ Accordingly, OPM amends subpart B of 5 CFR part 591 as follows:

## PART 591—ALLOWANCES AND DIFFERENTIALS

### Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

■ 1. The authority citation for subpart B of 5 CFR part 591 continues to read as follows:

**Authority:** 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; and E.O. 12510, 3 CFR, 1985 Comp., p. 338.

■ 2. Revise appendix A of subpart B to read as follows:

**Appendix A to Subpart B of Part 591—Places and Rates at Which Allowances Are Paid**

This appendix lists the places approved for a cost-of-living allowance and shows the authorized allowance rate for each area. The allowance rate shown is paid as a percentage of an employee's rate of basic pay. The rates are subject to change based on the results of future surveys.

| Geographic coverage | Allowance rate (percent) |
|---|---|
| State of Alaska: | |
| City of Anchorage and 80-kilometer (50-mile) radius by road | 24 |
| City of Fairbanks and 80-kilometer (50-mile) radius by road | 24 |
| City of Juneau and 80-kilometer (50-mile) radius by road | 24 |
| Rest of the State | 25 |
| State of Hawaii: | |
| City and County of Honolulu | 25 |
| Hawaii County, Hawaii | 18 |
| County of Kauai | 25 |
| County of Maui and County of Kalawao | 25 |
| Territory of Guam and Commonwealth of the Northern Mariana Islands | 25 |
| Commonwealth of Puerto Rico | 13 |
| U.S. Virgin Islands | 25 |

[FR Doc. E8–12020 Filed 5–28–08; 8:45 am]

BILLING CODE 6325–39–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 28

**[AMS–CN–07–0092; CN–08–001]**

**RIN 0581–AC80**

### User Fees for 2008 Crop Cotton Classification Services to Growers

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

**ACTION:** Final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) will raise the user fees for cotton producers for 2008 crop cotton classification services under the Cotton Statistics and Estimates Act. These user fees also are authorized under the Cotton Standards Act of 1923. The 2007 user fee for this classification service was $1.85 per bale. This rule will raise the fee for the 2008 crop to $2.00 per bale. This fee and the existing reserve are sufficient to cover the costs

of providing classification services, including costs for administration and supervision.

**DATES:** Effective July 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Darryl Earnest, Deputy Administrator, Cotton and Tobacco Programs, AMS, USDA, Room 2639–S, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Telephone (202) 720–2145, facsimile (202) 690–1718, or e-mail *darryl.earnest@usda.gov.*

**SUPPLEMENTARY INFORMATION:** A proposed rule detailing the revisions was published in the **Federal Register** on April 17, 2008 (73 FR 20842). A 15-day comment period was provided for interested persons to respond to the proposed rule. One comment was received from the National Cotton Council in support of the fee increase.

**Executive Order 12866**

This rule has been determined to be not significant for purposes of Executive Order 12866; and, therefore has not been reviewed by the Office of Management and Budget (OMB).

**Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

**Regulatory Flexibility Act**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 25,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). The increase above the 2007 crop level as stated will not significantly affect small businesses as defined in the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services. (The 2007 user fee for classification services was $1.85 per bale; the fee for the 2008 crop would be increased to $2.00 per bale; the 2008 crop is estimated at 14,000,000 bales.)

(2) The fee for services will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 2007 crop, 19,033,000 bales were produced; and, almost all of these bales were voluntarily submitted by growers for the classification service.

(4) Based on the average price paid to growers for cotton from the 2006 crop of 47.3 cents per pound, 500 pound bales of cotton are worth an average of $236.50 each. The proposed user fee increase for classification services, $2.00 per bale, is less than one percent of the value of an average bale of cotton.

**Paperwork Reduction Act**

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520), the information collection requirements contained in the provisions to be amended by this final rule have been previously approved by OMB and were assigned OMB control number 0581–AC80.

*Fees for Classification Under the Cotton Statistics and Estimates Act of 1927*

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.85 per bale during the 2007 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The fees cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration and supervision. The fee structure for the 2007 crop year was incorporated under the authority of the Cotton Standards Act of 1923, by an interim final rule effective October 1, 2007 (72 FR 56242).

This final rule establishes the user fee charged to producers for HVI classification at $2.00 per bale during the 2008 harvest season.

The classification fees are based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 2007. Therefore, the 2008 producers' user fee for classification service is based on the 2007 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237 which AMS also considers reasonable under the authority of the Cotton Standards Act of 1923. The 2007 base fee for HVI classification exclusive of adjustments, as provided by that Act, was $2.52 per bale. An increase of 3.06 percent, or 7 cents per bale, due to the implicit price deflator of the gross domestic product added to the $2.52 would result in a 2008 base fee of $2.59 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, gross national product has been replaced by gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 2008 crop is estimated at 14,000,000 bales. The 2008 base fee was decreased 15 percent based on the estimated number of bales to be classed (1 percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum decreased adjustment of 15 percent). This percentage factor amounts to a 39 cents per bale reduction and was subtracted from the 2008 base fee of $2.59 per bale, resulting in a fee of $2.20 per bale.

However, with a fee of $2.20 per bale, the projected operating reserve would be 31.6 percent. The 1987 Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $2.20 is reduced by 20 cents per bale, to $2.00 per bale, to provide an ending accumulated operating reserve for the fiscal year of not more than 25 percent of the projected cost of operating the program. This will establish the 2008 season fee at $2.00 per bale.

Accordingly, § 28.909, paragraph (b) will reflect the increase of the HVI classification fee to $2.00 per bale.

A 5 cent per bale discount will continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909 (c).

Growers or their designated agents receiving classification data will continue to incur no additional fees if classification data is requested only once. The fee for each additional retrieval of classification data in § 28.910 would remain at 5 cents per

bale. The fee in § 28.910 (b) for an owner receiving classification data from the National database would remain at 5 cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period would remain the same. The provisions of § 28.910 (c) concerning the fee for new classification memoranda issued from the National database for the business convenience of an owner without reclassification of the cotton will remain the same at 15 cents per bale or a minimum of $5.00 per sheet.

The fee for review classification in § 28.911 will increase to $2.00 per bale.

The fee for returning samples after classification in § 28.911 would remain at 40 cents per sample. This fee was incorrectly referred to in the proposed rule as 50 cents per sample.

**List of Subjects in 7 CFR Part 28**

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

■ For the reasons set forth in the preamble, 7 CFR part 28 is amended to read as follows:

## PART 28—[AMENDED]

■ 1. The authority citation for 7 CFR part 28, subpart D, continues to read as follows:

**Authority:** 7 U.S.C. 51–65; 7 U.S.C. 471–476.

■ 2. In § 28.909, paragraph (b) is revised to read as follows:

**§ 28.909 Costs.**

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $2.00 per bale.

* * * * *

■ 3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

**§ 28.911 Review classification.**

(a) * * * The fee for review classification is $2.00 per bale.

* * * * *

Dated: May 27, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 08–1308 Filed 5–27–08; 1:29 pm]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF THE TREASURY

## Office of Thrift Supervision

## 12 CFR Part 585

**[OTS–2007–0008]**

**RIN 1550–AC14**

## Prohibited Service at Savings and Loan Holding Companies Extension of Expiration Date of Temporary Exemption

**AGENCY:** Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Final rule.

**SUMMARY:** OTS is revising its rules implementing section 19(e) of the Federal Deposit Insurance Act (FDIA), which prohibits any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering (or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense) from holding certain positions with respect to a savings and loan holding company (SLHC). Specifically, OTS is extending the expiration date of a temporary exemption granted to persons who held positions with respect to a SLHC as of the date of the enactment of section 19(e). The revised expiration date for the temporary exemption is November 3, 2008.

**DATES:** *Effective Date:* The final rule is effective on May 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** Donna Deale, Director, Holding Companies and Affiliates, Supervision Policy, (202) 906–7488, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** On May 8, 2007, OTS published an interim final rule adding 12 CFR part 585. This new part implemented section 19(e) of the FDIA, which prohibits any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering (or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense) from holding certain positions with a SLHC. Section 19(e) also authorizes the Director of OTS to provide exemptions from the prohibitions, by regulation or order, if the exemption is consistent with the purposes of the statute.

The interim final rule described the actions that are prohibited under the statute and prescribed procedures for applying for an OTS order granting a case-by-case exemption from the prohibition. The rule also provided regulatory exemptions to the prohibitions, including a temporary exemption for persons who held positions with respect to a SLHC on October 13, 2006, the date of enactment of section 19(e). This temporary exemption is set to expire on June 1, 2008, unless a case-by-case exemption is filed prior to that expiration date.[1]

OTS is extending the expiration date of the temporary exemption to November 3, 2008. This extension will avoid needless disruptions of SLHC operations while OTS continues to review the public comments and develop a final rule addressing these comments. OTS has concluded that this extension of the exemption is consistent with the purposes of section 19(e) of the FDIA.

**Regulatory Findings**

*Notice and Comment and Effective Date*

For the reasons set out in the interim final rule,[2] OTS has concluded that: Notice and comment on this extension are unnecessary and contrary to the public interest under section 552(b)(B) of the Administrative Procedure Act; there is good cause for making the extension effective immediately under section 553(d) of the APA; and the delayed effective date requirements of section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) do not apply.

*Regulatory Flexibility Act*

For the reasons stated in the interim final rule,[3] OTS has concluded that this extension does not require an initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), and that this extension should not have a significant impact on a substantial number of small entities, as defined in the RFA.

*Paperwork Reduction Act*

OTS has determined that this extension does not involve a change to collections of information previously approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

*Unfunded Mandates Act of 1995*

For the reasons stated in the interim final rule,[4] OTS has determined that this extension will not result in expenditures by state, local, and tribal

[1] This temporary exemption originally was scheduled to expire on September 5, 2007. OTS extended the expiration date to March 1, 2008, 72 FR 50644 (Sept. 4, 2008) and to June 1, 2008, 73 FR 10985 (Feb. 29, 2008).

[2] 72 FR at 25953.

[3] 72 FR at 25953–54.

[4] 72 FR at 25954.

governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

*Executive Order 12866*

OTS has determined that this extension is not a significant regulatory action under Executive Order 12866.

*Plain Language*

Section 722 of the Gramm-Leach-Bliley Act (12 U.S.C. 4809) requires the Agencies to use ''plain language'' in all final rules published after January 1, 2000. OTS believes that the final rule containing the extension is presented in a clear and straightforward manner.

**List of Subjects in 12 CFR Part 585**

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations.

**Authority and Issuance**

■ For the reasons in the preamble, OTS is amending part 585 of chapter V of title 12 of the Code of Federal Regulations as set forth below:

## PART 585—PROHIBITED SERVICE AT SAVINGS AND LOAN HOLDING COMPANIES

■ 1. The authority citation for 12 CFR part 585 continues to read as follows:

**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, and 1829(e).

■ 2. In § 585.100(b)(2), revise the introductory text to read as follows:

**§ 585.100 Who is exempt from the prohibition under this part?**

* * * * *

(b) * * *

(2) This exemption expires on November 3, 2008, unless the savings and loan holding company or the person files an application seeking a case-by-case exemption for the person under § 585.110 by that date. If the savings and loan holding company or the person files such an application, the temporary exemption expires on:

* * * * *

Dated: May 20, 2008.

By the Office of Thrift Supervision.

**John M. Reich,**

*Director.*

[FR Doc. E8–11781 Filed 5–28–08; 8:45 am]

BILLING CODE 6720–01–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2007–28389; Directorate Identifier 2006–NM–171–AD; Amendment 39–15536; AD 2008–11–13]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 777–200, –200LR, –300, and –300ER Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 777–200, –200LR, –300, and –300ER series airplanes. This AD requires revising the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness by incorporating new limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. This AD also requires the initial performance of certain repetitive inspections specified in the AWLs to phase in those inspections, and repair if necessary. This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

**DATES:** This AD becomes effective July 3, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 3, 2008.

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

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6500; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 777–200, –200LR, –300, and –300ER series airplanes. That supplemental NPRM was published in the **Federal Register** on February 28, 2008 (73 FR 10698). That supplemental NPRM proposed to require revising the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness (ICA) by incorporating new limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 (SFAR 88) requirements. That supplemental NPRM also proposed to require the initial performance of certain repetitive inspections specified in the AWLs to phase in those inspections, and repair if necessary.

**Actions Since NPRM Was Issued**

Since we issued the NPRM, Boeing has issued Temporary Revision (TR) 09–014, dated December 2007. Boeing TR 09–014 is published as Section 9 of the Boeing 777 Maintenance Planning Document (MPD) Document, D622W001–9, Revision February 2008 (hereafter referred to as ''Revision February 2008 of the MPD''). The supplemental NPRM referred to Revision October 2007 of the MPD as the appropriate source of service information for accomplishing the proposed actions. Revision February 2008 of the MPD revises AWL No. 28–AWL–03 to reflect the new maximum loop resistance values associated with the lightning protection of the unpressurized fuel quantity indicating system (FQIS) wire bundle installations.

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

requirements of paragraphs (g) and (h) of this AD.

Operators should note that we have revised paragraph (g)(2) of this AD to require incorporating only AWLs No. 28–AWL–01 through No. 28–AWL–20 inclusive. AWLs No. 28–AWL–21 through No. 28–AWL–26 were added in Revision December 2007 of the MPD for Model 777–200LR series airplanes equipped with an auxiliary fuel tank. We might issue additional rulemaking to require the incorporation of those AWLs. However, as an optional action, operators may incorporate those optional AWLs as specified in paragraph (g)(2) of this AD. Operators should also note that we might issue a separate NPRM that proposes to incorporate AWL No. 28–AWL–19 and No. 28–AWL–20 into the AWLs section of the ICA and the associated design change.

**Comments**

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

**Support for the Supplemental NPRM**

Boeing, American Airlines, and United Airlines (UAL) concur with the contents of the supplemental NPRM. The Air Transport Association (ATA) agrees with the intent of the supplemental NPRM.

**Request for Clarification of Paragraph (g)**

The ATA, on behalf of UAL, submitted a comment stating that there might be a logic error in the proposed requirement of paragraph (g) of the supplemental NPRM. UAL states that it understands that the proposed action is to revise the AWLs section of the ICA to ''Incorporate the MPD into the MPD.''

We infer that the commenters request that we clarify the requirements of paragraph (g) of this AD. We agree that clarification is necessary. The intent of paragraph (g) of this AD is to require the operator to incorporate Subsections D and E of Revision February 2008 of the MPD into the operator's existing MPD. We have deleted the words ''into the MPD'' from paragraph (g) of this AD to eliminate any confusion.

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

The ATA, on behalf of Continental Airlines (CAL), submitted a request to revise the loop resistance values for AWL No. 28–AWL–03 of Revision October 2007 of the MPD to reflect the appropriate limits for in-service airplanes. CAL states that the limits in AWL No. 28–AWL–03 reflect factory limits, and that mandating those limits would result in non-compliance and ground the Model 777 fleet. CAL states that the limits in AWL No. 28–AWL–03 should be harmonized with the limits in Tables 601 and 602 of Task 05–55–54–200–801 of the Boeing 777 Airplane Maintenance Manual (AMM), which contain bonding resistance values for in-service airplanes. CAL further requests that the new limits be published before May 2008, so that operators have adequate time to develop the necessary task cards before the required compliance time of paragraph (g) of this AD.

We agree that the loop resistance values for AWL No. 28–AWL–03 of Revision October 2007 of the MPD needed to be revised. Boeing published Revision February 2008 of the MPD to specify the appropriate values, which agree with the AMM. As stated previously, we have revised this AD accordingly.

**Request To Clarify Paragraph (i)**

The ATA, on behalf of UAL, requests that we clarify paragraph (i) of the supplemental NPRM. UAL interprets paragraph (i) to mean that, prior to the accomplishment of paragraphs (g) and (h) of the supplemental NPRM, an operator is allowed to use alternative inspections, inspection intervals, or critical design configuration control limitations (CDCCLs), which are not part of subsequent revisions of Revision October 2007 of the MPD. UAL states that, if this interpretation is true, then paragraph (i) might be in conflict with section 121.1113 (''Fuel tank system maintenance program'') of the Federal Aviation Regulations (14 CFR 121.1113). UAL asks us to clarify whether paragraph (i) suspends the intent of 14 CFR 121.1113 and allows deviations until paragraphs (g) and (h) are complied with.

We disagree with UAL's interpretation that this AD conflicts with 14 CFR 121.1113. The two requirements are entirely compatible. That section requires that, no later than December 16, 2008, operators must incorporate applicable inspections, procedures, and limitations for fuel tank systems that have been approved under SFAR 88. The AWLs required by this AD are a portion of the SFAR 88 documents approved for these airplanes. Since the compliance date for this AD was chosen to coincide with the compliance date for 14 CFR 121.1113, compliance with this AD by that date will also be partial compliance with 14 CFR 121.1113, and neither that section nor this AD impose requirements before that date. Paragraph (i) of this AD is also consistent with 14 CFR 121.1113 in that both prohibit changing the requirements unless the changes are approved by the Seattle Aircraft Certification Office (ACO), which is the oversight office for this airplane model. No change to this AD is necessary in this regard.

**Request To Clarify Use of Equivalent Tools and Chemicals**

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

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

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

**Request To Delete Reference to Task Cards**

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

AMM and maintenance personnel always refer to the AMM. ANA further states that the applicable task card references are not listed in Subsection D of the MPD, or in Appendix 1 of the original NPRM; they refer only to the AMM. ANA, therefore, states that it is difficult to find out or distinguish the affected task card.

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

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

**Request To Clarify Meaning of Task Cards**

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

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

**Request To Revise Intervals for Certain AWL Inspections**

KLM Royal Dutch Airlines (KLM), on behalf of several operators, requests that we review a 45-page proposal to align certain airworthiness limitation item (ALI) intervals with the applicable maintenance significant item (MSI) and enhanced zonal analysis procedure (EZAP) intervals for Model 737, 747, 757, 767, and 777 airplanes. The recommendations in that proposal ensure that the ALI intervals align with the maintenance schedules of the operators. Among other changes, the proposal recommends revising certain AWL inspection intervals from 16,000 flight cycles/3,000 days to only 6,000 days for Model 777 airplanes.

We infer that KLM requests we revise paragraph (h) of this AD to extend the compliance time to 6,000 days for AWLs No. 28–AWL–01 and No. 28–AWL–03. We disagree because we have determined that it would be inappropriate to extend the inspection intervals. Given the safety implications for these inspections, 6,000 days (approximately over 16 years) is too long, especially since these areas are accessed more frequently than every 16 years for maintenance. Also, KLM did not include any reliability information showing that the systems can continue to safely operate between the proposed inspection periods. However, according to the provisions of paragraph (k) of this AD, we might approve requests to adjust the compliance time if the request includes data that prove that the new compliance time would provide an acceptable level of safety. No change to this AD is necessary in this regard.

**Request To Require Latest Revision of the AMM**

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

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

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

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

**Request To Revise AMM Task 28–11–00**

The ATA, on behalf of CAL, submitted a comment regarding AWL No. 28–AWL–01, which specifies doing

repetitive detailed inspections of the wire bundles routed over the center fuel tank and under the main deck floor boards to detect damaged clamps, wire chafing, and any wire bundle that is in contact with the surface of the center fuel tank. The AWL specifies doing the inspection in accordance with Task 28–11–00 of the Boeing 777 AMM. CAL states that, according to the definition for a detailed inspection in the Enhanced Airworthiness Program for Airplane Systems (EAPAS) Participant Guide, dated August 2007, a detailed inspection may include a tactile assessment in which a component or assembly is checked for tightness and security (to ensure continued integrity of installations such as bonding jumpers and terminal connectors). CAL states that the inspection for tightness and security might require the disassembly of the wire installation, but that there are no re-installation procedures in the current routine manuals. CAL also states that maintenance personnel have to disassemble the entire wire bundle installation to accomplish the detailed inspection in Task 28–11–00–210–801 of the Boeing 777 AMM. According to CAL, this action, in the past, has created more discrepancies with wire bundle installations.

We infer the commenters request that Boeing revise Task 28–11–00 of the Boeing 777 AMM to include procedures for re-installation of the wire bundles. We do not agree that the Boeing 777 AMM needs to be revised. This inspection does not require any disassembly of wire bundle installations because, as CAL points out, disassembly might create an unsafe condition. The guidance for a detailed inspection provided by the Maintenance Steering Group 3 (MSG–3) and EAPAS includes a tactile assessment of bundle security, which uses the mechanic's hands to pull on the bundle. A visual inspection is not sufficient. The tactile assessment is intended to be a non-intrusive inspection. No change to this AD is necessary in this regard.

**Request To Revise AMM Task 28–11–00–210–801**

The ATA, on behalf of CAL, submitted a comment regarding Task 28–11–00–210–801 of the Boeing 777 AMM for accomplishing a detailed inspection of the wire bundles between the main deck and the top surface of the center fuel tank. (Task 28–11–00 is referenced in AWL No. 28–AWL–01 of Revision February 2008 of the MPD.) CAL states that the task procedures do not provide specific details or information for the wire bundle installation to ensure that maintenance personnel can comply with the design requirements. CAL also states that the wire bundle installation has been modified according to Boeing Alert Service Bulletin 777–57A0050, dated January 26, 2006; and Boeing Alert Service Bulletin 777–57A0051, dated May 15, 2006. CAL states that it provided comments to the NPRM that propose to mandate the accomplishment of those service bulletins. (That NPRM (Docket No. FAA–2007–27042) was published in the **Federal Register** on January 29, 2007 (72 FR 3956).)

We infer the commenters request that Boeing revise Task 28–11–00–210–801 of the Boeing 777 AMM to provide specific details for the wire bundle installation. We do not agree that the Boeing 777 AMM needs to be revised because specific design information is not needed for accomplishing this inspection. The type and location of the wiring over the center fuel tank can vary among airplanes, and these details are not necessary to complete the inspection. AWL No. 28–AWL–01 is concerned with wire installation failures that will eventually lead to arcing through the top surface of the tank. That AWL and the referenced AMM provide for the type of failures that might progress to arcing, and any wire bundle in that area needs to be inspected. No change to this AD is necessary in this regard.

**Request To Revise AMM by Including Warning Statements**

The ATA, on behalf of CAL, submitted a comment regarding Tasks 28–11–00–210–801 and 05–55–54–200–801 of the Boeing 777 AMM. CAL states that these tasks do not contain CDCCL warning statements to alert maintenance personnel of their importance to regulatory compliance requirements.

We infer the commenters request that Boeing revise the Boeing 777 AMM to include warning statements as stated by CAL. We do not agree that the Boeing 777 AMM needs to be revised because Step A.(1) of the relevant AMM sections contains notes about the CDCCLs. The FAA and Boeing chose to use notes, not warning statements, because we did not want to undermine other sections of the AMM, which are not tied to AWLs but are still necessary for maintaining the airplane. If CAL determines that a different approach would work better for its maintenance program, it can develop a different system with the help of its PMI or PAI. No change to this AD is necessary in this regard.

**Request To Publish Manuals for Maintenance Personnel**

The ATA, on behalf of CAL, submitted a comment stating that CAL is concerned that not enough attention has been given to ensure that specific detailed inspections are preserved for the long-term operation of its Model 777 fleet. CAL states that, other than some generic information found in Revision October 2007 of the MPD, there are no published maintenance documents for continuous airworthiness available to show each specific requirement as detailed in the airplane production drawings, such as Task 05–55–54–200–801 of the Boeing 777 AMM. CAL further states that information detailed by the airplane production drawing must be available in manuals that are routinely used by the maintenance personnel. CAL asserts that making this information available will prevent the inadvertent reversal of the designated configuration, which could lead to violation of the supplemental NPRM, in addition to compromising the higher level of safety intended for the Model 777 fleet.

CAL believes the current program, as provided by AWLs No. 28–AWL–01 and No. 28–AWL–03 of Revision October 2007 of the MPD, is not ready to be implemented. CAL states that, if those AWLs are mandated as proposed, CAL would not be able to incorporate those AWLs in its Model 777 fleet, and a high risk of future de-modification of the wire bundles would exist for airplanes on which those AWLs could be implemented. CAL recommends that we coordinate with Boeing regarding the changes it requests in the previous comments.

We infer the commenters request that we delay issuance of the final rule until Boeing publishes manual(s) containing detailed information for maintenance personnel to accomplish the required AWL inspections. We disagree. To delay this action would be inappropriate, since we have determined that an unsafe condition exists and that the actions required by this AD must be mandated to ensure continued safety.

The amount of detail within the Boeing 777 AMM needs to be balanced, and it might not be the same for every operator. The FAA and Boeing have worked together to define what design requirements need to be included in the AMMs for fuel tank ignition prevention features. If the AMMs are overly specific, they might be too voluminous to be used effectively and would be prone to errors, since wiring installations vary among airplanes. The amount of information needed to be

included in the AMMs will also vary among operators, depending on the processes and training for a given operator. If CAL determines more detailed design information needs to be included in its AMMs, CAL can work with its PMI or PAI and Boeing to add that information. No change to this AD is necessary in this regard.

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

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

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

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

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

**Request To Identify Other Test Equipment**

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

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

**Request To Clarify AWL No. 28–AWL–02**

JAL requests that we clarify the intent of AWL No. 28–AWL–02. JAL states that Chapters 53–01 and 53–21 of the Boeing 777 AMM specify doing an inspection of the external wires over the center fuel tank according to AMM 28–11–00 before installing the floor panel over the center wing tank based on AWL No. 28–AWL–02. JAL also states that, according to Revision March 2006 of the MPD, AWL No. 28–AWL–02 contains two limitations: Maintaining the existing wire bundle routing and clamping, and installing any new wire bundle per the Boeing standard wiring practices manual (SWPM). Therefore, JAL believes it is not necessary to inspect the external wires over the center fuel tank according to AMM 28–11–00 before installing the floor panel over the center wing tank, unless that wire bundle routing and clamping are changed.

We point out that AWL No. 28–AWL–02 also contains a third limitation: Verifying that all wire bundles over the center fuel tank are inspected according to AWL No. 28–AWL–01, which refers to AMM 28–11–00 for accomplishing the inspection. We do not agree that the inspection should be required only if the wire bundle routing and clamping are changed while maintenance is accomplished in the area. If any of the other bundles have a clamp or routing failure, it must be detected and corrected. After accomplishing the inspection required by AWL No. 28–AWL–01, an operator would not need to repeat the inspection for another 16,000 flight cycles or 3,000 days, whichever is first. No change to this AD is necessary in this regard.

**Request for Clarification for Recording Compliance With CDCCLs**

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

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

**Request To Clarify Approval of CMM Changes**

JAL requests that we clarify whether FAA approval is required for changes to the CMM. JAL states that, when it finds incorrect instructions, typographical

errors, or vague instructions in the CMM, it usually contacts the component manufacturer about those issues and revises the instructions in its own manuals. JAL states that those changes are not reflected in the CMM until the component manufacturer revises the CMM. JAL requests that we provide guidelines for CMM errors that do not require FAA approval.

Changes to the CMMs must be approved by the FAA, or governing regulatory authority, before the revised CMMs can be used. No change to this AD is necessary in this regard.

### Conclusion

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

### Costs of Compliance

We estimate that this AD affects 127 airplanes of U.S. registry. The following table provides the estimated costs, at an average labor rate of $80 per work hour, for U.S. operators to comply with this AD.

ESTIMATED COSTS

| Action | Work hours | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|
| AWLs revision | 8 | None | $640 | 127 | $81,280 |
| Inspection | 8 | None | 640 | 127 | 81,280 |

### 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):

**2008–11–13 Boeing:** Amendment 39–15536. Docket No. FAA–2007–28389; Directorate Identifier 2006–NM–171–AD.

#### Effective Date

(a) This AD becomes effective July 3, 2008.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Boeing Model 777–200, –200LR, –300, and –300ER series airplanes; certificated in any category; with an original standard airworthiness certificate or original export certificate of airworthiness issued before December 5, 2007.

**Note 1:** Airplanes with an original standard airworthiness certificate or original export certificate of airworthiness issued on or after December 5, 2007, must be already in compliance with the airworthiness limitations (AWLs) specified in this AD because those limitations were applicable as part of the airworthiness certification of those airplanes.

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

#### Unsafe Condition

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

#### Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

#### Service Information

(f) The term ''Revision February 2008 of the MPD,'' as used in this AD, means Boeing Temporary Revision (TR) 09–014, dated December 2007. Boeing TR 09–014 is published as Section 9 of the Boeing 777 Maintenance Planning Document (MPD) D622W001–9, Revision February 2008.

**Revision of Airworthiness Limitations (AWLs) Section**

(g) Before December 16, 2008, revise the AWLs section of the Instructions for Continued Airworthiness (ICA) by incorporating the information in the subsections specified in paragraphs (g)(1) and (g)(2) of this AD; except that the initial inspections specified in paragraph (h) of this AD must be done at the compliance times specified in paragraph (h) of this AD.

(1) Subsection D, ''AIRWORTHINESS LIMITATIONS—SYSTEMS,'' of Revision February 2008 of the MPD.

(2) Subsection E, ''PAGE FORMAT: FUEL SYSTEMS AIRWORTHINESS LIMITATIONS,'' AWLs No. 28–AWL–01 through No. 28–AWL–20 inclusive, of Revision February 2008 of the MPD. As an optional action, AWLs No. 28–AWL–21 through No. 28–AWL–26 inclusive, as identified in Subsection E of Revision February 2008 of the MPD, also may be incorporated into the AWLs section of the ICA.

**Initial Inspections and Repair**

(h) Do the inspections required by paragraphs (h)(1) and (h)(2) of this AD at the compliance times specified in paragraphs (h)(1) and (h)(2), in accordance with the applicable AWLs described in Subsection E of Revision February 2008 of the MPD. If any discrepancy is found during these inspections, repair the discrepancy before further flight in accordance with Revision February 2008 of the MPD.

(1) At the later of the times specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD, do a detailed inspection of external wires over the center fuel tank for damaged clamps, wire chafing, and wire bundles in contact with the surface of the center fuel tank, and repair any discrepancy, in accordance with AWL No. 28–AWL–01. Accomplishing AWL No. 28–AWL–01 as part of an FAA-approved maintenance program before the applicable compliance time specified in paragraph (h)(1)(i) or (h)(1)(ii) of this AD constitutes compliance with the requirements of this paragraph.

(i) Before the accumulation of 16,000 total flight cycles, or within 3,000 days since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.

(ii) Within 72 months after the effective date of this AD.

**Note 3:** For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(2) At the later of the times specified in paragraphs (h)(2)(i) and (h)(2)(ii) of this AD, do a special detailed inspection (resistance test) of the lightning shield-to-ground termination of the out tank wiring of the fuel quantity indicating system (FQIS) and, as applicable, repair (restore) the bond to ensure the shield-to-ground termination meets specified resistance values, in accordance with AWL No. 28–AWL–03. Accomplishing AWL No. 28–AWL–03 as part of an FAA-approved maintenance program before the applicable compliance time specified in paragraph (h)(2)(i) or (h)(2)(ii) of this AD constitutes compliance with the requirements of this paragraph.

(i) Before the accumulation of 16,000 total flight cycles, or within 3,000 days since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.

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

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

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

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

**Credit for Actions Done According to Previous Revisions of the MPD**

(j) Actions done before the effective date of this AD in accordance with Section 9 of the Boeing 777 MPD Document, D622W001–9, Revision October 2007; or Revision December 2007; are acceptable for compliance with the corresponding requirements of paragraphs (g) and (h) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(k)(1) The Manager, Seattle ACO, FAA, ATTN: Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6500; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

**Material Incorporated by Reference**

(l) You must use Boeing Temporary Revision (TR) 09–014, dated December 2007, to the Boeing 777 Maintenance Planning Document (MPD) Document, D622W001–9, to do the actions required by this AD, unless the AD specifies otherwise. Boeing TR 09–014 is published as Section 9 of the Boeing 777 Maintenance Planning Document (MPD) Document, D622W001–9, Revision February 2008. (The List of Effective Pages for Section 9 of Boeing 777 Maintenance Planning Document (MPD) Document, D622W001–9, Revision February 2008, contains numerous errors. However, the revision/date identified on the individual pages of the document are correct.)

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

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

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

Issued in Renton, Washington, on May 14, 2008.

**Ali Bahrami,**

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

[FR Doc. E8–11467 Filed 5–28–08; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–0214; Directorate Identifier 2007–NM–224–AD; Amendment 39–15528; AD 2008–11–06]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain McDonnell Douglas Model 717–200 airplanes. This AD requires installing an additional support bracket for the gray water drain hose; replacing the screw of the support bracket with a new screw for the potable water supply hose; installing a spacer; doing a detailed inspection to detect interference or wear damage on hoses, lines and/or cables; and doing corrective actions if necessary. This AD results from reports

of interference between the potable water supply hose and/or gray water drain hose at the aft lavatories and the fuel line and/or power feeder cables of the auxiliary power unit (APU) located below the aft cabin floor. We are issuing this AD to prevent interference and chafing between the potable water supply hose and/or gray water hose and the fuel line and/or power feeder cables of the APU, which could cause arcing and sparking, and/or fuel leaking, and consequent fire.

**DATES:** This AD is effective July 3, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 3, 2008.

**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:** Ken Sujishi, 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) 627–5353; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain McDonnell Douglas Model 717–200 airplanes. That NPRM was published in the **Federal Register** on November 21, 2007 (72 FR 65478). (A correction of the proposed rule was published in the **Federal Register** on December 21, 2007 (72 FR 72823).) That NPRM proposed to require installing an additional support bracket for the gray water drain hose; replacing the screw of the support bracket with a new screw for the potable water supply hose; installing a spacer; doing a detailed inspection to detect interference or wear damage on hoses, lines and/or cables; and doing corrective actions if necessary.

**Comments**

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

**Request To Exclude a Certain Airplane From the Applicability Statement**

AirTran Airways (AirTran) states that it supports the proposed actions, but requests that we remove a certain airplane (fuselage number 5005) from the proposed applicability statement. AirTran notes that the proposed requirements were accomplished on this specific airplane during the Boeing service bulletin validation program, so it should not be required to re-accomplish the proposed requirements or to obtain an approval of an alternative method of compliance in order to comply with the AD.

We agree that the specific airplane should not be subject to this AD because it has already had the required actions completed on it. Therefore, we have excluded that airplane from the applicability statement of this AD.

**Request To Revise Certain Language**

Boeing requests that we revise certain language in the Discussion section of the NPRM to clarify the cause of the unsafe condition and the circumstances under which it was identified.

We agree that the language suggested by Boeing is more accurate and does clarify the circumstances under which the specified unsafe condition was identified. However, because the Discussion section is not repeated in this final rule, we have not changed the AD in this regard.

**Request To Revise Paragraph (g) of the NPRM**

Boeing requests that we revise paragraph (g) of the NPRM to require accomplishment of the actions specified in that paragraph in accordance with Boeing Alert Service Bulletin 717–38A0004, Revision 1, dated August 15, 2007. Paragraph (g) of the NPRM specifies contacting the FAA for certain repair instructions. Boeing asserts that the current proposed language is unduly restrictive on operators and that operators should be allowed to use standard practices specified in certain maintenance manuals.

We do not agree to revise paragraph (g) of this AD to refer to the service bulletin for certain repair instructions, as suggested by Boeing. In two places, where the service bulletin addresses the corrective action for ''APU Fuel Line Interference and/or Wear'', Boeing states to repair the APU fuel line and references the MD–80 airplane maintenance manual. As such, the AD does allow operators to use standard practices specified in the airplane maintenance manual. However, Boeing also states ''or contact Boeing for a specific repair.'' It is our understanding that Boeing's intent is that in the unlikely event that damage is found that is not addressed by the standard practices contained in the airplane maintenance manual, the operator should contact Boeing for a ''specific'' repair. We do not consider a specific repair to be ''standard'' practices. For this reason, paragraph (g) of this AD specifies that operators contact us only when the service bulletin specifies contacting the manufacturer. To allow operators to contact the manufacturer for a specific repair would be delegating our rulemaking authority to the manufacturer. Without paragraph (g), the AD would be requiring only an unspecified Boeing developed repair. This is in fact delegating our rulemaking authority to Boeing. We have not changed the AD in this regard.

**Request To Allow Credit for Revision 1 or Later Revisions of the Service Bulletin**

Boeing requests that we revise paragraph (h) of the NPRM to allow credit for actions done using Revision 1 of the service bulletin. Boeing asserts that the text of the NPRM would not credit operators that used Revision 1 of the service bulletin as having met the intent of the AD. Boeing also requests that we allow operators to use later versions of the service bulletin.

We do not agree. This AD requires the actions to be done in accordance with Revision 1 of the service bulletin. In the event that an operator accomplishes the required actions in accordance with Revision 1 of the service bulletin before the effective date of the AD, paragraph (e) specifies that the actions are required ''unless already accomplished.'' Therefore, credit for using Revision 1 before the effective date of the AD is already provided. We have not changed the AD in this regard.

**Conclusion**

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD

with the change described previously. We also determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

## Costs of Compliance

There are about 123 airplanes of the affected design in the worldwide fleet. This AD affects about 95 airplanes of U.S. registry. The required actions take about 70 work hours per airplane, at an average labor rate of $80 per work hour. The manufacturer states that it will supply required parts to the operators at no cost. Based on these figures, the estimated cost of the AD for U.S. operators is $532,000, or $5,600 per airplane.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2008–11–06 McDonnell Douglas:** Amendment 39–15528. Docket No. FAA–2007–0214; Directorate Identifier 2007–NM–224–AD.

**Effective Date**

(a) This airworthiness directive (AD) is effective July 3, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to McDonnell Douglas Model 717–200 airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 717–38A0004, Revision 1, dated August 15, 2007; excluding fuselage number 5005.

**Unsafe Condition**

(d) This AD results from reports of interference between the potable water supply hose and/or gray water drain hose at the aft lavatories with the fuel line and/or power feeder cables of the auxiliary power unit (APU) located below the aft cabin floor. We are issuing this AD to prevent interference and chafing between the potable water supply hose and/or gray water hose with the fuel line and/or power feeder cables of the APU, which could cause arcing and sparking, and/or fuel leaking, and consequent 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.

**Installations, Replacements, Inspections, and Corrective Actions**

(f) Within 27 months after the effective date of this AD, do the installations, replacement, inspections, and applicable corrective actions by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 717–38A0004, Revision 1, dated August 15, 2007; except as provided by paragraph (g) of this AD. The applicable corrective actions must be done before further flight.

(g) If any discrepancy is found during any inspection required by this AD, and Boeing Alert Service Bulletin 717–38A0004, Revision 1, dated August 15, 2007, specifies to contact Boeing for appropriate action: Before further flight, repair the discrepancy in accordance with the procedures specified in paragraph (i) of this AD.

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

(h) Actions accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 717–38A0004, dated December 6, 2006, is considered acceptable for compliance with the corresponding actions specified in paragraph (f) of this AD.

**Alternative Methods of Compliance (AMOCs)**

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

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

**Material Incorporated by Reference**

(j) You must use Boeing Alert Service Bulletin 717–38A0004, Revision 1, dated August 15, 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 Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

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

Issued in Renton, Washington, on May 12, 2008.

**Ali Bahrami,**

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

[FR Doc. E8–11721 Filed 5–28–08; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2008–0032; Directorate Identifier 2007–NM–314–AD; Amendment 39–15538; AD 2008–11–15]**

**RIN 2120–AA64**

# Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes; Model DC–9–10 Series Airplanes; Model DC–9–20 Series Airplanes; Model DC–9–30 Series Airplanes; Model DC–9–40 Series Airplanes; Model DC–9–50 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; Model MD–88 Airplanes; and Model MD–90–30 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all McDonnell Douglas airplanes identified above. This AD requires revising the FAA-approved maintenance program, or the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness, as applicable, to incorporate new AWLs for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

**DATES:** This AD is effective July 3, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 3, 2008.

**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:** Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5254; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

## Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to McDonnell Douglas Model 717–200 airplanes; Model DC–9–10 series airplanes; Model DC–9–20 series airplanes; Model DC–9–30 series airplanes; Model DC–9–40 series airplanes; Model DC–9–50 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; Model MD–88 airplanes; and Model MD–90–30 airplanes. That NPRM was published in the **Federal Register** on January 18, 2008 (73 FR 3422). That NPRM proposed to require revising the FAA-approved maintenance program, or the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness (ICA), as applicable, to incorporate new AWLs for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements.

## Changes Made to This AD

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

- We have added a new paragraph (i) to this AD to specify that no alternative inspections, inspection intervals, or critical design configuration control limitations (CDCCLs) may be used unless they are part of a later approved revision of the Boeing Twinjet Special Compliance Items Report, MDC–92K9145, Revision G, dated June 7, 2007 (hereafter referred to as ''Report MDC–92K9145''), or unless they are approved as an alternative method of compliance (AMOC). Inclusion of this paragraph in the AD is intended to ensure that the AD-mandated airworthiness limitations changes are treated the same as the airworthiness limitations issued with the original type certificate.
- We have revised Note 1 of this AD to clarify that an operator must request approval for an AMOC if the operator cannot accomplish the required inspections because an airplane has been previously modified, altered, or repaired in the areas addressed by the required inspections.

## Comments

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

### Request To Revise Note 1

Boeing requests that we revise Note 1 of the NPRM to clarify the intent of the note. Boeing states that Note 1 of the NPRM might be misinterpreted to mean that the AWLs of Report MDC–92K9145 must be revised to reflect modifications, alterations, or repairs that are initiated by an operator and outside of Boeing's design cognizance and responsibility. Boeing requests that we revise Note 1 as follows:

- Replace the words ''revision to'' with ''a deviation from'' in the last sentence.
- Delete the words ''(g), (h), or'' and ''as applicable'' from the last sentence.

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

### Request To Clarify Approval of Component Maintenance Manual (CMM) Changes

Boeing requests that we revise the heading and certain wording for the ''Changes to Component Maintenance Manuals (CMMs) Cited in Fuel Tank System AWLs'' section of the NPRM. Boeing believes that section was intended to address situations where an operator chooses to deviate from the procedures in the CMM referenced in Report MDC–92K9145. Boeing states that its proposed changes are intended to clarify that only deviations proposed by an operator require approval of the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Boeing further states that wording in the NPRM could be interpreted to mean that approval of a CMM in its entirety, including any future CMM revisions by Boeing, would require direct approval of the Manager, Los Angeles ACO, or governing regulatory authority.

Specifically, Boeing requests that we revise that section as follows:

- Revise the heading to ''Deviations from Component Maintenance Manuals (CMMs) Cited in Fuel Tank System AWLs.''
- Revise the third sentence to state that the Manager, Los Angeles ACO, must approve ''any deviations from'' the CMMs ''as defined in Report MDC–92K9145.''
- Replace the words ''revision of'' with ''deviation from'' in the fourth sentence.
- Revise the fourth sentence to state that those CMMs ''as defined in Report MDC–92K9145'' will be handled like a change to the AWL itself.
- Delete the entire last sentence.

We agree that clarification is necessary. Our intent is that any deviation from the CMMs as defined in Report MDC–92K9145 must be approved by the Manager, Los Angeles ACO, or the governing regulatory authority, before those deviations can be used. However, we have not changed the AD as suggested by the commenter, since the ''Changes to Component Maintenance Manuals (CMMs) Cited in Fuel Tank System AWLs'' section of the NPRM is not retained in this AD.

**Request To Identify Additional Service Information**

The Air Transport Association (ATA), on behalf of its member Delta Airlines (DAL), requests that we revise the NPRM to identify the affected airplane maintenance manual (AMM), structural repair manual (SRM), and standard wiring practices manual (SWPM) sections for each CDCCL and AWL inspection. DAL states that Appendixes B, C, and D of Report MDC–92K9145 do not fully identify all manuals that require revision to incorporate the requirements of the given appendix, but that the information is available in a cross-reference document that Boeing has made available on the Internet at *https://www.myboeingfleet.com/*.

DAL notes that the ''Ensuring Compliance With Fuel Tank System AWLs'' section of the NPRM indicates that Boeing has revised the applicable manuals to address AWLs and to include notes about CDCCLs. However, DAL has reviewed the applicable manuals and notes that certain information specified in Report MDC–92K9145 is not present. For example, although MD–90 CDCCL 28–3 specifies to use only connector part number 14158–2 when rebuilding or repairing a pump conduit assembly in accordance with chapter 28–20–7 of the Boeing overhaul manual, this requirement is not included in the SWPM or CMM 28–20–07, or identified as a CDCCL in the CMM.

We disagree with revising this AD as requested by the commenter. Boeing formatted Report MDC–92K9145 to provide specific information, where appropriate, concerning the limitations and necessary actions to maintain CDCCLs and AWL inspections. This revised service information is readily available to affected operators; therefore, there is no need to be more specific in this AD. No change to this final rule is necessary in this regard.

**Request To Allow Continued Use of Existing Inventory Parts**

The ATA, on behalf of its member American Airlines, submitted a comment objecting to the language in Report MDC–92K9145 that controls maintenance to the standards specified in the referenced CMMs without deviation according to a FAA-approved service bulletin. American Airlines states that this proposed requirement will mandate the removal of long-standing, proven parts substitutions and repair techniques developed by the operator in accordance with processes and procedures approved by the FAA. American Airlines also states that proposed requirement might also make obsolete certain test instruments and procedures developed by operators. American Airlines asserts that, without federally-regulated parts supply chains with price controls, the proposed process makes it impossible for operators to ensure that they have multiple sources for parts that can be obtained at reasonable prices. American Airlines states that, in order to ensure that CMM-approved parts cannot be interchanged with other approved substitute parts, operators will be forced into expensive redesigns of their inventory systems, or special procedures to permanently segregate parts for those specified CMMs. American Airlines states that the cost of incorporating the proposed requirements of the NPRM will far exceed the estimated cost specified in the NPRM.

We infer the commenters request that we allow operators to continue to use alternative parts inventory and test equipment for repair and overhaul of their fuel system components and interchange these parts, which might be different than the parts identified in the approved CMM. We disagree with this request. While the commenters are correct about the restrictions included in the referenced service information, operators may always take advantage of alternatives by requesting that those alternatives be evaluated and approved in accordance with the provisions of paragraph (k) of this AD. No change to this AD is necessary in this regard.

**Request To Allow Minor Fuel Pump Repairs Without FAA-Approval**

The ATA, on behalf of its member Northwest Airlines (NWA), requests we revise the NPRM to specify that fuel pump repairs that are minor do not require FAA approval, and that existing FAA-approved repairs and parts manufacturer approval (PMA) parts do not require re-approval by the FAA. NWA states that CDCCL 28–2 severely limits or eliminates NWA's ability to use Part 121 authority to customize the particular CMM with NWA-developed repairs that use alternate PMA materials and vendors.

We disagree with revising this AD as suggested by the commenters. The intent of this AD and Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83) is to define CDCCLs, and the repair and overhaul of fuel system components in accordance with the limitations specified in Report MDC–92K9145. The impetus to declare overhaul and repair of certain fuel tank system components as CDCCLs arose from in-service pump failures that resulted from repairs not done according to the original equipment manufacturer (OEM) procedures. Therefore, all changes, whether minor or major, must be approved by the Manager, Los Angeles ACO. NWA did not identify any PMAs that would require re-approval. Any existing or future PMAs, or deviations from the approved CMMs, can be requested by the AMOC process.

**Request To Revise Estimated Costs**

The ATA, on behalf of its members DAL and NWA, disagrees with the ''Costs of Compliance'' section of the NPRM. DAL estimates that it will take at least 40 hours to document and implement the changes to the ICA, rather than 1 hour as proposed in the NPRM. DAL also notes that the ''Costs of Compliance'' section of the NPRM does not include the labor time required for accomplishing the required repetitive inspections. NWA states it overhauled and repaired 75 fuel pumps in 2007, and that it estimates that compliance with CDCCL 28–2 will add about $1,000 to the cost of each overhauled/repaired fuel pump.

We infer that the commenters request that we revise the ''Costs of Compliance'' section of this AD. We agree that, for certain operators, there might be a one-time cost associated with changing over from existing repair/

overhaul procedures to the CMM procedures approved under SFAR 88. However, we disagree with including the costs in this AD for complying with the CDCCLs. The economic analysis of an AD is limited only to the cost of actions actually required by the rule. It does not consider the costs of ''on-condition'' actions (that is, actions needed to correct an unsafe condition) because, regardless of AD direction, those actions would be required to correct an unsafe condition identified in an airplane and ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations. No change is necessary in this regard.

We also disagree with increasing the estimated work-hours for incorporating new AWLs for fuel tank systems into the FAA-approved maintenance program, or AWLs section of the ICA, as applicable. While some individual operators may take longer to accomplish the requirements, others may not. Our cost estimate is based on an average of expected costs for all operators. We also disagree with including the cost of accomplishing the repetitive AWL inspections, since they are not directly required by this AD. This AD only requires the change to the maintenance program, or AWLs of the ICA, as applicable. The operating rules require the repetitive inspections once the maintenance program/ICA is changed. No change to this AD is necessary in this regard.

## Conclusion

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

## Costs of Compliance

We estimate that this AD affects 780 airplanes of U.S. registry. We also estimate that it takes about 1 work-hour per product to comply with this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $62,400, or $80 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

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

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2008–11–15 McDonnell Douglas:** Amendment 39–15538. Docket No. FAA–2008–0032; Directorate Identifier 2007–NM–314–AD.

**Effective Date**

(a) This airworthiness directive (AD) is effective July 3, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to all McDonnell Douglas Model 717–200 airplanes; 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; Model MD–88 airplanes; and Model MD–90–30 airplanes; certificated in any category.

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

**Unsafe Condition**

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

**Compliance**

(e) Comply with this AD within the compliance times specified, unless already done.

**Service Information Reference**

(f) The term ''Report MDC–92K9145,'' as used in this AD, means the Boeing Twinjet Special Compliance Items Report, MDC–92K9145, Revision G, dated June 7, 2007.

**Revise the FAA-Approved Maintenance Program**

(g) For 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; and Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes: Before December 16, 2008, revise the FAA-approved maintenance program to incorporate the information specified in Appendixes B, C, and D of

Report MDC–92K9145. Accomplishing the revision in accordance with a later revision of Report MDC–92K9145 is an acceptable method of compliance if the revision is approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

**Revise the Airworthiness Limitations (AWLs) Section**

(h) For Model 717–200, Model MD–88, and Model MD–90–30 airplanes: Before December 16, 2008, revise the AWLs section of the Instructions for Continued Airworthiness (ICA) to incorporate the information specified in Appendixes B, C, and D of Report MDC–92K9145. Accomplishing the revision in accordance with a later revision of Report MDC–92K9145 is an acceptable method of compliance if the revision is approved by the Manager, Los Angeles ACO.

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

(i) After accomplishing the actions specified in paragraph (g) or (h) of this AD, as applicable, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are part of a later revision of Report MDC–92K9145 that is approved by the Manager, Los Angeles ACO; or unless the inspections, intervals, or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (k) of this AD.

**No Reporting Requirement**

(j) Although Report MDC–92K9145 specifies to submit certain information to the manufacturer, this AD does not require that action.

**Alternative Methods of Compliance (AMOCs)**

(k)(1) The Manager, Los Angeles ACO, FAA, ATTN: Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5254; fax (562) 627–5210; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

**Material Incorporated by Reference**

(l) You must use the Boeing Twinjet Special Compliance Items Report, MDC–92K9145, Revision G, dated June 7, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The document contains the following errors:

(i) The Index of Page Changes specifies incorrect revision levels for certain pages. The revision levels specified on each page are correct.

(ii) There are three sets of pages (six pages total) with the same page numbers in Appendix C (i.e., pages C1 and C2). The first set of page numbers (i.e., Appendix C title page and Twinjet Airworthiness Limitation Instructions (ALIs)) is correct. The second set of page numbers (i.e., ALI 20–2) is incorrect. Those pages should be identified as page numbers C6 and C7 as specified in the Index of Page Changes. The third set of page numbers (i.e., ALI 20–3) is also incorrect. Those pages should be identified as page numbers C8 and C9 as specified in the Index of Page Changes.

(iii) None of the pages are dated. The issue date for each revision is specified in the Index of Page Changes.

(2) 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.

(3) 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).

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

Issued in Renton, Washington, on May 15, 2008.

**Ali Bahrami,**

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

[FR Doc. E8–11502 Filed 5–28–08; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0231; Directorate Identifier 2007–NM–218–AD; Amendment 39–15534; AD 2008–11–12]**

**RIN 2120–AA64**

## Airworthiness Directives; Fokker Model F.28 Mark 0070 and Mark 0100 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:

To date, there have been at least 10 reported events on Fokker 70 (F28 Mark 0070) and Fokker 100 (F28 Mark 0100) aircraft where the flight crew manually overpowered the autopilot, inadvertently neglecting to disengage the autopilot. * * * When the autopilot is not disengaged, the elevator servomotor is overpowered and the horizontal stabilizer is moved by the Automatic Flight Control & Augmentation System (AFCAS) auto-trim in a direction opposite to the (manual) deflection of the elevator, causing high elevator control forces. This condition, if not corrected, could cause the stabilizer to move to an extreme out-of-trim position, creating the (remote) possibility of loss of control of the aircraft, due to the extreme control loads.

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

**DATES:** This AD becomes effective July 3, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 3, 2008.

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

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

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 3, 2008 (73 FR 11366). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

To date, there have been at least 10 reported events on Fokker 70 (F28 Mark 0070) and Fokker 100 (F28 Mark 0100) aircraft where the flight crew manually overpowered the autopilot, inadvertently neglecting to disengage the autopilot. Detailed investigation of these incidents has shown that this usually occurs in a high workload environment that demands immediate manual control of the aircraft by the pilot flying, e.g. terrain warning. When the autopilot is not disengaged, the elevator servomotor is overpowered and the horizontal stabilizer is moved by the

Automatic Flight Control & Augmentation System (AFCAS) auto-trim in a direction opposite to the (manual) deflection of the elevator, causing high elevator control forces. This condition, if not corrected, could cause the stabilizer to move to an extreme out-of-trim position, creating the (remote) possibility of loss of control of the aircraft, due to the extreme control loads. In the original design of AFCAS, operation of the control wheel-mounted stabilizer trim switches has no effect when the autopilot is engaged. Based on the assumption that stabilizer trim switches will be operated by the pilot flying when encountering high control forces, an Autopilot Disconnect Unit has been developed that disconnects the autopilot when the stabilizer trim switches are operated. Since a potentially unsafe condition has been identified that may exist or develop on aircraft of this type design, this Airworthiness Directive requires the installation of Autopilot Disconnect Units and associated wiring changes.

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.

### Correction to Table Information

We have corrected the date of Fokker Drawing W46143, Sheet 03, Issue K, to March 7, 2002, in Table 1 of this AD.

### Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

### 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 12 products of U.S. registry. We also estimate that it will take about 27 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 $3,000 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 $61,920, or $5,160 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:

**2008–11–12 Fokker Services B.V.:** Amendment 39–15534. Docket No. FAA–2008–0231; Directorate Identifier 2007–NM–218–AD.

#### Effective Date

(a) This airworthiness directive (AD) becomes effective July 3, 2008.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Fokker Model F.28 Mark 0070 and 0100 airplanes, all serial numbers; certificated in any category.

#### Subject

(d) Air Transport Association (ATA) of America Code 22: Auto flight.

#### Reason

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

To date, there have been at least 10 reported events on Fokker 70 (F28 Mark 0070) and Fokker 100 (F28 Mark 0100) aircraft where the flight crew manually overpowered the autopilot, inadvertently neglecting to disengage the autopilot. Detailed investigation of these incidents has shown that this usually occurs in a high workload environment that demands immediate manual control of the aircraft by the pilot flying, e.g. terrain warning. When the autopilot is not disengaged, the elevator

servomotor is overpowered and the horizontal stabilizer is moved by the Automatic Flight Control & Augmentation System (AFCAS) auto-trim in a direction opposite to the (manual) deflection of the elevator, causing high elevator control forces. This condition, if not corrected, could cause the stabilizer to move to an extreme out-of-trim position, creating the (remote) possibility of loss of control of the aircraft, due to the extreme control loads. In the original design of AFCAS, operation of the control wheel-mounted stabilizer trim switches has no effect when the autopilot is engaged. Based on the assumption that stabilizer trim switches will be operated by the pilot flying when encountering high control forces, an Autopilot Disconnect Unit has been developed that disconnects the autopilot when the stabilizer trim switches are operated. Since a potentially unsafe condition has been identified that may exist or develop on aircraft of this type design, this Airworthiness Directive requires the installation of Autopilot Disconnect Units and associated wiring changes.

**Actions and Compliance**

(f) Within 36 months after the effective date of this AD, unless already done, install autopilot disconnect units and do associated wiring changes in accordance with Section 3, ''Accomplishment Instructions,'' of Fokker Service Bulletin SBF100–22–050, dated April 25, 2006, including the drawings listed in Table 1 of this AD.

TABLE 1.—DRAWINGS INCLUDED IN FOKKER SERVICE BULLETIN SBF100–22–050

| Fokker drawing | Sheet | Issue | Date |
|---|---|---|---|
| W41501 | 057 | CQ | April 25, 2006. |
| W41501 | 058 | CQ | April 25, 2006. |
| W41501 | 059 | CQ | April 25, 2006. |
| W41501 | 060 | CQ | April 25, 2006. |
| W41501 | 061 | CR | April 25, 2006. |
| W41501 | 062 | CR | April 25, 2006. |
| W41504 | 009 | K | April 25, 2006. |
| W41504 | 010 | K | April 25, 2006. |
| W41504 | 011 | J | April 25, 2006. |
| W41504 | 012 | L | April 25, 2006. |
| W41504 | 013 | L | April 25, 2006. |
| W46140 | 27 | AR | March 5, 2002. |
| W46140 | 28 | AR | March 8, 2002. |
| W46143 | 02 | K | February 26, 2002. |
| W46143 | 03 | K | March 7, 2002. |
| W46144 | 06 | R | March 4, 2002. |
| W46144 | 07 | S | March 7, 2002. |
| W46912 | 01 | D | March 12, 2002. |
| W46930 | 01 | Original | March 14, 2002. |
| W46930 | 02 | E | March 14, 2002. |
| W46932 | 01 | D | March 13, 2002. |
| W59140 | 177 | GC | February 8, 2006. |
| W59140 | 178 | GB | February 6, 2006. |
| W59140 | 221 | GB | February 6, 2006. |

**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, FAA, Transport Airplane Directorate, 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 Dutch Airworthiness Directive NL–2006–010, dated July 14, 2006; and Fokker Service Bulletin SBF100–22–050, dated April 25, 2006, including the drawings listed in Table 1 of this AD, for related information.

**Material Incorporated by Reference**

(i) You must use Fokker Service Bulletin SBF100–22–050, dated April 25, 2006, including the drawings specified in Table 2 of this AD, to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 2.—DRAWINGS INCLUDED IN FOKKER SERVICE BULLETIN SBF100–22–050

| Fokker drawing | Sheet | Issue | Date |
|---|---|---|---|
| W41501 | 057 | CQ | April 25, 2006. |
| W41501 | 058 | CQ | April 25, 2006. |
| W41501 | 059 | CQ | April 25, 2006. |
| W41501 | 060 | CQ | April 25, 2006. |
| W41501 | 061 | CR | April 25, 2006. |
| W41501 | 062 | CR | April 25, 2006. |
| W41504 | 009 | K | April 25, 2006. |
| W41504 | 010 | K | April 25, 2006. |

TABLE 2.—DRAWINGS INCLUDED IN FOKKER SERVICE BULLETIN SBF100–22–050—Continued

| Fokker drawing | Sheet | Issue | Date |
|---|---|---|---|
| W41504 | 011 | J | April 25, 2006. |
| W41504 | 012 | L | April 25, 2006. |
| W41504 | 013 | L | April 25, 2006. |
| W46140 | 27 | AR | March 5, 2002. |
| W46140 | 28 | AR | March 8, 2002. |
| W46143 | 02 | K | February 26, 2002. |
| W46143 | 03 | K | March 7, 2002. |
| W46144 | 06 | R | March 4, 2002. |
| W46144 | 07 | S | March 7, 2002. |
| W46912 | 01 | D | March 12, 2002. |
| W46930 | 01 | Original | March 14, 2002. |
| W46930 | 02 | E | March 14, 2002. |
| W46932 | 01 | D | March 13, 2002. |
| W59140 | 177 | GC | February 8, 2006. |
| W59140 | 178 | GB | February 6, 2006. |
| W59140 | 221 | GB | February 6, 2006. |

(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 Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands.

(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 May 14, 2008.

**Ali Bahrami,**

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

[FR Doc. E8–11501 Filed 5–28–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0544; Directorate Identifier 2008–NM–099–AD; Amendment 39–15535; AD 2008–10–51]**

**RIN 2120–AA64**

## Airworthiness Directives; Dornier Model 328–100 and –300 Airplanes

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

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

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2008–10–51 that was sent previously to all known U.S. owners and operators of all Dornier Model 328–100 and –300 airplanes by individual notices. This AD requires detailed visual and eddy current inspections of both the left-hand and right-hand lower wing panel of the rear trailing edge (inboard and outboard of flap lever arm 1 (rib 3 and rib 5)) for cracks, and repair if necessary. This AD is prompted by cracks found in the lower wing panel of the rear trailing edge (inboard and outboard of flap lever arm 1 (rib 5)) during a routine inspection on a Model 328–100 airplane. Subsequent inspection of the other Model 328–100 airplanes in the same fleet revealed several more airplanes with cracks at the same location. We are issuing this AD to prevent structural failure of the affected wing panel, possible separation of the wing from the airplane, and consequent loss of control of the airplane.

**DATES:** This AD becomes effective June 3, 2008 to all persons except those persons to whom it was made immediately effective by emergency AD 2008–10–51, issued May 8, 2008, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the **Federal Register** as of June 3, 2008.

We must receive comments on this AD by July 28, 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 328 Support Services GmbH, P.O. Box 1252, D–82231 Wessling, Federal Republic of Germany.

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

**SUPPLEMENTARY INFORMATION:** On May 8, 2008, we issued emergency AD 2008–10–51, which applies to all Dornier Model 328–100 and –300 airplanes.

### Background

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, notified the FAA that an unsafe condition may exist on all Dornier Model 328–100 and –300 airplanes. The EASA advises that, during a routine inspection, cracks were found in the lower wing panel of the

rear trailing edge (inboard and outboard of flap lever arm 1 (rib 5)) on a Model 328–100 airplane. Subsequent inspection of the other Model 328–100 airplanes in the same fleet revealed several more airplanes with cracks at the same location. The cause of the cracking is unknown. This condition, if not corrected, could result in structural failure of the affected wing panel, possible separation of the wing from the airplane, and consequent loss of control of the airplane.

**Relevant Service Information**

328 Support Services GmbH has issued Dornier Alert Service Bulletins ASB–328J–57–015 (for Model 328–300 airplanes), and ASB–328–57–037 (for Model 328–100 airplanes), both Revision 1, both dated May 8, 2008. The service bulletins describe procedures for detailed visual and eddy current inspections of both the left-hand (LH) and right-hand (RH) lower wing panel of the rear trailing edge (inboard and outboard of flap lever arm 1 (rib 3 and rib 5)) for cracks. The EASA mandated the service bulletins and issued EASA emergency airworthiness directive 2008–0087–E, dated May 8, 2008, to ensure the continued airworthiness of these airplanes in Europe.

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

These airplane models are manufactured in Europe 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 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.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, we issued emergency AD 2008–10–51 to prevent structural failure of the affected wing panel, possible separation of the wing from the airplane, and consequent loss of control of the airplane. The AD requires accomplishing the actions specified in the service information previously described, except as described in ''Differences Between This AD and Service Information.'' This AD also requires you to report the inspection results to 328 Support Services GmbH.

We found that immediate corrective action was required; therefore, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on May 8, 2008, to all known U.S. owners and operators of all Dornier Model 328–100 and –300 airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

**Differences Between This AD and Service Information**

The service bulletins specify to contact the manufacturer for instructions on how to repair cracks, but this AD requires repairing the cracks using a method approved by the FAA or the EASA (or its delegated agent). In light of the type of repair that is required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this AD, a repair approved by the FAA or the EASA (or its delegated agent) is acceptable for compliance with this AD.

Unlike the procedures described in the service bulletins that specify a one-time eddy current inspection, this AD requires the eddy current inspection to be repeated at intervals not to exceed 400 flight hours. Doing the eddy current inspections terminates the detailed visual inspections required by this AD. We have determined that, because of the safety implications and consequences associated with the cracking, the eddy current inspection of the affected area must be repeated. This difference has been coordinated with the EASA.

**Interim Action**

This AD requires that operators report the results of the inspections to 328 Support Services GmbH. Because the cause of the cracking is not known, these required inspection reports will help determine the extent of the cracking in the affected fleet. Based on the results of these reports, we may determine that further corrective action is warranted.

**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–2008–0544; Directorate Identifier 2008–NM–099–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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If this emergency regulation is later deemed significant under DOT Regulatory Policies and Procedures, we will prepare a final regulatory evaluation

and place it in the AD Docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation, if filed.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2008–10–51 328 Support Services GmbH (Formerly Avcraft Aerospace GmbH):** Amendment 39–15535. Docket No. FAA–2008–0544; Directorate Identifier 2008–NM–099–AD.

**Effective Date**

(a) This AD becomes effective June 3, 2008, to all persons except those persons to whom it was made immediately effective by emergency AD 2008–10–51, issued on May 8, 2008, which contained the requirements of this amendment.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies all Dornier Model 328–100 and –300 airplanes, certificated in any category.

**Unsafe Condition**

(d) This AD results from a report indicating that, during a routine inspection, cracks were found in the lower wing panel of the rear trailing edge (inboard and outboard of flap lever arm 1 (rib 5)) on a Model 328–100 airplane. Subsequent inspection of the other Model 328–100 airplanes in the same fleet revealed several more airplanes with cracks at the same location. We are issuing this AD to prevent structural failure of the affected wing panel, possible separation of the wing from the airplane, and consequent loss of control 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.

**Repetitive Detailed Visual Inspections for Cracks**

(f) Within 10 flight cycles, or 10 flight hours, or 7 days, whichever occurs first, after the effective date of this AD: Accomplish a detailed visual inspection of both the left-hand (LH) and right-hand (RH) lower wing panel inboard and outboard of flap lever arm 1 (rib 5) for cracks, in accordance with the Accomplishment Instructions of Dornier Alert Service Bulletin ASB–328J–57–015, or ASB–328–57–037, both Revision 1, both dated May 8, 2008, as applicable. If no crack is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 50 flight hours until the eddy current inspection required by paragraph (g) of this AD is accomplished. If any crack is detected, before further flight, do an eddy current inspection in accordance with paragraph (g) of this AD.

**Repetitive Eddy Current Inspections for Cracks**

(g) Within 400 flight hours or 3 months after the effective date of this AD, whichever occurs first: Accomplish an eddy current inspection of both the LH and RH lower wing panel in the vicinity of rib 3 and inboard and outboard of flap lever arm 1 (rib 5) for cracks, in accordance with the Accomplishment Instructions of Dornier Alert Service Bulletin ASB–328J–57–015, or ASB–328–57–037, both Revision 1, both dated May 8, 2008, as applicable. Repeat the eddy current inspection thereafter at intervals not to exceed 400 flight hours. Accomplishment of the eddy current inspection terminates the detailed visual inspection required by paragraph (f) of this AD.

**Repair**

(h) If any crack is detected during any inspection required by this AD: Before further flight, repair the crack using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (or its delegated agent).

**Credit for Previously Accomplished Actions**

(i) Accomplishment of the actions required by paragraph (f) or (g) of this AD before the effective date of this AD in accordance with Dornier Alert Service Bulletin ASB–328J–57–015 or ASB–328–57–037, both dated May 5, 2008, as applicable, is considered acceptable for compliance with the corresponding initial inspection requirements specified in paragraph (f) or (g) of this AD.

**Report**

(j) At the applicable time specified in paragraph (j)(1) or (j)(2) of this AD: Send 328 Support Services GmbH a report of findings (both positive and negative) found during each inspection required by paragraphs (f) and (g) of this AD. The report must include the inspection results, a description of any cracks found, the airplane serial number, and the number of landings and flight hours on the airplane. Send the report to 328 Support Services GmbH, Global Support Center, P.O. Box 1252, D–82231 Wessling, Federal Republic of Germany; Telephone +49 8153 88111 6666; fax 49 8153 88111 6565; E-mail: *gsc.op@328support.de.* 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 contained in this AD and has assigned OMB Control Number 2120–0056.

(1) For any inspection done after the effective date of this AD: Within 3 days after the inspection.

(2) For any inspection done before the effective date of this AD: Within 3 days after the effective date of this AD.

**Special Flight Permits**

(k) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done if the following conditions are met:

(1) The initial inspection required by paragraph (f) of this AD must be accomplished.

(2) If a crack indication exceeds 12.5 mm (0.49 inch), the Manager, International Branch, ANM–116, concurs with issuance of the special flight permits.

**Alternative Methods of Compliance (AMOCs)**

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

(2) 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**

(m) European Aviation Safety Agency emergency airworthiness directive 2008–0087–E, dated May 8, 2008, also addresses the subject of this AD.

**Material Incorporated by Reference**

(n) You must use Dornier Alert Service Bulletin ASB–328J–57–015, Revision 1, dated May 8, 2008; or Dornier Alert Service Bulletin ASB–328–57–037, Revision 1, dated May 8, 2008; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. (Only the odd-numbered pages of the documents contain the document revision level and issue date; the even-numbered pages do not contain this information.) The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact 328 Support Services GmbH, P.O. Box 1252, D–82231 Wessling, Germany. 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 May 14, 2008.

**Ali Bahrami,**

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

[FR Doc. E8–11468 Filed 5–28–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–28598; Directorate Identifier 2007–NM–036–AD; Amendment 39–15529; AD 2008–11–07]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 757 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Boeing Model 757 airplanes. This AD requires installation of an automatic shutoff system for the center tank fuel boost pumps, and installation of a placard in the airplane flight deck if necessary. This AD also requires revisions to the Limitations and Normal Procedures sections of the airplane flight manual to advise the flightcrew of certain operating restrictions for airplanes equipped with an automated center tank fuel pump shutoff control. This AD also requires a revision to the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness to incorporate AWLs No. 28–AWL–20 and No. 28–AWL–26. This AD also requires replacement of the fuel control panel assembly with a modified part, installation of two secondary pump control relays for the center tank fuel pumps, other specified actions, and concurrent modification of the fuel control panel assembly. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent center tank fuel pump operation with continuous low pressure, which could lead to friction sparks or overheating in the fuel pump inlet that could create a potential ignition source inside the center fuel tank; these conditions, in combination with flammable fuel vapors, could result in a center fuel tank explosion and consequent loss of the airplane.

**DATES:** This AD is effective July 3, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 3, 2008.

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

### Examining the AD Docket

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

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

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to all Boeing Model 757–200, –200CB, –200PF, and –300 series airplanes. That NPRM was published in the **Federal Register** on July 9, 2007 (72 FR 37132). That NPRM proposed to require installation of an automatic shutoff system for the center tank fuel boost pumps, and installation of a placard in the airplane flight deck if necessary. That NPRM also proposed to require revisions to the Limitations and Normal Procedures sections of the airplane flight manual to advise the flightcrew of certain operating restrictions for airplanes equipped with an automated center tank fuel pump shutoff control. That NPRM also proposed to require a revision to the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness (ICA) to incorporate AWLs No. 28–AWL–20 and No. 28–AWL–26. That NPRM also proposed to require replacement of the fuel control panel assembly with a modified part, installation of two secondary pump control relays for the center tank fuel pumps, other specified actions, and concurrent modification of the fuel control panel assembly.

### Actions Since NPRM Was Issued

On April 29, 2008, we issued AD 2008–10–11, amendment 39–15517, that applies to all Model 757 airplanes. AD 2008–10–11, among other actions, requires revising the AWLs section of the ICA by incorporating AWLs No. 28–AWL–01 through No. 28–AWL–24 of Section 9 of the Boeing 757 Maintenance Planning Document (MPD) Document D622N001–9, Revision March 2008. AD 2008–10–11 also provides the optional action of incorporating AWL No. 28–AWL–26. This AD, however, requires the incorporation of AWLs No. 28–AWL–20 and No. 28–AWL–26 in accordance with paragraphs (j) and (m) of this AD, respectively. Therefore, we have added a new paragraph (q) to this AD specifying that incorporating AWLs No. 28–AWL–20 and No. 28–AWL–26 into the AWLs section of the ICA in accordance with paragraph (g)(3) of AD 2008–10–11 terminates the corresponding actions required by this AD.

### Comments

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

### Request To Revise the Unsafe Condition

Boeing requests that we clarify the unsafe condition in the summary and in paragraph (d) of the NPRM. Boeing states that the unsafe condition exists when continuous low pressure is indicated during pump operation with no fuel available to cover the pump inlet, and that it does not exist when there is fuel available to cover the pump inlet during pump operation. Boeing suggests using the following statement:

> We are issuing this AD to prevent center tank fuel pump operation with continuous low pressure (with no fuel passing through the pump), which could lead to friction sparks or overheating in the fuel pump inlet that could create a potential ignition source inside the center fuel tank. These conditions, in combination with flammable fuel vapors, could result in a center fuel tank explosion and consequent loss of the airplane.

We agree that the unsafe condition is present only when there is no fuel available to cover the pump inlet. When fuel is not covering the pump inlet, the ''continuous low pressure'' indication will be present. Therefore, we have not added the phrase ''with no fuel passing through the pump'' to this AD in this regard, since the continuous low pressure indication is integral to describing the unsafe condition. We have, however, revised the summary and paragraph (d) of this AD by

replacing ''or'' with ''that'' to specify ''* * * overheating in the fuel pump inlet that could create a potential ignition source * * *''

**Request To Explain Policy for Alternative Methods of Compliance (AMOCs)**

TDG Aerospace requests that we explain our criteria in determining which FAA-approved solutions are specified as a primary means of compliance as opposed to being identified as an AMOC and listed in the AMOC paragraph of an AD. TDG Aerospace states that it would be logical to include all solutions that exist and address an unsafe condition in an AD as a primary means of compliance. TDG Aerospace asserts that, by not doing so, we are failing to provide operators with a comprehensive discussion of the cost and scheduling impact associated with compliance, and that this practice could misrepresent ongoing maintenance and airworthiness limitation requirements. TDG Aerospace also asserts that it appears that preferential bias is shown towards one particular solution, even though two or more other equivalent solutions might exist. TDG Aerospace points to AD 2002–21–06, amendment 39–12912 (68 FR 12802, March 18, 2003), as an example of an AD that lists several equivalent solutions for addressing an unsafe condition.

We find that clarification of the AMOC process is necessary. An AMOC is issued only after an AD has been issued. AMOCs provide an alternative method of compliance to those methods that are cited in the associated AD.

When an unsafe condition is identified, the burden of developing a means for correcting the unsafe condition is placed on the original equipment manufacturer (OEM). Usually, no means for correcting an unsafe condition other than those provided by the OEM exist when we issue an AD. We agree that if multiple solutions exist that have fleet-wide application, such solutions may be cited in an AD. However, such solutions would be included in the AD only as methods of compliance with the requirements of the AD—not as AMOCs.

In cases where a non-OEM solution does not have fleet-wide application, it would not be appropriate to include the solution in the AD. Such solutions are best addressed by requesting approval as AMOCs after the AD has been issued. We disagree that this approach undermines the efficacy of those alternative methods, or shows bias towards the OEM's method. A key aspect of the notice of proposed rulemaking process is to do specifically what the commenter is recommending, which is to provide an opportunity for us to become aware of other potential solutions to an unsafe condition. Any person who might be aware of another means to correct the unsafe condition is free to propose that means during the comment period to the proposed AD. We would then carefully consider the comment before issuing the AD.

Further, we have reviewed AD 2002–21–06, and that AD is in line with this practice. That AD refers to approved AMOCs; however, when a new AD supersedes a previously issued AD, we make an assessment of any AMOCs that may have been approved for the previously issued AD. If appropriate, we include a reference to those AMOCs in the new AD to preclude an affected operator from having to re-apply for AMOC approval.

In this case, we have determined that installing and maintaining TDG Aerospace Universal Fault Interrupter (UFI), in accordance with Supplemental Type Certificate (STC) ST01950LA, would also address the unsafe condition on Model 757–200 and –300 series airplanes. Therefore, we have deleted paragraph (p)(3) of the NPRM and added a new paragraph (p) to this AD specifying that incorporating STC ST01950LA terminates the requirements of paragraphs (g) through (m) of this AD. We have also added a concurrent requirement to paragraph (p) of this AD to install a placard on all airplanes in the operator's fleet not equipped with a UFI or automatic shutoff system.

**Request To Clarify the Summary**

Boeing requests that we add a statement to the NPRM specifying that this AD will not be extended to the main wing tanks, as discussed in meetings between Boeing and the Seattle Aircraft Certification Office, FAA. Boeing states that AD 2002–24–51, amendment 39–12992 (68 FR 10, January 2, 2003), was based upon discrepancies in the manufacturing process, and that AD 2002–24–51 was later expanded because inspection of in-service units showed that the units could possibly overheat in service or during manufacture. Boeing further states that there is no service history of incidents or accidents on the main wing tanks on Model 757 airplanes to support this AD.

Although we agree that the scope of this AD is not being expanded to address the main wing tanks, revising the summary of this AD is not necessary because it only discusses the center fuel tanks. We have not changed this AD in this regard.

**Request To Allow Use of Existing AMOC**

Boeing requests that we revise the NPRM to specify that operators may continue using the procedures in the following documents as an AMOC, until an operator has inspected all center tank fuel pumps and modified all airplanes in its fleet: AD 2002–19–52, amendment 39–12900 (67 FR 61253, September 30, 2002), and AD 2002–24–51; or FAA Approval Letter 140S–03–234, dated August 15, 2003. As justification, Boeing states that the AMOC has already been accepted as a valid means of fulfilling the intent of the AD pending hardware installation.

We agree that the procedures in AD 2002–19–52 and AD 2002–24–51, or the procedures approved by FAA Approval Letter 140S–03–234 as an AMOC to AD 2002–19–52 and AD 2002–24–51, continue to be acceptable until all airplanes in an operator's fleet are in compliance with all the requirements of this AD. As stated in the NPRM, installing a placard in accordance with paragraph (e) of AD 2002–19–52 is acceptable for compliance with paragraph (h) of this AD. Also, paragraph (n) of this AD states that accomplishing the actions specified in paragraphs (g), (h), (i), and (j) of this AD terminates the AFM revision specified in paragraph (e) of AD 2002–24–51 for Model 757–200, –200CB, –200PF, and –300 series airplanes that have the automatic shutoff system installed. No change to this AD is necessary in this regard.

**Request To Allow Use of an AMOC**

UPS requests that we revise the NPRM to allow AD 2002–24–51 as an AMOC and terminating action to the proposed requirements of the NPRM. As justification, UPS states that there is no opportunity for potential ignition sources to develop from the center tank fuel pump, since AD 2002–24–51 prohibits operating the fuel pumps when the center tank fuel quantity reaches 1,000 pounds; under this limitation, the fuel pump is submerged and always covered with fuel. UPS believes that the limitations required by AD 2002–24–51 provide a higher level of safety than the automatic shutoff system because the limitations of AD 2002–24–51 always require the fuel pumps to be submerged in fuel, precluding the opportunity for dry running the pumps. UPS further states that, since Boeing Service Bulletin 757–28A0105, Revision 1, dated April 2, 2007, was issued to counteract the potential continued dry running of the fuel pump, it should not be required for

operators who have accomplished AD 2002–24–51.

We do not agree to allow AD 2002–24–51 as an AMOC or terminating action for the requirements of this AD. The changes to the pump control system required by this AD address problems with the system, such as indication failures and power relay failures, that the limitations required by AD 2002–24–51 do not address. Further, the FAA Flight Standards Service has informed us that there are flights where the fuel pumps are not turned off as required by AD 2002–24–51 because of the lack of crew indication prompting early shutoff of the fuel pumps. AD 2002–24–51 was intended only to be an interim action until the pump power control system changes were developed and incorporated. We have determined that installing the automatic shutoff system provides a higher level of safety because it prevents extended dry running of the fuel pumps. Therefore, we have not changed this AD in this regard.

**Request To Revise AWLs Intervals**

KLM Royal Dutch Airlines, on behalf of several operators, requests that we review a 45-page proposal to align certain Airworthiness Limitation Item (ALI) intervals with the applicable maintenance significant item (MSI) and enhanced zonal analysis procedure (EZAP) intervals, for Model 737, 747, 757, 767, and 777 airplanes. The recommendations in that proposal ensure that the ALI intervals align with the maintenance schedule of the operators.

We have reviewed the proposal and note that it recommends extending the inspection interval for AWL No. 28–AWL–20 from 1 year to 24 months. We infer that the operators request that we revise paragraph (m) of this AD to extend the inspection interval for AWL No. 28–AWL–20 of Boeing Temporary Revision (TR) 09–006, dated January 2007, to the Boeing 757 Maintenance Planning Document, D622N001–9. That 1-year interval was determined using a quantitative fault tree analysis. Given the confidence level of certain inputs into that analysis, it would not be appropriate to extend the inspection interval until sufficient reliability data is available to substantiate those assumptions. Therefore, we have determined that a 1-year interval is appropriate for ensuring an acceptable level of safety. No change to this AD is necessary in this regard.

**Request To Explain Compliance With Industry Guidance**

TDG Aerospace requests that we specify whether the service bulletins referred to in the NPRM are in compliance with the requirements of section 25.981(a) and (b) of the Federal Aviation Regulations (14 CFR 25.981(a) and (b)) and with section 25.1309(c) of the Federal Aviation Regulations (14 CFR 25.1309(c)) with respect to latent failure conditions. If so, TDG Aerospace further requests that we discuss any inaccuracies between the service bulletins and FAA Advisory Circular (AC) 25.981–1B, ''Fuel Tank Ignition Source Prevention Guidelines,'' dated April 18, 2001; AC 25.1309–1A, ''System Design and Analysis,'' dated June 21, 1988; and MIL–HDBK–217F, ''Reliability Prediction of Electronic Equipment.''

The Boeing service bulletins referred to in this AD are FAA-approved and were found to comply with the requirements of 14 CFR 25.981(a) and (b), amendment 25–102. In developing the service bulletins, Boeing followed the guidance cited by TDG Aerospace. Boeing's substantiation included other features with the fuel pump that contribute an additional condition probability to the latent failure cases referred to by TDG Aerospace. No change to this AD is necessary in this regard.

**Request To Adopt an Industry-Collaborative Approach**

TDG Aerospace suggests that we use the regulatory docket as a tool to encourage industry participation in the pursuit of solutions to known deficiencies that we intend to address with an AD. TDG Aerospace suggests that such an approach would not only result in the most efficient and cost-effective solutions, but also reduce the delay in bringing viable corrective actions to the market.

We welcome any feedback that will improve the AD process for industry, while also ensuring that an unsafe condition is adequately addressed in an appropriate amount of time. As stated previously, the burden of developing a means for correcting the unsafe condition is placed on the OEM. We have found that the comment period is most useful if we notify operators about the work required by a proposed AD, which is typically detailed in a service bulletin. Also, in determining the appropriate compliance time for an AD, we must consider both the risk and scope of work that would be required. Without service information, it would be difficult to set appropriate compliance times, or provide operators with an opportunity to comment on the merits of a corrective action. No change to this AD in necessary in this regard.

**Conclusion**

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

**Costs of Compliance**

There are about 1,094 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs, at an average labor rate of $80 per hour, for U.S. operators to comply with this AD. The estimated cost of parts in the following table depends on the airplane configuration.

ESTIMATED COSTS

| Model | Action | Work hours | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| 757–200, –200CB, and –200PF, series airplanes. | Installation of the automatic shutoff system. | 91 | $8,309 to $9,194 | $15,589 to $16,474 | 631 | $9,836,659 to $10,395,094. |
| 757–300 series airplanes | Installation of the automatic shutoff system. | 51 | $8,598 to $8,654 | $12,678 to $12,734 | 75 | $950,850 to $955,050. |
| 757–200, –200CB, –200PF, and –300 series airplanes. | Placard installation, if necessary. | 1 | $10 | $90 | 706 | $63,540. |
| | AFM revision | 1 | None | $80 | 706 | $56,480. |
| | AWLs revision | 1 | None | $80 | 706 | $56,480. |
| | Installation of secondary pump control relays. | 29 | $2,097 | $4,417 | 706 | $3,118,402. |

ESTIMATED COSTS—Continued

| Model | Action | Work hours | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| | Concurrent modification of the fuel control panel assembly. | 2 | $40 | $200 | 706 | $141,200 |

## 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

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

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2008–11–07 Boeing:** Amendment 39–15529. Docket No. FAA–2007–28598; Directorate Identifier 2007–NM–036–AD.

**Effective Date**

(a) This airworthiness directive (AD) is effective July 3, 2008.

**Affected ADs**

(b) Accomplishing certain paragraphs of this AD terminates certain requirements of AD 2002–24–51, amendment 39–12992.

**Applicability**

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

**Note 1:** This AD requires revisions to certain operator maintenance documents to include new inspections of the automatic shutoff system for the center tank fuel boost pumps. Compliance with these inspections is required by 14 CFR 43.16 and 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (r) of this AD. The request should include a description of changes to the required inspections that will ensure acceptable maintenance of the automatic shutoff system.

**Unsafe Condition**

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent center tank fuel pump operation with continuous low pressure, which could lead to friction sparks or overheating in the fuel pump inlet that could create a potential ignition source inside the center fuel tank; these conditions, in combination with flammable fuel vapors, could result in a center fuel tank explosion and consequent loss of the airplane.

**Compliance**

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

**Service Bulletin References**

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

TABLE 1.—SERVICE BULLETIN REFERENCES

| Airplanes | Action | Service Bulletin |
|---|---|---|
| Model 757–200, –200CB, and –200PF series airplanes. | Installation specified in paragraph (g) of this AD. | Boeing Alert Service Bulletin 757–28A0081, dated February 16, 2006. |
| Model 757–300 series airplanes | Installation specified in paragraph (g) of this AD. | Boeing Alert Service Bulletin 757–28A0082, dated February 16, 2006. |
| For Model 757–200, –200CB, –200PF, and –300 series airplanes. | Installation specified in paragraph (k) of this AD. | Boeing Service Bulletin 757–28A0105, Revision 1, dated April 2, 2007. |

**Installation of Automatic Shutoff System for the Center Tank Fuel Boost Pumps**

(g) Within 36 months after the effective date of this AD: Install an automatic shutoff system for the center tank fuel boost pumps, by accomplishing all of the actions specified in the applicable service bulletin. If a placard has been previously installed on the airplane in accordance with paragraph (h) of this AD, the placard may be removed from the flight deck of only that airplane after the automatic shutoff system has been installed. Installing automatic shutoff systems on all airplanes in an operator's fleet, in accordance with this paragraph, terminates the placard installation required by paragraph (h) of this AD, for all airplanes in an operator's fleet.

**Placard Installation for Mixed Fleet Operation**

(h) Concurrently with installing an automatic shutoff system on any airplane in an operator's fleet, as required by paragraph (g) of this AD: Install a placard adjacent to the pilot's primary flight display on all airplanes in the operator's fleet not equipped with an automatic shutoff system for the center tank fuel boost pumps. The placard reads as follows (alternative placard wording may be used if approved by an appropriate FAA Principal Operations Inspector): ''AD 2002–24–51 fuel usage restrictions required.''

Installation of a placard in accordance with paragraph (e) of AD 2002–19–52, amendment 39–12900, is acceptable for compliance with the requirements of this paragraph. Installing an automatic shutoff system on an airplane, in accordance with paragraph (g) of this AD, terminates the placard installation required by this paragraph, for only that airplane. Installing automatic shutoff systems on all airplanes in an operator's fleet, in accordance with paragraph (g) of this AD, terminates the placard installation required by this paragraph, for all airplanes in an operator's fleet. If automatic shutoff systems are installed concurrently on all airplanes in an operator's fleet in accordance with paragraph (g) of this AD, or if operation according to the fuel usage restrictions of AD 2002–24–51 is maintained until automatic shutoff systems are installed on all airplanes in an operator's fleet, the placard installation specified in this paragraph is not required.

**Airplane Flight Manual (AFM) Revision**

(i) Concurrently with accomplishing the actions required by paragraph (g) of this AD: Do the actions specified in paragraphs (i)(1) and (i)(2) of this AD.

(1) Revise Section 1 of the Limitations section of the Boeing 757 AFM to include the following statement. This may be done by inserting a copy of this AD in the AFM.

''Intentional dry running of a center tank fuel pump (CTR L FUEL PUMP or CTR R FUEL PUMP message displayed on EICAS) is prohibited.''

**Note 2:** When a statement identical to that in paragraph (i)(1) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

(2) Revise Section 3.1 of the Normal Procedures section of the Boeing 757 AFM to include the following statements. This may be done by inserting a copy of this AD in the AFM.

''Procedures contained on this page are applicable to airplanes equipped with the automatic center tank fuel pump power removal system per Boeing Service Bulletin 757–28A0081 (757–200 Series) or 757–28A0082 (757–300 Series).

CENTER TANK FUEL PUMPS

Center tank fuel pump switches must not be ''ON'' unless personnel are available in the flight deck to monitor low PRESS lights.

For ground operations prior to engine start: The center tank fuel pump switches must not be positioned ON unless the center tank contains usable fuel. With center tank fuel pump switches ON, verify both center tank fuel pump low PRESS lights are illuminated and EICAS CTR L FUEL PUMP and CTR R FUEL PUMP messages are displayed.

For ground operations after engine start and flight operations: The center tank fuel pump switch must be selected OFF when the respective CTR L FUEL PUMP or CTR R FUEL PUMP message displays. Both center tank fuel pump switches must be selected OFF when either the CTR L FUEL PUMP or CTR R FUEL PUMP message displays if the center tank is empty. During cruise flight, both center tank pump switches may be reselected ON whenever center tank usable fuel is indicated.

DE-FUELING AND FUEL TRANSFER

When transferring fuel or de-fueling center or main wing tanks, the center fuel pump low PRESS must be monitored and the fuel pump switches positioned to ''OFF' at the first indication of low pressure. Prior to transferring fuel or de-fueling, conduct a lamp test of the respective fuel pump low PRESS lights.

De-fueling main wing tanks with passengers onboard is prohibited if main tank fuel pumps are powered. De-fueling center wing tank with passengers onboard is prohibited if the center wing tank fuel pumps are powered with the automatic center tank fuel pump power removal system inhibited. Fuel may be transferred from tank to tank, or the aircraft may be de-fueled with passengers onboard, provided fuel quantity in the tank from which fuel is being transferred from is maintained above 2,000 pounds (900 kilograms).''

**Note 3:** When statements identical to those in paragraph (i)(2) of this AD have been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

**Airworthiness Limitations (AWLs) Revision for AWL No. 28–AWL–20**

(j) Concurrently with accomplishing the actions required by paragraph (g) of this AD: Revise the AWLs section of the Instructions for Continued Airworthiness (ICA) by incorporating AWL No. 28–AWL–20 of Subsection G of Section 9 of the Boeing 757 Maintenance Planning Data (MPD) Document, D622N001–9, Revision January 2006, into the MPD. Accomplishing the revision in accordance with a later revision of the MPD is an acceptable method of compliance if the revision is approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

**Installation of Secondary Override Pump Control Relays**

(k) Within 60 months after the effective date of this AD: Replace fuel control panel assembly part number 233N3206–( ) (equipment number M10055) with a modified fuel control assembly, install the secondary override pump control relays for the center tank fuel pumps in the P33 and P37 relay panels, and do all other specified actions as applicable, by accomplishing all of the applicable actions specified in the applicable service bulletin. The other specified actions must be accomplished before further flight after installing the secondary override pump control relays.

**Concurrent Modification of the M10055 Fuel Control Panel Assembly**

(l) For airplanes identified in paragraph 1.A.1. of Boeing Service Bulletin 757–28A0105, Revision 1, dated April 2, 2007, equipped with any fuel control panel assembly identified in paragraph 1.A. of BAE Systems Service Bulletin 233N3206–28–03, dated October 4, 2006: Before or concurrently with accomplishing the actions required by paragraph (k) of this AD, modify the fuel control panel assembly, in accordance with BAE Systems Service Bulletin 233N3206–28–03, dated October 4, 2006.

**AWLs Revision for AWL No. 28–AWL–26**

(m) Before or concurrently with accomplishing the actions required by paragraph (k) of this AD: Revise the AWLs section of the ICA by incorporating AWL No. 28–AWL–26 of Boeing Temporary Revision (TR) 09–006, dated January 2007, into the MPD. Boeing TR 09–006 is published as Section 9 of the Boeing 757 MPD Document, D622N001–9, Revision January 2007. Accomplishing the revision in accordance with a later revision of the MPD is an acceptable method of compliance if the revision is approved by the Manager, Seattle ACO.

**Terminating Action for AD 2002–24–51**

(n) Accomplishing the actions required by paragraphs (g), (h), (i), and (j) of this AD terminates the AFM limitations required by paragraph (e) of AD 2002–24–51 for Model 757–200, –200CB, –200PF, and –300 series airplanes that have the automatic shutoff system installed, except for the following limitation: ''Warning Do not reset a tripped fuel pump circuit breaker.''

Except for this limitation, all other AFM limitations required by paragraph (e) of AD 2002–24–51 for Model 757–200, –200CB, –200PF, and –300 series airplanes may be removed from the AFM after accomplishing the actions required by paragraphs (g), (h), (i), and (j) of this AD.

**Credit for Actions Done According to Previous Issue of Service Bulletin**

(o) Actions accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 757–28A0105, dated January 31, 2007, are considered acceptable for compliance with the

corresponding actions specified in paragraph (k) of this AD.

**Terminating Action for Certain Airplanes**

(p) For Model 757–200 and –300 series airplanes: Installing and maintaining TDG Aerospace, Inc. Universal Fault Interrupter (UFI), in accordance with Supplemental Type Certificate (STC) ST01950LA, terminates the actions required by paragraphs (g) through (m) of this AD; provided that, concurrently with installing a UFI on any airplane in an operator's fleet, a placard is installed adjacent to the pilot's primary flight display on all airplanes in the operator's fleet not equipped with a UFI. The placard reads as follows (alternative placard wording may be used if approved by an appropriate FAA Principal Operations Inspector): ''AD 2002–24–51 fuel usage restrictions required.''

Installation of a placard in accordance with paragraph (e) of AD 2002–19–52 or paragraph (h) of this AD is acceptable for compliance with the placard installation required by this paragraph. Installing a UFI in accordance with STC ST01950LA, or an automatic shutoff system in accordance with paragraph (g) of this AD, on an airplane terminates the placard installation required by this paragraph for only that airplane. Installing UFIs in accordance with STC ST01950LA, or automatic shutoff systems in accordance with paragraph (g) of this AD, on all airplanes in an operator's fleet terminates the placard installation required by this paragraph for all airplanes in an operator's fleet. If UFIs or automatic shutoff systems are installed concurrently on all airplanes in an operator's fleet, or if operation according to the fuel usage restrictions of AD 2002–24–51 is maintained until UFIs or automatic shutoff systems are installed on all airplanes in an operator's fleet, the placard installation specified in this paragraph is not required.

**Terminating Action for AWLs Revision**

(q) Incorporating AWLs No. 28–AWL–20 and No. 28–AWL–26 into the AWLs section of the ICA in accordance with paragraph (g)(3) of AD 2008–10–11 terminates the corresponding action required by paragraphs (j) and (m) of this AD.

**Alternative Methods of Compliance (AMOCs)**

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

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

**Material Incorporated by Reference**

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

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

| Service information | Revision | Date |
|---|---|---|
| BAE Systems Service Bulletin 233N3206–28–03 | Original | October 4, 2006. |
| Boeing Alert Service Bulletin 757–28A0081 | Original | February 16, 2006. |
| Boeing Alert Service Bulletin 757–28A0082 | Original | February 16, 2006. |
| Boeing Service Bulletin 757–28A0105 | 1 | April 2, 2007. |
| Boeing 757 Maintenance Planning Data Document, D622N001–9, Section 9, Subsection G | January 2006 | January 2006. |
| Boeing Temporary Revision 09–006 to the Boeing 757 Maintenance Planning Data Document, D622N001–9. Boeing Temporary Revision 09–006 is published as Section 9 of the Boeing 757 Maintenance Planning Data Document, D622N001–9, Revision January 2007. | Original | January 2007. |

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

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

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

Issued in Renton, Washington, on May 8, 2008.

**Michael J. Kaszycki,**

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

[FR Doc. E8–11275 Filed 5–28–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–0263; Directorate Identifier 2007–NM–207–AD; Amendment 39–15530; AD 2008–11–08]**

**RIN 2120–AA64**

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

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This AD requires repetitive inspections for any cracking of or damage to the left side and right side flight deck No. 2, No. 4, and No. 5 windows, as necessary, and corrective actions if necessary. This AD results from reports of in-flight departure and separation of the flight deck windows. We are issuing this AD to detect and correct cracking in the vinyl interlayer or damage to the structural inner glass panes of the flight deck No. 2, No. 4, and No. 5 windows, which could result in loss of a window and rapid loss of cabin pressure. Loss of cabin pressure could cause crew communication difficulties or crew incapacitation.

**DATES:** This AD is effective July 3, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 3, 2008.

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

**Examining the AD Docket**

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

1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

## Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to all Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. That NPRM was published in the **Federal Register** on December 3, 2007 (72 FR 67864). That NPRM proposed to require repetitive inspections for any cracking of or damage to the left side and right side flight deck No. 2, No. 4, and No. 5 windows, as necessary, and corrective actions if necessary.

## Changes Made to This AD

We have revised the applicability of this AD to clearly identify that Boeing Model 737–900ER series airplanes are also subject to the requirements of this AD. These airplanes were not previously identified in the applicability of the NPRM because they were type certificated after issuance of Boeing Alert Service Bulletin 737–56A1022, dated July 18, 2007, which we referenced for the applicability of the NPRM. Although these airplanes are not explicitly identified in the effectivity of the service bulletin, they are included as Group 2 airplanes in the service bulletin.

We have deleted paragraph (h)(4) of the NPRM and added a new paragraph (h) to this AD specifying that installation of metallic window blanks at cockpit eyebrow windows No. 4 and No. 5 in accordance with Supplemental Type Certificate (STC) ST01630SE terminates the initial and repetitive inspections for the flight deck No. 4 and No. 5 windows required by paragraph (f) of this AD. Incorporation of STC ST01630SE is considered a terminating action, not an alternative method of compliance (AMOC), since an AMOC can be issued only after an AD has been issued. We also have reidentified the AMOC paragraph of the NPRM as paragraph (j) in this AD.

## Comments

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

### Support for the NPRM

Boeing and AirTran Airways agree with the NPRM.

### Request To Add Terminating Action

AirTran Airways and Continental Airlines (CAL) request that we revise the NPRM to specify that installing structural plugs at cockpit eyebrow windows No. 4 and No. 5 in accordance with Boeing Service Bulletin 737–56–1017, dated May 17, 2006; or Revision 1, dated February 15, 2007; terminates the initial and repetitive inspections for the flight deck No. 4 and No. 5 windows. CAL notes that a similar statement is found in Tables 2 and 3 of Boeing Alert Service Bulletin 737–56A1022, dated July 18, 2007. (We referred to Boeing Alert Service Bulletin 737–56A1022 as the appropriate source of service information for accomplishing the proposed requirements of the NPRM.)

We agree with the commenters and have added a new paragraph (i) to this AD accordingly.

### Request To Revise the Applicability

CAL requests that we limit the applicability of the NPRM to airplanes delivered before line number 2589. As justification, CAL states that new production airplanes do not include the flight deck No. 4 and No. 5 windows, and that Boeing is in the final stages of approving a new, improved flight deck No. 2 window, part numbers 5–89355–87 and –88. According to CAL, the new, improved No. 2 window, which is manufactured by PPG Aerospace, is designed specifically to address the unsafe condition of the NPRM. CAL also states that Boeing plans to install the new, improved No. 2 windows on new production airplanes this year.

We do not agree to exclude any airplanes from the applicability of this AD. The affected flight deck No. 2 windows are interchangeable with the new, improved windows manufactured by PPG Aerospace; therefore, the unsafe condition could be introduced on a new production airplane if an affected No. 2 window is installed after airplane delivery. We have not changed this AD in this regard.

### Request To Track Compliance Time by Flight Cycles

AirTran Airways requests that we add an option to this AD to allow operators to track the inspections by airplane flight cycles instead of window flight hours, provided that any used window is inspected before it is installed. AirTran Airways states that tracking compliance by a component rather than by airplane is more difficult due to the extra work and documentation generated for the removal and installation of a component. According to AirTran Airways, tracking compliance by component also increases the opportunity for human factor errors. AirTran Airways also states that tracking inspections by airplane flight cycles will accomplish the inspections within the same timeframe as proposed in the NPRM and be less of a burden.

We disagree with allowing operators to track compliance by airplane flight cycles because the unsafe condition is primarily related to window flight hours. The utilization of airplanes within the fleet varies from short to long flight hours per flight cycle. Therefore, we have not changed this AD in this regard.

### Request To Revise the Compliance Time for the No. 2 Window

CAL requests that we revise the compliance time for the initial inspection of the flight deck No. 2 window to within 36 months or 7,500 flight hours, whichever occurs first, after the window installation; or to within 24 months, for windows installed more than 36 months ago or for windows where the number of flight hours is unknown. CAL states that the NPRM, which proposes to require the initial inspection within 24 months after the effective date of this AD regardless of the age or flight time of the window, unnecessarily penalizes operators who proactively inspect and replace the No. 2 window before the AD is issued. CAL also states that, according to the wording in the NPRM, a window replaced one day before the effective date of the AD would need to be re-inspected within 24 months, but a window inspected and replaced one day after the effective date of the AD would not need to be re-inspected until 36 months or 7,500 window flight hours.

We do not agree to revise the compliance time for the initial inspection of the flight deck No. 2 window. According to paragraph (e) of this AD, an operator is responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done. If the initial inspection of the No. 2 window was done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–56A1022, dated July 18, 2007, then the initial inspection does not need to be accomplished again; only the repetitive inspections would need to be accomplished in accordance with the service bulletin at the applicable interval specified in the service bulletin.

If the initial and repetitive inspections of the No. 2 window are done before the effective date of this AD, but are not done in accordance with the service bulletin, then those inspections are not acceptable for compliance with this AD unless an AMOC is issued for those prior inspections. Under the provisions of paragraph (j) of this AD, we will consider requests for approval of an AMOC if sufficient data are submitted to substantiate that prior inspections incorporate similar criteria to what is provided for in the service bulletin. Therefore, no change to this AD is necessary in this regard.

### Request for an AMOC for a Parts Manufacturer Approval (PMA) Equivalent Part

CAL states that the FAA has approved a new, improved flight deck No. 2 window designed by GKN Aerospace Transparency Systems, under PMA Holder No. PQ1250NM, Supplement 10, dated September 17, 2007. CAL also states that the new, improved No. 2 window was designed to prevent the premature failure of the window, and that the new, improved window addresses the unsafe condition of the NPRM. CAL, therefore, requests that we add a new AMOC paragraph to this AD, which would exempt the new, improved No. 2 window from the required inspections.

We do not agree to allow the PMA equivalent No. 2 window as an AMOC to the required inspections. Although the window has been approved as a PMA equivalent part, the commenter has not provided data showing that the PMA equivalent window is not susceptible to the same vinyl interlayer cracking. However, under the provisions of paragraph (j) of this AD, we will consider requests for approval of an AMOC if sufficient data are submitted to substantiate that the design change would provide an acceptable level of safety. No change to this AD is necessary in this regard.

### Conclusion

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

### Costs of Compliance

There are about 2,127 airplanes of the affected design in the worldwide fleet. This AD affects about 737 airplanes of U.S. registry. The required actions take about 2 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $117,920, or $160 per airplane, per inspection cycle.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

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

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

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2008–11–08 Boeing:** Amendment 39–15530. Docket No. FAA–2007–0263; Directorate Identifier 2007–NM–207–AD.

#### Effective Date

(a) This airworthiness directive (AD) is effective July 3, 2008.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to all Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category.

#### Unsafe Condition

(d) This AD results from reports of in-flight departure and separation of the flight deck windows. We are issuing this AD to detect and correct cracking in the vinyl interlayer or damage to the structural inner glass panes of the flight deck No. 2, No. 4, and No. 5 windows, which could result in loss of a window and rapid loss of cabin pressure. Loss of cabin pressure could cause crew communication difficulties or crew incapacitation.

#### Compliance

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

#### Repetitive Inspections and Replacement

(f) At the applicable times specified in Tables 1, 2, and 3 of paragraph 1.E. of Boeing Alert Service Bulletin 737–56A1022, dated July 18, 2007, except as provided by paragraph (g) of this AD: Do the internal and external detailed inspections for any cracking of or damage to the left side and right side flight deck No. 2, No. 4, and No. 5 windows, as applicable, and do the applicable corrective actions before further flight, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–56A1022, dated July 18, 2007. Repeat the inspections thereafter at the applicable interval specified in paragraph 1.E. of Boeing Alert Service Bulletin 737–56A1022, dated July 18, 2007.

#### Exception to Compliance Times

(g) Where Tables 1, 2, and 3 of paragraph 1.E. of Boeing Alert Service Bulletin 737–56A1022, dated July 18, 2007, specify counting the compliance time from '' * * * the date on this service bulletin,'' this AD requires counting the compliance time from the effective date of this AD.

**Optional Terminating Actions**

(h) Installation of metallic window blanks at cockpit eyebrow windows No. 4 and No. 5 in accordance with Supplemental Type Certificate ST01630SE terminates the initial and repetitive inspections for the flight deck No. 4 and No. 5 windows required by paragraph (f) of this AD. All other applicable actions required by paragraph (f) of this AD must be fully complied with.

(i) Installation of structural plugs at cockpit eyebrow windows No. 4 and No. 5 in accordance with Boeing Service Bulletin 737–56–1017, dated May 17, 2006; or Revision 1, dated February 15, 2007, terminates the initial and repetitive inspections for the flight deck No. 4 and No. 5 windows required by paragraph (f) of this AD. All other applicable actions required by paragraph (f) of this AD must be fully complied with.

**Alternative Methods of Compliance (AMOCs)**

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

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

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

**Material Incorporated by Reference**

(k) You must use Boeing Alert Service Bulletin 737–56A1022, dated July 18, 2007, to do the actions required by this AD, unless the AD specifies otherwise. If you do the optional actions specified in this AD, you must use Boeing Service Bulletin 737–56–1017, dated May 17, 2006; or Boeing Service Bulletin 737–56–1017, Revision 1, dated February 15, 2007, unless the AD specifies otherwise.

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

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

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

Issued in Renton, Washington, on May 10, 2008.

**Michael J. Kaszycki,**

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

[FR Doc. E8–11336 Filed 5–28–08; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–0265; Directorate Identifier 2007–NM–213–AD; Amendment 39–15531; AD 2008–11–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 727 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Boeing Model 727 airplanes. This AD requires repetitive inspections for any cracking of or damage to the left side and right side flight deck No. 2, No. 4, and No. 5 windows, as necessary, and corrective actions if necessary. This AD results from reports of in-flight departure and separation of the flight deck windows. We are issuing this AD to detect and correct cracking in the vinyl interlayer or damage to the structural inner glass panes of the flight deck No. 2, No. 4, and No. 5 windows, which could result in loss of a window and rapid loss of cabin pressure. Loss of cabin pressure could cause crew communication difficulties or crew incapacitation.

**DATES:** This AD is effective July 3, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 3, 2008.

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

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6577; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to all Boeing Model 727 series airplanes. That NPRM was published in the **Federal Register** on December 3, 2007 (72 FR 67873). That NPRM proposed to require repetitive inspections for any cracking of or damage to the left side and right side flight deck No. 2, No. 4, and No. 5 windows, as necessary, and corrective actions if necessary.

**Changes Made to This AD**

We have deleted paragraph (h)(4) of the NPRM and added a new paragraph (h) to this AD specifying that installation of metallic window blanks at cockpit eyebrow windows No. 4 and No. 5 in accordance with Supplemental Type Certificate (STC) ST01704SE terminates the initial and repetitive inspections for the flight deck No. 4 and No. 5 windows required by paragraph (f) of this AD. Incorporation of STC ST01704SE is considered a terminating action, not an alternative method of compliance (AMOC), since an AMOC can only be issued after an AD has been issued. We have also reidentified the AMOC paragraph of the NPRM as paragraph (i) in this AD.

**Comments**

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

**Support for the NPRM**

Boeing supports the NPRM.

**Request To Extend Compliance Times**

FedEx requests that we extend the compliance time to 36 months or 3,600 flight hours, whichever occurs later, for the initial inspections of the flight deck No. 2, No. 4, and No. 5 windows and the repetitive intervals for the No. 4 and No.

5 windows. FedEx states this extension will allow it to do the initial inspections at a scheduled maintenance check. FedEx also states that extending the repetitive interval will allow the repetitive inspections of the No. 2, No. 4, and No. 5 to be done concurrently.

We do not agree with the request to extend certain compliance times. In developing an appropriate compliance time for this action, we considered the urgency associated with the subject unsafe condition and the practical aspect of accomplishing the required inspections within a period of time that corresponds to the normal scheduled maintenance for most affected operators. However, according to the provisions of paragraph (i) of this AD, we may approve requests to adjust the compliance time if the request includes data that show that the new compliance time would provide an acceptable level of safety.

## Conclusion

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

## Costs of Compliance

There are about 790 airplanes of the affected design in the worldwide fleet. This AD affects about 431 airplanes of U.S. registry. The required actions take about 2 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $68,960, or $160 per airplane, per inspection cycle.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2008–11–09 Boeing:** Amendment 39–15531. Docket No. FAA–2007–0265; Directorate Identifier 2007–NM–213–AD.

**Effective Date**

(a) This airworthiness directive (AD) is effective July 3, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to all Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category.

**Unsafe Condition**

(d) This AD results from reports of in-flight departure and separation of the flight deck windows. We are issuing this AD to detect and correct cracking in the vinyl interlayer or damage to the structural inner glass panes of the flight deck No. 2, No. 4, and No. 5 windows, which could result in loss of a window and rapid loss of cabin pressure. Loss of cabin pressure could cause crew communication difficulties or crew incapacitation.

**Compliance**

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

**Repetitive Inspections and Replacement**

(f) At the applicable times specified in Tables 1, 2, and 3 of paragraph 1.E. of Boeing Alert Service Bulletin 727–56A0019, dated June 6, 2007, except as provided by paragraph (g) of this AD: Do the internal and external detailed inspections for any cracking of or damage to the left side and right side flight deck No. 2, No. 4, and No. 5 windows, as applicable, and do the applicable corrective actions before further flight, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 727–56A0019, dated June 6, 2007. Repeat the inspections thereafter at the applicable interval specified in paragraph 1.E. of Boeing Alert Service Bulletin 727–56A0019, dated June 6, 2007.

**Exception to Compliance Times**

(g) Where Tables 1, 2, and 3 of paragraph 1.E. of Boeing Alert Service Bulletin 727–56A0019, dated June 6, 2007, specify counting the compliance time from ''* * * the date on this service bulletin,'' this AD requires counting the compliance time from the effective date of this AD.

**Optional Terminating Action**

(h) Installation of metallic window blanks at cockpit eyebrow windows No. 4 and No. 5 in accordance with Supplemental Type Certificate ST01704SE terminates the initial and repetitive inspections for the flight deck No. 4 and No. 5 windows required by paragraph (f) of this AD. All other applicable actions required by paragraph (f) of this AD must be fully complied with.

**Alternative Methods of Compliance (AMOCs)**

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option

Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

**Material Incorporated by Reference**

(j) You must use Boeing Alert Service Bulletin 727–56A0019, dated June 6, 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 Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

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

Issued in Renton, Washington, on May 10, 2008.

**Michael J. Kaszycki,**

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

[FR Doc. E8–11359 Filed 5–28–08; 8:45 am]

**BILLING CODE 4910–13–P**

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–28748; Directorate Identifier 2007–NM–115–AD; Amendment 39–15537; AD 2008–11–14]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–10–10F, DC–10–30F (KC–10A and KDC–10), DC–10–40F, MD–10–10F, and MD–10–30F Airplanes; and Model MD–11 and MD–11F Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain McDonnell Douglas Model DC–10–10F, DC–10–30F (KC–10A and KDC–10), DC–10–40F, MD–10–10F, and MD–10–30F airplanes; and Model MD–11 and MD–11F airplanes. This AD requires installation of control cable freeze protection by making certain changes. This AD results from reports of standing water on the horizontal pressure panel above the main and center landing gear wheel wells. We are issuing this AD to prevent the accumulation of ice on the flight control cables in the wheel wells. When the landing gear doors open or vibration in this area occurs, such ice accumulation could break off and can cause injury to people or damage to property on the ground, can affect landing gear controls and rear spar flight control systems, can cause damage to other control systems, and might cause loss of control of the airplane.

**DATES:** This AD is effective July 3, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 3, 2008.

**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:** Ken Sujishi, 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) 627–5353; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–30F (KC–10A and KDC–10), DC–10–40F, MD–10–10F, and MD–10–30F airplanes; and Model MD–11 and MD–11F airplanes. That NPRM was published in the **Federal Register** on July 23, 2007 (72 FR 40094). That NPRM proposed to require installation of control cable freeze protection by making certain changes.

### Comments

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

### Request To Delay Issuance of Final Rule

FedEx and Boeing request that we delay issuance of the final rule until Boeing releases a revision to Boeing Alert Service Bulletin DC10–27A237, dated January 9, 2007 (referred to as an appropriate source of service information for accomplishing the actions specified in the NPRM), and to Drawing SR11530052, and necessary parts are available. FedEx notes that Boeing released Information Notice DC10–27A237 IN 01, dated August 8, 2007, which indicates that the procedures specified in Boeing Alert Service Bulletin DC10–27A237 for Model DC–10–10F and MD–10–10F airplanes cannot be done. Boeing states that the engineering provided in Drawing SR11530052, which is referred to in Boeing Alert Service Bulletin DC10–27A237, does not reflect the existing structural configuration used on Model DC–10–10F and MD–10–10F airplanes.

Since issuance of the NPRM, we have reviewed Boeing Alert Service Bulletin DC10–27A237, Revision 1, dated December 20, 2007. Revision 1 revises Drawing SR11530052 to account for different panel configurations on Model DC–10–10F and MD–10–10F airplanes and adds airplane groups for those affected airplanes. Revision 1 also removes Model DC–10–10 airplanes, which are not subject to the identified unsafe condition of this AD. No more work is necessary on Model DC–10–30F (KC–10A and KDC–10), DC–10–40F, MD–10–10F, and MD–10–30F airplanes changed in accordance with Boeing Alert Service Bulletin DC10–27A237, dated January 9, 2007.

Therefore, we have revised this AD to refer to Boeing Alert Service Bulletin DC10–27A237, Revision 1, as an appropriate source of service information for accomplishing the required actions and identifying the affected airplanes. We also have added a new paragraph (g) of this AD to give credit for actions done before the effective date of this AD according to Boeing Alert Service Bulletin DC10–27A237, dated January 9, 2007, and redesignated subsequent paragraphs of the AD accordingly. In addition, we have removed Model DC–10–10

airplanes from the applicability of this AD.

In addition, according to Boeing, an ample number of required parts will be available to modify the U.S. fleet within the compliance time. However, according to the provisions of paragraph (h) of the final rule, we may approve requests to adjust the compliance time if the request includes data that prove that the new compliance time would provide an acceptable level of safety.

**Request To Add Repair for Damaged Seals**

FedEx requests that a repair for any damaged seal, part number ADA3211–125, be included in the NPRM or the next revision of Boeing Alert Service Bulletin DC10–27A237, dated January 9, 2007. FedEx notes that Boeing issued Information Notices DC10–27A237 IN 01 and MD11–27A084 IN 02, both dated August 8, 2007, which indicate that a fix for damaged seals is forthcoming.

We do not agree. Since issuance of Information Notices DC10–27A237 IN 01 and MD11–27A084 IN 02, Boeing issued MD11–27A084 IN 03, dated December 14, 2007, and Boeing Alert Service Bulletin DC10–27A237, Revision 1, as described previously. Both of these documents state that repairs for damaged seals will be included in the DC10/MD10 Structural Repair Manuals (SRM). In addition, Boeing has received reports that, in certain cases, the seal, which is installed in accordance with Boeing Alert Service Bulletin DC10–27A237, is being damaged after installation as a result of being stepped on during maintenance. Therefore, there is no effect on accomplishing the requirements of this AD. We have not revised the AD in this regard.

**Request To Provide Blanket Approval**

FedEx requests that we provide blanket approval for operators who modified the installation as shown in View L of Boeing Drawing SR11530052 (for Model DC–10–30F (KC–10A and KDC–10) and Model MD–10–30F airplanes) to fit Model DC–10–10F and MD–10–10F airplanes. FedEx states that blanket approval to modify the size, shape, and location of the angles and to shim would be helpful to any operators who have already done so.

We do not agree. FedEx did not provide us with any data supporting their request for such an approval. In addition, we have determined that accomplishing the actions specified in Boeing Alert Service Bulletin DC10–27A237, Revision 1, will adequately address the identified unsafe condition of this AD. However, under the provisions of paragraph (h) of this AD, we might consider requests for approval of an alternative method of compliance (AMOC) if sufficient data are submitted to substantiate that such a design change would provide an acceptable level of safety. We have made no change to the AD in this regard.

**Request To Refer to Correct Drawing**

FedEx requests that the NPRM be revised to refer to Drawing SR10270026, or that we verify that the incorrect drawing number (i.e., Drawing SR11270026) in Step 3 of the Work Instructions is corrected in the next revision to Boeing Alert Service Bulletin DC10–27A237, dated January 9, 2007.

We do not agree to refer to the subject drawing in the AD. As discussed previously, we have reviewed Boeing Alert Service Bulletin DC10–27A237, Revision 1, and have revised this AD to include that service bulletin revision as an appropriate source of service information for accomplishing the required actions. The incorrect drawing number has been corrected in the service bulletin.

**Conclusion**

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

**Costs of Compliance**

There are about 387 airplanes of the affected design in the worldwide fleet. This AD affects about 283 airplanes of U.S. registry. The actions take about 40 work hours per airplane, at an average labor rate of $80 per work hour. Required parts cost about $5,896 or $6,073 per airplane depending on the airplane configuration. Based on these figures, the estimated cost of the AD for U.S. operators is between $2,574,168 and $2,624,259, or $9,096 or $9,273 per airplane depending on the airplane configuration.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2008–11–14 McDonnell Douglas:** Amendment 39–15537. Docket No. FAA–2007–28748; Directorate Identifier 2007–NM–115–AD.

**Effective Date**

(a) This airworthiness directive (AD) is effective July 3, 2008.

**Affected ADs**

(b) None.

**Applicability**

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

TABLE 1.—APPLICABILITY

| McDonnell Douglas model— | As identified in Boeing Alert Service Bulletin— |
|---|---|
| (1) DC–10–10F, DC–10–30F (KC–10A and KDC–10), DC–10–40F, MD–10–10F, and MD–10–30F airplanes. | DC10–27A237, Revision 1, dated December 20, 2007. |
| (2) MD–11 and MD–11F airplanes | MD11–27A084, Revision 1, dated March 26, 2007. |

**Unsafe Condition**

(d) This AD results from reports of standing water on the horizontal pressure panel above the main and center landing gear wheel wells. We are issuing this AD to prevent the accumulation of ice on the flight control cables in the wheel wells. When the landing gear doors open or vibration in this area occurs, such ice accumulation could break off and can cause injury to people or damage to property on the ground, can affect landing gear controls and rear spar flight control systems, can cause damage to other control systems, and might cause loss of control 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.

**Installation of Control Cable Freeze Protection**

(f) Within 24 months after the effective date of this AD, install control cable freeze protection by making the changes specified in and in accordance with the Accomplishment Instructions of the applicable service bulletin identified in Table 1 of this AD.

(g) For Model DC–10–30F (KC–10A and KDC–10), DC–10–40F, MD–10–10F, and MD–10–30F airplanes: Installations done before the effective date of this AD in accordance with Boeing Alert Service Bulletin DC10–27A237, dated January 9, 2007, are acceptable for compliance with the requirements of paragraph (f) of this AD.

**Alternative Methods of Compliance (AMOCs)**

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

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

**Material Incorporated by Reference**

(i) You must use Boeing Alert Service Bulletin DC10–27A237, Revision 1, dated December 20, 2007; or Boeing Alert Service Bulletin MD11–27A084, Revision 1, dated March 26, 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 Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

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

Issued in Renton, Washington, on May 14, 2008.

**Ali Bahrami,**

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

[FR Doc. E8–11465 Filed 5–28–08; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 73

**[Docket No. FAA–2008–0519; Airspace Docket No. 08–ASO–6]**

**RIN 2120–AA66**

## Modification of Restricted Areas R–5314A, B, C, D, E, F, H, and J; and Revocation of Restricted Area R–5314G; Dare County Range, NC

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

**ACTION:** Final rule.

**SUMMARY:** This action realigns the internal boundaries and amends the time of designation and using agency title for restricted areas R–5314A, B, C, D, E, and F; amends the time of designation and using agency title for R–5314H and J; and revokes R–5314G. The FAA is taking this action to enhance the safety and operational efficiency of the Dare County Range.

**DATES:** *Effective Date:* 0901 UTC, July 31, 2008.

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

**SUPPLEMENTARY INFORMATION:**

### Background

Restricted Area R–5314 is part of the Dare County Range in North Carolina. R–5314 is divided into nine subareas, designated A, B, C, D, E, F, G, H and J. These subareas support the Air Force Dare bombing range and the Navy Dare bombing range and are used to train aircrews in various tactics such as air-to-ground ordnance delivery and night vision goggle operations. The current layout of R–5314 requires aircrews using the two ranges to share R–5314A and R–5314F. This involves extensive coordination between aircrew and the Range Control Officers at both ranges to deconflict the two operations. The U.S. Air Force requested that the FAA take action to reconfigure the internal alignment and boundaries of R–5314 to better delineate the airspace between the Navy and Air Force ranges. Under the reconfiguration, Air Force Dare users will operate in R–5314A, B, and C, while Navy Dare users will operate in R–5314D, E, and F. The airspace currently designated as R–5314G is subdivided into two areas and redesignated as R–5314C and R–5314F. The designation R–5314G will be revoked. To the east of the newly realigned C and F subareas, the current areas R–5314A, B, C, D, E and F are reconfigured into R–5314A, B, D, and E. This rearranges the location of several subareas within the current restricted area boundaries, but does not alter the existing geographic footprint or altitude floors of the R–5314 complex. The changes will simplify the restricted area

layout, enhance range boundary awareness for aircrews, eliminate much of the coordination and deconfliction actions currently required, and thereby enhance the safety and operational efficiency of the Dare County Range. The boundaries for restricted areas R–5314H and J are not being modified by this rule.

The FAA is also modifying the time of designation for all R–5314 subareas by removing the term ''intermittent'' from the descriptions. The term ''intermittent'' is used in the time of designation to denote sporadic or irregular use of an area. A review of over five years of utilization data for the Dare County Range shows regular and frequent use of the restricted areas; therefore, the term ''intermittent'' is inappropriate and is being deleted to more accurately represent actual usage of the areas. Other than removing the term ''intermittent,'' this change does not alter the current published restricted area time of designation of ''0600–2400 local time, Monday-Friday; 0700–1800 local time Saturday-Sunday; other times by NOTAM 6 hours in advance.'' The change has no effect on the current or projected use of the Dare County Range restricted areas.

In addition, the name of the using agency for all of the restricted areas is changed to add the military service and correct the using agency name.

## The Rule

This action realigns the internal boundaries and layout of restricted areas R–5314A, B, C, D, E and F, and revokes R–5314G. The airspace formerly within R–5314G is further subdivided and redesignated as restricted areas R–5314C and F. The boundaries for R–5314H and J are not modified by this rule and will remain as currently published. This action also removes the term ''intermittent'' from the time of designation for R–5314A, B, C, D, E, F, H and J. In addition, the name of the using agency for all of the above restricted areas is changed from ''Commander, 4th Tactical Fighter Wing'' to ''U.S. Air Force, Commander, 4th Fighter Wing.'' This change adds the name of the military service and corrects the title of the 4th Fighter Wing.

This rule is an administrative change to realign the internal boundaries of existing restricted airspace, update the name of the using agency and correct the time of designation. These changes do not expand restricted airspace beyond the current lateral or vertical boundaries, or increase the available times of use, or alter the activities conducted within the restricted areas. Therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies restricted airspace in North Carolina.

## Environmental Review

The FAA has reviewed the above referenced action according to Department of Transportation Order 5610.1C, ''Procedures for Considering Environmental Impacts'' and FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures.'' In accordance with FAA Order 1050.1E paragraphs 311d and 401p (5), it is determined that the action qualifies for categorical exclusion from further environmental review. Additionally, the implementation of this action will not result in any extraordinary circumstances in accordance with Order 1050.1E paragraph 304. Therefore, on February 15, 2008, the FAA issued a categorical exclusion declaration for the change in the internal boundaries for R–5314.

## List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

## Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

## PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

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

### § 73.53 [Amended]

■ 2. Section 73.53 is amended as follows:

* * * * *

**R–5314A Dare County, NC [Amended]**

By removing the current boundaries, time of designation and using agency and substituting the following:

Boundaries. Beginning at lat. 35°42′36″ N., long. 75°49′49″ W.; to lat. 35°40′08″ N., long. 75°50′14″ W.; to lat. 35°40′25″ N., long. 75°52′15″ W.; to lat. 35°38′41″ N., long. 75°52′34″ W.; to lat. 35°39′01″ N., long. 75°54′34″ W.; to lat. 35°40′41″ N., long. 75°54′09″ W.; to lat. 35°41′31″ N., long. 76°00′19″ W.; to lat. 35°44′10″ N., long. 75°59′41″ W.; to the point of beginning.

Time of designation. 0600–2400 local time, Monday–Friday; 0700–1800 local time Saturday–Sunday; other times by NOTAM 6 hours in advance.

Using agency. U.S. Air Force, Commander, 4th Fighter Wing, Seymour Johnson AFB, NC.

* * * * *

**R–5314B Dare County, NC [Amended]**

By removing the current boundaries, time of designation and using agency and substituting the following:

Boundaries. Beginning at lat. 35°41′52″ N., long. 75°45′11″ W.; to lat. 35°34′41″ N., long. 75°46′49″ W.; to lat. 35°36′46″ N., long. 76°01′19″ W.; to lat. 35°41′31″ N., long. 76°00′19″ W.; to lat. 35°40′41″ N., long. 75°54′09″ W.; to lat. 35°39′01″ N., long. 75°54′34″ W.; to lat. 35°38′41″ N., long. 75°52′34″ W.; to lat. 35°40′25″ N., long. 75°52′15″ W.; to lat. 35°40′08″ N., long. 75°50′14″ W.; to lat. 35°42′36″ N., long. 75°49′49″ W.; to the point of beginning.

Time of designation. 0600–2400 local time, Monday–Friday; 0700–1800 local time Saturday–Sunday; other times by NOTAM 6 hours in advance.

Using agency. U.S. Air Force, Commander, 4th Fighter Wing, Seymour Johnson AFB, NC.

* * * * *

**R–5314C Dare County, NC [Amended]**

By removing the current boundaries, designated altitudes, time of designation, and using agency and substituting the following:

Boundaries. Beginning at lat. 35°44′10″ N., long. 75°59′41″ W.; to lat. 35°38′55″ N., long. 76°00′52″ W.; to lat. 35°39′21″ N., long. 76°04′59″ W.; to lat. 35°44′48″ N., long. 76°03′44″ W.; to the point of beginning.

Designated altitudes. 200 feet above the surface to 15,000 feet MSL.

Time of designation. 0600–2400 local time, Monday–Friday; 0700–1800 local time Saturday–Sunday; other times by NOTAM 6 hours in advance.

Using agency. U.S. Air Force, Commander, 4th Fighter Wing, Seymour Johnson AFB, NC.

* * * * *

**R–5314D Dare County, NC [Amended]**

By removing the current boundaries, time of designation and using agency and substituting the following:

Boundaries. Beginning at lat. 35°47′51″ N., long. 75°48′49″ W.; to lat. 35°42′36″ N., long. 75°49′49″ W.; to lat. 35°44′10″ N., long. 75°59′41″ W.; to lat. 35°47′01″ N., long. 75°58′59″ W.; to lat. 35°46′08″ N., long. 75°52′35″ W.; to lat. 35°48′01″ N., long. 75°51′59″ W.; to the point of beginning.

Time of designation. 0600–2400 local time, Monday–Friday; 0700–1800 local time Saturday–Sunday; other times by NOTAM 6 hours in advance.

Using agency. U.S. Air Force, Commander, 4th Fighter Wing, Seymour Johnson AFB, NC.

* * * * *

**R–5314E Dare County, NC [Amended]**

By removing the current boundaries, designated altitudes, time of designation and using agency and substituting the following:

Boundaries. Beginning at lat. 35°48′31″ N., long. 75°43′39″ W.; to lat. 35°41′52″ N., long. 75°45′11″ W.; to lat. 35°42′36″ N., long. 75°49′49″ W.; to lat. 35°47′51″ N., long. 75°48′49″ W.; to lat. 35°48′01″ N., long. 75°51′59″ W.; to lat. 35°46′08″ N., long. 75°52′35″ W.; to lat. 35°47′01″ N., long. 75°58′59″ W.; to lat. 35°51′36″ N., long. 75°57′54″ W.; to lat. 35°49′31″ N., long. 75°44′59″ W.; to the point of beginning.

Designated altitudes. 500 feet above the surface to FL 205.

Time of designation. 0600–2400 local time, Monday–Friday; 0700–1800 local time Saturday–Sunday; other times by NOTAM 6 hours in advance.

Using agency. U.S. Air Force, Commander, 4th Fighter Wing, Seymour Johnson AFB, NC.

* * * * *

**R–5314F Dare County, NC [Amended]**

By removing the current boundaries, designated altitudes, time of designation and using agency and substituting the following:

Boundaries. Beginning at lat. 35°51′36″ N., long. 75°57′54″ W.; to lat. 35°44′10″ N., long. 75°59′41″ W.; to lat. 35°44′48″ N., long. 76°03′44″ W.; to lat. 35°51′53″ N., long. 76°02′08″ W.; to the point of beginning.

Designated altitudes. 200 feet above the surface to 15,000 feet MSL.

Time of designation. 0600–2400 local time, Monday–Friday; 0700–1800 local time Saturday–Sunday; other times by NOTAM 6 hours in advance.

Using agency. U.S. Air Force, Commander, 4th Fighter Wing, Seymour Johnson AFB, NC.

* * * * *

**R–5314G Dare County, NC [Removed]**

* * * * *

**R–5314H Dare County, NC [Amended]**

By removing the current time of designation and using agency and substituting the following:

Time of designation. 0600–2400 local time, Monday–Friday; 0700–1800 local time Saturday–Sunday; other times by NOTAM 6 hours in advance.

Using agency. U.S. Air Force, Commander, 4th Fighter Wing, Seymour Johnson AFB, NC.

* * * * *

**R–5314J Dare County, NC [Amended]**

By removing the current time of designation and using agency and substituting the following:

Time of designation. 0600–2400 local time, Monday–Friday; 0700–1800 local time Saturday–Sunday; other times by NOTAM 6 hours in advance.

Using agency. U.S. Air Force, Commander, 4th Fighter Wing, Seymour Johnson AFB, NC.

* * * * *

Issued in Washington, DC on May 22, 2008.

**Stephen L. Rohring,**

*Acting Manager, Airspace and Rules Group.*

[FR Doc. E8–11975 Filed 5–28–08; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 30609; Amdt. No 3270]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This Rule establishes, amends, suspends, or revokes STANDARD Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective May 29, 2008. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 29, 2008.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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.*

*Availability*—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://nfdc.faa.gov* to register.

Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125). Telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14

CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the Associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

## The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

## Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on May 16, 2008.

**James J. Ballough,**

*Director, Flight Standards Service.*

## Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Under Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

*Effective 3 JUL 2008*

Tallahassee/Havana, FL, Tallahassee Commercial, RNAV (GPS) RWY 16, Orig
Tallahassee/Havana, FL, Tallahassee Commercial, Takeoff Minimums and Obstacle DP, Orig
Lone Rock, WI, Tri-County Rgnl, Takeoff Minimums and Obstacle DP, Amdt 4

*Effective 31 JUL 2008*

Adak Island, AK, Adak, Takeoff Minimums and Obstacle DP, Amdt 2
Bethel, AK, Bethel, ILS OR LOC/DME RWY 19R, Amdt 6
Bethel, AK, Bethel, LOC/DME BC RWY 1L, Amdt 6
Bethel, AK, Bethel, NDB RWY 18, Amdt 8C, CANCELLED
Bethel, AK, Bethel, RNAV (GPS) RWY 1L, Amdt 1
Bethel, AK, Bethel, RNAV (GPS) RWY 1R, Orig
Bethel, AK, Bethel, RNAV (GPS) RWY 19L, Orig
Bethel, AK, Bethel, RNAV (GPS) RWY 19R, Amdt 1
Bethel, AK, Bethel, RNAV (GPS)–A, Amdt 1
Bethel, AK, Bethel, Takeoff Minimums and Obstacle DP, Amdt 3
Bethel, AK, Bethel, VOR RWY 18, Amdt 8C, CANCELLED
Bethel, AK, Bethel, VOR/DME RWY 1L, Amdt 2
Bethel, AK, Bethel, VOR/DME RWY 19R, Amdt 2
Bethel, AK, Bethel, VOR/DME–B, Orig–A, CANCELLED
Cold Bay, AK, Cold Bay, LOC/DME BC RWY 32, Amdt 9
Cold Bay, AK, Cold Bay, RNAV (GPS) RWY 32, Amdt 1
Cold Bay, AK, Cold Bay, Takeoff Minimums and Obstacle DP, Amdt 5
Gulkana, AK, Gulkana, RNAV (GPS) RWY 15, Amdt 2
Gulkana, AK, Gulkana, RNAV (GPS) RWY 33, Amdt 2
Sitka, AK, Sitka Rocky Gutierrez, NDB/DME–B, Amdt 1, CANCELLED
Sitka, AK, Sitka Rocky Gutierrez, VOR–C, Orig, CANCELLED
Sitka, AK, Sitka Rocky Gutierrez, VOR/DME–A, Orig
Siloam Springs, AR, Smith Field, RNAV (GPS) RWY 18, Amdt 1
Orlando, FL, Orlando Sanford Intl, Takeoff Minimums and Obstacle DP, Amdt 8
Bemidji, MN, Bemidji Regional, ILS OR LOC RWY 31, Amdt 4
Bemidji, MN, Bemidji Regional, Takeoff Minimums and Obstacle DP, Amdt 3
Casselton, ND, Casselton Robert Miller Rgnl, RNAV (GPS) RWY 13, Amdt 1
Casselton, ND, Casselton Robert Miller Rgnl, RNAV (GPS) RWY 31, Amdt 1
Seward, NE, Seward Muni, GPS RWY 16, Orig–A, CANCELLED
Seward, NE, Seward Muni, GPS RWY 34, Orig–A, CANCELLED
Seward, NE, Seward Muni, RNAV (GPS) RWY 16, Orig
Seward, NE, Seward Muni, RNAV (GPS) RWY 34, Orig
Columbus, OH, Ohio State University, VOR/DME RNAV RWY 27L, Amdt 6D, CANCELLED

On May 2, 2008 (73 FR 24171) the FAA published an Amendment in Docket No. 30604, Amdt 3266 to Part 97 of the Federal Aviation Regulations under Section 97.33 effective date May 8, 2008 has now changed to June 5, 2008:

Smithville, TN, Smithville Muni, RNAV (GPS) RWY 6, Amdt 1
Smithville, TN, Smithville Muni, RNAV (GPS) RWY 24, Amdt 1
Smithville, TN, Smithville Muni, Takeoff Minimums and Obstacle DP, Orig

[FR Doc. E8–11759 Filed 5–28–08; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

**[Docket No. USCG–2008–0154]**

**RIN 1625–AA08**

## Special Local Regulations for Marine Events; Severn River, College Creek, Weems Creek and Carr Creek, Annapolis, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing special local regulations for the ''William I. Koch International Sea Scout Cup'', a sail boat regatta to be held on the waters of the Severn River, Annapolis, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Severn River adjacent to the U.S. Naval Academy, Annapolis, Maryland during the sail boat regatta.

**DATES:** This rule is effective from 8:30 a.m. on July 14, through 7:30 p.m., July 18, 2008.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–0154 and are available online at *www.regulations.gov*. This material is also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the Fifth Coast Guard District, Office of Prevention, 431 Crawford Street, Portsmouth, VA, 23704 between 10 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

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

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On March 21, 2008, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Severn River, College Creek, Weems Creek and Carr Creek, Annapolis, MD in the **Federal Register** (73 FR 15108). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

### Background and Purpose

On July 13 through July 19, 2008, the U.S. Naval Academy, Annapolis, MD will host the ''William I. Koch International Sea Scout Cup'', sail boat regatta on the waters of the Severn River. This youth sailing regatta is comprised of young men and women between the ages of 14 and 21 who are actively registered in the Sea Scout program. The five day event will be held at the Naval Academy's Sailing Center. Teams from the United States and 20 countries will test their seamanship skills as they sail 14′ sloop rigged boats. The event will consist of approximately 80 fourteen foot sail boats racing about several marked courses on the Severn River. A fleet of spectator vessels is anticipated to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, support vessels, spectators and transiting vessels.

### Regulatory Evaluation

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

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

### Small Entities

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

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

This temporary rule will not have a significant economic impact on a substantial number of small entities for the following reasons. Although this regulation prevents traffic from transiting a small segment of the Severn River during the event, this rule will be in effect for only a short period, from 8:30 a.m. to 7:30 p.m. on July 14, 15, 16, 17, and 18, 2008. Vessel traffic may be able to transit around the regulated area or when event activity is halted, when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

### Assistance for Small Entities

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

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

### Collection of Information

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

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

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

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

**List of Subjects in 33 CFR Part 100**

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

**Words of Issuance and Regulatory Text**

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

## PART 100—REGATTAS AND MARINE PARADES

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

**Authority:** 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35–T05–017 to read as follows:

**§ 100.35–T05–017 Severn River, Annapolis, MD.**

(a) *Regulated area.* The regulated area is established for the waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′38.9″ N, longitude 076°31′05.2″ W thence to the north shoreline at latitude 39°00′54.7″ N, longitude 076°30′44.8″ W, this line is approximately 1300 yards northwest of the U.S. 50 fixed highway bridge. The regulated area is bounded to the southeast by a line drawn from the Naval Academy Light at latitude 38°58′39.5″ N, longitude 076°28′49″ W thence southeast to a point 700 yards east of Chinks Point, MD at latitude 38°58′1.9″ N, longitude 076°28′1.7″ W thence northeast to Greenbury Point at latitude 38°58′29″ N, longitude 076°27′16″ W. All coordinates reference Datum NAD 1983.

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

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

(3) *Participant* includes all vessels participating in the William I. Koch International Sea Scout Cup sailboat regatta under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

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

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

(ii) Proceed as directed by any Official Patrol.

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

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section but may not block a navigable channel.

(d) *Enforcement period.* (1) This section will be enforced from 8:30 a.m. to 7:30 p.m. on July 14, 15, 16, 17, and 18, 2008 and if the event's daily activities should conclude prior to 6 p.m., enforcement of this proposed regulation may be terminated for that day at the discretion of the Patrol Commander.

(2) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

Dated: May 19, 2008.

**Fred M. Rosa, Jr.**

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

[FR Doc. E8–11938 Filed 5–28–08; 8:45 am]

**BILLING CODE 4910–15–P**

---

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2008–0046]**

**RIN 1625–AA00**

## Safety Zone: Hatteras Boat Parade and Firework Display, Trent River, New Bern, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard will implement a safety zone during the Hatteras Boat Parade and Firework Display, a motor yacht parade to be held on the waters of the Trent River, New Bern, North Carolina. Access to portions of the Trent River adjacent to New Bern, North Carolina will be restricted during the fireworks display.

**DATES:** This rule is effective May 30, 2008 from 7:30 p.m. to 9 p.m.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0046 and are available online at *http://www.regulations.gov.* They are also available for inspection or copying two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and at Commander Sector North Carolina, 2301 East Fort Macon Road, Atlantic Beach, North Carolina 28512, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call C. D. Humphrey, Marine Event Coordinator, (252) 247–4569. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be impracticable and contrary to public interest because immediate action is needed to minimize potential danger to the public during the event. The necessary information to determine whether the marine event poses a threat to persons and vessels was not provided to the Coast Guard in sufficient time to publish an NPRM. The potential dangers posed by the pyrotechnic fireworks display, make a safety zone necessary to provide for the safety of the public in the vicinity of the event area. The Coast Guard will issue a broadcast notice to mariners and on have Coast Guard vessels on scene to advise mariners of the safety zone.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, because immediate action is needed to ensure the safety of the event participants, spectator craft and other vessels transiting the event area. Advance notifications will be made to the public, via marine information broadcasts, local notice to mariners, commercial radio stations and area newspapers.

### Background and Purpose

On May 30, 2008, Hatteras Yacht's will sponsor the ''Hatteras Boat Parade and Firework Display'', on the waters of the Trent River. The event will consist of approximately nine motor Yachts ranging from 41 to 80 feet in length parading single file past the Sheraton Hotel and Marina. A small barge with close proximity pyrotechnics will be anchored at the west end of the Trent River Swing Bridge fender system. Due to the need for safety during the event, vessel and personnel access will be temporarily restricted in the specified area to provide for the safety of participants, spectators and transiting vessels.

### Discussion of Rule

The Coast Guard is establishing a safety zone on specified waters of the Trent River, New Bern, North Carolina. The regulated area includes all waters within a 150 foot radius of position 350°06′09″ N 0770 02′15″ W or approximately one 100 yards west of the center span of Trent River Swing Bridge, New Bern, North Carolina. The safety zone will be in effect from 7:30 p.m. to 9 p.m. on May 30, 2008. The effect will be to restrict access to the regulated area during the fireworks display. Except for persons or vessels authorized by the Captain of the Port (COTP) or the COTP representative, no person or vessel may enter or remain in the regulated area during the enforcement period. The Coast Guard will notify the public of specific enforcement times by Marine Radio Safety Broadcast. These regulations are needed to control public access during the event to enhance the safety of participants, spectators and transiting vessels.

### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

### Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this proposed regulation would prohibit access to a portion of the Trent River adjacent to New Bern, North Carolina during the event, the effects of this regulation

would not be significant due to the limited size of the safety zone and duration of the enforcement period. Extensive advance notifications will be made to the maritime community via Local Notice to Mariners, marine information broadcast, and area newspapers, so mariners can adjust their plans accordingly.

**Small Entities**

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

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

The owners or operators of vessels intending to transit this section of the Trent River will be impacted during the event.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be enforced for only a short period, from 7:30 p.m. to 9 p.m. on May 30, 2008; the regulated area is a small segment of the Trent River adjacent to the New Bern waterfront; marine traffic may be allowed to pass through the regulated area with the permission of the Coast Guard representative on scene; and before the enforcement period, we would issue maritime advisories so mariners can adjust their plans accordingly.

**Assistance for Small Entities**

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

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

This rule will not 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 guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

■ For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T–0046 to read as follows:

**§ 165.T–0046 Trent River, New Bern, North Carolina.**

(a) *Safety Zone.* The safety zone includes all waters within a 150 feet radius of position 350°06′09″ North 77°02′15″ West, approximately one hundred yards west of the Trent River Swing Bridge, New Bern, North Carolina. All coordinates reference Datum NAD 1983.

(b) Definition:

(1) As used in this section; *Captain of the Port representative* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, North Carolina, to act on her behalf.

(c) Regulation:

(1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, North Carolina or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port and the Sector Duty Officer at Sector North Carolina can be contacted at (252) 247–4570.

(4) The Captain of the Port representative enforcing the safety zone can be contacted on VHF–FM marine band radio, channel 13 (156.65Mhz) and channel 16 (156.8Mhz).

(d) *Enforcement period.* This section will be enforced from 7:30 p.m. to 9 p.m. on May 30, 2008.

Dated: May 16, 2008.

**June E. Ryan,**

*Captain, U.S. Coast Guard, Captain of the Port North Carolina.*

[FR Doc. E8–11937 Filed 5–28–08; 8:45 am]

BILLING CODE 4910–15–P

---

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 51

**[EPA–HQ–OAR–2007–0844, FRL–8572–1]**

**RIN 2060–A039**

## Method 207—Pre-Survey Procedure for Corn Wet-Milling Facility Emission Sources

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is taking direct final action to add Method 207 to the promulgated test methods in 40 CFR Part 51. Appendix M contains recommended test methods that are provided for the States to use in their State Implementation Plans. Therefore, this method may be used as an alternative to existing test methods for measuring volatile organic compound (VOC) emissions. This pre-survey method was developed by the corn wet-milling industry specifically to VOC mass emissions from processes within the corn wet-milling industry. It provides a systematic approach to develop a specific list of target organic compounds and the appropriate methods to measure those target compounds during subsequent VOC emissions testing. After using the pre-survey procedure, the tester will have sufficient information to design a comprehensive testing program using Method 18 and other appropriate methods to measure the mass of VOC emissions during the actual emissions testing. This method is an alternative to existing test methods and does not add any new reporting requirements to the reporting requirements that already exist. While it is an alternative method, it is the recommended method for measuring VOC mass emissions from corn wet-milling facilities.

**DATES:** This direct final rule is effective on August 27, 2008 without further notice, unless EPA receives adverse comment by June 30, 2008. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–HQ–OAR–2007–0844, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Attention Docket ID No. EPA–HQ–OAR–2007–0844, U.S. Environmental Protection Agency, EPA West (Air Docket), Mail code: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, Northwest, Room 3334, Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2007–0844. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions.* Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0844. 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*.

*Docket.* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary McAlister, Air Quality Assessment Division (E143–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–1062, e-mail address: *mcalister.gary@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. General Information
A. Why Is EPA Using a Direct Final Rule?
B. Does This Action Apply to Me?
C. Judicial Review
II. Background
A. What Is the Basis for This New Method?
B. What Procedures Are Included in EPA Method 207?
III. Statutory and Executive Order Reviews
A. Executive Order 12866—Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132—Federalism
F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

## I. General Information

### *A. Why Is EPA Using a Direct Final Rule?*

The EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. This action adds a method to the list of recommended methods in 40 CFR Part 51, Appendix M. The method may be used as an alternative method to existing recommended methods, but it is not required to be used by any existing rule. In the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule to add Method 207 to Appendix M in 40 CFR Part 51 if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For Further information about commenting on this rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rules based on the proposed rule.

### *B. Does This Action Apply to Me?*

Method 207 affects/applies to the corn wet-milling industry and is used specifically to measure VOC mass emissions from processes within the corn wet-milling industry. Therefore, the categories and entities potentially regulated by this action include the following:

| Category | NAICS [a] | Examples of regulated entities |
|---|---|---|
| Industry | 311221 | Corn wet-milling. |
| State/local/tribal government | 924110 | State, local, and tribal air quality management programs that regulate corn wet-milling. |

[a] North American Industry Classification System.

### *C. Judicial Review*

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this direct final rule is available by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by July 28, 2008. Only those objections to this final rule that were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307 (b)(2) of the CAA, the requirements that are the subject of this direct final rule may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

## II. Background

### *A. What Is the Basis for This New Method?*

The Method 207 Pre-Survey Procedure for Corn Wet-Milling Facility Emission Sources was developed in collaboration with the corn wet-milling industry (i.e., Corn Refiners Association (CRA)) specifically to measure volatile organic compound (VOC) mass emissions from processes within their facilities on an individual species basis. The pre-survey procedure provides a systematic approach to develop a specific list of target organic compounds and the appropriate sampling approach to collect those target compounds during subsequent VOC emissions testing. After using the new pre-survey procedure, the tester will have sufficient information to design a comprehensive testing program using Method 18 and other appropriate methods to measure the mass of VOC emissions during the actual emissions testing. The CRA submitted their proposed procedures and supporting information to the EPA for review, and we concluded that it was an acceptable procedure for measuring VOC emissions from corn wet-milling facilities.

For the purposes of measuring VOC emissions from corn wet-milling facilities, all of the sampling procedures in Method 18 may be used, as well as an additional sampling procedure using water filled impingers to collect water soluble VOC. This sampling procedure is described in detail in Method 308 (40 CFR Part 63) and NCASI Method CI/SG/PULP–94.03. The resulting water samples should also be analyzed using the procedures in Method 308 or NCASI

Method CI/SG/PULP–94.03. If formaldehyde is a target compound, it may be collected with the water-filled impinger collection system, but the sample must be analyzed by procedures other than those in EPA Method 18. Examples of acceptable analytical procedures are those in Method 316 (40 CFR Part 63) or NCASI Method CI/SG/PULP–94.02.

*B. What Procedures Are Included in EPA Method 207?*

In this action, we are amending Title V, Part 51, Appendix M of the Code of Federal Regulations (CFR) by adding a new measurement technique for VOC emissions from corn wet-milling facilities, referred to as ''EPA Method 207—Pre-Survey Procedure for Corn Wet-Milling Facility Emission Sources.'' This method provides procedures for establishing analytes for subsequent EPA Method 18 testing to determine the total mass emissions of VOC from sources at corn wet-milling facilities. Objectives of the method include:

(1) Identification of physical characteristics of the VOC contained in the effluent;

(2) Determination of the appropriate Method 18 sampling approach to ensure efficient collection of all VOC present in the effluent;

(3) Development of a specific list of target compounds to be quantified during the subsequent total VOC test program; and

(4) Qualification of the list of target compounds as being a true representation of the total VOC.

The procedures call for using flame ionization detection in conjunction with various configurations of impingers, and other absorbents, or adsorbents to determine the best EPA Method 18 sampling train configuration for the assessment and capture of VOC. Volatile organic compound analytes present in the exhaust air from production processes located at corn wet-milling facilities typically fall into five general categories: Alcohols, aldehydes, acetate esters, ketones, and carboxylic acids, and typically contain fewer than six carbon atoms.

## III. Statutory and Executive Order Reviews

*A. Executive Order 12866—Regulatory Planning and Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under the EO.

*B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). It adds a test method to the recommended methods in Appendix M of 40 CFR Part 51. This method is an alternative to existing test methods and does not add any new reporting requirements to the reporting requirements that already exist.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on a substantial number of small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This action establishes voluntary alternative test procedures for satisfying the requirements of EPA Method 18, Section 16 (pre-survey), which are used to determine the mass VOC emissions from processes within the corn wet-milling industry, by specifying the analytes for subsequent EPA Method 18 testing. This rule does not impose any new requirements or create impacts on small entities. Therefore, this action is not expected to have a significant economic impact on a substantial number of small entities.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopts the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, more cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling official of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This rule imposes no enforceable duty on any State, local or tribal governments or the private sector.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This action adds a new test method for measuring VOC air emissions to the recommended methods in 40 CFR part 51. Because this method is an alternative method, its use is voluntary. It will not impose requirements on State, local governments, or tribal governments. Thus, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

*E. Executive Order 13132—Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Because this method is an alternative method, its use is voluntary. It will not impose substantial direct compliance costs on State or local governments, nor will it preempt State law. Thus, Executive Order 13132 does not apply to this rule.

*F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. The final action would add a test method that could be used as an alternative to existing methods. It does not add any new requirements and does not affect VOC emissions or air quality. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

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

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. However, we identified no such standards, and none were brought to our attention in comments. Therefore, EPA has decided to use Method 207 to measure mass VOC emissions from processes within the corn-wet milling industry. This method provides a systematic approach to develop a specific list of target organic compounds and the appropriate methods to measure those target compounds during subsequent VOC emissions testing.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action adds a new test method for measuring VOC air emissions to the recommended methods in 40 CFR Part 51. It does not change any existing rules that limit VOC air emission limits.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on August 27, 2008.

**List of Subjects in 40 CFR Part 51**

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Volatile organic compounds.

Dated: May 21, 2008.

**Stephen L. Johnson,**

*Administrator.*

■ For reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

## PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

**Authority:** 23 U.S.C. 101; 42 U.S.C. 7401, *et seq.*

■ 2. Part 51 is amended in appendix M by adding Method 207 in numerical order to read as follows:

## Appendix M to Part 51—Recommended Test Methods for State Implementation Plans

* * * * *

### METHOD 207—PRE-SURVEY PROCEDURE FOR CORN WET-MILLING FACILITY EMISSION SOURCES

*1.0 Scope and Application*

1.1 *Analyte.* Total gaseous organic compounds.

1.2 *Applicability.* This pre-survey method is intended for use at corn wet-milling (CWM) facilities to satisfy the requirements of Method 18, Section 16 (Pre-survey). This procedure establishes the analytes for subsequent Method 18 testing to determine the total mass emissions of VOCs from sources at CWM facilities. The specific objectives of the pre-survey procedure are:

1.2.1 Identify the physical characteristics of the VOC contained in the effluent.

1.2.2 Determine the appropriate Method 18 sampling approach to ensure efficient collection of all VOC present in the effluent.

1.2.3 Develop a specific list of target compounds to be quantified during the subsequent total VOC test program.

1.2.4 Qualify the list of target compounds as being a true representation of the total VOC.

1.3 *Range.* The lower and upper ranges of this procedure are determined by the sensitivity of the flame ionization detector (FID) instruments used. Typically, gas detection limits for the VOCs will be on the order of 1–5 ppmv, with the upper limit on the order of 100,000 ppmv.

*2.0 Summary of Method*

**Note:** Method 6, Method 18, and Method 25A as cited in this method refer to the methods in 40 CFR Part 60, Appendix A.

This procedure calls for using an FIA in conjunction with various configurations of impingers, and other absorbents, or adsorbents to determine the best EPA Method 18 sampling train configuration for the assessment and capture of VOCs. VOC compounds present in the exhaust gas from processes located at CWM facilities fall into five general categories: Alcohols, aldehydes, acetate esters, ketones, and carboxylic acids, and typically contain fewer than six carbon atoms. This pre-survey protocol characterizes and identifies the VOC species present. Since it is qualitative in nature, quantitative performance criteria do not apply.

*3.0 Definitions*

3.1 Calibration drift means the difference in the measurement system response to a mid-level calibration gas before and after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

3.2 Calibration error means the difference between the gas concentration indicated by the measurement system and the known concentration of the calibration gas.

3.3 Calibration gas means a known concentration of a gas in an appropriate diluent gas.

3.4 Measurement system means the equipment required for the determination of the gas concentration. The system consists of the following major subsystems:

3.4.1 Sample interface means that portion of a system used for one or more of the following: Sample acquisition, sample transportation, sample conditioning, or protection of the analyzer(s) from the effects of the stack effluent.

3.4.2 Organic analyzer means that portion of the measurement system that senses the gas to be measured and generates an output proportional to its concentration.

3.5 Response time means the time interval from a step change in pollutant concentration at the inlet to the emission measurement system to the time at which 95 percent of the corresponding final value is reached as displayed on the recorder.

3.6 Span Value means the upper limit of a gas concentration measurement range that is specified for affected source categories in the applicable part of the regulations. The span value is established in the applicable regulation and is usually 1.5 to 2.5 times the applicable emission limit. If no span value is provided, use a span value equivalent to 1.5 to 2.5 times the expected concentration. For convenience, the span value should correspond to 100 percent of the recorder scale.

3.7 Zero drift means the difference in the measurement system response to a zero level calibration gas before or after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

*4.0 Interferences [Reserved]*

*5.0 Safety [Reserved]*

*6.0 Equipment and Supplies*

6.1 *Organic Concentration Analyzer.* A flame ionization analyzer (FIA) with heated detector block and sample handling system, meeting the requirements of USEPA Method 25A.

6.2 *Heated Sampling System.* A sampling system consisting of a stainless steel probe with particulate filter, Teflon® sample line, and sampling pump capable of moving 1.0 l/min through the sample probe and line. The entire system from probe tip to FIA analyzer must have the capability to maintain all sample-wetted parts at a temperature >120°C. A schematic of the heated sampling system and impinger train is shown in Figure 1 of this method.

6.3 *Impinger Train.* EPA Method 6 type, comprised of three midget impingers with appropriate connections to the sampling system and FIA system. The impinger train may be chilled in an ice bath or maintained at a set temperature in a water bath as indicated by the operator's knowledge of the source and the compounds likely to be present. Additional impingers or larger impingers may be used for high moisture sources.

6.4 *Adsorbent tubes.*

6.4.1 Silica gel, SKC Type 226–22 or equivalent, with appropriate end connectors and holders.

6.4.2 Activated carbon, SKC Type 226–84 or equivalent, with appropriate end connectors and holders.

6.5 *Tedlar bag.* 24 liter, w/ Roberts valve, for GC/MS analysis of ''breakthrough'' VOC fraction as needed.

*7.0 Reagents and Standards*

7.1 Organic-free water, HPLC, or pharmaceutical grade.

7.2 *Calibration Gases.* The calibration gases for the gas analyzer shall be propane in air or propane in nitrogen. If organic compounds other than propane are used, the appropriate corrections for response factor must be available and applied to the results. Calibration gases shall be prepared in accordance with the procedure listed in Citation 2 of section 16. Additionally, the manufacturer of the cylinder must provide a recommended shelf life for each calibration gas cylinder over which the concentration does not change more than ± 2 percent from the certified value. For calibration gas values not generally available (i.e., organics between 1 and 10 percent by volume), alternative methods for preparing calibration gas mixtures, such as dilution systems (Test Method 205, 40 CFR Part 51, Appendix M), may be used with prior approval of the Administrator.

7.3 *Fuel.* A 40 percent H2/60 percent N2 or He gas mixture is recommended to avoid an oxygen synergism effect that reportedly occurs when oxygen concentration varies significantly from a mean value.

7.4 *Zero Gas.* High purity air with less than 0.1 parts per million by volume (ppmv) of organic material (propane or carbon equivalent) or less than 0.1 percent of the span value, whichever is greater.

7.5 *Low-level Calibration Gas.* An organic calibration gas with a concentration equivalent to 25 to 35 percent of the applicable span value.

7.6 *Mid-level Calibration Gas.* An organic calibration gas with a concentration equivalent to 45 to 55 percent of the applicable span value.

7.7 *High-level Calibration Gas.* An organic calibration gas with a concentration equivalent to 80 to 90 percent of the applicable span value.

*8.0 Sample Collection, Preservation and Storage*

8.1 *Configuration.* The configuration of the pre-survey sampling system is provided in Figure 1. This figure shows the primary components of the sampling system needed to conduct a VOC survey. A dual-channel analyzer is beneficial, but not necessary. Only a single channel is indicated in the figure.

8.2 *Sampling.* The pre-survey system should be set up and calibrated with the targeted sampling flow rate that will be used during Method 18 VOC sampling. The targeted flow rate for capture of most

expected VOC species is 400 cc/min. Since most FIA analyzers do not specifically allow for adjusting the total sample flow rate (only the back pressure), it may be necessary to insert a flow control valve at the sample inlet to the FIA. The total sample flow can be measured at the FIA bypass, since only a small fraction of the sample flow is diverted to analysis portion of the instrument.

The sampling system configuration shown in Figure 1 is operated using the process flow diagram provided in Figure 2. As noted in the process flowchart, the initial sampling media consists of the three midget impingers. The attenuation of the VOC sample stream is evaluated to determine if 95 percent or greater attenuation (capture) of the VOCs present has been achieved. The flow diagram specifies successive adjustments to the sampling media that are utilized to increase VOC capture.

A one-hour test of the final sampling configuration is performed using fresh media to ensure that significant breakthrough does not occur. Additional sampling media (more water, silica or carbon tubes) may be added to ensure that breakthrough is not occurring for the full duration of a test run.

If 95 percent or greater attenuation has not been achieved after inserting all indicated media, the most likely scenario is that methane is present. This is easily checked by collecting a sample of this final bypass sample stream and analyzing for methane. There are other VOC compounds which could also penetrate the media. Their identification by gas chromatography followed by mass spectrometry would be required if the breakthrough cannot be accounted for by the presence of methane.

*9.0 Quality Control*

9.1 *Blanks.* A minimum of one method blank shall be prepared and analyzed for each sample medium employed during a pre-survey testing field deployment to assess the effect of media contamination. Method blanks are prepared by assembling and charging the sample train with reagents, then recovering and preserving the blanks in the same manner as the test samples. Method blanks and test samples are stored, transported and analyzed in identical fashion as the test samples.

9.2 *Synthetic Sample (optional).* A synthetic sample may be used to assess the performance of the VOC characterization apparatus with respect to specific compounds. The synthetic sample is prepared by injecting appropriate volume(s) of the compounds of interest into a Tedlar bag containing a known volume of zero air or nitrogen. The contents of the bag are allowed to equilibrate, and the bag is connected to the sampling system. The sampling system, VOC characterization apparatus and FIA are operated normally to determine the performance of the system with respect to the VOC compounds present in the synthetic sample.

*10.0 Calibration and Standardization*

10.1 *Calibration.* The FIA equipment is able to be calibrated for almost any range of total organic concentrations. For high concentrations of organics (>1.0 percent by volume as propane), modifications to most commonly available analyzers are necessary. One accepted method of equipment modification is to decrease the size of the sample to the analyzer through the use of a smaller diameter sample capillary. Direct and continuous measurement of organic concentration is a necessary consideration when determining any modification design.

*11.0 Procedure*

11.1 *Analytical Procedure.* Upon completion of the pre-survey sampling, the sample fractions are to be analyzed by an appropriate chromatographic technique. (Ref: Method 18) The resulting chromatograms must be reviewed to ensure that the ratio of known peak area to total peak area is 95% or greater. It should be noted that if formaldehyde is a suspected analyte, it must be quantitated separately using a different analytical technique.

*12.0 Data Analysis and Calculations*

Chromatogram peaks will be ranked from greatest area to least area using peak integrator output. The area of all peaks will then be totaled, and the proportion of each peak area to the total area will be calculated. Beginning with the highest ranked area, each peak will be identified and the area added to previous areas until the cumulative area comprises at least 95% of the total area. The VOC compounds generating those identified peaks will comprise the compound list to be used in Method 18 testing of the subject source.

*13.0 Method Performance [Reserved]*

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 References*

16.1 CFR 40 Part 60, Appendix A, Method 18, Measurement of Gaseous Organic Compound Emissions by Gas Chromatography.

16.2 CFR 40 Part 60, Appendix A, Method 25A, Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer.

16.2 CFR 40 Part 60, Appendix A, Method 6, Determination of Sulfur Dioxide Emissions from Stationary Sources.

16.3 National Council for Air and Stream Improvement (NCASI), Method CI/WP–98.01 ''Chilled Impinger Method for Use at Wood Products Mills to Measure Formaldehyde, Methanol, and Phenol.

*17. Tables, Diagrams, Flowcharts, and Validation Data*

BILLING CODE 6560–50–P

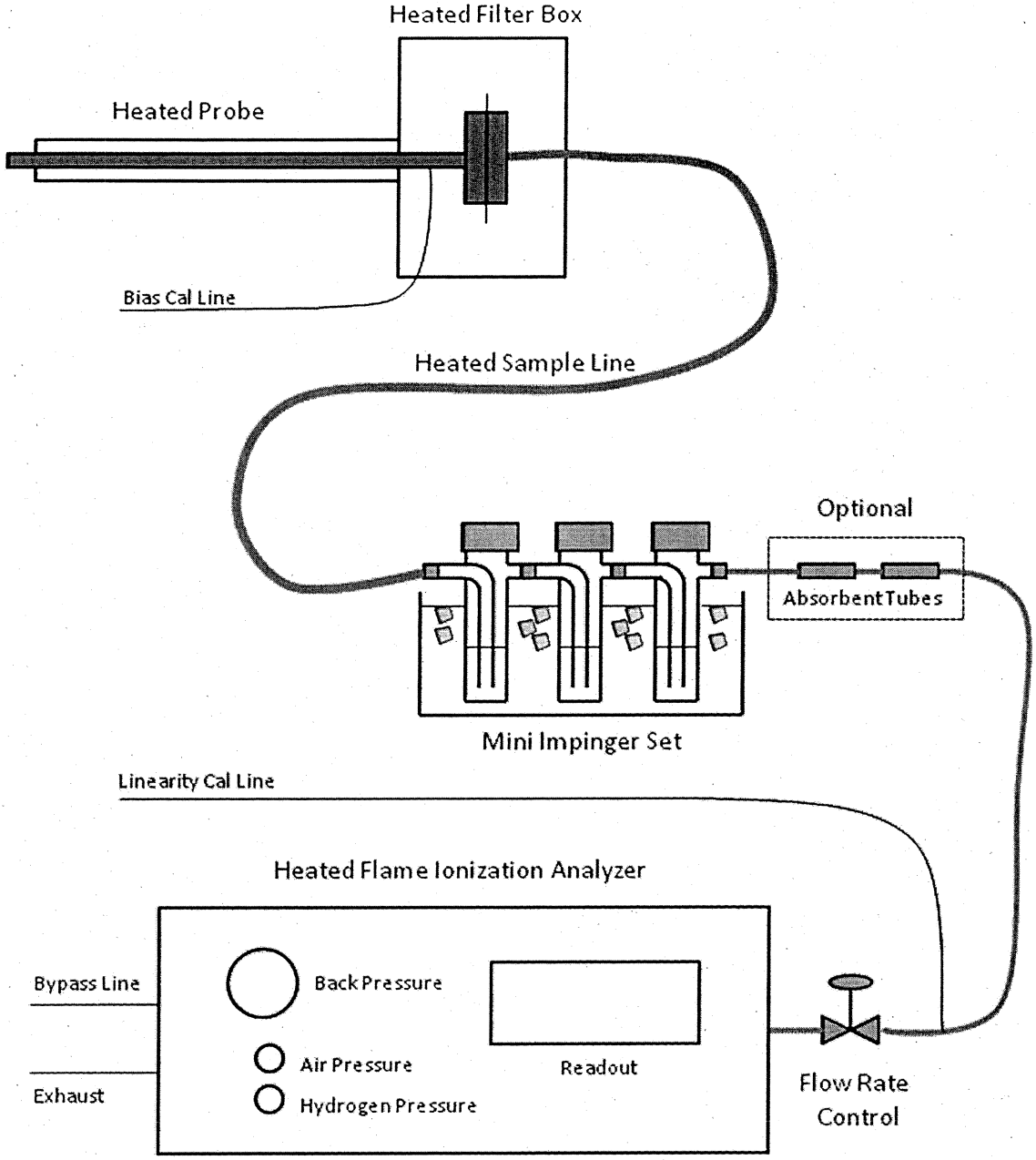



**Figure 1. Pre-Survey Sampling System**

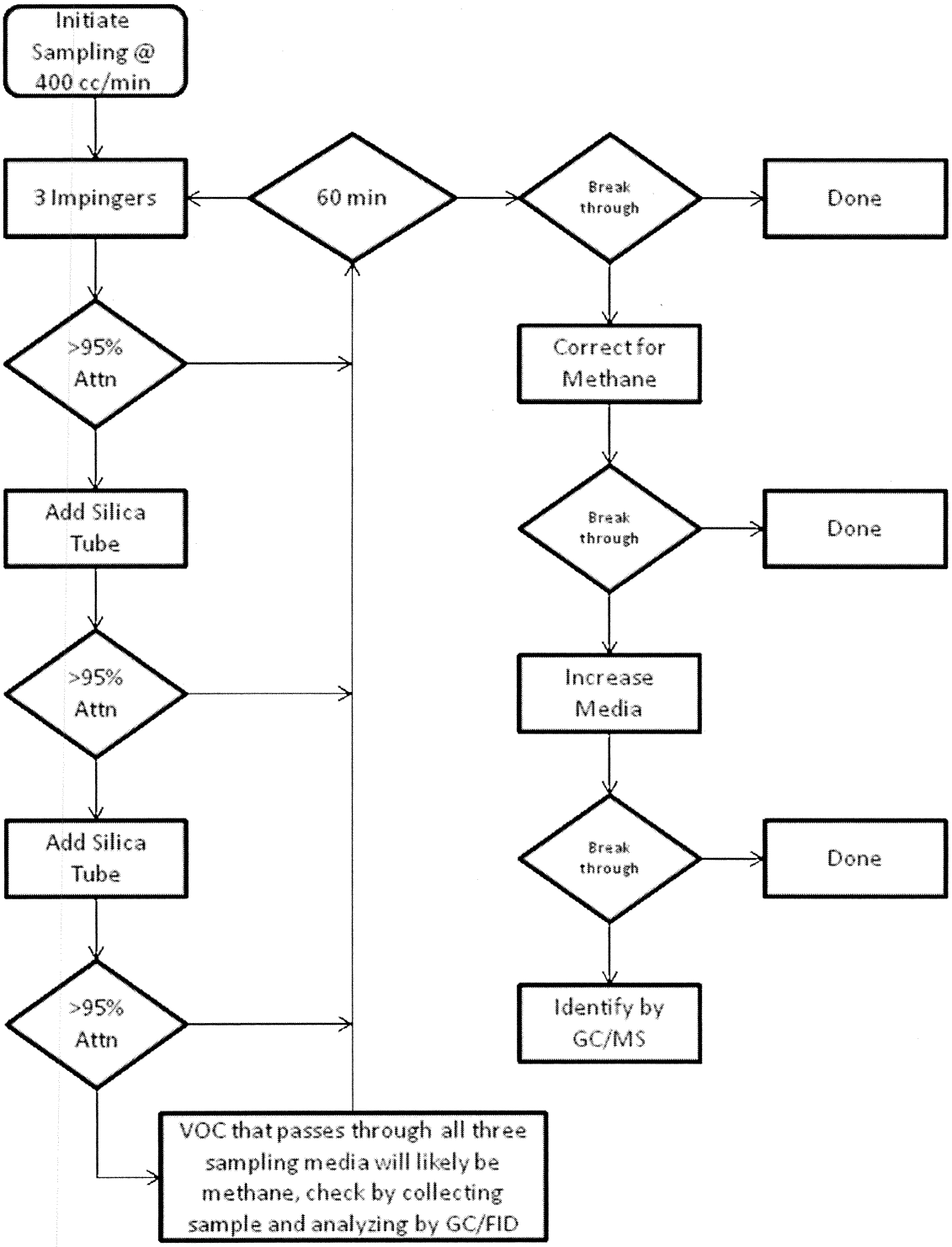



Figure 2. Method 207 Flowchart

[FR Doc. E8–11882 Filed 5–28–08; 8:45 am]
BILLING CODE 6560–50–C

**DEPARTMENT OF TRANSPORTATION**

**Maritime Administration**

**46 CFR Part 389**

**[Docket No. MARAD–2008–0045]**

**RIN 2133–AB67**

## Determination of Availability of Coastwise-Qualified Launch Barges

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Interim final rule.

**SUMMARY:** The Maritime Administration supports the coastwise laws of the United States. We are publishing this interim final rule to establish regulations governing administrative determinations of availability of coastwise-qualified launch barges to be used in the transportation and, if needed, launch or installation of offshore oil drilling or production platform jackets in specified projects only. Based upon any further comments received, we may publish an amended final rule. We view this as a special, technical legislative requirement that does not indicate a change in our full support for other requirements of the coastwise laws.

Specifically, this rulemaking implements provisions of the Coast Guard and Maritime Transportation Act of 2004, which, among other things, requires the Secretary of Transportation (acting through the Maritime Administrator) to adopt procedures to maximize the use of coastwise-qualified launch barge vessels but if the Secretary determines such coastwise-qualified vessels are not available for platform jacket transport and launching, then to allow the use of non-coastwise-qualified launch barges.

**DATES:** This interim final rule will be effective June 30, 2008 Any further comments are due by July 28, 2008.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number MARAD–2008–0045 any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 of the Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 of the Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Thomas W. Harrelson, Office of Cargo Preference and Domestic Trades, Maritime Administration, MAR–730, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone: (202) 366–5515 or 800–9US–FLAG; e-mail: *Tom.Harrelson@dot.gov.*

**SUPPLEMENTARY INFORMATION:** Section 27 of the Merchant Marine Act of 1920, commonly known as the Jones Act (46 U.S.C. 55102), requires, with a few exceptions, that all cargo transported in the coastwise trade be carried on ships that are U.S.-owned and U.S.-built. The Jones Act has been amended over the years, and in 1988 a special technical proviso, known as the thirteenth proviso, was added to allow for the use of foreign-built platform jacket launch barges in the coastwise trade if no U.S.-built vessels were found to be available.

On August 9, 2004, the thirteenth proviso of the Jones Act was amended by section 417 of the Coast Guard and Maritime Transportation Act of 2004, Public Law 108–293 (the Act), now codified at 46 U.S.C. 55108. Under the Act, the Secretary of Transportation is directed to establish procedures to issue determinations as to whether suitable U.S.-built barges are available for use in transportation and, if needed, launch or installation of offshore oil drilling or production structures and to maximize the use of U.S.-built coastwise-qualified vessels for such activities. The Act provides that if the Secretary determines that a suitable coastwise qualified vessel is not available for use in a specified platform jacket transportation and, if needed, launch or installation project, a foreign-built launch barge may be used.

### Public Comments

The Maritime Administration published a Notice of Proposed Rulemaking requesting public comments on our administration of these subject determinations on August 15, 2005 (70 FR 47771) with comments due on October 15, 2005. However, because of Hurricane Katrina and at the request of respondents, we extended the public notice period to December 13, 2005. At the further request of a commenting party, we subsequently opened a reply comment period on August 15, 2006, which closed on October 16, 2006. Based on our consideration of the nine responses received, we have adjusted our original proposal. The comments were received and our responses follow:

*Issue #1. How will the Maritime Administration meet the requirement to provide timely information to the coastwise industry?*

*Public comment:* Seven interests representing the owners or builders of U.S. barges said that significant notice of upcoming offshore petroleum development projects (which may require foreign-built launch barges) should be made a requirement of the Maritime Administration regulation. The owners of foreign vessels opposed any pre-notification requirement not provided for by law. U.S.-flag interests highlighted that the Act requires that ''the Secretary of Transportation shall adopt procedures implementing this proviso that are reasonably designed to provide timely information so as to maximize the use of coastwise qualified-vessels.'' In order to build a launch barge to meet demand, which all agree is planned for years in advance, the U.S.-flag interested commenters recommended at least an 18 month notice period prior to the formal waiver application process. Operators of foreign-built vessels state that the Act did not specifically set forth assistance requirements to the U.S. Merchant Marine, nor did the Act require advance notice of launch barge needs beyond the 30-day public notice period for waiver applications provided in the statute.

Maritime Administration Response

After considering these comments, the Maritime Administration has decided there is a need to provide for ''timely information to maximize the use of coastwise qualified vessels.'' Therefore, our regulation will require the platform owner or operator to notify the Maritime Administration at the same time they register their Development Operations Coordination Document (DOCD) or Development and Production Plan (DPP) with the Minerals Management Service but not later than 21 months before the proposed date of using a launch barge. This will provide an 18 month notice to current and potential

coastwise-qualified vessel owners before the three month waiver process, should a waiver be sought. This is consistent with the advance planning that is common practice in the offshore industry and it provides sufficient time and information to establish discussions between project owners and vessel owners. It also complies with the statutory requirement to maximize the use of coastwise-qualified vessels by allowing sufficient time for the construction or modification of a launch barge.

*Issue #2. Should the petroleum production company or the vessel operator apply for the determination?*

*Public comment:* Five commenters with interests in U.S.-built vessels said that a request for a determination to use a foreign-built launch barge should come from the offshore petroleum production company as the company is typically the decision maker in contracting for transportation, launch or installation arrangements.

Maritime Administration Response

We agree that the language and intent of the legislation means the owner or operator of the petroleum production company.

*Issue #3. Will the Maritime Administration deny requests for determinations if applications are incomplete?*

*Public Comment:* Five operators of U.S.-built vessels asked that the Maritime Administration establish clearly that if application requirements are not met, the application will be denied.

Maritime Administration Response

We will not process applications that are not complete but we will advise the applicant and seek to rectify errors and omissions to application information before we will begin the review process. If, after an opportunity to redress, the applicant has not met application requirements, we may take action to deny the request for determination based on an incomplete application.

*Issue #4. Will the Maritime Administration require that requestors register in advance?*

Public Comment: Five operators or builders of U.S.-built vessels requested that the Maritime Administration require petroleum production companies to formally register (as much as 18 months to two years in advance) with the Maritime Administration if they wish to use a foreign-built launch barge.

Maritime Administration Response:

As stated under Issue #1, we will require the platform owner/operator to notify us of a potential need for a launch barge at the same time they file their DOCD or DPP with the Minerals Management Service but not later than 21 months before they project a need for a launch barge. We will annually ask all coastwise-qualified launch barge potential owners/operators to register their contact information with us. This is consistent with Public Law 100–329, as amended by Public Law 108–293, which requires us to keep a listing of coastwise-qualified launch barges that are less than 12,000 tons. This exchange of contact information will allow the platform owner/operator to survey the market and hold discussions with operators of coastwise-qualified vessels. If the platform owner/operator is not successful in concluding business with a coastwise-qualified launch barge owner then they can begin the formal request for a determination of non-availability.

*Issue #5. Can the Maritime Administration clarify the definitions of ''eligible vessel'' and ''launch barge?''*

*Public Comment:* One foreign vessel owner and one owner of U.S.-built vessels requested clarification on the use of the term ''eligible vessel'' and requested that the same definition for ''launch barge'' be used throughout the regulation.

Maritime Administration Response

The statute does not use the term ''eligible vessel'' and so it will not be used in the regulation. We have defined a ''Launch Barge'' as a vessel that is technically capable of loading, transporting, and launching or installing an offshore drilling or production platform jacket in a timely manner. We have defined the term ''Foreign Launch Barge'', for the purpose of this rule, to mean a non-coastwise-qualified vessel that was built before December 31, 2000 and is technically capable of loading, transporting, and launching or installing an offshore drilling or production platform jacket in a timely manner and has a launch capacity of 12,000 long tons or more.

*Issue #6. The application fee of $16,460 is considered excessive, can it be lowered?*

*Public Comment:* Two owners of foreign-built vessels considered the application fee inapplicable or excessive.

Maritime Administration Response

We have reviewed the application fee issue. We have determined that it is the owner or operator of the production platform who is the responsible party and who must make application for any determination of non-availability and thus becomes the beneficiary of any such finding. We have also determined that a foreign launch barge must be classified as a launch barge by one of our named classification societies in order to be eligible for a positive determination. If the applicant requests that we find that an offered coastwise-qualified launch barge is not suitable or available, then we will review the technical details and charge the applicant for the number of hours of work required at the prevailing hourly rate plus overhead of the persons involved in the review and any administrative costs. We expect such review would entail the use of naval architects, marine engineers, electrical engineers, and various support staff. There will be a minimum non-refundable $500 deposit to cover initial **Federal Register** costs and the applicant must sign a letter of commitment to pay any additional costs we incur. We estimate such costs could range from $500 to $20,000 or more.

*Issue #7. Will there be a clear determination when coastwise qualified vessels are not available?*

*Public Comment:* One owner of a foreign-built vessel requested that the Maritime Administration clearly determine coastwise qualified vessel non-availability as this will then clearly allow the use of a foreign-built launch barge.

Maritime Administration Response

We have revised our regulation to state clearly that if we determine that no coastwise-qualified vessels are found to be suitable or available then our determination will allow for the use of a foreign-built launch barge.

*Issue #8. Will the approval of U.S. Customs and Border Protection be required?*

*Public Comment:* Two owners of foreign vessels and an interest group representing U.S.-built vessel operators said that further approval from U.S. Customs and Border Protection (CBP) should not be a regulatory requirement, if the Maritime Administration determines that U.S.-built vessels are not available.

Maritime Administration Response

The statute states that non-coastwise-qualified barges may be used after the

Secretary of Transportation (as administered by the Maritime Administration) determines that no coastwise qualified launch barges are available. Therefore, no formal CBP approval is being made a requirement of this regulation.

*Issue #9. Can the Maritime Administration make the determinations good for the duration of a project?*

*Public Comment:* Two foreign vessel owners would like either no expiration date on the determination that no U.S. vessels are available, or have the Maritime Administration issue determinations for the ''duration of the project.''

Maritime Administration Response

To comply with the Congressional intent to maximize the use of coastwise-qualified vessels, we have decided to retain the 120-day expiration date for determinations of non-availability of coastwise-qualified vessels. We have the authority to extend the determination beyond 120 days on a case by case basis, and will do so as necessary.

*Issue #10. Can the Maritime Administration be flexible regarding submission of platform jacket technical requirements and launch dates?*

*Public Comment:* Two owners of foreign-built vessels asked for flexibility in the submission of platform jacket load dates, as well for flexibility in the exact technical specifications of the platform jacket to be launched. Commenters representing U.S.-built vessel interests opposed any flexibility on technical specifications or load dates noting that platform jacket specifications are often prepared years in advance of launch.

Maritime Administration Response

We believe that platform jacket specifications and launch schedules are developed far enough in advance of a project start date to be effective for review. If the launch schedule changes significantly, the Maritime Administration can change the expiration date of our determination for good cause.

*Issue #11. Can the Maritime Administration clarify the definition of ''launching''?*

*Public Comment:* The owner of a foreign vessel recommended that our regulation should extend the definition regarding the permissible activity of these barges from just ''launching'' to also ''transporting'' in conformance with the law.

Maritime Administration Response

We agree and have made an effort to indicate that transporting, placement, and/or launching are all purposes provided for in the enabling legislation.

*Issue #12. Are technical documents from foreign classification societies acceptable?*

*Public Comment:* In our proposed rule, we had proposed that the American Bureau of Shipping (ABS) or U.S. Coast Guard (USCG) approve the technical elements of a proposed foreign-built launch barge. Foreign-built barge owners would like us to recognize other classification societies as well.

Martime Administration Response

We will accept vessel launch barge classification and technical documentation from vessel classification societies recognized by the USCG. The specific societies are: American Bureau of Shipping (ABS), Bureau Veritas (BV), Lloyd's Register (LR), Germanischer Lloyd (GL), Det Norske Veritas (DNV), or Nippon Kaiji Kyokai (NK).

*Issue #13. Can the coastwise-qualified vessel availability window be narrowed from seven days to two?*

*Public Comment:* One owner of a foreign-built vessel requested that the definition of a launch barge be changed to require that the vessel be capable of transporting and launching a platform jacket within two days instead of the seven days listed in the notice of proposed rulemaking. A U.S.-built vessel owner commented that a seven day delivery window for a coastwise-qualified vessel may be too narrow.

Maritime Administration Response

We believe that vessel delivery capability or availability should not be within some number of days specified by a regulation since the needs of each case will vary. Thus, we will require the delivery window be in ''a timely manner'' to be negotiated between the parties. This is similar to the way that ''lay days'' or ''delivery dates'' are negotiated in commercial transportation projects. If the platform owner and launch barge operator cannot reach agreement on the window timing, then we will make a determination based on the facts of the specific case.

*Issue #14. If coastwise-qualified vessels become unavailable, can foreign-built vessels be used instead?*

*Public Comment:* A foreign-built vessel operator asked that foreign-built vessels be allowed if for some reason a previously identified coastwise qualified vessel cannot conduct a platform jacket launch operation.

Maritime Administration Response

If the selected coastwise-qualified vessel is not able to perform, and if we find there are no other coastwise-qualified vessels available, we can make a non-availability determination that would allow a foreign launch barge to provide the service.

*Issue #15. Can the Maritime Administration make its determinations faster than 90 days?*

*Public Comment:* One owner of a foreign-built vessel requested that the Maritime Administration determination be provided within 60 days of the **Federal Register** announcement seeking coastwise qualified vessels instead of within the 90-day period described in the Notice of Proposed Rulemaking.

Maritime Administration Response

We will issue our determination within 90 days of the **Federal Register** announcement as this is specifically required in the enabling legislation.

*Issue #16. Is a U.S. built barge still considered suitable if it needs modifications?*

*Public Comment:* A foreign-built barge operator asked that a coastwise qualified launch barge NOT be considered suitable or available if it needs modifications in excess of $75,000.

Maritime Administration Response

One of our roles is to determine availability and suitability of launch barges. Therefore, we will review applications and comments on a case by case basis. The intent of the legislation is to maximize the use of coastwise-qualified barges. The enabling legislation provided the Maritime Administration with the authority to make a determination that coastwise-qualified launch barges are or are not suitable. We will use this authority as required.

**Program Description**

In this rulemaking, the Maritime Administration is establishing interim procedures to be followed to determine if coastwise-qualified U.S.-flag launch barges are available for a specific project and if they are not available, we will make a determination that will allow a foreign-built vessel to transport and, if needed, launch or install a platform jacket under certain conditions.

We will request coastwise-qualified launch barge owners and other potentially interested parties to register with us on an annual basis with their

full contact information. The registration process for platform owners/operators begins with a notification to us of a proposed offshore platform jacket project at the same time they file with the Minerals Management Service for DOCD or DPP approval but not later than 21 months before projected use of the launch barge. The notification information provided to us must include: the projected summary details of the platform jacket to be transported and, if needed, launched or installed; the approximate date of the operation; and contact information for the platform owner/operator individuals having decision-making responsibility with respect to the transportation and installation of the platform jacket. This information will be made public in order to ''provide timely information to ensure maximum use of coastwise qualified vessels'' as is required in the Act. At the same time, we will provide the current list of potentially interested registered parties to the platform owner/operator so they can begin canvassing the market and entering into discussions.

Once we determine that the prior notice requirement has been met, and if the platform owner/operator is unable to find a potential coastwise-qualified launch barge that will be available for the project, the application process seeking a determination of non-availability can begin. Each application must include: the complete engineering details for the platform jacket; the operational details for the loading, transport, launching or installation; the timing requirements; and the foreign launch barge they propose to use.

Upon the receipt of a complete application including deposit fee, we will publish a notice in the **Federal Register** requesting that comments and information on the availability of coastwise-qualified vessels be submitted within 30 days. We may also canvas the market. If, after the comment period, we determine that suitable coastwise-qualified vessels are not available for the project, upon receipt of final payment for all relevant costs, we will issue a determination of non-availability, allowing the transportation, launch or installation to proceed with the foreign-built launch barge vessel.

We will not take action on applications that are not complete. For example, if we are not in receipt of early prior notification, or if fees are not paid, or if the application is incomplete, we will not take action on the application. However, we will seek to rectify errors and omissions to the application. It is important to note that we may take action to deny a request for a determination if the application remains incomplete. As previously stated, we will publish complete applications in the **Federal Register** for a period of 30 days and will provide a determination within 90 days thereafter.

Because launch barges have long lead times for construction, applicants are encouraged to provide the Maritime Administration and the public with as much notice as possible in advance of these projects. Early notification will help ensure the maximum utilization of coastwise-qualified vessels, and will assist the Maritime Administration in its review process.

**Application Fee**

Title V of the Independent Offices Appropriations Act of 1952 (''IOAA''; 31 U.S.C. 9701) authorizes Federal agencies to establish and collect user fees. The statute provides that each service or thing of value provided by an agency should be self-sustaining to the extent possible, and that each charge shall be fair and based on the costs to the Government, the value of the service or thing to the recipient, the policy or interest served, and other relevant factors. 31 U.S.C. 9701.

The primary guidance for implementation of the IOAA is Office of Management and Budget (OMB) Circular No. A–25 (''User Charges,'' July 8, 1993). Circular A–25, section 6, directs agencies to assess user charges against identifiable recipients for special benefits derived from Federal activities beyond those received by the general public. Circular A–25 further directs agencies, with limited exceptions, to recover the full cost of providing a Government service from the direct recipients of special benefits. Section 6(d) of Circular A–25 defines ''full cost'' as including ''all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service.''

Because determinations of availability under part 389 represent special benefits to identifiable recipients (i.e., platform owners/operators) that are beyond the benefits and services normally received by the general public, the IOAA and Circular A–25 direct us to assess user fees for providing this service.

Following the principles embodied in Circular A–25, we will estimate the costs associated with processing and issuing determinations under part 389 as follows. The main cost components of the program include direct and indirect personnel costs and **Federal Register** publication costs. We will charge the actual number of hours at the relevant personnel costs plus associated overhead and administrative costs. The other cost component of the program will be the cost of publishing notices of applications in the **Federal Register**. The current **Federal Register** publication cost is $155 per column and the average length of a public notice published for this program is estimated to be three columns. Thus, the total average publication cost currently is estimated to be about $465.00. The total of personnel costs and **Federal Register** publication costs is estimated to range from $500 to $20,000 or more, dependent upon the extent of the required review. Each application will require a $500 deposit and the payment of any additional costs prior to the final determination.

**Rulemaking Analyses and Notices**

*Executive Order 12866 and DOT Regulatory Policies and Procedures*

This rulemaking is not significant under section 3(f) of Executive Order 12866, and as a consequence, OMB did not review the rule. This rulemaking is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). It is also not considered a major rule for purposes of Congressional review under Public Law 104–121. We believe that the economic impact of this rulemaking is so minimal as to not warrant the preparation of a full regulatory evaluation. This rulemaking merely establishes procedures to determine if a coastwise-qualified barge is available for use in a project and, if not, to allow the use of a non-coastwise qualified barge.

*Executive Order 13132*

We analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'') and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The regulations herein have no substantial effects on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among local officials. Therefore, we did not consult with State and local officials because it was not necessary.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires us to assess the impact that regulations will have on small entities. After analysis of this proposed rule, the Maritime Administrator certifies that this proposed rule will not have a

significant economic impact on a substantial number of small entities. We anticipate that few, if any, small entities will participate in this process due to the nature of the shipping industry and the capital costs associated with vessels that fall under this program.

*Environmental Assessment*

We have analyzed this proposed rule for purposes of compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et. seq.*) and we have concluded that, under the categorical exclusions provision in section 4.05 of Maritime Administrative Order (MAO) 600–1, ''Procedures for Considering Environmental Impacts,'' 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this rulemaking is required. This rulemaking will not result, either individually or cumulatively, in a significant impact on the environment. This rulemaking only relates to the determination of whether a coastwise-qualified barge is available for a project, and, if not, allows the use of a non-coastwise qualified barge.

*Paperwork Reduction Act*

This rulemaking contains an information collection that will require review and clearance by the Office of Management and Budget (OMB).

*Unfunded Mandates Reform Act*

This rulemaking does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves this objective of U.S. policy.

*Executive Order 13175*

We believe that these regulations will have no significant or unique effect on the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

*Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

*Privacy Act*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

**List of Subjects in 46 CFR Part 389**

Administrative practice and procedure, Maritime carriers, Reporting and recordkeeping requirements.

■ Accordingly, the Maritime Administration amends 46 CFR chapter II, subchapter J, by adding part 389 to read as follows:

## PART 389—DETERMINATION OF AVAILABILITY OF COASTWISE-QUALIFIED LAUNCH BARGES

Sec.
389.1 Purpose.
389.2 Definitions.
389.3 Registration.
389.4 Application and fee.
389.5 Review; issuance of determinations.

**Authority:** 49 U.S.C. 322(a); 46 U.S.C. 55102; 46 U.S.C. 55108; Public Law 108–293, 118 Stat 1028; 49 CFR 1.66.

### § 389.1 Purpose.

This part prescribes regulations implementing the provisions of section 417 of Public Law 108–293, which grants the Secretary of Transportation, acting through the Maritime Administration, the authority to review and approve applications for determinations of availability of coastwise-qualified launch barges. Owners or operators of proposed platform jackets may submit information regarding a specific platform jacket transport, placement and/or launch project, following the procedures set forth in this regulation, in order for us to determine whether a suitable coastwise-qualified barge is available for the project. If we determine a suitable coastwise-qualified launch barge is not available, then a non-coastwise qualified foreign-built launch barge may be used.

### § 389.2 Definitions.

For the purposes of this Part:

''*Administrator*'' means the Maritime Administrator.

''*Coastwise-qualified Vessel*'' means a vessel that has been issued a certificate of documentation with a coastwise endorsement under 46 U.S.C. 12112.

Coastwise Trade Laws include:

(1) The Coastwise Endorsement Provision of the Vessel Documentation Laws, (46 U.S.C. 12112);

(2) The Passenger Services Act, section 8 of the Act of June 19, 1886 (46 U.S.C. 55103);

(3) The Jones Act, section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 55102); and

(4) Section 2(c) of the Shipping Act of 1916 (46 U.S.C. 50501).

''*Launch barge*'' means a vessel that is technically capable of transporting and, if needed, launching or installing an offshore drilling or production platform jacket in a timely manner.

''*Foreign launch barge*'', for the purpose of this rule, means a non-coastwise-qualified launch barge that was built before December 31, 2000, and has a launch capacity of 12,000 long tons or more.

A ''*long ton*'' equals 2,240 pounds.

''*Platform Jacket*'' refers to a single physical component and includes any type of offshore exploration, development, or production structure or component thereof, including platform jackets, tension leg or SPAR platform superstructures (including the deck, drilling rig and support utilities, and supporting structure), hull (including vertical legs and connecting pontoons or vertical cylinder), tower and base sections of a platform jacket, jacket structures, and deck modules (known as ''*topsides*'').

''*Secretary*'' means the Secretary of the Maritime Administration, who will route the correspondence to the proper office within the Maritime Administration for handling.

''*Classed as a launch barge by a recognized classification society*'' means that the vessel holds a current classification document to be used as a launch barge by at least one of the following classification societies: American Bureau of Shipping (ABS), Bureau Veritas (BV), Lloyd's Register (LR), Germanischer Lloyd (GL), Det Norske Veritas (DNV), or Nippon Kaiji Kyokai (NK).

''*Applicant*'' means the offshore development company as identified to the Minerals Management Service (MMS) in their Development Production Plan (DPP) or Development Operations Coordination Document (DOCD), who has applied to the Maritime Administration (MARAD) for a waiver.

### § 389.3 Registration

In order to provide timely notification and to identify the potential participants

to each other so they may examine how they can best work together to maximize the use of coastwise-qualified launch barges, we will require early notification as outlined in this section.

(a) In January of each calendar year, the Maritime Administration will publish a notice in the **Federal Register** requesting that owners or operators or potential owners or operators of coastwise-qualified launch barges notify us of:

(1) Their interest in participating in the transportation and, if needed, the launching or installation of offshore platform jackets; and,

(2) Provide us with contact information for their company; and,

(3) Provide specifications of any currently owned or operated coastwise-qualified launch barges or plans to construct same.

(b) When current or potential owners or operators of any type of offshore exploration, development, or production structure expect to need the use of a launch barge they must notify the Maritime Administration. Such notification must be the earlier of either:

(1) The filing of their Development and Production Plan (DPP) or Development Operations Coordination Document (DOCD) with the Minerals Management Service as required by 30 CFR 250.201; or

(2) Not later than twenty-one (21) months before the proposed date of using a launch barge.

(c) The early notification information to be provided to the Maritime Administration by the platform owner or operator shall include:

(1) A summary of technical details of the platform jacket that will need to be transported and, if needed, launched or installed; and,

(2) The projected physical requirements for a suitable launch barge to be used in this project; and,

(3) The projected time period and load and launching sites for the launch barge operation; and,

(4) Full contact information for the company and the individuals having decision-making authority with respect to the utilization of the launch barge and the transportation and, if needed, the launching or installation of the platform jacket.

(d) The information in paragraphs (a), (b), and (c) of this section must be submitted either electronically to *cargo.marad@dot.gov* or delivered to the Secretary, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Any information that is business confidential must be so noted and accompanied by a justification.

(e) We will publish a list of potential coastwise-qualified launch barge owners/operators on our Web site at *http://marad.dot.gov*. We will publish a summary of the early notification information in paragraph (c) of this section on the website and also disseminate it to the registered potential coastwise-qualified launch barge owners/operators.

**§ 389.4 Application and fee.**

(a) When, after surveying the market and discussing the platform project with potential coastwise-qualified launch barge owners/operators, it appears that coastwise-qualified vessels will not be available, the platform jacket owner/operator may apply to the Maritime Administration for a determination of non-availability and request to use a foreign launch barge.

(1) The fully complete application must be submitted to the Secretary, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 at least 120 days prior to the proposed launch barge operations date.

(2) We reserve the right to waive or reduce or extend the time requirements based upon our evaluation of any national emergency or other situation.

(b) Applications must contain the information set forth in paragraphs (c) and (d) of this section and be accompanied by a statement signed by an officer of the company containing the following language:

''This application is made for the purpose of inducing the United States of America to grant a determination of non-availability of a coastwise-qualified launch barge as set forth in 46 U.S.C. 55108. I have carefully examined the application and all documents submitted and, to the best of my knowledge, information and belief, the statements and representatives contained in said application and related documents are full, complete, accurate and true. Further, I agree to pay any fees that result from the work required by this application.

Signature: _____

Name (typed): _____

Title: _____

Date: _____

(c) The applicant must submit a non-refundable check in the amount of $500 (Five Hundred Dollars) made payable to the Maritime Administration, which is a minimum fee and represents a deposit against any costs to the Government for processing the application. The applicant must also submit a signed statement (see paragraph (b) of this section) that they agree to pay all such additional costs that will be invoiced by the Government. Government costs will be billed for actual staff hours at applicable hourly rates plus overhead, administrative and other relevant costs.

(d) *Required Transport and Launch Project Information.*

(1) Applications must include a general description of the transport, placement and/or launch project, including:

(i) A description of the platform jacket structure with launching weight, center of gravity, major dimensions, and a general arrangement plan,

(ii) The projected loading date and site,

(iii) The projected launching date and site,

(iv) The names of the potential coastwise-qualified launch barges' owners/operators contacted and their response regarding suitability and availability, and

(v) The technical merits and availability studies for the coastwise-qualified launch barges considered.

(2) Characteristics of the applicant's desired foreign launch barge, including, at a minimum, the following information:

(i) Name of the vessel,

(ii) Registered owner of the vessel,

(iii) Physical dimensions, deadweight capacity in long tons, ballasting capacities and arrangements, and launch capacity in long tons, and arrangements,

(iv) Documentation showing classification as a launch barge by one of the following classification societies: American Bureau of Shipping (ABS), Bureau Veritas (BV), Lloyd's Register (LR), Germanischer Lloyd (GL), Det Norske Veritas (DNV), or Nippon Kaiji Kyokai (NK).

(v) Date and place of construction of the foreign launch barge and (if applicable) rebuilding. If applicant is unable to document the origin of the vessel, foreign construction will be assumed.

(vi) Name, address, and telephone number of the foreign launch barge owner.

(3) The signed statement that the applicant represents that the foregoing information is true to the best of the applicant's knowledge, as required by paragraph (b) of this section and the $500 deposit fee.

(e) We may require additional information from the applicant as part of the review process. The application will not be considered complete until we have received all relevant information.

**§ 389.5 Review; issuance of determinations.**

(a) The Maritime Administration will review each application for

completeness including evidence of prior notification and payment of application fee. Applications will not be processed until deemed complete. We will notify the applicant if additional information is necessary. We encourage the submission of applications well in advance of project dates in order to allow sufficient time for review under this part.

(b) We will review the information required by § 389.4. When the application is deemed complete, we will publish a notice in the **Federal Register** describing the project and platform jacket involved, advising that all relevant information reasonably needed to assess the transportation and launching requirements will be made available to interested parties upon request. The notice will request that information on the availability of coastwise-qualified launch barges be submitted within thirty (30) days after the publication date. We will also notify the coastwise-qualified owners/operators who have registered with us as per § 389.3.

(c) The Maritime Administration will review any submittals whereby an owner or operator of a coastwise-qualified launch barge asserts they are available and we will facilitate discussions between the offeror and the platform jacket owner/operator. If the parties are unable to reach agreement, we will make a determination regarding availability.

(d) If needed, the Maritime Administration's technical personnel will review the data required in § 389.4. The data must be complete and current. Any data submitted will not be returned to the applicant and will be retained by us on file for a period of time. The Maritime Administration review will not substitute for the review and approval by either a major classification society (ABS, BV, LR, GL, DNV, NK) or the U.S. Coast Guard. The Maritime Administration review will not verify the accuracy or correctness of the applicant's engineering proposal; rather, it will only pertain to the general reasonableness and soundness of the technical approach.

(e) The Maritime Administration will deny the application if:

(1) We find the applicant did not comply with the requirements in § 389.3 or § 389.4; or,

(2) We determine a suitable coastwise-qualified launch barge is reasonably available.

(f) The Maritime Administration will issue a determination of non-availability if we determine that no suitable coastwise-qualified vessel is reasonably available.

(g) Our determination will be issued within ninety (90) days from the date the application notice was published in the **Federal Register**.

(g) Our determination of non-availability will expire one-hundred and twenty (120) days after the date of issuance, unless we provide an extension for good cause.

Maritime Administration determinations in this regard should NOT be interpreted as a change setting new federal maritime precedents. The Maritime Administration continues to support the Jones Act, the Passenger Vessel Services Act, and other federal U.S.-flag requirements.

By order of the Maritime Administrator.

Dated: May 19, 2008.

**Leonard Sutter,**

*Secretary, Maritime Administration.*

[FR Doc. E8–11704 Filed 5–28–08; 8:45 am]

BILLING CODE 4910–81–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MB Docket No. 07–91; FCC 07–228]**

### Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection(s) associated with section 73.682(d) of the rules. On January 30, 2008, the Commission established May 29, 2008 as the effective date for this rule—section 73.682(d)—in the summary document of the Report and Order, which was published in the **Federal Register** at 73 FR 5634. The Ordering Clause of the Report and Order stated that the Commission would publish a notice in the **Federal Register** announcing when OMB approval for this rule section has been received and when this rule will take effect. This notice is consistent with the statement in the Report and Order.

**DATES:** Effective May 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** For additional information, please contact Evan Baranoff, *Evan.Baranoff@fcc.gov,* or Kim Matthews, *Kim.Matthews@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

**SUPPLEMENTARY INFORMATION:** This document announces that, on March 4, 2008, OMB approved, for a period of three years, the information collection requirement contained in section 73.682(d) of the rules. The Commission publishes this notice as a second announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1104, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

### Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on March 4, 2008, for the information collection requirement contained in the Commission's rules at 47 CFR 73.682(d). The OMB Control Number is 3060–1104. The total annual reporting burden for respondents for these collections of information, including the time for gathering and maintaining the collection of information, is estimated to be: 1,812 respondents, a total annual hourly burden of 47,112 hours, and there is no total annual cost burden associated with this information collection.

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB Control Number.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E8–11984 Filed 5–28–08; 8:45 am]

BILLING CODE 6712–01–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 070817467–8554–02]**

**RIN 0648–AV90**

## Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 19

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS is implementing measures included in Framework Adjustment 19 (Framework 19) to the Atlantic Sea Scallop Fishery Management Plan (FMP), which was developed by the New England Fishery Management Council (Council). Framework 19 was developed to achieve the following management measures for the scallop fishery: Limited access scallop fishery specifications for 2008 and 2009 (open area days-at-sea (DAS) and Sea Scallop Access Area (access area) trip allocations); Elephant Trunk Access Area (ETAA) and Delmarva Access Area (Delmarva) in-season trip adjustment procedures; new Hudson Canyon Access Area (HCAA) measures; DAS allocation adjustment measures if an access area yellowtail flounder (yellowtail) total allowable catch (TAC) is caught; adjustments to the scallop overfishing definition; a prohibition on deckloading of scallops on access area trips; adjustments to the industry-funded observer program; a 30-day vessel monitoring system (VMS) power down provision; general category access area specifications for 2008 and 2009; and general category measures dependent on the implementation of Amendment 11 to the FMP, including a quarterly TAC, 2008 and 2009 general category quota allocations, and individual fishing quota (IFQ) permit cost recovery program requirements. NMFS has disapproved the Council's recommendation to eliminate the September 1 through October 31 ETAA seasonal closure, which was implemented under Framework 18 to the FMP to reduce sea turtle interactions with the scallop fishery. NMFS determined that the Council's recommendation would not be consistent with National Standards 2 and 9 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Effective June 1, 2008, except § 648.4(a)(2)(ii)(D)(*2*), (a)(2)(ii)(E), (a)(2)(ii)(H), and (a)(2)(ii)(I)(*3*), § 648.14(i)(1)(xx) and (i)(2)(xvii), and § 648.59(a)(3)(ii), (b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii) as amended in instruction 9, which are effective July 1, 2008, and § 648.11(h)(vii)(G) through (J), which contain collection-of-information requirements that have not been approved by the Office of Management and Budget (OMB). NMFS will publish a notice in the **Federal Register** announcing the effective date.

**ADDRESSES:** An environmental assessment (EA) was prepared for Framework 19 that describes the action and other alternatives considered, and provides a thorough analysis of the impacts of the measures and alternatives. Copies of Framework 19, the EA, and the Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Newburyport, MA 01950.

Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this final rule should be submitted to the Regional Administrator at the address above and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Ryan Silva, Cooperative Research Program Specialist, 978–281–9326; fax 978–281–9135.

**SUPPLEMENTARY INFORMATION:**

### Background

The Council adopted Framework 19 on October 25, 2007, and submitted it to NMFS on November 8, 2007, for review and approval. Framework 19 was developed and adopted by the Council in order to meet the FMP's requirement to adjust biennially the management measures for the scallop fishery. The FMP requires biennial adjustments to ensure that the measures continue to meet the fishing mortality rate (F) and other goals of the FMP and achieve optimum yield (OY) from the scallop resource on a continuing basis. The Council reviewed the Framework 19 proposed rule regulations as drafted by NMFS, which included regulations proposed by NMFS under the authority of section 305(d) of the Magnuson-Stevens Act, and on February 27, 2008, deemed them to be necessary and consistent with section 303(c) of the Magnuson-Stevens Act. Framework 19 published in the **Federal Register** on March 19, 2008, with a 20-day public comment period that ended April 8, 2008. Three comments were received on the proposed measures.

### Disapproved Measure

The September through October seasonal closure of the ETAA was implemented under Framework 18 to the FMP (Framework 18), consistent with National Standard 9, which called for management measures to minimize and reduce the mortality of bycatch to the extent practicable, to reduce potential interactions between threatened and endangered sea turtles and the scallop fishery in the Mid-Atlantic. Framework 18 concluded that a closure to scallop fishing may have positive benefits to turtles in the ETAA if fishing effort is not displaced to areas with higher densities of turtles than inside the ETAA. Additionally, Framework 18 concluded that the elevated water and air temperatures that occur during September and October in the ETAA may result in higher than average small scallop and finfish discard mortality. Therefore, Framework 18 concluded that the 2-month closure could also reduce scallop and finfish discard mortality. The information relied on in Framework 19 to eliminate the seasonal closure, as recommended by the Council, does not represent the best scientific information. The scientific information relied on for Framework 18 is still considered the best scientific information available and, therefore, the Council's recommendation to eliminate the closure is therefore inconsistent with National Standard 2. Maintaining the closed season remains consistent with the MSA, including National Std. 9, which requires that management measures minimize bycatch and bycatch mortality to the extent practicable.

### Approved Measures

In the proposed rule, NMFS requested comments on all proposed management measures. The approved management measures are discussed below. Details concerning the Council's development of these measures were presented in the preamble of the proposed rule and are not repeated here.

#### *Open Area DAS Allocations*

To achieve optimum yield at the target F of 0.20 for the scallop resource, limited access open area DAS allocations are required to be adjusted every 2 years. Because the calculation of overall F also includes the mortality in controlled access areas, the calculation of the open area DAS allocations depends on the access area measures,

including the rotation schedule, management measures, and access area trip allocations. Framework 19 implements the following vessel-specific DAS allocations: Full-time limited access vessels will be allocated 35 DAS in 2008 and 42 DAS in 2009; part-time vessels will be allocated 14 DAS in 2008 and 17 DAS in 2009; and occasional limited access vessels will be allocated 3 DAS in 2008 and 3 DAS in 2009. If implementation of the general category IFQ program is delayed beyond March 1, 2009, the 2009 DAS allocations would be reduced to the following: Full-time—37 DAS; part-time—15 DAS, occasional—3 DAS. Amendment 11 to the FMP specifies that the general category fleet will be allocated 10 percent of the scallop quota during the transition period to the IFQ program. The Council did not specify in Framework 19 what the general category quota would be in the event the IFQ program is not implemented in 2009. Therefore, NMFS has determined that the potential DAS reduction is consistent with Amendment 11 and will extend the 10 percent allocation into 2009 in the event the IFQ program is not implemented by March 1, 2009.

Because Framework 19 was not implemented by the start of the fishing year on March 1, 2008, and interim regulations in effect at the start of the 2008 fishing year are inconsistent with Framework 19 specifications, it is possible that a scallop vessel may have exceeded its DAS allocation during the interim period between March 1, 2008, and June 1, 2008. Therefore, any limited access open area DAS used in 2008 by a vessel that is above the final 2008 allocation for that vessel will be deducted from the vessel's 2009 DAS allocation.

*Limited Access Trip Allocations and Possession Limits for Scallop Access Areas*

In the 2008 fishing year, full-time limited access scallop vessels will be allocated one trip in the Nantucket Lightship Access Area (NLCA), and four trips in the ETAA. A part-time limited access scallop vessel will be allocated two trips, which could be taken as follows: One trip in the ETAA and one trip in the NLCA; or two trips in the ETAA. An occasional limited access vessel will be allocated one trip, which could be taken in either the NLCA or the ETAA. The 2008 limited access scallop possession limit for access area trips will be 18,000 lb (8,165 kg) for full-time and part-time vessels, and 7,500 lb (3,402 kg) for occasional vessels.

In the 2009 fishing year, full-time limited access scallop vessels will be allocated one trip in the Closed Area II Access Area (CAII), up to three trips in the ETAA, and up to one trip in Delmarva (unless ETAA and/or Delmarva trips are reduced due to updated exploitable scallop biomass estimates). A part-time limited access scallop vessel will be allocated two trips, and could distribute these trips between the following access areas as follows: Up to two trips in the ETAA; up to one trip in CAII; and up to one trip in Delmarva (unless ETAA and/or Delmarva trips are reduced due to updated exploitable scallop biomass estimates). An occasional limited access vessel will be allocated one trip, which could be taken in CAII, the ETAA, or Delmarva (unless ETAA and/or Delmarva trips are reduced due to updated exploitable scallop biomass estimates). The 2009 limited access scallop possession limit for access area trips will be 18,000 lb (8,165 kg) for full-time and part-time vessels, and 7,500 lb (3,402 kg) for occasional vessels. However, if ETAA or Delmarva trips are reduced, part-time possession limits may be reduced as described below.

Although the Framework 19 document submitted to NMFS did not specify 2009 Delmarva trip options for part-time and occasional vessels, NMFS has interpreted this as an oversight, and has included Delmarva trip options for part-time and occasional limited access vessels in 2009. ETAA and Delmarva trip allocations and possession limits in 2009 are subject to change per the ETAA and Delmarva trip reduction procedures described below.

*Regulatory Procedure To Reduce 2009 ETAA and/or Delmarva Allocations*

ETAA and Delmarva specifications are based on 2007 scallop resource survey information, which was the best scientific information available when the Council established the ETAA and Delmarva allocations for Framework 19. If 2008 ETAA and/or Delmarva survey data indicate that there is less estimated exploitable biomass of scallops in the ETAA and/or Delmarva for the 2009 fishing year, the Regional Administrator may reduce ETAA and/or Delmarva allocations to prevent overfishing.

If a reduction in the ETAA is necessary, as dictated by pre-determined thresholds detailed in Table 1, the Regional Administrator will publish a final rule consistent with the Administrative Procedure Act (APA) on or about December 1, 2008. If the ETAA exploitable biomass estimate is between 20,000 and 29,999 mt, part-time limited access vessels will be authorized to take one trip in the ETAA at a reduced possession limit of 3,600 lb (1,633 kg), and one trip in the NLCA at the normal possession limit of 18,000 lb (8,165 kg). The reduced possession limit for part-time vessels under this scenario results from the FMP structure, which allocates to part-time vessels 40 percent of what is allocated to a full-time vessel. If updated exploitable biomass information is not available so that a final rule pursuant to the APA cannot be published on or about December 1, 2008, no reductions will be made.

TABLE 1.—2009 ETAA TRIP REDUCTION TABLE

| Exploitable biomass estimate (mt) | Adjusted trips (full-time, part-time, occasional) | Adjusted trips (general category) | Adjusted 2009 research set-aside TAC (mt) | Adjusted 2009 observer set-aside TAC (mt) |
|---|---|---|---|---|
| 30,000 or greater | No adjustment | No adjustment | No adjustment | No adjustment. |
| 20,000–29,999 | 2, 1*, 0 | 1473 | 108.86 | 54.43. |
| 10,000–19,000 | 1, 0, 0 | 982 | 72.57 | 36.29. |
| Less than 10,000 | 0, 0, 0 | 491 | 36.29 | 18.15. |

* Part-time vessels may take one trip in the ETAA at a reduced possession limit of 3,600 lb (1,633 kg) and one trip in CAII or Delmarva (unless Delmarva trips are reduced); or one trip in CAII and one trip in Delmarva (unless Delmarva trips are reduced).

In addition, if an updated estimate of overall F exceeds 0.29 in 2008, then ETAA allocations will be reduced consistent with the reductions specified in Table 1 under exploitable biomass estimates of 20,000–29,000 mt. If both the biomass and F thresholds are exceeded, the allocation level will be

established using the biomass adjustment schedule.

Under the same procedures and dates, if the Delmarva biomass for the 2009 fishing year is estimated to be below 10,000 mt, then the area will remain closed to scallop fishing for the 2009 fishing year, and no trips or set-aside will be authorized there.

*New Hudson Canyon Rotational Management Area*

Due to the high concentration of small scallops in the HCAA, Framework 19, consistent with the FMP's area rotation program strategy to protect young scallop concentrations, will establish the HCAA as a rotational management area, and close the HCAA to all scallop fishing, including general category vessels, for at least the 2008 and 2009 fishing years. The expected increase in exploitable biomass in the absence of fishing mortality is expected to exceed 30 percent per year. The area could be considered again as an access area and re-open to fishing when the annual increase in exploitable biomass in the absence of fishing mortality is less than 15 percent per year.

*Open Area DAS Adjustment if a Scallop Access Area Yellowtail TAC Allocated to the Scallop Fishery Is Caught*

Under the Northeast Multispecies Fishery Management Plan, 10 percent of the Southern New England (SNE) and Georges Bank (GB) yellowtail TACs are allocated to scallop vessels fishing in the NLCA, CAI, and CAII. If the SNE and/or GB yellowtail TAC is caught, the respective access area(s) are closed to further scallop fishing for the remainder of the fishing year. If a limited access vessel has unutilized trip(s) in an access area closed by a scallop fishery yellowtail TAC, Framework 19 will allocate additional open area DAS in a manner that maintains the F objectives of the FMP. This trip/DAS conversion will apply only to full-time vessels, and to occasional or part-time vessels that have no other available access areas in which to take their access area trip(s). Unused access area trip(s) will be converted to open area DAS so that scallop fishing mortality that will have resulted from the access area trip(s) will be equivalent to the scallop fishing mortality resulting from the open area DAS allocation. Consequently, if the NLCA or CAII is closed in 2008 or 2009, respectively, each vessel with unutilized trip(s) will be allocated a specific amount of additional open area DAS according to permit category. Full-time vessels will be allocated 7.7 DAS per unutilized trip in the NLCA and 7.9 DAS per unutilized trip in CAII. Part-time vessels will receive the same DAS conversion as full-time vessels, as long as there was no other access area available for the vessel to take a trip(s). If an occasional vessel has no available access area in which to take its trip, it will be allocated converted DAS according to the most recent closure: 3.2 DAS if it was the NLCA; or 3.3 DAS if it was CAII. Although the Council did not specify this measure regarding occasional vessels in Framework 19, based on other Framework 19 measures adopted by the Council and the overall objectives of the FMP, NMFS proposed this measure under the authority of section 305(d) of the Magnuson-Stevens Act.

If a vessel has unused broken trip compensation trip(s) when an access area closes due to reaching a yellowtail TAC, it will be issued additional DAS in proportion to the un-harvested possession limit. For example, if a full-time vessel had an unused 9,000 lb (4,082 kg) NLCA compensation trip (half of the full possession limit) at the time of a NLCA yellowtail TAC closure, the vessel will be allocated 3.85 DAS (half of the 7.7 DAS that would be allocated for a full NLCA trip).

*Research Set-Aside (RSA) Allocations*

Two percent of each scallop access area quota and 2 percent of the DAS quota are set aside as part of the Scallop RSA Program to fund scallop research and compensate participating vessels through the sale of scallops harvested under the research set-aside quota. The 2008 research set-aside access area allocations will be: NLCA—110,000 lb (50 mt); and ETAA—440,000 lb (200 mt). The 2009 research set-aside access area allocations will be: CAII—116,000 lb (53 mt); ETAA—324,000 lb (147 mt); and Delmarva—120,000 lb (54 mt). If 2008 ETAA and/or Delmarva survey data indicate that there is less estimated exploitable biomass of scallops in the ETAA and/or Delmarva, the 2009 RSA allocations in these areas will be reduced as specified in Table 1.

The 2008 and 2009 research set-aside DAS allocations will be 235 and 282, respectively. If the general category IFQ program is delayed beyond March 1, 2009, the 2009 RSA DAS allocation would be 241 DAS.

*Observer Set-Aside Allocations*

One percent of each scallop access area quota and 1 percent of the DAS allocation are set aside as part of the industry funded observer program to help defray the cost of carrying an observer. Scallop vessels on an observed DAS trip are charged a reduced DAS rate, currently 0.85 per DAS; scallop vessels on an observed access area trip are authorized to have an increased possession limit, currently 400 lb of shucked scallops per DAS. The Regional Administrator for the Northeast Region (Regional Administrator) has the authority to establish, and adjust, the reduced DAS rate and increased possession limit.

The Council recommended in Framework 19 that the observer set-aside compensation rates be adjusted to more accurately reflect current fishery conditions. The Council noted that the current DAS set-aside rate of 0.85 is insufficient to offset the cost of carrying an observer, and suggested that the DAS compensation rate be increased while decreasing the access area possession limit, effectively transferring access area scallops to the DAS set-aside. However, the observer set-aside program is not currently structured to authorize access area scallops to be converted for use under the DAS set-aside. The set-aside program explicitly sets aside 1 percent of scallop DAS and 1 percent from each access area TAC. Therefore, the Council's recommendation cannot be adopted.

NMFS did evaluate the current set-aside rates and determined that, although the current DAS set-aside rate may not fully offset the cost of carrying an observer, the current rate provides the greatest benefit to the fleet and should not change for the 2008 fishing year. NMFS determined that, if the DAS compensation rate was increased, the DAS set aside would not likely last the entire fishing year, resulting in some vessel owners needing to pay the full cost of observer DAS trips. Therefore, the reduced DAS charge on observed DAS trips will remain at 0.85 for the 2008 fishing year. The Regional Administrator may re-evaluate the DAS compensation rate before the start of the 2009 fishing year.

The 2008 access area observer set-aside allocations will be: NLCA—55,000 lb (25 mt); ETAA—222,000 lb (111 mt). The 2009 access area observer set-aside allocations will be: CAII—58,000 lb (26 mt); ETAA—162,000 lb (73 mt); and Delmarva—60,000 lb (27 mt). If 2008 ETAA and/or Delmarva survey data indicate that there is less estimated exploitable biomass of scallops in the ETAA and/or Delmarva, the 2009 RSA allocations in these areas will be reduced as specified in Table 1.

The 2008 and 2009 DAS observer set-aside allocations will be 118 and 141, respectively. If the general category IFQ program is delayed beyond March 1, 2009, the 2009 observer set-aside DAS allocation would be 124 DAS.

*Adjustment of the Scallop Overfishing Definition*

The Council recommended a new overfishing definition based on results from the recent scallop stock assessment (SAW 45), which used a new model to characterize the scallop resource, including a new biomass target and threshold, and a new F threshold. Because the Council recommended the new reference points and a modified overfishing definition to reflect the new parameters, the Council also considered whether the current target F of 0.20 should be adjusted upward consistent with the F threshold adjustment. The overfishing threshold F of 0.29 is based on an assumption that F is spatially uniform. However, uniform F does not occur in the scallop fishery due to unfished biomass in closed areas and highly variable F's in open and access areas. In the case of highly non-uniform fishing effort, the F that maximizes yield per recruit will be less than the spatially uniform target (F=0.29). The Council was concerned that setting the F target at the typical 80 percent of the threshold (F=0.23) would result in localized overfishing in open areas. Therefore, the Council recommended keeping the target F at 0.20 in recognition that F is not uniformly distributed throughout the range of the scallop fishery, and the resource is prone to localized overfishing, particularly in open areas. An F target of 0.20 will help maintain a stable fishery over the long term rather than maximize individual catch on an annual basis, compared to higher F targets.

In addition, based on the results of SAW 45, the Council recommended establishing scallop biomass reference points using absolute scallop meat biomass estimates instead of scallop resource survey indices, as in the past.

Based on these recommendations, the scallop overfishing definition will be as follows: If stock biomass is equal to or greater than the maximum scallop resource biomass target (Bmax), as measured by an absolute value of scallop meat (mt) (currently estimated at 108,600 mt for scallops in the GB and Mid-Atlantic resource areas), overfishing occurs when F exceeds Fmax, currently estimated as 0.29. If the total stock biomass is below Bmax, overfishing occurs when F exceeds the level that has a 50-percent probability to rebuild stock biomass to Bmax in 10 years. The scallop stock is in an overfished condition when stock biomass is below ½Bmax and, in that case, overfishing occurs when F is above a level expected to rebuild the stock in 5 years, or when F is greater than zero when the stock is below Bmax.

The following table details the biomass and F reference points that will be implemented by Framework 19.

TABLE 2.—BIOMASS AND F REFERENCE POINTS

| | Target | Threshold |
|---|---|---|
| Biomass (B) | 108,600 mt | 54,300 mt. |
| Fishing mortality (F) | 0.20 | 0.29. |

*Prohibition on Deckloading*

To minimize scallop discard mortality, no scallop vessel that is declared into the Area Access Program as specified in § 648.60 may possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in § 648.52(d), outside the boundaries of a Sea Scallop Access Area.

*Adjustments to the Industry-Funded Observer Program*

There are several measures designed to improve the industry-funded observer program. Framework 19 includes measures described below that have new reporting requirements subject to review and approval by the OMB pursuant to the Paperwork Reduction Act (PRA). As noted, OMB is currently reviewing the new PRA requirements and as such, the measures are not effective along with other measures included in this final rule. A subsequent rule published in the **Federal Register** will announce the effective date of such measures.

1. Measures Pertaining to Observer Service Providers

Providers must respond to a fisherman's request for an observer within 18 hr of the fisherman's call to let them know if an observer is available.

Providers must provide the NMFS Northeast Fishery Observer Program (NMFS/NEFOP) with an updated list of contact information for all observers that includes the observer identification number, observer's name, mailing address, e-mail address, phone numbers, homeports or fisheries/trip types assigned, and must include whether or not the observer is ''in service,'' indicating when the observer has requested for leave and/or is not currently working for the industry-funded program.

Providers must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services.

Providers must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and specific observers.

Providers must submit to NMFS/NEFOP, if requested, copies of any information developed and used by the observer providers and distributed to vessels, such as informational pamphlets, payment notification, description of observer duties, etc.

The proposed rule stated that observer service providers would charge for services consistent with how vessel owners receive compensation, and specified that this would be based on VMS transmission data and time spent seaward of the demarcation line. However, based on comments received on this new requirement, NMFS has revisited the rationale of this requirement. The rationale of this measure was to reduce confusion for vessel owners resulting from different charging methods used by observer service providers, and to ensure the charging methodology was consistent. NMFS does not intend to direct observer providers on how much they may charge, but merely what the charge is based upon. Therefore, for access area trips, a service provider shall charge a vessel owner from when an observer boards a vessel until they disembark (dock to dock), where ''day'' is defined as a 24-hr period, or any portion of a 24-hr period, regardless of the calendar day. For example, if a vessel with an observer departs on July 1st at 10 pm and lands on July 3rd at 1 am, the time at sea equals 27 hr, which would equate to 2 ''days.'' For open area DAS trips, a service provider shall charge dock to dock where ''day'' is defined as a 24-hr

period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, for the trip demonstrated above, the provider would charge 1 day and 3 hours.

Providers will no longer be required to maintain at least eight certified observers.

Providers must provide NMFS/NEFOP with observer contract data within 24 hr of landing, and raw data within 72 hr of landing.

2. Measures Pertaining to Scallop Fishermen

Scallop fishermen must allow NMFS/NEFOP up to 24 hr to respond to a pre-sailing notice and, if selected, must provide the observer provider at least 48 hr to respond to an observer deployment request. Currently, NMFS/NEFOP may take up to 24 hr to respond to a pre-sailing notice, and the observer service provider may take up to 72 hr to respond to an observer deployment request. This will reduce the pre-sailing notice period. The proposed rule erroneously noted that NMFS would have up to 72 hours to respond to a pre-sailing notification.

Limited access trip notification calls cannot be made more than 10 days in advance of a trip, and not more than 10 trips may be called in at a time.

General category vessels making an access area trip(s) must call in with the same notice described above, but make calls weekly rather than daily. For example, a general category vessel could call in by Thursday for all the trips it plans to take from the following Sunday through Saturday. The vessel will either get a waiver for that week, or be selected for observer coverage. If selected, a vessel could be required to carry an observer on up to two trips made that week.

Vessel owners, operators, or managers are required to notify NMFS/NEFOP of any trip plan changes at least 48 hr prior to vessel departure.

Confirmation numbers for trip notification calls are valid for 48 hr from the intended sail date.

A vessel is prohibited from fishing in an access area without a NMFS/NEFOP call-in confirmation number specific to that trip and that was issued for the trip plan and area.

3. Observer Program Observer Training Adjustments

NMFS/NEFOP observer training sessions will no longer have a minimum class size of eight.

An observer's first three deployments and the resulting data will be immediately edited and approved after each trip by NMFS/NEFOP, prior to any further deployments by that observer. If data quality is considered acceptable, the observer will be certified. If the data is not acceptable, the observer will not be certified.

An observer provider will not deploy any observer on the same vessel for more than two consecutive multi-day trips and not more than twice in any given month for multi-day deployments. Multi-day is defined as more than 2 days.

At least 7 days prior to the beginning of an observer training class, providers would be required to provide a final list of observer candidates, observer candidate resumes, and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any.

Prior to the end of an observer training course, the observer will be required to complete a cardiopulmonary resuscitation/first aid course.

*30-Day VMS Power Down Provision for Scallop Vessels*

Scallop vessels may power down their VMS unit for a minimum of 30 days provided the vessel does not engage in any fishing activity until the unit is turned back on. Such vessels will be required to obtain a letter of exemption from the Regional Administrator. This provision will provide more flexibility and will reduce operating costs for some scallop vessel owners that do not engage in fisheries for extended periods of time.

*General Category Allocations*

The general category fishery will be allocated 10 percent of the overall scallop TAC in 2008, and 5 percent in 2009 (unless the IFQ program is not implemented by March 1, 2009, in which case the general category fishery will be allocated 10 percent of the scallop quota). Provided the IFQ program is implemented in 2009, 0.5 percent of the scallop TAC will be allocated to full-time, part-time, or occasional vessels that qualify for an IFQ permit.

The NGOM TAC for both 2008 and 2009 will be 70,000 lb (31,751 kg).

The incidental catch target TAC for the 2008 and 2009 fishing years will be 50,000 lb (22,680 kg) to account for mortality from this component of the fishery and to ensure that F targets are not exceeded.

The annual TAC, excluding the NGOM TAC and incidental catch TAC, will be distributed into quarterly TACs. The fleetwide quarterly TAC will remain in effect until the IFQ program is implemented under Amendment 11 to the FMP. Framework 19 allocates 35 percent (1,523,375 lb (690.99 mt)) of the 2008 directed general category annual TAC to Quarter 1, 40 percent (1,741,000 lb, (789.70 mt)) to Quarter 2, 15 percent (652,875 lb, (296.14 mt)) to Quarter 3, and 10 percent (435,250 lb (197.43 mt)) to Quarter 4. If any portion of the Quarter 1 TAC is not caught, the remainder will be rolled over into Quarter 3; if any portion of the Quarter 2 TAC is not caught, it will be rolled over into Quarter 4. Open area and access area scallop landings by directed general category trips will count against the quarterly TACs. If a quarterly TAC is caught, all directed general category scallop fishing will cease for the remainder of the quarter in access area, and open areas, but excluding the NGOM. If the Quarter 1 TAC (March 1–May 31) is underharvested or exceeded, those pounds will be added or removed from Quarter 3. If the Quarter 2 TAC (June 1–August 31) and/or Quarter 3 TAC (September 1–November 30) are underharvested or exceeded, those pounds will be added or removed from Quarter 4. In addition, since the quarterly TACs are intended to be in place for the entire 2008 fishing year, as specified in Amendment 11, Framework 19 requires that any scallops harvested by general category scallop vessels during the first and/or second quarter prior to implementation of Amendment 11 and Framework 19 are counted against the applicable quarterly TAC.

Starting with the first year of the IFQ program in 2009 or 2010, if necessary, the pool of IFQ vessels that do not qualify for a full-time, part-time, or occasional limited access scallop permit will be allocated 5 percent of the overall scallop TAC; and the pool of full-time, part-time, or occasional limited access vessels that qualify for an IFQ permit will be allocated 0.5 percent of the overall scallop TAC. General category vessels that qualify for an IFQ permit in 2009 will be allocated 5 percent of the overall scallop TAC as follows: 1,182,500 lb (536 mt) from open areas, 785,700 lb (357 mt) from ETAA, and 291,000 lb (132 mt) from Delmarva. Full-time, part-time, and occasional scallop vessels that qualify for an IFQ permit in 2009 will be allocated 225,950 lb (113 mt) from open areas on general category trips.

In the event that implementation of the IFQ program is delayed beyond the start of the 2009 fishing year (March 1, 2009), the IFQ scallop fishery will be allocated 10 percent of the overall scallop TAC and be divided among quarters as described in the preceding section.

*General Category Access Area Harvest Specifications for 2008 and 2009*

In 2008, the general category fishery will be allocated 667 trips in the NLCA, and 2,668 trips in the ETAA, respectively. Because 997 of the 2,668 ETAA trips have already occurred, 1,161 ETAA trips will be allocated to general category vessels when Framework 19 is effective under this final rule. The NLCA will open on June 15, 2008.

In 2009, the general category scallop fishery will be allocated up to 1,964 ETAA trips and up to 728 Delmarva trips. If 2008 ETAA scallop resource surveys indicate a reduced exploitable scallop biomass, or overall 2008 scallop F exceeds 0.29, general category ETAA trip allocations will be subject to trip reduction procedures as specified under Table 1-2009 ETAA Trip Reduction Table. If updated 2008 Delmarva scallop resource surveys indicate the exploitable biomass in Delmarva is less than 10,000 mt, Delmarva will be closed for the 2009 fishing year, and no general category trips will be allocated. General category vessels will not be allocated any trips in CAII because of concerns that negligible fishing effort by general category vessels will occur there. Because general category vessels will receive overall TAC, the zero allocation in CAII will be offset by a higher percentage of overall catch in open areas.

*IFQ Cost Recovery Program*

NMFS is required by the Magnuson-Stevens Act to recover the costs directly related to the management, data collection and analysis, and enforcement of IFQ programs such as the one implemented through Amendment 11. Under section 304(d)(2)(A) of the Magnuson-Stevens Act, the Secretary of Commerce is authorized to collect a fee, not to exceed 3 percent of the ex-vessel value of fish harvested, to recover these costs. Therefore, a scallop IFQ vessel will incur a cost recovery fee liability for every landing of scallops. The IFQ permit holder that landed the IFQ scallops will be responsible for submitting this payment to NMFS once per year. The ex-vessel value of scallops used to calculate the cost-recovery fees due for a fishing year will be based on an average of the ex-vessel value of all general category scallops landed between March 1 and September 30 of the initial year of the IFQ program, and October 1 through September 30 of each year thereafter. IFQ permit owners that transferred IFQ scallops (transferee) from another IFQ vessel (transferor) as part of the IFQ scallop transfer program must submit a cost recovery fee for scallops landed by the transferee.

Payment of the cost recovery fee will be a permit condition that must be met before permits may be renewed. On or about October 30 of each year, NMFS will mail a cost recovery bill for the IFQ fee incurred by each IFQ vessel to each IFQ permit holder. Owners of IFQ vessels will be required to submit payment by January 1 of each year. An IFQ scallop vessel's permit will not be renewed (i.e., not issued) by NMFS until payment for the prior year's fees is received in full. Bills will also be made available electronically via the internet. Fee liabilities due January 1 will be for the previous cost recovery period (October 1–September 30 of the year preceding the January 1 due date). For example, for scallops landed October 1, 2009–September 30, 2010, NMFS will issue a cost recovery bill on or about October 30, 2010, and the IFQ permit holder will be required to submit the cost recovery fee by January 1, 2011. If an IFQ permit holder does not pay, or pays less than the full amount due, the vessel's IFQ permit will not be renewed.

Disputes regarding fee liabilities will be resolved through an administrative appeal procedure. If an IFQ permit holder makes a timely payment to NMFS of an amount less than the fee liability NMFS has determined, the IFQ permit holder will have the burden of demonstrating that the fee amount submitted is correct and that the fee calculated by NMFS is incorrect. If, upon preliminary review of the accuracy and completeness of a fee payment, NMFS determines the IFQ permit holder has not paid the amount due in full, NMFS will notify the IFQ permit holder by letter. NMFS will explain the discrepancy and the IFQ permit holder will have 30 days to either pay the amount that NMFS has determined should be paid, or provide evidence that the amount paid was correct. The IFQ permit for the vessel will not be renewed until the payment discrepancy is resolved. If the IFQ permit holder submits evidence in support of his/her payment, NMFS will evaluate it and, if there is any remaining disagreement as to the appropriate IFQ fee, prepare a Final Administrative Determination (FAD). The FAD will set out the facts, discuss those facts within the context of the relevant agency policies and regulations, and make a determination as to the appropriate disposition of the matter. A FAD will be the final agency action. If the FAD determines that the IFQ permit holder is out of compliance, the IFQ scallop permit in question will not be renewed until the conditions established by the FAD are met. If the FAD determines that the IFQ permit holder owes additional fees, and if the IFQ permit holder has not paid such fees, all IFQ permit(s) held by the IFQ permit holder will not be renewed until the required payment is received by NMFS. If NMFS does not receive such payment within 30 days of the issuance of the final agency action, NMFS will refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection, and the vessel's IFQ permit(s) will remain invalid. If NMFS does not receive such payment prior to the end of the fishing year, the IFQ permit will be considered voluntarily abandoned.

Cost recovery payments shall be made electronically via the Federal web portal, *http://www.pay.gov,* or other Internet sites as designated by the Regional Administrator. Instructions for electronic payment will be made available on both the payment Web site and the paper bill. Payment options may include payment via a credit card (the Regional Administrator will specify in the cost recovery bill acceptable credit cards) or direct ACH (automated clearing house) withdrawal from a designated checking account. Payment by check could be authorized by the Regional Administrator if the Regional Administrator has determined that electronic payment is not possible (for example, if the geographical area or an individual(s) is affected by catastrophic conditions).

NMFS will create an annual IFQ report and provide it to the owner of the IFQ permit. The report will include quarterly and annual information regarding the amount and value of IFQ scallops landed during the fishing year, the associated cost recovery fees, and the status of those fees. This report will also detail the costs incurred by NMFS, including the calculation of the recoverable costs for the management, enforcement, and data collection, incurred by NMFS during the fishing year.

**Comments and Responses**

A total of 3 relevant comment letters that raised 6 relevant issues were received in response to the proposed rule for Framework 19.

*Comment 1:* A comment letter was submitted by an observer service provider suggesting that vessels should be compensated for the full cost of observer coverage; including costs associated with observer deployment, at-sea data collection, and post-trip data processing. At the least, vessels should be compensated based on when the

vessel leaves the dock at the start of the trip to when the vessel returns to the dock at the end of the trip.

*Response:* Based on the above comment and in consultation with the NMFS/NEFOP, NMFS has adjusted the proposed rule measures. NMFS has determined that ''dock-to-dock,'' which is the period of time between vessel departure and landing, is the appropriate method by which an observer provider shall charge scallop vessel owners for observer coverage. Details of this adjustment are detailed in the preamble and regulatory text.

*Comment 2:* A comment letter was submitted by an environmental advocacy organization supporting the continuation of the September 1 through October 31 ETAA seasonal closure. This letter also requests that NMFS include additional measures to further protect sea turtles, including: A scallop closed season for Delmarva similar to the ETAA closed season; expansion of the Hudson Canyon Access Area boundaries; implementation of the requirements of the recently signed biological opinion for the scallop fishery; and a provision to allow up to 5 percent of the access area TACs and open area DAS to be set-aside for the industry-funded observer program to ensure maximum observer coverage.

*Response:* NMFS agrees that the continuation of this closure is consistent with the Magnuson-Stevens Act. However, NMFS does not have the authority to expand Framework 19 to include additional management measures as requested by the commenter, or to modify measures developed by the Council. NMFS can only approve or disapprove the specific measures recommended by the Council. NMFS did request that the Council adopt through Framework 21 to the Scallop FMP reasonable and prudent measures to reduce sea turtle take as recommended by the most recent biological opinion. Framework 21 is scheduled to be implemented in 2010.

*Comment 3:* A comment letter was submitted by an organization representing limited access scallop vessel owners. The commenter suggested that maintaining the F target at 0.20 may be overly cautious and may not achieve optimum yield as required by National Standard 1 of the Magnuson-Stevens Act. The commenter expressed the opinion that the DAS reductions proposed by Framework 19 are not warranted given the status of the scallop resource and the new overfishing definition. Framework 19 would allocate 35 DAS in 2008 and 42 DAS in 2009. The commenter also referenced Amendment 10 to the FMP, which had established the target F at 80 percent of the threshold F, and recommended that the target F should therefore be increased to 0.23 to be consistent with Amendment 10. Consequently, the commenter requested that NMFS disapprove the DAS allocations proposed by Framework 19, and maintain the status quo, which would allocate 51 DAS to full-time scallop vessels in 2008 and 2009.

*Response*: NMFS has determined that setting the F target at 0.20 is appropriate given that fishing mortality is not uniformly distributed throughout the range of the scallop fishery, but recognizes that maintaining the F target is a conservative approach and may need to be revisited in the future. But because there is concern for localized overfishing in open areas, an F target of 0.20 would help maintain a stable fishery over the long term. NMFS has determined that the DAS allocations proposed through Framework 19 are consistent with National Standard 1 of the Magnuson-Stevens Act.

*Comment 4:* An organization representing limited access scallop vessel owners expressed concern that NMFS exceeded its legal authority when it proposed to reduce full-time and part-time DAS allocations in the event the IFQ program is not implemented by the start of the 2009 fishing year and the general category fishery is allocated 10 percent of the scallop quota. The commenter also felt that the general category fishery should not be allocated more than 5 percent of the quota beyond 2009, regardless of whether the IFQ program is implemented.

*Response:* This provision is entirely consistent with Amendment 11 and its implementing regulations and, therefore, NMFS acted within its legal authority. During the transition period to the general category IFQ program Amendment 11 specifies that the limited access fleet would be allocated DAS in open areas based on an allocation of 90 percent of the total allowable scallop catch, without reference to the length of the transition period. Once the IFQ program is implemented, the limited access fleet would be allocated DAS based on an allocation of 94.5 percent of total scallop catch. In specifying DAS for the 2009 fishing year through Framework 19, the Council presumed that the IFQ program would be in effect and consequently did not specify DAS in the event the IFQ program was not implemented by the start of the 2009 fishing year. Framework 19 does not supersede measures approved as part of Amendment 11. Therefore, consistent with Amendment 11, if the general category fishery is still transitioning to the IFQ program by the start of the 2009 fishing year, the limited access fleet would be allocated DAS in open areas based on an allocation of 90 percent of the total allowable scallop catch. In response to the comment that general category vessels should not be allocated more than 5 percent of the TAC beyond 2009, the Council is scheduled to recommend future scallop specifications beyond the 2009 fishing year through a future framework to the FMP. However, if the Council does not specify otherwise, the 10-percent scallop quota allocation to the general category fishery will remain in effect during the transition period to the IFQ program.

*Comment 5:* An organization representing limited access scallop vessel owners supported the Council's recommendation to adjust the observer set-aside compensation rates.

*Response:* NMFS did consider the Council's request and evaluated the current set aside rates and determined that, although there is a possibility that the current DAS set-aside rate may not fully offset the cost of carrying an observer, on balance, the current rate provides the greatest benefit to the fleet and should not change for the 2008 fishing year. NMFS determined that if the DAS compensation rate was increased, the DAS set aside would likely not last through the fishing year, resulting in some vessel owners needing to pay the full cost of observer DAS trips. Therefore, the reduced DAS charge on observed DAS trips will remain at 0.85 for the 2008 fishing year to ensure an equitable distribution of DAS compensation for vessels required to carry an observer on a DAS trip. The Regional Administrator may re-evaluate the DAS compensation rate prior to the start of the 2009 fishing year.

*Comment 6:* An organization representing limited access scallop vessel owners supports the VMS power down provision.

*Response:* NMFS agrees that the power down provision will provide benefits to the scallop fishery without compromising the objectives of the FMP.

**Changes From Proposed Rule to Final Rule**

In § 648.4(a)(2)(ii)(D)(*2*), the conversion from in-shell scallop weight to meat weight is revised to specify that 8.33 lb (3.78 kg) of in-shell scallops will be converted to one pound (0.45 kg) of scallop meats.

In § 648.4(a)(2)(ii)(E), the IFQ contribution factor reference is corrected to read § 648.53(h)(2)(ii)(A).

In § 648.4(a)(2)(ii)(I)(*3*), the date April 14, 2008, is changed to July 1, 2008, to reflect the effective date of Amendment 11 permit requirements as indicated in the final rule for Amendment 11.

Section 648.11(g)(2)(ii) is revised to clarify the general category access area observer reporting requirements.

In § 648.11, paragraph (g)(3) is revised to state that NMFS shall respond to a trip notification within 24 hours, not 72 hours as erroneously noted in the proposed rule.

In § 648.11, paragraph (g)(5)(i)(A) revises how observer providers should charge vessel owners for access area trips.

In § 648.11, paragraph (g)(5)(i)(B) revises how observer providers should charge vessel owners for open area DAS trips.

In § 648.11, paragraph (h)(5)(i) is revised to clarify that if pre-certification observer data is accepted, the observer would be certified.

In § 648.11, paragraph (h)(5)(vi) is revised to clarify that observer providers must submit candidate information to NMFS within 7 days to the beginning of a class.

In § 648.11, paragraph (h)(5)(vii)(A) is revised to require observer reports to be submitted to NMFS within 24 hr of landing, not 12 hr as noted in the proposed rule. The change in the final rule makes the regulation consistent with the Framework 19 document.

In § 648.53, paragraph (a)(1) is revised to clarify the 2008 scallop fishery allocations.

In § 648.53, paragraph (a)(2) is revised to clarify the 2009 scallop fishery allocations.

In § 648.53, paragraphs (a)(4)(i), (a)(4)(ii), (a)(5)(i), (a)(5)(ii), (a)(5)(iii) are revised to more clearly describe how the scallop quota is divided.

In § 648.53, paragraph (a)(5)(ii) is revised to correctly reference § 648.53(a)(7).

In § 648.53, paragraph (h)(2)(ii) is revised to correctly reference the index factor in § 648.53(h)(2)(ii)(A).

Revisions in § 648.59 have been made to reflect changes that were made in the final rule for Amendment 11 to the FMP. Also, two revisions of paragraphs within § 648.59 are included to reflect measures effective June 1, 2008, and July 1, 2008, under the same paragraphs.

In § 648.60, the table in paragraph (a)(2) listing 2009 research set-aside and observer set-aside adjustment weights is corrected.

Other editorial and minor changes were made throughout the rule to clarify various provisions in this action.

*Classification*

NMFS has determined that Framework 19 as implemented by this rule is necessary for the conservation and management of the Atlantic sea scallop fishery and is consistent with the Magnuson-Stevens Act and other applicable law.

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

The Assistant Administrator for Fisheries has determined that the need to implement these measures in a timely manner to avoid continuation of measures that are inconsistent with the measures in Framework 19 that are designed to meet the resource conservation goals of the FMP constitutes good cause under authority contained in 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date and establish an effective date of June 1, 2008. Framework 19 measures need to be effective on the same day that the allocation measures for Amendment 11 to the FMP (Amendment 11) measures are effective. Amendment 11 specifies the level of TACs that will be allocated to the general category and limited access scallop fleets to be effective on June 1, 2008. Amendment 11 does not include the actual fishery specifications that would make the full suite of Amendment 11 measures effective in controlling the general category fishery. Rather, the specific TACs based on Amendment 11 are part of Framework 19. As such, implementation of Framework 19 is directly responsible for achieving the effectiveness of Amendment 11 allocation and harvest limit measures. Delaying the measures would compromise the ability to achieve the overall benefits to the resource, fishery, and economy that are anticipated in Amendment 11, to the detriment of the public.

In addition, without the measures included in Framework 19, the limited access scallop fleet will continue to fish under fishing year 2007 DAS and Sea Scallop Access Area trip allocations that continue to be in effect from March 1, 2008, and until Framework 19 is implemented. Current DAS allocations are inconsistent with the measures in Framework 19 designed to meet the resource conservation goals of the FMP. Specifically, open area DAS are higher under current measures than will be implemented under Framework 19 and vessel owners and operators have the potential of exceeding the Framework 19 DAS allocations. Because these vessels have been fishing under the current allocations since March 1, 2008, it is likely that some vessels have already exceeded their Framework 19 DAS allocations. Vessel owners continue to be faced with uncertainty for future allocations, and will have DAS reduced in 2009 if DAS used exceed the Framework 19 allocated DAS.

NMFS accepted the Council's submission of Framework 19 in December 2007 and anticipated that the final rule could not be published by March 1, 2008, because of its complexity and because Framework 19 could not be made effective until Amendment 11 was effective. NMFS anticipated that Framework 19 would need to be effective on the same day, or very shortly after the effective date of Amendment 11, regardless of when the Framework 19 final rule is published. The complexity and relation of the two related actions delayed publication despite efforts to complete the proposed rule earlier. In addition, due to the dependence of Framework 19 on Amendment 11, the development of the final rule for Framework 19 was held until the final rule for Amendment 11 was published on April 14, 2008. The effective date of June 1, 2008, created a brief window for the final rule for Framework 19 to be developed and published.

This final rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. NMFS will publish a subsequent notice when these information collection requirements have been approved by OMB. Public reporting burden for these collections of information are estimated to average as follows:

1. Service provider observer contact information reports, OMB #0648–0546—5 min per response;

2. Service provider observer availability reports, OMB #0648–0546—1 min per response;

3. Copies of service provider outreach materials, OMB #0648–0546—30 min per response;

4. Copies of service provider contracts, OMB #0648–0546—30 min per response.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments on these or any other aspects of the collection of information to the Regional Administrator as specified in **ADDRESSES** above, and by e-mail to

*David_Rostker@omb.eop.gov* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection-of-information requirement subject to the requirements of the PRA, unless that collection-of-information requirement displays a currently valid OMB control number.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has included a final regulatory flexibility analysis (FRFA) in support of Framework 19 in this final rule. The FRFA describes the economic impact that this final rule, along with non-adopted alternatives, will have on small entities. The FRFA incorporates the economic impacts and analysis summarized in the IRFA for the proposed rule to implement Framework 19, the comments and responses in this final rule, and the corresponding economic analyses prepared for Framework 19 (e.g., the EA and the RIR). A copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**).

*Statement of Need for This Action*

A detailed description of the reasons for this action, the objectives of the action, and the legal basis for this final rule are found in Framework 19 and the preamble to the proposed and final rules.

*A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments*

A comment letter was submitted by an organization representing limited access scallop vessel owners noting that the economic impacts presented in the proposed rule wrongly characterized that the DAS allocations would have a positive impact on the industry. This was the only comment received with any bearing on the economic analyses summarized in the IRFA.

*Response:* The IRFA provides a summary of the economic impacts of the management measures combined and of each proposed and alternative management measure. The IRFA demonstrates that the DAS allocations would have positive impacts overall and in the long term. The IRFA is a summary and refers readers to the full economic analysis in the Framework 19 document, which provides extensive detailed analysis of the economic impacts that are estimated through projections that have long been utilized in assessing the economic impacts of scallop fishery management measures.

No changes were made to the final rule as result of the above comment.

*Description and Estimate of Number of Small Entities to Which the Rule Will Apply*

The vessels in the Atlantic sea scallop fishery are all considered small business entities and, therefore, there is no disproportionate impact on large and small entities. All of the vessels grossed less than $4 million according to dealer data for the 2004 to 2006 scallop fishing years. Annual total revenue averaged over $1 million in the 2005 fishing year, and about $881,990 in the 2006 fishing year, per limited access vessel. Total revenues per vessel, including revenues from species other than scallops, exceeded these amounts, but were less than $3.5 million per vessel. Average scallop revenue per general category vessel was $88,702 in 2005 and $66,785 in the 2006 fishing years. Average total revenue per general category vessel, including revenue from species other than scallops, exceeded $250,000 in the 2005 and 2006 fishing years. Average revenues per vessel were lower in the 2006 fishing year for all permit categories because of lower scallop prices.

Framework 19 regulations will affect all federally permitted scallop vessels. The Amendment 11 and Framework 19 documents provide extensive information on the number, port, state, and size of vessels and small businesses that will be affected by the regulations. In 2007, there were 346 full-time, 33 part-time, and 1 occasional limited access scallop permits issued, and 2,332 general category permits issued to vessels in the open access general category fishery: 915 category 1B permits and 1,417 category 1A incidental catch permits.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

This action contains four new collection-of-information, reporting, and recordkeeping requirements currently under review by OMB. The following describes these requirements.

1. Observer Contact List

Observer service providers will be required to provide and maintain an updated list of contact information for all observers. This will facilitate the ability of NMFS/NEFOP to contact observers. Maintaining an up-to-date observer contact list is estimated to entail 5 min per response, 12 responses per year, for a total of 1 burden hour annually. These updates do not have any associated miscellaneous costs.

2. Observer Availability List

Service providers will be required to provide and maintain a listing of whether or not the observer is ''in service,'' indicating when the observer has requested leave and/or is not currently working for the industry-funded program. This will facilitate the ability of NMFS/NEFOP to confirm observer availability. Maintaining an up-to-date observer availability list is estimated to entail 1 min per response, 300 responses per year, for a total of 5 burden hr annually. These updates do not have any associated miscellaneous costs.

3. Copies of Observer Service Provider Materials

Service providers will be required to submit to NMFS/NEFOP, if requested, copies of any materials developed and distributed to vessels, such as informational pamphlets, payment notification, description of observer duties, etc. This will allow NMFS/NEFOP to ensure that information distributed to industry is accurate and in keeping with the objectives of the observer program. It is estimated that NMFS/NEFOP will request copies of service provider outreach materials once a year. It is estimated it will take 30 min to submit this information, for a total burden of 0.5 hour. It is estimated the service providers will incur a total of $5 in mailing fees to submit these materials.

4. Copies of Observer Service Provider Contracts

Service providers will be required to submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services. This will allow NMFS/NEFOP to ensure contractual information is accurate and in keeping with the objectives of the observer program and help resolve disagreements between industry and the service provider. It is estimated that NMFS/NEFOP will request copies of service provider contracts once a year. It is estimated it will take 30 min to submit this information, for a total burden of 1 hour. It is estimated the service providers will incur a total of $5 in mailing fees to submit these materials.

*Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected*

The long-term overall economic effects of Framework 19 measures are estimated to be slightly positive on revenues; an average of about a 0.5-percent increase per year during 2008–2021.

Average overall annual scallop revenue for a limited access vessel is estimated to increase by 1.3 percent in the 2008 fishing year and by 6.2 percent in the 2009 fishing year compared to no action. Because fishing costs are estimated to decline due to fewer DAS used in the access areas and the open areas, the impacts on the net revenue and vessel profits will be positive, with a 2.1-percent increase expected in fishing year 2008 and a 6-percent increase expected in fishing year 2009.

The economic impacts of the adopted measure for the general category fleet will be positive because the general category TAC will be higher under the adopted alternative compared to the no action alternative. As a result, average scallop revenues and profits for general category vessels are expected to be higher for the adopted alternative compared to no action.

However, the level of general category TAC will be lower than general category scallop landings in recent years, resulting in negative short-term economic impacts. These short-term impacts are due to measures in Amendment 11 that will establish a limited entry program for the general category fishery, thereby reducing general category fishing effort and landings. Since Framework 19 will not change measures adopted through Amendment 11, the impacts to the general category limited entry program are not analyzed here. Section 7.9 of the Environmental Impact Statement for Amendment 11 provides a comprehensive analysis of the economic impacts of the general category limited entry program on small business entities. These analyses indicate that, despite the negative impacts in the short-term, the medium to long-term economic impacts of the limited entry program are expected to be positive for the scallop fishery as a whole.

The overall economic impacts of Framework 19 general category measures are not expected to be significantly different from the impacts analyzed in Amendment 11. Amendment 11 analyzed the economic impacts by assuming that the general category TAC will be 5 million lb (2,2668 mt) in 2008 and 2.5 million lb (1,134 mt) in 2009. Framework 19 will result in a lower TAC: About 4.3 million lb (1,950 mt) TAC in 2008 and 2.2 million lb (998 mt) TAC in 2009. Although these amounts exceed potential TAC levels under the no action alternative, they are slightly less than the landings by the general category vessels in recent years. Landings by vessels that had a general category permit before the control date and that are expected to fish in 2008 were 4.6 million lb (2,087 mt) in 2006. The vessels that are expected to qualify for the limited access general category program, and thus fish in 2009, landed about 2.4 million lb (1,089 mt). Therefore, short-term economic impacts of the general category TAC will be negative on the general category fleet to the extent that the overall TAC prevents these vessels from landing the amount of scallops they will catch without such a constraint. Those distributional impacts were analyzed in Amendment 11. However, a limited access general category fishery will have positive economic impacts over the medium to long term on the vessels that qualify for general category limited access permits and for limited access vessels by preventing overfishing of the scallop resource and the dissipation of profits by uncontrolled entry and effort into the general category fishery.

Other Framework 19 measures, such as the general category quarterly hard TAC, 5-percent access area allocation for general category vessels, observer program improvements, a 30-day VMS power down provision, NGOM hard TAC, and yellowtail TAC adjustments, are expected to provide additional positive impacts by providing vessels the opportunity to reduce fishing costs and increase revenues from scallop fishing.

*Economic Impacts of the Adopted Alternatives and Rejected Alternatives*

In some cases the Council only considered one alternative versus a no action alternative if additional alternatives would be outside the scope of Framework 19. The following describes all of the alternatives considered by the Council.

1. GB Access Area Schedule Revision

Framework 19 will adjust the GB access area schedule so that the NLCA will be open in 2008 and CAII will be open in 2009. The adopted action to revise the GB access area schedule is expected to have positive economic impacts by providing access to areas with more scallop biomass. This will help increase yield, landings, and revenues from the fishery both in the short and the long term, benefiting both limited access and general category vessels. The only alternative was the no action option, which would have provided access in 2008 to CAI instead of the NLCA. Due to low biomass, CAI will not likely support a fleet-wide trip allocation. Consequently, since both the NLCA and CAII have higher scallop concentrations than CAI, the adopted alternative will result in higher economic benefits than the no action alternative.

2. DAS Conversion and Yellowtail TAC

The adopted action to allocate additional open area DAS if an access area closes due to the attainment of a scallop yellowtail TAC will continue under the no action alternative, but the values will be changed to reflect current fishery and resource conditions. The adopted DAS conversion rates will be higher than those under no action because scallop biomass in the NLCA and CAII is lower than when the no action DAS conversion rates were established. This DAS conversion measure helps minimize lost revenue that will result from a yellowtail TAC closure. Although this measure will have positive economic impacts on scallop vessels that lost access area trip(s), they will likely receive less revenue from the DAS due to the access area trip to DAS conversion rate, which is based on scallop fishing mortality, not trip revenue. The conversion rate was established so that scallop mortality from the additional DAS will be equivalent to the scallop mortality from an access area. Scallops in open areas are generally smaller than scallops in access areas. No alternatives, other than maintaining conversion rates that are currently in the regulations, were considered. The adopted higher DAS conversion rates will result in higher economic benefits than no action.

3. HCAA Trip Expiration

Through FY 2007, ending on February 29, 2008, the FMP has allowed scallop vessels to continue fishing in the HCAA under trips that were originally allocated for FY 2005. This extension of the authorized trips was intended to

allow vessels to take advantage of additional time to harvest scallops under the allocated trips since scallop catch rates had declined in FY 2005. Under Framework 19, the Council considered whether or not the trips should continue to be extended into FY 2008. The adopted no action alternative to allow all un-used 2005 HCAA trips to expire on February 29, 2008, instead of the rejected alternative of extending them to May 31, 2008, could have negative economic impacts on those vessels that could not take an economically viable trip to HCAA due to the poor resource conditions in this area. But these negative impacts are on 2007 fishing year revenues, not projected revenues under Framework 19. If landings per unit effort (LPUE) improved in early 2007, some vessels may have had incentive to take their trips rather than let them expire, minimizing these negative impacts. The alternative to extend the trip expiration deadline to May 31, 2008, could have reduced the negative impacts compared to no action. However, extending the duration of Hudson Canyon trips until May 31, 2008, could have had negative impacts on future scallop yields resulting in negative long-term economic impacts.

4. ETAA and Delmarva Schedule

The adopted action to provide access to the ETAA in 2008 and 2009 and Delmarva in 2009 will have positive economic impacts on both limited access and general category vessels because this area has more scallop biomass compared to areas such as open areas and CAI. The procedure to reduce trips will help prevent overfishing, and thus have positive impacts on the scallop resource, and on the long term landings and revenues of scallop vessels. There are no alternatives under the current FMP that would generate higher benefits for scallop vessels. The only alternative is the no action, which would allocate fewer ETAA trips and zero Delmarva trips.

5. Access Area Crew Limits

The adopted action will continue to allow a vessel to carry any number of crew on an access area trip. No crew limit will give vessels the most flexibility, potentially reducing total fishing costs, and will therefore have positive economic impacts on scallop vessels. The alternative option would have restricted the crew size to eight or nine persons. This would potentially reduce scallop mortality and control effort, with positive impacts on the scallop resource, landings, and revenues over the long term. On the other hand, limiting crew size would reduce a vessel's flexibility and increase trip costs. Therefore, the economic benefits of this alternative are expected to be small compared to the adopted alternative.

6. In-Shell Possession Limit

The adopted action will prohibit any scallop vessel on an access area trip from possessing more than 50 U.S. bu (17.6 hL) of in-shell scallops. This prohibition will help reduce scallop discard mortality, and therefore result in higher yields, revenues, and economic benefits. There are no alternatives that would generate higher benefits for the scallop vessels. The only alternative is the no action which would continue to allow deckloading and result in lower economic benefits compared to the adopted alternative.

7. Research and Observer Set-Asides

The adopted alternative will continue to set-aside 2 percent of the scallop TAC for the research set-aside program and 1 percent of the scallop TAC for the industry-funded observer set-aside program. These set-asides are expected to have indirect economic benefits for the scallop fishery by improving scallop information and data made possible by research and the observer program. There are no alternatives that will generate higher benefits for scallop vessels.

8. DAS Allocations and Access Areas Trip Allocations

The adopted open area DAS allocations are expected to prevent overfishing in open areas and to have positive economic impacts on scallop vessels when combined with controlled access area allocations. Framework 19 will implement the following vessel-specific DAS allocations: Full-time vessels will be allocated 35 DAS in 2008 and 42 DAS in 2009; part-time vessels will be allocated 14 DAS in 2008 and 17 DAS in 2009; and occasional vessels will receive 3 DAS for each year. Except for the no action alternatives, other alternatives would result in slightly higher revenues and profits compared to the adopted action during 2008–2009, but would be offset by lower DAS allocations and resulting reductions in revenues in future years as the result of lower exploitable scallop biomass. The adopted action will allocate fewer open area DAS compared to the no action in both the 2008 and 2009 fishing years, but it will allocate more trips to access areas. As a result, the adopted action will generate higher benefits than the no action alternative.

9. General Category Quarterly TAC

Amendment 11 will establish a limited entry IFQ program for the general category scallop fishery scheduled to start in 2009. The 2008 fishing year will be a transition year as IFQ shares are established. The adopted action will distribute the 2008 general category quota allocation into quarters to minimize derby-style fishing. This measure will have positive economic impacts over the long-term for vessels that qualify for the general category limited entry program. Although management of the general category fishery by a quarterly hard TAC during the transition period to an IFQ program may result in some degree of derby-style fishing, the quarterly TAC allocation is intended to reduce the extent of derby fishing and lessen the negative economic impacts associated with derby fishing. The adopted alternative (Option A) will allocate 35 percent (1,056,563 lb, (475.25 mt) of the 2008 directed general category annual TAC to Quarter 1, 40 percent (1,207,750 lb, (547.83 mt)) to Quarter 2, 15 percent (452,813 lb, (205.39 mt)) to Quarter 3, and 10 percent (301,875 lb, (136.93 mt)) to Quarter 4. Quarters 1 and 2 will be allocated 75 percent of the TAC because general category access area trips primarily occur in those quarters. Unused TAC from Quarter 1 will roll over to Quarter 3, and unused TAC from Quarter 2 will roll over to the fourth quarter, thereby ensuring the full benefit of the scallop TAC is realized. There was no alternative to the adopted alternative to allocate 10 percent of the overall 2008 scallop TAC to the general category fishery. However, Option B would have distributed a greater percentage of the quarterly 10-percent hard TAC to the first and second quarters (85 percent) and less (15 percent) to the last two quarters, reducing the derby fishing in the first two quarters but increasing it in the last two quarters. This option is not expected to have larger positive economic impacts on the general category fishery compared to the adopted alternative.

10. General Category Access Area Allocations

The adopted action to allocate 5 percent of the scallop access area TACs in the 2008 and 2009 fishing years is expected to have positive economic impacts on the general category vessels compared to the no action allocation of 2 percent. In 2008, the general category fishery will be allocated 5 percent of the overall NLCA and ETAA TACs, resulting in up to 665 trips in the NLCA,

and up to 2,662 trips in the ETAA. In 2009, the general category scallop fishery will be allocated 5 percent of the overall ETAA and Delmarva TACs, resulting in up to 1,967 trips and 726, respectively. General category vessels will not be allocated any trips in CAII.

Because access areas are more productive and have higher LPUE than open areas, it will take less fishing time to catch the 400-lb (181-kg) possession limit. As a result, fishing costs will be lower and profits will be higher for trips taken in the access areas when compared to open areas. Since most general category vessels do not fish in CAII, zero percent allocation for this area will increase open area landings and overall revenues of the general category fishery. The alternative option would have allocated 2 percent of the 2008 and 5 percent of the 2009 access area TACs, which would likely have less economic benefits for general category vessels.

11. IFQ Cost Recovery

Framework 19 will implement a cost recovery program that will collect 3 percent of the ex-vessel value of scallop product landed to recover the costs directly related to management, data collection and analysis, and enforcement of the general category IFQ program as mandated by the Magnuson-Stevens Act. The adopted alternative estimates total scallop landings will be 45.9 million lb (20,820 mt) in 2009. With ex-vessel prices estimated from $7.55–$8.30, a 3-percent cost recovery will likely range from $519,818 to $571,455 in 2009. Although this measure imposes costs on qualifying IFQ vessels, alternatives to reduce those costs, either by not implementing a cost recovery program, or collecting less than 3 percent, would be contrary to the Magnuson-Stevens Act, which requires a full cost recovery program to be implemented for each IFQ program.

12. NGOM TAC

Amendment 11 will establish a NGOM Management Area that will be managed under a hard quota system. Framework 19 will establish the NGOM annual specifications. The adopted NGOM TAC is expected to have positive economic impacts for vessels that do not qualify for limited access IFQ permit but do qualify for a NGOM permit because it will allow them to land scallops in this area during favorable resource conditions. The adopted hard TAC of 70,000 lb (32 mt) is expected to generate more than $500,000 in scallop revenue for NGOM vessels in 2008–2009. The Council discussed higher TACs for the NGOM, but none were considered consistent with Amendment 11 and therefore were rejected and not analyzed.

13. Incidental Scallop Catch Target TAC

Amendment 11 includes a provision that the FMP should consider the level of mortality from incidental catch and remove that from the projected total catch before allocations are made to general category and limited access fisheries. The adopted action to remove incidental scallop catch before making allocations to limited access and directed general category vessels will ensure F targets are not exceeded, and thus will have positive impacts on the resource, scallop yield, and on the revenues and profits of scallop vessels. Framework 19 will establish the incidental catch target TAC for the 2008 and 2009 fishing years. The target TAC will be established at 50,000 lb (22.68 mt) per year in 2008 and 2009. This measure is based on the best available estimate of incidental catch and, therefore, no alternatives were considered.

14. Overfishing Definition Adjustment

The Council recommended a new overfishing definition based on results from the recent scallop stock assessment (SAW 45) which used a new model to characterize the scallop resource, including a new biomass target and threshold, as well as a new F threshold. The adopted action to adjust the overfishing definition will have positive impacts on the scallop resource, scallop landings, revenues, and profits of scallop vessels over the long term by more accurately defining the biomass reference points and appropriate F threshold based on the biomass reference points. Maintaining the F target at the precautionary level of 0.20 will also reduce the risk of localized overfishing in open areas. The Council also considered maintaining the current overfishing definition but, for the reasons stated, the new overfishing definition will provide greater benefits to the fishery. The alternative that would increase the F target is less precautionary. Although it would increase landings and economic benefits over the short term, it could result in overfishing and lower long-term economic benefits.

15. Observer Program Improvements

Framework 19 includes several measures that will improve oversight and administration of the scallop observer program. Measures include: Greater oversight by NNMFS/NEFOP of observer availability; observer provider materials and contracts; closer correlation between service provider fees and observer set-aside compensation rates; adjusted general category access area trip notification requirements; and observer notification and observer waiver requirements, among others. The adopted action will have positive economic impacts by improving the administration and reducing the cost burden of the observer program on scallop vessels by improving observer program efficiency and by making provider fees more commensurate with observer set-aside compensation rates. The no action alternatives will not include observer program improvements, and therefore, will not facilitate the effectiveness and efficiency of the industry-funded observer program.

16. HCAA Rotational Management Area

The adopted action will establish the HCAA as a rotational management area and close it for at least the 2008 and 2009 fishing years to protect young scallops. This is expected to have positive economic impacts over the long term by reducing mortality and increasing yield from this area. As a rotational closed area, the HCAA is expected to provide for increased economic benefits to the scallop industry, consistent with the area rotation program. The foundation of the area rotation program is to increase yield from the scallop resource and thereby increase overall benefits. Two different boundary alternatives for HCAA were considered but not selected by the Council. These alternative closures would have slightly increased the revenues and economic benefits for the scallop vessels compared to the adopted HCAA closure boundaries, but would allocate fewer open area DAS in the 2008 fishing year.

17. 30-Day VMS Power Down Provision

The adopted action to implement a 30-day VMS power down provision will reduce the burden on vessel owners to maintain a transmitting VMS on their vessel for long periods when it is not fishing. This provision will have some positive economic impacts by reducing vessel operation costs. There are no other alternatives other than no action which does not allow vessels to power down the VMS unit.

*Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with

the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the Atlantic scallop fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator and are also available from NMFS, Northeast Region (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: May 21, 2008.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

■ 2. Effective July 1, 2008, in § 648.4 paragraphs (a)(2)(ii)(D)(*2*), (a)(2)(ii)(E), (a)(2)(ii)(H), (a)(2)(ii)(I)(*3*) are revised to read as follows:

### § 648.4 Vessel permits.

(a) * * *

(2) * * *

(ii) * * *

(D) * * *

(*2*) *Landings criterion.* A vessel must have landed at least 1,000 lb (454 kg) of shucked scallops in any one year when the vessel also held a general category scallop permit as specified in paragraph (a)(2)(ii)(D)(*1*) of this section. To qualify, scallop landings in the 2004 fishing year must have occurred on or before November 1, 2004. NMFS dealer data shall be used to make the initial determination of vessel eligibility. If a dealer reported more than 400 lb (181.4 kg) of scallops on a trip, only 400 lb (181.4 kg) will be credited toward the landings criteria. For dealer reports that indicate that the landings were bushels of in-shell scallops, a conversion of 8 lb (3.63 kg) of scallop meats per bushel will be used to calculate meat-weight, up to the maximum of 400 lb (181.4 kg) per trip. For dealer reports that indicate that the landings were reported in pounds of in-shell scallops, the weight shall be converted to meat-weight using the formula of one pound (0.45 kg) of scallop meats for 8.33 lb (3.78 kg) of in-shell scallops, up to the maximum of 400 lb (181.4 kg) per trip, for qualification purposes.

(E) *Contribution factor for determining a vessel's IFQ.* An eligible IFQ scallop vessel's best year of scallop landings during the qualification period of March 1, 2000, through November 1, 2004, as specified in § 648.53(h)(2)(ii)(A), and the vessel's number of years active, as specified in § 648.53(h)(2)(ii)(B), shall be used to calculate a vessel's contribution factor, as specified in § 648.53(h)(2)(ii)(C). A vessel owner that has applied for an IFQ scallop permit will be notified of the vessel's contribution factor at the time of issuance of the IFQ scallop permit, consistent with confidentiality restrictions of the Magnuson-Stevens Act specified at 16 U.S.C. 1881a. A vessel owner may appeal NMFS's determination of the IFQ scallop vessel's contribution factor by complying with the appeal process as specified in paragraph (a)(2)(ii)(O) of this section.

* * * * *

(H) *Application/renewal restrictions.* See paragraph (a)(1)(i)(B) of this section. Applications for a LAGC permit described in paragraph (a)(2)(ii) of this section must be postmarked no later than August 30, 2008. Applications for LAGC permits that are not postmarked on or before August 30, 2008, may be denied and returned to the sender with a letter explaining the denial. Such denials may not be appealed and shall be the final decision of the Department of Commerce. If NMFS determines that the vessel owner has failed to pay a cost recovery fee in accordance with the cost recovery requirements specified at § 648.53(h)(4)(ii), the IFQ permit shall not be renewed.

(I) * * *

(*3*) Notwithstanding paragraph (a)(1)(i)(L) of this section, a vessel owner applying for a LAGC permit who sold or transferred a vessel with non-scallop limited access permits, as specified in paragraph (a)(1)(i)(D) of this section, and retained only the general category scallop history of such vessel as specified in paragraph (a)(1)(i)(D) of this section, before July 1, 2008, may use the general category scallop history to qualify a different vessel for the initial IFQ scallop permit, regardless of whether the history from the sold or transferred vessel was used to qualify another vessel for another limited access permit.

■ 3. In § 648.9, paragraph (c)(2)(i)(B) is revised to read as follows:

### § 648.9 VMS requirements.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(B) For vessels fishing with a valid NE multispecies limited access permit, a valid surfclam and ocean quahog permit specified at § 648.4(a)(4), or an Atlantic sea scallop permit, the vessel owner signs out of the VMS program for a minimum period of 30 consecutive days by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, the vessel does not engage in any fisheries until the VMS unit is turned back on, and the vessel complies with all conditions and requirements of said letter; or

* * * * *

■ 4. In § 648.11, paragraphs (g)(2), (g)(3), (g)(4)(i), (g)(4)(ii), (g)(5), (h)(5)(i), (h)(5)(iv), (h)(5)(vi), (h)(5)(vii)(A), and (h)(5)(vii)(E) are revised, and paragraphs (h)(5)(vii)(G) through (h)(5)(vii)(J) are added to read as follows:

### § 648.11 At-sea sea sampler/observer coverage.

* * * * *

(g) * * *

(2) *Vessel notification procedures—(i) Limited access vessels.* Limited access vessel owners, operators, or managers shall notify NMFS/NEFOP by telephone not more than 10 days prior to the beginning of any scallop trip of the time, port of departure, open area or specific Sea Scallop Access Area to be fished, and whether fishing as a scallop dredge, scallop trawl, or general category vessel.

(ii) *General category vessels.* General category vessel owners, operators, or managers must notify the NMFS/NEFOP by telephone by 0001 hr of the Thursday preceding the week (Sunday through Saturday) that they intend to start a scallop trip in an access area. If selected, up to two Sea Scallop Access Area trips that start during the specified week (Sunday through Saturday) can be selected to be covered by an observer. NMFS/NEFOP must be notified by the owner, operator, or vessel manager of any trip plan changes at least 48 hr prior to vessel departure.

(3) *Selection of scallop trips for observer coverage.* Based on predetermined coverage levels for various permit categories and areas of the scallop fishery that are provided by NMFS in writing to all observer service providers approved pursuant to paragraph (h) of this section, NMFS shall notify the vessel owner, operator, or vessel manager whether the vessel

must carry an observer, or if a waiver has been granted, for the specified scallop trip, within 24 hr of the vessel owner's, operator's, or vessel manager's notification of the prospective scallop trip, as specified in paragraph (g)(2) of this section. Any request to carry an observer may be waived by NMFS. All waivers for observer coverage shall be issued to the vessel by VMS so as to have on-board verification of the waiver. A vessel may not fish in an area with an observer waiver confirmation number that does not match the scallop trip plan that was called in to NMFS. Confirmation numbers for trip notification calls are only valid for 48 hr from the intended sail date; and

(4) * * *

(i) An owner of a scallop vessel required to carry an observer under paragraph (g)(3) of this section must arrange for carrying an observer certified through the observer training class operated by the NMFS/NEFOP from an observer service provider approved by NMFS under paragraph (h) of this section. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 48-hr notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip. The observer service provider will notify the vessel owner, operator, or manager within 18 hr whether they have an available observer. A list of approved observer service providers shall be posted on the NMFS/NEFOP Web site at *http://www.nefsc.noaa.gov/femad/fsb/.* The observer service provider may take up to 48 hr to arrange for observer deployment for the specified scallop trip.

(ii) An owner, operator, or vessel manager of a vessel that cannot procure a certified observer within 48 hr of the advance notification to the provider due to the unavailability of an observer may request a waiver from NMFS/NEFOP from the requirement for observer coverage for that trip, but only if the owner, operator, or vessel manager has contacted all of the available observer service providers to secure observer coverage and no observer is available. NMFS/NEFOP shall issue such a waiver within 24 hr, if the conditions of this paragraph (g)(4)(ii) are met. A vessel may not begin the trip without being issued a waiver.

(5) Owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop trips on which an observer is carried onboard the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit or reduced DAS accrual rate. The owners of vessels that carry an observer may be compensated with a reduced DAS accrual rate for open area scallop trips or additional scallop catch per day in Sea Scallop Access Areas in order to help defray the cost of the observer, under the program specified in §§ 648.53 and 648.60.

(i) Observer service providers shall establish the daily rate for observer coverage on a scallop vessel on an Access Area trip or open area DAS scallop trip consistent with paragraphs (g)(5)(i)(A) and (B), respectively, of this section.

(A) *Access Area trips.* For purposes of determining the daily rate for an observed scallop trip in a Sea Scallop Access Area, a service provider shall charge a vessel owner from when an observer boards a vessel until they disembark (dock to dock), where ''day'' is defined as a 24-hr period, or any portion of a 24-hr period, regardless of the calendar day. For example, if a vessel with an observer departs on the July 1st at 10 pm and lands on July 3rd at 1 am, the time at sea equals 27 hours, which would equate to 2 ''days.''

(B) *Open area scallop trips.* For purposes of determining the daily rate for an observed scallop trip for open area DAS trips, a service provider shall charge dock to dock where ''day'' is defined as a 24-hour period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on the July 1st at 10 pm and lands on July 3rd at 1 am, the time at sea equals 27 hours, so the provider would charge 1 day and 3 hours.

(ii) NMFS shall determine any reduced DAS accrual rate and the amount of additional pounds of scallops per day fished in a Sea Scallop Access Area for the applicable fishing year based on the economic conditions of the scallop fishery, as determined by best available information. Vessel owners and observer service providers shall be notified through the Small Entity Compliance Guide of any DAS accrual rate changes and any changes in additional pounds of scallops determined by the Regional Administrator to be necessary. Vessel owners and observer providers shall be notified by NMFS of any adjustments.

* * * * *

(h) * * *

(5) * * *

(i) An observer service provider must provide observers certified by NMFS/NEFOP pursuant to paragraph (i) of this section for deployment in the scallop fishery when contacted and contracted by the owner, operator, or vessel manager of a vessel fishing in the scallop fishery, unless the observer service provider does not have an available observer within 48 hr of receiving a request for an observer from a vessel owner, operator, and/or manager, or refuses to deploy an observer on a requesting vessel for any of the reasons specified at paragraph (h)(5)(viii) of this section. An observer's first three deployments and the resulting data shall be immediately edited and approved after each trip, by NMFS/NEFOP, prior to any further deployments by that observer. If data quality is considered acceptable, the observer would be certified.

* * * * *

(iv) *Observer deployment limitations.* Unless alternative arrangements are approved by NMFS, an observer provider must not deploy any observer on the same vessel for more than two consecutive multi-day trips, and not more than twice in any given month for multi-day deployments.

* * * * *

(vi) *Observer training requirements.* The following information must be submitted to NMFS/NEFOP at least 7 days prior to the beginning of the proposed training class: A list of observer candidates; observer candidate resumes; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the end of a NMFS/NEFOP Sea Scallop Observer Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS/NEFOP Minimum Eligibility Standards for observers as described on the NMFS/NEFOP Web site.

(vii) * * *

(A) *Observer deployment reports.* The observer service provider must report to NMFS/NEFOP when, where, to whom, and to what fishery (open or closed area) an observer has been deployed, within 24 hr of the observer's departure. The observer service provider must ensure that the observer reports back to NMFS its Observer Contract (OBSCON) data, as described in the certified observer training, within 24 hr of landing. OBSCON data are to be submitted electronically or by other means as specified by NMFS. The observer service provider shall provide the raw (unedited) data collected by the

observer to NMFS within 72 hr, which should be within 4 business days of the trip landing.

* * * * *

(E) *Observer availability report.* The observer service provider must report to NMFS any occurrence of inability to respond to an industry request for observer coverage due to the lack of available observers by 5 p.m., Eastern Standard Time, of any day on which the provider is unable to respond to an industry request for observer coverage.

* * * * *

(G) *Observer status report.* Providers must provide NMFS/NEFOP with an updated list of contact information for all observers that includes the observer identification number, observer's name, mailing address, e-mail address, phone numbers, homeports or fisheries/trip types assigned, and must include whether or not the observer is ''in service,'' indicating when the observer has requested leave and/or is not currently working for the industry funded program.

(H) Providers must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services.

(I) Providers must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and specific observers.

(J) Providers must submit to NMFS/NEFOP, if requested, copies of any information developed and used by the observer providers distributed to vessels, such as informational pamphlets, payment notification, description of observer duties, etc.

* * * * *

■ 5. In § 648.14, as revised on April 14, 2008 (73 FR 20120) effective June 1, 2008, is further amended, effective June 1, 2008, by revising paragraphs (h)(27) and (i)(2)(iv). Paragraph (h)(29) is revised and is effective June 1, 2008, and paragraphs (i)(1)(xx), and (i)(2)(xvii) are added, effective July 1, 2008. All revisions and additions read as follows:

**§ 648.14 Prohibitions.**

* * * * *

(h) * * *

(27) Possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in § 648.52(d), outside the boundaries of a Sea Scallop Access Area by a vessel that is declared into the Area Access Program as specified in § 648.60.

* * * * *

(29) Fish for, possess, or land scallops in or from any Sea Scallop Access Area without an observer on board, unless the vessel owner, operator, or manager has received a waiver to carry an observer for the specified trip and area fished.

(i) * * *

(1) * * *

(xx) Fish for, possess, or land scallops in or from any Sea Scallop Access Area without an observer on board, unless the vessel owner, operator, or manager has received a waiver to carry an observer for the specified trip and area fished.

(2) * * *

(iv) Possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in § 648.52(d), outside the boundaries a Sea Scallop Access Area by a vessel that is declared into the Area Access Program as specified in § 648.60.

* * * * *

(xvii) Fail to comply with cost recovery requirements as specified under § 648.53(g)(4)

* * * * *

■ 6. In § 648.53, as revised on April 14, 2008 (73 FR 20123), effective June 1, 2008, is further amended, effective June 1, 2008, by revising paragraphs (a)(1) through (7), (a)(8)(i) and (ii), and (a)(9), (b)(5)(i), (b)(5)(ii), (b)(6), (g)(1), (g)(2), (h)(2)(ii) introductory text, and (h)(4), revising, the table in paragraph (b)(4) introductory text, adding and reserving paragraph (b)(4)(ii), removing and reserving paragraph (b)(5)(iii), and adding paragraph (b)(4)(i) to read as follows:

**§ 648.53 Total allowable catch, DAS allocations, and Individual Fishing Quotas.**

(a) *Target total allowable catch (TAC) for scallop fishery.* The annual target total TAC for the scallop fishery shall be established through the framework adjustment process specified in § 648.55. The annual target TAC shall include the TAC for all scallop vessels fishing in open areas and Sea Scallop Access Areas as specified in this section, the observer and research set-aside TACs specified in paragraphs (g)(1) and (2) of this section, and in § 648.60(d) and (e). The annual target TAC for the scallop fishery shall exclude the TAC established for the Northern Gulf of Maine Scallop Management Area as specified in § 648.62, and the total estimated incidental catch of scallops, as specified at § 648.53(a)(9), by vessels issued incidental catch general category scallop permits, and limited access and limited access general category scallop vessels not declared into the scallop fishery. The annual target TAC for open and Sea Scallop Access Areas shall each be divided between limited access vessels, limited access vessels that are fishing under a limited access general category permit, and limited access general category vessels as specified in paragraphs (a)(3) through (a)(6) of this section. In the event that a framework adjustment does not implement an annual TAC for a fishing or part of a fishing year, the preceding fishing year's scallop regulations shall apply.

(1) *2008 fishing year target TAC for scallop fishery.* 20,140 mt, 90 percent of which will be allocated to the limited access fishery, and 10 percent of which will be allocated to the general category fishery.

(2) *2009 fishing year target TAC for scallop fishery.* 20,820 mt, 94.5 percent of which will be allocated to the limited access fishery, 5 percent of which will be allocated to IFQ scallop vessels, and 0.5 percent will be issued to limited access vessels also issued IFQ scallop permits and that are fishing under general category regulations. If the IFQ program is delayed beyond March 1, 2009, as specified at paragraph (a)(7) of this section, 90 percent of the TAC will be allocated to the limited access fishery, and 10 percent of the TAC will be allocated to the general category fishery.

(3) *Access area TAC.* The TAC for each Access Area shall be determined through the framework adjustment process described in § 648.55 and specified in § 648.59. The TAC set-asides for observer coverage and research shall be deducted from the TAC in each Access Area prior to assigning the target TAC and trip allocations for limited access scallop vessels, and prior to allocating TAC to limited access general category vessels. The percentage of the TAC for each access area allocated to limited access vessels, limited access general category vessels, and limited access vessels fishing under general category permits shall be specified in accordance with § 648.60 through the framework adjustment process specified in § 648.55.

(4) *Open area target TAC for limited access vessels.* The open area TAC specified in this paragraph (a)(4) excludes the open area DAS set-aside specified in (g)(1) and (2) of this section, the access area TACs specified in § 648.59, and access area set-asides specified in § 648.60(d) and (e).

(i) *2008 fishing year.* For the 2008 fishing year, the target TAC for limited

access vessels fishing under the scallop DAS program specified in this section shall be 6,274 mt.

(ii) *2009 fishing year.* For the 2009 fishing year, the target TAC for limited access vessels fishing under the scallop DAS program specified in this section shall be 7,458 mt., unless the implementation of the IFQ program is delayed beyond March 1, 2009, as specified in paragraph (a)(7) of this section.

(5) *Open area TAC for IFQ scallop vessels.* The open area TAC specified in this paragraph (a)(5) excludes the access area TACs specified in § 648.59, and access area set-asides specified in § 648.60(d) and (e).

(i) *2008 fishing year.* For the 2008 fishing year, IFQ scallop vessels, and limited access scallop vessels that are fishing under an IFQ scallop permit outside of the scallop DAS and Area Access programs, shall be allocated 1,369 mt.

(ii) *2009 fishing year and beyond for IFQ scallop vessels without a limited access scallop permit.* For the 2009 fishing year, unless the implementation of the IFQ program is delayed beyond March 1, 2009, as specified in paragraph (a)(7) of this section, the TAC for IFQ scallop vessels without a limited access scallop permit shall be 536 mt.

(iii) *2009 fishing year and beyond for IFQ scallop vessels with a limited access scallop permit.* For the 2009 fishing year, unless the IFQ program is delayed beyond March 1, 2009, as specified in paragraph (a)(7) of this section, limited access scallop vessels that are fishing under an IFQ scallop permit outside of the scallop DAS and Area Access programs shall be allocated 0.5 percent of the annual target TAC specified in accordance with this paragraph (a) minus the TAC for all access areas specified in accordance with paragraph (a)(3) of this section. If the IFQ program implementation is delayed beyond March 1, 2009, the allocation of TAC to IFQ scallop vessels is specified in paragraph (a)(7) of this section.

(6) *Northern Gulf of Maine Scallop Fishery.* The TAC for the Northern Gulf of Maine Scallop Fishery shall be specified in accordance with § 648.62, through the framework adjustment process specified in § 648.55. The Northern Gulf of Maine Scallop Fishery TAC is specified in § 648.62(b)(1).

(7) *Delay of the IFQ program.* If the IFQ program implementation is delayed beyond March 1, 2009, the quarterly fleetwide TAC will remain in effect. Under such a scenario, the overall IFQ fishery allocation of 4,551,700 lb (2,065 mt) will be distributed as follows: Quarter 1—1,593,095 lb (723 mt); Quarter 2—1,820,680 lb (826 mt), Quarter 3—682,755 lb (310 mt), Quarter 4—455,170 lb (206 mt). If the Regional Administrator determines that the IFQ program cannot be implemented by March 1, 2009, NMFS shall inform all scallop vessel owners that the IFQ program shall not take effect.

(8) *Distribution of transition period TAC*—(i) *Allocation.* For the 2008 fishing year, and subsequent fishing years until the IFQ program is implemented as specified in paragraph (a)(7) of this section, the TAC for IFQ scallop vessels shall be allocated as specified in paragraphs (a)(5) of this section into quarterly periods. The percentage allocations for each period allocated to the IFQ scallop vessels, including limited access vessels fishing under an IFQ scallop permit and vessels under appeal for an IFQ scallop permit pursuant to § 648.4(a)(2)(ii) shall be specified in the framework adjustment process as specified in § 648.55 and are specified in the following table:

| Quarter | Percent | TAC |
|---|---|---|
| I. March–May ..... | 35 | 1,523,375 lb (475.25 mt). |
| II. June–August .. | 40 | 1,741,000 lb (547.83 mt). |
| III. September–November. | 15 | 652,875 lb (205.39 mt). |
| IV. December–February. | 10 | 435,250 lb (136.93 mt). |

(ii) *Deductions of landings.* All landings by general category scallop vessels prior to July 1, 2008, and all landings by IFQ scallop vessels and limited access vessels fishing under an IFQ scallop permit after June 30, 2008, shall be deducted from the TAC allocations specified in the table in paragraph (a)(8)(i) of this section.

* * * * *

(9) *Scallop incidental catch target TAC.* The 2008 and 2009 incidental catch target TACs for vessels with incidental catch scallop permits are 50,000 lb (22,680 kg) per year.

(b) * * *

(4) * * *

| DAS category | 2008 | [1] 2009 |
|---|---|---|
| Full-time ..... | 35 | 42 |
| Part-time ..... | 14 | 17 |
| Occasional ..... | 3 | 3 |

[1] If the IFQ program implementation is delayed beyond March 1, 2009, the 2009 DAS allocations will be: Full-time—37; part-time—15, occasional—3.

(i) Limited access vessels that lawfully use more open area DAS in the 2008 fishing year than specified in this section shall have the DAS used in excess of the 2008 allocation specified in this paragraph (b)(4) deducted from their 2009 open area DAS allocation specified in paragraph (b)(2) of this section.

(ii) [Reserved]

(5) * * *

(i) For each remaining complete trip in the Nantucket Lightship Access Area, a full-time and part-time vessel may fish an additional 7.7 DAS in open areas and an occasional vessel may fish an additional 3.2 DAS during the same fishing year. A complete trip is deemed to be a trip that is not subject to a reduced possession limit under the broken trip provision in § 648.60(c). If a vessel has unused broken trip compensation trip(s), as specified in § 648.60(c), when the Nantucket Lightship Access Area closes due to the yellowtail flounder bycatch TAC, it will be issued additional DAS in proportion to the unharvested possession limit. For example, if a full-time vessel had an unused 9,000-lb (4,082-kg) Nantucket Lightship Access Area compensation trip (half of the possession limit) at the time of a Nantucket Lightship Access Area yellowtail flounder bycatch TAC closure, the vessel will be allocated 3.85 DAS (half of 7.7 DAS).

(ii) For each remaining complete trip in Closed Area II, a full-time and part-time vessel may fish an additional 7.9 DAS in open areas and an occasional vessel may fish an additional 3.3 DAS during the same fishing year. A complete trip is deemed to be a trip that is not subject to a reduced possession limit under the broken trip provision in § 648.60(c). If a vessel has unused Closed Area II broken trip compensation trip(s), as specified in § 648.60(c), when Closed Area II closes due to the yellowtail flounder bycatch TAC, it will be issued additional DAS in proportion to the unharvested possession limit. For example, if a full-time vessel had an unused 9,000 lb (4,082 kg) Closed Area II compensation trip (half of the possession limit) at the time of a Closed Area II yellowtail flounder bycatch TAC closure, the vessel will be allocated 3.95 DAS (half of 7.9 DAS).

(6) DAS allocations and other management measures are specified for each scallop fishing year, which begins on March 1 and ends on February 28 (or February 29), unless otherwise noted.

* * * * *

(g) * * *

(1) *DAS set-aside for observer coverage.* As specified in paragraph (b)(2) of this section, to help defray the cost of carrying an observer, 1 percent of the total DAS shall be set-aside from the total DAS available for allocation, to

be used by vessels that are assigned to take an at-sea observer on a trip other than an Area Access Program trip. The DAS set-aside for observer coverage is 118 DAS for the 2008 fishing year, and 141 DAS for the 2009 fishing year. If the IFQ program implementation is delayed beyond March 1, 2009, the 2009 DAS set-aside for observer coverage will be 124 DAS. Vessels carrying an observer shall be compensated with reduced DAS accrual rates for each trip on which the vessel carries an observer. For each DAS that a vessel fishes for scallops with an observer on board, the DAS shall be charged at a reduced rate based on an adjustment factor determined by the Regional Administrator on an annual basis, dependent on the cost of observers, catch rates, and amount of available DAS set-aside. The Regional Administrator shall notify vessel owners of the cost of observers and the DAS adjustment factor through a permit holder letter issued prior to the start of each fishing year. The number of DAS that are deducted from each trip based on the adjustment factor shall be deducted from the observer DAS set-aside amount in the applicable fishing year. Utilization of the DAS set-aside shall be on a first-come, first-served basis. When the DAS set-aside for observer coverage has been utilized, vessel owners shall be notified that no additional DAS remain available to offset the cost of carrying observers. The obligation to carry and pay for an observer shall not be waived due to the absence of set-aside DAS allocations.

(2) *DAS set-aside for research.* As specified in paragraph (b)(2) of this section, to help support the activities of vessels participating in certain research, as specified in § 648.56; the DAS set-aside for research is 235 DAS for the 2008 fishing year, and 282 DAS for the 2009 fishing year. If the IFQ program implementation is delayed beyond March 1, 2009, the 2009 DAS set-aside for research shall be 241 DAS. Vessels participating in approved research shall be authorized to use additional DAS in the applicable fishing year. Notification of allocated additional DAS shall be provided through a letter of authorization, or Exempted Fishing Permit issued by NMFS, or shall be added to a participating vessel's open area DAS allocation, as appropriate.

* * * * *

(h) * * *

(2) * * *

(ii) *Contribution factor.* An IFQ scallop vessel's contribution factor is calculated using the best year, years active, and index factor as specified in paragraphs (h)(2)(ii)(A) through (C) of this section. A vessel's contribution factor shall be provided to the owner of a qualified limited access general category vessel following initial application for an IFQ scallop permit as specified in § 648.4(a)(2)(ii)(E), consistent with confidentiality restrictions of the Magnuson-Stevens Act specified at 16 U.S.C. 1881a.

* * * * *

(4) *IFQ cost recovery.* A fee, not to exceed 3 percent of the ex-vessel value of IFQ fish harvested, shall be collected to recover the costs associated with management, data collection, and enforcement of the IFQ program. The owner of a vessel issued an IFQ scallop permit and subject to the IFQ program specified in this paragraph (h), shall be responsible for paying the fee as specified by NMFS in this paragraph (h)(4). An IFQ scallop vessel shall incur a cost recovery fee liability for every landing of IFQ scallops. The IFQ scallop permit holder shall be responsible for collecting his/her own fee for all of his/her IFQ scallop landings, and shall be responsible for submitting this payment to NMFS once per year.

(i) *Cost recovery fee determination.* The ex-vessel value of scallops shall be determined as an average of the ex-vessel value, as determined by Northeast Federal dealer reports, of all IFQ scallops landed between March 1 and September 30 of the initial year of the IFQ scallop program, and from October 1 through September 30 of each year thereafter.

(ii) *Fee payment procedure.* On or about October 31 of each year, NMFS shall mail a cost recovery bill to each IFQ scallop permit holder for the previous cost recovery period. An IFQ scallop permit holder who has incurred a fee must pay the fee to NMFS by January 1 of each year. Cost recovery payments shall be made electronically via the Federal web portal, *www.pay.gov,* or other Internet sites as designated by the Regional Administrator. Instructions for electronic payment shall be available on both the payment Web site and the paper bill. Payment options shall include payment via a credit card, as specified in the cost recovery bill, or via direct automated clearing house (ACH) withdrawal from a designated checking account. Payment by check may be authorized by NMFS if it has determined that electronic payment is not possible (for example, if the geographical area of an individual(s) is affected by catastrophic conditions).

(iii) *Payment compliance.* An IFQ scallop permit holder that has incurred an IFQ cost recovery fee must pay the fee to NMFS by January 1 of each year. If the cost recovery payment, as determined by NMFS, is not made by January 1, NMFS may deny the renewal of the IFQ scallop permit until full payment is received. If, upon preliminary review of the accuracy and completeness of a fee payment, NMFS determines the IFQ scallop permit holder has not paid the full amount due, NMFS shall notify the IFQ scallop permit holder by letter. NMFS shall explain the discrepancy and provide the IFQ scallop permit holder 30 days to either pay the amount specified by NMFS or to provide evidence that the amount paid was correct. If the IFQ scallop permit holder submits evidence in support of his/her payment, NMFS shall determine if there is any remaining disagreement as to the appropriate IFQ fee, and prepare a Final Administrative Determination (FAD). The FAD shall set out the facts, discuss those facts within the context of the relevant agency policies and regulations, and make a determination as to the appropriate disposition of the matter. A FAD shall be the final agency action, and, if the FAD determines that the IFQ scallop permit holder is out of compliance, the FAD shall require payment within 30 days. If a FAD is not issued until after the start of the fishing year, the IFQ scallop permit holder may be authorized to fish temporarily by the Regional Administrator until the FAD is issued, at which point the permit holder shall have 30 days to comply with the terms of the FAD or the IFQ scallop permit shall not be issued until such terms are met. If NMFS determines that the IFQ scallop permit holder owes additional fees for the previous cost recovery period, and the IFQ scallop permit has already been renewed, NMFS shall issue a FAD, at which point the permit holder shall have 30 days to comply with the terms of the FAD or NMFS may withdraw the issuance of the IFQ scallop permit until such terms are met. If such payment is not received within 30 days of issuance of the FAD, NMFS shall refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection, and no IFQ permit held by the permit holder may be renewed until the terms of the FAD are met. If NMFS determines that the conditions of the FAD have been met, the IFQ permit holder may renew the IFQ scallop permit(s). If NMFS does not receive full payment prior to the end of the fishing year, the IFQ scallop permit shall be considered voluntarily abandoned, pursuant to § 648.4(a)(2)(ii)(K), unless

otherwise determined by the Regional Administrator.

* * * * *

■ 7. In § 648.58, paragraph (a) is added and paragraph (b) is revised to read as follows and paragraphs (e) through (h) are removed.

**§ 648.58 Rotational Closed Areas.**

(a) *Hudson Canyon Closed Area.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Hudson Canyon Closed Area. No vessel may possess scallops in the Hudson Canyon Closed Area, unless such vessel is only transiting the area as provided in paragraph (c) of this section. The Hudson Canyon Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

| Point | Latitude | Longitude |
|---|---|---|
| H1 | 39°30′ N. | 73°10′ W. |
| H2 | 39°30′ N. | 72°30′ W. |
| H3 | 38°30′ N. | 73°30′ W. |
| H4 | 38°50′ N. | 73°30′ W. |
| H5 | 38°50′ N. | 73°42′ W. |
| H1 | 39°30′ N. | 73°10′ W. |

(b) *Delmarva Closed Area.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Delmarva Closed Area. No vessel may possess scallops in the Delmarva Closed Area, unless such vessel is only transiting the area as provided in paragraph (b) of this section. The Delmarva Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

| Point | Latitude | Longitude |
|---|---|---|
| DMV1 | 38°10′ N. | 74°50′ W. |
| DMV2 | 38°10′ N. | 74°00′ W. |
| DMV3 | 37°15′ N. | 74°00′ W. |
| DMV4 | 37°15′ N. | 74°50′ W. |
| DMV1 | 38°10′ N. | 74°50′ W. |

* * * * *

■ 8. In § 648.59, paragraph (e)(3) is removed and reserved, and paragraph (a) is revised, effective June 1, 2008. Section 648.59 as revised on April 14, 2008 (73 FR 20129) effective June 1, 2008, is further amended, effective June 1, 2008, by revising paragraphs (b)(5)(i), (b)(5)(ii), (c)(5)(i), (c)(5)(ii), (d)(5)(i), (d)(5)(ii), (e)(4)(i), (e)(4)(ii). The revisions read as follows.

**§ 648.59 Sea Scallop Access Areas.**

(a) *Delmarva Sea Scallop Access Area.* (1) From March 1, 2009, through February 28, 2010, a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Delmarva Sea Scallop Access Area, described in paragraph (a)(2) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

(2) The Delmarva Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

| Point | Latitude | Longitude |
|---|---|---|
| DMV1 | 38°10′ N. | 74°50′ W. |
| DMV2 | 38°10′ N. | 74°00′ W. |
| DMV3 | 37°15′ N. | 74°00′ W. |
| DMV4 | 37°15′ N. | 74°50′ W. |
| DMV1 | 38°10′ N. | 74°50′ W. |

(3) *Number of trips.*—(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Delmarva Access Area as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Delmarva Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(i), or unless the vessel is taking a compensation trip for a prior Delmarva Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Delmarva Access Area shall be based on the TAC for the access area, which shall be determined through the annual framework process and specified in this paragraph (a)(5)(i). The 2009 Delmarva Access Area scallop quota for limited access scallop vessels is 5,529,000 lb (2,508 mt), unless reduced per § 648.60(a)(3)(i)(E)(*3*).

(ii) *General category vessels.* General category vessels shall be allocated 728 Delmarva Access Area trips in 2009, unless reduced per § 648.60(a)(3)(i)(E)(*3*). Subject to the seasonal restrictions specified in paragraph (a)(4) of this section, a vessel issued a general category scallop permit, may not fish for, possess, or land sea scallops in or from the Delmarva Access Area, or enter the Delmarva Access Area on a declared scallop trip once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that the allocated number of trips for the applicable fishing year have been taken, in total, by all general category scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken.

(b) * * *

(5) * * *

(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area I Access Area as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area I Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area I Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Closed Area I Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in this paragraph (b)(5)(i).

(ii) *General category vessels.* (A) General category vessels shall be allocated 0 trips in the Closed Area I Access Area in 2008 and 2009. Except as provided in paragraph (b)(5)(ii)(B) of this section, and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, a vessel issued a general category scallop permit, may not fish for, possess, or land sea scallops in or from the Closed Area I Access Area, or enter the Closed Area I Access Area on a declared scallop trip, once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that the allocated number of trips for the applicable fishing year have been taken, in total, by all general category scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken.

(B) A vessel issued a NE Multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (b)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(c) * * *

(5) * * *

(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area II Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area II Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area II Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Closed Area II Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in this paragraph (c)(5)(i). The 2009 Closed Area II Access Area scallop quota for limited access scallop vessels is 5,626,666 lb (2,553 mt).

(ii) *General category vessels.* (A) General category vessels shall be allocated 0 trips in the Closed Area II Access Area in 2008 and 2009. Except as provided in paragraph (c)(5)(ii)(B) of this section, and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, a vessel issued a general category scallop permit may not fish for, possess, or land sea scallops in or from the Closed Area II Access Area, or enter the Closed Area II Access Area on a declared scallop trip once the Regional Administrator has provided notification in the **Federal Register** in accordance with § 648.60(g)(4), that the allocated number of trips for the applicable fishing year have been taken, in total, by all general category scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken.

(B) A vessel issued a NE Multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (c)(5)(ii)(A) of this section provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(d) * * *

(5) * * *

(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Nantucket Lightship Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Nantucket Lightship Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Nantucket Lightship Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Nantucket Lightship Access Area shall be based on the TAC for the access area. The 2008 Nantucket Lightship Access Area scallop quota for limited access scallop vessels is 5,068,250 lb (2,293 mt).

(ii) *General category vessels.* (A) General category vessels shall be allocated 667 trips in the Nantucket Lightship Access Area in 2008 and 0 trips in 2009. Except as provided in paragraph (d)(5)(ii)(B) of this section, a vessel issued a general category scallop permit, may not fish for, possess, or land sea scallops in or from the Nantucket Lightship Access Area, or enter the Nantucket Lightship Access Area on a declared scallop trip, once the Regional Administrator has provided notification in the **Federal Register** in accordance with § 648.60(g)(4), that the allocated number of trips for the applicable fishing year, have been taken, in total, by all general category scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken. The 2008 Nantucket Lightship Access Area scallop quota for general category scallop vessels is 266,750 lb (121 mt).

(B) A vessel issued a NE Multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (d)(5)(ii)(A) of this section provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(e) * * *

(4) * * *

(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Elephant Trunk Access Area, as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains an Elephant Trunk Access Area trip and gives up a trip into another Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Elephant Trunk Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Elephant Trunk Access Area shall be based on the TAC for the access area. The 2008 Elephant Trunk Access Area scallop quota for limited access scallop vessels is 20,273,000 lb (9,196 mt). The 2009 Elephant Trunk Access Area scallop quota for limited access scallop vessels is 14,928,300 lb (6,771 mt), unless otherwise reduced per § 648.60(a)(3)(i)(E)(*2*).

(ii) *General category vessels.* General category vessels shall be allocated 2,668 trips in the Elephant Trunk Access Area in 2008 and 1,964 trips in 2009. The 2009 general category trip allocation may be reduced per § 648.60(a)(3)(i)(E)(*2*). Subject to the possession limits specified in §§ 648.52(a) and (b), and 648.60(g), a vessel issued a general category scallop permit may not fish for, possess, or land sea scallops in or from the Elephant Trunk Access Area, or enter the Elephant Trunk Access Area on a declared scallop trip once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that the allocated trips applicable to each fishing year, have been taken, in total, by all general category scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken. The 2008 Elephant Trunk Access Area scallop quota for general category scallop vessels is 1,067,000 lb (484 mt). The 2009 Elephant Trunk Access Area scallop quota for general category scallop vessels is 785,700 lb (356 mt), unless otherwise reduced per § 648.60(a)(3)(i)(E)(*2*).

* * * * *

■ 9. Effective July 1, 2008, in § 648.59, paragraphs (a)(3)(ii), (b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii) are revised to read as follows:

**§ 648.59 Sea Scallop Access Areas.**

(a) * * *

(3) * * *

(ii) *LAGC scallop vessels.* (A) The percentage of the Delmarva Access Area TAC to be allocated to LAGC scallop vessels shall be specified in this

paragraph (a)(3)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (a)(3)(ii)(B) of this section. LAGC vessels will be allocated 291,000 lb (132 mt), which is 5 percent of the 2009 Delmarva Access Area TAC.

(B) Based on the TAC specified in paragraph (a)(3)(ii)(A) of this section, LAGC scallop vessels shall be allocated 728 trips to the Delmarva Access Area, unless reduced per § 648.60(a)(3)(i)(E)(*3*). The Regional Administrator shall notify all LAGC scallop vessels of the date when 728 trips have been, or are projected to be, taken. Except as provided in paragraph (d)(5)(ii)(C) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Delmarva Access Area, or enter the Delmarva Access Area on a declared LAGC scallop trip once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), of the date that the allocated number of trips for the applicable fishing year have been taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section.

(b) * * *

(5) * * *

(ii) *LAGC scallop vessels.* (A) The percentage of the Closed Area I Access Area TAC to be allocated to LAGC scallop vessels shall be specified in this paragraph (b)(5)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (b)(5)(ii)(B) of this section. The Closed Area I Access Area shall be closed in the 2008 and 2009 fishing years.

(B) The Closed Area I Access Area shall be closed in fishing years 2008 and 2009. The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the 2008 fishing year. Except as provided in paragraph (b)(5)(ii)(C) of this section, and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Closed Area I Access Area, or enter the Closed Area I Access Area on a declared LAGC scallop trip once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), the date on which the allocated number of trips for the applicable fishing year have been taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section.

(C) A vessel issued a NE Multispecies permit and a LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (b)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(c) * * *

(5) * * *

(ii) *LAGC scallop vessels.* (A) The percentage of the total Closed Area II Access Area TAC specified to be allocated to LAGC scallop vessels shall be specified in this paragraph (c)(5)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (c)(5)(ii)(B) of this section. The Closed Area II Access Area shall be closed in fishing year 2008, and LAGC vessels will be allocated zero percent of the 2009 Closed Area II Access Area TAC.

(B) The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken. Except as provided in paragraph (c)(5)(ii)(C) of this section, and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Closed Area II Access Area, or enter the Closed Area II Access Area on a declared LAGC scallop trip once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), of the date that the allocated number of trips for the applicable fishing year have been taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section.

(C) A vessel issued a NE Multispecies permit and an LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (c)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(d) * * *

(5) * * *

(ii) *LAGC scallop vessels.* (A) The percentage of the Nantucket Lightship Access Area TAC to be allocated to LAGC scallop vessels shall be specified in this paragraph (d)(5)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (d)(5)(ii)(B) of this section. LAGC vessels shall be allocated 266,750 lb (121 mt) in fishing year 2008, which is 5 percent of the 2008 Nantucket Lightship Access Area TAC. The Nantucket Lightship Access Area shall be closed in fishing year 2009.

(B) Based on the TAC specified in paragraph (d)(5)(ii)(A) of this section, LAGC scallop vessels shall be allocated 667 trips to the Nantucket Lightship Access Area in fishing year 2008. The Regional Administrator shall notify all LAGC scallop vessels of the date when the 667 trips have been, or are projected to be, taken. Except as provided in paragraph (d)(5)(ii)(C) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Nantucket Lightship Access Area, or enter the Nantucket Lightship Access Area on a declared LAGC scallop trip once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), of the date that the allocated number of trips for the applicable fishing year have been taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section.

(C) A vessel issued a NE Multispecies permit and an LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (d)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(e) * * *

(4) * * *

(ii) *LAGC scallop vessels.* (A) The percentage of the Nantucket Lightship Access Area TAC to be allocated to LAGC scallop vessels shall be specified in this paragraph (e)(4)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (e)(4)(ii)(B) of this section. LAGC vessels shall be allocated [INSERT TAC lb] (TAC mt) in fishing year 2008, which is 5 percent of the 2008 Elephant Trunk Access Area TAC. LAGC vessels shall be allocated [INSERT TAC lb] (TAC mt) in fishing year 2009, which is 5 percent of the 2009 Elephant Trunk Access Area TAC. The 2009 general category TAC may be reduced per § 648.60(a)(3)(i)(E)(*2*).

(B) Based on the TACs specified in paragraph (e)(4)(ii)(A) of this section

LAGC vessels shall be allocated a total of 2,668 trips in the Elephant Trunk Access Area in fishing year 2008 and 1,964 trips in fishing year 2009. The fishing year 2009 general category trip allocation may be reduced per § 648.60(a)(3)(i)(E)(*2*). The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken. An LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Elephant Trunk Access Area, or enter the Elephant Trunk Access Area on a declared LAGC scallop trip once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), of the date that the allocated number of trips for the applicable fishing year have been taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section.

* * * * *

■ 10. In § 648.60, paragraphs (a)(3)(i), (d)(1), and (e)(1) are revised to read as follows:

**§ 648.60 Sea scallop area access program requirements.**

(a) * * *

(3) * * *

(i) *Limited access vessel trips.* (A) Except as provided in paragraph (c) of this section, and unless the number of trips is adjusted for the Elephant Trunk Access Area or the Delmarva Access Area as specified in paragraph (a)(3)(i)(F) of this section, paragraphs (a)(3)(i)(B) through (E) of this section specify the total number of trips that a limited access scallop vessel may take into Sea Scallop Access Areas during applicable seasons specified in § 648.59. The number of trips per vessel in any one Sea Scallop Access Area may not exceed the maximum number of trips allocated for such Sea Scallop Access Area as specified in § 648.59, unless the vessel owner has exchanged a trip with another vessel owner for an additional Sea Scallop Access Area trip, as specified in paragraph (a)(3)(ii) of this section, been allocated a compensation trip pursuant to paragraph (c) of this section, or unless the Elephant Trunk Access Area trip allocations are adjusted as specified in § 648.60(a)(3)(i)(F). If, during the interim period between March 1, 2008, and the implementation of the limited access Access Area trip allocations specified in this section, a limited access vessel takes a 2008 Closed Area I Access Area trip, one ETAA trip will be deducted from the vessel's 2009 allocation as specified in this section.

(B) *Full-time scallop vessels.* In the 2008 fishing year, a full-time scallop vessel may take four trips in the Elephant Trunk Access Area and one trip in the Nantucket Lightship Access Area. In the 2009 fishing year, a full-time scallop vessel may take three trips in the Elephant Trunk Access Area (unless adjusted per paragraph (a)(3)(i)(F) of this section), one trip in the Closed Area II Access Area, and one trip in the Delmarva Access Area (unless adjusted per paragraph (a)(3)(i)(F) of this section).

(C) *Part-time scallop vessels.* In the 2008 fishing year, a part-time scallop vessel may take one trip in the Nantucket Lightship Access Area and one trip in the Elephant Trunk Access Area (unless adjusted per paragraph (a)(3)(i)(F) of this section); or two trips in the Elephant Trunk Access Area. In the 2009 fishing year, a part-time scallop vessel is allocated two trips that may be distributed between access areas as follows: Up to two trips in the Elephant Trunk Access Area (unless adjusted per paragraph (a)(3)(i)(F) of this section); up to one trip in Closed Area II; and up to one trip in the Delmarva Access Area (unless adjusted per paragraph (a)(3)(i)(E) of this section).

(D) *Occasional scallop vessels.* In the 2008 fishing year, an occasional scallop vessel may take one trip in the Nantucket Lightship Access Area or one trip in the Elephant Trunk Access Area. In the 2009 fishing year, an occasional scallop vessel may take one trip in the Closed Area II Access Area or one trip in the Elephant Trunk Access Area (unless adjusted per paragraph (a)(3)(i)(F) of this section) or one trip in the Delmarva Access Area (unless adjusted per paragraph (a)(3)(i)(E) of this section).

(E) *Procedure for adjusting the number of 2009 fishing year trips in the Elephant Trunk and Delmarva Access Areas.* (*1*) The Regional Administrator shall reduce the number of 2009 Elephant Trunk Access Area trips or Delmarva Access Area trips using the tables in paragraphs (a)(3)(i)(F)(*2*) and (*3*) of this section, respectively, provided that updated exploitable biomass projections are available with sufficient time to announce such an adjustment through publication in the **Federal Register**, in accordance with the Administrative Procedure Act, on or about December 1, 2008. In addition, if an updated estimate of overall F exceeds 0.29 in 2008, then Elephant Trunk Access Area trip allocations shall be reduced consistent with reductions as required in the table in paragraph (a)(3)(i)(F)(*2*) of this section under exploitable biomass estimates of 20,000–29,000 mt. If both the exploitable biomass and F thresholds are exceeded, the allocation level shall be established using the exploitable biomass adjustment schedule. If information is not available in time for NMFS to announce an adjustment in the **Federal Register** on or about December 1, 2008, no adjustment may be made. The exploitable biomass estimate necessary for any adjustment of the 2009 Elephant Trunk Access Area or Delmarva Access Area trip allocations shall be based on all available scientific surveys of scallops within the Elephant Trunk Access Area or Delmarva Access Area. Survey data must be used only if they are available with sufficient time for review and incorporation in the exploitable biomass estimate and they are determined to be scientifically sound. If no other surveys are available, the annual NOAA scallop resource survey shall be used to estimate exploitable scallop biomass for the Elephant Trunk Access Area.

(*2*) *Table of Elephant Trunk Access Area TAC and trip allocation adjustments based on exploitable biomass estimates and revised target TAC levels.* If the exploitable biomass estimate is between 20,000 and 29,999 mt, part-time vessels shall be authorized to take one trip in the Elephant Trunk Access Area at a reduced possession limit of 3,600 lb (1,633 kg) and one trip in the Nantucket Lightship Access Area at the normal possession limit as specified at § 648.60(a)(5); and occasional vessels may take one trip in the Elephant Trunk Access Area or one trip in the Nantucket Lightship Access Area with a normal possession limit of 7,500 lb (3,402 kg) as specified at § 648.60(a)(5). The following table specifies the adjustments that shall be made through the procedure required in paragraph (a)(3)(i)(F)(*1*) of this section under various biomass estimates and adjusted 2009 TAC estimates:

| Exploitable biomass estimate (mt) | Adjusted trips (full-time, part-time, occasional) | Adjusted trips (general category) | Adjusted 2009 research set-aside TAC (mt) | Adjusted 2009 observer set-aside TAC (mt) |
|---|---|---|---|---|
| 30,000 or greater | No adjustment | No adjustment | No adjustment | No adjustment. |
| 20,000–29,999 | 2, 1*, 1** | 1473 | 108.86 | 54.43. |

| Exploitable biomass estimate (mt) | Adjusted trips (full-time, part-time, occasional) | Adjusted trips (general category) | Adjusted 2009 research set-aside TAC (mt) | Adjusted 2009 observer set-aside TAC (mt) |
|---|---|---|---|---|
| 10,000–19,000 | 1, 0, 0 | 982 | 72.57 | 36.29. |
| Less than 10,000 | 0, 0, 0 | 491 | 36.29 | 18.15. |

* Part-time vessels may take one trip in the Elephant Trunk Access Area at a reduced possession limit of 3,600 lb (1,633 kg) and one trip in the NLCA with a possession limit of 18,000 lb (8,165 kg).
** Occasional vessels may take 1 trip in the Nantucket Lightship Access Area or 1 trip in the Elephant Trunk Access Area.

(*3*) *Table of Delmarva Access Area TAC and trip allocation adjustments based on exploitable biomass estimates and revised target TAC levels.* The following table specifies the required adjustments that shall be made through the procedure specified in paragraph (a)(3)(i)(F)(*1*) of this section under various biomass estimates and adjusted 2009 target TAC estimates:

| Exploitable biomass estimate (mt) | Adjusted trips (full-time, part-time, occasional) | Adjusted trips (general category) | Adjusted 2009 research set-aside TAC | Adjusted 2009 observer set-aside TAC |
|---|---|---|---|---|
| 10,000 or greater | No adjustment | No adjustment | No adjustment | No adjustment. |
| Less than 10,000 | 0, 0, 0 | 0 | 0 | 0. |

* * * * *

(5) Possession and landing limits—(i) Scallop possession limits. Unless authorized by the Regional Administrator, as specified in paragraphs (c) and (d) of this section, after declaring a trip into a Sea Scallop Access Area, a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, scallops, up to the maximum amounts specified in the table in this paragraph (a)(5). No vessel declared into an Access Area as described in § 648.59 may possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Access Area described in § 648.59.

| Fishing year | Permit category possession limit | | |
|---|---|---|---|
| | Full-time | Part-time | Occasional |
| 2008 | 18,000 lb (8,165 kg) | 18,000 lb (8,165 kg) | 7,500 lb. (3,402 kg). |
| 2009 | 18,000 lb (8,165 kg) | 18,000 lb[1] (8,165 kg) | 7,500 lb. (3,402 kg). |

[1] Unless reduced per § 648.60(a)(3)(i)(E)(*2*).

* * * * *

(d) Possession limit to defray costs of observers—(1) Observer set-aside limits by area—(i) Nantucket Lightship Access Area. For the 2008 fishing year, the observer set-asides for the Nantucket Lightship Access Area is 55,000 lb (25 mt).

(ii) *Closed Area II Access Area.* For the 2009 fishing year, the observer set-aside for the Closed Area II Access Area is 58,000 lb (26 mt).

(iii) *Elephant Trunk Access Area.* For the 2008 and 2009 fishing years, the observer set-aside for the Elephant Trunk Access Area is 222,000 lb (101 mt), and 162,000 lb (73 mt), respectively, unless the 2009 set-aside is adjusted as specified in paragraph (a)(3)(i)(E) of this section.

(iv) *Delmarva Access Area.* For the 2009 fishing year, the observer set-aside for the Delmarva Access Area is 60,000 lb (27 mt), unless the 2009 set-aside is adjusted as specified in paragraph (a)(3)(i)(E) of this section.

* * * * *

(e) * * *

(1) Research set-aside limits and number of trips by area—(i) *Nantucket Lightship Access Area.* For the 2008 fishing year, the research set-aside for the Nantucket Lightship Access Area is 110,000 lb (50 mt).

(ii) *Closed Area II Access Area.* For the 2009 fishing year, the research set-aside for the Closed Area II Access Area is 116,000 lb (53 mt).

(iii) *Elephant Trunk Access Area.* For the 2008 and 2009 fishing years, the research set-aside for the Elephant Trunk Access Area is 440,000 lb (200 mt), and 324,000 lb (147 mt), respectively, unless the 2009 set-aside is adjusted as specified in paragraph (a)(3)(i)(E) of this section.

(iv) *Delmarva Access Area.* For the 2009 fishing year, the research set-aside for the Delmarva Access Area is 120,000 lb (54 mt), unless the 2009 set-aside is adjusted as specified in paragraph (a)(3)(i)(E) of this section.

* * * * *

■ 11. In § 648.62, paragraph (b)(1) is revised to read as follows:

**§ 648.62 Northern Gulf of Maine (NGOM) scallop management area.**

* * * * *

(b) * * *

(1) *NGOM TAC.* The TAC for the NGOM shall be 70,000 lb (31.8 mt) for both the 2008 and 2009 fishing years.

* * * * *

[FR Doc. 08–1300 Filed 5–23–08; 12:48 pm]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**[Docket No. 080326475–8686–02]**

**RIN 0648–XG22**

## Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; closure of directed fishing for Pacific sardine

**SUMMARY:** NMFS issues this final rule to implement the annual harvest guideline

(HG) for Pacific sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of January 1, 2008, through December 31, 2008. This HG has been determined according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific sardine off the Pacific coast. NMFS also announces that based on the best available information recently obtained from the fishery, the directed fishing harvest total for the first allocation period (January 1 – June 30) has been reached and therefore directed fishing for Pacific sardine is now closed until July 1, 2008.

**DATES:** Effective May 29, 2008 through December 31, 2008, except for directed harvest closure effective through June 30, 2008

**ADDRESSES:** Copies of the report ''Assessment of Pacific Sardine Stock for U.S. Management in 2008'' may be obtained from the Southwest Regional Office (see the Mailing address above).

**FOR FURTHER INFORMATION CONTACT:** Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

**SUPPLEMENTARY INFORMATION:** The CPS FMP, which is implemented by regulations at 50 CFR part 660 subpart I, divides management unit species into two categories: actively managed and monitored. Harvest guidelines for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

During public meetings each year, the biomass for each actively managed species within the CPS FMP is presented to the Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (Team) and the Council's Coastal Pelagic Species Advisory Subpanel (Subpanel). At that time, the biomass, the acceptable biological catch (ABC) and the status of the fisheries are reviewed and discussed. This information is then presented to the Council along with HG recommendations and comments from the Team and Subpanel. Following review by the Council and after hearing public comment, the Council makes its HG recommendation to NMFS.

A full assessment for Pacific sardine was conducted this management cycle and reviewed by a Stock Assessment Review (STAR) Panel in La Jolla, California, September 18–21, 2007. This assessment produced an estimated biomass of 832,706 metric tons (mt). Applying this biomass number to the harvest control rule in the FMP produces an ABC for the 2008 fishery of 89,093 (mt).

In November, the Council adopted, and NMFS then approved, an ABC or HG of 89,093 mt for the 2008 fishing year. This ABC is 42 percent less than the ABC/HG adopted by the Council for the 2007 fishing season. The Council also adopted, and NMFS approved, a set-aside of 8,909 mt (10 percent of the ABC), establishing a directed harvest fishery of 80,184 mt and an incidental fishery of 8,909 mt. The purpose of the incidental fishery is to allow for incidental landings of Pacific sardine in other fisheries and prevent the closure of such fisheries, particularly other CPS fisheries, if a seasonal directed fishery total is reached and directed fishing is closed. In turn the set-aside also helps to ensure the fishery does not exceed the ABC.

The Pacific sardine HG is apportioned based on the following allocation scheme established by Amendment 11 (71 FR 36999, June 29,2006) to the CPS FMP: 35 percent is allocated coastwide on January 1; 40 percent, plus any portion not harvested from the initial allocation is reallocated coastwide on July 1; and on September 15 the remaining 25 percent, plus any portion not harvested from earlier allocations is released. If the total HG or these apportionment levels for Pacific sardine are reached at any time, the Pacific sardine fishery will be closed via appropriate rulemaking until it re-opens either per the allocation scheme or the beginning of the next fishing season. The Regional Administrator shall publish a notice in the **Federal Register** the date of the closure of the directed fishery for Pacific sardine.

The set-aside is based on recent annual incidental sardine landing rates in other fisheries during each of the seasonal allocation periods. The set-aside is initially allocated across these periods in the following way: January 1–June 30, 26,550 mt is allocated for directed harvest with an incidental set-aside of 4,633 mt; July 1–September 14, 34,568 mt is allocated for directed harvest with an incidental set-aside of 1,069 mt; September 15–December 31, 19,066 mt is allocated for directed harvest with an incidental set-aside of 3,207 mt.

If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, only incidental harvest will be allowed and, for the remainder of the period, any incidental Pacific sardine landings will be counted against that period's incidental set aside. The incidental fishery will also be constrained to a 20–percent by weight incidental catch rate when Pacific sardine are landed with other CPS to minimize targeting of Pacific sardine and to maximize landings of harvestable stocks. In the event that an incidental set-aside is projected to be attained, all fisheries will be closed to the retention of Pacific sardine for the remainder of the period via appropriate rulemaking. If the set-aside is not fully attained or is exceeded in a given seasonal period, the directed harvest allocation in the following seasonal period will be automatically adjusted to account for the discrepancy. The above in-season harvest restrictions are not intended to affect the prosecution the live bait portion of the Pacific sardine fishery.

For further background information on this action please refer to the preamble of the proposed rule (73 FR 20015).

**Comments and Responses**

NMFS received one comment regarding the Pacific sardine annual specifications.

*Comment 1:* The commenter stated that they believed that the catch specifications for CPS do not adequately take into account broader ecosystem needs and information such as foraging requirements of other species that may feed on Pacific sardine.

*Response:* NMFS agrees that Pacific sardine is an important prey component of the California Current ecosystem and as such the current harvest control rule formula used to determine the harvest guideline for Pacific sardine takes into account ecosystem as well as physical environmental factors. This is achieved by means of a formula that, after overall biomass is determined, takes into account the viability of the sardine stock and its value as forage when determining the guideline number. This is accomplished by a harvest rate or harvest ''fraction'' that is adjusted between 5 percent and 15 percent based on current ocean temperatures. Because past shifts in sardine productivity are linked with warm or cold ocean regimes a higher fraction is allotted for harvest when ocean temperatures are warmer and sardine production is greater, while the lower fraction is used when ocean temperatures are cooler and sardine production is decreased. In addition, a 150,000 mt stock biomass threshold, or ''cutoff'', is established below which no harvest is allowed in order to ensure a minimum spawning biomass is protected. Each year this ''cutoff'' number of 150,000 mt is subtracted from the overall biomass number before the

harvestable biomass is calculated to take into account the importance of Pacific sardine as forage.

**Classification**

The Administrator, Southwest Region, NMFS, determined that this final rule is necessary for the conservation and management of the CPS fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

NMFS finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. § 553(b)(B) for the closure of the January 1- June 30 directed harvest of Pacific sardine. For the reasons set forth below, notice and comment procedures are impracticable and contrary to the public interest. For the same reasons, NMFS also finds good cause under 5 U.S.C. § 553(d)(3) to waive the 30–day delay in effectiveness for both the establishment of the harvest guideline and closure of the January 1 June 30 directed harvest. These measures respond to the best available information and are necessary for the conservation and management of the Pacific sardine resource. The most recent data from the fishery, received by NMFS on May 11, 2008, shows that projected landings, along with some previously reported landings, are significantly greater than anticipated. Based on this data, NMFS believes that the directed harvest allocation for the period January 1 through June 30 will be attained much sooner than predicted and prior to publication of this rulemaking. A delay in effectiveness would cause the fishery to further exceed the in-season directed harvest level. These seasonal harvest levels are important mechanisms in preventing overfishing and managing the fishery at optimum yield. The established directed and incidental harvest allocations are designed to allow fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery and to allow access to other profitable CPS fisheries, such as squid and Pacific mackerel. Many of the same fishermen who harvest Pacific sardine rely on these other fisheries for a significant portion of their income. To help keep the regulated community advised of the progression of sardine landings, the California Department of Fish and Game provided a detailed accounting of landings-to-date to the CPS Advisory Subpanel in late April. The Subpanel is comprised of representatives from all sectors and regions of the sardine industry, including processors, fishermen, user groups and fishermen association representatives. As landing totals have become available, they are also posted on NMFS' Southwest Regional Office website, *http://swr.nmfs.noaa.gov/*. NMFS will also announce this closure through other means available, including fax, email, and mail to fishermen, processors, and state agencies. Therefore, NMFS finds that there is good cause to waive the 30–day delay in effectiveness in this circumstance.

This final rule is exempt from Office of Management and Budget review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule (73 FR 20015) and is not repeated here. No comments were received regarding this certification or the economic impact of the proposed rule. As a result, a regulatory flexibility analysis was not required and none was prepared.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 23, 2008.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 08–1304 Filed 5–23–08; 3:15 pm]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register

Vol. 73, No. 104

Thursday, May 29, 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.

## FEDERAL RESERVE SYSTEM

## 12 CFR Part 222

**[Regulation V; Docket No. R–1316]**

## FEDERAL TRADE COMMISSION

## 16 CFR Part 698

**RIN 3084–AA94**

## Fair Credit Reporting Risk-Based Pricing Regulations; Correction

**AGENCIES:** Board of Governors of the Federal Reserve System (Board) and Federal Trade Commission (Commission).

**ACTION:** Notice of proposed rulemaking; correction.

**SUMMARY:** This document contains corrections to proposed rules published in the **Federal Register** on May 19, 2008 (73 FR 28966) implementing the risk-based pricing provisions in section 311 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).

**FOR FURTHER INFORMATION CONTACT:** Board: Amy E. Burke, Senior Attorney, Division of Consumer and Community Affairs, (202) 452–3667 or (202) 452–2412; or Andrea K. Mitchell, Senior Attorney, Legal Division, (202) 452–2458, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. For users of a Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

*Commission:* Kellie Cosgrove Riley, Senior Attorney, or Stacey Brandenburg, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326–2252, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

### Background

On May 19, 2008, the Board and the Commission published in the **Federal Register** proposed rules (73 FR 28966) to implement the risk-based pricing provisions in section 311 of the FACT Act. The proposal includes model forms that creditors can use to comply with the requirements of the proposed rules.

### Need for Correction

Due to a technical error, the second page of Model form H–4 of the Board's proposal and Model form B–4 of the Commission's proposal, as published, erroneously included a row entitled ''Key *factors* that adversely affected your credit score.'' As discussed in the preamble to the proposed rules, the notice provided in connection with the credit score disclosure exception for non-mortgage credit is *not* required to include the key factors that affected the credit score (73 FR 28983). This document corrects this error by amending Model forms H–4 and B–4 to delete this row.

### Correction of Publication

The proposed rule, FR Doc. E8–10640, published in the **Federal Register** on May 19, 2008 (73 FR 28966) is corrected as follows:

## PART 222—[CORRECTED]

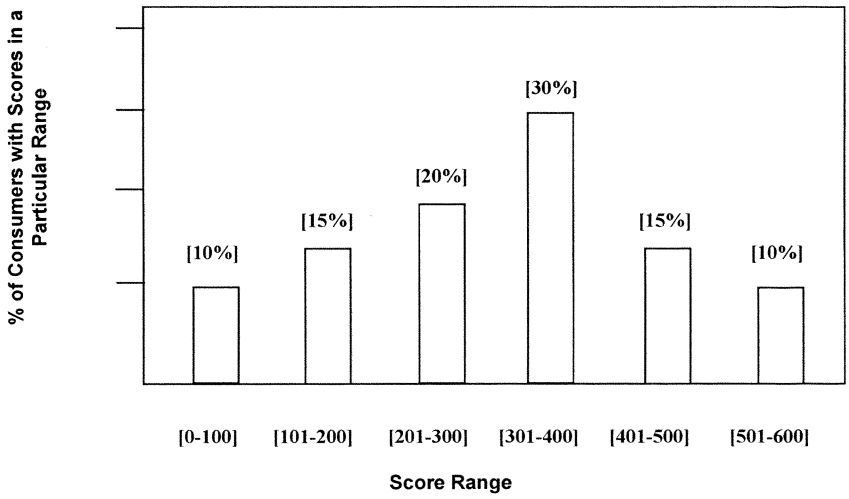
1. On pages 29004–29005, Model form H–4 is corrected to read as follows:

BILLING CODE 6210–01–P

## H-4. Model form for credit score disclosure exception for loans not secured by residential real property

**[Name of Entity Providing the Notice]**
**Your Credit Score and the Price You Pay for Credit**

| Your Credit Score | |
|---|---|
| **Your credit score** | **[Insert credit score]**<br>Source: **[Insert source]** Date: **[Insert date score was created]** |

| Understanding Your Credit Score | |
|---|---|
| **What you should know about credit scores** | Your credit score is a number that reflects the information in your credit report.<br><br>Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.<br><br>Your credit score can change, depending on how your credit history changes. |
| **How we use your credit score** | Your credit score can affect whether you can get a loan and how much you will have to pay for that loan. |
| **The range of scores** | Scores range from a low of **[Insert bottom number in the range]** to a high of **[Insert top number in the range]**.<br><br>Generally, the higher your score, the more likely you are to be offered better credit terms. |
| **How your score compares to the scores of other consumers** |  <br>**[or]** [Your credit score ranks higher than [X] percent of U.S. consumers.] |

| Checking Your Credit Report | |
|---|---|
| **What if there are mistakes in your credit report?** | You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency.<br><br>It is a good idea to check your credit report to make sure the information it contains is accurate. |
| **How can you obtain a copy of your credit report?** | Under federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year.<br><br>To order your free annual credit report—<br><br>*By telephone:* Call toll-free: 1-877-322-8228<br><br>*On the web:* Visit www.annualcreditreport.com<br><br>*By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's web site at http://www.ftc.gov/ bcp/conline/include/requestformfinal.pdf) to:<br><br>Annual Credit Report Request Service<br>P.O. Box 105281<br>Atlanta, GA 30348-5281 |
| **How can you get more information?** | For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov. |

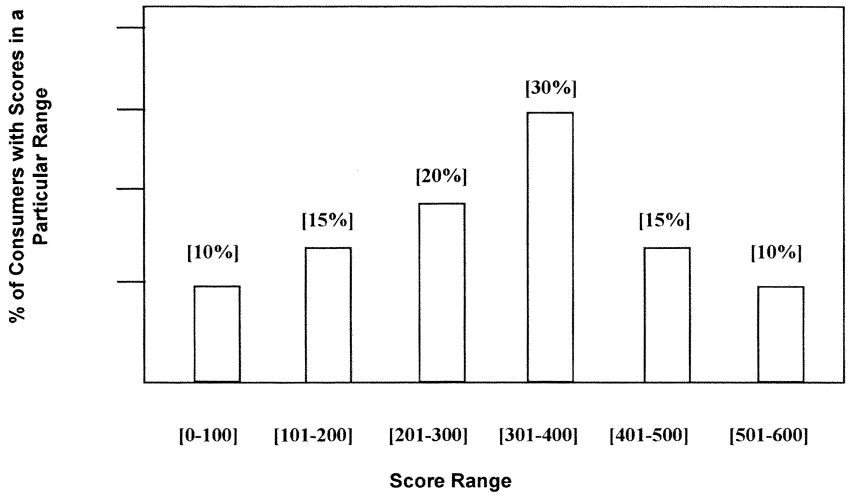
**PART 698—[CORRECTED]**

2. On pages 29018–29019, Model form B–4 is corrected to read as follows:

## B-4. Model form for credit score disclosure exception for loans not secured by residential real property

**[Name of Entity Providing the Notice]**
**Your Credit Score and the Price You Pay for Credit**

| Your Credit Score | |
|---|---|
| **Your credit score** | **[Insert credit score]**<br>Source: **[Insert source]** Date: **[Insert date score was created]** |

| Understanding Your Credit Score | |
|---|---|
| **What you should know about credit scores** | Your credit score is a number that reflects the information in your credit report.<br><br>Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.<br><br>Your credit score can change, depending on how your credit history changes. |
| **How we use your credit score** | Your credit score can affect whether you can get a loan and how much you will have to pay for that loan. |
| **The range of scores** | Scores range from a low of **[Insert bottom number in the range]** to a high of **[Insert top number in the range]**.<br><br>Generally, the higher your score, the more likely you are to be offered better credit terms. |
| **How your score compares to the scores of other consumers** |  <br>**[or]** [Your credit score ranks higher than [X] percent of U.S. consumers.] |

| Checking Your Credit Report | |
|---|---|
| **What if there are mistakes in your credit report?** | You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency.<br><br>It is a good idea to check your credit report to make sure the information it contains is accurate. |
| **How can you obtain a copy of your credit report?** | Under federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year.<br><br>To order your free annual credit report—<br><br>*By telephone:* Call toll-free: 1-877-322-8228<br><br>*On the web:* Visit www.annualcreditreport.com<br><br>*By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's web site at http://www.ftc.gov/ bcp/conline/include/requestformfinal.pdf) to:<br><br>Annual Credit Report Request Service<br>P.O. Box 105281<br>Atlanta, GA 30348-5281 |
| **How can you get more information?** | For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov. |

By order of the Secretary of the Board acting under delegated authority, May 22, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board, Federal Reserve System.*

By direction of the Commission.

**Donald S. Clark,**

*Secretary, Federal Trade Commission.*

[FR Doc. E8–11961 Filed 5–28–08; 8:45 am]

**BILLING CODE 6210–01–P, 6750–01–C**

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 721

**RIN 3133–AD12**

### Incidental Powers

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed rule.

**SUMMARY:** NCUA proposes to amend its regulation governing a federal credit union's (FCU's) incidental powers by adding illustrations of permissible activities under the categories of correspondent services, operational programs, and finder activities. These amendments will provide useful information to FCUs by clarifying and updating the illustrations regarding permissible activities.

**DATES:** Comments must be received on or before July 28, 2008.

**ADDRESSES:** You may submit comments by any of the following methods (Please send comments by one method only):

- *NCUA Web Site: http://www.ncua.gov/news/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include "[Your name] Comments on Notice of Proposed Rulemaking (Incidental Powers)" in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

**FOR FURTHER INFORMATION CONTACT:** Justin M. Anderson, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

**SUPPLEMENTARY INFORMATION:**

### A. Background

NCUA's policy is to review regulations periodically to "update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions." Interpretive Ruling and Policy Statement (IRPS) 87–2, Developing and Reviewing Government Regulations. NCUA notifies the public about the review, which is conducted on a rolling basis so that a third of its regulations are reviewed each year. This proposed rule is the result of NCUA's 2007 review under IRPS 87–2, which covered the middle third of the regulations, including part 721. The proposed changes are intended to update and clarify the regulation.

Part 721 describes the incidental powers an FCU may exercise under the incidental powers authority in the Federal Credit Union Act (Act), which provides an FCU may "exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it was incorporated." 12 U.S.C. 1775(17). The current part 721 resulted from a rulemaking involving an advance notice of proposed rulemaking in 1999, a proposed rule in 2000, and a final rule

in 2001 that replaced the former group purchasing rule. 64 FR 66413 (Nov. 26, 1999); 65 FR 70526 (Nov. 24, 2000); 66 FR 40845 (Aug. 6, 2001). The former group purchasing rule permitted FCUs to endorse and make available insurance plans and other third party products to their members and to perform administrative functions on behalf of the vendors. 12 CFR 721.1 (as codified in the CFR as of January 1, 2000). Until the revision in 2001, the former group purchasing rule had been in place with little change since 1985 and recognition of a broad range of other activities as permissible under the incidental powers authority of the Act appeared only in legal opinions NCUA's Office of General Counsel (OGC) issued. 66 FR at 40845–46.

Briefly summarized, the current incidental powers rule: provides a standard derived from well-established case law for recognizing an incidental powers activity; incorporates into broad, ''pre-approved'' categories of activities the activities legal opinions had recognized; describes an application process for adding new activities and seeking advisory opinions from NCUA's OGC on whether an activity would fit within an existing category; cautions FCUs to comply with any laws, regulations, or legal opinions applicable to the activities; expressly permits FCUs to earn income from their incidental powers activities; and sets out conflict of interest provisions. 12 CFR Part 721. The rule specifically states the examples of activities within each category are provided as illustrations and ''not as an exclusive or exhaustive list.'' 12 CFR 721.3. The broad categories include certification services, correspondent services, electronic financial services, excess capacity, financial counseling services, finder activities, loan-related products, marketing activities, monetary instrument services, operational programs, stored value products, and trustee or custodial services.

The Board believes it will be helpful to clarify certain provisions and update the rule by adding examples of activities that have been recognized as permissible incidental powers activities since 2001. Also, since 2001, questions have arisen from time to time about the sale of third-party insurance products, negotiation of discounts, endorsements, and provision of administrative services to support the sale of a third party's products or services. As noted in the preamble to the proposed rule in 2000, the Board intended to incorporate the concept of group purchasing, particularly with regard to insurance products, into the category of finder activities. 65 FR at 70527. Further, the Board specifically noted that it contemplated the negotiation of ''membership-wide rates or benefits with vendors'' as part of being a finder of products, not only insurance. *Id.* Although the continued permissibility of activities covered by the former group purchasing rule was addressed in preambles in the rulemaking several years ago, the Board believes it will be helpful to add language to the regulatory text under the finder activities category regarding negotiation of discounts, sale of third-party insurance products, and administrative functions on behalf of third-party vendors.

**B. Proposed Changes**

*Section 721.3(b): Correspondent Services With Foreign Credit Unions*

The proposed rule would recognize that FCUs may provide correspondent services to foreign as well as federal or state-chartered credit unions. Generally, correspondent service agreements address circumstances where a credit union, as a service to another credit union, provides a service to a member of the other credit union, for example, where the geographic location of the member does not permit the member's own credit union to provide the service. A typical service would be receipt of funds from a member by another credit union for credit to the member's account with his or her credit union where the member is located some distance from his or her credit union. The current rule permits correspondent services between ''credit unions'' and NCUA regulations generally define credit union to mean a federal or state chartered credit union. 12 CFR 700.2(d). In 2006, an OGC legal opinion recognized as permissible an FCU receiving funds from a member of a foreign credit union that the FCU would then transmit to the member's credit union located in a foreign country. OGC Op. 05–0915 (March 3, 2006) (available on the NCUA Web site at *ncua.gov*). To update this category in the rule, the Board proposes to revise this provision to permit FCUs to provide correspondent services to both foreign and domestic credit unions. The Board cautions, however, that credit unions should consult United States and international laws before engaging in any transaction with a foreign credit union.

*Section 721.3(f): Finder Activities*

Finder activities is the category of incidental powers that allows FCUs to introduce its members to an outside vendor so that the two sides may negotiate and consummate a transaction. 12 CFR 721.3(f). The proposed amendments clarify that finder activities include an FCU's negotiation of group discounts and the performance of administrative functions for outside vendors. As noted previously, the negotiation of group discounts was contemplated under the old group purchasing rule and ''performing administrative functions on behalf of the vendors'' was expressly included in the old rule. *See also* OGC Op. 02–0221 (April 26, 2002) (available on the NCUA Web site at ncua.gov) (An FCU, as a finder, may provide information about vendors, perform administrative functions for the parties, and negotiate group discounts or benefits on behalf of its membership). The Board believes the additional language will be a helpful clarification.

The proposed amendment would add language elaborating that vendors may be providers of non-financial products or financial products, including insurance. As noted above, the former group purchasing rule permitted FCUs to endorse and make available insurance plans and other third party products to their members and, in revising Part 721, the Board did not intend to limit previously permissible activities. Further, as noted above, the Board stated, when it was revising Part 721, that it considered promotion of third party insurance covered by the finder activities category. The Board believes specifically noting insurance as an example in the regulation will be a helpful clarification.

The Board also proposes to add language to § 721.3(f) clarifying that FCUs may act as finders for the financial products of other financial institutions. The incidental powers rule does not limit the types of vendors or products and services an FCU may promote or facilitate, and the Board believes an FCU bringing its members together with another financial institution may significantly benefit members where an FCU does not or is unable to provide to provide the product or service.

Nevertheless, as with any incidental powers activities, but particularly here where the product may be a regulated investment or financial product, FCUs must be particularly mindful of the provisions of § 721.5. This section states that, in engaging in any incidental powers activity, FCUs must comply with all applicable law and regulations. *See also* OGC Op. 02–0221 (April 26, 2002) (available on the NCUA Web site at *ncua.gov*) (FCU, as finder, may offer its members depository products of other financial institutions but should clearly understand legal and safety and soundness issues related to the activity).

Further, FCUs must be mindful that, although the rule generally permits them to perform administrative functions in connection with finder activities, in connection with the sale of financial products, FCUs must be cautious that these functions do not create an agency or brokerage relationship and trigger compliance problems under any applicable laws or regulations. FCUs unclear as to the permissibility of a particular function should consult with their own private legal counsel with expertise in the activity or may consult with NCUA's OGC.[1]

*Section 721.3(j): Payroll Services*

The proposed rule adds payroll services to the operational programs category. Generally, this category describes programs an FCU can establish to deliver products and services that enhance member service and promote safe and sound operation. 12 CFR 721.3(j). Payroll services permit an FCU to make disbursements from a business member's account to third parties, as well as deduct the appropriate amounts for income taxes and employee-paid benefit premiums. In a 2006 opinion letter, NCUA recognized that payroll services are related to other permissible activities, such as electronic financial services and payroll deductions, and concluded providing payroll services is a permissible operational program. OGC Op. 05–1204 (February 15, 2006) (available on the NCUA Web site at *ncua.gov*).

**Regulatory Procedures**

*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under $10 million in assets). This proposed rule adds to the language of preexisting permissible activities for FCUs. The proposed rule, therefore, will not have a significant economic impact on a substantial number of small credit unions and a regulatory flexibility analysis is not required.

*Paperwork Reduction Act*

NCUA has determined that the proposed amendments will not increase paperwork requirements and a paperwork reduction analysis is not required.

*Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

*The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

**List of Subjects in 12 CFR Part 721**

Credit unions, Functions, Implied powers, and Insurance.

By the National Credit Union Administration Board on May 22, 2008.

**Mary Rupp,**

*Secretary of the Board.*

For the reasons stated in the preamble, the National Credit Union Administration proposes to amend 12 CFR part 721 as set forth below:

## PART 721—INCIDENTAL POWERS

1. The authority citation for part 721 continues to read as follows:

**Authority:** 12 U.S.C. 1757(17), 1766 and 1789.

2. Amend § 721.3 as follows:

a. Amend the first sentence in paragraph (b) by adding the phrase ''including foreign credit unions'' after the words ''other credit unions''.

b. Revise paragraph (f) to read as set forth below.

c. Amend the second sentence in paragraph (j) by adding ''payroll services'' after the phrase ''payroll deduction,''.

**§ 721.3 What categories of activities are preapproved as incidental powers necessary or requisite to carry on a credit union's business?**

* * * * *

(f) *Finder activities.* Finder activities are activities in which you introduce or otherwise bring together outside vendors with your members so that the two parties may negotiate and consummate transactions and include vendors of non-financial products, vendors that are other financial institutions, and vendors of financial products such as insurance and securities. Finder activities may include endorsing a product or service, negotiating group discounts on behalf of your members, offering third party products and services to members through the sale of advertising space on your Web site, account statements and receipts, and selling statistical or consumer financial information to outside vendors to facilitate the sale of their products to your members. You may perform administrative functions on behalf of vendors to facilitate transactions between your members and another institution.

* * * * *

[FR Doc. E8–11927 Filed 5–28–08; 8:45 am]

BILLING CODE 7535–01–P

[1] For example, the Board notes FCUs should consult the Real Estate Settlement Procedures Act (RESPA) when accepting fees from a third party, as a finder of mortgage related products. NCUA's incidental powers rule permits FCUs to earn income for those activities determined to be incidental to its business. 12 CFR 721.6. RESPA, however, prohibits financial institutions from accepting fees or payments for referring members to settlement service providers in mortgage related transactions. 24 CFR 3500. FCUs acting as a finder of mortgage related products should consult RESPA to determine if the acceptance of fees in a particular transaction is prohibited.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2008–0460; Airspace Docket No. 08–AAL–18]**

### Proposed Establishment of Class E Airspace; Venetie, AK

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to establish Class E airspace at Venetie, AK. Two Standard Instrument Approach Procedures (SIAPs) and a textual Obstacle Departure Procedure (ODP) are being developed for the Venetie Airport at Venetie, AK. Adoption of this proposal would result in establishing Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at the Venetie Airport, Venetie, AK.

**DATES:** Comments must be received on or before July 14, 2008.

**ADDRESSES:** Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2008–0460/ Airspace Docket No. 08–AAL–18, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

**FOR FURTHER INFORMATION CONTACT:** Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at.*

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–0460/Airspace Docket No. 08–AAL–18.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

## Availability of Notice of Proposed Rulemakings (NPRMs)

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara/index.html.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

## The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), which would establish Class E airspace at the Venetie Airport, in Venetie, AK. The intended effect of this proposal is to create Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at the Venetie Airport, Venetie, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two SIAPs and one textual ODP for the Venetie Airport. The new SIAPs are (1) the Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 04, Original (Orig) and (2) the RNAV (GPS) RWY 22, Orig. Textual ODPs are unnamed and are published in the front of the U.S. Terminal Procedures for Alaska. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Venetie Airport area would be created by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Venetie Airport, Venetie, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at the Venetie Airport, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points,* signed August 15, 2007, and effective September 15, 2007, is to be amended as follows:

* * * * *

*Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**AAL AK E5 Venetie, AK [New]**

Venetie, Venetie Airport, AK
(Lat. 67°00′31″ N., long. 146°21′59″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Venetie Airport, AK, and 3.9 miles either side of the 062°(T)/088°(M) bearing from the Venetie Airport, AK, extending from the 6.4-mile radius to 10.1 miles northeast of the Venetie Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 70-mile radius of the Venetie Airport, AK.

* * * * *

Issued in Anchorage, AK, on May 16, 2008.

**Anthony M. Wylie,**

*Manager, Alaska Flight Services Information Area Group.*

[FR Doc. E8–11969 Filed 5–28–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2008–0447; Airspace Docket No. 08–AAL–8]**

## Proposed Establishment of Class E Airspace; Eek, AK

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to establish Class E airspace at Eek, AK. Two Standard Instrument Approach Procedures (SIAPs) and a textual Obstacle Departure Procedure (ODP) are being developed for the Eek Airport at Eek, AK. Adoption of this proposal would result in establishing Class E airspace upward from 700 feet (ft.) above the surface at the Eek Airport, Eek, AK.

**DATES:** Comments must be received on or before July 14, 2008.

**ADDRESSES:** Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2008–0447/ Airspace Docket No. 08–AAL–8, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

**FOR FURTHER INFORMATION CONTACT:** Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–0447/Airspace Docket No. 08–AAL–8.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of Notice of Proposed Rulemakings (NPRMs)**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara/index.html.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking

Distribution System, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), which would establish Class E airspace at the Eek Airport, in Eek, AK. The intended effect of this proposal is to create Class E airspace upward from 700 ft. above the surface to contain Instrument Flight Rules (IFR) operations at the Eek Airport, Eek, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two SIAPs and one textual ODP for the Eek Airport. The new SIAPs are (1) the Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 17, Original (Orig) and (2) the RNAV (GPS) RWY 35, Orig. Textual ODPs are unnamed and are published in the front of the U.S. Terminal Procedures for Alaska. Class E controlled airspace extending upward from 700 ft. above the surface in the Eek Airport area would be created by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Eek Airport, Eek, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9R, *Airspace Designations and Reporting Points,* signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at the Eek Airport, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points,* signed August 15, 2007, and effective September 15, 2007, is to be amended as follows:

* * * * *

*Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**AAL AK E5 Eek, AK [New]**

Eek, Eek Airport, AK
(Lat. 60°13′07″ N., long. 162°01′25″ W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the Eek Airport, AK.

* * * * *

Issued in Anchorage, AK, on May 16, 2008.

**Anthony M. Wylie,**

*Manager, Alaska Flight Services Information Area Group.*

[FR Doc. E8–11968 Filed 5–28–08; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2008–0111; Airspace Docket No. 08–AAL–2]**

## Proposed Establishment of Class E Airspace; White Hills, AK

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

**ACTION:** Proposed rule: withdrawal.

**SUMMARY:** This action withdraws the notice of proposed rulemaking (NPRM) published in the **Federal Register** on February 19, 2008. The FAA proposed to establish Class E airspace at the White Hills Airstrip, AK, to support the installation of instrument approach procedures. The FAA has since been advised by the proponent that the airstrip will not be used for instrument approaches in the near term. Therefore, the FAA has determined that withdrawal of the proposed rule is warranted.

**DATES:** *Effective Date:* May 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

**SUPPLEMENTARY INFORMATION:** On February 19, 2008, an NPRM was published in the **Federal Register** (73 FR 9059) proposing to amend 14 CFR part 71 to establish Class E airspace around the White Hills airstrip in the location known as White Hills, AK. Subsequent to the NPRM publication, the proponent informed the FAA that their plans to implement instrument approaches at the airstrip had been cancelled. As a result the Class E airspace will not be required.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Withdrawal**

In consideration of the foregoing, the Notice of Proposed Rulemaking, Airspace Docket No. 08–AAL–2, as

published in the **Federal Register** on February 19, 2008 (73 FR 9059), is hereby withdrawn.

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

Issued in Anchorage, AK, on May 16, 2008.

**Anthony M. Wylie,**

*Manager, Alaska Flight Services Information Area Group.*

[FR Doc. E8–11970 Filed 5–28–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2008–0456; Airspace Docket No. 08–AAL–15]**

## Proposed Revision of Class E Airspace; Prospect Creek, AK

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to revise Class E airspace at Prospect Creek, AK. Three Special Standard Instrument Approach Procedures (SIAPs) are being developed for the Prospect Creek Airport at Prospect Creek, AK. Additionally, two Special SIAPs and a Special textual Obstacle Departure Procedure (ODP) are being amended. Adoption of this proposal would result in revision of existing Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at the Prospect Creek Airport, Prospect Creek, AK.

**DATES:** Comments must be received on or before July 14, 2008.

**ADDRESSES:** Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2008–0456/ Airspace Docket No. 08–AAL–15, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

**FOR FURTHER INFORMATION CONTACT:** Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–0456/Airspace Docket No. 08–AAL–15.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of Notice of Proposed Rulemakings (NPRMs)

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara/index.html.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application process.

### The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), which would revise the Class E airspace at the Prospect Creek Airport, in Prospect Creek, AK. The intended effect of this proposal is to revise Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at the Prospect Creek Airport, Prospect Creek, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed three Special SIAPs for the Prospect Creek Airport. Additionally, two Special SIAPs and a Special textual ODP are being amended. The new SIAPs are (1) the Area Navigation (RNAV) Global Positioning System (GPS) Y Runway (RWY) 01, Special, Original (Orig), (2) the RNAV (GPS) Z RWY 01, Special, Orig and (3) the RNAV (GPS) RWY 19, Special, Orig. The two new SIAPs are (1) the Nondirectional Beacon (NDB) RWY 01, Special, Amendment (Amdt) 1 and (2) the Simplified Directional Facility (SDF)/Distance Measuring Equipment (DME), RWY 01, Special, Orig. These procedures are funded privately and are not published in the U.S. Terminal Procedures Alaska publication. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Prospect Creek Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Prospect Creek Airport, Prospect Creek, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA

Order 7400.9R, *Airspace Designations and Reporting Points,* signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at the Prospect Creek Airport, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points,* signed August 15, 2007, and effective September 15, 2007, is to be amended as follows:

* * * * *

*Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**AAL AK E5 Prospect Creek, AK [Revised]**

Prospect Creek, Prospect Creek Airport, AK
(Lat. 66°48′50″ N., long. 150°38′37″ W.)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of the Prospect Creek Airport, AK, and extending 2.0 miles either side of a line from 66°55′50″ N. 150°32′43″ W. to 67°02′47″ N. 150°34′16″ W. extending beyond the 11-mile radius, and 4.5 miles east and 4 miles west of the 214°(T)/241°(M) bearing from the Prospect Creek Airport, AK, extending from the 11-mile radius to 13 miles southwest of the Prospect Creek Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 72-mile radius of the Prospect Creek Airport, AK.

* * * * *

Issued in Anchorage, AK, on May 16, 2008.

**Anthony M. Wylie,**

*Manager, Alaska Flight Services Information Area Group.*

[FR Doc. E8–11972 Filed 5–28–08; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2008–0451; Airspace Docket No. 08–AAL–10]**

## Proposed Revision of Class E Airspace; Kake, AK

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to revise Class E airspace at Kake, AK. A Standard Instrument Approach Procedure (SIAP) and Standard Instrument Departure (SID) procedure are being developed for the Kake Airport at Kake, AK. Additionally, a Special Area Navigation (RNAV) SID and two SIAPs are being amended. Adoption of this proposal would result in revision of existing Class E airspace upward from 700 feet (ft.) above the surface at the Kake Airport, Kake, AK.

**DATES:** Comments must be received on or before July 14, 2008.

**ADDRESSES:** Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2008–0451/ Airspace Docket No. 08–AAL–10, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

**FOR FURTHER INFORMATION CONTACT:** Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above.

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–0451/Airspace Docket No. 08–AAL–10.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of Notice of Proposed Rulemakings (NPRMs)**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents' Web page at *http://www.access.gpo.gov/nara/index.html.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would revise the Class E airspace at the Kake Airport, in Kake, AK. The intended effect of this proposal is to revise Class E airspace upward from 700 ft. above the surface to contain Instrument Flight Rules (IFR) operations at the Kake Airport, Kake, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed one SIAP and one SID for the Kake Airport. Additionally, two SIAPs and one Special Aircraft and Aircrew Authorization Required (SAAAR) RNAV SID are being amended. The new SIAP and SID are (1) the RNAV Global Positioning System (GPS) Runway (RWY) 11, Original (Orig) and (2) the KAKE ONE SID. The amended SIAPs and Special SAAAR SID are (1) the RNAV (GPS) A, Amendment (Amdt) 1, (2) the Nondirectional Beacon (NDB)/Distance Measuring Equipment (DME) RWY 11, Amdt 1 and (3) the WUSID TWO RNAV SID (SAAAR). SAAAR procedures are flown in aircraft that are specially equipped with certain precision RNAV navigation equipment on board and by aircrews that possess special training to fly the procedures. Class E controlled airspace extending upward from 700 ft. above the surface in the Kake Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Kake Airport, Kake, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at the Kake Airport, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, is to be amended as follows:

* * * * *

*Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**AAL AK E5 Kake, AK [Revised]**

Kake, Kake Airport, AK
(Lat. 56°57′41″ N., long. 133°54′37″ W.)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of the Kake Airport, AK.

* * * * *

Issued in Anchorage, AK, on May 16, 2008.

**Anthony M. Wylie,**

*Manager, Alaska Flight Services Information Area Group.*

[FR Doc. E8–11973 Filed 5–28–08; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2008–0452; Airspace Docket No. 08–AAL–11]**

## Proposed Revision of Class E Airspace; Kivalina, AK

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to revise Class E airspace at Kivalina, AK. Two Standard Instrument Approach Procedures (SIAPs) are being amended for the Kivalina Airport at Kivalina, AK. Additionally, one textual Obstacle Departure Procedure (ODP) is being developed. Adoption of this proposal would result in revision of existing Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at the Kivalina Airport, Kivalina, AK.

**DATES:** Comments must be received on or before July 14, 2008.

**ADDRESSES:** Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2008–0452/ Airspace Docket No. 08–AAL–11, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

**FOR FURTHER INFORMATION CONTACT:** Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–0452/Airspace Docket No. 08–AAL–11.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of Notice of Proposed Rulemakings (NPRMs)

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents' Web page at *http://www.access.gpo.gov/nara/index.html.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would revise the Class E airspace at the Kivalina Airport, in Kivalina, AK. The intended effect of this proposal is to revise Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at the Kivalina Airport, Kivalina, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has amended two SIAPs for the Kivalina Airport. The amended SIAPs are (1) the Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 12, Amendment (Amdt) 1 and (2) the RNAV (GPS) RWY 30, Amdt 1. Textual ODPs are unnamed and are published in the front of the U.S. Terminal Procedures for Alaska. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Kivalina Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Kivalina Airport, Kivalina, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at the Kivalina Airport, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, is to be amended as follows:

* * * * *

*Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**AAL AK E5 Kivalina, AK [Revised]**

Kivalina, Kivalina Airport, AK
(Lat. 67°44′10″ N., long. 164°33′49″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Kivalina Airport, AK, and 3.9 miles either side of the 317°(T)/333°(M) bearing from the Kivalina Airport, AK, extending from the 6.5-mile radius to 11.1 miles northwest of the Kivalina Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Kivalina Airport, AK.

* * * * *

Issued in Anchorage, AK, on May 16, 2008.

**Anthony M. Wylie,**

*Manager, Alaska Flight Services Information Area Group.*

[FR Doc. E8–11978 Filed 5–28–08; 8:45 am]

**BILLING CODE 4910–13–P**

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2008–0448; Airspace Docket No. 08–AAL–9]**

## Proposed Revision of Class E Airspace; Gulkana, AK

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to revise Class E airspace at Gulkana, AK. Two Standard Instrument Approach Procedures (SIAPs) are being amended for the Gulkana Airport at Gulkana, AK. Adoption of this proposal would result in revision of existing Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at the Gulkana Airport, Gulkana, AK. The present Class E2 Surface Area is not being amended.

**DATES:** Comments must be received on or before July 14, 2008.

**ADDRESSES:** Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2008–0448/Airspace Docket No. 08–AAL–9 at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

**FOR FURTHER INFORMATION CONTACT:** Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–0448/Airspace Docket No. 08–AAL–9.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of Notice of Proposed Rulemakings (NPRMs)

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents' Web page at *http://www.access.gpo.gov/nara/index.html.*

Additionally, any person may obtain a copy of this notice by submitting a

request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), which would revise the Class E airspace at the Gulkana Airport, in Gulkana, AK. The intended effect of this proposal is to revise Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at the Gulkana Airport, Gulkana, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has amended two SIAPs for the Gulkana Airport. The amended SIAPs are (1) the Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 15, Amendment (Amdt) 2 and (2) the RNAV (GPS) RWY 33, Amdt 2. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Gulkana Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Gulkana Airport, Gulkana, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at the Gulkana Airport, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, is to be amended as follows:

* * * * *

*Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**AAL AK E5 Gulkana, AK [Revised]**

Gulkana, Gulkana Airport, AK
(Lat. 62°09′18″ N., long. 145°27′16″ W.)
Gulkana VOR/DME, AK
(Lat. 62°09′14″ N., long. 145°26′50″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Gulkana Airport, AK, and within 4 miles east and 4 miles west of the 178°(T)/201°(M) radial of the Gulkana VOR/DME, AK, extending from the 6.5-mile radius to 12.5 miles south of the Gulkana Airport, AK, and within 4 miles either side of the 351°(T)/014°(M) radial of the Gulkana VOR/DME, AK, extending from the 6.5-mile radius to 12.5 miles north of the Gulkana Airport, AK; and that airspace extending upward from 1,200 ft. above the surface within a 67-mile radius of the Gulkana Airport, AK.

* * * * *

Issued in Anchorage, AK, on May 16, 2008.

**Anthony M. Wylie,**

*Manager, Alaska Flight Services Information Area Group.*

[FR Doc. E8–11976 Filed 5–28–08; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2008–0457; Airspace Docket No. 08–AAL–16]**

## Proposed Revision of Class E Airspace; Red Dog, AK

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to revise Class E airspace at Red Dog, AK. A Special Standard Instrument Approach Procedure (SIAP) and a Special textual Obstacle Departure Procedure (ODP) are being developed for the Red Dog Airport at Red Dog, AK. Additionally, a Special SIAP is being amended. Adoption of this proposal would result in revision of existing Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at the Red Dog Airport, Red Dog, AK.

**DATES:** Comments must be received on or before July 14, 2008.

**ADDRESSES:** Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the

docket number FAA–2008–0457/ Airspace Docket No. 08–AAL–16, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

**FOR FURTHER INFORMATION CONTACT:** Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–0457/Airspace Docket No. 08–AAL–16.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

## Availability of Notice of Proposed Rulemakings (NPRMs)

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents' Web page at *http://www.access.gpo.gov/nara/index.html.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

## The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would revise the Class E airspace at the Red Dog Airport, in Red Dog, AK. The intended effect of this proposal is to revise Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at the Red Dog Airport, Red Dog, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed one Special SIAP and one Special textual ODP for the Red Dog Airport. Additionally, one Special SIAP is being amended. The new SIAP is the Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 03, Special, Original (Orig). The new SIAP is the Nondirectional Beacon (NDB)/ Distance Measuring Equipment (DME) RWY 03, Special, Amendment (Amdt) 1. These procedures are funded privately and are not published in the U.S. Terminal Procedures Alaska publication. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Red Dog Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Red Dog Airport, Red Dog, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9R, *Airspace Designations and Reporting Points,* signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at the Red Dog Airport, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points,* signed August 15, 2007, and effective September 15, 2007, is to be amended as follows:

* * * * *

*Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**AAL AK E5 Red Dog, AK [Revised]**

Red Dog Airport, AK
(Lat. 68°01′56″ N., long. 162°54′14″ W.)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of the Red Dog Airport, AK, and 4 miles either side of the 219°(T)/238°(M) bearing from the Red Dog Airport, AK, extending from the 11-mile radius to 14.5 miles southwest of the Red Dog Airport, AK; and that airspace extending upward from 1,200 ft. above the surface within a 72.5-mile radius of the Red Dog Airport, AK.

* * * * *

Issued in Anchorage, AK, on May 16, 2008.

**Anthony M. Wylie,**

*Manager, Alaska Flight Services Information Area Group.*

[FR Doc. E8–11971 Filed 5–28–08; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 201

**[Docket No. FDA–2006–N–0515] (Formerly Docket No. 2006N–0467)**

**RIN 0910–AF11**

## Content and Format of Labeling for Human Prescription Drug and Biological Products; Requirements for Pregnancy and Lactation Labeling

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

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend its regulations concerning the format and content of the ''Pregnancy'', ''Labor and delivery'', and ''Nursing mothers'' subsections of the ''Use in Specific Populations'' section of the labeling for human prescription drug and biological products. The agency is proposing to require that labeling include a summary of the risks of using a drug during pregnancy and lactation and a discussion of the data supporting that summary. The labeling would also include relevant clinical information to help health care providers make prescribing decisions and counsel women about the use of drugs during pregnancy and/or lactation. The proposal would eliminate the current pregnancy categories A, B, C, D, and X. The ''Labor and delivery'' subsection would be eliminated because information on labor and delivery is included in the proposed ''Pregnancy'' subsection. The proposed rule is intended to create a consistent format for providing information about the effects of a drug on pregnancy and lactation that will be useful for decisionmaking by women of childbearing age and their health care providers.

**DATES:** Submit written or electronic comments on the proposed rule by August 27, 2008. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 by June 30, 2008, (see the ''Paperwork Reduction Act of 1995'' section of this document).

**ADDRESSES:** You may submit comments, identified by Docket No. FDA–2006–N–0515 and/or RIN number 0910–AF11, by any of the following methods, except that comments on information collection issues under the Paperwork Reduction Act of 1995 must be submitted to the Office of Regulatory Affairs, Office of Management and Budget (OMB) (see the ''Paperwork Reduction Act of 1995'' section of this document).

*Electronic Submissions*

Submit electronic comments in the following way:

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

*Written Submissions*

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

*Instructions*: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket*: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts, and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:**

Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041, or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N Rockville, MD 20856, 301–827–6210.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Current Pregnancy, Labor and Delivery, and Lactation Labeling

II. FDA's Examination of Pregnancy Labeling
A. Part 15 Hearing on the Pregnancy Labeling Categories
B. Development of a Model Pregnancy Labeling Format
C. Focus Group Testing of Model Pregnancy Labeling Format
D. Advisory Committee Assessment of Pregnancy Labeling Concepts
E. Focus Group Testing of Pregnancy Risk Statements
III. FDA's Examination of Labeling on Lactation
A. Recommendations on Lactation Labeling From Part 15 Hearing
B. Advisory Committee on Lactation Labeling Issues
C. The Need for Informative Lactation Labeling
IV. Description of the Proposed Rule
A. General Description of the Format and Content of the Pregnancy and Lactation Subsections of Labeling
B. Pregnancy Subsection
C. Lactation Subsection
D. Removing the Pregnancy Designation
V. Implementation Plan for the Proposed Rule
A. General
B. New Content (Proposed § 201.57(c)(9)(i) and (c)(9)(ii))
C. Removing the Pregnancy Category (Proposed § 201.80(f)(6))
VI. Legal Authority
VII. Environmental Impact
VIII. Analysis of Impacts
A. Need for the Proposed Rule
B. Scope of the Proposed Rule
C. Costs of the Proposed Rule
D. Benefits of the Proposed Rule
E. Impacts on Small Entities
F. Alternatives Considered
IX. Paperwork Reduction Act of 1995
X. Federalism
XI. Request for Comments
XII. References
Appendix

## I. Current Pregnancy, Labor and Delivery, and Lactation Labeling

Under the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352 and 355), FDA has responsibility for ensuring that prescription drug and biological products (both referred to as ''drugs'' in this proposed rule) are accompanied by labeling (including prescribing information) that summarizes scientific information concerning their safe and effective use. FDA regulations on labeling for use during pregnancy, during labor and delivery, and by nursing mothers were originally issued in 1979 as part of a rule prescribing the content and format for labeling for human prescription drugs (21 CFR part 201) (44 FR 37434, June 26, 1979).[1] The requirements on content and format of labeling for human prescription drug and biological products were revised on January 24, 2006 (71 FR 3922).[2] As part of the 2006 revision, the subsections of the labeling on pregnancy, labor and delivery, and nursing mothers were moved from the ''Precautions'' section under § 201.57 to the ''Use in Specific Populations'' section. The content of these sections in part 201 (21 CFR part 201) was not revised, but they were redesignated as §§ 201.57(c)(9)(i) through (c)(9)(iii). The previous labeling regulation (adopted in 1979) was redesignated § 201.80, and this regulation applies to products not affected by the January 24, 2006, revisions. In redesignated § 201.80, the subsections on pregnancy, labor and delivery, and nursing mothers are § 201.80(f)(6) through (f)(8)).

The current regulations provide that, unless a drug is not absorbed systemically and is not known to have a potential for indirect harm to a fetus, a ''Pregnancy'' subsection must be included within the ''Use in Specific Populations'' section of the labeling. The ''Pregnancy'' subsection must contain information on the drug's teratogenic effects and other effects on reproduction and pregnancy. When available, a description of human studies with the drug and data on its effects on later growth, development, and functional maturation of the child must also be included. The regulations require that each product be classified under one of five pregnancy categories (A, B, C, D, or X) on the basis of risk of reproductive and developmental adverse effects or, for certain categories, on the basis of such risk weighed against potential benefit.

Currently, §§ 201.57(c)(9)(i)(A)(1) through (c)(9)(i)(A)(5) and 201.80(f)(6)(i)(a) specify the following pregnancy category designations and language:

- *Pregnancy Category A*

For pregnancy category A, if adequate and well-controlled studies in pregnant women have failed to demonstrate a risk to the fetus in the first trimester of pregnancy (and there is no evidence of a risk in later trimesters), the labeling must state:

Pregnancy Category A. Studies in pregnant women have not shown that (*name of drug*) increases the risk of fetal abnormalities if administered during the first (*second, third, or all*) trimester(s) of pregnancy. If this drug is used during pregnancy, the possibility of fetal harm appears remote. Because studies cannot rule out the possibility of harm, however, (*name of drug*) should be used during pregnancy only if clearly needed.

If animal reproduction studies are also available and they fail to demonstrate a risk to the fetus, the labeling must also state:

Reproduction studies have been performed in (*kinds of animal(s)*) at doses up to (*x*) times the human dose and have revealed no evidence of impaired fertility or harm to the fetus due to (*name of drug*).

- *Pregnancy Category B*

For pregnancy category B, if animal reproduction studies have failed to demonstrate a risk to the fetus and there are no adequate and well-controlled studies in pregnant women, the labeling must state:

Pregnancy Category B. Reproduction studies have been performed in (*kind(s) of animal(s)*) at doses up to (*x*) times the human dose and have revealed no evidence of impaired fertility or harm to the fetus due to (*name of drug*). There are, however, no adequate and well-controlled studies in pregnant women. Because animal reproduction studies are not always predictive of human response, this drug should be used in pregnancy only if clearly needed.

If animal reproduction studies have shown an adverse effect (other than decrease in fertility), but adequate and well-controlled studies in pregnant women have failed to demonstrate a risk to the fetus during the first trimester of pregnancy (and there is no evidence of a risk in later trimesters), the labeling must state:

Pregnancy Category B. Reproduction studies in (*kind(s) of animal(s)*) have shown (*describe findings*) at (*x*) times the human dose. Studies in pregnant women, however, have not shown that (*name of drug*) increases the risk of abnormalities when administered during the first (*second, third, or all*) trimester(s) of pregnancy. Despite the animal findings, it would appear that the possibility of fetal harm is remote, if the drug is used during pregnancy. Nevertheless, because the studies in humans cannot rule out the possibility of harm, (*name of drug*) should be used during pregnancy only if clearly needed.

- *Pregnancy Category C*

For pregnancy category C, if animal reproduction studies have shown an adverse effect on the fetus, if there are no adequate and well-controlled studies in humans, and if the benefits from the use of the drug in pregnant women may be acceptable despite its potential risks, the labeling must state:

Pregnancy Category C. (*Name of drug*) has been shown to be teratogenic (or to have an

[1] Thus, the labeling for drugs originally approved before 1979 may not contain the information required by these regulations regarding pregnancy, labor and delivery, and nursing mothers.

[2] FDA's regulations governing the content and format of labeling for human prescription drug products are contained in §§ 201.56, 201.57, and 201.80. Although those regulations do not specifically mention the term ''biologics,'' under the act most biologics are drugs that require a prescription and, thus, are subject to these regulations.

embryocidal effect or other adverse effect) in (*name(s) of species*) when given in doses (*x*) times the human dose. There are no adequate and well-controlled studies in pregnant women. (*Name of drug*) should be used during pregnancy only if the potential benefit justifies the potential risk to the fetus.

If there are no animal reproduction studies and no adequate and well-controlled studies in humans, the labeling must state:

Pregnancy Category C. Animal reproduction studies have not been conducted with (*name of drug*). It is also not known whether (*name of drug*) can cause fetal harm when administered to a pregnant woman or can affect reproduction capacity. (*Name of drug*) should be given to a pregnant woman only if clearly needed.

• *Pregnancy Category D*

For pregnancy category D, if there is positive evidence of human fetal risk based on adverse reaction data from investigational or marketing experience or studies in humans, but the potential benefits from the use of the drug in pregnant women may be acceptable despite its potential risks, the labeling must state: ''Pregnancy Category D. See 'Warnings and Precautions' section'' (for § 201.57(c)(9)(i)(A)(4)) or ''Pregnancy Category D. See 'Warnings' Section'' (for § 201.80(f)(6)(i)(d)). Under the ''Warnings and Precautions'' or ''Warnings'' section, the labeling must state:

(*Name of drug*) can cause fetal harm when administered to a pregnant woman. (*Describe the human data and any pertinent animal data.*) If this drug is used during pregnancy, or if the patient becomes pregnant while taking this drug, the patient should be apprised of the potential hazard to a fetus.

• *Pregnancy Category X*

For pregnancy category X, if studies in animals or humans have demonstrated fetal abnormalities or if there is positive evidence of fetal risk based on adverse reaction reports from investigational or marketing experience, or both, and the risk of the use of the drug in a pregnant woman clearly outweighs any possible benefit, the labeling must state: ''Pregnancy Category X. See 'Contraindications' section.'' Under ''Contraindications,'' the labeling must state:

(*Name of drug*) may (*can*) cause fetal harm when administered to a pregnant woman. (*Describe the human data and any pertinent animal data.*) (*Name of drug*) is contraindicated in women who are or may become pregnant. If this drug is used during pregnancy, or if the patient becomes pregnant while taking this drug, the patient should be apprised of the potential hazard to a fetus.

With regard to labor and delivery, the current regulations state at § 201.57(c)(9)(ii) and § 201.80(f)(7) that, under certain circumstances, the labeling must include information on the effects of the drug on, among other things, the mother and the fetus, the duration of labor and delivery, and the effect of the drug on the later growth, development, and functional maturation of the child.

With regard to labeling on lactation, under current FDA regulations, a ''Nursing mothers'' subsection must be included in either the ''Use in Specific Populations'' section of the labeling (§ 201.57(c)(9)(iii)) or the ''Precautions'' section of the labeling (§ 201.80(f)(8)). The ''Nursing mothers'' subsections provide that if a drug is absorbed systemically, the labeling must contain information about excretion of the drug in human milk and effects on the nursing infant, as well as a description of any pertinent adverse effects observed in animal offspring. The ''Nursing mothers'' subsections require the use of certain standard statements.

If the drug is known to be excreted in human milk and is associated with serious adverse reactions or has a known tumorigenic potential, the labeling must state: ''Because of the potential for serious adverse reactions in nursing infants from (*name of drug*) (or, ''Because of the potential for tumorigenicity shown for (*name of drug*) in (*animal or human*) studies), a decision should be made whether to discontinue nursing or to discontinue the drug, taking into account the importance of the drug to the mother.''

If the drug is known to be excreted in human milk, but is not associated with serious adverse reactions and does not have a known tumorigenic potential, the labeling must state: ''Caution should be exercised when (*name of drug*) is administered to a nursing woman.''

If information on excretion in human milk is unknown and the drug is associated with serious adverse reactions or has a known tumorigenic potential, the labeling must state: ''It is not known whether this drug is excreted in human milk. Because many drugs are excreted in human milk and because of the potential for serious adverse reactions in nursing infants from (*name of drug*) (or, ''Because of the potential for tumorigenicity shown for (*name of drug*) in (*animal or human*) studies), a decision should be made whether to discontinue nursing or to discontinue the drug, taking into account the importance of the drug to the mother.''

If information on excretion in human milk is unknown, but the drug is not associated with serious adverse reactions and does not have a known tumorigenic potential, the labeling must state: ''It is not known whether this drug is excreted in human milk. Because many drugs are excreted in human milk, caution should be exercised when (*name of drug*) is administered to a nursing woman.''

## II. FDA's Examination of Pregnancy Labeling

### *A. Part 15 Hearing on the Pregnancy Labeling Categories*

In September 1997, the agency held a part 15 hearing (21 CFR part 15) on the current category requirements for pregnancy labeling (62 FR 41061, July 31, 1997). The agency sought comment on the practical utility and effects of the pregnancy categories as well as on problems associated with the categories. The agency also sought input on ways to address problems with the categories, including suggestions for possible alternatives to the categories for communicating information on reproductive and developmental toxicity. The following are the specific issues the agency sought comment and data on, followed by a summary of the comments received and the discussion related to those comments:

(1) *The agency requested comment on the extent to which the category designations are relied upon in making decisions about drug therapy in pregnant women and women of childbearing potential and decisions about inadvertent fetal exposure, the extent to which such reliance may be misplaced, and the extent to which such reliance may have untoward public health consequences.*

Participants stated that because the categories appear to provide a simple, convenient measure of risk, they are routinely relied upon by health care providers and others in making decisions about drug therapy in pregnant women and women of childbearing age. There was concern that, because these decisions are more complex than the category designations suggest, such reliance may often be misplaced and could result in poorly informed clinical decisionmaking.

(2) *The agency requested comment on the extent to which current pregnancy labeling (category designation and accompanying narrative text) is effective in communicating risk of reproductive and developmental toxicity.*

Participants stated that the current categories are confusing and overly simplistic and, therefore, not adequate to effectively communicate risk of reproductive and developmental toxicity. A major problem identified by the participants is that the categories convey the incorrect impression that developmental risk increases from category A to B to C to D to X when, in fact, the criteria for inclusion in the categories are not based solely on

increasing risk. Categories C, D, and X also consider risk weighed against benefit. Thus, drugs in categories C or D may pose risks similar to a drug in Category X based on animal or human data, but may be categorized differently based on different risk-benefit considerations.

Participants stated that the categories also create the incorrect impression that drugs within a given category have similar potential to cause developmental toxicity. In fact, because the descriptive criteria for the individual categories focus largely on whether the available data have identified a potential hazard, they permit assignment of drugs to the same category when the severity, incidence, and types of risk may be quite different. The criteria also permit drugs with known risks and drugs with no known risks to be placed in the same category. Specifically, category C (which includes more than 60 percent of all products with a pregnancy category)[3] includes both drugs with demonstrated adverse reproductive effects in animals and drugs for which no animal studies have been performed.

Participants also expressed concern that current labeling can be confusing because the way risk is characterized does not readily discriminate among potential developmental adverse effects on the basis of severity, incidence, or type of adverse effects, nor does it make a distinction between the nature of the data (e.g., possible effects in humans based on animal data versus known effects that have been observed in humans) and the quality of the data (e.g., statistical significance, study design) that identified the effects. In addition, current labeling often does not indicate whether there are degrees of risk based on the dose, duration, frequency, route of exposure, and gestational timing of exposure to a given product.

(3) *The agency requested comment on the extent to which current pregnancy labeling may not adequately address the range of issues that may bear on decisions about drug therapy in pregnant women and women of childbearing potential and decisions about inadvertent fetal exposure (e.g., indication-specific concerns, pregnancy status, magnitude of exposure, incidental exposure, chronic exposure, timing of exposure).*

Participants stated that current pregnancy labeling does not adequately address the range of clinical situations in which information about drug exposure in pregnancy is needed. Specifically, current pregnancy labeling focuses almost entirely on prospective considerations of whether to prescribe a drug for a pregnant woman and rarely addresses inadvertent exposure. However, because approximately 50 percent of pregnancies are unplanned (Ref. 1), there is significant potential for inadvertent exposure to a drug before a pregnancy is detected. Participants expressed strong support for addressing inadvertent exposure issues in pregnancy labeling because clinical decisions about inadvertent exposures often involve deciding whether to terminate pregnancies due to the exposure. It was also pointed out that a statement about the risk associated with use of a drug during pregnancy should be put in the context of the background risk of adverse fetal outcomes.

(4) *The agency requested comment on additional information (data or interpretation of data) that could be included in pregnancy labeling to better address the range of issues that bear on decisions about drug therapy in pregnant women and women of childbearing potential and decisions about inadvertent fetal exposure.*

Participants stated that current pregnancy labeling does not adequately address the full range of potential developmental toxicities—fetal death, structural malformations, perturbations of fetal growth, and functional deficits. There were also concerns that current labeling does not present enough of the evidentiary basis for the category designation or adequately discuss the potential relevance of animal data to humans. Participants urged FDA to implement a mechanism to routinely update the ''Pregnancy'' subsection of labeling after a drug is marketed to include human exposure information as it becomes available. Several participants spoke favorably about the utility of pregnancy exposure registries. FDA was also encouraged to expand its assessment of the adequacy of pregnancy labeling to include what was then called the ''Nursing mothers'' subsection and to incorporate discussions of a product's effects on fertility, pregnancy, and lactation into a single labeling subsection. Some participants also expressed concern that current pregnancy labeling fails to discuss the risks, sometimes serious, of foregoing medically necessary medication during pregnancy.

(5) *The agency requested comment on options to improve communication of reproductive and developmental risk in labeling, which could include alternatives to the categories (both content and format options) or efforts to make the current category scheme and accompanying narrative text more consistent and informative.*

Most participants stated that the current letter categories should be replaced with a concise narrative summarizing a product's risks to pregnant women and women of childbearing age, and the clinical implications of such risks. To aid comprehension and facilitate evaluation of therapeutic options, it was recommended that the narratives contain common core elements. Some comments also supported providing a conclusive statement or recommendation about clinical use. FDA also was encouraged to take steps to better understand how language used in pregnancy labeling to communicate risk is perceived by health care providers.

*B. Development of a Model Pregnancy Labeling Format*

After the part 15 hearing testimony and comments, FDA decided to revise its pregnancy labeling regulations and began to develop a model format to address the concerns raised about the existing format. The model format was designed to prominently display important information relevant to managing the risks of fetal and maternal adverse effects in the clinical setting, provide a summary of the risks that are the basis for the clinical care recommendations, and provide an overview of the data that are the basis for the risk conclusions. Accordingly, the model format divided the ''Pregnancy'' subsection into three components: (1) Clinical management statement, (2) summary risk assessment, and (3) discussion of data. The model format replaced the letter categories with concise conclusions about risk presented in narrative form, in large part to address concerns that users of the labeling might misinterpret the categories as presenting gradations of risk and as indicating that drugs in a given category pose similar risks. The model format also separated clinical management information from the risk assessment. This separation was intended to address concerns that the current categories (category X, in particular) appear to represent only risk assessments, but, in some cases, actually represent risk-benefit considerations. The three distinct labeling components were intended to clearly differentiate between the clinical management information, the risk conclusions, and the data that underpin the risk conclusions.

[3] Based on searches of the 2001 and 2002 electronic version of the *Physicians' Desk Reference* (Ref. 39).

*C. Focus Group Testing of Model Pregnancy Labeling Format*

FDA sought practical feedback on the model format the agency had developed for the ''Pregnancy'' subsection at the 15th Annual Clinical Update in Obstetrics and Gynecology Conference in February 1999 (February 1999 Conference). At this conference, FDA conducted two focus groups that included obstetrician-gynecologists and family practitioners. One of the groups also included a reproductive endocrinologist.

Participants were provided with sample ''Pregnancy'' subsections of labeling for three fictitious drugs. One sample used the current pregnancy labeling format and the other two used the model format that FDA had developed based on recommendations from the part 15 hearing. The feedback the agency sought and the responses it received from the participants were as follows:

(1) *What factors did they take into account when prescribing for a pregnant woman and what information did they rely on?*

Focus group members indicated that they rely on the pregnancy categories as a guide for prescribing and that they also rely on colleagues for advice.

(2) *What was the availability and quality of data they relied on in making prescribing decisions for pregnant women?*

The major concern of focus group members was the absence of human data. They indicated a willingness to rely on animal data in the absence of human data if the labeling provided some correlation to human dosing. They also recommended that if human data were available, they should take precedence over animal data in making risk conclusions.

(3) *What were their overall impressions of the sample labeling formats, including their thoughts about the formats generally and the clinical management section in particular?*

Focus group members preferred the model pregnancy labeling formats that had been developed based on recommendations from the part 15 hearing. They agreed that the clinical recommendations should appear first in the labeling, followed by the details. They favored a clinical management section, but there was some difference of opinion as to how directive the management advice should be. While some members said they appreciated the directive nature of the new labeling formats, other participants were uncomfortable with the directive management advice. The overall consensus was that the participants wanted as much information as possible without specific instructions pertaining to clinical management.

(4) *What were their recommendations for what should be in labeling and how it should be presented?*

Focus group members recommended that animal data be arranged by species and that the data be organized by effect in trimester of pregnancy. They also preferred a uniform labeling format for all drug products. Finally, participants stated that more information was better and that the most important information should be presented first. Specifically, they encouraged FDA to include relevant information about human exposures even if such information was limited (e.g., from a very limited number of case reports of exposures).

*D. Advisory Committee Assessment of Pregnancy Labeling Concepts*

Based on the part 15 hearing and the feedback from the focus groups at the February 1999 Conference, the agency further developed the model pregnancy labeling format and presented the revised version for discussion and comment at a meeting of the Pregnancy Labeling Subcommittee of the FDA Reproductive Health Drugs Advisory Committee in June 1999 (64 FR 23340, April 30, 1999). The model labeling format was presented as a Concept Paper on Pregnancy Labeling (*http://www.fda.gov/ohrms/dockets/ac/99/transcpt/3516r1.doc*).

The agency asked the advisory committee for input on the following issues:

(1) *The committee was asked to provide comment on the usefulness of the proposed reorganization of information on pregnancy, fertility, and lactation in the labeling that separates information into three components: Clinical management, summary risk assessment, and discussion of data, including their suggestions to refine or improve the model.*

In general, committee members thought the proposed model with its standardized format was an improvement over the current labeling and that separating information into three components (clinical management statement, risk summary, and discussion of data) under the fertility, pregnancy, and lactation subsections would be beneficial. However, they felt that the summary risk information was the most important information in the pregnancy subsection; therefore, the risk statement should precede the clinical management information. One advisory committee member recommended against including fertility, saying that fertility is a very different issue and should be considered separately.

(2) *How specific and detailed should the recommendations be in the clinical management statements (e.g., should they address types and frequency of testing and monitoring)? Were there circumstances under which specific recommendations should not be provided?*

Committee members agreed that it was important to have information relevant to clinical management of pregnant women in the labeling. However, they advised against providing directive advice or instructions (e.g., specific instructions about the type of monitoring that should be done and when to do it). They were concerned that directive advice could intrude on the practice of medicine and, if not kept current, could become outdated and contrary to the standard of care. They were also concerned about the liability implications for prescribers of failing to adhere to instructions in labeling that are no longer the standard of care for the relevant clinical situation.

Committee members also objected to the heading ''Clinical Management Statement'' because it suggested that the information is intended to dictate to health care providers how to manage their patients. They recommended that the heading be changed to ''Clinical Considerations'' to clarify that the information is intended to assist health care providers and patients in making their own decisions.

(3) *In the risk summary, how could appropriate context for the reader be provided, such as risks to pregnancy associated with the maternal disease state or baseline population rates of the adverse outcomes in question?*

Committee members agreed that the risk summary should be expressed in terms of an increased risk due to drug exposure compared to a background risk—either a background risk for a disease state or general background risk for the occurrence of the hazard in pregnancy. Some members advocated including a general statement in this section to remind readers of the inherent risks of developmental adverse effects independent of drug therapy. The committee also recommended that standardized risk statements be used and that the risk statement indicate gestational periods of higher and lower fetal vulnerability if that information is available. They felt that any description of risk should be portrayed as either ''potential'' or ''known'' depending on whether the information is based on animal studies or human experience.

(4) *Could the committee provide guidance on the relative merits of*

*quantitative (e.g., risk ratios) vs. qualitative (e.g., high/low) descriptions of risk for this section of the label?*

There was general agreement among the committee members that quantitative description of risks is more informative and less problematic than qualitative description. Some members also expressed the view that stating the absolute or attributable risk is preferable to stating a risk ratio. Others stated they would like to see confidence intervals around numbers used because they convey information on the quantity of data.

(5) *What should the goals be for the discussion of data component? How should information be selected for inclusion?*

Committee members stated that the discussion of data component should include human data to the extent available. There was some discussion about the utility of animal data in the absence of human data. However, there was consensus among committee members that the labeling should address the relevance of animal data for the doses generally prescribed for humans.

In the model format provided to the committee members, the discussion of data component included six subheadings: Structural alteration (or dysmorphogenesis), embryo-fetal death, growth retardation (irreversible and reversible), functional toxicities, maternal toxicity, and labor and delivery. The agency's purpose in proposing these subheadings was to address the full range of possible reproductive and developmental toxicities that might be appropriate for discussion in the data component. The committee's discussion focused on animal data because most of the data in current labeling is animal data. Committee members thought that the subheadings were too detailed. Instead, it was suggested that the presentation of animal studies should focus on describing the toxicities and include dose response information. Committee members also thought it was important, with regard to animal data, to compare the level of systemic exposure in animals to the human level.

(6) *In the setting where little is known about risk, how should this lack of information be communicated in a manner that is optimally informative?*

Committee members agreed that situations where there are ''no data'' should be distinguished from those where there are ''limited data.'' They agreed that the labeling should clearly state when there are no data available. When there are some data available, but the data are not sufficient to draw a conclusion about the risk of developmental abnormality, it was suggested that the labeling should qualify the risk by saying that the risk is undetermined. Committee members also cautioned against making the assumption that all drugs within a pharmaceutical class are teratogenic just because one member of the class is.

(7) *How could uncertainty associated with the predictive value of animal studies, particularly in the absence of human data, best be communicated?*

Some committee members stated that the uncertainty of predicting human risk based on animal data should be clearly expressed in the labeling. Other committee members suggested that in the absence of human data, instead of focusing on the uncertainty of the predictive value of the available animal data, the labeling should focus on the weight of evidence provided by the animal data.

(8) *Is there risk or other descriptive language that has acquired sufficient unintended connotation that it should be avoided in providing advice or in summary risk statements? Were there examples and could they suggest alternatives?*

There was general agreement among committee members that labeling should describe the facts. Committee members cautioned against the use of phrases or terms such as ''use with caution,'' ''crosses the placental barrier,'' and ''probability'' because the lay public and scientists define the terms very differently. One member also pointed out that all of the terms used to describe animal findings can be alarming to patients and providers.

*E. Focus Group Testing of Pregnancy Risk Statements*

Based on the recommendations of the advisory committee, the agency further refined the model pregnancy labeling format. FDA also developed a number of standard statements to use in pregnancy labeling to characterize the risk of developmental abnormality associated with a drug. In May 2000, FDA conducted four focus groups to evaluate these standard statements being considered by the agency. Two focus groups consisted of nurse-midwives attending the annual meeting of the American College of Nurse-Midwives and two focus groups consisted of obstetrician/gynecologists attending the annual meeting of the American College of Obstetricians and Gynecologists (ACOG).

Participants in all four focus groups were asked to review the following series of risk statements:

*Risk Statement 1*

Drug X does not appear to increase the risk of (type of developmental toxicity). Data on a limited number of exposed pregnancies indicate no adverse effects on the health of the (fetus/newborn child). While animal studies did show (specific adverse effect seen in animals), such effects in humans are unlikely.

*Risk Statement 2*

Drug X is not expected to increase the risk of (type of developmental toxicity) attributable to Drug X. Data on a large number of exposed pregnancies indicate no adverse effects on the health of the (fetus/newborn child). Animal studies show (specific adverse effect seen in animals) but the implications for humans are uncertain.

*Risk Statement 3*

Drug X does not appear to increase the risk of (type of developmental toxicity). Data on a limited number of exposed pregnancies indicate no adverse effects on the health of the (fetus/newborn child). Animal studies show (specific adverse effect seen in animals) but the implications for humans are uncertain.

*Risk Statement 4*

Drug X may increase the risk of (type of developmental toxicity or adverse effect) based on animal studies and data on a limited number of exposed pregnancies.

*Risk Statement 5*

Drug X does not appear to increase the risk of (type of developmental toxicity). Data on a large number of exposed pregnancies indicate no adverse effect on the health of the (fetus/newborn child), although animal studies did show (specific adverse effect seen in animals).

*Risk Statement 6*

Drug X may increase the risk of (type of developmental toxicity). Data on a limited number of exposed pregnancies indicate no adverse effects on the health of the (fetus/newborn child). However, animal studies did show (specific adverse effect seen in animals).

The focus groups were asked to consider a number of phrases for possible use in risk statements, including phrases used in the six model risk statements above. These phrases included ''does not appear to increase the risk,'' ''there is no known risk attributable to,'' ''is not expected to increase the risk,'' ''may not increase the risk,'' and ''may increase the risk.'' In general, the participants did not like the use of terms such as ''may increase,'' ''may not increase,'' ''is uncertain,'' ''although,'' or ''however,'' saying they felt the words were too vague and not useful to them. They preferred a factual statement that would allow them to

make a clinical judgment based on the circumstances of their patient. Participants also believed that the degree of risk that certain statements attempted to convey overlapped with that conveyed by other statements.

The physicians participating in the focus groups at the ACOG meeting also were asked to review a general statement about the risks inherent in pregnancy independent of drug therapy, the difficulty in determining whether a drug poses any additional risk of developmental abnormality above the background incidence, and the uncertain predictive value of animal studies. The physicians agreed that it would be useful to include the general statement in labeling and said it would be particularly useful when explaining the concept of background risk to their patients.

Based on feedback from the four focus groups, FDA revised the standard risk statements in the model format and incorporated the general statement reviewed by the physician groups.

## III. FDA's Examination of Labeling on Lactation

### *A. Recommendations on Lactation Labeling From Part 15 Hearing*

Participants in the September 1997 part 15 hearing on pregnancy labeling also recommended that the agency revise the requirements for the ''Nursing mothers'' subsection of the labeling. They were concerned that current labeling on lactation is not informative for a number of reasons, including lack of data and a tendency for clinicians to conclude, based on the current format of the labeling, that they should recommend to their patients that they choose between breast-feeding and taking a drug. Based in part on these concerns, FDA developed a new format for the lactation subsection of labeling, using the draft pregnancy labeling model as a guide.

### *B. Advisory Committee on Lactation Labeling Issues*

In September 2000, the agency held a joint advisory committee meeting of the Pregnancy Labeling Subcommittee of the Advisory Committee for Reproductive Health Drugs and the Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee to consider lactation labeling (65 FR 50995, August 22, 2000) (advisory committee on lactation). Committee members heard presentations on what was then called the ''Nursing mothers'' subsection of the labeling, the need for research and information on drug therapy during lactation, and the draft format developed by FDA for the lactation portion of the labeling.

The committee members were specifically asked to address the following questions:

(1) *Is maternal drug therapy during lactation an important health issue for infants? If yes, how should fundamental data be derived to determine if a drug is expressed in breast milk; whether a drug found in breast milk is available to the infant; and, when the drug is available, what the risk or lack of risk is to the nursing infant?*

The advisory committee members agreed that maternal drug therapy during lactation is an important health issue for infants. They believed that the only type of studies that could be ethically conducted involving nursing infants would be those in which the mother had already independently made the decision to breast-feed during drug therapy. The committee agreed that serum levels in the child would provide valuable information and that it is most important to assess clinical effects on the child from drug exposure. Committee members indicated that, as a practical matter, only short-term effects could be detected. They recommended that, if there is a known pediatric dose and safety profile, the dose received via breast milk should be put in perspective by reference to the recommended pediatric dose.

(2) *What products or types of therapies are most important to study: Those for conditions common in young women; those for chronic conditions; those for life-threatening conditions? Are there characteristics that are common across products or groups of products that make them a high priority?*

After lengthy discussion of the various issues and classes of drugs, the committee recommended that studies in the following categories of drugs should be of higher priority: Drugs predicted to have high levels in breast milk; drugs commonly used by women of childbearing age; and drugs used to treat chronic illnesses.

(3) *What kinds of information should be included in the labeling to allow informed decisions as to the safety of breast-feeding while taking a medication?*

The advisory committee members recommended that labeling include the following information:

- The amount of drug in breast milk,
- The anticipated daily dose for a nursing infant,
- The effect of the drug on the infant taking into account the infant's age,
- Drug pharmacokinetics during lactation,
- The presence of metabolites in breast milk and their half-lives,
- The effect of the drug on displacement of bilirubin from protein-binding, and
- The effect of the drug on the quantity and quality of breast milk produced.

Committee members recommended against a general statement that a drug enters the breast milk without information on the quantity of drug in breast milk. The committee advised that labeling discussions about the need to discontinue breast-feeding should be put in the context of a particular drug, its importance to the mother, and any risk to the infant. One member questioned the value of including animal data in lactation labeling, saying the data can be confusing and not necessarily helpful. Committee members urged FDA to provide a mechanism to ensure that labeling is updated as new data become available.

### *C. The Need for Informative Lactation Labeling*

Breast milk is the most complete form of nutrition for infants and offers a range of health benefits for breast-feeding women and infants. Research in developed and developing countries provides strong evidence that breast-feeding decreases the incidence and/or severity of a wide range of infectious diseases including bacterial meningitis, bacteremia, diarrhea, respiratory tract infection, necrotizing enterocolitis, otitis media, urinary tract infection, and late-onset sepsis in preterm infants. Studies suggest that breast-feeding significantly reduces postneonatal infant mortality and rates of sudden infant death syndrome in the first year of life. In addition, data suggest that older children who were breast-fed have slightly enhanced cognitive performance and decreased rates of asthma, obesity and overweight, diabetes mellitus (insulin and non-insulin dependent), lymphoma, leukemia, and Hodgkin's disease. Maternal benefits of breast-feeding include reduction in postpartum bleeding, earlier return to pre-pregnancy weight, reduced risk of premenopausal breast cancer, and reduced risk of osteoporosis (Ref. 2).

A survey conducted in 2001 found that 69.5 percent of women initiated breast-feeding and 32.5 percent had continued to breast-feed when surveyed at 6 months postpartum (Ref. 3). Given these numbers, FDA believes that it is highly likely that a woman will need and take medications while she is breast-feeding and thereby potentially will expose her child to the effects of

these medications. Surveys in various countries indicate that 90 to 99 percent of nursing mothers receive a medication during the first week postpartum. At 4 months postpartum, the percentage of nursing mothers taking medication was 17 to 25 percent. Five percent of nursing mothers receive long-term drug therapy (Ref. 4).

Because lactation studies, including studies of the transfer of drug into milk (animal or human), are not usually conducted during drug development, for most drugs there is little scientific information available on the effects on milk production, the extent of passage into breast milk, and the effects on the infant. Therefore, breast-feeding women and their health care providers must make decisions about treatment of maternal medical conditions in the absence of data. FDA is aware that a decision often is made to stop breast-feeding in order to take needed drug therapy.

FDA encourages sponsors to conduct lactation studies so that women and their health care providers will have the information they need to make decisions about breast-feeding during maternal drug use. On February 8, 2005, the agency issued a draft guidance for industry entitled ''Clinical Lactation Studies—Study Design, Data Analysis, and Recommendations for Labeling'' (70 FR 6697). The draft guidance provides advice and recommendations on the design, conduct, and analysis of clinical lactation studies, including advice about when to perform such studies. It sets out in detail the types of information on lactation that the agency believes should be available to breast-feeding women and their health care providers. In addition to the public comments received on the draft guidance, the agency requested input from the Pediatric Advisory Committee at its November 29, 2007, meeting. FDA is currently working to finalize its guidance on Clinical Lactation Studies.

## IV. Description of the Proposed Rule

### *A. General Description of the Format and Content of the Pregnancy and Lactation Subsections of Labeling*

The agency is proposing to revise the format and content of § 201.57 to change the requirements for the current ''Pregnancy,'' ''Labor and delivery,'' and ''Nursing mothers'' subsections. The proposed rule would merge the current ''Pregnancy'' and ''Labor and delivery'' subsections into a single ''Pregnancy'' subsection and would modify the requirements for the format and content of that subsection. The proposed rule would modify the format and content of the ''Nursing mothers'' subsection. The agency is proposing to rename the subsection ''Lactation'' because the focus of the subsection is primarily on the breast-fed child rather than on the lactating woman. In labeling, the identifying numbers for the subsections under the section ''8 Use in Specific Populations'' would be 8.1 for ''Pregnancy'' and 8.2 for ''Lactation.'' The identifying number 8.3 would be available for future use.

### *B. Pregnancy Subsection*

The proposed rule would amend § 201.57(c)(9)(i) by entirely replacing the format and content of the ''Pregnancy'' subsection. As discussed in section II.A of this document, the pregnancy category system has been criticized as being confusing and overly simplistic. The standardized statements required by current regulations do not distinguish information about risk alone from judgments based on both risk and benefit. In addition, the statements associated with the pregnancy categories do not take into account that a woman may already have been exposed to a drug before learning she is pregnant, and thus considerations for her may differ from those for a women who has not yet been exposed to a drug during pregnancy. The agency believes that advice and cautions about drug use should be clear and should specifically relate to the particular clinical situation, which includes whether exposure has already occurred or is being contemplated. The clinical situation also includes the risks presented if the woman has a condition or disease that remains untreated during her pregnancy.

FDA's process for developing this model for the pregnancy and lactation subsections of labeling included establishing an internal working group to obtain extensive input from experts from multiple disciplines across the Center for Drug Evaluation and Research and the Center for Biologics Evaluation and Research. The working group carefully explored a multitude of models to determine whether a different pregnancy category system could accurately and consistently communicate differences in degrees of maternal and fetal risk. The working group considered systems employed by other countries, including the European Union and Australia, but concluded that these approaches either did not address degrees of risk, or that these approaches simply provided statements that directed clinicians whether or not to use a product without describing risk information in a clinically meaningful way. The working group also explored developing a new model using alpha-numeric symbols or character/graphics to represent a continuum of risk. This approach included building tables and matrices of evidence-based criteria that might underlie each category along the risk continuum. When the working group applied these criteria to actual animal and human data findings for drugs with known risk profiles, none of the models produced clinically informative and reliable differentiations of risk.

FDA concluded that using a category system to characterize the risks of drug use during pregnancy would not be appropriate because of the complexity of medical decisionmaking about drug use during pregnancy. Various combinations of reproductive toxicology data, human pregnancy exposure data, and information about the mother's condition define a risk/benefit equation for each individual patient and her circumstances. As for any drug in any patient, prescribing and drug use decisions that affect both mother and fetus require consideration of various clinical and individual factors including the effects of the drug on the mother, the severity of the mother's condition, maternal tolerance of the drug, coexisting maternal conditions, the impact of maternal illness on the fetus, and the available alternative therapies. These conclusions mirror and support feedback FDA obtained from the public through the 1997 part 15 hearing and in Advisory Committee meetings and focus groups with experts and other clinicians who care for pregnant women. The feedback from the participants in these activities made it clear that the explanation of what is meant by any determination of ''risk'' or ''hazard'' is equally, if not more, important than the risk determination itself. This perspective is consistent with FDA's approach to other aspects of product labeling. For example, numeric or letter or other categorical gradations of risk have never been used for safety labeling because safety and risk are much more complex constructs in clinical medicine than in other areas, such as environmental exposure or consumer product ratings. For similar reasons, FDA does not apply symbol or letter designations of risk to other potential toxicities or adverse effects expected with medical product use. Accordingly, FDA believes that a narrative structure for pregnancy labeling is best able to capture and convey the potential risks of drug exposure based on animal or human data, or both.

One of FDA's primary objectives in developing the model labeling format in response to the part 15 hearing and

early focus group testing was to make a clear distinction between risk information and clinical management information. The model format originally contained three components in the following order: Clinical management, summary risk assessment, and discussion of data. Committee members at the June 1999 advisory committee stated that the summary risk assessment was the most important information in pregnancy labeling and therefore should precede the clinical considerations component. FDA agrees that the risks should be presented first, followed by clinical considerations. Accordingly, under the proposed rule, pregnancy labeling would contain a fetal risk summary, clinical considerations, and data discussion, in that order. Since developing the model format, the agency has concluded that pregnancy labeling should contain two additional components: Pregnancy exposure registry information (if applicable) and a general statement about the background risk of fetal developmental abnormalities. These two components, as well as the reasons for including them, are discussed in detail below. Thus, the proposed ''Pregnancy'' subsection would require prescription drug labeling to contain, under the subheading ''8.1 Pregnancy,'' the following information: (1) Pregnancy exposure registry information (if applicable), (2) a general statement about the background risk of fetal developmental abnormalities, (3) a fetal risk summary, (4) clinical considerations, and (5) data. Information on labor and delivery would be included under clinical considerations of the pregnancy subsection because, from a medical perspective, labor and delivery is the end phase of pregnancy. FDA seeks comment on how these elements should be ordered to optimize the clinical usefulness of this labeling subsection. Specifically, FDA is interested in comments on whether the fetal risk summary should precede the pregnancy registry contact information and the information on background risk.

FDA's current regulations permit omission of the ''Pregnancy'' subsection of labeling if the drug is not absorbed systemically and is not known to have a potential for indirect harm to the fetus. In contrast, the proposed rule would require that the labeling for all drugs contain a ''Pregnancy'' subsection. The agency believes that labeling that omits the ''Pregnancy'' subsection is confusing because the reader has no way of knowing why that subsection has been omitted. It is unlikely that most health care providers are aware that the ''Pregnancy'' subsection may be omitted when the drug is not absorbed systemically. Thus, the lack of a ''Pregnancy'' subsection does not necessarily signal to the reader that the drug is not absorbed systemically. Furthermore, in some cases, particularly with older labeling, there may be no ''Pregnancy'' subsection even when the drug is systemically absorbed. To correct this potential source of confusion, the proposed rule would require that the labeling of all drugs contain a ''Pregnancy'' subsection. However, when the drug is not systemically absorbed, the fetal risk summary would contain only the following statement:

''(*Name of drug*) is not absorbed systemically from (*part of body*) and cannot be detected in the blood. Maternal use is not expected to result in fetal exposure to the drug.''

1. Pregnancy Exposure Registry Information (Proposed § 201.57(c)(9)(i)(A))

FDA believes that appropriately conducted pregnancy exposure registries are an important mechanism for the collection of clinically relevant data concerning the effects of exposure to drugs during human pregnancy. Because of its belief in the value of pregnancy exposure registries, the agency has taken a number of steps to facilitate the establishment of well-designed pregnancy exposure registries and to encourage participation in such registries. In August 2002, the agency published a guidance for industry on ''Establishing Pregnancy Exposure Registries'' to provide sponsors with recommendations on the design of pregnancy exposure registries (67 FR 59528, September 23, 2002). FDA's Office of Women's Health maintains a Web site (*http://www.fda.gov/womens/registries/default.htm*) that explains what a pregnancy registry is and lists pregnancy registries currently enrolling pregnant women with specific medical conditions and women using specific drugs. Providing information about pregnancy exposure registries in prescription drug labeling is an additional step to encourage participation in registries.

Data from pregnancy registries have been used to support important labeling changes for certain drugs. The agency anticipates that, under the proposed labeling format, data from pregnancy registries, among other types of data, would be used to update labeling that, in most cases, would otherwise contain only animal data, and thus labeling would provide more clinically useful information for health care providers and their patients.

The proposed rule states that, if there is a pregnancy exposure registry for the drug, the telephone number or other information needed to enroll in the registry or to obtain information about the registry must be stated at the beginning of the ''Pregnancy'' subsection of labeling. FDA believes that placing this information in a position of prominence in prescription drug labeling may encourage participation in pregnancy registries by making it easier for health care providers and their patients to learn of pregnancy registries and the means to contact them. This information may also be appropriate for inclusion in a Medication Guide (patient labeling) under 21 CFR part 208.

If there is no pregnancy registry for the drug, the labeling is not required to contain any statement about pregnancy registries.

2. General Statement About Background Risk (Proposed § 201.57(c)(9)(i)(B))

In all pregnancies, there is a risk that there will be an adverse outcome, even if the mother takes no medications during her pregnancy. This risk is usually referred to as the background risk. Rates of adverse pregnancy outcomes vary with maternal age and underlying maternal medical conditions (Ref. 5). Fifteen to twenty percent of recognized pregnancies result in spontaneous abortion or miscarriage (loss prior to 20 weeks) (Ref. 6), and 1 in 200 known pregnancies results in fetal death or stillbirth (loss after 20 weeks) (Ref. 7). One out of 28 infants is born with serious birth defects (i.e., those resulting in physical or mental disability or death) (Ref. 1). Except for genetic syndromes and chromosomal abnormalities, most birth defects have no known cause. Minor birth defects may be 10 to 20 times more common than major ones, and 20 percent of infants with one or more minor birth defects also have a major birth defect (Ref. 8).

Because many women of reproductive age are not aware that there is a background risk in all pregnancies, physicians on the advisory committee and those who participated in focus testing of the model format suggested that FDA include in pregnancy labeling a general statement about background risk. The physicians stated that including such a statement would help them when counseling their patients.

FDA agrees that it is important to make clear that, when labeling characterizes the risk presented by a drug used during pregnancy, it is the

increase over the background risk that is being characterized. To emphasize this point, proposed § 201.57(c)(9)(i)(B) would require pregnancy labeling to state that all pregnancies have a background risk of birth defect, loss, or other adverse outcome, regardless of drug exposure, and that the fetal risk summary describes the drug's potential to increase the risk of developmental abnormalities above the background risk.

3. Fetal Risk Summary (Proposed § 201.57(c)(9)(i)(C))

The proposed rule states that, under the subheading ''Fetal Risk Summary,'' the labeling must contain a risk conclusion, contain a narrative description of the risk(s) (if the risk conclusion is based on human data), and refer to any contraindications or warnings and precautions. The fetal risk summary must characterize the likelihood that the drug increases the risk of developmental abnormalities and other risks (e.g., transplacental carcinogenesis) in humans.

a. *Types of developmental abnormalities and other risks.* Reproductive toxicologists refer to birth defects as developmental toxicities, and divide such toxicities into four types: (1) Dysmorphogenesis, (2) developmental mortality, (3) functional toxicity, and (4) alterations to growth (Ref. 9). Because some of this terminology is technical and unfamiliar to most health care providers, FDA is proposing to use simpler terms so that pregnancy labeling based on this proposed rule would be more easily understandable. Accordingly, FDA uses the following terms in this proposed rule:

- To describe developmental toxicities, the proposed rule uses ''developmental abnormalities.''
- To describe dysmorphogenesis, the proposed rule uses ''structural anomalies,'' which includes malformations, deformations, and disruptions.
- To describe developmental mortality, the proposed rule uses ''fetal and infant mortality,'' which includes miscarriage, stillbirth, and neonatal death.
- To describe functional toxicity, the proposed rule uses ''impaired physiologic function,'' which includes such outcomes as deafness, endocrinopathy, neurodevelopmental effects, and impairment of reproductive function.
- The proposed rule retains the term ''alterations to growth,'' which includes such outcomes as growth retardation, excessive growth, and early maturation because this term is not as technical as the others, and other terms do not adequately capture this range of outcomes.

In addition to the four types of developmental abnormalities, there may be other risks that are appropriate for discussion in the fetal risk summary, such as transplacental carcinogenesis.

FDA believes that it is important for pregnancy labeling to describe, to the extent possible, all recognized potential adverse outcomes to the fetus associated with drug use during pregnancy. This point was also made by participants at the part 15 hearing. Thus, the proposed rule provides that the fetal risk summary must characterize the likelihood that the drug increases the risk of developmental abnormalities (i.e., structural anomalies, fetal and infant mortality, impaired physiologic function, alterations to growth) or other risks (e.g., transplacental carcinogenesis) in humans.

b. *Conclusions about risk.* The June 1999 advisory committee recommended that pregnancy labeling use standardized risk statements. Some participants at the part 15 hearing recommended that pregnancy labeling provide a conclusion statement as well as a narrative summary. Based on this feedback and its own internal deliberations, FDA believes that, to be most useful to health care providers, pregnancy labeling should draw conclusions about the likelihood that drug use during pregnancy increases the risk of developmental abnormalities, as well as describe the nature of the risk(s). Thus, the proposed rule would require that the fetal risk summary component of pregnancy labeling include language characterizing the likelihood that the drug increases the risk of developmental abnormalities or other risks in humans by using certain standardized risk conclusions that are provided in the proposed rule. More than one risk conclusion may be needed to characterize the likelihood of risk for different developmental abnormalities, doses, durations of exposure, or gestational ages at exposure. Examples of risk conclusions for varying types of data are provided in the sample fetal risk summaries in the appendix of this document.

c. *Data sources.* In developing the fetal risk summary, all available data, including human, animal, and pharmacologic data, that are relevant to assessing the likelihood that a drug will increase the risk of developmental abnormalities or other relevant risks must be considered. Participants in the part 15 hearing expressed concern that current pregnancy labeling does not clearly identify whether descriptions of, and conclusions about, risk are based on animal or human data. FDA agrees that it is critical to know the source of the information and conclusions in the fetal risk summary. Thus, the proposed rule would require that the source(s) of the data that are the basis for the fetal risk summary be stated. For example, the risk summary must state that it is based on human data or based on animal data. The proposed rule also states that the fetal risk summary must present human data before animal data.

For the fetal risk summary, the agency is proposing different approaches for communicating the risks of drug use during pregnancy depending on whether the risk is based on human data or on animal data. Although FDA is proposing the use of standardized risk conclusions both for risks based on human data and those based on animal data, the risk conclusions based on human data would be followed by a narrative discussion of the risk. The agency believes that a narrative description of human data is the best approach for summarizing such data in a comprehensive manner because the types of human data contributing to the assessment are variable and complex. The assessment must also contribute constructively to the clinical decision to be made by the health care provider by helping her understand how the human data may or may not apply to the individual patient. In deciding whether to prescribe a drug during pregnancy, the clinician needs to consider the human data in combination with the maternal and fetal effects of not treating the maternal condition, other coexisting maternal conditions and/or medications, and whether exposure has already occurred. On the other hand, while the degree to which teratogenesis in animals predicts teratogenesis in humans varies, collective knowledge about the animal species used for reproductive toxicology studies and certain principles of reproductive toxicology provide a basis for more algorithmically characterizing expected risk in the context of animal data. It is important to emphasize that animal data can only predict that a risk exists. For this reason, and because most clinicians are not experts in reproductive toxicology, the proposed rule uses only standardized risk statements to convey risk based on animal findings, and does not include a narrative summary of the animal findings.

d. *Sources of human data.* Except for the few products developed to treat conditions unique to pregnancy, prescription drugs are not tested in pregnant women prior to their approval. Therefore, human data concerning a

drug's effect(s) on pregnant women and their offspring almost never come from controlled clinical trials. When human data are available, they may come from a variety of other sources. Sources that may contribute to an evaluation of whether a drug increases the risk of developmental abnormalities include pregnancy exposure registries, cohort studies, case-control studies, case series, and case reports. An assessment of the quality and quantity of the available human data is critical in determining the probative value of that data.

e. *The importance of human data.* FDA expects that revising our regulations on the content and format of pregnancy labeling will result in pregnancy labeling that includes much more information based on human data than does existing labeling. The importance of including human data in labeling was stressed by physicians who participated in focus group testing of the model format and also by the June 1999 advisory committee.

Participants at the part 15 hearing also emphasized that pregnancy labeling should be updated routinely to include human exposure information as it becomes available. The same principle was addressed by the Teratology Society in its comments on FDA's draft guidance for reviewers on ''Integration of Study Results to Assess Concerns About Human Reproductive and Developmental Toxicities,'' issued in October 2001 (66 FR 56830, November 13, 2001):

> We recommend that assessment of the developmental and reproductive toxicity of every drug be seen as an ongoing process, not one that ends when the drug receives initial FDA approval. The process should encourage collection of human reproductive and developmental toxicity data after the drug has been approved and include provision for regular re-evaluation of all available data, and especially of relevant human data, as they become available.

Most health care providers are not able to translate animal reproductive toxicity data into an accurate assessment of human teratogenic risk. Thus, in the absence of human data, it is difficult for health care providers to adequately counsel patients about the risks of drug use in pregnancy. Without adequate counseling, women may decide to take steps to avoid becoming pregnant while on needed drug therapy, to forego needed drug therapy while pregnant, or to terminate pregnancies.

Providing the most complete assessment of risk possible, including both human and animal data, is essential because complete avoidance of drug use by pregnant women is neither realistic nor beneficial to the overall wellbeing of mother and fetus. Women of reproductive age commonly use prescription drugs. A recent survey reported that 46 percent of women 18 to 44 years old had used at least one prescription drug during the preceding week, while 3 percent had used five or more (Ref. 10). Approximately 10 percent of women between the ages of 15 and 44 become pregnant annually (Ref. 11), and about half of these pregnancies are unplanned (Ref. 1). Thus, it is not uncommon for a fetus to be exposed to drugs before a woman knows she is pregnant. In many cases, such exposure would likely occur during the critical period of organogenesis (3 to 8 weeks postconception) (Ref. 12).

Some women enter pregnancy with medical conditions that require ongoing or episodic treatment with prescription drugs (e.g., asthma, epilepsy, hypertension). In addition, new medical problems may develop, or old ones may be exacerbated by pregnancy (e.g., migraine headaches, depression). Studies show that most women who know they are pregnant use either prescribed or over-the-counter drugs during pregnancy (Refs. 13 through 15).

Because pregnant women do use prescription drugs, it is critical that health care providers have access in labeling to available information about the effects of drug exposure in human pregnancies. In the usual case, no human data are available at the time a drug is approved. Animal studies function as a screen for potential human teratogenicity and are a required part of the drug development process. However, the positive and negative predictive values of animal studies for humans are often uncertain (Ref. 16). In screening for drug-induced fetal effects, animal models can be misleading by suggesting associations that ultimately turn out to be false positive or false negative in humans (Ref. 17). That is, there may be a finding of a drug-associated developmental abnormality in an animal study when that abnormality, or indeed, any abnormality, is not associated with the drug in humans. On the other hand, animal studies may predict that a drug is not associated with any developmental abnormality, while human experience may later indicate that the drug is associated with some developmental abnormality.

In some cases, drugs that are teratogenic in animals when given at high doses are not teratogenic to humans in therapeutic doses, which are typically much lower. In addition, certain animal species are especially disposed to develop a particular type of developmental abnormality (e.g., cleft palate in mice), making it difficult to determine whether drug exposure contributed to the effect or, if so, to what extent. The strongest concordance between animal findings and human effects is when there are positive findings from more than one species, although even in this case the results cannot always be used to predict specific human effects or the incidence in humans (Ref. 18).

Inclusion of clinically relevant new human data in pregnancy labeling is necessary to ensure that labeling complies with the general requirements on content and format of labeling for human prescription drug and biological products (§ 201.56(a)(1) and (a)(2)). Section 201.56(a)(1) provides that the labeling must contain a summary of the essential scientific information needed for the safe and effective use of the drug. Section 201.56(a)(2) provides, in part, that ''the labeling must be updated when new information becomes available that causes the labeling to become inaccurate, false, or misleading.''

When new human data concerning the use of a drug during pregnancy becomes available, if that information is clinically relevant, FDA believes that it is necessary for the safe and effective use of the drug and, therefore, the pregnancy subsection of the labeling must be updated to include that information. Failure to include clinically relevant new information about the use of a drug during pregnancy could cause the drug's labeling to become inaccurate, false, or misleading. For example, animal data available at the time of approval might suggest that use of a particular drug during pregnancy is likely to be associated with a risk for the development of neural tube defects in the fetus. Under the proposed rule, that information would be included in the ''Pregnancy'' subsection of the labeling when the drug is approved. If data developed after the initial approval (perhaps from an appropriately designed and powered pregnancy registry) indicate that the drug may not be associated with neural tube defects in humans, the drug's original labeling—based only on animal data—would be inaccurate, false, and misleading. In such a situation, § 201.56(a) would require that the labeling be updated to include the new information.

f. *Risk conclusions based on human data.* The proposed rule states that, when both human and animal data are available, risk conclusions based on human data must be presented before risk conclusions based on animal data. A risk conclusion based on human data

must be followed by a narrative description of the risk(s) as discussed in section IV.B.3.h of this document.

The proposed rule addresses two different situations where human data are available: Those where human data are ''sufficient'' and those involving ''other human data.'' The proposed rule states that ''sufficient human data'' are those that are sufficient to reasonably determine the likelihood that the drug increases the risk of fetal developmental abnormalities or specific developmental abnormalities. As explained in the proposed rule, sufficient human data may come from such sources as clinical trials, robust pregnancy exposure registries or other large scale, well-conducted epidemiologic studies, or case series reporting a rare event.

The proposed rule provides the following two risk conclusions to be used when human data are sufficient:

- When sufficient human data do not show an increased risk, the risk conclusion must state: ''Human data do not indicate that (*name of drug*) increases the risk of (*type of developmental abnormality or specific developmental abnormality*).'' An example of a hypothetical risk conclusion using this statement is: ''Human data do not indicate that hypothezine increases the risk of structural malformations.'' Another example is: ''Human data do not indicate that hypothezine increases the risk of neural tube defects.''
- When sufficient human data show an increased risk, the risk conclusion must state: ''Human data indicate that (*name of drug*) increases the risk of (*type of developmental abnormality or specific abnormality*).'' An example of a hypothetical risk conclusion using this statement is: ''Human data indicate that theoretamine increases the risk of cardiac abnormalities.'' Another example is: ''Human data indicate that theoretamine increases the risk of hypospadias and clitoral anomalies.''

The proposed rule states that when human data are available but are not sufficient to require the use of one of the two preceding risk conclusions, the likelihood that the drug increases the risk of developmental abnormalities must be characterized as low, moderate, or high. Whether the likelihood of increased risk would be characterized as low, moderate, or high would require a scientific judgment about the quantity and quality of the available data. For example, if the human data consisted of a pregnancy registry examining the increased risk for a specific developmental abnormality, FDA would consider such factors as the duration of the registry, the number of patients enrolled, and the statistical power of the study to identify or rule out a specified level of risk.

The proposed rule uses a slightly different approach for situations involving other human data,'' i.e., those where the human data are not sufficient to reasonably determine the likelihood that the drug increases the risk of fetal developmental abnormalities or specific developmental abnormalities. As discussed in section II.E of this document, FDA conducted four focus groups to evaluate standard statements being considered by the agency to characterize the increased risk of drug-associated developmental abnormalities in pregnancy labeling. After holding these focus groups, an agency working group further considered numerous possible wordings for standard statements. The working group also prepared many samples of fetal risk summaries to evaluate the concepts being discussed for this proposed rule. These risk summaries were based on varying types and amounts of data and described varying endpoints. The working group's experience in preparing these sample risk summaries indicated that using standardized risk conclusions about human data that were not sufficient to reasonably determine the drug's effect(s) on fetal developmental abnormalities presented difficulties. Using standardized risk conclusions often removed the flexibility needed to accurately convey the data. There were situations where the data did not fit into the format of the standardized risk conclusions. Rather than force the data to fit a standardized risk conclusion, the working group determined that labeling under the proposed rule should not be required to employ standardized statements when human data are not sufficient. Therefore, the proposed rule would not mandate the use of prescribed sentences when available human data are not sufficient to reasonably determine the drug's effects on fetal developmental abnormalities. Instead, the risk would be classified as either low, medium, or high. FDA seeks comment on whether, in situations with human data that are not sufficient, rather than classifying the risk as low, moderate, or high, the risk should instead be characterized by specific statements describing the findings, or whether the findings should be described at all if they are not readily interpretable. Examples of specific statements would be: ''Limited data in humans show (describe outcomes),'' or ''Limited data in humans show conflicting results (describe study types, number of cases, outcomes, and limitations).''

g. *Risk conclusions based on animal data*. Section 201.56(a)(3) of FDA regulations states that labeling must be based whenever possible on data derived from human experience. Some of the limitations of animal data concerning the increased risk of developmental abnormalities because of drug exposure have been discussed in section IV.B.3.e of this document. There is an additional limitation that the agency considers to be particularly important in determining what conclusions can be drawn from animal data regarding human pregnancy outcomes. Toxic drug exposure may manifest as one type of developmental abnormality (e.g., embryolethality) in an animal species, but a different type of developmental abnormality (e.g., structural anomalies) in humans. Thus, the agency does not believe it is possible to draw a conclusion, based on animal data alone, that a drug is likely to cause an increased risk of a particular type of developmental abnormality (e.g., fetal and infant mortality), much less a specific developmental abnormality (e.g., cleft palate). However, it is more concerning when teratogenic effects occur in more than one animal species, especially if these effects were consistent across the different species. Accordingly, where the risk conclusion is based solely on animal data, the proposed rule would require that the fetal risk summary component consist only of a risk conclusion, and not, in addition, a description of the effects found in animals. The risk conclusion would be followed by a cross reference to the Data component of the ''Pregnancy'' subsection, and the effects found in animals would be described in the ''Data'' component.

The proposed rule states that when the data on which the risk conclusion is based are animal data, the fetal risk summary must characterize the likelihood that the drug increases the risk of developmental abnormalities using one of the following five risk conclusions.

- When animal data contain no findings for any developmental abnormality, the fetal risk summary must state, ''Based on animal data, (*name of drug*) is not predicted to increase the risk of developmental abnormalities.''
- When animal data contain findings of developmental abnormality but the weight of the evidence indicates that the findings are not relevant to humans (e.g., findings in a single animal species that are caused by unique drug metabolism or a mechanism of action

thought not to be relevant to humans; findings at high exposures compared with the maximum recommended human exposure), the fetal risk summary must state, ''Based on animal data, the likelihood that (*name of drug*) increases the risk of developmental abnormalities is predicted to be low.''

- When animal data contain findings of one or more fetal developmental abnormalities in one or more animal species, and those findings are thought to be relevant to humans, the fetal risk summary must state, ''Based on animal data, the likelihood that (*name of drug*) increases the risk of developmental abnormalities is predicted to be moderate.''
- When animal data contain robust findings of developmental abnormalities (e.g., multiple findings in multiple animal species, similar findings across species, findings at low exposures compared with the anticipated human exposure) thought to be relevant to humans, the fetal risk summary must state, ''Based on animal data, the likelihood that (*name of drug*) increases the risk of developmental abnormalities is predicted to be high.''
- When animal data are insufficient to assess the drug's potential to increase the risk of developmental abnormalities, the fetal risk summary must state that fact. When there are no animal data to assess the drug's potential to increase the risk of developmental abnormalities, the fetal risk summary must state that fact.

FDA seeks comment on whether these standardized statements can adequately communicate different levels of risk based on animal data and their potential relevance to human fetal effects or whether these statements are likely to generate confusion among prescribers.

h. *Narrative description of the risks.* The proposed rule states that when human data are available, in addition to the risk conclusion(s), the fetal risk summary must be followed by a brief description of the risks of developmental abnormalities as well as on other relevant risks associated with the drug. To the extent possible, this description must include the specific developmental abnormality (e.g., neural tube defects); the incidence, seriousness, reversibility, and correctability of the abnormality; and the effect on the risk of the dose, duration of exposure, or gestational timing of exposure. When appropriate, the description must include the risk above the background risk attributed to drug exposure. For example, the labeling might state: ''Exposure to Drug X during the first trimester increases the risk of neural tube defects 20-fold, from 10 to 25 defects in 10,000 pregnancies to 200 to 500 defects in 10,000 pregnancies.'' When possible, the description must also communicate the level of certainty about the risk based on the power of the study and confidence limits. Thus, the proposed rule states that, when appropriate, the description must include confidence limits and power calculations to establish the statistical power of the study to identify or rule out a specified level of risk. For example, the labeling might state: ''Compared to a 1.62% prevalence of major malformations in women with the same disease not exposed to the drug, the relative risk of having an affected offspring for Drug X-exposed women is 7.3 (95% CI: 4.4 to 12.2; $p<0.001$).''

i. *Contraindications, warnings, and precautions.* The proposed rule states that if there is information on an increased risk to the fetus from exposure to the drug in the ''Contraindications'' or ''Warnings and Precautions'' sections of the labeling (§ 201.57(c)(5) or (c)(6)), the fetal risk summary must refer to the relevant section.

Section 201.57(c)(5) of FDA's labeling regulations provides that the ''Contraindications'' section must describe ''any situations in which the drug should not be used because the risk of use * * * clearly outweighs any possible therapeutic benefit.'' This requirement applies to the use of a drug in pregnancy. FDA believes that pregnancy is different from other situations, however, in that the risk could be to the fetus as well as to the mother, and that in order to be contraindicated for use in pregnancy, the risk would have to clearly outweigh any possible therapeutic benefit either to the mother or to the fetus. Thus, the risk/benefit analysis would be somewhat different than for other situations because one would need to consider risk and benefit to both the mother and to the fetus. For example, a drug might have the potential to cause serious harm to the fetus, but be needed by the mother as treatment for an otherwise fatal disease or condition. Given that the mother's death would, depending on the gestational age of the fetus, result in the death of the fetus, the risk to the fetus from the drug would not necessarily outweigh the benefit to the mother.

FDA's understanding is that existing practice has been to contraindicate a drug in its entirety for use in pregnancy if any indication is contraindicated for such use, despite the fact that the risk/benefit analysis might differ for different indications. FDA believes that when there is more than one labeled indication for a drug, a decision should be made separately for each indication as to whether the drug should be contraindicated for use in pregnancy. It may also be appropriate to contraindicate a drug for use in pregnancy only for a particular patient population (e.g., when there is coexisting renal disease). In this case, the labeling should describe specifically the population to which the contraindication applies.

It may also be the case that a drug poses an increased risk to the fetus only during a particular time period, for example, the period of organogenesis or during the third trimester. Thus, the agency believes that if there is a specific known time period when the drug would pose an increased risk to the fetus, the contraindication should specify the time period (e.g., first trimester; after 30 weeks).

Finally, current drug labeling has sometimes contraindicated a drug for use in pregnancy simply because it is reasonable to assume that a pregnant woman would not use or be prescribed that drug. For example, women who know they are pregnant do not use oral contraceptives or fertility drugs. However, participants at the part 15 hearing clearly emphasized that contraindicating a drug gives the impression that it has been shown to cause fetal developmental abnormalities, perhaps leading women to terminate otherwise wanted pregnancies because of drug exposure before they realized they were pregnant. As was also brought out in the part 15 hearing, health care providers may also recommend termination to pregnant patients when a drug is contraindicated for use in pregnancy. Thus, FDA believes it is not appropriate to contraindicate a drug for use in pregnancy for the sole reason that the drug is not usually prescribed for pregnant women. Rather, a contraindication for use in pregnancy should be based on a determination that the drug should not be used in pregnancy because the risk of use during pregnancy clearly outweighs any possible therapeutic benefit.

4. Clinical Considerations (Proposed § 201.57(c)(9)(i)(D))

The proposed clinical considerations component of pregnancy labeling is intended to provide guidance and information to health care providers about the use of the drug in three distinct clinical situations: (1) Counseling women who were inadvertently exposed to the drug during pregnancy, (2) making prescribing decisions for pregnant

women, and (3) making prescribing decisions during labor and delivery.

a. *Inadvertent exposure*. The agency recognizes that many women are exposed to drugs before they know they are pregnant. Failure to address such inadvertent exposure has been identified as one of the key weaknesses of current pregnancy labeling. Participants in the part 15 hearing advocated that labeling address issues relating to inadvertent exposure because clinical decisions about inadvertent exposures often involve deciding whether to terminate pregnancies. FDA agrees that it is critical to address inadvertent exposure in labeling. The population at risk for unnecessary terminations due to early drug exposure is large because approximately half of all pregnancies in the United States are unintended (Ref. 1). Thus, the proposed rule would require that the clinical considerations component of pregnancy labeling discuss the known or predicted risks to the fetus from inadvertent exposure, including human or animal data on dose, timing, and duration of exposure. If there are no data to assess the risk from inadvertent exposure, the labeling would be required to state this fact.

b. *Prescribing decisions for pregnant women*. The discussion relating to prescribing decisions for pregnant women would be required to include the following four types of information:

(1) The labeling would be required to describe the risk, if known, to the pregnant woman and the fetus from the disease or condition the drug is indicated to treat and the potential influence of drug treatment on that risk.

There is evidence that women of childbearing age and their health care providers overestimate the likelihood that drugs used in pregnancy will cause serious birth defects, probably because of the thalidomide tragedy in the early 1960s (Refs. 19 through 27). Because of this overestimation of risk, women may not be appropriately treated for serious and even life-threatening diseases or conditions during pregnancy (Refs. 22 and 27). Of the 62 million women of childbearing age (15 to 44) in the United States (Ref. 28), more than 9 million have chronic conditions such as asthma, epilepsy, and hypertension (Ref. 29) that require ongoing treatment with prescription medicines. Failure to treat these conditions properly can have serious consequences for mothers and fetuses (Refs. 25 and 30). The agency believes that including information about the risks to the pregnant woman and the fetus from the disease or condition to be treated will help health care providers to weigh the risks of drug treatment against the risks of not treating the disease or condition.

(2) The labeling would be required to include information about dosing adjustments during pregnancy. Corresponding information would also be required in the ''Dosage and Administration'' and ''Clinical Pharmacology'' sections (§§ 201.57(c)(3) and (c)(13)). For example, the pregnancy subsection of the labeling might state under ''Clinical Considerations,'' ''Drug X is eliminated more rapidly in pregnant women than in nonpregnant women. Dosage adjustment is necessary for pregnant women. See 'Dosage and Administration.'" If there are no data on dosing in pregnancy, a statement of that fact would be required in the labeling.

Many physiologic changes occur during pregnancy, and these changes can affect drug pharmacokinetics. Assuming that the usual adult dose is appropriate during pregnancy can result in substantial underdosing or, in some cases, excessive dosages. FDA encourages sponsors to conduct studies to determine appropriate dosing during pregnancy. To this end, the agency published a draft guidance for industry on the design, conduct, and interpretation of pharmacokinetic studies in pregnant women. The availability of this guidance entitled ''Pharmacokinetics in Pregnancy—Study Design, Data Analysis, and Impact on Dosing and Labeling'' was announced in the **Federal Register** of November 1, 2004 (69 FR 63402).

(3) If use of the drug is associated with maternal adverse reactions that are unique to pregnancy or if known adverse reactions occur with increased frequency or severity in pregnant women, this portion of the labeling would be required to describe such adverse reactions. This description would include, if known, the effect of dose, timing, and duration of exposure on the risk to the pregnant woman of experiencing the adverse reaction(s). If information is available on interventions that might be needed, language to that effect would also be required. For example, the labeling might include the following statement: ''Drug X may cause hyperglycemia in pregnant women. Careful monitoring of blood glucose is recommended when using Drug X during pregnancy.''

(4) If it is known or anticipated that treatment of the pregnant woman will cause a complication in the fetus or the neonate, the labeling would be required to describe the complication, the severity and reversibility of the complication, and general types of interventions, if any, that may be needed.

c. *Labor and delivery*. If the drug has a recognized use during labor or delivery, whether or not that use is stated as an indication in the labeling, or if the drug is expected to affect labor or delivery, the discussion of clinical considerations would be required to provide the available information about the effect of the drug on the mother; the fetus/neonate; the duration of labor and delivery; the possibility of complications, including interventions, if any, that may be needed; and the later growth, development, and functional maturation of the child. FDA believes, for products to which this provision applies, that including this information in the labeling is important to help ensure the safe use of the drug under what may be a common condition of its use. FDA notes that, although the proposed rule would modify slightly the language currently found at § 201.57(c)(9)(ii), these changes are intended solely to update the language used in these sections and not to affect the information required by these provisions to be included in the labeling.

5. Data (Proposed § 201.57(c)(9)(i)(E))

The Data component of the proposed pregnancy labeling is intended to provide a brief overview of the data that are the basis for the fetal risk summary and the clinical considerations portion of the labeling. The discussion of the data is not intended to be all-encompassing, but rather to explain and supplement the conclusions in the fetal risk summary and clinical considerations portions of the labeling.

As in the fetal risk summary portion, the proposed rule states that human and animal data must be presented separately and human data must be presented first. The labeling would be required to describe the studies, including study type(s) (e.g., controlled clinical or nonclinical studies, ongoing or completed pregnancy exposure registries, other epidemiological or surveillance studies), animal species used, exposure information (e.g., dose, duration, timing), if known, and the nature of any identified fetal developmental abnormalities or other adverse effect(s).

Isolated case reports generally would not be included in the Data component of the labeling unless the quality of the report(s) and other factors (e.g., consistency with animal findings; information on the dose, duration, and timing of gestational exposure) support their inclusion.

The proposed rule states that, for human data included in the Data component, positive and negative

experiences during pregnancy, including developmental abnormalities, must be described. To the extent applicable, the description must include the number of subjects and the duration of the study.

The proposed rule states that, for animal data included in the Data component, the relationship of the exposure and mechanism of action in the animal species to the anticipated exposure and mechanism of action in humans must be described. This proposed requirement addresses the concerns of focus group members and advisory committee members that pregnancy labeling should help health care providers understand the relationship between animal data and human exposures.

FDA seeks comment on whether, in the Data component of labeling, when animal data is described, the rule should also require the inclusion of information on the findings that contribute to the designation of the risk from animal data as low, moderate, or high. For example, should there be information on the number of species with positive findings, the consistency of the findings, or the severity of findings?

*C. Lactation Subsection*

Proposed § 201.57(c)(9)(ii) would require prescription drug labeling to contain, under the subheading ''8.2 Lactation,'' the following three components: (1) A risk summary, (2) clinical considerations, and (3) data.

1. Risk Summary (Proposed § 201.57(c)(9)(ii)(A))

The proposed rule provides that a lactation risk summary must summarize the following information: (1) The drug's impact on milk production, (2) what is known about the presence of the drug in human milk, and (3) the effects on the breast-fed child. The proposed rule states that when, as discussed below, the data demonstrate that the drug does not affect the quantity and/or quality of human milk and there is reasonable certainty either that the drug is not detectable in human milk or that the amount of drug consumed via breast milk will not adversely affect the breast-fed child, the labeling must state that the use of the drug is compatible with breast-feeding. Requiring such a statement is supported by FDA's consultation with stakeholders. The discussion at the advisory committee on lactation included a recommendation that, if appropriate, labeling contain a statement indicating that it is safe for a nursing mother to take a drug. Participants in the September 1997 part 15 hearing also expressed concern that mothers who need to take prescription drugs after they give birth may be advised by their health care providers to choose between breast-feeding and taking a drug. FDA agrees that, if the data support the conclusion, it is important for lactation labeling to indicate that use of a drug is compatible with breast-feeding.

The source(s) of the data (e.g., human, animal, in vitro) that are the basis for the risk summary must be stated. When there are insufficient data or no data to assess the drug's impact on milk production, the presence of the drug in human milk, and/or the effects on the breast-fed child, the risk summary would be required to state that fact.

Under FDA's current regulations, information is only required to be included in the ''Nursing mothers'' subsections of FDA's current regulations if a drug is absorbed systemically, in which case, the labeling must contain information about excretion of the drug in human milk and effects on the nursing infant, as well as a description of any pertinent adverse effects observed in animal offspring. FDA believes that if a drug is not absorbed systemically, it is important for the health care provider and the nursing mother to be aware of this fact. Therefore, the proposed rule would require that the labeling of all drugs contain a ''Lactation'' subsection. The proposed rule would require that, when the drug is not systemically absorbed, the risk summary in the ''Lactation'' subsection contain the following statement:

''(*Name of drug*) is not absorbed systemically from (*part of body*) and cannot be detected in the mother's blood. Therefore, detectable amount of (*name of drug*) will not be present in breast milk. Breast-feeding is not expected to result in fetal exposure to the drug.''

- *The drug's impact on milk production*. The proposed rule states that the description of the effects of the drug on milk production must include the effect of the drug on the quality and quantity of milk, including milk composition, and the implications of these changes to the milk for the breast-fed child. The advisory committee on lactation thought this information was important and recommended its inclusion in the labeling.
- *The presence of the drug in human milk*. The proposed rule states that the presence of the drug in human milk must be described in one of the following five ways:

(1) The drug is not detectable in human milk;

(2) The drug has been detected in human milk;

(3) The drug is predicted to be present in human milk;

(4) The drug is not predicted to be present in human milk; or

(5) The data are insufficient to know or predict whether the drug is present in human milk.

If studies demonstrate that the drug is not detectable in human milk, the proposed rule would require that the risk summary state the limits of the assay used.

The advisory committee on lactation recommended that lactation labeling include the amount of drug present in breast milk. Thus, the proposed rule also would require that, if the drug has been detected in human milk, the risk summary must give the concentration detected in milk in reference to a stated adult dose (or, if the drug has been labeled for use in pediatric populations, in reference to the labeled pediatric dose), an estimate of the amount consumed daily by the infant based on an average daily milk consumption of 150 milliliters (mL) per kilogram (kg) of infant weight per day (Ref. 31), and an estimate of the percent of the adult dose excreted in human milk.

- *Effects on the breast-fed child*. As recommended by the advisory committee on lactation, the proposed rule would require that the labeling contain information regarding the effects of the drug on the breast-fed child. This would include information on the likelihood and seriousness of known or predicted effects on the breast-fed child from exposure to the drug in human milk. As proposed, the risk summary must be based on the pharmacologic and toxicologic profile of the drug, the amount of drug detected or predicted to be found in human milk, and age-related differences in absorption, distribution, metabolism, and elimination. For example, the labeling might state: ''Based on its pharmacologic properties, Drug X has the potential to cause sedation in the breast-fed child. However, it is unlikely that sedation will occur because the estimated daily dose in human milk, based on the predicted presence of Drug X in human milk, is 2 percent of the daily pediatric dose for 6- to 12-month old infants.'' If the drug has not been labeled for pediatric use, the amount of the drug predicted to be present in human milk would be stated as a percentage of the maternal (i.e., adult) dose.

2. Clinical Considerations (Proposed § 201.57(c)(9)(ii)(B))

The clinical considerations component of the proposed ''Lactation'' subsection is intended to help health

care providers make informed decisions about prescribing drugs for lactating women. The proposed rule would require a discussion of three clinical issues to the extent information on them is available:

- *Minimizing exposure of the breast-fed child*. The proposed rule states that, when there are ways to minimize the exposure of the breast-fed child to the drug, such as timing the dose relative to breast-feeding or pumping and discarding milk for a specified period, the labeling must provide this information.
- *Potential drug effects in the breast-fed child*. The proposed rule states that the labeling must provide information about potential drug effects in the breast-fed child that could be useful to caregivers, including recommendations for monitoring or responding to these effects. For example, the labeling might state: ''Drug X may cause sedation in the breast-fed child.''
- *Dosing adjustment during lactation*. The proposed rule states that, to the extent it is available, information about dosing adjustments during lactation must be provided and that this information must also be included in the ''Dosage and Administration'' and ''Clinical Pharmacology'' sections.

3. Data (Proposed § 201.57(c)(9)(ii)(C))

The proposed rule states that the Data component of the ''Lactation'' subsection must provide an overview of the data that are the basis for the risk summary and the basis for the clinical considerations component.

*D. Removing the Pregnancy Category Designation*

As discussed in section II.A and II.B of this document, the pregnancy categories currently found in § 201.57(c)(9)(i)(A)(1) through (c)(9)(i)(A)(5) and § 201.80(f)(6)(i)(a) through (f)(6)(i)(e) have been criticized for being overly simplistic and misleading about the degree of risk a drug presents to the fetus. Accordingly, FDA is not including pregnancy categories in its proposed revision to § 201.57. However, the agency believes that it would be confusing to require category designations in the labeling for products subject to § 201.80 while the labeling for products subject to § 201.57 would not contain pregnancy categories. Therefore, the proposed rule would remove the pregnancy category designations (A, B, C, D, and X) from both the headings and text of § 201.80(f)(6)(i)(a) through (f)(6)(i)(e).

## V. Implementation Plan for the Proposed Rule

*A. General*

There are two components to this proposed rule. The first component would require that the labeling of new and recently approved products be revised to comply with the new pregnancy and lactation labeling content (new content) described in proposed § 201.57(c)(9)(i) and (c)(9)(ii). The second component, affecting § 201.80(f)(6)(i), would require products subject to that regulation to remove from existing labeling the pregnancy category designations (e.g., ''Pregnancy Category C'') in both the headings and the text of that subsection of the labeling.

For already approved products subject to the new content requirements, under §§ 314.70(b) and 601.12(f)(1) (21 CFR 314.70(b), 21 CFR 601.12(f)(1)), holders of approved applications would be required to submit a supplement and obtain FDA approval prior to distributing the new labeling. Already-approved products that only would be required to remove the pregnancy category designation would be required to report the change to FDA in an annual report (§§ 314.70(d) and 601.12(f)(3) (21 CFR 314.70(d) and 601.12(f)(3)).

In the following discussion of the implementation plan, the term ''application'' refers to new drug applications (NDAs), biologic licensing applications (BLAs), and efficacy supplements. Any final rule that becomes effective based on this proposed rule is referred to in the following discussion as ''the pregnancy final rule.''

*B. New Content (Proposed § 201.57(c)(9)(i) and (c)(9)(ii))*

The new content requirements of the proposed rule would apply to all applications required to comply with FDA's final rule on ''Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products'' (71 FR 3921, January 24, 2006) (the physician labeling rule or the PLR). As stated in § 201.56(b)(1), this includes:

- Prescription drug products for which an application was approved by FDA between June 30, 2001, and June 30, 2006;
- Prescription drug products for which an application was pending June 30, 2006;
- Prescription drug products for which an application was or is submitted anytime on or after June 30, 2006.

The implementation schedule proposed in table 1 of this document would give all affected parties except those who submit an application on or after the date the pregnancy final rule becomes effective a minimum of 3 years after the effective date of the pregnancy final rule to submit labeling with the new content. FDA believes that this 3-year period would give industry sufficient time to use up existing labeling stocks and would avoid requiring manufacturers that have recently made the major labeling revision required by the physician labeling rule to make another significant labeling change in less than 3 years. In addition, the proposed implementation schedule would distribute the number of affected applications requiring review by the agency over a period of several years, thus assisting the agency in managing the workload associated with reviewing the new labeling.

The effective date of the physician labeling rule was June 30, 2006. For ease of coordinating the implementation of the pregnancy final rule with the implementation of the PLR, FDA proposes that the pregnancy final rule would become effective on the first June 30th that occurs at least 120 days after the date of publication of the pregnancy final rule. Thus, if the pregnancy final rule were to publish on January 14, 2010, the rule would become effective on June 30, 2010. Or, if the pregnancy final rule were to publish on June 1, 2010, the rule would become effective on June 30, 2011. For purposes of developing the proposed implementation schedule, FDA has assumed that the pregnancy rule will become effective no earlier than June 30, 2010. If it becomes effective earlier than that, FDA will adjust the implementation schedule accordingly.

Table 1 of this document describes the implementation plan FDA is proposing for the pregnancy final rule.

TABLE 1.—IMPLEMENTATION PLAN

| Applications Required To Conform to New Pregnancy/Lactation Content Requirements | Time by Which Labeling with New Pregnancy/Lactation Content Must Be Submitted to FDA for Approval |
|---|---|
| New or Pending Applications: | |
| Applications submitted on or after the effective date of the pregnancy final rule | Time of submission |
| Applications pending on the effective date of the pregnancy final rule | 4 years after the effective date of pregnancy final rule or at time of approval, whichever is later |
| Approved Applications Subject to the Physician Labeling Rule: | |
| Applications approved any time from June 30, 2001, up to and including June 29, 2002, and from June 30, 2005, up to and including June 29, 2007 | 3 years after the effective date of pregnancy final rule |
| Applications approved any time from June 30, 2007, up to and including the effective date of the pregnancy final rule | 4 years after the effective date of pregnancy final rule |
| Applications approved from June 30, 2002, up to and including June 29, 2005 | 5 years after the effective date of pregnancy final rule |

*C. Removing the Pregnancy Category (Proposed § 201.80(f)(6))*

Holders of applications approved prior to June 29, 2001 (i.e., applications not subject to the PLR), would not be required to implement the new content requirements. Instead, if the labeling for such applications contains a pregnancy category, the application holders would be required to remove the pregnancy category designation by 3 years after the effective date of the pregnancy final rule. Because this is a relatively minor change, FDA believes it is not necessary to stagger its implementation.

## VI. Legal Authority

*A. Statutory Authority*

In this proposed rule, FDA is proposing to revise its regulations prescribing the format and content of the ''Pregnancy,'' ''Labor and delivery,'' and ''Nursing mothers'' subsections of the ''Use in Specific Populations'' section (under § 201.57) and the ''Precautions'' section (under § 201.80) of the labeling for human prescription drugs.

FDA's revisions to the content and format requirements for prescription drug labeling are authorized by the act and by the Public Health Service Act (the PHS Act). Section 502(a) of the act deems a drug to be misbranded if its labeling is false or misleading ''in any particular.'' Under section 201(n) of the act (21 U.S.C. 321(n)), labeling is misleading if it fails to reveal facts that are material with respect to consequences which may result from the use of the drug under the conditions of use prescribed in the labeling or under customary or usual conditions of use. Section 502(f) of the act deems a drug to be misbranded if its labeling lacks adequate directions for use and adequate warnings against use in those pathological conditions where its use may be dangerous to health, as well as adequate warnings against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users. Section 502(j) of the act deems a drug to be misbranded if it is dangerous to health when used in the dosage or manner, or with the frequency or duration, prescribed, recommended, or suggested in its labeling.

In addition, the premarket approval provisions of the act authorize FDA to require that prescription drug labeling provide the practitioner with adequate information to permit safe and effective use of the drug product. Under section 505 of the act, FDA will approve an NDA only if the drug is shown to be both safe and effective for use under the conditions set forth in the drug's labeling. Section 701(a) of the act (21 U.S.C. 371(a)) authorizes FDA to issue regulations for the efficient enforcement of the act.

Under 21 CFR 314.125, FDA will not approve an NDA unless, among other things, there is adequate safety and effectiveness information for the labeled uses and the product labeling complies with the requirements of part 201. Under § 201.100(d) of FDA's regulations, a prescription drug product must bear labeling that contains adequate information under which licensed practitioners can use the drug safely for their intended uses. This proposed rule amends the regulations specifying the format and content for such labeling.

Section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262) provides legal authority for the agency to regulate the labeling and shipment of biological products. Licenses for biological products are to be issued only upon a showing that they meet standards ''designed to insure the continued safety, purity, and potency of such products'' prescribed in regulations (section 351(d) of the PHS Act). The ''potency'' of a biological product includes its effectiveness (21 CFR 600.3(s)). Section 351(b) of the PHS Act prohibits false labeling of a biological product. FDA's regulations in part 201 apply to all prescription drug products, including biological products.

*B. First Amendment*

FDA's proposed requirements for the content and format of the ''Pregnancy'' and ''Lactation'' subsections of labeling for human prescription drug and biological products are constitutionally permissible because they are reasonably related to the government's interest in ensuring the safe and effective use of prescription drug products and because they do not impose unjustified or unduly burdensome disclosure requirements. In the PLR, FDA explained in greater depth why that rule passes muster under the First Amendment. See 71 FR 3922 at 3964. That analysis is equally applicable to this proposed rule, and we hereby adopt that discussion by reference.

## VII. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or

cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## VIII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because so many prescription drug manufacturers would be affected by the proposed rule, the agency believes that this rule could have a significant impact on a substantial number of small entities. Consequently, the agency does not certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The following analysis, in conjunction with the preamble, constitutes the agency's initial regulatory flexibility analysis as required by the Regulatory Flexibility Act.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any 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 $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $127 million, using the most current (2006) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

The proposed rule would amend the current requirements for the content of human prescription drug labeling related to use in specific populations. The primary benefit of the proposed rule would be improved communication of clinically relevant information on the safe and effective use of prescription drugs by pregnant or lactating women. Although the agency is unable to quantify these benefits, this proposed rule is the product of over 10 years of consultation with stakeholders. Direct costs of the proposed rule are projected to range from approximately $0.8 million to $17.6 million in any single year, and over 10 years have a total present value of approximately $50.3 million with a 7-percent discount rate or $61.7 million with a 3-percent discount rate. The annualized costs over 10 years would be $7.2 million with both a 7-percent discount rate and with a 3-percent discount rate. Although the agency is unable to quantify the net benefits of this proposed rule, the rule responds to problems with existing labeling identified by current users of drug product labeling. FDA therefore concludes that the potential benefit of better informed health care providers and patients would justify the costs of the rule. Furthermore, the agency has determined that the proposed rule is not an economically significant rule as defined by the Executive order.

### *A. Need for the Proposed Rule*

In response to concerns about the usefulness of the current ''Pregnancy,'' ''Labor and delivery,'' and ''Nursing mothers'' subsections of prescription drug product labeling, FDA held a part 15 hearing and two advisory committee meetings and consulted with focus groups and the public to solicit comment on how to improve these subsections. During these discussions, participants said that current prescription drug product labeling lacks clarity and often fails to provide meaningful clinical information about drug exposure during pregnancy and lactation. Of equal concern, current prescription drug product labeling is not designed to address either inadvertent drug exposure in early pregnancy or the potential consequences of discontinuing during pregnancy a drug prescribed to the mother to treat a chronic condition. Moreover, the current system of pregnancy categories can be ambiguous, give a false impression of the comparative risks of different prescription drug products, and fail to adequately provide meaningful information that health care providers can use to advise their patients on the safe and effective use of prescription drugs during pregnancy.

This rule, therefore, proposes to improve the quality of prescription drug labeling. Providing up-to-date information on the safe and effective use of prescription drugs during pregnancy and lactation in a standardized format would make labeling a more reliable resource that health care providers could consult when they seek prescription drug information for their pregnant and lactating patients.

### *B. Scope of the Proposed Rule*

This proposed rule would affect human prescription drugs that would be required to have labeling with a ''Pregnancy'' or ''Lactation'' subsection. Some manufacturers with multiple dosage forms, dosage strengths, and package sizes of the same active ingredients may produce a single version of the labeling to use with all products. Nevertheless, for this analysis, FDA assumes that manufacturers will produce separate labeling for each dosage form, but will use the same version for all package sizes and dosage strengths of the same dosage form. This assumption may lead to an overestimation of the costs of the proposed rule.

### *C. Costs of the Proposed Rule*

The extent to which the proposed rule might affect labeling depends on whether an affected application is subject to the PLR. The labeling for applications subject to the PLR would need to conform to the proposed content requirements for the ''Pregnancy'' and ''Lactation'' subsections of the ''Use in Specific Populations'' section of the full prescribing information (proposed §§ 201.57(c)(9)(i)-(c)(9)(ii)). The labeling of applications not subject to the PLR would only need to conform to the proposed requirement to remove the pregnancy category if it exists. The level of effort required to comply with the proposed changes, therefore, would depend on whether the affected application is subject to the requirements of the PLR. In the analysis of costs, multiple applications for the same prescription drug product are counted only once.

#### 1. Affected Applications

a. *Future applications*. NDAs, BLAs, and efficacy supplements submitted on or after the effective date of the pregnancy labeling final rule are future applications. Even though the number of future applications is unknown, for the analysis of impacts for the PLR (71 FR 3922 at 3969), FDA examined approvals from 1997 to 2001 to estimate the average annual number of applications that might be submitted in the future (i.e., after the effective date of the PLR). An updated analysis of the FDA approval data suggests that these estimates remain representative of current activity. Thus, FDA continues to

use the numbers derived for the PLR analysis as the agency's best estimate of future activity. Table 2 of this document shows that manufacturers might submit an estimated 1,580 applications in the 10 years following the effective date of the pregnancy labeling final rule, with approximately 75 percent of these submissions being for innovator products.

b. *Approved or pending applications subject to the PLR*. Any approved or pending application subject to the requirements of the PLR would also need to conform to the requirements of this proposed rule. This includes applications pending on the effective date of the pregnancy labeling final rule and those applications approved between June 30, 2001, and the effective date of the pregnancy labeling final rule. For the purposes of this analysis, FDA assumes that the pregnancy labeling final rule would become effective on June 30, 2010, and affect some applications counted as future applications in the PLR analysis.

This analysis uses FDA's approval data to tally the number of affected approvals between June 30, 2001, and June 30, 2006. This number provides a partial estimate of the number of approved or pending applications that might be affected by the proposed rule. Because the number of applications that would be submitted between June 30, 2006, and the effective date of the pregnancy labeling rule is unknown, FDA uses the estimate of the number of future applications in years 5 to 10 from the PLR analysis to complete the estimate of the number of approved or pending applications subject to the PLR that might be affected by this proposed rule.

To minimize the burden on industry, FDA proposes that manufacturers with labeling that already conforms to the PLR requirements on the effective date of the pregnancy labeling final rule would have from 3 to 5 years to revise labeling to conform to the requirements of the rule. Table 2 of this document shows that the existing labeling of an estimated 1,300 innovator applications and 600 generic applications would need to be revised to add the new content that would be required by the pregnancy labeling final rule.

TABLE 2.—ESTIMATED NUMBER OF APPLICATIONS SUBJECT TO THE PLR[1]

| Year | Future Applications | | Pending or Recently Approved Applications | | Total | |
|---|---|---|---|---|---|---|
| | Innovator Drugs | Generic Drugs | Innovator Drugs | Generic Drugs | Innovator Drugs | Generic Drugs |
| 1 | 140 | 40 | 0 | 0 | 140 | 40 |
| 2 | 130 | 40 | 0 | 0 | 130 | 40 |
| 3 | 120 | 40 | 380 | 260 | 500 | 300 |
| 4 | 120 | 40 | 480 | 130 | 600 | 170 |
| 5 | 120 | 40 | 440 | 210 | 560 | 250 |
| 6 | 110 | 40 | 0 | 0 | 110 | 40 |
| 7 | 110 | 40 | 0 | 0 | 110 | 40 |
| 8 | 110 | 40 | 0 | 0 | 110 | 40 |
| 9 | 110 | 40 | 0 | 0 | 110 | 40 |
| 10 | 110 | 40 | 0 | 0 | 110 | 40 |
| Total | 1,180 | 400 | 1,300 | 600 | 2,480 | 1,000 |

[1] Numbers include an estimated 1,613 pending or future applications (Source: See ANDAs, efficacy supplements, new NDAs and BLAs for years 5 to 10 of table 14 in 71 FR 3922 at 3977 through 3978), and 1,900 approved applications when the pregnancy labeling final rule becomes effective (Source: Analysis of approvals from June 29, 2001, to June 30, 2006, using FDA's approval data). Numbers may not sum due to rounding.

c. *Approved applications not subject to the PLR*. The proposed rule would require that manufacturers responsible for the labeling of approved applications not subject to the requirements of the PLR make minor revisions to remove the pregnancy category from the existing ''Pregnancy'' subsection of the ''Precautions'' section of the labeling. Manufacturers would have 3 years after the effective date of the pregnancy labeling final rule to make this change. This provision of the proposed rule would affect any approved application not subject to the PLR that currently has labeling that contains a pregnancy category. Although the actual number of applications that would be affected by this provision of the proposed rule is uncertain, the recent analysis of FDA's approval data suggests that the labeling of up to 4,720 existing prescription drug products could be affected in year 3 of the rule. Because the labeling of many older products initially approved before 1979 might not contain a pregnancy category, this estimate is an upper bound. Moreover, it should be noted that manufacturers sometimes voluntarily discontinue marketing older products and might do so before they would be required to remove the pregnancy category. Although the magnitude is uncertain, this natural attrition would likely reduce the number of products that would be affected by the pregnancy labeling final rule.

2. One-Time and Annual Labeling Costs

a. *One-time costs*. The actions required under this proposed rule to create drug product labeling can be divided into two major categories: (1) Collecting and organizing the additional information required by this proposed rule and (2) revising existing labeling to add or remove information. FDA notes that designing the labeling is a routine cost of a new application and would not be attributable to this proposed rule. To conform to the requirements of the proposed rule, manufacturers might spend more time on these actions than

they currently spend preparing the ''Pregnancy,'' ''Labor and delivery,'' and ''Nursing mothers'' subsections of the labeling, thus incurring additional labeling costs. Which costs would be incurred by a manufacturer will depend on when in the product's life cycle the labeling subject to the pregnancy labeling final rule would be required and whether the application is subject to the PLR. For example, manufacturers with future innovator applications would only incur costs to collect and organize the required information because designing labeling is a routine cost of a new application. In contrast, manufacturers required to change existing product labeling would incur both types of costs (i.e., collecting and organizing required information, and revising existing labeling).

i. *One-time costs to collect and organize the new content.* Manufacturers responsible for applications subject to the new content requirements would need to collect and organize the information required for the appropriate subsections of the ''Use in Specific Populations'' section of the labeling. Specifically, the proposed rule would merge the information in the ''Pregnancy'' and ''Labor and delivery'' subsections and revise the ''Nursing mothers'' subsection. The merged subsection would be called the ''Pregnancy'' subsection and would require the following: (1) Information about pregnancy exposure registries, (2) a general risk statement, (3) a fetal risk summary, (4) clinical considerations, and (5) a discussion of data. The proposed rule would rename the ''Nursing mothers'' subsection the ''Lactation'' subsection and require the following: (1) A risk summary, (2) clinical considerations, and (3) a discussion of data.

Under the current system, applicants and FDA review any existing animal and human data and determine the appropriate pregnancy category. Although the proposed rule would no longer require that a drug be assigned to a pregnancy category, preparing the new labeling content might require more time than manufacturers currently spend preparing this part of the product labeling. FDA personnel have worked with manufacturers on a case-by-case basis to update certain prescription drug labeling to include content similar to the content that would be required by the proposed rule. This experience suggests that for innovator products, a physician or other health care professional might spend up to 10 hours collecting the new information. In addition, regulatory affairs and legal personnel might spend up to 10 hours organizing the information and discussing the new content with FDA. At hourly wage costs of $100 for medical personnel and $50 for regulatory and legal personnel, manufacturers would incur about $1,500 in additional costs (10 hours x $100 per hour + 10 hours x $50 per hour). Because labeling of generic drug products duplicates the labeling of reference listed drugs, FDA anticipates that manufacturers of generic products would not incur these incremental costs.

Furthermore, under § 314.50(l)(1)(i), all manufacturers submitting new or revised prescription drug labeling must prepare an electronic version of the labeling for submission to the agency. Some manufacturers may incur incremental costs to prepare and transmit an electronic version that is consistent with the XML (Extensible Markup Language)-based Structured Product Labeling (SPL) standard. Because FDA has little information on the impact of this step, FDA requests detailed comment from industry on these costs.

ii. *One-time costs to revise existing prescription drug labeling.* The agency has previously estimated that the cost of revising prescription drug labeling varies with the size of the manufacturer (68 FR 6062 at 6074, February 6, 2003). Product labeling involves many departments in a manufacturer, including legal, drug safety, regulatory affairs, layout, and production personnel. Larger manufacturers with several administrative layers may require more time to change labeling than smaller manufacturers with fewer layers. In addition to labor costs, manufacturers incur material costs for each change to drug product labeling, including artwork and labeling scrap. If the rule were to require a labeling revision without allowing sufficient time to deplete existing inventories of labeling, manufacturers might also lose the value of labeling that they must throw away.

Using 2004 wages, table 3 of this document shows the estimated labor and material costs for generic drug manufacturers and three sizes of innovator manufacturers to revise labeling. Because the proposed implementation schedule would allow manufacturers with approved or pending applications subject to the PLR a minimum of 3 years to revise product labeling to conform to the requirements of the pregnancy final rule, manufacturers are not expected to incur any additional inventory costs beyond scrap. Material costs, therefore, include only the average cost of artwork and scrap.

TABLE 3.—LABELING REVISION COSTS BY SIZE AND TYPE OF MANUFACTURER

| Type of manufacturer | Labor Cost ($) | Material Cost ($) | Total Cost ($) |
|---|---|---|---|
| Generic: | 1,000 | 500 | 1,500 |
| Innovator (estimated share of products): | | | |
| Small (5 percent) | 1,000 | 500 | 1,500 |
| Medium (5 percent) | 1,500 | 1,420 | 2,920 |
| Large (90 percent) | 2,180 | 2,020 | 4,200 |

Source: 68 FR 6062 at 6074, updating for 2004 costs and excluding excess inventory loss from the material costs.

FDA's approval data suggests that large manufacturers with 1,000 or more employees produce about 90 percent of the affected innovator prescription drug products. Assuming a uniform distribution of the other 10 percent of innovator prescription drug products among small and medium-size manufacturers, manufacturers of innovator prescription drug products may incur a weighted average cost of about $4,000 per product to revise existing product labeling ((5 percent small innovator manufacturers x $1,500) + (5 percent medium-size innovator manufacturers x $2,920) + (90 percent large innovator manufacturers x $4,200)). Generic drug manufacturers may incur about $1,500 per product to revise labeling.

iii. *One-time cost to prepare artwork for prescription drug labeling other than trade labeling.* The PLR requires that trade labeling (labeling on or within the package from which the drug is to be dispensed) be printed in a minimum of 6-point type size and that labeling

disseminated in other contexts (nontrade labeling) be printed in a minimum of 8-point type size (§ 201.57(d)(6)). In the analysis of impacts for the PLR, FDA assumed that manufacturers would incur additional costs for nontrade labeling because the 8-point type size requirement would require that manufacturers revise nontrade labeling to accommodate the larger type size. FDA makes the same assumption for prescription drug labeling incorporating the new pregnancy and lactation content: that affected manufacturers would incur additional one-time costs to revise nontrade labeling to accommodate the new pregnancy and lactation content in the 8-point type size. The agency previously estimated it would cost manufacturers about $810 per product to revise and proofread the layout, and to prepare artwork (71 FR 3922 at 3981). Updating for current material and labor costs, on average, FDA estimates that, on average, manufacturers might spend $1,000 for each affected innovator product.

b. *Annual incremental costs to print longer labeling.* Longer labeling increases the cost of paper, ink, and other ongoing incremental printing costs. Some requirements of the proposed rule would increase the length of labeling. The incremental increase will depend on many factors, including the number of animal and human studies that have been conducted and their findings, the known risks of the drug, and whether a pregnancy registry exists. Based on the agency's experience with recent labeling changes incorporating content similar to that proposed in this rule, labeling conforming to both the PLR and the proposed requirements might increase by approximately 15 square inches in 6-point type size and 24 square inches in 8-point type size.[4] Although the estimate is based on a small number of labeling changes, FDA concludes it reasonably approximates the additional amount of paper that would be needed. Nevertheless, FDA requests comment from industry on these assumptions.

i. *Trade labeling.* Manufacturers must send trade labeling with all shipments of prescription drugs and with any samples distributed to health care providers. The PLR requires that trade labeling be printed in a minimum of 6-point type size. The proposed new content requirements would increase the size of trade labeling by an estimated 15-square inches. To conserve space, trade labeling is normally printed on both sides of the paper. The proposed new content, therefore, would add about 7.5-square inches of paper to the overall size of trade labeling. The agency previously estimated that manufacturers would spend about $0.0086 to produce 100-square inches of labeling (65 FR 81082 at 81107). Updating for inflation, FDA estimates that manufacturers might spend $0.01 for each additional 100-square inches of labeling they produce.

The agency has also previously estimated that, on average, manufacturers annually send up to 650,000 pieces of trade labeling with each innovator product and up to 370,000 pieces of trade labeling with each generic product. In addition, industry wide, a total of 90 million pieces of trade labeling are distributed with drug samples each year (71 FR 3922 at 3979). Because the new content provisions of this proposed rule would only add about 7.5-square inches to the overall size of trade labeling, the cost of labeling for an affected innovator product would increase by approximately $470 each year (650,000 pieces per product x $0.000096 per square inch x 7.5-square inches per piece). Generic drug manufacturers would incur annual incremental printing costs of about $280 for each generic product affected by the proposed rule (370,000 pieces per product x $0.000102 per square inch x 7.5-square inches per product).

FDA assumes that almost all samples are innovator products. Although it is unlikely that all samples would be affected by the proposed rule, the annual cost of longer trade labeling accompanying all samples of innovator products could equal about $65,000 (90 million samples x $0.000096 per square inch x 7.5-square inches per piece).

ii. *Nontrade labeling.* The PLR requires that any nontrade labeling be printed in a minimum of 8-point type size. For applications subject to the PLR, the new content requirements of the proposed rule would increase the size of the paper needed to print nontrade labeling by approximately 24 square inches. FDA assumes that only innovator products would incur these costs because almost all nontrade labeling is for innovator products. The agency previously estimated that manufacturers might distribute to health care providers and consumers an annual average of 730,000 pieces of labeling during the first 3 years of the life of an innovator product (71 FR 3922 at 3981). FDA assumes that this estimate is also a reasonable estimate of the number of pieces of labeling that would be distributed in the first 3 years after a product is relabeled under this rule. Thus, a manufacturer might spend up to $5,100 per innovator product to print labeling in 8-point type size.[5]

iii. *Physicians' Desk Reference (PDR) costs.* The new content requirements of this proposed rule would add about 0.2 page to labeling printed in the PDR and would cost manufacturers an additional $2,350 annually for each affected product.[6] FDA assumes that these costs would be incurred by the pharmaceutical industry as fees paid to the publisher of the PDR. The total cost for a manufacturer to print longer labeling in the PDR depends on how many years the labeling remains in the PDR. In the economic analysis of the PLR, FDA assumed that only 75 percent of the affected innovator products would have labeling published in the PDR (some smaller manufacturers do not publish labeling in the PDR) and would continue to include the labeling in the PDR in subsequent years (71 FR 3922 at 3976). FDA makes the same assumptions for this analysis.

3. Summary of Industry Compliance Costs for the Proposed Rule

a. *One-time costs for applications subject to the PLR.* Manufacturers with future innovator applications or those with innovator applications pending on the effective date of the pregnancy labeling rule would incur one-time costs to collect and organize the information required for prescription drug labeling

[4] This estimate is based on the agency's sample labeling in the appendix, experience with recent case-by-case labeling changes, and the results of a study on new approvals between January 1, 1997, and December 31, 2002. The net increase in the number of characters was tallied for each case and for the hypothetical samples in the appendix. Using the average increase in the number of characters and the proportion of drug products for each pregnancy category, we estimate that prescription drug labeling could increase by a weighted average of 3,200 characters. Labeling can accommodate approximately 200 characters per square inch in 6-point type size and about 130 characters per square inch in 8-point type size. Therefore, 3,200 additional characters would require about 15-square inches of paper in 6-point type size and 24-square inches of paper in 8-point type size.

[5] For the PLR, the agency estimated that manufacturers would print and distribute 775,000 pieces of labeling in 8-point type size in the first year of the life cycle of an innovator drug product and 710,000 pieces in years 2 and 3. Compared to the 6-point type size, about 59 percent more paper would be needed to print the new content in 8-point type size. Printing on one side of the paper, manufacturers would need about 24 square inches more paper to accommodate the new content. For this analysis, manufacturers would spend about $5,100 per product to print longer labeling ((775,000 + 710,000 + 710,000) x $0.000096 per sq inch x 24 sq inches = $5,083).

[6] There are approximately 15,850 characters on an average page of the PDR. The new content adds, on average, 3,200 more characters, requiring an additional 0.2 page. Using the lowest per page cost shown on the 2006 PDR rate card, manufacturers might spend up to $2,350 per product to add the new content ($11,730 per page x 0.2 page).

conforming to the rule, but would not incur one-time costs to revise existing labeling. As explained in section VIII.C.2.a.i of this document, FDA estimates that manufacturers would spend approximately $1,500 to collect and organize the information for the new pregnancy and lactation content. In contrast, manufacturers with future generic applications would incur no additional costs.

Manufacturers with applications approved on or after June 30, 2001, up to and including the effective date of the pregnancy labeling final rule, would incur costs to collect and organize the new content information and to revise existing prescription drug labeling. As described in section VIII.C.2.a.ii of this document, the estimated average cost to revise existing labeling equals $1,500 for generic drugs and $4,000 for innovator drugs. Moreover, manufacturers with innovator products might incur another $1,000 to prepare the artwork for labeling not accompanying the prescription drug product. Therefore, manufacturers might spend a total of $6,500 for existing innovator labeling ($1,500 to gather and organize information for the new content + $4,000 to revise trade labeling + $1,000 to prepare artwork for labeling not accompanying the prescription drug product) and a total of $1,500 for existing generic labeling.

Table 4 of this document shows that total one-time labeling costs would be $11.1 million and range from $0.2 million to $3.5 million in any single year. As shown in table 2 of this document, after 10 years, the labeling of approximately 2,480 innovator drug products and about 1,000 generic drug products would include the new pregnancy and lactation content.

TABLE 4.—ONE-TIME COSTS TO PREPARE NEW CONTENT AND REVISE EXISTING LABELING FOR APPLICATIONS SUBJECT TO THE PLR[1]

| Year | One-Time Costs ($ million) | | |
|---|---|---|---|
| | Innovators | Generic | Total |
| 1 | 0.2 | 0.0 | 0.2 |
| 2 | 0.2 | 0.0 | 0.2 |
| 3 | 2.7 | 0.4 | 3.0 |
| 4 | 3.3 | 0.2 | 3.5 |
| 5 | 3.0 | 0.3 | 3.4 |
| 6 | 0.2 | 0.0 | 0.2 |
| 7 | 0.2 | 0.0 | 0.2 |
| 8 | 0.2 | 0.0 | 0.2 |
| 9 | 0.2 | 0.0 | 0.2 |
| 10 | 0.2 | 0.0 | 0.2 |
| Total | 10.2 | 0.9 | 11.1 |

[1] Costs may not sum due to rounding. See table 2 of this document for details on the number and distribution of affected products.

b. *Annual incremental printing costs for applications subject to the PLR.*

i. *Trade labeling.* As described in section VIII.C.2.b.i of this document, the agency estimates that each year manufacturers print an average of about 650,000 pieces of trade labeling for each innovator product and an average of about 370,000 pieces of trade labeling for each generic product. Based on the average number of pieces of trade labeling and the estimated number of affected applications subject to the PLR from table 2 of this document, table 5 of this document shows the cumulative number of pieces of trade labeling that would be affected by this proposed rule.

TABLE 5.—CUMULATIVE NUMBER OF PIECES OF PRESCRIPTION DRUG TRADE LABELING BY TYPE OF PRODUCT FOR APPLICATIONS SUBJECT TO THE PLR[1]

| Year | Cumulative Number of Pieces (million) | | |
|---|---|---|---|
| | Innovator | Generic | Samples |
| 1 | 90 | 10 | 90 |
| 2 | 180 | 30 | 90 |
| 3 | 500 | 140 | 90 |
| 4 | 890 | 200 | 90 |
| 5 | 1,250 | 300 | 90 |
| 6 | 1,330 | 310 | 90 |
| 7 | 1,400 | 330 | 90 |
| 8 | 1,470 | 340 | 90 |
| 9 | 1,540 | 360 | 90 |
| 10 | 1,610 | 370 | 90 |

[1] Numbers may not sum due to rounding. The cumulative calculation assumes that manufacturers print 650,000 pieces for each innovator product and 370,000 pieces for each generic product, and once a product is approved, it remains on the market for the entire analysis.

Printing longer trade labeling would cost manufacturers a total of $9.9 million over 10 years, including $7.4 million for innovator trade labeling, $1.8 million for generic trade labeling, and $0.7 million for trade labeling accompanying samples. As shown in table 6 of this document, annual costs to print the additional information that would be required by this proposed rule range from $0.1 million in year 1 to $1.5 million in year 10. However, if at some point in the future, manufacturers can supply trade labeling electronically, the rule will cease to impose these annual incremental printing costs.

TABLE 6.—ANNUAL INCREMENTAL PRINTING COSTS FOR LONGER TRADE LABELING[1]

| Year | Costs by Type[2] ($ million) | | | |
|---|---|---|---|---|
| | Innovator | Generic | Samples | Total |
| 1 | 0.1 | 0.0 | 0.1 | 0.1 |
| 2 | 0.1 | 0.0 | 0.1 | 0.2 |
| 3 | 0.4 | 0.1 | 0.1 | 0.5 |
| 4 | 0.6 | 0.2 | 0.1 | 0.9 |
| 5 | 0.9 | 0.2 | 0.1 | 1.2 |
| 6 | 1.0 | 0.2 | 0.1 | 1.3 |
| 7 | 1.0 | 0.2 | 0.1 | 1.3 |
| 8 | 1.1 | 0.3 | 0.1 | 1.4 |
| 9 | 1.1 | 0.3 | 0.1 | 1.5 |
| 10 | 1.2 | 0.3 | 0.1 | 1.5 |
| Total | 7.4 | 1.8 | 0.7 | 9.9 |

[1] Costs may not sum due to rounding.

[2] Manufacturers would incur printing costs of about $72.37 for every 100,000 pieces of innovator trade labeling and about $76.58 for every 100,000 pieces of generic trade labeling. Trade labeling accompanying prescription drug samples would cost industry about $65,132 annually. See section IX.C.2.b.i of this document for details.

ii. *Nontrade labeling.* As discussed in section VIII.C.2.b.ii of this document, the new content requirements of the pregnancy labeling final rule likely would require manufacturers to print longer nontrade labeling in 8-point type size during the first 3 years after adding the new content to labeling. FDA assumes that only innovator products would incur these costs because almost all nontrade labeling is for innovator products. Thus, over 10 years, manufacturers of innovator products might spend up to $12.6 million ($5,100 per innovator product x 2,480 innovator products) to print labeling in 8-point type size.

iii. *Physicians' Desk Reference.* As discussed in section VIII.C.2.b.iii of this document, manufacturers of innovator products may pay an additional $2,350 annually to include longer prescription drug labeling in the PDR. Because FDA assumes that, after the first year, labeling would remain in the PDR for all subsequent years, PDR printing costs are cumulative. As illustrated in table 7 of this document, in 10 years industry might incur a cumulative total of $27.8 million to print longer labeling in the PDR.

TABLE 7.—CUMULATIVE NUMBER OF AFFECTED APPLICATIONS AND ANNUAL INCREMENTAL COST OF LONGER LABELING PRINTED IN THE PDR[1]

| Year | Cumulative Number of Affected Innovator Applications[2] | Annual Incremental Cost ($ mil) |
|---|---|---|
| 1 | 110 | 0.2 |
| 2 | 210 | 0.5 |
| 3 | 590 | 1.4 |
| 4 | 1,040 | 2.4 |
| 5 | 1,460 | 3.4 |
| 6 | 1,540 | 3.6 |
| 7 | 1,620 | 3.8 |
| 8 | 1,700 | 4.0 |
| 9 | 1,780 | 4.2 |
| 10 | 1,860 | 4.4 |

TABLE 7.—CUMULATIVE NUMBER OF AFFECTED APPLICATIONS AND ANNUAL INCREMENTAL COST OF LONGER LABELING PRINTED IN THE PDR[1]—Continued

| Year | Cumulative Number of Affected Innovator Applications[2] | Annual Incremental Cost ($ mil) |
|---|---|---|
| Total Cost | 27.8 | |

[1] Costs may not sum due to rounding.
[2] Seventy-five percent of innovator products adding new content (see table 2 of this document) would be included in the PDR.

c. *One-time costs for applications not subject to the PLR*. The proposed rule would require that manufacturers with approved prescription drugs not subject to the PLR remove the pregnancy category from labeling if a category exists. To minimize the impact on industry, the agency proposes to give manufacturers 3 years after the effective date of the pregnancy labeling final rule to make these changes. The proposed implementation schedule would give manufacturers sufficient time to deplete their stocks of labeling. Because removing the pregnancy category is a minor labeling change, manufacturers not subject to the PLR would only need to submit revised labeling with their annual reports. In most cases, the burden on manufacturers would be less than the average standard costs to revise existing labeling (see table 3 of this document). However, some manufacturers with multiple applications not subject to the PLR may need to revise simultaneously the labeling of many products, creating other costs than those estimated for standard labeling revisions. FDA requests detailed comment from industry about the potential burden of the implementation schedule for this provision of the proposed rule.

Based on an analysis of FDA's approval data, an estimated 4,720 prescription drug products would be affected by this provision of the proposed rule. The agency estimates that in year 3, manufacturers would remove the pregnancy category from labeling of 1,700 innovator prescription drug products and 3,020 generic prescription drug products, at a total cost of $11.3 million ((1,700 innovator products x $4,000 per innovator product) + (3,020 generic products x $1,500 per generic product)). This estimate likely overstates the direct compliance costs because many companies would remove the pregnancy category at the same time they voluntarily revise product labeling for other reasons.

d. *Summary of compliance costs*. The industry compliance costs of the proposed rule include the following: (1) One-time cost to prepare the new ''Pregnancy'' and ''Lactation'' subsections of trade labeling and labeling not accompanying prescription drug products, and (2) annual incremental costs to print longer labeling.

Similar to the rollout for PLR, FDA would provide training to medical reviewers on the requirements of the final pregnancy labeling rule. Nevertheless, reviewing the new labeling, including the longer content, would increase the review times and workloads of medical reviewers in the review divisions. Because the long-term impact of the rule depends on a number of uncertain factors, we are unable to quantify this burden on the agency.

As shown in table 8 of this document, the total present value of all costs equals $50.3 million with a 7-percent discount rate or $61.7 million with a 3-percent discount rate. The annualized cost would be $7.2 million with both a 7-percent discount rate and a 3-percent discount rate.

TABLE 8.—SUMMARY OF COMPLIANCE COSTS[1]

| Year | One-time Costs ($ mil) | Annual Costs ($ mil) | Total Costs ($ mil) | Present Value ($ mil) | |
|---|---|---|---|---|---|
| | | | | 3% | 7% |
| 1 | 0.2 | 0.6 | 0.8 | 0.8 | 0.8 |
| 2 | 0.2 | 1.2 | 1.3 | 1.3 | 1.2 |
| 3 | 14.4 | 3.2 | 17.6 | 16.1 | 14.4 |
| 4 | 3.5 | 5.4 | 8.9 | 7.9 | 6.8 |
| 5 | 3.4 | 7.4 | 10.8 | 9.3 | 7.7 |
| 6 | 0.2 | 7.0 | 7.1 | 6.0 | 4.7 |
| 7 | 0.2 | 6.4 | 6.6 | 5.3 | 4.1 |
| 8 | 0.2 | 5.9 | 6.1 | 4.8 | 3.5 |
| 9 | 0.2 | 6.2 | 6.3 | 4.9 | 3.5 |
| 10 | 0.2 | 7.0 | 7.1 | 5.3 | 3.6 |
| Total | 22.5 | 50.3 | 72.7 | 61.7 | 50.3 |

[1] Costs may not sum due to rounding.

*D. Benefits*

This proposed rule is part of the agency's ongoing efforts to improve the quality of prescription drug labeling. To effectively communicate information about a drug, labeling should be easily accessible, understandable, accurate, reliable, and up-to-date. The agency's public health initiative to provide labeling in an electronic format is intended to make labeling accessible. This proposed rule would address the other aspects of effective communication and result in better quality prescription drug labeling. Once a prescription drug is approved, information starts to become available regarding clinical experience on the use of the drug during pregnancy or lactation. The purpose of this proposed rule is to ensure that prescription drug

labeling includes any available clinical information that can inform health care providers about the safe and effective use of prescription drugs during pregnancy and lactation. By requiring that manufacturers update prescription drug labeling with clinically relevant information, the proposed rule would improve the quality of labeling and could lead to better informed health care providers. The agency is unable to quantify the potential benefits of the proposed rule, but expects that better quality information in prescription drug labeling has the potential to improve the advice that health care providers give women about the safe and effective use of prescription drugs during pregnancy and lactation.

1. Current Use of Prescription Drugs.

a. *Women of reproductive age*. Many women between 15 and 44 years of age take prescription drugs. Data from the Medical Expenditure Panel Survey (MEPS) show that, in 2003, almost 70 percent of the women of reproductive age were prescribed at least one prescription drug (Ref. 32). Moreover, in a recent survey of medication use in adults, 82 percent of the women between 18 and 44 years of age reported using some type of medication in the week preceding the survey and 46 percent of these women reported using at least one prescription drug (Ref. 9).

b. *Pregnant women*. A recent retrospective study of over 150,000 pregnant women enrolled in 8 health maintenance organizations located throughout the United States found that within 270 days before delivery, over 60 percent of the women included in the study were dispensed a prescription drug other than a vitamin or mineral supplement (Ref. 33). Oral anti-infective drugs were the most commonly dispensed prescription drugs, accounting for about 40 percent of all dispensed drugs. Even though almost half of the pregnant women in this study received prescription drugs with pregnancy category A or B, over 30 percent received prescription drugs with pregnancy category C, and 2 percent received category D or X drugs (excluding female reproductive hormones). Similarly, a smaller study of rural obstetric patients in West Virginia found that, excluding prenatal vitamins and minerals, about 60 percent of the pregnant women in the study were prescribed a prescription drug (Ref. 34). Although this study did not examine the pregnancy category of the prescribed drugs, antibiotics were the most frequently prescribed type of drug.

These newer findings support findings reported in a 1994 Institute of Medicine report on women in clinical trials (Ref. 35). The report cited two studies from the 1980s on prescription drug use by pregnant women. One study found that pregnant women took an average of 3.8 medications and the other found that over 75 percent of pregnant women took 3 to 10 drugs during their pregnancy. Studies of pregnant women in several developed countries have found similar results for prescription drug use during pregnancy (Refs. 14, 36, and 37).

c. *Lactating women*. There is less information about the effect of prescription drugs on lactation than about effects on pregnancy. The percentage of new mothers who breast-feed their newborns continues to grow. A recent study found that the percent of mothers who breast-feed their newborns at some time increased from about 50 percent in 1990 to about 70 percent in 2003 (Ref. 38). With improved labeling, health care providers would have more concise clinical information about the use of prescription drugs during lactation, allowing women to make more informed choices about continuing to nurse their newborns while taking prescription drugs.

2. Current Pregnancy Labeling Is Not Adequate

Since 1979, most human prescription drug product labeling includes ''Pregnancy,'' ''Labor and delivery,'' and ''Nursing mothers'' subsections. Besides providing information about a prescription drug's effect on reproduction, pregnancy, and the development of the fetus, each ''Pregnancy'' subsection must include a letter category (A, B, C, D, or X) intended to: (1) Communicate the prescription drug's reproductive and developmental risks or (2) weigh the risks and potential benefits of the prescription drug. The pregnancy letter category suggests increased risk as the letters ascend and equivalent risk for drugs with the same letter. This is a particular problem with category C because a prescription drug can be assigned this category when sponsors: (1) Lack both animal and human data or (2) have adverse animal data, but lack human data.

Pregnant women are rarely included in premarket clinical trials unless a drug is being developed to treat a condition unique to pregnancy. Consequently, few sponsors have any premarket data from pregnant women. Because human data on use during pregnancy are rarely available when a prescription drug is initially approved, category C is the most frequently assigned category. For example, a survey in the early 1990s found that about two-thirds of all prescription drugs in the hardcopy version of the PDR were in category C (Ref. 39). A recent search of the electronic PDR supports this observation. The study also found that over 60 percent of the prescription drugs with a pregnancy category were in category C (Ref. 40). Furthermore, once approved, prescription drugs tend to retain their initial pregnancy category.

Current labeling fails to provide up-to-date information about prescription drug use by pregnant or lactating women. Since the 1990s, the Teratology Society and health care providers have called for the agency to replace the current pregnancy categories with narrative statements that summarize and interpret all available human data.

3. Potential Benefits From Better Quality Labeling

As described in sections II and III of this document, FDA has consulted extensively with stakeholders interested in the use of prescription drugs during pregnancy and lactation. This proposed rule is in part a result of those consultations and would ensure that labeling contains clinically relevant information about prescription drug use during pregnancy and lactation to help health care providers and their patients make informed decisions about their treatment options. Although FDA has little information about adverse outcomes related to incomplete labeling information, better informed decisions about treatment options would likely lead to better outcomes.

a. *Treatment of chronic diseases during pregnancy or while lactating*. Improved information about the safe and effective use of prescription drugs during pregnancy would benefit health care providers and their patients who are pregnant and require medication to treat chronic diseases. The number of women who may benefit from better informed health care providers depends on many factors, including the prevalence of chronic diseases in pregnant women. Some chronic diseases (such as asthma, diabetes, hypertension, mental illness, and epilepsy) may result in negative health outcomes if left uncontrolled during pregnancy and lactation. Without adequate information, women with chronic medical conditions may receive suboptimal treatment, and suboptimal treatment may lead to poor health outcomes for the woman and her fetus. By requiring that manufacturers include human data, labeling will become a reliable source of up-to-date information on prescription drug use during pregnancy. Without complete

information about the benefits and risks of continuing medications during pregnancy, women with chronic medical conditions cannot make informed decisions about whether to stop taking their prescription drugs during pregnancy, and could take actions that might jeopardize their health or the health of their fetuses (Ref. 41).

i. *Pregnancy and asthma.* An estimated 6 million women of reproductive age have asthma. Previous studies have found that from 4 to 7 percent of pregnant women have asthma (Ref. 42); a recent study that used data from national health surveys conducted from 1997 to 2001 found that the annual prevalence of current asthma in pregnant women ranged from 3.7 to 8.4 percent (Ref. 43). Uncontrolled asthma has been associated with negative outcomes for both the pregnant women and the fetus.

ii. *Other chronic conditions.* The Centers for Disease Control and Prevention (CDC) tracks live births for women with several medical risk factors, including some chronic conditions requiring prescription drug therapy. For example, in 2003, of the approximately 4 million live births, some of the most frequent maternal risk factors included diabetes (3.3 percent), cardiac disease (0.5 percent), chronic (not pregnancy-related) hypertension (0.9 percent), and pregnancy-related hypertension (3.7 percent) (Ref. 44). Moreover, it has been reported that about 1 million women of reproductive age have epilepsy (Ref. 45) and up to 9 percent of pregnant women may experience depression (Ref. 46).

b. *Managing inadvertent exposure to drugs.* Improved information about the effects of inadvertent exposure to prescription drugs before women know they are pregnant would help health care providers to advise these women about the consequences of their inadvertent exposure. Because about one-half of the pregnancies in the United States are unintended, many women are taking prescription drugs before they are aware of the pregnancy (Ref. 41). Inadvertent exposure to prescription drugs during pregnancy may be of particular concern for women taking prescription drugs for chronic conditions. Fears about possible fetal harm from early exposure to prescription drugs can create anxiety for pregnant women and their families.

c. *Use of OTC drugs and dietary supplements by pregnant women.* Some studies in the United States have found that pregnant women often take over-the-counter (OTC) drugs and dietary supplements (Refs. 34, 47, and 48). It is possible that women are substituting these products for prescription drugs because OTC drugs and dietary supplements are perceived as being safer for use during pregnancy than prescription drugs. However, information on the safety of many of these products during pregnancy is as limited, if it is available at all, as that for prescription drugs. Furthermore, unlike prescription and OTC drugs, dietary supplements can be marketed without FDA premarket approval. Providing up-to-date information on the risks and benefits of prescription drugs may encourage more pregnant and lactating women to use safe and effective products that they might otherwise avoid.

4. Potential Benefits for Companies in the International Market

Besides the potential public health benefit of better informed health care providers, the proposed rule may benefit individual manufacturers operating on a global scale. In 1979, the United States began requiring that prescription drug manufacturers include a pregnancy category in the labeling of any systemically absorbed prescription drug. Although many European countries adopted similar category systems, recent guidance from the European Medicines Agency (EMEA) requires that prescription drug labeling include a narrative risk statement rather than a pregnancy category (Ref. 49). FDA's proposed rule would require narrative risk statements similar to those required by the EMEA. More consistent labeling at an international level may create some efficiency gains for global manufacturers marketing prescription drugs in both the United States and the European Union. FDA does not attempt to quantify these potential gains in efficiency.

*E. Impacts on Small Entities*

1. The Need for, and the Objectives of, the Proposed Rule

The current labeling for pregnant and lactating women provides limited clinical information for health care providers and their patients. The use of pregnancy categories is confusing and can be misinterpreted. The primary objective of the proposed rule is to modernize the content of the ''Pregnancy,'' ''Labor and delivery,'' and ''Lactation'' subsections of prescription drug product labeling and replace the category system with a narrative summary of potential risk. Narrative information can provide a valuable resource to clinicians and their patients about the relative risks and benefits of prescription drug use during pregnancy and lactation.

2. Description and Estimate of the Number of Small Entities Affected

This proposed rule would affect all small entities with applications required to include ''Pregnancy'' and ''Lactation'' subsections in the labeling. The Small Business Administration (SBA) considers Pharmaceutical Preparation Manufacturing firms (NAICS (North American Industry Classification System) 325412) with fewer than 750 employees and Biological Product Manufacturing firms (NAICS 325414) with fewer than 500 employees to be small entities. The U.S. Census Bureau reports that in 2002 there were 296 biological product manufacturing establishments (Ref. 50) and 901 pharmaceutical preparation manufacturing establishments (Ref. 51). However, Census employment size classes for pharmaceutical preparation manufacturing do not correspond to SBA size categories. For this analysis, any pharmaceutical preparation manufacturing establishment with less than 1,000 employees would be considered a small entity. Census data suggest that approximately 96 percent of biological product manufacturing establishments and no more than 97 percent of the pharmaceutical preparation manufacturing establishments could be considered small entities. Despite the large number of small entities, large companies manufacture most prescription drug products.

Because the labeling of all prescription drugs required to have a pregnancy category would be affected by the pregnancy labeling final rule, the agency expects this rule to have an impact on a substantial number of small entities. An analysis of FDA's approval data shows that about 60 small or privately held entities would be required to revise existing prescription drug labeling to conform to the content requirements between year 3 and year 5 of the proposed rule. An additional 180 small or privately held entities would be required to remove the pregnancy category from existing prescription drug labeling within 3 years of the effective date of the pregnancy labeling final rule, and many of these small entities would be required to remove the pregnancy category from more than 10 existing products. Because some of these entities would be required to make several labeling changes in the same year, the agency requests detailed comment from affected small entities on the potential burden of the proposed rule.

The compliance requirements for small entities under this proposed rule are the same as those described above for other affected entities. Compliance primarily involves revising subsections of prescription drug labeling to conform to the requirements of the proposed rule. Because manufacturers already submit labeling to FDA, no additional skills would be required to comply with the proposed rule. The small entities likely to bear the highest total costs under this proposed rule are those entities that would need to simultaneously revise the prescription drug labeling of several high-volume products. Because these small entities would likely have the highest sales volumes of affected products manufactured by small entities, the incremental cost per unit sold is likely to be relatively low. In contrast, small entities with a single, low-volume product would have a higher incremental cost per unit sold. The following examples illustrate possible impacts on small entities with different production volumes. Prescription drug labeling costs are estimated for a small entity that must revise labeling of an innovator product. Table 9 of this document outlines the projected per-unit and total costs to the entity with three different levels of production: 1,000, 10,000, and 100,000 units produced per year.

TABLE 9.—ESTIMATED COSTS FOR HYPOTHETICAL SMALL ENTITY WITH A SINGLE INNOVATOR PRODUCT, UNDER THREE ALTERNATIVE LEVELS OF PRODUCTION[1]

| Cost Category | Number of Units Produced and Sold Each Year | | |
|---|---|---|---|
| | 100,000 | 10,000 | 1,000 |
| *One-Time Costs*:[2] | | | |
| Add new content to existing trade labeling | $5,420 | $5,420 | $5,420 |
| Prepare labeling not accompanying prescription drug products | $5,100 | $5,100 | $5,100 |
| Total One-Time Costs | $10,520 | $10,520 | $10,520 |
| *Annual Incremental Costs*: | | | |
| Printing longer trade labeling[3] | $80 | $8 | $1 |
| Printing longer PDR[4] | $2,350 | $2,350 | N/A |
| Total Annual Incremental Costs | $2,430 | $2,358 | $1 |
| *Annualized Costs*:[5] | | | |
| Total Annualized Costs at 3 percent | $3,660 | $3,590 | $1,230 |
| Additional annualized cost per unit sold at 3 percent | $0.04 | $0.36 | $1.23 |
| Total Annualized Costs at 7 percent | $3,920 | $3,850 | $1,500 |
| Additional annualized cost per unit sold at 7 percent | $0.04 | $0.39 | $1.50 |

[1] Numbers may not sum due to rounding.
[2] Includes one-time costs to collect and organize information for the new content ($1,500), revise trade labeling ($2,920; see Medium firm in table 6 of this document), prepare artwork for labeling in 8-point type size ($1,000), and print labeling in 8-point type size to distribute directly to health care providers.
[3] Number of pieces of trade labeling printed is calculated as units produced/year plus 10 percent wastage factor, at an incremental printing cost of $0.0005 per piece.
[4] Assumes that products with less than 10,000 units per year will not have labeling in the PDR.
[5] One-time costs are annualized over 10 years.

Although this is an illustrative example, because the scope of the proposed rule would likely include most small entities, FDA uses the example of 100,000 units annualized over 10 years at a 7-percent discount rate to estimate the compliance costs as a proportion of average annual revenue. FDA calculated the average annual value of shipments for each employment category from data from the 2002 Economic Census. Because the agency's analysis of FDA's approval data found that at least one small entity might be required to revise the content of labeling for five innovator products in a single year, tables 10 and 11 of this document show the potential lower and upper bound impact on small manufacturing entities. Even with five affected products in a single year, annualized compliance costs would be less than 1.1 percent of average annual shipments for all establishment sizes.

TABLE 10.—ANNUALIZED COMPLIANCE COSTS AS A PERCENTAGE OF THE VALUE OF AVERAGE ANNUAL SHIPMENTS FOR SMALL PHARMACEUTICAL PREPARATION MANUFACTURING ESTABLISHMENTS (NAICS 325412)

| Number of Employees | Number of Establishments | Annual Value of Shipments ($ mil) | Average Per Establishment Annual Value of Shipments ($ mil) | Hypothetical Annualized Costs as a Percentage of Average Annual Value of Shipments[1] | |
|---|---|---|---|---|---|
| | | | | 1 Affected Product | 5 Affected Products |
| 1-19 | 436 | 1,101.9 | 2.5 | 0.2% | 0.8% |
| 20-49 | 109 | 978.5 | 9.0 | 0.0% | 0.2% |
| 50-99 | 93 | 2,804.7 | 30.2 | 0.0% | 0.1% |

TABLE 10.—ANNUALIZED COMPLIANCE COSTS AS A PERCENTAGE OF THE VALUE OF AVERAGE ANNUAL SHIPMENTS FOR SMALL PHARMACEUTICAL PREPARATION MANUFACTURING ESTABLISHMENTS (NAICS 325412)—Continued

| Number of Employees | Number of Establishments | Annual Value of Shipments ($ mil) | Average Per Establishment Annual Value of Shipments ($ mil) | Hypothetical Annualized Costs as a Percentage of Average Annual Value of Shipments[1] | |
|---|---|---|---|---|---|
| | | | | 1 Affected Product | 5 Affected Products |
| 100-499 | 184 | 23,773.2 | 129.2 | 0.0% | 0.0% |
| 500-999 | 48 | 35,262.7 | 734.6 | 0.0% | 0.0% |

Source: Table 4 in Ref. 50.
[1] One time compliance costs annualized at 7 percent for 10 years. Total annualized costs for this example total $3,920 per affected innovator product.

In the year that a small entity revises innovator labeling, the entity might spend up to $13,000 on one-time design costs, one-time printing costs for longer labeling in 8-point type size, and the annual incremental costs of printing longer trade labeling and a PDR listing conforming to the new content requirements. With five affected innovator products in a single year, compliance costs could total up to $65,000. However, FDA approval data suggest that it is unlikely that entities in the smallest category of establishments (i.e., less than 20 employees) would have 5 innovator products requiring revision in a single year. Nevertheless, $65,000 in compliance costs would total less than 4 percent of average annual revenues for an entity with less than 20 employees and less than 1 percent of average annual revenues for small entities with 20 or more employees.

TABLE 11.—ANNUALIZED COMPLIANCE COSTS AS A PERCENTAGE OF THE VALUE OF AVERAGE ANNUAL SHIPMENTS FOR SMALL BIOLOGICAL PRODUCT MANUFACTURING ESTABLISHMENTS (NAICS 325414)

| Number of Employees | Number of Establishments | Annual Value of Shipments ($ mil) | Average Per Establishment Annual Value of Shipments ($ mil) | Hypothetical Annualized Costs as a Percentage of Average Annual Value of Shipments[1] | |
|---|---|---|---|---|---|
| | | | | 1 Affected Product | 5 Affected Products |
| 1-19 | 166 | 302.4 | 1.8 | 0.2% | 1.1% |
| 20-49 | 58 | 378.5 | 6.5 | 0.1% | 0.3% |
| 50-99 | 26 | 366.5 | 14.1 | 0.0% | 0.1% |
| 100-499 | 35 | 2,719.7 | 77.7 | 0.0% | 0.0% |

Source: Table 4 in Ref. 49.
[1] One time compliance costs annualized at 7 percent for 10 years. Total annualized costs for this example total $3,920 per affected innovator product.

*F. Alternatives Considered*

1. No New Regulatory Action

This alternative is the baseline against which FDA measures the costs and benefits of the other regulatory alternatives. The current ''Pregnancy,'' ''Labor and delivery,'' and ''Nursing mothers'' subsections of the labeling, including the pregnancy categories, fail to provide relevant clinical information to health care providers and their patients about the safe and effective use of drug products during pregnancy and lactation. Current labeling also provides no information about the effects of inadvertent exposure before a woman knows she is pregnant.

2. Require the Labeling of Applications Submitted After the Effective Date of the Pregnancy Labeling Final Rule To Conform to the New Content Requirements; Remove the Pregnancy Category From the Labeling of All Other Approved Products (''Prospective Alternative'')

This alternative would require that the new content be added only to the labeling for applications submitted after the effective date of the pregnancy final labeling rule. The scope of this alternative would be narrower than that of the proposed rule. Consequently, FDA estimates that 10 years after the effective date, 1,200 innovator products and 400 generic products would contain the new content. The estimated costs, therefore, would be less than those of the proposed rule. Because the labeling of fewer products would include the new pregnancy labeling content, the potential benefits of this alternative, although uncertain, might be less than those of the proposed rule.

This alternative would also require that, within 3 years of the effective date, manufacturers remove the pregnancy category (if it exists) from all labeling for products approved before the effective date of the pregnancy labeling final rule. FDA's approval data suggests that this requirement would affect about 2,990 innovator products and 3,630 generic products. Like the proposed rule, these changes to labeling would not require a separate labeling supplement, but would be submitted in an annual report.

FDA assumes that most cost components for this alternative are the same as for the proposed rule (see section VIII.C.2 of this document for details). However, because this alternative would only require new content prospectively, FDA anticipates

that no additional agency resources would be needed.

Table 12 of this document shows the estimated costs of this alternative. The estimated one-time costs to add the new content and remove the pregnancy category are $19.2 million. The annual incremental costs to print longer labeling that contains the new content are estimated at $22.3 million. The present value of the total compliance costs of this option would be approximately $29.9 million with a 7-percent discount rate or about $35.8 million with a 3-percent discount rate. The estimated annualized compliance costs for this alternative are $4.2 million with a 3-percent discount rate and $4.3 million with a 7-percent discount rate. Moreover, any overlap of the implementation schedules of the PLR and the pregnancy labeling final rule would reduce these costs because firms could make all labeling changes at the same time. However, any potential cost savings depend on the effective date of the pregnancy labeling final rule.

TABLE 12.—ESTIMATED COSTS OF THE PROSPECTIVE ALTERNATIVE

| Year | One-Time Revision Cost ($ mil) | Annual Printing Costs ($ mil) | Total Costs ($ mil) | Present Value ($ mil) | |
|---|---|---|---|---|---|
| | | | | 3% | 7% |
| 1 | 0.2 | 0.6 | 0.8 | 0.8 | 0.8 |
| 2 | 0.2 | 1.2 | 1.3 | 1.3 | 1.2 |
| 3 | 17.6 | 1.6 | 19.2 | 17.6 | 15.7 |
| 4 | 0.2 | 1.9 | 2.1 | 1.8 | 1.6 |
| 5 | 0.2 | 2.1 | 2.3 | 2.0 | 1.7 |
| 6 | 0.2 | 2.4 | 2.5 | 2.1 | 1.7 |
| 7 | 0.2 | 2.6 | 2.8 | 2.3 | 1.7 |
| 8 | 0.2 | 2.9 | 3.0 | 2.4 | 1.8 |
| 9 | 0.2 | 3.1 | 3.3 | 2.5 | 1.8 |
| 10 | 0.2 | 3.9 | 4.1 | 3.0 | 2.1 |
| Total | 19.2 | 22.3 | 41.5 | 35.8 | 29.9 |

3. Require the Labeling of Categories of Drugs That Are Most Widely Used by Pregnant Women and Women of Reproductive Age To Conform to the Content Requirements

The scope of this alternative would be greater than that of the proposed rule. In the agency's efforts to develop this proposed rule, it consulted with outside experts concerning what drugs should be covered by this rule. FDA asked the American College of Obstetrics and Gynecology, the American Academy of Pediatrics, and the Association of Women's Health, Obstetric and Neonatal Nurses were asked about which drugs each thought were important to the clinical care of pregnant women and for which drugs more information is needed. FDA asked the Organization of Teratology Information Services and Motherisk, two organizations that counsel pregnant women about exposure to drugs during pregnancy, to list the drugs about which they received the most questions from pregnant women. FDA also consulted the March of Dimes and the Canadian Pediatric Society. In addition, FDA asked the Pregnancy Labeling Subcommittee of the Advisory Committee for Reproductive Health Drugs to consider how to determine which drugs merited priority implementation of the new content and format for pregnancy labeling. Consultation with these experts resulted in numerous lists of drugs for which revised pregnancy labeling was considered a priority. However, no clear core set of drugs or drug classes emerged from this process. The agency compiled a list of drug classes from those suggested by the various sources. The list included analgesics, anti-infective drugs, anticoagulants, antidepressants, antiemetics, anticonvulsants, antifungals, antihypertensives, antimigraine drugs, antivirals, respiratory agents, thyroid drugs, tranquilizers, oral contraceptives, glucocorticoids, estrogens, gastrointestinal drugs, and antihistamines. Changing the content and format of pregnancy labeling for such a large universe of drugs would be a large burden for both industry and FDA. Because of the difficulties of identifying the products affected by this alternative, FDA did not estimate the costs of this alternative, but expects that they would fall somewhere between those of the proposed rule and the highest cost alternative described below.

4. Require the Labeling of All Approved Products To Conform to the New Content Requirements

In contrast to the proposed rule, this alternative has the broadest scope and would require that new content be added to the labeling of about 4,170 innovator products and 4,030 generic products. Consequently the estimated costs and potential benefits would be greatest with this alternative.

The implementation schedule and estimated costs for future applications and for approved applications subject to the PLR would be the same as for the proposed rule. Approved applications not subject to the PLR would follow a staggered implementation schedule in which manufacturers would be given from 6 to 10 years to revise product labeling, depending on the approval date. Under this staggered schedule, manufacturers with applications approved before June 30, 1975, would have 6 years to revise labeling; manufacturers with applications approved between June 30, 1975, and June 29, 1984, would have 7 years to revise labeling; manufacturers with

applications approved between June 30, 1984, and June 29, 1990, would have 8 years to revise labeling; manufacturers with applications approved between June 30, 1990, and June 29, 1996, would have 9 years to revise labeling; and manufacturers with applications approved between June 30, 1996, to June 29, 2001, would have 10 years to revise labeling.

The length of time since a product's approval determines the amount of information available for the new content. In general, more information about clinical experience is available for older products than for newly approved products. Thus, FDA expects that manufacturers with applications not subject to the PLR might spend more time collecting and organizing the new content and that the costs to print longer labeling may exceed those estimated for applications subject to the PLR. Because the new content for older products could be longer than that for newly approved products, additional FDA personnel might be needed to review the labeling supplements for older products.

To account for these potential differences in the costs for the labeling of older products, this analysis uses a range of costs for products not subject to the PLR. One-time costs to collect and organize information range from $3,000 to $6,000 for innovator products. The length of trade labeling might increase by 12-square inches at a cost of $750 for innovator products and $450 for generic products. If the labeling of older products is longer than that of newly approved products, manufacturers with older innovator products might incur costs for labeling distributed directly to consumers and health care providers and costs to print longer labeling in the PDR. For this alternative, FDA estimates that, on average, labeling printed in 8-point type size would increase by 38 square inches at a cost of $8,050, and the PDR would be about 0.3 page longer at a cost of $3,950. Finally, to account for a potential increase in FDA resources for this alternative, the number of additional FTEs would double from two to four for the last 5 years of the analysis.

Over 10 years, the one-time costs to revise labeling to add the new content could range from $29.2 million to $34.3 million. Annual incremental printing costs might total about $91.5 million over 10 years. The present value of the total compliance costs range from about $75.3 million to about $78.2 million with a 7-percent discount rate and from about 97.9 million to about $101.9 million with a 3-percent discount rate. The estimated annualized compliance costs for this alternative, therefore, range from $11.5 million to $11.9 million with a 3-percent discount rate and range from $10.7 million to $11.1 million with a 7-percent discount rate. Table 13 shows the upper bound estimate for this alternative.

TABLE 13.—UPPER BOUND ESTIMATED COSTS OF HIGHEST IMPACT ALTERNATIVE

| Year | Number of Approved Applications by Type of Product | | Total Costs ($ mil) | Present Value ($ mil) | |
|---|---|---|---|---|---|
| | Innovator | Generic | | 3% | 7% |
| 1 | 140 | 40 | 1.3 | 1.2 | 1.2 |
| 2 | 130 | 40 | 1.8 | 1.7 | 1.5 |
| 3 | 500 | 300 | 6.7 | 6.1 | 5.5 |
| 4 | 600 | 170 | 9.3 | 8.3 | 7.1 |
| 5 | 560 | 250 | 11.2 | 9.7 | 8.0 |
| 6 | 480 | 630 | 15.5 | 13.0 | 10.3 |
| 7 | 430 | 720 | 16.7 | 13.6 | 10.4 |
| 8 | 390 | 650 | 17.7 | 13.9 | 10.3 |
| 9 | 450 | 670 | 20.0 | 15.3 | 10.9 |
| 10 | 490 | 560 | 25.6 | 19.1 | 13.0 |
| Total | 4,170 | 4,030 | 125.8 | 101.9 | 78.2 |

5. Summary of Regulatory Options

Table 14 of this document shows the total and incremental costs of the proposed rule and regulatory alternatives. The total benefits of the regulatory alternatives would be directly related to the costs, because the more costly the alternative the more products that would be covered. It should be noted that although the total benefits would correspond to the total costs, the marginal benefits of these alternatives may not correspond directly to marginal costs. FDA is unable, however, to quantify the total or incremental benefits of these regulatory alternatives.

The requirements of this proposed rule are the result of the agency's efforts to revise the regulations concerning the content and format of the ''Pregnancy,'' ''Labor and delivery,'' and ''Nursing mothers'' subsections of prescription drug labeling. Although the prospective alternative has lower costs than the proposed rule, it would result in two types of PLR labeling—one with the revised pregnancy and lactation content and one without the revised content. To ensure the consistent quality of labeling subject to the PLR, the agency, therefore, proposes that the pregnancy labeling rule apply to all labeling subject to the PLR.

TABLE 14.—COMPARISON OF THE ESTIMATED COMPLIANCE COSTS OF THE PROPOSED RULE AND THE REGULATORY ALTERNATIVES[1]

| Alternatives | Annualized costs ($ million) | | Incremental costs ($ million) | |
|---|---|---|---|---|
| | 3 percent | 7 percent | 3 percent | 7 percent |
| No new regulatory action | 0 | 0 | N/A | N/A |
| Content required for labeling prospectively | 4.2 | 4.3 | 4.2 | 4.3 |
| Proposed rule | 7.7 | 7.6 | 3.5 | 3.3 |
| Content required for labeling of most widely used drugs | 7.7 < x < 11.9 | 7.6 < x < 11.1 | 0 < x < 4.2 | 0 < x < 3.5 |
| Content required for labeling of all approved drugs | 11.5 to 11.9 | 10.7 to 11.1 | 3.8 to 4.2 | 3.1 to 3.5 |

[1] The present value of the total estimated compliance costs are annualized over 10 years at a 3–percent discount rate or a 7–percent discount rate. Compliance costs include the costs to remove the pregnancy categories from labeling not subject to the content requirements of each alternative.

## IX. Paperwork Reduction Act of 1995

This proposed rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501 3520). A description of these requirements is given below, along with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

FDA invites comments on: (1) Whether the 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.

*Title*: Content and Format of Labeling for Human Prescription Drug and Biological Products; Requirements for Pregnancy and Lactation Labeling

*Description*: The proposed rule would amend FDA regulations concerning the format and content of the ''Pregnancy,'' ''Labor and delivery,'' and ''Nursing mothers'' subsections of the ''Use in Specific Populations'' section of the labeling for human prescription drugs. The proposal would require that labeling include a summary of the risks of using a drug during pregnancy and lactation and a discussion of the data supporting that summary. The labeling would also include relevant clinical information to help health care professionals make prescribing decisions and counsel women about the use of drugs during pregnancy and lactation. The proposal would eliminate the current pregnancy categories A, B, C, D, and X. The ''Labor and delivery'' subsection would be eliminated because information on labor and delivery would be included in the ''Pregnancy'' subsection. The proposed rule is intended to create a consistent format for providing information about the effects of a drug on pregnancy and lactation that will be useful for decisionmaking by women of childbearing age and their health care providers.

Under proposed §§ 201.57(c)(9)(i) and 201.57(c)(9)(ii), holders of approved applications[7] would be required to provide new labeling content in a new format—that is, to completely rewrite the pregnancy and lactation portions of each drug's labeling. These application holders would be required to submit supplements requiring prior approval by FDA before distribution of the new labeling, as required in § 314.70(b) or § 601.12(f)(1).

Under proposed § 201.80(f)(6)(i), holders of approved applications would be required to remove the pregnancy category designation (e.g., ''Pregnancy Category C'') from the ''Pregnancy'' subsection of the ''Precautions'' section of the labeling. These application holders would report the labeling change in their annual reports, as required in § 314.70(d) or § 601.12(f)(3).

The new content and format requirements of the proposed rule would apply to all applications that are required to comply with the PLR, including: (1) Applications submitted on or after the date the proposed rule becomes final; (2) applications pending on the date the proposed rule becomes final; and (3) applications approved from June 30, 2001, to the effective date of the pregnancy labeling rule.

Information collection subject to the PRA would consist of the following submissions under the proposed rule:

(1) Applications submitted on or after the effective date of the proposed rule (§§ 314.50; 314.70(b); 601.2; 601.12(f)(1));

(2) Amendments to applications pending on the effective date of the final rule (§ 314.60);

(3) Supplements to applications approved from June 30, 2001, to the effective date of the final rule (§ 314.70(b); 601.12(f)(1));

(4) Holders of applications approved before June 29, 2001, that contain a pregnancy category would be required to remove the pregnancy category designation by 3 years after the effective date of the final rule and include this labeling change in their annual report (§ 314.70(d), 601.12(f)(3)).

The information collection requirements and burden estimates are summarized in table 12 of this document. Based on data provided in section VIII of this document, FDA estimates that approximately 1,613[8] applications containing labeling consistent with this rulemaking would be submitted to FDA by approximately 885 applicants. Based on data provided in section VIII of this document, FDA estimates that it would take applicants approximately 20 hours to prepare and submit labeling consistent with this rulemaking. The estimate of 20 hours is

[7] As discussed previously, the term ''application'' refers to NDAs, BLAs, and efficacy supplements.

[8] 1,613 includes approximately 1,197 innovator and 416 generic drug products.

incremental, in that it applies only to the requirements for this rulemaking and does not indicate the total hours required to prepare and submit complete labeling for these applications. The information collection burden to prepare and submit labeling in accordance with §§ 201.56, 201.57, and 201.80 is approved by OMB under Control Number 0910–0572.

FDA also estimates that approximately 111 amendments to applications pending on the effective date of the pregnancy labeling final rule would be submitted to FDA as a result of this proposal, by approximately 81 applicants, and that it would take those applicants approximately 20 hours (incremental) to prepare and submit each amendment.

In addition, FDA estimates that approximately 1,789 supplements to approved applications would be submitted to FDA to update labeling in accordance with this proposal, that approximately 210 application holders would submit these supplements, and that it would take those application holders approximately 85 hours[9] (incremental) to prepare and submit each supplement.

FDA also estimates that approximately 4,720[10] annual reports containing labeling changes resulting from this rulemaking would be submitted to FDA by approximately 300 application holders, and that it would take application holders approximately 50 hours[11] to prepare and submit each revision.

FDA must request an extension of approval of this information collection every 3 years. For purposes of OMB approval for the first 3-year period, FDA divided the total hours in table 15 of this document (422,545 hours) by 3 to provide OMB an annualized estimate of burdens associated with this rulemaking (i.e., 140,848 hours).

*Description of Respondents*: Persons and businesses, including small businesses and manufacturers.

*Burden Estimate*: Table 15 of this document provides an estimate of the annual reporting burden for the proposed pregnancy and lactation labeling requirements. FDA specifically requests comments on these estimates.

TABLE 15.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| Category (21 CFR section) | Number of Respondents | Number of Responses per Respondent | Total Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| New NDAs/ANDAs/BLAs/efficacy supplements submitted on or after effective date (§§ 314.50; 314.70(b); 601.2; 601.12(f)(1)) | 885 | 1.82 | 1,613 | 20 | 32,260 |
| Amendments to applications pending on effective date (§ 314.60) | 81 | 1.37 | 111 | 20 | 2,220 |
| Supplements to applications approved 6/30/01 to effective date (§ 314.70(b); 601.12(f)(1)) | 210 | 8.52 | 1,789 | 85 | 152,065 |
| Annual report submission of revised labeling for applications approved before 6/29/01 that contain a pregnancy category (§ 314.70(d); 601.12(f)(3)) | 300 | 15.73 | 4,720 | 50 | 236,000 |
| Total | | | | | 422,545 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In compliance with section 3507(d) of the PRA, the agency has submitted the information collection requirements of this proposed rule to OMB for review. The information collection provisions of this proposed rule have been submitted to OMB for review. Interested persons are requested to fax comments regarding information collection by June 30, 2008, to the Office of Information and Regulatory Affairs, OMB. To ensure that comments on 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.*

## X. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' In this proposed rule, FDA is proposing to revise its existing requirements concerning the format and content of the ''Pregnancy,'' ''Labor and delivery,'' and ''Nursing mothers'' subsections of labeling for human prescription drug and biological products. To the extent that a State requires labeling that conflicts with these requirements, the State required labeling would be subject to implied conflict preemption.

As stated in the preamble, this proposed rule would amend portions of FDA's regulations that were recently revised by the PLR. When FDA finalized

[9] The estimate for innovator companies is approximately 85 hours, and the estimate for generic companies is approximately 22 hours. For purposes of this information collection analysis, FDA used the higher estimate and invites comment on the time needed to prepare and submit these supplements.

[10] 4,720 includes approximately 1,697 innovator and 3,023 generic drug products.

[11] The estimate for innovator companies is approximately 50 hours, and the estimate for generic companies is approximately 22 hours. For purposes of this information collection analysis, FDA used the higher estimate and invites comment on the time needed to prepare and submit these supplements.

the PLR, the agency responded to comments regarding the product liability implications of revising the labeling for prescription drugs. Several comments on the proposed PLR had raised concerns about State requirements on drug labeling, often as a result of product liability lawsuits, that conflict with federal requirements. As a result of those comments, and in discussing federalism issues, FDA restated its longstanding views on preemption. For further discussion of this issue, see 71 FR 3922 at 3933 through 3936 and 3967 through 3969. FDA's statements in this regard are applicable to this proposed rule as well, and reflect the agency's current position on this issue. Section 4(c) of Executive Order 13132 instructs us to restrict any Federal preemption of State law to the ''minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated.'' This proposed rule meets the preceding requirement because as discussed above, it would preempt State laws that conflict with these Federal requirements. Section 4(d) of Executive Order 13132 states that when an agency foresees the possibility of a conflict between State law and federally protected interests within the agency's area of regulatory responsibility, the agency ''shall consult, to the extent practicable, with appropriate State and local officials in an effort to avoid such a conflict.'' In this case, FDA foresees the possibility of a conflict between State law and federally protected interests within the agency's area of regulatory responsibility. Section 4(e) of Executive Order 13132 adds that ''when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency ''shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.''

FDA is seeking input from all stakeholders on the proposed requirements for the content and format of pregnancy labeling through publication of the proposed rule in the **Federal Register** and will consult with State and local officials in an effort to avoid conflict between State law and federal protected interests.

## XI. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

## XII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)


1. ''PRAMS and . . . Unintended Pregnancy,'' Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, *http://www.cdc.gov/PRAMS/PDFs/PRAMSUnintendPreg.pdf* (last viewed 4/23/08).
2. American Academy of Pediatrics, ''Policy Statement: Breastfeeding and the Use of Human Milk, *Pediatrics*, vol. 115, pp. 496–506, 2005.
3. Ryan, A. S., Z. Wenjun, and A. Acosta, ''Breast-feeding Continues to Increase Into the New Millenium,'' *Pediatrics*, vol. 110, pp. 1103–1109, 2002.
4. *Drugs and Human Lactation*, edited by P. N. Bennett, Elsevier, Amsterdam, 1988.
5. *Williams Obstetrics*, 21st ed., edited by F. G. Cunningham et al., McGraw-Hill, New York, pp. 201–219, 2001.
6. March of Dimes, Fact Sheet: Miscarriage, *http:/www.marchofdimes.com/professionals/14332_1192.asp* (last viewed 4/23/08).
7. March of Dimes, Fact Sheet: Stillbirth, *http:/www.marchofdimes.com/professionals/14332_1198.asp* (last viewed 4/23/08).
8. Leppig, K. A. et al., ''Predictive Value of Minor Anomalies,'' *The Journal of Pediatrics*, vol. 110, pp. 531–537, 1987.
9. Christian, M. S., ''Test Methods for Assessing Female Reproductive and Developmental Toxicology,'' *Principles and Methods of Toxicology*, 4th ed., edited by A. W. Hayes, Taylor & Francis, Philadelphia, p. 1301–1381, 2001.
10. Kaufman, D. W. et al., ''Recent Patterns of Medication Use in the Ambulatory Adult Population of the United States: the Sloane Survey,'' *Journal of the American Medical Association*, vol. 287, pp. 337–344, 2002.
11. Ventura, S. J. et al., ''Trends in Pregnancies and Pregnancy Rates by Outcome: United States, 1976–96,'' National Center for Health Statistics, *Vital and Health Statistics*, 21(56), p. 1, *http://www.cdc.gov/nchs/data/series/sr_21/sr21_056.pdf* (last viewed 4/23/08).
12. Schardein, J. L., *Chemically Induced Birth Defects*, 3rd ed., Marcel Dekker, Inc., New York, pp. 5–7, 2000.
13. De Vigan, C. et al., ''Therapeutic Drug Use During Pregnancy: A Comparison in Four European Countries,'' *Journal of Clinical Epidemiology*, vol. 52, pp. 977–982, 1999.
14. Lacroix, I. et al., ''Prescription of Drugs During Pregnancy in France,'' *The Lancet*, vol. 356, pp. 1735–1736, 2000.
15. Mitchell, A. A. et al., ''Medication Use in Pregnancy 1976–2000,'' *Pharmacoepidemiology and Drug Safety*, vol. 10, Supplement 1, pp. S146–S147, 2001.
16. Mitchell, A. A., ''Special Considerations in Studies of Drug-Induced Birth Defects,'' in *Pharmacoepidemiology*, 3rd ed., edited by B. L. Strom, John Wiley & Sons, Ltd., England, pp. 749–763, 2000.
17. Ward, R. M., ''Difficulties in the Study of Adverse Fetal and Neonatal Effects of Drug Therapy During Pregnancy,'' in *Seminars in Perinatology: Proceedings from the NIH Workshop to Label Drugs During Pregnancy*, vol. 25, pp. 191–195, 2001.
18. Rogers, J. M., and R. J. Kavlock, ''Developmental Toxicity,'' in *Toxicology: The Basic Science of Poisons*, 5th ed., edited by C. D. Klaassen, McGraw-Hill, New York, pp. 301–332, 1996.
19. Matsui, D. et al., ''Drugs and Chemicals Most Commonly Used by Pregnant Women,'' in *Maternal-Fetal Toxicology*, edited by G. Koren, Marcel Dekker, Inc., New York, pp. 115–135, 2001.
20. Jasper, J. D. et al., ''Effects of Framing on Teratogenic Risk Perception in Pregnant Women,'' *The Lancet*, vol. 358, pp. 1237–1238, 2001.
21. Kallen, B., ''Drugs in Pregnancy—The Dilemma of Labeling,'' *Drug Information Journal*, vol. 33, pp. 1135–1143, 1999.
22. Koren, G., ''Misrepresentation and Miscommunication of Teratogenic Risk of Drugs; Analysis of Three Highly Publicized International Cases,'' *Reproductive Toxicology*, vol. 15, pp. 1–3, 2000.
23. Pole, M. et al., ''Drug Labeling and Risk Perceptions of Teratogenicity: A Survey of Pregnant Canadian Women and Their Health Professionals,'' *Journal of Clinical Pharmacology*, vol. 40, pp. 573–577, 2000.
24. Sanz, E., T. Gomez-Lopez, and M. J. Martinez-Quintas, ''Perception of Teratogenic Risk of Common Medicines,'' *European Journal of Obstetrics & Gynecology and Reproductive Biology*, vol. 95, pp. 127–131, 2001.
25. Thurmann, P. A., and A. Steioff, ''Drug Treatment in Pregnancy,'' *International Journal of Clinical Pharmacology and Therapeutics*, vol. 39, pp. 185–191, 2001.
26. Webster, W. S., and J. A. D. Freeman, ''Is This Drug Safe in Pregnancy?'' *Reproductive Toxicology*, vol. 15, pp. 619–629, 2001.
27. Doering, P. L., L. A. Boothby, and M. Cheok, ''Review of Pregnancy Labeling of Prescription Drugs: Is the Current System Adequate to Inform of Risks?'' *American Journal of Obstetrics and Gynecology*, vol. 187, pp. 333–339, 2002.
28. Alan Guttmacher Institute, ''Facts in Brief: Contraceptive Use,'' 1999, *http://www.guttmacher.org/pubs/fb_contr_use.html* (last viewed 4/23/08).

29. Centers for Disease Control and Prevention, ''Current Estimates from the National Health Interview Survey, 1996,'' *Vital and Health Statistics*, 1999, *http://www.cdc.gov/nchs/data/series/sr_10/sr10_200.pdf* (last viewed 4/23/08).

30. Meadows, M., ''Pregnancy and the Drug Dilemma,'' *FDA Consumer*, May-June 2001.

31. *Drugs and Human Lactation*, 2nd ed., edited by P. N. Bennett, Elsevier, Amsterdam, 1996.

32. Agency for Healthcare Research and Quality, Medical Expenditure Panel Survey Household Component Data for 2003, generated using MEPSnet/HC, *http://www.meps.ahrq.gov/mepsweb* under ''Database of Household Component (HC) Files'' housed in the on-line PUF (public use file) database (last viewed 4/23/08).

33. Andrade, S. E. et al., ''Prescription Drug Use in Pregnancy,'' *American Journal of Obstetrics and Gynecology*, vol. 191, pp. 398–407, 2004.

34. Glover, D. D. et al., ''Prescription, Over-the-Counter, and Herbal Medicine use in a Rural, Obstetric Population,'' *American Journal of Obstetrics and Gynecology*, vol. 188, pp. 1039–1045, 2003.

35. Mastroianni, A. C., R. Faden, and D. Federman, Editors, *Women and Health Research: Ethical and Legal Issues of Including Women in Clinical Studies, Volume 1*; Committee on Ethical and Legal Issues Relating to the Inclusion of Women in Clinical Studies, Institute of Medicine, p. 188, 1994.

36. Donati, S. et al., ''Drug Use in Pregnancy Among Italian Women,'' *European Journal of Clinical Pharmacology*, vol. 56, pp. 323–328, 2000.

37. Irl, C., P. Kipferler, and J. Hasford, ''Drug Use Assessment and Risk Evaluation in Pregnancy—The PEGASUS-Project,'' *Pharmacoepidemiology and Drug Safety*, vol. 6, suppl. 3, pp. S37–S42, 1997.

38. Centers for Disease Control and Prevention, Department of Health and Human Services ''2004 National Immunization Survey, Table 3: Any and Exclusive Breastfeeding Rates by Age, 2004.'' *http://www.cdc.gov/breastfeeding/data/NIS_data/2004/age.htm* (last viewed 4/23/08).

39. Friedman, J. M., ''Report of the Teratology Society Public Affairs Committee Symposium on FDA Classification of Drugs,'' *Teratology*, vol. 48, pp. 5–6, 1993.

40. Uhl, K., D. L. Kennedy, and S. L. Kweder, ''Risk Management Strategies in the Physicians' Desk Reference Product Labels for Pregnancy Category X Drugs,'' *Drug Safety*, vol. 25, pp. 885–892, 2002.

41. Lagoy, C. T. et al., ''Medication Use during Pregnancy and Lactation: an Urgent Call for Public Health Action,'' *Journal of Women's Health*, vol. 14, pp. 104–109, 2005.

42. Namazy, J. A., and M. Schatz, ''Treatment of Asthma During Pregnancy and Perinatal Outcomes,'' *Current Opinions Allergy Clinical Immunology*, vol. 5, pp. 229–233, 2005.

43. Kwon, H. L., K. Belanger, and M. B. Bracken, ''Asthma Prevalence among Pregnant and Childbearing-aged Women in the United States: Estimates from National Health Surveys,'' *Annals of Epidemiology*, vol. 13, pp. 317–24, 2003.

44. Martin, J. A. et al., *Births: Final data for 2003. National Vital Statistics Reports*, vol. 54, no. 2, Hyattsville, MD, National Center for Health Statistics, 2005.

45. The North American Pregnancy and Epilepsy Registry, ''A North American Registry for Epilepsy and Pregnancy, a Unique Public/Private Partnership of Health Surveillance,'' *Epilepsia*, vol. 39, pp. 793–799, 1998.

46. Wisner, K. L., ''Risk-Benefit Decision Making for Treatment of Depression During Pregnancy,'' *American Journal of Psychiatry*, vol. 157, pp. 1933–1940, 2000.

47. Refuerzo, J. S. et al., ''Use of Over-the-Counter Medications and Herbal Remedies in Pregnancy,'' *American Journal of Perinatology*, vol. 22, pp. 321–4, 2005.

48. Werler, M. M. et al., and the National Birth Defects Prevention Study, ''Use of Over-the-Counter Medications During Pregnancy,'' *American Journal of Obstetrics and Gynecology*, vol. 193, pp. 771–7, 2005.

49. Committee for Medicinal Products for Human Use (CHMP), ''Guideline on Risk Assessment of Medicinal Products on Human Reproduction and Lactation: From Data to Labelling, Annex I'' European Medicines Agency, Evaluation of Medicines for Human Use, Doc Reference EMEA/CHMP/203927/2005, London, 23 March 2006 *http://www.emea.europa.eu/htms/human/qrd/qrdtemplate.htm* (last viewed 4/23/08).

50. U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, ''Biological Product (Except Diagnostic) Manufacturing: 2002,'' *2002 Economic Census Manufacturing Industry Series*, EC02–31I–325414, December 2004.

51. U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, ''Pharmaceutical Preparation Manufacturing: 2002,'' *2002 Economic Census Manufacturing Industry Series*, EC02–31I–325412, December 2004.

## List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 201 be amended as follows:

## PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

### § 201.56 [Amended]

2. Amend § 201.56 in paragraph (d)(1) by removing from the list of headings and subheadings the subheadings ''8.2 Labor and delivery'' and ''8.3 Nursing mothers'' and adding in their place the subheading ''8.2 Lactation''.

3. Section 201.57 is amended by removing and reserving paragraph (c)(9)(iii) and by revising paragraphs (c)(9)(i) and (c)(9)(ii) to read as follows:

### § 201.57 Specific requirements on content and format of labeling for human prescription drug and biological products described in § 201.56(b)(1).

* * * * *

(c) * * *

(9) * * *

(i) *8.1 Pregnancy*. This subsection of the labeling must contain the following information in the following order:

(A) *Pregnancy exposure registry*. If there is a pregnancy exposure registry for the drug, the telephone number or other information needed to enroll in the registry or to obtain information about the registry must be stated at the beginning of the ''Pregnancy'' subsection of the labeling.

(B) *General statement about background risk*. The following statement must be included:

''All pregnancies have a background risk of birth defect, loss, or other adverse outcome regardless of drug exposure. The fetal risk summary below describes (*name of drug*)'s potential to increase the risk of developmental abnormalities above the background risk.''

(C) *Fetal risk summary*. Under the subheading ''Fetal Risk Summary,'' the labeling must contain a risk conclusion, contain a narrative description of the risk(s) (if the risk conclusion is based on human data), and refer to any contraindications or warnings and precautions.

(*1*) Using the risk conclusions provided in paragraphs (c)(9)(i)(C)(*2*) and (c)(9)(i)(C)(*3*) of this section, the fetal risk summary must characterize the likelihood that the drug increases the risk of developmental abnormalities in humans (i.e., structural anomalies, fetal and infant mortality, impaired physiologic function, alterations to growth) and other relevant risks (e.g., transplacental carcinogenesis). More than one risk conclusion may be needed to characterize the likelihood of risk for different developmental abnormalities, doses, durations of exposure, or gestational ages at exposure. All available data, including human, animal, and pharmacologic data, that are relevant to assessing the likelihood that a drug will increase the risk of developmental abnormalities and other relevant risks must be considered. The source(s) of the data that are the basis for the fetal risk summary must be stated. If data demonstrate that a drug is not systemically absorbed, the fetal risk summary must contain only the following statement, without any other risk conclusion:

''(*Name of drug*) is not absorbed systemically from (part of body) and cannot be detected in the blood.

Maternal use is not expected to result in fetal exposure to the drug.''

(*2*) *Risk conclusions based on human data*. When both human and animal data are available, risk conclusions based on human data must be presented before risk conclusions based on animal data. A risk conclusion based on human data must be followed by a narrative description of the risks as described in paragraph (c)(9)(i)(C)(*4*) of this section.

(*i*) *Risk conclusions based on sufficient human data*. Sufficient human data may come from such sources as clinical trials, pregnancy exposure registries or other large scale epidemiologic studies, or case series reporting a rare event. When human data are sufficient to reasonably determine the likelihood that the drug increases the risk of fetal developmental abnormalities or specific developmental abnormalities, the likelihood of increased risk must be characterized using one of the following risk conclusions: ''Human data do not indicate that (*name of drug*) increases the risk of (*type of developmental abnormality or specific developmental abnormality*).'' or ''Human data indicate that (*name of drug*) increases the risk of (*type of developmental abnormality or specific abnormality*).''

(*ii*) *Risk conclusions based on other human data*. When human data are available but are not sufficient to use one of the risk conclusions listed in paragraph (c)(9)(i)(C)(*2*)(*i*) of this section, the likelihood that the drug increases the risk of developmental abnormalities must be characterized as low, moderate, or high.

(*3*) *Risk conclusions based on animal data*. When the data on which the risk conclusion is based are animal data, the fetal risk summary must characterize the likelihood that the drug increases the risk of developmental abnormalities using one of the following risk conclusions:

(*i*) *Not predicted to increase the risk*. When animal data contain no findings for any developmental abnormality, the fetal risk summary must state: ''Based on animal data, (*name of drug*) is not predicted to increase the risk of developmental abnormalities (see Data).''

(*ii*) *Low likelihood of increased risk*. When animal data contain findings of developmental abnormality but the weight of the evidence indicates that the findings are not relevant to humans (e.g., findings in a single animal species that are caused by unique drug metabolism or a mechanism of action thought not to be relevant to humans; findings at high exposures compared with the maximum recommended human exposure), the fetal risk summary must state: ''Based on animal data, the likelihood that (*name of drug*) increases the risk of developmental abnormalities is predicted to be low (see Data).''

(*iii*) *Moderate likelihood of increased risk*. When animal data contain findings of one or more fetal developmental abnormalities in one or more animal species, and those findings are thought to be relevant to humans, the fetal risk summary must state: ''Based on animal data, the likelihood that (*name of drug*) increases the risk of developmental abnormalities is predicted to be moderate (see Data).''

(*iv*) *High likelihood of increased risk*. When animal data contain robust findings of developmental abnormalities (e.g., multiple findings in multiple animal species, similar findings across species, findings at low exposures compared with the anticipated human exposure) thought to be relevant for humans, the fetal risk summary must state: ''Based on animal data, the likelihood that (*name of drug*) increases the risk of developmental abnormalities is predicted to be high (see Data).''

(*v*) *Insufficient data*. When there are insufficient animal data or no animal data on which to assess the drug's potential to increase the risk of developmental abnormalities, the fetal risk summary must so state (see Data).

(*4*) *Narrative description of risk(s)*. When there are human data, the risk conclusion must be followed by a brief description of the risks of developmental abnormalities as well as other relevant risks associated with the drug. To the extent possible, this description must include the specific developmental abnormality (e.g., neural tube defects); the incidence, seriousness, reversibility, and correctability of the abnormality; and the effect on the risk of dose, duration of exposure, and gestational timing of exposure. When appropriate, the description must include the risk above the background risk attributed to drug exposure and confidence limits and power calculations to establish the statistical power of the study to identify or rule out a specified level of risk.

(*5*) *Contraindications, warnings, and precautions*. If there is information in the ''Contraindications'' or ''Warnings and Precautions'' section of the labeling on an increased risk to the fetus from exposure to the drug, the fetal risk summary must refer to the relevant section.

(D) *Clinical considerations*. Under the subheading ''Clinical Considerations,'' the ''Pregnancy'' subsection of the labeling must provide the following information:

(*1*) *Inadvertent exposure during pregnancy*. The labeling must discuss the known or predicted risks to the fetus from inadvertent exposure to the drug (exposure in early pregnancy before a woman knows she is pregnant), including human or animal data on dose, timing, and duration of exposure. If there are no human or animal data to assess the risk from inadvertent exposure, the labeling must so state.

(*2*) *Prescribing decisions for pregnant women*. The labeling must provide the following information:

(*i*) The labeling must describe the risk, if known, to the pregnant woman and the fetus from the disease or condition the drug is indicated to treat.

(*ii*) *Information about dosing adjustments during pregnancy must be provided*. This information must also be included in the ''Dosage and Administration'' and ''Clinical Pharmacology'' sections of the labeling. If there are no data on dosing in pregnancy, the labeling must so state.

(*iii*) If use of the drug is associated with maternal adverse reactions that are unique to pregnancy or if known adverse reactions occur with increased frequency or severity in pregnant women, the labeling must describe the adverse reactions. The labeling must describe, if known, the effect of dose, timing, and duration of exposure on the risk to the pregnant woman of experiencing the adverse reaction(s). The labeling must describe any interventions that may be needed (e.g., monitoring blood glucose for a drug that causes hyperglycemia in pregnancy).

(*iv*) If it is known or anticipated that treatment of the pregnant woman will cause a complication in the neonate, the labeling must describe the complication, the severity and reversibility of the complication, and general types of interventions, if any, that may be needed.

(*3*) *Drug effects during labor or delivery*. If the drug has a recognized use during labor or delivery, whether or not the use is stated as an indication in the labeling, or if the drug is expected to affect labor or delivery, the labeling must provide the available information about the effect of the drug on the mother; the fetus/neonate; the duration of labor and delivery; the possibility of complications, including interventions, if any, that may be needed; and the later growth, development, and functional maturation of the child.

(E) *Data*. (*1*) Under the subheading ''Data,'' the ''Pregnancy'' subsection of the labeling must provide an overview

of the data that were the basis for the fetal risk summary.

(*2*) Human and animal data must be presented separately, and human data must be presented first.

(*3*) The labeling must describe the studies, including study type(s) (e.g., controlled clinical or nonclinical, ongoing or completed pregnancy exposure registries, other epidemiological or surveillance studies), animal species used, exposure information (e.g., dose, duration, timing), if known, and the nature of any identified fetal developmental abnormalities or other adverse effect(s). Animal doses must be described in terms of human dose equivalents and the basis for those calculations must be included.

(*4*) For human data, positive and negative experiences during pregnancy, including developmental abnormalities, must be described. To the extent applicable, the description must include the number of subjects and the duration of the study.

(*5*) For animal data, the relationship of the exposure and mechanism of action in the animal species to the anticipated exposure and mechanism of action in humans must be described. If this relationship is not known, that should be stated.

(ii) *8.2 Lactation*. This subsection of the labeling must contain the following information in the following order:

(A) *Risk summary*. Under the subheading ''Risk Summary,'' if, as described under § 201.57(c)(9)(ii)(A)(*1*) through (c)(9)(ii)(A)(*3*) of this section, the data demonstrate that the drug does not affect the quantity and/or quality of human milk and there is reasonable certainty either that the drug is not detectable in human milk or that the amount of drug consumed via breast milk will not adversely affect the breast-fed child, the labeling must state: ''The use of (*name of drug*) is compatible with breast-feeding.'' After this statement (if applicable), the risk summary must summarize the drug's effect on milk production, what is known about the presence of the drug in human milk, and the effects on the breast-fed child. The source(s) of the data (e.g., human, animal, in vitro) that are the basis for the risk summary must be stated. When there are insufficient data or no data to assess the drug's effect on milk production, the presence of the drug in human milk, and/or the effects on the breast-fed child, the risk summary must so state. If data demonstrate that a drug is not systemically absorbed, the fetal risk summary must contain only the following statement: ''(*Name of drug*) is not absorbed systemically from (part of body) and cannot be detected in the mother's blood. Therefore, detectable amounts of (*name of drug*) will not be present in breast milk. Breast-feeding is not expected to result in fetal exposure to the drug.'' If the drug is absorbed systemically, the risk summary must describe the following to the extent information is available:

(*1*) *Effects of drug on milk production*. The risk summary must describe the effect of the drug on the quality and quantity of milk, including milk composition, and the implications of these changes to the milk on the breast-fed child.

(*2*) *Presence of drug in human milk*.

(*i*) The risk summary must describe the presence of the drug in human milk in one of the following ways: The drug is not detectable in human milk; the drug has been detected in human milk; the drug is predicted to be present in human milk; the drug is not predicted to be present in human milk; or the data are insufficient to know or predict whether the drug is present in human milk.

(*ii*) If studies demonstrate that the drug is not detectable in human milk, the risk summary must state the limits of the assay used.

(*iii*) If the drug has been detected in human milk, the risk summary must give the concentration detected in milk in reference to a stated maternal dose (or, if the drug has been labeled for pediatric use, in reference to the labeled pediatric dose), an estimate of the amount of the drug consumed daily by the infant based on an average daily milk consumption of 150 milliliters per kilogram of infant weight per day, and an estimate of the percent of the maternal dose excreted in human milk.

(*3*) *Effects of drug on the breast-fed child*. The risk summary must contain information on the likelihood and seriousness of known or predicted effects on the breast-fed child from exposure to the drug in human milk. The risk summary must be based on the pharmacologic and toxicologic profile of the drug, the amount of drug detected or predicted to be found in human milk, and age-related differences in absorption, distribution, metabolism, and elimination.

(B) *Clinical considerations*. Under the subheading ''Clinical Considerations,'' the labeling must provide the following information to the extent it is available:

(*1*) Information concerning ways to minimize the exposure of the breast-fed child to the drug, such as timing the dose relative to breast-feeding or pumping and discarding milk for a specified period.

(*2*) Information about potential drug effects in the breast-fed child that could be useful to caregivers, including recommendations for monitoring or responding to these effects.

(*3*) Information about dosing adjustments during lactation. This information must also be included in the ''Dosage and Administration'' and ''Clinical Pharmacology'' sections.

(C) *Data*. Under the subheading ''Data,'' the ''Lactation'' subsection of the labeling must provide an overview of the data that are the basis for the risk summary and clinical considerations.

* * * * *

**§ 201.80 [Amended]**

4. Amend § 201.80 as follows:

a. Remove the paragraph heading ''Pregnancy category A.'' and the words ''Pregnancy Category A.'' from paragraph (f)(6)(i)(*a*);

b. Remove the paragraph heading ''Pregnancy category B.'' and the words ''Pregnancy Category B.'' both times they appear from paragraph (f)(6)(i)(*b*);

c. Remove the paragraph heading ''Pregnancy category C.'' and the words ''Pregnancy Category C.'' both times they appear from paragraph (f)(6)(i)(*c*);

d. Remove the paragraph heading ''Pregnancy category D.'' and the words ''Pregnancy Category D.'' from paragraph (f)(6)(i)(*d*); and

e. Remove the paragraph heading ''Pregnancy category X.'' and the words ''Pregnancy Category X.'' from paragraph (f)(6)(i)(*e*).

[This appendix will not appear in the Code of Federal Regulations.]

## APPENDIX

This appendix contains examples of how to apply the proposed rule depending on the type of data available. All examples use hypothetical drugs.

## SAMPLE PREGNANCY SUBSECTION LABELING

### 1. Drug for which only animal data are available; with developmental toxicity findings:

All pregnancies have a background risk of birth defect, loss, or other adverse outcome regardless of drug exposure. The fetal risk summary below describes ALPHATHON's potential to increase the risk of developmental abnormalities above the background risk.

*Fetal Risk Summary*

Based on animal data, the likelihood that ALPHATHON increases the risk of developmental abnormalities is predicted to be high (see Data).

*Clinical Considerations*

Asthma complicates approximately 1 percent of all pregnancies resulting in higher perinatal mortality, low birth weight infants, preterm births, and pregnancy-induced hypertension compared to outcomes for nonasthmatic women. Because of the risks of even mild maternal hypoxia to the developing fetus, asthma should be clinically well-controlled during pregnancy. There are no human studies evaluating ALPHATHON use in pregnant women. The time of gestation at which risk may be greatest is unknown; therefore, risks of inadvertent exposure in early gestation cannot be evaluated. Animal data suggest that ALPHATHON exposure may result in early fetal loss and anomalies of major organ systems. There are no data regarding dose adjustment needs in pregnancy. Given the lack of human data and the risks suggested by animal data, prescribers should consider alternative treatments for asthma for pregnant women when possible (especially during the first trimester) and women planning pregnancy.

*Data*

Human data.

- There are no data on human pregnancies exposed to ALPHATHON.

Animal Data.

- Reproductive studies performed during early pregnancy in rats at oral doses 0.75 to 1.0 times the recommended human dose (adjusted for body surface area) showed implantation loss, fetal resorptions, and major congenital anomalies of the cardiac, skeletal and renal systems without signs of maternal toxicity.
- Reproductive studies performed in early pregnancy in rabbits at doses approximately 0.33 to 1.0 times the recommended human dose (adjusted for body surface area) showed increased post-implantation loss. Studies at 3 times the human dose showed significant fetal loss without signs of maternal toxicity.
- The effects of ALPHATHON on fetal growth, labor, or post-natal complications were not evaluated in the animal studies.

**2. Drug for which only animal data are available; lack of developmental toxicity findings:**

All pregnancies have a background risk of birth defect, loss, or other adverse outcome regardless of drug exposure. The fetal risk summary below describes GAMMAZINE's potential to increase the risk of developmental abnormalities above the background risk.

*Fetal Risk Summary*

Based on animal data, GAMMAZINE is not predicted to increase the risk of developmental abnormalities.

*Clinical Considerations*

Infection of the urinary tract in pregnant women carries a higher risk of morbidity than in the general population and is associated with an increased incidence of preterm delivery, low birth weight, and progression to pyelonephritis. It is not known whether the dose of GAMMAZINE requires adjustment during pregnancy.

*Data*

Human Data.

- There are no data on human pregnancies exposed to GAMMAZINE.

Animal Data.

- No teratogenic effects were seen when pregnant rats and rabbits were treated throughout pregnancy with doses equivalent to 1.5 times the maximum recommended human dose adjusted for body surface area. There were no findings of increased fetal loss, mortality or resorptions, reductions in body weights in fetuses, or other developmental abnormalities.

**3. Drug for which animal and some human (insufficient) data are available:**

All pregnancies have a background risk of birth defect, loss, or other adverse outcome regardless of drug exposure. The fetal risk summary below describes KAPPAATE's potential to increase the risk of developmental abnormalities above the background risk.

*Fetal Risk Summary*

Based on limited human data from one retrospective cohort study and postmarketing adverse event reporting, the likelihood that KAPPAATE increases the risk of major congenital abnormalities or spontaneous abortions is low. Short term (less than 3 weeks), first trimester exposure to 5 to 10 milligrams per (mg/) day of KAPPAATE did not result in an increase in major congenital abnormalities or spontaneous abortions over the background rate. The limited number of pregnant women that were exposed to KAPPAATE during the second and third trimesters delivered infants with no major congenital abnormalities. Based on animal data, the likelihood that KAPPAATE increases the risk of developmental abnormalities is predicted to be moderate.

*Clinical Considerations*

Symptoms of heartburn and gastroesophageal reflux disease (GERD) are common during pregnancy, occurring in about 50 percent of women in the third trimester. During pregnancy, untreated GERD can lead to reflux esophagitis and can increase nausea and asthma exacerbations in asthmatics. Based on limited human data, inadvertent exposure to KAPPAATE in early pregnancy is unlikely to be associated with major congenital abnormalities or spontaneous abortions; however, animal data suggest that early fetal loss may result from KAPPAATE exposure. Pharmacokinetic studies have shown that no dose adjustment of KAPPAATE is needed for pregnant women in the third trimester (see DOSAGE AND ADMINISTRATION and CLINICAL PHARMACOLOGY). Pharmacologically similar drugs have demonstrated delayed parturition in animal studies, but the relevance of this finding in humans is not known.

*Data*

Human Data.

- A retrospective cohort study reported on 400 pregnant women who used 5 to 10 mg/day of KAPPAATE in the first trimester.[1] The majority of use (90 percent) was short term (less than 3 weeks). The overall malformation rate for first trimester exposure to KAPPAATE was 3.4 percent (95 percent CI 1.3-7.2) compared to 4.1 percent (95 percent CI 1.6-6.2) in the comparator group. The study could effectively rule out a relative risk greater than 2.0 for overall malformations. Rates of spontaneous abortions did not differ between the groups.
- Postmarketing reports on 125 women exposed to 5 to 10 mg/day of KAPPAATE during pregnancy did not suggest an increased risk of major congenital malformations compared to the background rate in the general population. However, gestational ages and durations of exposure were not available for all cases. Interpretation of these results are limited by the voluntary nature of postmarketing adverse event reporting and underreporting.
- No change in pharmacokinetics were seen in pregnant women at 32 to 36 weeks gestation given a single dose of KAPPAATE (see CLINICAL PHARMACOLOGY).

Animal Data.

- In rats, no teratogenic or embryocidal effects were observed when KAPPAATE was administered at doses up to 7 times the human dose on a body surface area basis).
- In rabbits, KAPPAATE at maternal doses about 5 to 50 times the human dose on a body surface area basis produced dose-related increases in embryo-lethality, fetal resorptions,

[1] Smith J.D., M.R. Perkins, ''Retrospective study on pregnant women exposed to Kappaate,'' *Some Medical Journal*, 121(55):123–134, 2002.

pregnancy disruptions, and fetal growth impairment.

- No effects were seen on parturition.

**4. Drug for which sufficient human data are available:**

All pregnancies have a background risk of birth defect, loss, or other adverse outcome regardless of drug exposure. The fetal risk summary below describes Deltaman's potential to increase the risk of developmental abnormalities above the background risk.

*Fetal Risk Summary*

Human data do not indicate that DELTAMAN increases the overall risk of congenital malformations or neural tube defects. The majority of reported human exposures to DELTAMAN are first trimester exposures. Epidemiology studies adequate to detect a 2.5-fold increase in the rate of major malformations and a 10-fold increase in the rate of neural tube defects did not detect a risk. Based on animal data, the likelihood that DELTAMAN increases the risk of other developmental abnormalities is predicted to be low.

*Clinical Considerations*

About 1 in 100 women of childbearing age has diabetes. During pregnancy, diabetic women have increased risks of miscarriage, preterm labor, stillbirth, macrosomia, and congenital malformations, including heart defects and neural tube defects. Neonates born to women with poorly controlled diabetes are at increased risk of breathing difficulties, low blood sugar levels and jaundice. Based on human data, inadvertent exposure to DELTAMAN in early pregnancy is not associated with an increased risk of major congenital abnormalities or neural tube defects. There are no data regarding whether dosing adjustments are needed when DELTAMAN is used in pregnancy.

*Data*

Human Data.

- The DELTAMAN Pregnancy Exposure Registry, a population-based prospective cohort epidemiological study, has collected data since January 2000. As of December 2007, the registry documented outcomes on 1,055 infants exposed to DELTAMAN during pregnancy (997 exposed during the first trimester and 58 exposed after the first trimester) have been documented. In utero exposure to DELTAMAN was not associated with an increased risk of major congenital malformations at birth (odds ratio 0.93, 95 percent CI 0.52-1.39). The number of infants born with neural tube defects was similar in the DELTAMAN exposed infants and controls. The sample size in this study had 90 percent power to detect a 2.5-fold increase in the rate of major malformation and 80 percent power to detect a 10-fold increase in the rate of neural tube defects.
- A retrospective cohort study reported on 869 pregnant women exposed to either DELTAMAN or pharmacologically similar drugs in the first trimester (245 exposed to DELTAMAN).[2] The overall major malformation rate was 4.1 percent (95 percent CI 3.2-5.1) and the malformation rate for first trimester exposure to DELTAMAN was 3.4 percent (95 percent CI 1.3-7.8). The relative risk of major malformations associated with first trimester exposure to DELTAMAN compared with nonexposed women was 0.92 (95 percent CI 0.34-2.3). The sample size in this study had 80 percent power to detect a 4-fold increase in the rate of major malformations.

Animal Data.

- Exposure of pregnant rats or mice to DELTAMAN at doses comparable to the maximum recommended human dose (based on body surface area) resulted in embryonic death and malformations in the offspring. Skeletal abnormalities were the most common malformations observed in rats and cardiac, skeletal and urinary tract abnormalities were seen most often in mice. Neural tube defects were observed in pregnant mice and rats at doses of 15 to 25 and 5 to 20 times the human dose (based on body surface area), respectively. Behavioral alterations and poor weight gain were seen among the offspring of rats treated with DELTAMAN during pregnancy at doses greater than 15 times the maximum human dose (based on body surface area).
- Studies in cynomolgus monkeys at 1 to 10 times the maximum recommended human dose (based on a body surface area) demonstrated a dose dependent increase in neural tube and skeletal anomalies.

**SAMPLE LACTATION SUBSECTION LABELING**

**1. Drug for which no data are available:**

*Risk Summary*

No studies have been conducted to assess ALPHAZINE's impact on milk production, its presence in breast milk or its effects on the breast-fed child.

*Clinical Considerations*

Other medical therapies are available for the treatment of maternal hypertension.

*Data*

No data available.

**2. Drug for which pharmacologic class information is available, but no human data are available:**

*Risk Summary*

No studies have been conducted to assess THETAM's effect on milk production, its presence in breast milk, or its effects on the breast-fed child. Based on experience with other products in this class, maternal THETAM use has the potential to cause neutropenia in the breast-fed child. Because of the potential for neutropenia in the breast-fed child, a decision should be made whether to discontinue breast-feeding or discontinue using THETAM.

*Clinical Considerations*

Other medical therapies are available for the treatment of maternal fungal infection.

*Data*

No data available.

**3. Drug for which human data are available:**

*Risk Summary*

GAMMATOL is secreted in human milk. At a maternal dose of 400 mg daily, the average milk concentration, collected over 24 hours after dosing, was 10 mcg/milliliter (mL) which is lower than maternal serum drug concentrations at steady state. Based on an average milk consumption of 150 mL/kilogram (kg)/day, a 2-month-old infant would consume approximately 6 mg/day of GAMMATOL via breast milk, which is approximately 1.3 percent of the maternal dose. No studies have been performed to assess infant absorption and exposure to GAMMATOL from breast milk. No studies have been performed to assess the impact of GAMMATOL on milk production or its effects on the breast-fed child.

*Clinical Considerations*

Because GAMMATOL is taken once daily, mothers can reduce infant exposure by taking their GAMMATOL dose immediately after breast-feeding at the time of day when feedings are less frequent.

*Data*

- A lactation study was performed in 30 women who were 2 months postpartum and exclusively breast-feeding their infants. All women enrolled in the study were taking a 400 mg single dose of GAMMATOL daily. Breast milk samples were collected from each breast at the beginning and end of each feeding for 24 hours after a GAMMATOL dose. An average

[2] Jones A.B. and C.D. Smith, ''Exposure to Deltaman during pregnancy,'' *Medical Journal*, 98:56–68, 2000.

maximum milk concentration of 20 mcg/mL occurred 3 hours after dosing and drug concentrations in milk rapidly declined over the next 12 hours. The average milk concentration was 10 mcg/mL. No drug was detectable in milk samples obtained 36 hours or later after dosing. No data are available to assess the impact of GAMMATOL on milk production or its effects on the breast-fed child.

Dated: May 16, 2008.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E8–11806 Filed 5–28–08; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2008–0290]**

**RIN 1625–AA00**

## Safety Zone; Gulf of Mexico—Johns Pass, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone on the waters of Johns Pass, Florida while construction operations are being conducted. This rule is necessary to ensure the safety of the workers and mariners on the navigable waters of the United States. No person or vessel may anchor, moor, or transit the Regulated Area without permission of the Captain of the Port St. Petersburg, Florida.

**DATES:** Comments and related material must reach the Coast Guard on or before June 30, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2008–0290 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, D.C. 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call BM1 Charles Voss at Coast Guard Sector St. Petersburg, (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–2008–0290), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

*Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time. Enter the docket number for this rulemaking (USCG–2008–0092) in the Search box, and click ''Go >>.'' You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the Coast Guard Sector St. Petersburg, Prevention Department, 155 Columbia Drive, Tampa, Florida 33606–3598 between 7:30 a.m. and 3:30 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**.

### Background and Purpose

Flatiron Construction will be performing construction work on the new Johns Pass Bridge. This work will involve setting girders, installing a new fendering system, setting the deck, setting overhangs, placing resteel, pouring the bridge deck, and wrecking the old bridge's deck on the Johns Pass old bridge. These operations will require the closure of the navigable channel. The closures will only be for limited times, during nighttime hours, and scheduled to accommodate the local marine traffic. The nature of the operation and environment surrounding the Johns Pass Bridge presents a danger to the workers and mariners transiting the area. This proposed safety zone is being established to ensure the safety of life on the navigable waters of the United States.

### Discussion of Proposed Rule

The proposed safety zone encompasses the following waters of the Gulf of Mexico, Florida: all waters from surface to bottom, within a 100-yard radius of the following coordinates: 27°46′58″ N, 082°46′57″ W. Vessels are

prohibited from anchoring, mooring, or transiting within this zone unless authorized by the Captain of the Port St. Petersburg or a designated representative.

The proposed safety zone will be effective until the completion of the bridge project tentatively scheduled for July 2010. However, the safety zone will only be enforced for a limited time on days when construction operations that require the channel to be closed are actually occurring. The Coast Guard does not know the exact dates of the construction operations at this time. Most of the operations are tide and weather restricted. However, every attempt will be made to conduct the operations at early morning hours to reduce the impact to mariners. At no time will the zone be enforced on a Saturday or Sunday and the closures will in no way exceed any continuous 18 hour period. Coast Guard Sector St. Petersburg will give notice of the enforcement of the safety zone by publishing it in the Local Notice to Mariners and by issuing a Broadcast Notice to Mariners 24 to 48 hours prior to the start of enforcement. On-Scene notice will be provided by Coast Guard or other local law enforcement maritime units enforcing the safety zone as designated representatives of Captain of the Port St. Petersburg.

**Regulatory Evaluation**

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The rule will only be enforced during a time when vessel traffic is expected to be minimal. Moreover, vessels may still enter the safety zone with the express permission of the Captain of the Port St. Petersburg or a designated representative.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit Johns Pass, FL. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be enforced for a limited time when marine traffic is expected to be minimal; additionally traffic will be allowed to enter the zone with the permission of the Captain of the Port Sector St. Petersburg or a designated representative.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the office listed under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

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

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

**Environment**

We have analyzed this proposed rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation. A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 33 CFR Part 165**

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. A new temporary § 165.T08–0290 is added to read as follows:

**§ 165.T08–290 Safety Zone; Gulf of Mexico, Florida.**

(a) *Regulated area*. The Coast Guard is establishing a temporary safety zone on the waters of the Gulf of Mexico, Florida, in the vicinity of the John's Pass Bridge, that includes all the waters from surface to bottom, within a 100-yard radius of the following coordinates: 27°46′58″ N, 082°46′57″ W. All coordinates referenced use datum: NAD 83.

(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 (COTP) St. Petersburg, Florida, in the enforcement of regulated navigation areas and safety and security zones.

(c) *Regulations*. In accordance with the general regulations in § 165.23 of this part, no person or vessel may anchor, moor or transit the Regulated Area without the prior permission of the Captain of the Port St. Petersburg, Florida, or a designated representative.

(d) *Dates*. This rule is effective until the bridge construction is completed tentatively scheduled for July 2010.

(e) *Enforcement*. This regulated area will only be enforced while construction operations are taking place. The Coast Guard does not know the exact dates of the construction operations at this time; however Sector St. Petersburg will announce each enforcement period by publishing the restriction in the local notice to mariners and issuing a Broadcast Notice to Mariners 24 to 48 hours prior to the start of enforcement. Additionally, on-scene notice will be provided by Coast Guard or other local law enforcement maritime units enforcing the safety zone.

Dated: May 8, 2008.

**J.A. Servidio,**

*Captain, U.S. Coast Guard, Captain of the Port, St. Petersburg, Florida.*

[FR Doc. E8–11866 Filed 5–28–08; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 51**

**[EPA–HQ–OAR–2007–0844, FRL–8572–2]**

**RIN 2060–AO39**

## Method 207—Pre-Survey Procedure for Corn Wet-Milling Facility Emission Sources

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to add Method 207 to the test methods in Appendix M of 40 CFR Part 51. Appendix M contains recommended test methods that are provided for the States to use in their State Implementation Plans. Therefore, this method may be used as an alternative to existing test methods for measuring volatile organic compound (VOC) emissions. This pre-survey method was developed by the corn wet-milling (CWM) industry specifically to measure VOC mass emissions from processes within the CWM industry. It provides a systematic approach to develop a specific list of target organic compounds and the appropriate methods to measure those target compounds during subsequent VOC emissions testing. After using the pre-survey procedure, the tester will have sufficient information to design a comprehensive testing program using Method 18 and other appropriate methods to measure the mass of VOC emissions during the actual emissions testing. This method is an alternative to existing test methods and does not add any new reporting requirements to the reporting requirements that already exist. While it is an alternative method, it is the recommended method for measuring VOC mass emissions from CWM facilities. In the ''Rules and Regulations'' section of this **Federal Register**, we are adding Method 207 to the test methods in Appendix M of 40 CFR Part 51 as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

**DATES:** Written comments must be received by June 30, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–HQ–OAR–2007–0844, by mail to: U.S. Environmental Protection Agency, Mail code: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. Comments may also be submitted electronically or through hand delivery/

courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary McAlister, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Measurements Technology Group (E143–02), Research Triangle Park, North Carolina 27711; telephone number: (919) 541–1062; fax number: (919) 541–0516; e-mail address: *mcalister.gary@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Why Is EPA Issuing This Proposed Rule?

This document proposes to add Method 207 to the test methods in Appendix M of 40 CFR Part 51. We have published a direct final rule adding Method 207 to the test methods in Appendix M of 40 CFR Part 51 in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule, and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

## II. Does This Action Apply to Me?

Method 207 affects/applies to the CWM industry and is used specifically to measure VOC mass emissions from processes within the CWM industry. Therefore, the categories and entities potentially regulated by this action include the following:

| Category | NAICS [a] | Examples of regulated entities |
|---|---|---|
| Industry | 311221 | Corn wet-milling. |
| State/local/tribal government | 924110 | State, local, and tribal air quality management groups that regulate corn wet-milling. |

[a] North American Industry Classification System.

## III. Statutory and Executive Reviews

### *A. Executive Order 12866—Regulatory Planning and Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under the EO.

### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). It adds a test method to the recommended methods in Appendix M of 40 CFR Part 51. This method is an alternative to existing test methods and does not add any new reporting requirements to the reporting requirements that already exist.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on a substantial number of small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This action establishes voluntary alternative test procedures for satisfying the requirements of EPA Method 18, Section 16 (pre-survey), which are used to determine the mass VOC emissions from processes within the corn wet-milling industry, by specifying the analytes for subsequent EPA Method 18 testing. This rule does not impose any new requirements or create impacts on small entities. Therefore, this action is not expected to have a significant economic impact on a substantial number of small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section

205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, more cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This rule imposes no enforceable duty on any State, local or tribal governments or the private sector. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This action adds a new test method for measuring VOC air emissions to the recommended methods in 40 CFR Part 51. Because this method is an alternative method, its use is voluntary. It will not impose requirements on State, local, or tribal governments. Thus, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

*E. Executive Order 13132—Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Because this method is an alternative method, its use is voluntary. It will not impose substantial direct compliance costs on State or local governments, nor will it preempt State law. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

*F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination With Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. The proposed action would add a test method that could be used as an alternative to existing methods. It does not add any new requirements and does not affect VOC emissions or air quality. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

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

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, explanations when it decides not to use available and applicable voluntary consensus standards.

The rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. However, we identified no such standards, and none were brought to our attention in comments. Therefore, EPA has decided to propose Method 207 to measure mass VOC emissions from processes within the corn wet-milling industry. This proposed method provides a systematic approach to develop a specific list of target organic compounds and the appropriate methods to measure those target compounds during subsequent VOC emissions testing.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

*J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse

human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action proposes adding a new test method for measuring VOC air emissions to the recommended methods in 40 CFR part 51. It does not change any existing rules that limit VOC air emissions.

**List of Subjects in 40 CFR Part 51**

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Volatile organic compounds.

Dated: May 21, 2008.

**Stephen L. Johnson,**

*Administrator.*

[FR Doc. E8–11879 Filed 5–28–08; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[Docket No., EPA–R02–OAR–2008–0020; FRL–8572–5]**

## Approval and Promulgation of Implementation Plans; Variance Determination for Particulate Matter from a Specific Source in the State of New Jersey

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the State Implementation Plan (SIP) submitted by the State of New Jersey. This SIP revision consists of a source-specific reasonably available control technology (RACT) determination for controlling particulate matter from the cooling tower operated by the PSEG Nuclear LLC Hope Creek and Salem Generating Stations. This action proposes an approval of the source-specific variance determination that was made by New Jersey in accordance with the provisions of its rule to help meet the national ambient air quality standards (NAAQS) for particulate matter. The intended effect of this proposed rule is to approve source-specific emissions limitations required by the Clean Air Act.

**DATES:** Comments must be received on or before June 30, 2008.

**ADDRESSES:** Submit your comments, identified by Docket Number EPA–R02–OAR–2008–0020, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Werner.Raymond@epa.gov.*
- *Fax:* 212–637–3901.
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. 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 to 4:30 excluding Federal holidays.

*Instructions:* Direct your comments to Docket No. EPA–R02–OAR–2008–0020. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Paul Truchan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3711 or *Truchan.paul@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. EPA's Proposed Action
A. What Action Is EPA Proposing?
B. Why Is EPA Proposing This Action?
C. What Is EPA's Evaluation of New Jersey's SIP Revision?
II. New Jersey's SIP Revision
A. What Are New Jersey's PM Requirements?
B. When Was New Jersey's Variance Determination Proposed and Adopted?
C. When Was New Jersey's SIP Revision Submitted to EPA?
D. What Are EPA's findings?
III. Conclusion
IV. Statutory and Executive Order Reviews

## I. EPA's Proposed Action

### *A. What Action Is EPA Proposing?*

EPA is proposing to approve New Jersey's revision to the particulate matter (PM) State Implementation Plan (SIP) submitted on November 2, 2007. This SIP revision relates to New Jersey's PM variance determination for the cooling tower at the PSEG Nuclear LLC Hope Creek and Salem Generating Stations located in Lower Alloways Creek Township, Salem County. As part of this variance evaluation, alternate emission limitations are specified for total suspended particulates (TSP) and PM–10 (particles with an aerodynamic diameter of 10 micrometers or less). This evaluation and variance only involves the operation of the cooling tower.

### *B. Why Is EPA Proposing This Action?*

EPA is proposing this action to:

- Give the public the opportunity to submit comments on EPA's proposed

action, as discussed in the **DATES** and **ADDRESSES** sections; and

- Fulfill New Jersey's and EPA's requirements under the Clean Air Act (Act); and
- Make New Jersey's variance determination federally-enforceable.

*C. What Is EPA's Evaluation of New Jersey's SIP Revision?*

EPA has determined that New Jersey's SIP revision for the PM variance for the cooling tower at the PSEG Nuclear LLC Hope Creek and Salem Generating Stations is consistent with New Jersey's PM rule and EPA's guidance. EPA's basis for evaluating New Jersey's SIP revision is whether it meets the SIP requirements described in section 110 of the Act. EPA has determined that New Jersey's SIP revision will not interfere with any applicable requirement concerning attainment or any other applicable requirement of the Act.

After reviewing New Jersey's SIP revision submittal, EPA found it administratively and technically complete. EPA has determined that the TSP and PM–10 emission limits were developed and adopted through a source-specific SIP revision and incorporated into a revision of the source's Title V Operating Permit. The permit contains specific conditions relating to emissions limits, work practice standards, testing, monitoring, and recordkeeping/reporting requirements. These conditions are consistent with the PM requirements specified in Subchapter 6, Control and Prohibition of Particulates from Manufacturing Processes of Chapter 27, Title 7 of the New Jersey Administrative Code and conform to EPA guidance. EPA proposes to approve the conditions contained in the ''Facility Specific Requirements'' which includes alternative emission limits for the cooling tower. PSEG will comply with the following hourly emission limits: for TSP less than or equal to 42 pounds per hour and for PM–10 (total) less than or equal to 42 pounds per hour. PSEG will comply with the following annual emission limits: for TSP less than or equal to 65.9 tons per year and for PM–10 (total) less than or equal to 65.9 tons per year. In addition to the limits, New Jersey will include other requirements, such as adequate monitoring, recordkeeping, and reporting in the Title V Operating Permit.

## II. New Jersey's SIP Revision

*A. What Are New Jersey's PM Requirements?*

New Jersey's PM requirements are contained in Subchapter 6, Control and Prohibition of Particulates from Manufacturing Processes of Chapter 27, Title 7, of the New Jersey Administrative Code. Section 6.5 of New Jersey's rule establishes a variance procedure should a source not be able to meet the prescribed emission limits for technology reasons. The source must provide the reasons and justifications why the prescribed emission limits cannot be technologically achieved. Any variance issued by New Jersey is conditioned on the source complying with requirements that New Jersey deems necessary. In order for EPA to recognize any variance as Federally enforceable, New Jersey must submit the variance as a revision to its SIP and EPA must approve it through notice and rulemaking.

*B. When Was New Jersey's Variance Determination Proposed and Adopted?*

New Jersey's variance was proposed on April 3, 2007, with the public hearing held on May 1, 2007. The comment period ended May 3, 2007. New Jersey adopted the variance on August 7, 2007. No verbal comments were received during the public hearing and only PSEG Fossil LLC submitted written comments.

*C. When Was New Jersey's SIP Revision Submitted to EPA?*

New Jersey's SIP revision was submitted to EPA on November 2, 2007. EPA determined that the submittal was administratively and technically complete on December 19, 2007.

*D. What Are EPA's Findings?*

The variance request would allow the evaporation rate of the cooling tower to be increased by approximately 20 percent. This would increase the cooling tower particulate matter emissions from the currently permitted value of 29.4 pounds per hour (lbs/hr) to a projected 35.28 lbs/hr, based on the total dissolved solids (TDS) in the cooling water. However, under worst-case conditions of the ambient water salinity, hydrologic conditions, and the tidal hydrodynamics of the Delaware Estuary, which is the water source of the circulating cooling water, the maximum emissions that could be expected from the cooling tower would be 42.0 lbs/hr. Worst-case conditions are projected to occur once in 20 years and to address this occurrence, the new allowable will be set at 42.0 lbs/hr. New Jersey now requires that PSEG sample the circulating water at a minimum of every seven days and analyze it for TDS, which will help ensure that the emission limits are not exceeded.

The cooling tower is currently limited to annual allowable emissions of 129 tons per year (tpy). Based on calculations, the actual annual emissions are only 54.7 tpy. Adjusting for the new cooling rate, the annual emissions are projected to be 65.9 tpy. New Jersey has limited the new annual emissions to 65.9 tpy, instead of the existing limit of 129 tpy.

As part of this variance request, a review was undertaken to determine ''state-of-the-art'' controls for this type of cooling tower. EPA's RACT/BACT/LAER Clearinghouse, the manufacturer of the existing cooling tower, and internationally available information were consulted on currently available controls and control efficiency for this type of tower. The only currently available controls involve drift eliminators which are already installed and any additions would not be technology feasible due to space constraints. Further, the current drift rate for the cooling tower is lower than the most stringent rate found in EPA's database. There is also no alternative source of makeup water that would result in a decrease in total dissolved solids (TDS), which are contained in the water and are the source of the particulate matter emissions.

The result of air quality modeling analysis predicts that the impact on TSP, PM–10 and PM–2.5 will be below their respective significant impact levels and will not cause or contribute to a violation of a NAAQS, or a prevention of significant deterioration (PSD) Class II increment.

The only comment received on the variance request was from PSEG and involved issues raised at an earlier adjudicatory hearing and did not involve the action being proposed on the cooling tower.

Based on the above findings, EPA proposes to find that requirements for approving a variance request pursuant to the Clean Air Act, EPA guidance and requirements of New Jersey's Subchapter 6 have been satisfied.

## III. Conclusion

EPA is proposing to approve the New Jersey SIP revision for an alternative emission limit determination for the PSEG Nuclear LLC Hope Creek and Salem Generating Stations. This SIP revision contains source-specific particulate emission limitations for PSEG Nuclear LLC Hope Creek and Salem Generating Stations. EPA will consider all comments submitted prior to any final rulemaking action.

## IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: May 19, 2008.

**Alan J. Steinberg,**

*Regional Administrator, Region 2.*

[FR Doc. E8–11979 Filed 5–28–08; 8:45 am]

BILLING CODE 6560–50–P

---

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MB Docket Nos. 07–294; 06–121; 02–277; 04–228, MM Docket Nos. 01–235; 01–317; 00–244; FCC 07–217]**

### In the Matter of Promoting Diversification of Ownership in the Broadcasting Services; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; correction.

**SUMMARY:** The Federal Communications Commission published a document in the **Federal Register** of May 16, 2008, requesting comment on proposals for the promotion of increased diversity in the broadcasting services. Due to a clerical error, the document contained incorrect comment dates.

**DATES:** Comments for the proceeding published in the **Federal Register** on May 16, 2008 (73 FR 28400), are due on or before June 30, 2008. Reply comments are due on or before July 14, 2008.

**FOR FURTHER INFORMATION CONTACT:** Kristi Thompson, 202–418–1318.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of May 16, 2008, in FR Doc. E8–11043, on page 28400, in the second column, correct the **DATES** caption to read: ''**DATES:** Comments for this proceeding are due on or before June 30, 2008. Reply comments are due on or before July 14, 2008.''

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E8–11776 Filed 5–28–08; 8:45 am]

BILLING CODE 6712–01–P

---

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**RIN 0648–XH70**

### Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fisheries in the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Availability of a proposed amendment to a fishery management plan; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council (Council) has submitted proposed Amendment 79 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) for Secretarial review. If approved, Amendment 79 would amend the FMP and require the Council to annually recommend an aggregate overfishing level (OFL) and acceptable biological catch (ABC) for the ''other species'' category in the Gulf of Alaska (GOA). The ''other species'' category consists of sharks, sculpins, squid, and octopus. Currently, the Council only sets total allowable catch (TAC) for the ''other species'' category, which is intended to accommodate the directed catch of ''other species'' and incidental catch in other groundfish fisheries. The revised process would allow the Council to incorporate the best and most recent scientific and socio-economic information and public testimony in its recommendation for an annual ''other species'' TAC. The purpose of this amendment is to provide a sound biological basis for the setting of the ''other species'' TAC, ABC, and OFL, and is necessary to comply with the Magnuson-Stevens Fishery Conservation and Management Act.

**DATES:** Comments must be received on or before July 28, 2008.

**ADDRESSES:** Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–XH70 by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov*.
- Mail: P.O. Box 21668, Juneau, AK 99802.

• Fax: 907–586–7557

• Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will be generally postedto *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of Amendment 79 and the Environmental Assessment (EA) prepared for this action are available from the NMFS Alaska Region at the address above or from the Alaska Region website at *http://www.fakr.noaa.gov/*.

**FOR FURTHER INFORMATION CONTACT:** Tom Pearson, 907–481–1780.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan amendment to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a proposed amendment, immediately publish a notice in the **Federal Register** that the amendment is available for public review and comment. This action constitutes such notice for Amendment 79 to the FMP. NMFS will consider public comments received during the comment period in determining whether to approve this FMP amendment.

In 2006, NMFS implemented Amendment 69 to the FMP that allowed the North Pacific Fishery Management Council (Council) to set the TAC for the ''other species'' category at or below 5 percent of the combined TACs for the GOA target species, which accommodated incidental catch in directed groundfish fisheries. This was an interim step to provide greater protection for the constituent species of the ''other species'' category until additional data allowed for adequate stock assessment. Under this system, the FMP did not authorize the specification of OFLs and ABCs for the ''other species'' category.

In April 2008, the Council unanimously recommended Amendment 79 to the FMP. The purpose of Amendment 79 is to provide a sound biological basis for the setting of the ''other species'' TAC and to provide for an annual review of the stock status of the ''other species'' category to further reduce the risk of overfishing the species in the ''other species'' category. Amendment 79 would authorize aggregate OFL and ABC levels for the ''other species'' category in the GOA as part of the annual groundfish harvest specifications process. The revised process would allow the Council to incorporate the best and most recent scientific and socio-economic information and public testimony in its recommendation for an annual ''other species'' TAC. The proposed amendment is intended to comply with the Magnuson-Stevens Act, particularly National Standard 1 and Section 303(a), and other applicable laws.

Public comments are being solicited on proposed Amendment 79 through July 28, 2008. All comments received by the close of the business on the last day of the comment period on the amendment will be considered in the approval/disapproval decision. Comments received after that date will not be considered.

Dated: May 22, 2008.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. E8–12010 Filed 5–28–08; 8:45 am]

**BILLING CODE 3510–22–S**

---

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 070816465–8648–03]**

**RIN 0648–AW28**

## Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

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

**SUMMARY:** NMFS proposes regulations to exempt groundfish catcher/processors and motherships equipped with an operational vessel monitoring system (VMS) transmitter from check-in/check-out requirements. This action does not repeal the requirement for submission of a check-in/check-out report by catcher/processors and motherships. This action would reduce the paperwork submissions required from catcher/processors and motherships and change the definitions for ''active'' period for motherships and trawl, hook-and-line, and pot gear catcher/processors. This action would reduce administrative costs for both the fishing industry and NMFS.

**DATES:** Comments must be received by June 30, 2008.

**ADDRESSES:** You may submit comments, identified by 0648BAW28, by any one of the following methods:

• Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*;

• Mail: Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802; Attn: Ellen Sebastian, Records Officer;

• Hand delivery: 709 West 9th Street, Room 420A, Juneau, AK; or

• Fax: 907B586B7557, Attention: Sue Salveson.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of the National Environmental Policy Act Categorical Exclusion (CE), the Regulatory Impact Review, and the Regulatory Flexibility Act certification prepared for this action may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, Alaska 99802, Attn: Ellen Sebastian, and on the NMFS Alaska Region website at *http://www.alaskafisheries.noaa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Patsy A, Bearden, 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

### Background

NMFS manages the U.S. groundfish fisheries of the exclusive economic zone (EEZ) off Alaska under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the

Gulf of Alaska (FMPs). The North Pacific Fishery Management Council prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Check-in/check-out reports notify NMFS that a fish processor will participate or cease participation in a groundfish fishery. According to regulations at § 679.5(h), catcher/processor and mothership operators and shoreside processor and stationary floating processor managers must submit check-in/check-out reports. This action would exempt operators of catcher/processors and motherships equipped with an operational VMS transmitter from submitting a check-in/check-out report to NMFS. Specifically, this action would revise the text at § 679.5(h) to state that a catcher/processor or mothership that is not carrying onboard a transmitting VMS transmitter that meets the requirements of § 679.28(f) must submit check-in/check-out reports.

The check-in/check-out report also tells NMFS where fishing will occur (if a catcher/processor) or groundfish will be received (if a mothership). The check-in/check-out information was originally used by NMFS inseason managers to monitor the fishing capacity and effort. The information also was used by the United States Coast Guard (USCG) to monitor vessel location. The USCG will still receive this information through VMS or the Interagency Electronic Reporting System (IERS).

Catcher/processors and motherships must submit a check-in/check-out report when the harvester changes gear type; when a vessel changes operation from catcher/processor to mothership or vice versa; when a fishing year (calendar year) changes; and when fish production is interrupted.

The information previously collected only through check-in/check-out reports may be obtained through VMS and the IERS. The USCG receives and has access to VMS and IERS data.

Over the past ten years, NMFS has added VMS use in many fishery management programs to monitor vessel location. VMS transmitters combine global positioning systems and satellite communications to automatically provide precise location reports to NMFS several times each hour. NMFS requires VMS transmissions when operating in: any reporting area off Alaska while any fishery requiring VMS, for which the vessel has a species and gear endorsement on its Federal Fisheries Permit is open; the Aleutian Islands subarea; the Gulf of Alaska and mobile bottom contact gear is onboard; and the Rockfish Pilot Program.

IERS and its data entry component, eLandings, are scheduled for implementation for all groundfish fisheries in the Gulf of Alaska and Bering Sea and Aleutian Islands Management Area in 2008 (see proposed rule 72 FR 35748, June 29, 2007). Through eLandings, fisheries participants provide daily information on vessel location (although, with less precision than the VMS), vessel gear use, the management program under which fishing is taking place, the gear used by the harvesting vessel, landings information, discard and donation information, and production information.

The same information that the check-in/check-out system collects would be collected by these other systems. Moreover, VMS and IERS data will be more precise and will require less data processing by NMFS because electronic data is entered on standard forms and automatically entered into the NMFS database.

In NMFS' current recordkeeping and reporting regulations, motherships and trawl, longline, and pot gear catcher/processors must record the occurrence of active and inactive periods. Active periods include times when the vessel is ''checked-in'' per the check-in report. The definition of an active period currently means Awhen checked-in or processing@ for a mothership and catcher/processor. Because this action would eliminate the requirement for a check-in/check-out report for certain of the motherships and catcher/processors, the corresponding definition of an active period must change. For a catcher/processor using longline or pot gear, the definition for ''active'' status would be revised at § 679.5(a)(7)(i)(D)(*1*) to describe that ''active'' status starts when all or part of the longline or pot gear is in the water. For a catcher/processor using trawl gear, the definition for ''active'' status would be amended at § 679.5(a)(7)(i)(D)(*2*) to describe that ''active'' status starts when all or part of the trawl net is in the water. Further, for a mothership, the definition for ''active'' status would be revised at § 679.5(a)(7)(i)(C) to describe that an ''active'' status is when a mothership is receiving or processing groundfish and begins when the first groundfish is received.

NMFS considered extending the check-in/check-out report exemption to shoreside processors and stationary floating processors, but concluded that the report provides valuable information not submitted elsewhere. Shoreside and stationary floating processor check-in/check-out reports provide information on the facilities' fish and fish product inventories as they exist at the facility on the report submission date. This inventory information is useful for onboard audits by NOAA Fisheries Office for Law Enforcement (OLE) and USCG.

**Proposed Changes to 50 CFR 679.5**

To accommodate the changes in ''active'' period catcher/processor definitions, NMFS would revise paragraphs (a)(7)(i)(C) and (a)(7)(i)(D). NMFS would also reorganize the regulations at (h) to accommodate the changes in check-in/check-out report requirements. Introductory paragraph (h)(1) would be revised by removing outdated text that describes submittal methods. NMFS no longer accepts check-in/check-out reports by Telex, modem, or satellite. Rather, NMFS accepts fax and e-mail submittals for these reports.

A new paragraph (h)(2) would be created to list exceptions to the requirement at paragraph (h)(1) to submit a check-in report. A new paragraph (h)(2)(i) would be added to describe the exception due to carrying onboard a transmitting VMS transmitter that meets the requirements of § 679.28(f). Paragraph (h)(1)(iii) would be redesignated as (h)(2)(ii) to describe exceptions due to fishing in two adjacent reporting areas. Redesignated paragraph (h)(2)(ii)(B) would be amended to change a cross-reference to new paragraph (h)(2)(ii). Paragraphs (h)(2) and (h)(3) would be redesignated as (h)(3) and (h)(4), respectively, to describe transit through reporting areas and required information on a check-in/check-out report.

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

*Factual Basis For Certification*

Description and Estimate of the Number of Small Entities to Which the Rule Applies

Eleven small-entity groundfish catcher/processors (CPs), and no small-entity motherships, will be directly regulated by this action. NMFS currently uses a $4 million gross revenue threshold to determine whether a CP is a small entity for purposes of the Regulatory Flexibility Act (RFA). Alaska Fisheries Science Center data on gross revenues from all fishing sources, supplied in August 2007, indicate that in 2006, 11 groundfish CPs were small entities under this criterion. The most recent data available are from 2006. The count of small entities may be overestimated because it considers each vessel independently. Some entities own multiple fishing vessels, and there are often affiliations between entities. NMFS currently uses an employment standard of 500 employees to evaluate for RFA purposes the size of motherships that are not also used as CPs. The three motherships that are not also used as CPs operating off of Alaska are believed to be large for RFA purposes, because they are owned by entities with more than 500 employees.

Estimate of Economic Impact on Small Entities by Entity Size and Industry

NMFS does not expect this action to have a significant economic impact on small entities. The action does not impose a requirement on vessels to acquire a VMS transmitter, and it does not require a vessel with a VMS transmitter to take advantage of the exemption. It is likely that no operation would take advantage of this exemption if it would incur a net cost to do so.

Some small entities may reduce their paperwork burden and costs by small amounts under this action. The analysis contained in the Regulatory Impact Review (RIR) estimates potential savings of about $740 per vessel, per year. Since the 11 small CPs average $2.4 million in gross revenues from all sources, these savings (3/100 of a percent) are not considered significant. Thus, the proposed regulatory change has a potential to yield some small benefit, but no discernable cost to small entities.

Criteria Used to Evaluate Whether the Rule Would Impose ASignificant Economic Impacts@

The two criteria recommended to determine significant economic impact of the action are disproportionality and profitability. The proposed action would not place a substantial number of small entities at a disadvantage, relative to large entities. This action would create opportunities for some small entities to reduce their costs slightly and, thus, slightly increase their profitability. The benefit is probably proportionally greater for small entities than for large ones, but still small overall benefit.

Criteria Used to Evaluate Whether the Rule Would Impose Impacts on AA Substantial Number of Small Entities@

NMFS guidelines for economic review of regulatory actions explain that the term Asubstantial number@ has no specific statutory definition and the criterion does not lend itself to objective standards applicable across all regulatory actions. Rather, Asubstantial number@ depends upon the context of the action, the problem to be addressed, and the structure of the regulated industry. The Small Business Administration casts Asubstantial@ within the context of Amore than just a few@or de minimis (Atoo few to care about@) criteria. In this instance 11 out of 85 CPs are estimated to be small entities. This appears to be a substantial number within the meaning of these guidelines.

Description of and Basis for Assumptions Used

Gross revenue estimates for individual CP operations were prepared by the Alaska Fisheries Science Center in August 2007. Mothership size determinations were based on anecdotal information about mothership ownership structure, affiliations, and resultant employee numbers. The economic analysis contained in the RIR further describes the potential size, distribution, and magnitude of the economic impacts that this action may have on small entities. Based upon that analysis, NMFS finds that the proposed action will not have a significant economic impact on the small entities participating in these fisheries. As a result, an initial regulatory flexibility analysis is not required, and none has been prepared.

*Collection-of-Information Requirements*

This proposed rule contains a collection-of-information requirement that is subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) and which has been approved by OMB under Control Number 0648–0213. Public reporting burden for the check-in/check-out report is estimated to average seven minutes per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. The removal of the requirement for check-in and check-out reports by catcher/processors and motherships will result in an estimated annual savings of 248 burden hours per year, $6,200 in personnel costs, and $3,928 in miscellaneous costs.

Public comment is sought regarding whether this proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection-of-information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection-of-information to NMFS Alaska Region at the **ADDRESSES** above, and e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

Notwithstanding any other provision of the 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 PRA, unless that collection-of-information displays a currently valid OMB Control Number.

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: May 22, 2008.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; and 3631 *et seq.* ; Pub. L. 108–447.

2. In § 679.5:

a. Paragraphs (h)(2) and (h)(3) are redesignated to read (h)(3) and (h)(4), respectively.

b. Paragraph (h)(2) heading and paragraph (h)(2)(i) are added.

c. Paragraph (h)(1)(iii) is redesignated as (h)(2)(ii).

d. Paragraphs (a)(7)(i)(C), (a)(7)(i)(D), and (h)(1) introductory text, and the

heading for newly redesignated (h)(2)(ii) are revised.

The additions are revisions read as follows:

**§ 679.5 Recordkeeping and reporting (R&R).**

(a) * * *

(7) * * *

| If participant is . . . | And fishing activity is . . . | An active period is . . . | An inactive period is . . . |
|---|---|---|---|
| | * * * | * * | |
| (C) MS | Receipt, discard, or processing of groundfish | When receiving or processing groundfish. | When not active |
| (D) C/P | Harvest, discard, or processing groundfish | A longline or pot gear catcher/processor is active when processing or when all or part of the longline or pot gear is in the water. | When not active |
| | | A trawl gear catcher/processor is active when processing groundfish or when all or part of the trawl net is in the water. | When not active |
| | * * * | * * | |

* * * * *

(h) * * *

(1) *Requirement.* Except as noted in paragraph (h)(2) of this section, the operator of a catcher/processor or mothership and the manager of a shoreside processor or stationary floating processor must submit to NMFS a check-in report (BEGIN message) prior to becoming active and a check-out report (CEASE message) for every check-in report submitted. The check-in report and check-out report may be submitted by fax to 907–586–7131, or by e-mail to *erreports.alaskafisheries@noaa.gov*.

* * * * *

(2) *Exceptions*—(i) *VMS onboard.* The operator of a catcher/processor or mothership is not required to submit to NMFS a check-in report or check-out report if the vessel is carrying onboard a transmitting VMS that meets the requirements of § 679.28(f).

(ii) *Two adjacent reporting areas.* * * *

* * * * *

(i) * * *

[FR Doc. E8–12009 Filed 5–28–08; 8:45 am]

BILLING CODE 3510–22–S

# Notices

Federal Register

Vol. 73, No. 104

Thursday, May 29, 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

### Natural Resources Conservation Service

### Pohick Creek Watershed Dam No. 3, Fairfax County, VA

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of a Finding of No Significant Impact.

**SUMMARY:** Pursuant to Section 102[2][c] of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations [40 CFR Part 1500]; and the Natural Resources Conservation Service Regulations [7 CFR Part 650]; the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation of Pohick Creek Watershed Dam No. 3, Fairfax County, Virginia.

**FOR FURTHER INFORMATION CONTACT:** W. Ray Dorsett, Acting State Conservationist, Natural Resources Conservation Service, 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229. Telephone (804) 287–1691, E-Mail *Ray.Dorsett@va.usda.gov.*

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, W. Ray Dorsett, Acting State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purpose is continued flood prevention. The planned works of improvement include upgrading an existing floodwater retarding structure.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the U.S. Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting W. Ray Dorsett at the above number.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

**W. Ray Dorsett,**

*Acting State Conservationist.*

[This activity is listed in the Catalog of Federal Domestic Assistance under 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires inter-government consultation with State and local officials].

[FR Doc. E8–11936 Filed 5–28–08; 8:45 am]

BILLING CODE 3410–16–P

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Notice of Expiring Expanded Rural Area Definition

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** On March 13, 2006 (71 FR 12671–74), a notice was published regarding the availability of hurricane disaster assistance that expanded the rural area definition for USDA Rural Development's housing programs. USDA Rural Development's housing programs are governed by the Housing Act of 1949, as amended (42 U.S.C. 1471, *et seq.*)(Act).

Section 541 of the Act (42 U.S.C. 1490q), which only applies to USDA Rural Development's housing programs, provided the authority to waive rural area requirements in § 520 of the Act (42 U.S.C. 1490) subsequent to a natural disaster. This waiver authority applied with respect to assistance under § 541. The Secretary could allocate appropriated disaster funds under § 541(a) for each fiscal year during the 3-year period beginning on the declaration of the disaster by the President.

Notice is hereby given that the expanded rural area definition (which increased the population limits to 75,000) under the March 13, 2006 notice will expire at the end of the current fiscal year, September 30, 2008, for areas covered under the Hurricane Katrina or Rita declarations. Financial assistance in these expanded communities must be obligated by the above-mentioned dates. Financial disaster assistance will continue in areas meeting the rural area definition of § 520 of the Act until such appropriations are expended.

**FOR FURTHER INFORMATION CONTACT:** Myron Wooden, Loan Specialist,Rural Housing Service, Single Family Housing Direct Loan Division, Stop 0783,1400 Independence Avenue SW., Washington, DC 20250–0783; Telephone: 202–720–1474; FAX: 202–720–2232; E-mail: *Myron.Wooden@wdc.usda.gov.*

Dated: May 13, 2008.

**Russell T. Davis,**

*Administrator, Rural Housing Service.*

[FR Doc. E8–11934 Filed 5–28–08; 8:45 am]

BILLING CODE 3410–XV–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the New Jersey Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning of the New Jersey Advisory Committee to the Commission will convene by conference call at 2 p.m. and adjourn at 3 p.m. Wednesday, June 18, 2008. The purpose of the meeting is to narrow the list of possible topics for a civil rights project to be conducted over the course of the SAC's current charter. Pursuant to agency guidelines, the chair will appoint subcommittees that will make recommendations to the Committee when it meets again to select its civil rights project.

This meeting is available to the public through the following toll-free call-in number: 800 516–9896, access code: 98105. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they

initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Alfreda Greene of the Eastern Regional Office, 202–376–7533, TTY 202–376–8116 by 4:00 p.m., on June 11, 2008.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by June 30, 2008. The address is 624 Ninth Street, NW., Suite 740, Washington, DC 20425. Comments may be e-mailed to *agreene@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Eastern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, May 23, 2008.

**Christopher Byrnes,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. E8–12019 Filed 5–28–08; 8:45 am]

BILLING CODE 6335–01–P

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Notice

**AGENCY:** United States Commission on Civil Rights.

**ACTION:** Notice of briefing and meeting.

**DATE AND TIME:** Friday, June 6, 2008; 9:30 a.m.

**PLACE:** U.S. Commission on Civil Rights, 624 Ninth Street, NW., Rm. 540, Washington, DC 20425.

**BRIEFING AGENDA:** Topic: Review of the Department of Justice's Plans to Monitor Voting Rights Enforcement for the 2008 U.S. Presidential Election.

I. Introductory Remarks by Chairman.
II. Speakers' Presentations.
III. Questions by Commissioners and Staff Director.
IV. Adjourn Briefing.

**Meeting Agenda:**

I. Approval of Agenda.
II. Approval of Minutes.
- May 9, 2008 Meeting.

III. Announcements.
IV. Staff Director's Report.
V. Management and Operations.
- FY 2009 Budget Submission.

VI. Program Planning.
- 2010 Program Planning.

VII. State Advisory Committee Issues.
- Florida SAC.
- Kentucky SAC.
- Wyoming SAC.

VIII. Future Agenda Items.
IX. Adjourn.

**FOR FURTHER INFORMATION CONTACT:** Lenore Ostrowsky, Acting Chief, Public Affairs Unit, (202) 376–8582.

Dated: May 27, 2008.

**David Blackwood,**

*General Counsel.*

[FR Doc. 08–1309 Filed 5–27–08; 1:44 pm]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**(A–570–868)**

### Folding Metal Tables and Chairs from the People's Republic of China: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** May 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** Laurel LaCivita or Benjamin Caryl, 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) 482–4243 or (202) 482–3003, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 26, 2007, the Department of Commerce (''the Department'') published the initiation of the administrative review of the antidumping duty order on folding metal tables and chairs from the People's Republic of China (''PRC''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 41057 (July 26, 2007). This review covers the period June 1, 2006, through May 31, 2007.

**Extension of Time Limit for Preliminary Results of Review**

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

On March 4, 2008, the Department published a notice of extension of time limit for the preliminary results of this administrative review of the antidumping duty order. *See Folding Metal Tables and Chairs from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 73 FR 11615 (March 4, 2008). The preliminary results of review are currently due no later than May 30, 2008.

The Department finds that it is not practicable to complete the preliminary results of the administrative review of folding metal tables and chairs from the PRC within this time limit. Specifically, due to complex issues related to the selection of surrogate values, we find that additional time is needed to complete these preliminary results. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is now fully extending the time period for completion of the preliminary results of this review to 365 days until June 29, 2008. Because June 29, 2008, falls on a Sunday, the preliminary results will be due June 30, 2008, the next business day.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: May 22, 2008.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E8–11992 Filed 5–28–08; 8:45 am]

BILLING CODE 3510–DR–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A–533–809**

### Certain Forged Stainless Steel Flanges from India; Final Results of Antidumping Duty Administrative Review and Rescission in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On March 5, 2008, the Department of Commerce (the

Department) published the preliminary results of the administrative review of the antidumping duty order on certain forged stainless steel flanges (stainless steel flanges) from India manufactured by Shree Ganesh Forgings, Ltd. (Shree Ganesh) and Nakshatra Enterprises Pvt., Ltd. (Nakshatra) covering the period February 1, 2006, through January 31, 2007. *See Certain Forged Stainless Steel Flanges from India; Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Administrative Review in Part*, 73 FR 11863 (March 5, 2008) (Preliminary Results). Based on further analysis of our computations for Shree Ganesh, we have made changes in the margin calculation; therefore, the final results differ from the preliminary results for Shree Ganesh. The final weighted–average dumping margin for Shree Ganesh is listed below in the section entitled, ''Final Results of Review.'' We are also rescinding the review for Nakshatra because we have determined that it had no *bona fide* U.S. sales during the period of review.

**EFFECTIVE DATE:** May 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** Fred Baker or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2924 or (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On March 5, 2008, the Department published the *Preliminary Results*. In response to the Department's invitation to comment on the preliminary results of review, Shree Ganesh submitted two sets of comments. However, we received these comments after the deadline for submitting comments, and they were not filed in proper form. Therefore, we returned them to Shree Ganesh, and have not considered them in these final results of review. See the Department's letter to Shree Ganesh dated April 17, 2008.

We also received a request from the law firm of Miller Chevalier to extend the briefing period to allow for further briefing on behalf of Shree Ganesh. We received this request from Miller Chevalier on April 7, 2008, after the comment period had already closed. We denied the request. *See* the Department's letter to Miller Chevalier dated April 17, 2008.

We received no comments from Nakshatra.

## Period of Review

The period of review (POR) is February 1, 2006, to January 31, 2007.

## Scope of the Order

The products covered by this order are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld–neck, used for butt–weld line connection; threaded, used for threaded line connections; slip–on and lap joint, used with stub–ends/butt–weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above–described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the scope of the order.

## Partial Rescission of Review

In the preliminary results, we stated that we intended to rescind the review with respect to Nakshatra because we had determined, based on the totality of the circumstances, that Nakshatra's U.S. sales were not *bona fide. See Preliminary Results* at 11866. Nakshatra submitted no comments, and we have found no basis for changing the determination announced in the preliminary results. Therefore we are rescinding the review with respect to Nakshatra.

## Changes Since the Preliminary Results

Based on our analysis of the computer programming used in the preliminary results, we have made the following changes to the margin calculation for Shree Ganesh:

- We changed the names of two of the data sets to ensure use of the proper data;
- We removed language converting the variables for packing (PACKU) and total cost of manufacture (TCOMU) into U.S. dollars because the currency conversion for those variables is made later in the program;
- We removed language converting variable cost of manufacturing (VCOMU) into U.S. dollars because the conversion was unnecessary;
- We deleted references to constructed value (CV) data because Shree Ganesh did not submit a separate CV data base;
- We removed some of the language from the macro program because it was overriding some of the language written into the SAS program.

*See* the final results analysis memorandum for additional details.

## Final Results of Review

As a result of our review, the Department finds the following weighted–average dumping margin exists for the period February 1, 2006, through January 31, 2007:

| Manufacturer/Exporter | Margin (percent) |
|---|---|
| Shree Ganesh Forgings, Ltd. | 42.93 |

## Assessment

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Tariff Act), and 19 CFR 351.212(b). The Department calculated an assessment rate for each importer of the subject merchandise covered by the review.

For any importer–specific assessment rates calculated in the final results that are above *de minimis (i.e.*, at or above 0.50 percent), we will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. We will issue assessment instructions to CBP fifteen days after publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Notice of Policy Concerning Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by Shree Ganesh for which Shree Ganesh did not know the merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the 162.14 percent all–others rate if there is no company–specific rate for an intermediary involved in the transaction. *See id.* for a full discussion of this clarification.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, consistent with section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed company will be the rate listed above; (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original less–than-fair–value (LTFV) investigation, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 162.14 percent, the all–others rate established in the LTFV investigation. *See Amended Final Determination and Antidumping Duty Order; Certain Forged Stainless Steel Flanges from India*, 59 FR 5994, 5995 (February 9, 1994). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Notification to Interested Parties**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred, and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: May 20, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8–11996 Filed 5–28–08; 8:45 am]

BILLING CODE 3510–DR–S

## CONSUMER PRODUCT SAFETY COMMISSION

### Proposed Collection; Comment Request—Customer Satisfaction Surveys (Fast-Track Recall Survey, Ombudsman Survey, State Partner Survey, Hotline Survey, Web-site Survey, and Clearinghouse Survey)

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) (PRA), the Consumer Product Safety Commission (CPSC) requests comments on a proposed request for an extension of its PRA approval to conduct surveys to determine customers' level of satisfaction with existing services. The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget (OMB).

**DATES:** Written comments must be received by the Office of the Secretary not later than July 28, 2008.

**ADDRESSES:** Written comments should be captioned ''Customer Satisfaction Surveys'' and e-mailed to the Office of the Secretary at *cpsc-os@cpsc.gov*. Comments may also be sent by facsimile to (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814.

**FOR FURTHER INFORMATION CONTACT:** For information about this proposed extension of approval of the collection of information, or to obtain a copy of the questions to be used for this collection of information, call or write Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7671 or by e-mail to *lglatz@cpsc.gov*.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

OMB has approved CPSC information collection activity using customer satisfaction surveys, OMB Control No. 0341–0128. CPSC seeks extension of that approval for six customer satisfaction surveys to determine the kind and quality of services CPSC customers want and customers' level of satisfaction with existing services. ''Customers'' of CPSC include any individual or entity interested in or affected by agency activities. These would include, but not be limited to: (1) Consumers that telephone the Hotline or access the CPSC Web-site via the internet to report product-related incidents, or to obtain information on recent product recalls; (2) consumers, industry members, or others that contact the National Injury Information Clearinghouse for information; (3) State representatives who work with CPSC on cooperative programs; (4) firms that use CPSC's Fast-Track Product Recall Program to report and simultaneously propose satisfactory product recall plans; and (5) small businesses that seek information or assistance from the CPSC's small business ombudsman.

These customer surveys are used by the CPSC Office of Financial Management, Planning and Evaluation to prepare sections of the agency's annual performance plan and accountability report in accordance with the Government Performance and Results Act of 1993. The information from the surveys will provide measures of the quality and effectiveness of agency efforts related to three goals in its strategic plan: informing the public, industry services, and customer satisfaction. If this information is not collected, the Commission would not have the means to measure its effectiveness in providing useful services to consumers and others, and lack information necessary to guide program development.

**B. Estimated Burden**

The surveys will be conducted by in-house staff primarily through internet, telephone, or in writing. The CPSC staff may: (1) Conduct customer service follow-up queries with a sample of telephone Hotline callers; (2) survey a sample of firms that use Fast-Track Product Recall and Ombudsman Programs to assess their views and suggestions for improvements in the services aspects of the program; (3) conduct a sample survey of state partners and customers of the National Injury Information Clearinghouse; and (4) obtain web-based survey information on customer satisfaction with the

agency's Web-site. Fewer than 6 customer surveys or information collection activities a year would be conducted using this clearance. The Commission staff estimates the number of annual respondents to be about 684. The anticipated sources and respondents for surveys conducted over a three-year period include:

| | |
|---|---|
| Hotline | 350 |
| National Injury Information Clearinghouse | 300 |
| Small Businesses | 200 |
| State Partners | 54 |
| Web-site | 1000 |
| Fast Track Product Recall Program | 150 |
| | 2,054 |

The estimated time of the total annualized cost/burden to respondents would be approximately 65 hours. The annualized cost to respondents for the hour burden for collection of information is $1,821.95 based on a total of 65 hours at $28.03/hour (Bureau of Labor Statistics average hourly private industry employer compensation costs, December 2007).

**C. Requests for Comments**

The Commission solicits written comments from all interested persons about the proposed extension. The Commission specifically seeks information relevant to the following topics:

— Whether the surveys described above are necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

— Whether the estimated burden of the proposed collections are accurate;

— Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

— Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: May 23, 2008.

**Todd Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E8–12008 Filed 5–28–08; 8:45 am]

BILLING CODE 6355–01–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal Nos. 08–32]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–32 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 16, 2008.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001–06–M

**DEFENSE SECURITY COOPERATION AGENCY**
**WASHINGTON, DC 20301-2800**

MAY 0 9 2008
**In reply refer to:**
**USP001116-08**

**The Honorable Nancy Pelosi**
**Speaker of the House of Representatives**
**Washington, DC 20515-6501**

**Dear Madam Speaker:**

**Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-32, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the North Atlantic Treaty Organization for defense articles and services estimated to cost $700 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.**

**Sincerely,**

Richard J. Millies
Deputy Director

**Enclosures:**
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

**Same ltr to:**

| House | Senate |
|---|---|
| Committee on Foreign Affairs | Committee on Foreign Relations |
| Committee on Armed Services | Committee on Armed Services |
| Committee on Appropriations | Committee on Appropriations |

**Transmittal No. 08-32**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act, as amended**

(i) **Prospective Purchaser:** North Atlantic Treaty Organization

(ii) **Total Estimated Value:**

| | |
|---|---|
| Major Defense Equipment* | $545 million |
| Other | $155 million |
| TOTAL | $700 million |

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** two Boeing C-17 GLOBEMASTER III aircraft, four Turbofan F117-PW-100 engines installed on each aircraft (8 total engines), AN/ALE-47 Counter-Measures Dispensing System (CMDS), AN/AAR-47 Missile Warning System, Government Furnished Equipment, spare and repairs parts, pyrotechnics, flares, other explosives, Global Positioning System security devices, crew armor, mission planning system software, COMSEC equipment and support, support and training equipment, publications and technical data, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) **Military Department:** Air Force (SAA)

(v) **Prior Related Cases, if any:** none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** MAY 09 2008

* as defined in Section 47(6) of the Arms Export Control Act.

## POLICY JUSTIFICATION

### Strategic Airlift Capability – C-17 GLOBEMASTER III Aircraft

**An international consortium made up of allies in the North Atlantic Treaty Organization (NATO) together with Sweden and Finland, the Strategic Airlift Capability (SAC) requests a possible sale of two Boeing C-17 GLOBEMASTER III aircraft, four Turbofan F117-PW-100 engines installed on each aircraft (8 total engines), AN/ALE-47 Counter-Measures Dispensing System (CMDS), AN/AAR-47 Missile Warning System, Government Furnished Equipment, spare and repairs parts, pyrotechnics, flares, other explosives, Global Positioning System security devices, crew armor, mission planning system software, COMSEC equipment and support, supply support, training equipment and support, publications and technical data, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $700 million.**

**The new NATO Airlift Management Organization (NAMO) will purchase, own, and manage the aircraft. A multinational military unit to be named the Heavy Airlift Wing (HAW) will conduct airlift operations**

**This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of NATO and further weapon system standardization and interoperability with U.S. forces. NATO is transitioning to an expanded global role, increasing the share of its burden in the Global War on Terrorism, specifically for out-of-area operations. NATO allies have agreed to increase the capability, usability, and deployability of their forces, transforming them from their Cold War territorial defense roles. This expanded role includes peacekeeping and stability operations, as well as disaster relief around the globe. The C-17 will partially serve NATO's agreed military requirement for eight C-17 equivalents to rapidly deploy a force around the globe, including the NATO Response Force (NRF). Furthermore, member nations will be able to execute strategic airlift missions in support of national objectives, or to fulfill national contributions to multi-nation missions. This capability provides consortium member nations with an organic capability that complements global reach efforts supported by the U.S. Air Force.**

**NATO does not currently have a heavy airlift capability and must rely on outside sources for its military airlift needs. This assistance normally takes the form of either U.S. Air Force airlift or contract carriers that use Russian heavy airlift aircraft. The procurement of C-17s will increase interoperability with the U.S. Air Force airlift system and will enhance relationships with SAC members.**

**NATO has the ability to absorb and employ the C-17. It has agreed to pursue basing the C-17s at Papa Air Base, in Hungary, further adding to the synergies of operating side-by-side with NATO allies. Papa AB has already undergone significant NATO-funded infrastructure upgrades required to support operation of C-17s and other large aircraft, and this capability will qualify Papa AB for further NATO Security Investment program funding.**

**The proposed sale of this equipment and support will not affect the basic military balance in the region.**

**This proposed sale will involve the following contractors:**

| | |
|---|---|
| **Boeing Company** | **Long Beach, California** |
| **United Technologies Cooperation, Pratt & Whitney Military Engines** | **East Hartford, Connecticut** |

**Additional subcontractors may be needed depending on the exact nature of the contracting arrangements established. At this time, there are no known offset agreements proposed in connection with this potential sale.**

**This proposed sale will require Boeing to establish a facility at Papa AB to provide C-17 logistics support under the current GLOBEMASTER Support Partnership. The proposed plan will require approximately 7 of the personnel to be US citizens and 7 personnel to be local hires. Approximately 50 United States Air Force personnel will be stationed with the SAC HAW at Papa AB, Hungary. Implementation of this proposed sale will require the participation of up to 10 each U.S. Government and contractor representatives for annual program management and technical reviews in Europe or the US for a period of approximately two weeks per review.**

**There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.**

**Transmittal No. 08-32**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act**

**Annex**
**Item No. vii**

**(vii) Sensitivity of Technology:**

**1. The Boeing C-17 GLOBEMASTER III military airlift aircraft is the newest, most flexible cargo aircraft to enter the U. S. Air Force fleet. The C-17 is capable of rapid strategic delivery of up to 170,900 pounds of personnel and equipment to main operating bases or to forward operating bases. The aircraft is also capable of short field landings with a full cargo load. Finally, the aircraft can perform tactical airlift and airdrop missions and can also transport litters and ambulatory patients during aeromedical evacuation when required. A fully integrated electronic cockpit and advanced cargo systems allow a crew of three: the pilot, copilot and loadmaster to operate the aircraft on any type of mission.**

**2. The AN/ALE-47 Counter-Measures Dispensing System (CMDS) is an integrated, threat-adaptive, software-programmable dispensing system capable of dispensing chaff, flares and active radio frequency expendables. The threats countered by the CMDS include radar-directed anti-aircraft artillery (AAA), radar command-guided missiles, radar homing guided missiles, and infrared (IR) guided missiles. The system is internally mounted and may be operated as a stand-alone system or may be integrated with other on-board electronic warfare and avionics systems. The AN/ALE-47 uses threat data received over the aircraft interfaces to assess the threat situation and to determine a response. Expendable routines tailored to the immediate aircraft and threat environment may be dispensed using one of four operational modes. The hardware, technical data, and documentation to be provided are Unclassified. The software is classified Secret.**

**3. The AN/AAR-47 Missile Warning System is a small, lightweight, passive, electro-optic, threat warning device used to detect surface-to-air missiles fired at helicopters and low-flying fixed-wing aircraft and automatically provide countermeasures, as well as audio and visual-sector warning messages to the aircrew. The basic system consists of multiple Optical Sensor Converter (OSC) units, a Computer Processor (CP) and a Control Indicator (CI). The set of OSC units, which normally consist of four, is mounted on the aircraft exterior to provide omnidirectional protection. The OSC detects the rocket plume of missiles and sends appropriate signals**

**to the CP for processing. The CP analyses the data from each OSC and automatically deploys the appropriate countermeasures. The CP also contains comprehensive BIT circuitry. The CI displays the incoming direction of the threat, so that the pilot can take appropriate action. The hardware, technical data, and documentation to be provided are Unclassified. The Software is Secret.**

**4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.**

[FR Doc. E8–11669 Filed 5–28–08; 8:45 am]
BILLING CODE 5001–06–C

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal Nos. 08–48]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–48 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 19, 2008.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

MAY 1 2 2008

In reply refer to:
USP003418-08

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-48, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Korea for defense articles and services estimated to cost $25 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

| House | Senate |
|---|---|
| Committee on Foreign Affairs | Committee on Foreign Relations |
| Committee on Armed Services | Committee on Armed Services |
| Committee on Appropriations | Committee on Appropriations |

**Transmittal No. 08-48**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act, as amended**

(i) **Prospective Purchaser:** Korea

(ii) **Total Estimated Value:**

| | |
|---|---|
| Major Defense Equipment* | $22 million |
| Other | $ 3 million |
| TOTAL | $25 million |

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 35 All-Up-Round AIM-9X SIDEWINDER Missiles, 1 AIM-9M SIDEWINDER Missile (Legacy), 12 AIM-9X SIDEWINDER Captive Air Training Missiles (CATMs), 2 AIM-9X SIDEWINDER Dummy Air Training Missiles (DATMs), Missile Containers, Organizational and Intermediate-Level Maintenance AIM-9X spares; missile modifications, test sets and support equipment, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, contractor engineering and technical support services, and other related elements of logistics support.

(iv) **Military Department:** Navy (AJW)

(v) **Prior Related Cases, if any:**
FMS case AIL-$35 million-01Jul02

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** MAY 12 2008

* as defined in Section 47(6) of the Arms Export Control Act.

## POLICY JUSTIFICATION

### Korea – AIM-9X SIDEWINDER Missiles

**The Republic of Korea has requested a possible sale of 35 All-Up-Round AIM-9X SIDEWINDER Missiles, 1 AIM-9M SIDEWINDER Missile (Legacy), 12 AIM-9X SIDEWINDER Captive Air Training Missiles (CATMs), 2 AIM-9X SIDEWINDER Dummy Air Training Missiles (DATMs), Missile Containers, missile modifications, test and support equipment, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, contractor engineering and technical support services, and other related elements of logistics support. The estimated cost is $25 million.**

**The Republic of Korea is one of the major political and economic powers in East Asia and the Western Pacific and a key partner of the United States in ensuring peace and stability in that region. It is vital to the U.S. national interest to assist our ally in developing and maintaining a strong and ready self-defense capability, which will contribute to an acceptable military balance in the area. This proposed sale is consistent with those objectives. No foreign policy or military developments affect this proposed sale.**

**The sale of the AIM-9X SIDEWINDER missile system is being addressed in conjunction with the planned sale of additional F-15K fighter aircraft. AIM-9X procurement will significantly enhance the Korean Air Force's current air-to-air intercept capability to equal capabilities within their region of operations. Korea will have no difficulty absorbing these additional missiles into its armed forces.**

**The prime contractor will be Raytheon Electronic Systems Company of Tucson, Arizona. Offset agreements associated with this proposed sale are expected, but at this time the specific offset agreements are undetermined and will be defined in negotiations between the purchaser and contractor.**

**Implementation of this sale will not require the assignment of any additional U. S. Government personnel in-country.**

**There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.**

**Transmittal No. 08-48**

**Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act**

**Annex**
**Item No. vii**

**(vii) Sensitivity of Technology:**

**1. The AIM-9X represents a substantial increase in missile acquisition and kinematics performance over previous AIM-9 variants. The missile includes a high off bore-sight seeker, enhanced countermeasure rejection capability, low drag/high angle of attack airframe and the ability to integrate the Joint Helmet Mounted Cueing System. The software algorithms are the most sensitive portions of the AIM-9X missile. The software continues to be modified during the testing phase in order to improve its counter-countermeasures capabilities. No software source code or algorithms will be released. Sensitive and/or classified (up to Secret) elements of the AIM-9X missiles include equipment/hardware, and software, and classified portions of operational performance. Maintenance training documentation is unclassified up to and including missile sectionalization training.**

**2. The external view of the AIM-9X Sidewinder Missile is Unclassified and is not sensitive. The seeker/guidance and control section and the target detector are Confidential and contain sensitive state-of-the-art technology. Specifically, the infrared seeker sensitivity is a significant improvement over the previous AIM-9 variants. Manuals and technical documents for the AIM-9X that support the ability to integrate with aircraft sensors are classified up to Secret. Performance and operating logic of the counter-countermeasures circuits are Secret. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters and similar critical information.**

**3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures, which might reduce weapon systems effectiveness or could be used in the development of a system with similar or advanced capabilities.**

[FR Doc. E8–11670 Filed 5–28–08; 8:45 am]
BILLING CODE 5001–06–C

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal Nos. 08–52]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–52 with attached transmittal, policy justification.

Dated: May 16, 2008.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001–06–M

**DEFENSE SECURITY COOPERATION AGENCY**
**WASHINGTON, DC 20301-2800**

MAY 07 2008

**In reply refer to:**
**USP003763-08**

**The Honorable Nancy Pelosi**
**Speaker of the House of Representatives**
**Washington, DC 20515-6501**

**Dear Madam Speaker:**

**Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-52, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $450 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.**

**Sincerely,**

Jeffrey A. Wieringa
Vice Admiral, USN
Director

**Enclosures:**
1. **Transmittal**
2. **Policy Justification**

**Same ltr to:**

| **House** | **Senate** |
|---|---|
| **Committee on Foreign Affairs** | **Committee on Foreign Relations** |
| **Committee on Armed Services** | **Committee on Armed Services** |
| **Committee on Appropriations** | **Committee on Appropriations** |

**Transmittal No. 08-52**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act, as amended**

(i) **Prospective Purchaser**: Iraq

(ii) **Total Estimated Value**:

| | |
|---|---|
| Major Defense Equipment* | $ 0 million |
| Other | $450 million |
| TOTAL | $450 million |

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase**: technical assistance to ensure provision of adequate facilities and infrastructure in support of the recruitment, garrison, training, and operational facilities and infrastructure for the Iraqi Security Forces (ISF). The U.S. Army Corps of Engineers (USACE) will provide engineering, planning, design, acquisition, contract administration, construction management, and other technical services for construction of facilities and infrastructure (repair, rehabilitation, and new construction) in support of the training, garrison, and operational requirements of the ISF. The scope of the program includes provision of technical assistance for facilities and infrastructure in support of Government of Iraq (GoI) construction projects throughout the country of Iraq. The facilities and infrastructure planned include, new barracks/facilities, maintenance and supply buildings, brigade headquarters, and utilities systems (including heating, water, sewer, electricity, and communication lines). Services include support, personnel training and training equipment, acquisition of engineer construction equipment, technical assistance to Iraqi military engineers, other technical assistance, contractor engineering services, and other related elements of logistic support.

(iv) **Military Department**: USACE (HAK)

(v) **Prior Related Cases, if any**: none.

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: none

(viii) **Date Report Delivered to Congress**: MAY 07 2008

* as defined in Section 47(6) of the Arms Export Control Act.

## POLICY JUSTIFICATION

**Iraq - Technical Assistance for Construction of Facilities and Infrastructure**

**The Government of Iraq has requested a possible sale of technical assistance to ensure provision of adequate facilities and infrastructure in support of the recruitment, garrison, training, and operational facilities and infrastructure for the Iraqi Security Forces (ISF). The U.S. Army Corps of Engineers (USACE) will provide engineering, planning, design, acquisition, contract administration, construction management, and other technical services for construction of facilities and infrastructure (repair, rehabilitation, and new construction) in support of the training, garrison, and operational requirements of the ISF. The scope of the program includes provision of technical assistance for facilities and infrastructure in support of Government of Iraq (GoI) construction projects throughout the country of Iraq. The facilities and infrastructure planned include, new barracks/facilities, maintenance and supply buildings, brigade headquarters, and utilities systems (including heating, water, sewer, electricity, and communication lines). Services include support, personnel training and training equipment, acquisition of engineer construction equipment, technical assistance to Iraqi military engineers, other technical assistance, contractor engineering services, and other related elements of logistic support. The estimated cost is $450 million.**

**This proposed sale would contribute to the foreign policy and national security of the U.S. by enhancing Iraq's capacity to support USG Operation Iraqi Freedom efforts, and by supporting Iraq's legitimate need for military independence.**

**This proposed sale would enable Iraq to support the recruitment, training, bed-down, and operational effectiveness of its military; to establish security and stability throughout Iraq; and to promote the stability and development of a friendly, democratic central government.**

**The proposed sale of this equipment and support will not affect the basic military balance in the region.**

**The USACE is the principal organization that will direct and manage this program. The USACE will provide services through both in-house personnel and contract services. Contracts will be procured in accordance with Federal Government contracting law and regulations. There are no known offset agreements proposed in connection with this potential sale.**

**The estimated number of U.S. Government and contractor representatives to be assigned to Iraq to implement the provisions of this proposed sale will be determined during program execution.**

**There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.**

[FR Doc. E8–11676 Filed 5–28–08; 8:45 am]
**BILLING CODE 5001–06–C**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Revised Non-Foreign Overseas Per Diem Rates

**AGENCY:** DoD, Per Diem, Travel and Transportation Allowance Committee.

**ACTION:** Notice of revised non-foreign overseas per diem rates.

**SUMMARY:** The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 259. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 259 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

**EFFECTIVE DATE:** June 1, 2008.

**SUPPLEMENTARY INFORMATION:** This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 258. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

Dated: May 16, 2008.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

| LOCALITY | MAXIMUM LODGING AMOUNT (A) + | M&IE RATE (B) = | MAXIMUM PER DIEM RATE (C) | EFFECTIVE DATE |
|---|---|---|---|---|
| THE ONLY CHANGES IN CIVILIAN BULLETIN 259 ARE UPDATES TO THE RATES FOR LANAI AND MOLOKAI HAWAII. | | | | |
| ALASKA | | | | |
| ADAK | 120 | 79 | 199 | 07/01/2003 |
| ANCHORAGE [INCL NAV RES] | | | | |
| 05/01 - 09/15 | 181 | 97 | 278 | 04/01/2007 |
| 09/16 - 04/30 | 99 | 89 | 188 | 04/01/2007 |
| BARROW | 159 | 95 | 254 | 05/01/2002 |
| BETHEL | 135 | 82 | 217 | 06/01/2007 |
| BETTLES | 135 | 62 | 197 | 10/01/2004 |
| CLEAR AB | 90 | 82 | 172 | 10/01/2006 |
| COLD BAY | 90 | 73 | 163 | 05/01/2002 |
| COLDFOOT | 165 | 70 | 235 | 10/01/2006 |
| COPPER CENTER | | | | |
| 05/01 - 09/30 | 129 | 80 | 209 | 07/01/2007 |
| 10/01 - 04/30 | 89 | 76 | 165 | 07/01/2007 |
| CORDOVA | | | | |
| 05/01 - 09/30 | 95 | 78 | 173 | 06/01/2007 |
| 10/01 - 04/30 | 85 | 77 | 162 | 06/01/2007 |
| CRAIG | 140 | 79 | 219 | 04/01/2007 |
| DEADHORSE | 95 | 67 | 162 | 05/01/2002 |
| DELTA JUNCTION | 90 | 77 | 167 | 02/01/2007 |
| DENALI NATIONAL PARK | | | | |
| 06/01 - 08/31 | 117 | 73 | 190 | 04/01/2007 |
| 09/01 - 05/31 | 75 | 69 | 144 | 04/01/2007 |
| DILLINGHAM | 114 | 69 | 183 | 06/01/2004 |
| DUTCH HARBOR-UNALASKA | 121 | 84 | 205 | 04/01/2006 |
| EARECKSON AIR STATION | 90 | 77 | 167 | 06/01/2007 |
| EIELSON AFB | | | | |
| 05/01 - 09/15 | 169 | 95 | 264 | 02/01/2007 |
| 09/16 - 04/30 | 75 | 86 | 161 | 02/01/2007 |
| ELMENDORF AFB | | | | |
| 05/01 - 09/15 | 181 | 97 | 278 | 04/01/2007 |
| 09/16 - 04/30 | 99 | 89 | 188 | 04/01/2007 |
| FAIRBANKS | | | | |
| 05/01 - 09/15 | 169 | 95 | 264 | 02/01/2007 |
| 09/16 - 04/30 | 75 | 86 | 161 | 02/01/2007 |
| FOOTLOOSE | 175 | 18 | 193 | 06/01/2002 |
| FT. GREELY | 90 | 77 | 167 | 02/01/2007 |
| FT. RICHARDSON | | | | |
| 05/01 - 09/15 | 181 | 97 | 278 | 04/01/2007 |
| 09/16 - 04/30 | 99 | 89 | 188 | 04/01/2007 |
| FT. WAINWRIGHT | | | | |
| 05/01 - 09/15 | 169 | 95 | 264 | 02/01/2007 |
| 09/16 - 04/30 | 75 | 86 | 161 | 02/01/2007 |
| GLENNALLEN | | | | |
| 05/01 - 09/30 | 129 | 80 | 209 | 07/01/2007 |
| 10/01 - 04/30 | 89 | 76 | 165 | 07/01/2007 |
| HAINES | | | | |

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

| LOCALITY | MAXIMUM LODGING AMOUNT (A) + | M&IE RATE (B) = | MAXIMUM PER DIEM RATE (C) | EFFECTIVE DATE |
|---|---|---|---|---|
| 04/01 - 09/30 | 109 | 75 | 184 | 06/01/2007 |
| 10/01 - 03/31 | 89 | 73 | 162 | 06/01/2007 |
| HEALY | | | | |
| 06/01 - 08/31 | 117 | 73 | 190 | 04/01/2007 |
| 09/01 - 05/31 | 75 | 69 | 144 | 04/01/2007 |
| HOMER | | | | |
| 05/15 - 09/15 | 131 | 84 | 215 | 07/01/2007 |
| 09/16 - 05/14 | 79 | 78 | 157 | 07/01/2007 |
| JUNEAU | | | | |
| 05/01 - 09/30 | 129 | 89 | 218 | 04/01/2006 |
| 10/01 - 04/30 | 79 | 84 | 163 | 04/01/2006 |
| KAKTOVIK | 165 | 86 | 251 | 05/01/2002 |
| KAVIK CAMP | 150 | 69 | 219 | 05/01/2002 |
| KENAI-SOLDOTNA | | | | |
| 05/01 - 08/31 | 129 | 92 | 221 | 04/01/2006 |
| 09/01 - 04/30 | 79 | 87 | 166 | 04/01/2006 |
| KENNICOTT | 249 | 110 | 359 | 04/01/2007 |
| KETCHIKAN | | | | |
| 05/01 - 09/30 | 135 | 85 | 220 | 06/01/2007 |
| 10/01 - 04/30 | 98 | 81 | 179 | 06/01/2007 |
| KING SALMON | | | | |
| 05/01 - 10/01 | 225 | 91 | 316 | 05/01/2002 |
| 10/02 - 04/30 | 125 | 81 | 206 | 05/01/2002 |
| KLAWOCK | 140 | 79 | 219 | 04/01/2007 |
| KODIAK | | | | |
| 05/01 - 09/30 | 123 | 91 | 214 | 04/01/2006 |
| 10/01 - 04/30 | 99 | 88 | 187 | 04/01/2006 |
| KOTZEBUE | | | | |
| 05/15 - 09/30 | 179 | 90 | 269 | 06/01/2007 |
| 10/01 - 05/14 | 139 | 89 | 228 | 06/01/2007 |
| KULIS AGS | | | | |
| 05/01 - 09/15 | 181 | 97 | 278 | 04/01/2007 |
| 09/16 - 04/30 | 99 | 89 | 188 | 04/01/2007 |
| MCCARTHY | 249 | 110 | 359 | 04/01/2007 |
| MCGRATH | 165 | 69 | 234 | 10/01/2006 |
| MURPHY DOME | | | | |
| 05/01 - 09/15 | 169 | 95 | 264 | 02/01/2007 |
| 09/16 - 04/30 | 75 | 86 | 161 | 02/01/2007 |
| NOME | 130 | 96 | 226 | 04/01/2008 |
| NUIQSUT | 180 | 53 | 233 | 05/01/2002 |
| PETERSBURG | 95 | 69 | 164 | 06/01/2007 |
| POINT HOPE | 130 | 70 | 200 | 03/01/1999 |
| POINT LAY | 105 | 67 | 172 | 03/01/1999 |
| PORT ALSWORTH | 135 | 88 | 223 | 05/01/2002 |
| PRUDHOE BAY | 95 | 67 | 162 | 05/01/2002 |
| SELDOVIA | | | | |
| 05/15 - 09/15 | 131 | 84 | 215 | 07/01/2007 |
| 09/16 - 05/14 | 79 | 78 | 157 | 07/01/2007 |
| SEWARD | | | | |
| 05/01 - 09/30 | 199 | 85 | 284 | 06/01/2007 |

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

| LOCALITY | MAXIMUM LODGING AMOUNT (A) + | M&IE RATE (B) = | MAXIMUM PER DIEM RATE (C) | EFFECTIVE DATE |
|---|---|---|---|---|
| 10/01 - 04/30 | 69 | 72 | 141 | 06/01/2007 |
| SITKA-MT. EDGECUMBE | | | | |
| 05/01 - 09/30 | 119 | 83 | 202 | 02/01/2007 |
| 10/01 - 04/30 | 99 | 81 | 180 | 02/01/2007 |
| SKAGWAY | | | | |
| 05/01 - 09/30 | 135 | 85 | 220 | 06/01/2007 |
| 10/01 - 04/30 | 98 | 81 | 179 | 06/01/2007 |
| SLANA | | | | |
| 05/01 - 09/30 | 139 | 55 | 194 | 02/01/2005 |
| 10/01 - 04/30 | 99 | 55 | 154 | 02/01/2005 |
| SPRUCE CAPE | | | | |
| 05/01 - 09/30 | 123 | 91 | 214 | 04/01/2006 |
| 10/01 - 04/30 | 99 | 88 | 187 | 04/01/2006 |
| ST. GEORGE | 129 | 55 | 184 | 06/01/2004 |
| TALKEETNA | 100 | 89 | 189 | 07/01/2002 |
| TANANA | 130 | 96 | 226 | 04/01/2008 |
| TOGIAK | 100 | 39 | 139 | 07/01/2002 |
| TOK | | | | |
| 05/01 - 09/30 | 109 | 69 | 178 | 02/01/2007 |
| 10/01 - 04/30 | 90 | 67 | 157 | 02/01/2007 |
| UMIAT | 350 | 35 | 385 | 10/01/2006 |
| VALDEZ | | | | |
| 05/01 - 10/01 | 149 | 87 | 236 | 04/01/2007 |
| 10/02 - 04/30 | 79 | 80 | 159 | 04/01/2007 |
| WASILLA | | | | |
| 05/01 - 09/30 | 144 | 88 | 232 | 06/01/2007 |
| 10/01 - 04/30 | 86 | 83 | 169 | 06/01/2007 |
| WRANGELL | | | | |
| 05/01 - 09/30 | 135 | 85 | 220 | 06/01/2007 |
| 10/01 - 04/30 | 98 | 81 | 179 | 06/01/2007 |
| YAKUTAT | 100 | 71 | 171 | 06/01/2007 |
| [OTHER] | 90 | 77 | 167 | 02/01/2007 |
| AMERICAN SAMOA | | | | |
| AMERICAN SAMOA | 122 | 73 | 195 | 12/01/2005 |
| GUAM | | | | |
| GUAM (INCL ALL MIL INSTAL) | 135 | 94 | 229 | 06/01/2007 |
| HAWAII | | | | |
| CAMP H M SMITH | 177 | 106 | 283 | 05/01/2008 |
| EASTPAC NAVAL COMP TELE AREA | 177 | 106 | 283 | 05/01/2008 |
| FT. DERUSSEY | 177 | 106 | 283 | 05/01/2008 |
| FT. SHAFTER | 177 | 106 | 283 | 05/01/2008 |
| HICKAM AFB | 177 | 106 | 283 | 05/01/2008 |
| HONOLULU | 177 | 106 | 283 | 05/01/2008 |
| ISLE OF HAWAII: HILO | 112 | 104 | 216 | 06/01/2007 |
| ISLE OF HAWAII: OTHER | 180 | 104 | 284 | 06/01/2007 |
| ISLE OF KAUAI | 198 | 109 | 307 | 06/01/2007 |
| ISLE OF MAUI | 160 | 101 | 261 | 05/01/2008 |
| ISLE OF OAHU | 177 | 106 | 283 | 05/01/2008 |
| KEKAHA PACIFIC MISSILE RANGE FAC | 198 | 109 | 307 | 06/01/2007 |
| KILAUEA MILITARY CAMP | 112 | 104 | 216 | 06/01/2007 |

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

| LOCALITY | MAXIMUM LODGING AMOUNT (A) + | M&IE RATE (B) = | MAXIMUM PER DIEM RATE (C) | EFFECTIVE DATE |
|---|---|---|---|---|
| LANAI | 269 | 124 | 393 | 06/01/2008 |
| LUALUALEI NAVAL MAGAZINE | 177 | 106 | 283 | 05/01/2008 |
| MCB HAWAII | 177 | 106 | 283 | 05/01/2008 |
| MOLOKAI | 139 | 94 | 233 | 06/01/2008 |
| NAS BARBERS POINT | 177 | 106 | 283 | 05/01/2008 |
| PEARL HARBOR | 177 | 106 | 283 | 05/01/2008 |
| SCHOFIELD BARRACKS | 177 | 106 | 283 | 05/01/2008 |
| WHEELER ARMY AIRFIELD | 177 | 106 | 283 | 05/01/2008 |
| [OTHER] | 112 | 104 | 216 | 05/01/2008 |
| MIDWAY ISLANDS | | | | |
| MIDWAY ISLANDS | | | | |
| INCL ALL MILITARY | 100 | 45 | 145 | 06/01/2006 |
| NORTHERN MARIANA ISLANDS | | | | |
| ROTA | 129 | 91 | 220 | 05/01/2006 |
| SAIPAN | 121 | 98 | 219 | 06/01/2007 |
| TINIAN | 85 | 69 | 154 | 06/01/2007 |
| [OTHER] | 55 | 72 | 127 | 04/01/2000 |
| PUERTO RICO | | | | |
| AGUADILLA | 75 | 64 | 139 | 11/01/2007 |
| BAYAMON | 195 | 82 | 277 | 10/01/2007 |
| CAROLINA | 195 | 82 | 277 | 10/01/2007 |
| CEIBA | | | | |
| 05/01 - 11/30 | 155 | 57 | 212 | 08/01/2006 |
| 12/01 - 04/30 | 185 | 57 | 242 | 08/01/2006 |
| FAJARDO [INCL ROOSEVELT RDS NAVS | | | | |
| 05/01 - 11/30 | 155 | 57 | 212 | 08/01/2006 |
| 12/01 - 04/30 | 185 | 57 | 242 | 08/01/2006 |
| FT. BUCHANAN [INCL GSA SVC CTR, | 195 | 82 | 277 | 10/01/2007 |
| HUMACAO | | | | |
| 05/01 - 11/30 | 155 | 57 | 212 | 08/01/2006 |
| 12/01 - 04/30 | 185 | 57 | 242 | 08/01/2006 |
| LUIS MUNOZ MARIN IAP AGS | 195 | 82 | 277 | 10/01/2007 |
| LUQUILLO | | | | |
| 05/01 - 11/30 | 155 | 57 | 212 | 08/01/2006 |
| 12/01 - 04/30 | 185 | 57 | 242 | 08/01/2006 |
| MAYAGUEZ | 109 | 77 | 186 | 11/01/2007 |
| PONCE | 139 | 83 | 222 | 11/01/2007 |
| SABANA SECA [INCL ALL MILITARY] | 195 | 82 | 277 | 10/01/2007 |
| SAN JUAN & NAV RES STA | 195 | 82 | 277 | 10/01/2007 |
| [OTHER] | 62 | 57 | 119 | 01/01/2000 |
| VIRGIN ISLANDS (U.S.) | | | | |
| ST. CROIX | | | | |
| 04/15 - 12/14 | 135 | 92 | 227 | 05/01/2006 |
| 12/15 - 04/14 | 187 | 97 | 284 | 05/01/2006 |
| ST. JOHN | | | | |
| 04/15 - 12/14 | 163 | 98 | 261 | 05/01/2006 |
| 12/15 - 04/14 | 220 | 104 | 324 | 05/01/2006 |
| ST. THOMAS | | | | |
| 04/15 - 12/14 | 240 | 105 | 345 | 05/01/2006 |
| 12/15 - 04/14 | 299 | 111 | 410 | 05/01/2006 |
| WAKE ISLAND | | | | |
| WAKE ISLAND | 152 | 15 | 167 | 06/01/2006 |

[FR Doc. E8–11671 Filed 5–28–08; 8:45 am]

BILLING CODE 5001–06–M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Notice of Intent To Prepare an Environmental Impact Statement for the Expansion of the Powder River Complex Near Ellsworth AFB, South Dakota

**AGENCY:** Air Combat Command, Department of the Air Force.

**ACTION:** Notice of Intent.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and Air Force policy and procedures (32 CFR Part 989), the Air Force is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement (EIS). The EIS will assess the potential environmental consequences of a proposal to expand and enhance the Air Force's existing Powder River Complex (PRC) which currently has both airspace and ground-based Air Force training assets in South Dakota, Wyoming, and Montana.

The Air Force proposal would establish the Powder River Training Complex (PRTC). The PRTC would more effectively use limited resources and finite flying hours by providing locally the realistic training needed by B–1 and B–52 aircrews flying from Ellsworth Air Force Base (AFB) and Minot AFB, respectively. This would address the training and other limitations affecting the existing PRC training assets as they are currently configured. The proposed action would restructure and reconfigure the existing PRC Military Operations Areas (MOAs) and associated Air Traffic Control Assigned Airspace (ATCAA), establish additional MOA/ATCAA combinations in portions of South Dakota, North Dakota, Wyoming, and Montana, and include Gap MOAs to link these airspace units together for anticipated quarterly exercises. The resulting PRTC would provide a versatile, scalable complex with more realistic, effective, and efficient air combat training. Under each action alternative, the proposal would add new airspace with a floor of 500 feet above ground level (AGL) and eliminate some existing airspace. The proposed PRTC would also support additional ground-based simulated threat emitters under the MOAs, authorize use of defensive chaff and flares throughout the special use airspace, and permit supersonic flight above 10,000 feet AGL (above ground level) within the special use airspace. Changes to the airspace would permit increased local training throughout the MOAs and ATCAAs and provide for almost a full range of required combat training missions which replicate the combat conditions faced by Ellsworth AFB and Minot AFB aircrews. The modular design of the airspace would provide for more viable combat training with today's technological systems, and support missions such as dissimilar air combat training, network linked operations, and large force exercises. Three action alternatives and a no-action alternative have currently been identified for analyses (per 40 CFR 1502.14(d)). Alternative A, Full PRTC, would establish low (MOAs) and high (ATCAA) airspace that would expand the area overflown at low altitude from the existing approximately 5,900 square miles to approximately 31,700 square miles. Under Alternative B the low-altitude MOA airspace would overfly approximately 22,800 square miles. Under Alternative C the low-altitude MOA airspace would overfly approximately 24,500 square miles. The proposed ATCAA airspace would overfly approximately 37,800 square miles under Alternatives A, B, or C. Under the no action alternative, the existing PRC would continue with low altitude MOAs overflying approximately 5,900 square miles and ATCAAs overflying approximately 14,100 square miles.

**DATES:** The Air Force will host a series of public scoping meetings in communities underlying and/or adjacent to the proposed action. The purpose of these meetings is to receive public input on the proposed action and alternatives, as well as gain a better understanding of the potential issues and concerns related to this proposal. All public meetings will be held from 4–7 p.m. The schedule and locations of the scoping meetings are provided below:

1. Monday, June 16, 2008: Rapid City Public Library, 610 Quincy Street, Rapid City, SD.
2. Tuesday, June 17, 2008: Community Center, 1111 National Street, Belle Fourche, SD.
3. Wednesday, June 18, 2008: Crook County Public Library, 414 E. Main Street, Sundance, WY.
4. Thursday, June 19, 2008: Campbell County Fire Department, 106 Rohan Ave, Gillette, WY.
5. Friday, June 20, 2008: Sheridan Senior Center, 211 Smith Street, Sheridan, WY.
6. Monday, June 23, 2008: Hardin Chamber of Commerce, 10 E. Railroad Street, Hardin, MT.
7. Tuesday, June 24, 2008: IDCLC, 520 Poplar Drive, Colstrip, MT.
8. Wednesday, June 25, 2008: Miles Community College, 2715 Dickinson, Miles City, MT.
9. Thursday, June 26, 2008: St. Joan of Arc Parish Hall, Church Street, Ekalaka, MT.
10. Friday, June 27, 2008: Powder River County District High School, 500 North Trautman, Broadus, MT.
11. Tuesday, July 8, 2008: Baker High School, 1015 South Third Street West, Baker, MT.
12. Wednesday, July 9, 2008: City Hall, 101 First Street, SW, Bowman, ND.
13. Thursday, July 10, 2008: Elgin Community Center, 305 N Main St., Elgin, ND.
14. Monday, July 14, 2008: Harding County Memorial Recreation Center, West Allison Street, Buffalo, SD.
15. Tuesday, July 15, 2008: Bison School Cafeteria, 200 E. Carr St., Bison, SD.

Additional community meetings are being coordinated for the Crow Indian Reservation, Northern Cheyenne Indian Reservation, Standing Rock Indian Reservation and Cheyenne River Indian Reservation.

**ADDRESSES:** Federal, state, and local agencies, and interested groups and persons are invited to attend the scoping open house meetings. All are encouraged to provide comments on the proposed action either at the scoping meetings or by mail, postmarked no later than August 4, 2008 to ensure proper consideration in the environmental impact analyses.

**FOR FURTHER INFORMATION CONTACT:** Direct written comments or requests for further information to: Ms. Linda DeVine, HQ ACC/A7PP, 129 Andrews Street, Suite 122 (Room 317), Langley AFB, VA 23665–2769 (757–764–9434).

**Bao-Anh Trinh,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. E8–11957 Filed 5–28–08; 8:45 am]

BILLING CODE 5001–05–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 June 30, 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: May 22, 2008.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

**Institute of Education Sciences**

*Type of Review:* New.

*Title:* Feasibility and Conduct of an Impact Evaluation of Title I Supplemental Education Services.

*Frequency:* On Occasion.

*Affected Public:*

Individuals or household.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 16,667.

*Burden Hours:* 3,333.

*Abstract:* The No Child Left Behind Act (NCLB) requires districts with Title I schools that fall short of state standards for three years or more to offer supplemental educational services (SES) to their students from low-income families who attend these schools. SES are tutoring or other academic support services offered outside the regular school day by state-approved providers free of charge to eligible students. Parents can choose the specific SES provider from among a list approved to serve their area. The U.S. Department of Education has commissioned Mathematica Policy Research to evaluate the impact of SES on student achievement in up to nine school districts across the country. Findings of the study will not only inform national policy discussions about SES, but will also provide direct feedback to participating districts about the effectiveness of the SES offered to their students.

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 3634. 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. E8–11956 Filed 5–28–08; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Federal Pell Grant, Academic Competitiveness Grant, National Science and Mathematics Access To Retain Talent Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs

**AGENCY:** Federal Student Aid, U.S. Department of Education.

**ACTION:** Notice of revision of the Federal Need Analysis Methodology for the 2009–2010 award year.

**SUMMARY:** The Secretary announces the annual updates to the tables that will be used in the statutory ''Federal Need Analysis Methodology'' to determine a student's expected family contribution (EFC) for award year 2009–2010 for the student financial aid programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA). An EFC is the amount a student and his or her family may reasonably be expected to contribute toward the student's postsecondary educational costs for purposes of determining financial aid eligibility. The Title IV programs include the Federal Pell Grant, Academic Competitiveness Grant, National Science and Mathematics Access to Retain Talent Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs (Title IV, HEA Programs).

**FOR FURTHER INFORMATION CONTACT:** Ms. Marya Dennis, Management and Program Analyst, U.S. Department of Education, Union Center Plaza, 830 First Street, NE., Washington, DC 20202. Telephone: (202) 377–3385.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free at 1–800–877–8339.

Individuals with disabilities can obtain this document in an alternative format (e.g., Braille, large print, audiotape or compact disk) on request to the contact person listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:** Part F of Title IV of the HEA specifies the criteria, data elements, calculations, and tables used in the Federal Need Analysis Methodology EFC calculations.

Section 478 of Part F of Title IV of the HEA requires the Secretary to adjust four of the tables—the Income Protection Allowance, the Adjusted Net Worth of a Business or Farm, the Education Savings and Asset Protection Allowance, and the Assessment Schedules and Rates—each award year to adjust for general price inflation. The changes are based, in general, upon increases in the Consumer Price Index.

For award year 2009–2010 the Secretary is charged with updating the income protection allowance for parents of dependent students, adjusted net worth of a business or farm, and the assessment schedules and rates to account for inflation that took place between December 2007 and December

2008. However, because the Secretary must publish these tables before December 2008, the increases in the tables must be based upon a percentage equal to the estimated percentage increase in the Consumer Price Index for All Urban Consumers for 2008. The Secretary estimates that the increase in the Consumer Price Index for All Urban Consumers (CPI–U) for the period December 2007 through December 2008 will be 1.7 percent. Additionally, the College Cost Reduction and Access Act (CCRAA, Pub. L. 110–84) modified the updating procedure for the income protection allowance for dependent students and the income protection allowance tables for both independent students with dependents other than a spouse and independent students without dependents other than a spouse. CCRAA established new 2009–2010 award year values for these income protection allowances. The updated tables are in sections 1, 2, and 4 of this notice.

The Secretary must also revise, for each award year, the education savings and asset protection allowances as provided for in section 478(d) of the HEA. The Education Savings and Asset Protection Allowance table for award year 2009–2010 has been updated in section 3 of this notice. Section 478(h) of the HEA also requires the Secretary to increase the amount specified for the Employment Expense Allowance, adjusted for inflation. This calculation is based upon increases in the Bureau of Labor Statistics budget of the marginal costs for a two-worker family compared to a one-worker family for food away from home, apparel, transportation, and household furnishings and operations. The Employment Expense Allowance table for award year 2009–2010 has been updated in section 5 of this notice.

The HEA provides for the following annual updates:

1. *Income Protection Allowance*. This allowance is the amount of living expenses associated with the maintenance of an individual or family that may be offset against the family's income. It varies by family size. The income protection allowance for the dependent student is $3,750. The income protection allowances for parents of dependent students for award year 2009–2010 are:

| Family size | Parents of dependent students | | | | |
|---|---|---|---|---|---|
| | Number in college | | | | |
| | 1 | 2 | 3 | 4 | 5 |
| 2 | $15,840 | $13,130 | ..... | ..... | ..... |
| 3 | 19,730 | 17,030 | $14,320 | ..... | ..... |
| 4 | 24,370 | 21,660 | 18,960 | $16,250 | |
| 5 | 28,750 | 26,040 | 23,340 | 20,630 | $17,940 |
| 6 | 33,630 | 30,920 | 28,220 | 25,510 | 22,820 |

For each additional family member, add $3,800.

For each additional college student, subtract $2,700.

The income protection allowances for independent students with dependents other than a spouse for award year 2009–10 are:

| Family size | Independent students with dependents other than a spouse | | | | |
|---|---|---|---|---|---|
| | Number in college | | | | |
| | 1 | 2 | 3 | 4 | 5 |
| 2 | $17,720 | $14,690 | ..... | ..... | ..... |
| 3 | 22,060 | 19,050 | $16,020 | ..... | ..... |
| 4 | 27,250 | 24,220 | 21,210 | $18,170 | ..... |
| 5 | 32,150 | 29,120 | 26,100 | 23,070 | $20,060 |
| 6 | 37,600 | 34,570 | 31,570 | 28,520 | 25,520 |

For each additional family member, add $4,240.

For each additional college student, subtract $3,020.

The income protection allowances for single independent students and independent students without dependents other than a spouse for award year 2009–10 are:

| Marital status | Number in college | IPA |
|---|---|---|
| Single | 1 | $7,000 |
| Married | 2 | 7,000 |
| Married | 1 | 11,220 |

2. *Adjusted Net Worth (NW) of a Business or Farm.* A portion of the full net value of a business or farm is excluded from the calculation of an expected contribution because—(1) the income produced from these assets is already assessed in another part of the formula; and (2) the formula protects a portion of the value of the assets. The portion of these assets included in the contribution calculation is computed according to the following schedule. This schedule is used for parents of dependent students, independent students without dependents other than a spouse, and independent students with dependents other than a spouse.

| If the net worth of a business or farm is— | Then the adjusted net worth is— |
|---|---|
| Less than $1 | $0 |
| $1 to $115,000 | $0 + 40% of NW |
| $115,001 to $340,000 | $46,000 + 50% of NW over $115,000 |
| $340,001 to $565,000 | $158,500 + 60% of NW over $340,000 |

| If the net worth of a business or farm is— | Then the adjusted net worth is— |
|---|---|
| $565,001 or more | $293,500 + 100% of NW over $565,000 |

3. *Education Savings and Asset Protection Allowance.* This allowance protects a portion of net worth (assets less debts) from being considered available for postsecondary educational expenses. There are three asset protection allowance tables—one for parents of dependent students, one for independent students without dependents other than a spouse, and one for independent students with dependents other than a spouse.

DEPENDENT STUDENTS

| If the age of the older parent is | And they are | |
|---|---|---|
| | Married | Single |
| | Then the education savings and asset protection allowance is— | |
| 25 or less | 0 | 0 |
| 26 | 2,900 | 1,200 |
| 27 | 5,800 | 2,400 |
| 28 | 8,700 | 3,600 |
| 29 | 11,600 | 4,800 |
| 30 | 14,500 | 6,000 |
| 31 | 17,400 | 7,200 |
| 32 | 20,300 | 8,400 |
| 33 | 23,100 | 9,500 |
| 34 | 26,000 | 10,700 |
| 35 | 28,900 | 11,900 |
| 36 | 31,800 | 13,100 |
| 37 | 34,700 | 14,300 |
| 38 | 37,600 | 15,500 |
| 39 | 40,500 | 16,700 |
| 40 | 43,400 | 17,900 |
| 41 | 44,200 | 18,200 |
| 42 | 45,300 | 18,600 |
| 43 | 46,400 | 19,100 |
| 44 | 47,600 | 19,500 |
| 45 | 48,700 | 19,900 |
| 46 | 49,900 | 20,400 |
| 47 | 51,200 | 20,900 |
| 48 | 52,400 | 21,400 |
| 49 | 53,700 | 21,900 |
| 50 | 55,300 | 22,400 |
| 51 | 56,700 | 22,900 |
| 52 | 58,000 | 23,500 |
| 53 | 59,800 | 24,000 |
| 54 | 61,200 | 24,600 |
| 55 | 63,000 | 25,300 |
| 56 | 64,900 | 25,900 |
| 57 | 66,400 | 26,500 |
| 58 | 68,300 | 27,200 |
| 59 | 70,300 | 27,900 |
| 60 | 72,300 | 28,700 |
| 61 | 74,400 | 29,500 |
| 62 | 76,600 | 30,300 |
| 63 | 79,100 | 31,100 |
| 64 | 81,300 | 32,000 |
| 65 or older | 84,000 | 32,800 |

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE

| If the age of the student is | And they are | |
|---|---|---|
| | Married | Single |
| | Then the education savings and asset protection allowance is— | |
| 25 or less | 0 | 0 |
| 26 | 2,900 | 1,200 |
| 27 | 5,800 | 2,400 |
| 28 | 8,700 | 3,600 |
| 29 | 11,600 | 4,800 |
| 30 | 14,500 | 6,000 |
| 31 | 17,400 | 7,200 |
| 32 | 20,300 | 8,400 |
| 33 | 23,100 | 9,500 |
| 34 | 26,000 | 10,700 |
| 35 | 28,900 | 11,900 |
| 36 | 31,800 | 13,100 |
| 37 | 34,700 | 14,300 |
| 38 | 37,600 | 15,500 |
| 39 | 40,500 | 16,700 |
| 40 | 43,400 | 17,900 |
| 41 | 44,200 | 18,200 |
| 42 | 45,300 | 18,600 |
| 43 | 46,400 | 19,100 |
| 44 | 47,600 | 19,500 |
| 45 | 48,700 | 19,900 |
| 46 | 49,900 | 20,400 |
| 47 | 51,200 | 20,900 |
| 48 | 52,400 | 21,400 |
| 49 | 53,700 | 21,900 |
| 50 | 55,300 | 22,400 |
| 51 | 56,700 | 22,900 |
| 52 | 58,000 | 23,500 |
| 53 | 59,800 | 24,000 |
| 54 | 61,200 | 24,600 |
| 55 | 63,000 | 25,300 |
| 56 | 64,900 | 25,900 |
| 57 | 66,400 | 26,500 |
| 58 | 68,300 | 27,200 |
| 59 | 70,300 | 27,900 |
| 60 | 72,300 | 28,700 |
| 61 | 74,400 | 29,500 |
| 62 | 76,600 | 30,300 |
| 63 | 79,100 | 31,100 |
| 64 | 81,300 | 32,000 |
| 65 or older | 84,000 | 32,800 |

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

| If the age of the student is | And they are | |
|---|---|---|
| | Married | Single |
| | Then the education savings and asset protection allowance is— | |
| 25 or less | 0 | 0 |
| 26 | 2,900 | 1,200 |
| 27 | 5,800 | 2,400 |
| 28 | 8,700 | 3,600 |

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE—Continued

| If the age of the student is | And they are | |
|---|---|---|
| | Married | Single |
| | Then the education savings and asset protection allowance is— | |
| 29 | 11,600 | 4,800 |
| 30 | 14,500 | 6,000 |
| 31 | 17,400 | 7,200 |
| 32 | 20,300 | 8,400 |
| 33 | 23,100 | 9,500 |
| 34 | 26,000 | 10,700 |
| 35 | 28,900 | 11,900 |
| 36 | 31,800 | 13,100 |
| 37 | 34,700 | 14,300 |
| 38 | 37,600 | 15,500 |
| 39 | 40,500 | 16,700 |
| 40 | 43,400 | 17,900 |
| 41 | 44,200 | 18,200 |
| 42 | 45,300 | 18,600 |
| 43 | 46,400 | 19,100 |
| 44 | 47,600 | 19,500 |
| 45 | 48,700 | 19,900 |
| 46 | 49,900 | 20,400 |
| 47 | 51,200 | 20,900 |
| 48 | 52,400 | 21,400 |
| 49 | 53,700 | 21,900 |
| 50 | 55,300 | 22,400 |
| 51 | 56,700 | 22,900 |
| 52 | 58,000 | 23,500 |
| 53 | 59,800 | 24,000 |
| 54 | 61,200 | 24,600 |
| 55 | 63,000 | 25,300 |
| 56 | 64,900 | 25,900 |
| 57 | 66,400 | 26,500 |
| 58 | 68,300 | 27,200 |
| 59 | 70,300 | 27,900 |
| 60 | 72,300 | 28,700 |
| 61 | 74,400 | 29,500 |
| 62 | 76,600 | 30,300 |
| 63 | 79,100 | 31,100 |
| 64 | 81,300 | 32,000 |
| 65 or older | 84,000 | 32,800 |

4. *Assessment Schedules and Rates.* Two schedules that are subject to updates, one for parents of dependent students and one for independent students with dependents other than a spouse, are used to determine the EFC toward educational expenses from family financial resources. For dependent students, the EFC is derived from an assessment of the parents' adjusted available income (AAI). For independent students with dependents other than a spouse, the EFC is derived from an assessment of the family's AAI. The AAI represents a measure of a family's financial strength, which

The parents' contribution for a dependent student is computed according to the following schedule:

| If AAI is— | Then the contribution is— |
|---|---|
| Less than −$3,409 | −$750 |
| ($3,409) to $14,200 | 22% of AAI |
| $14,201 to $17,800 | $3,124 + 25% of AAI over $14,200 |
| $17,801 to $21,400 | $4,024 + 29% of AAI over $17,800 |
| $21,401 to $25,000 | $5,068 + 34% of AAI over $21,400 |
| $25,001 to $28,600 | $6,292 + 40% of AAI over $25,000 |
| $28,601 or more | $7,732 + 47% of AAI over $28,600 |

The contribution for an independent student with dependents other than a spouse is computed according to the following schedule:

| If AAI is— | Then the contribution is— |
|---|---|
| Less than −$3,409 | −$750 |
| ($3,409) to $14,200 | 22% of AAI |
| $14,201 to $17,800 | $3,124 + 25% of AAI over $14,200 |
| $17,801 to $21,400 | $4,024 + 29% of AAI over $17,800 |
| $21,401 to $25,000 | $5,068 + 34% of AAI over $21,400 |
| $25,001 to $28,600 | $6,292 + 40% of AAI over $25,000 |
| $28,601 or more | $7,732 + 47% of AAI over $28,600 |

5. *Employment Expense Allowance.* This allowance for employment-related expenses, which is used for the parents of dependent students and for married independent students, recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based upon the marginal differences in costs for a two-worker family compared to a one-worker family for food away from home, apparel, transportation, and household furnishings and operations.

The employment expense allowance for parents of dependent students, married independent students without dependents other than a spouse, and independent students with dependents other than a spouse is the lesser of $3,500 or 35 percent of earned income.

6. *Allowance for State and Other Taxes.* The allowance for State and other taxes protects a portion of the parents' and students' income from being considered available for postsecondary educational expenses. There are four categories for State and other taxes, one each for parents of dependent students, independent students with dependents other than a spouse, dependent students, and independent students without dependents other than a spouse. Section 478(g) of the HEA directs the Secretary to update the tables for State and other taxes after reviewing the Statistics of Income file data maintained by the Internal Revenue Service.

| State | Parents of dependents and independents with dependents other than a spouse | | Dependents and independents without dependents other than a spouse |
|---|---|---|---|
| | Under $15,000 (%) | $15,000 & up (%) | All (%) |
| Alabama | 3 | 2 | 2 |
| Alaska | 2 | 1 | 0 |
| Arizona | 4 | 3 | 3 |
| Arkansas | 4 | 3 | 3 |
| California | 8 | 7 | 5 |
| Colorado | 5 | 4 | 3 |
| Connecticut | 8 | 7 | 4 |
| Delaware | 4 | 3 | 3 |
| District of Columbia | 7 | 6 | 6 |
| Florida | 3 | 2 | 1 |
| Georgia | 5 | 4 | 4 |
| Hawaii | 5 | 4 | 4 |
| Idaho | 5 | 4 | 3 |
| Illinois | 5 | 4 | 2 |
| Indiana | 4 | 3 | 3 |
| Iowa | 5 | 4 | 3 |
| Kansas | 5 | 4 | 3 |
| Kentucky | 5 | 4 | 4 |
| Louisiana | 3 | 2 | 2 |
| Maine | 6 | 5 | 4 |
| Maryland | 8 | 7 | 5 |
| Massachusetts | 7 | 6 | 4 |

| State | Parents of dependents and independents with dependents other than a spouse | | Dependents and independents without dependents other than a spouse |
|---|---|---|---|
| | Under $15,000 (%) | $15,000 & up (%) | All (%) |
| Michigan | 5 | 4 | 3 |
| Minnesota | 6 | 5 | 4 |
| Mississippi | 3 | 2 | 2 |
| Missouri | 5 | 4 | 3 |
| Montana | 5 | 4 | 3 |
| Nebraska | 5 | 4 | 3 |
| Nevada | 3 | 2 | 1 |
| New Hampshire | 5 | 4 | 1 |
| New Jersey | 9 | 8 | 4 |
| New Mexico | 3 | 2 | 3 |
| New York | 9 | 8 | 6 |
| North Carolina | 6 | 5 | 4 |
| North Dakota | 3 | 2 | 1 |
| Ohio | 6 | 5 | 4 |
| Oklahoma | 4 | 3 | 3 |
| Oregon | 7 | 6 | 5 |
| Pennsylvania | 6 | 5 | 3 |
| Rhode Island | 7 | 6 | 4 |
| South Carolina | 5 | 4 | 3 |
| South Dakota | 2 | 1 | 1 |
| Tennessee | 2 | 1 | 1 |
| Texas | 3 | 2 | 1 |
| Utah | 5 | 4 | 4 |
| Vermont | 5 | 4 | 3 |
| Virginia | 6 | 5 | 4 |
| Washington | 4 | 3 | 1 |
| West Virginia | 3 | 2 | 2 |
| Wisconsin | 7 | 6 | 4 |
| Wyoming | 2 | 1 | 1 |
| Other | 3 | 2 | 2 |

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant; 84.032 Federal Family Education Loan Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.268 William D. Ford Federal Direct Loan Program; 84.375 Academic Competitiveness Grant; 84.376 National Science and Mathematics Access to Retain Talent Grant)

**Program Authority:** 20 U.S.C. 1087rr.

Dated: May 22, 2008.

**Lawrence A. Warder,**

*Acting Chief Operating Officer, Federal Student Aid.*

[FR Doc. E8–11953 Filed 5–28–08; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### Notice of Intent To Prepare a Programmatic Environmental Impact Statement To Evaluate Solar Energy Development, Develop and Implement Agency-Specific Programs, Conduct Public Scoping Meetings, Amend Relevant Agency Land Use Plans, and Provide Notice of Proposed Planning Criteria

**AGENCIES:** Department of Energy (DOE) and Bureau of Land Management (BLM), Department of the Interior (DOI).

**ACTION:** Notice of Intent.

**SUMMARY:** In Executive Order 13212, *Actions to Expedite Energy-Related Projects*, the President ordered that executive departments and agencies take appropriate actions ''to expedite projects that will increase the production, transmission, or conservation of energy.'' In addition, Title II, Section 211, of the Energy Policy Act of 2005 (Pub. L. 109–58) provides that the Secretary of the Interior (the Secretary) should, within 10 years of enactment of the Act, ''* * * seek to have approved non-hydropower renewable energy projects located on the public lands with a generation capacity of at least 10,000 megawatts of electricity.'' DOE and BLM (the Agencies) have identified utility-scale solar energy development as a potentially critical component in meeting these mandates. Utility-scale solar energy projects generate electricity that is distributed to consumers through the electric power transmission grid. The Agencies have determined that specific actions should be taken to further such energy development. The Agencies are considering the development and implementation of agency-specific programs that would establish environmental policies and mitigation strategies (e.g., best management practices and siting criteria) related to solar energy development in six western states

(Arizona, California, Colorado, New Mexico, Nevada, and Utah). DOE proposes to develop a solar energy program of environmental policies and mitigation strategies that would apply to the deployment of DOE supported solar energy projects on BLM-administered lands or other Federal, State, tribal, or private lands. The BLM would establish its own environmental policies and mitigation strategies to use when making decisions on whether to issue rights-of-way for utility-scale solar energy development projects on public lands administered by the BLM. The Agencies have determined that a programmatic environmental impact statement (PEIS) under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) is appropriate for the establishment of specific agency-wide solar energy programs and additional related policy.

The Agencies are issuing this Notice of Intent to inform the public about the proposed actions; announce plans to conduct eight public scoping meetings; invite public participation in the scoping process; and solicit public comments for consideration in establishing the scope and content of the PEIS, alternatives, and environmental issues and impacts.

The Agencies will prepare the PEIS in accordance with NEPA; the Council on Environmental Quality regulations (40 CFR Parts 1500–1508); the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701, *et seq.*) DOE's NEPA regulations, 10 CFR Part 1021; and BLM's planning regulations, 43 CFR Part 1600.

**DATES:** The public scoping period starts with the publication of this notice in the **Federal Register** and will continue through July 7, 2008. Written and oral comments will be given equal weight, and the Agencies will consider all comments received or postmarked by July 7, 2008, in defining the scope of this PEIS. Comments received or postmarked after that date will be considered to the extent practicable.

Public scoping meetings to obtain comments on the PEIS will be held at the following locations on the dates specified below:

Riverside, California: Monday, June 16, 2008;
Barstow, California: Tuesday, June 17, 2008;
Las Vegas, Nevada: Wednesday, June 18, 2008;
Sacramento, California: Thursday, June 19, 2008;
Denver, Colorado: Monday, June 23, 2008;
Phoenix, Arizona: Tuesday, June 24, 2008;
Salt Lake City, Utah: Wednesday, June 25, 2008;
Albuquerque, New Mexico: Thursday, June 26, 2008.

The Agencies will announce the times and locations of the public meetings through the local media and the project Web site (*http://solareis.anl.gov*).

**ADDRESSES:** The Agencies invite interested Federal and State agencies, organizations, Native American tribes, and members of the public to submit comments or suggestions to assist in identifying significant environmental issues and in determining the scope of this PEIS.

You may submit written comments by the following methods:

- Electronically, using the online comment form available on the project Web site: *http://solareis.anl.gov.* This is the preferred method of commenting.
- In writing, addressed to: Solar Energy PEIS Scoping, Argonne National Laboratory, 9700 S. Cass Avenue—EVS/900, Argonne, IL 60439.

Scoping meetings will include an introductory presentation on: solar energy technologies and market prospects; the proposed actions and scope of the PEIS, including proposed alternatives and environmental issues and impacts to be analyzed; and the public participation process. Oral comments from the public will begin immediately after the presentation.

**FOR FURTHER INFORMATION CONTACT:** For further information, including information on how to comment, you may contact: Lisa Jorgensen, Department of Energy, Golden Field Office, *lisa.jorgensen@go.doe.gov,* 303–275–4906; or Linda Resseguie, BLM Washington Office, *linda_resseguie@blm.gov*, 202–452–7774, You may also visit the Solar Energy Development PEIS Web site at *http://solareis.anl.gov.*

For general information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119; e-mail: *AskNEPA@hq.doe.gov;* telephone: 202–586–4600; leave a message at 1–800–472–2756; or facsimile: 202–586–7031.

**SUPPLEMENTARY INFORMATION:**

## Background and Need for Agency Action

In response to direction from Congress under Title II, Section 211, of the Energy Policy Act of 2005 (Pub.L. 109–58), as well as Executive Order 13212, *Actions to Expedite Energy-Related Projects,* 66 FR 28357 published on May 22, 2001, the Agencies are evaluating whether environmentally responsible utility-scale solar energy projects can be facilitated through developing and implementing agency-specific programs that would establish environmental policies and mitigation strategies for solar energy development. Utility-scale solar energy projects generate electricity that is delivered directly into the electricity transmission grid.

The BLM has received a large number of utility-scale solar energy project proposals for BLM-administered lands, mainly in Arizona, California, and Nevada. It currently processes solar energy right-of-way applications for lands under its Solar Energy Development Policy (Instruction Memorandum No. 2007–097), which, among other objectives, establishes requirements for solar energy project environmental review. The DOE Solar Energy Technologies Program currently addresses environmental concerns for solar projects it sponsors through grants on a case-by-case basis. Other DOE program offices may use the PEIS in future decisionmaking.

## Proposed Action and Alternatives

The proposed action in this PEIS is for the Agencies to develop and implement agency-specific programs that would facilitate environmentally responsible utility-scale solar energy development by establishing environmental policies and mitigation strategies related to solar energy development in six western states (Arizona, California, Colorado, New Mexico, Nevada, and Utah). The study area has been limited to these six states based on initial resource assessment showing they encompass the most prospective solar energy resources suitable for utility-scale development over the next 20 years.

Through this PEIS, the BLM is considering whether to establish a Bureau-wide solar energy development program to supplement or replace existing BLM solar development policy, and to amend land use plans in the six-state study area to adopt the new program. In addition, the BLM expects to identify BLM-administered land in the six state study area that may be environmentally suitable for solar energy development and land that would be excluded from such development. The PEIS will also consider whether designation by BLM of additional electricity transmission corridors on BLM-administered lands is necessary to facilitate utility-scale solar energy development. Public lands withdrawn or set aside for use by

another Federal agency over which the BLM does not have administrative jurisdiction will not be considered by BLM to authorize solar energy development. The PEIS will not include lands within the National Landscape Conservation System, such as National Conservation Areas, National Monuments, Wilderness Areas, Wilderness Study Areas, Wild and Scenic Rivers, and National Historic and Scenic Trails. The PEIS also will not include lands that the BLM has previously identified in its land use plans as environmentally sensitive, such as Areas of Critical Environmental Concern or other special management areas, that are inappropriate for or inconsistent with extensive, surface-disturbing uses. The intention of the PEIS is not to eliminate the need for site-specific environmental review for individual utility-scale solar energy development proposals. Site-specific environmental reviews are expected to be tiered to the PEIS and to be more effective and efficient because of the PEIS. Existing solar energy right-of-way applications will continue to be processed by the BLM on a site-specific, case-by-case basis. As of the date of publication of this Notice, no new solar energy right-of-way applications will be accepted by the BLM until completion of the PEIS.

Through this PEIS, DOE is considering developing a solar energy program of environmental policies and mitigation strategies that would apply to the deployment of solar energy projects that are supported by DOE. Policies and mitigation measures adopted as part of the proposed solar energy technology deployment program would identify for DOE, industry, and stakeholders the best practices for deploying solar energy and ensuring minimal impact to natural and cultural resources on BLM-administered lands or other Federal, State, tribal, or private lands.

The Agencies invite any Federal, State, or local agency or tribal government with jurisdiction by law or special expertise in solar energy development to be a cooperating agency. The California Energy Commission, California Public Utilities Commission, and California Department of Fish and Game have already indicated that they plan to participate as cooperating agencies. Other agencies or state governments may become cooperating agencies at a later date.

*No Action Alternative*

The PEIS will address the no action alternative of (1) for DOE, not establishing a program of environmental policies and mitigation strategies that would be applicable to solar energy technology deployment supported by its programs, and (2) for BLM, not establishing a Bureau-wide solar energy development program, not amending its land use plans, and not identifying land that is environmentally suitable for solar energy development or land that would be excluded from such development. Under the no action alternative, DOE and BLM would continue to evaluate solar energy projects on a case-by-case basis (and, for BLM, in accordance with the requirements of the Solar Energy Development Policy, Instruction Memorandum No. 2007–097).

*Facilitated Development Alternative*

The PEIS will evaluate a facilitated development alternative (proposed action) that includes the establishment of (1) for DOE, a solar energy program of environmental policies and mitigation strategies that would apply to the deployment of solar energy project supported by DOE; and (2) for the BLM, a Bureau-wide solar energy program and the amendment of individual BLM land use plans to address future development of solar energy resources on BLM-administered lands. For this alternative, the Agencies will create a reasonably foreseeable development (RFD) scenario to define the potential for future utility-scale solar energy development activities over a 20-year study period. This RFD will identify which BLM land use plans might be amended. Examples of possible amendments to land use plans include the (1) adoption of stipulations (e.g., wildlife management guidelines) applicable to solar energy development projects, and (2) identification of lands with high solar energy development potential, including the designation of lands suited to competitive leasing, if applicable.

*Limited Development Alternative*

For BLM a ''limited development'' alternative may also be examined that would evaluate the impacts of previously proposed solar energy development projects which have complete plans of development and are awaiting application approval.

For DOE, there are no other alternatives at this time.

**BLM Planning Criteria**

The FLPMA requires the BLM to develop land use plans, also known as RMPs, to guide the BLM's management of public lands. For solar energy projects to be developed on public lands managed by the BLM, such activities must be provided for in these RMPs. One outcome of the PEIS could be to amend some of BLM's existing RMPs to adopt a new Bureau-wide solar energy program. The BLM's land use planning regulations, which implement the FLPMA, require the BLM to publish, and provide for public review of, the proposed planning criteria that will guide the BLM's land use planning process. This Notice fulfills the BLM's obligation under the FLPMA and the BLM's planning regulations (43 CFR 1610.2(f) and 43 CFR 1610.4–2) to notify the public of its proposed planning criteria.

Planning criteria are the constraints, standards, and guidelines that determine what the BLM will or will not consider during its planning process. As such, they establish parameters and help focus analysis of the issues identified in scoping, and structure the preparation of the PEIS. The BLM welcomes public comment on the following proposed planning criteria, which will be used in the development of the PEIS as it is prepared to analyze RMP amendments:

- The BLM will prepare RMP amendments in compliance with the FLPMA, the Endangered Species Act, the Clean Water Act, the Clean Air Act, NEPA, and all other applicable laws, Executive Orders, and BLM management policies.
- The BLM will use the PEIS as the analytical basis for any decision it makes to amend an individual land use plan to respond to the potential for increased levels of solar energy development on BLM-administered public lands.
- The BLM will develop an RFD scenario to predict levels of development. It will identify lands available for utility-scale solar energy development, lands available for utility-scale solar energy development that have restrictive stipulations, and lands not available for utility-scale solar energy development in affected plans.
- The BLM will limit its amendment of these plans to utility-scale solar energy development and associated transmission issues and will not address the management of other resources, although the BLM will consider and analyze the impacts from increased use on other managed resource values.
- The BLM will continue to manage other resources in the affected planning areas under the pre-existing terms, conditions, and decisions in the applicable RMPs for those other resources.
- The BLM will recognize valid existing rights under the RMPs, as amended.
- The BLM will coordinate with Federal, State, and local agencies and

tribal governments in the PEIS and plan amendment process to strive for consistency with existing plans and policies, to the extent practicable.

- The BLM will coordinate with tribal governments and provide strategies for the protection of recognized traditional uses in the PEIS and plan amendment process.
- The BLM will take into account appropriate protection and management of cultural and historic resources in the PEIS and plan amendment process, and will engage in all required consultation.
- The BLM will recognize in the PEIS and plan amendments the special importance of public lands to people who live in communities surrounded by public lands and the importance of public lands to the nation as a whole.
- The BLM will make every effort to encourage public participation throughout the PEIS process.
- The BLM has the authority to develop protective management prescriptions for lands with wilderness characteristics within RMPs. As part of the public involvement process for land use planning, the BLM will consider public input regarding lands to be managed to maintain wilderness characteristics.
- Environmental protection and energy production are both desirable and necessary objectives of sound land management practices and are not to be considered mutually exclusive priorities.
- The BLM will consider and analyze relevant climate change impacts in its land use plans and associated NEPA documents, including the anticipated climate change benefits of solar energy.
- The BLM will use geospatial data in a geographic information system (GIS) to facilitate discussions of the affected environment, formulation of alternatives, analysis of environmental consequences, and display of results.

Over the course of the scoping period, as further planning criteria are determined or developed, such criteria will be announced on the project Web site (*http://solareis.anl.gov*).

**Scoping Process**

Interested parties are invited to participate in the scoping process, both to refine the preliminary alternatives and environmental issues to be analyzed in depth and to eliminate from detailed study those alternatives and environmental issues that are not feasible or pertinent. The scoping process is intended to involve all interested agencies (Federal, State, county, and local), public interest groups, Native American tribes, businesses, and members of the public. Public scoping meetings will be held as indicated above under the **DATES** section. These scoping meetings will be informal. The presiding officer will establish only those procedures needed to ensure that everyone who wishes to speak has a chance to do so and that the agency representatives understand all issues and comments. Speakers will be allocated approximately three minutes for their oral statements. Depending on the number of persons wishing to speak, the presiding officer may allow longer speaking times. Persons wishing to speak on behalf of an organization should identify that organization in their request to speak. Meetings will begin at the times specified and will continue until all those present who wish to participate have had an opportunity to do so. Should any speaker wish to provide for the record further information that cannot be presented within the designated time, such information may be submitted in writing or electronically to the addresses in the **ADDRESSES** section by the date listed in the **DATES** section.

The public is encouraged to communicate information and comments on issues it believes the Agencies should address in the PEIS. The Agencies request information and comments on resources in the western United States that utility-scale solar energy development may impact. Comments may address broad issues or specific resources. Individuals should be aware that the entire comment—including personal identifying information (i.e., address, phone number, and e-mail address)—may be made publicly available at any time. While one can request in the comment that personal identifying information be withheld from public review, this cannot be guaranteed. All comments from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

After gathering public comments on issues that should be addressed in the PEIS during the public scoping period, the Agencies will identify and provide the rationale in the PEIS on those issues addressed and those issues determined to be beyond the scope of the PEIS. A scoping summary report will be available for public review approximately 45 days following closure of the public scoping period. The report will be posted on the project Web site (*http://solareis.anl.gov*), or may be requested from Lisa Jorgensen, Department of Energy, Golden Field Office, *lisa.jorgensen@go.doe.gov,* 303–275–4906, or Linda Resseguie, BLM Washington Office, *linda_resseguie@blm.gov*, 202–452–7774.

**Approach and Schedule for the PEIS**

To consider the variety of resource issues and concerns identified, the Agencies will use an interdisciplinary approach to develop the PEIS. Specialists with expertise in disciplines including but not limited to the following will be involved in the planning process: Solar energy, wildlife and fisheries, vegetation, air quality, outdoor recreation, archaeology, paleontology, hydrology, soils, land use, visual resources, sociology, and economics.

The PEIS will describe the purpose and need for the proposed actions, including the effects of solar energy development on the nation's energy supply, economy, and energy security. It will also describe solar energy technologies; the distribution of solar energy resources on a regional scale; activities to be undertaken for site monitoring, evaluation, and utility-scale development; the impacts associated with implementing current technologies; and mitigation measures and constraints relevant to solar energy development. The PEIS will consider ongoing transmission planning efforts underway (e.g., the Western Governors' Association Renewable Energy Zone Project; the California Renewable Energy Transmission Initiative, and the Draft PEIS entitled *Designation of Energy Corridors on Federal Land in the 11 Western States* (DOE/EIS–0386) in evaluating electricity transmission access issues associated with solar energy development in the six-state study area. The need to designate additional electricity transmission corridors on BLM-administered lands to facilitate utility-scale solar energy development will be considered. The PEIS may include NEPA analysis for a limited number of site-specific corridor designations on BLM-administered lands, as appropriate.

As currently envisioned, the PEIS will evaluate direct, indirect, and cumulative impacts to wildlife, wildlife habitat, threatened and endangered species, and vegetation; proximity to wilderness or other special management areas; and impacts to cultural, paleontological, socioeconomic, visual, and water resources. These resources are recognized as significant issues associated with utility-scale solar energy development.

During the public scoping period, the Agencies will work collaboratively with interested parties to identify the

management decisions that are best suited to local, regional, and national needs and concerns. Early participation is encouraged and will help determine the content of each Agency's solar energy program and the future management of the Federal, State, tribal or private lands used for utility-scale solar energy projects.

The Agencies anticipate that the Solar Energy Development PEIS will be completed in approximately 22 months; the process will include public and agency scoping; coordination and consultation with Federal, State, and local agencies and tribal governments; publication of a draft PEIS; public review of the draft PEIS; and publication of a final PEIS. The draft PEIS is scheduled to be issued in spring 2009. The availability of the draft PEIS and dates for public hearings soliciting comments on it will be announced in the **Federal Register** and local media. Comments on the draft PEIS will be considered in preparing the final PEIS.

Interested parties not submitting comments at this time but who would like to receive a copy of the draft PEIS and other project materials should indicate this preference through the project Web site (*http://solareis.anl.gov*), or by contacting Lisa Jorgensen or Linda Resseguie as provided in the **ADDRESSES** section of this notice.

Issued in Washington, DC, on May 23, 2008.

**Alexander A. Karsner,**

*Assistant Secretary, Energy Efficiency and Renewable Energy, Department of Energy.*

**Ray Brady,**

*Manager, Energy Policy Act Team, Bureau of Land Management, Department of the Interior.*

[FR Doc. E8–12024 Filed 5–28–08; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM93–11–000]**

### Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992; Notice of Annual Change in the Producer Price Index for Finished Goods

May 21, 2008.

The Commission's regulations include a methodology for oil pipelines to change their rates through use of an index system that establishes ceiling levels for such rates. The Commission bases the index system, found at 18 CFR 342.3, on the annual change in the Producer Price Index for Finished Goods (PPI–FG), plus one point three percent (PPI+1.3). The Commission determined in an ''Order Establishing Index For Oil Price Change Ceiling Levels'' issued March 21, 2006, that PPI+1.3 is the appropriate oil pricing index factor for pipelines to use.[1]

The regulations provide that the Commission will publish annually, an index figure reflecting the final change in the PPI–FG, after the Bureau of Labor Statistics publishes the final PPI–FG in May of each calendar year. The annual average PPI–FG index figures were 160.4 for 2006 and 166.6 for 2007.[2] Thus, the percent change (expressed as a decimal) in the annual average PPI–FG from 2006 to 2007, plus 1.3 percent, is positive .051653.[3] Oil pipelines must multiply their July 1, 2007, through June 30, 2008, index ceiling levels by positive 1.051653[4] to compute their index ceiling levels for July 1, 2008 through June 30, 2009, in accordance with 18 CFR § 342.3(d). For guidance in calculating the ceiling levels for each 12 month period beginning January 1, 1995,[5] see *Explorer Pipeline Company*, 71 FERC 61,416 at n.6 (1995).

In addition to publishing the full text of this Notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print this Notice via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426. The full text of this Notice is available on FERC's Home Page at the eLibrary link. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field and follow other directions on the search page.

User assistance is available for eLibrary and other aspects of FERC's website during normal business hours. For assistance, please contact the Commission's Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@ferc.gov*), or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov.*

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–11912 Filed 5–28–08; 8:45 am]

**BILLING CODE 6717–01–P**

[1] 114 FERC ¶ 61,293 at P 2 (2006).

[2] Bureau of Labor Statistics (BLS) publishes the final figure in mid-May of each year. This figure is publicly available from the Division of Industrial Prices and Price Indexes of the BLS, at (202) 691–7705, and in print in August in Table 1 of the annual data supplement to the BLS publication Producer Price Indexes via the Internet at *http://www.bls.gov/ppi/home.htm.* To obtain the BLS data, click on ''Get Detailed PPI Statistics,'' and then under the heading ''Most Requested Statistics'' click on ''Commodity Data.'' At the next screen, under the heading ''Producer Price Index–Commodity,'' select the first box, ''Finished goods–WPUSOP3000,'' then scroll all the way to the bottom of this screen and click on Retrieve data.

[3] [166.6—160.4]/160.4 = 0.038653 + .013 = 0.051653

[4] 1 + 0.051653 = 1.051653

[5] For a listing of all prior multipliers issued by the Commission, see the Commission's Web site, *http://www.ferc.gov.* The table of multipliers can be found under the headings ''Oil'' and ''Index.''

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

May 21, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP99–301–208.

*Applicants:* ANR Pipeline Company.

*Description:* ANR Pipeline Co submits an amendment to Rate Schedule FTS–1 and gathering negotiated rate agreements with Eagle Energy Partners I, LP.

*Filed Date:* 05/19/2008.

*Accession Number:* 20080520–0299.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 2, 2008.

*Docket Numbers:* RP06–200–043.

*Applicants:* Rockies Express Pipeline LLC.

*Description:* Rockies Express Pipeline LLC submits First Revised Sheet 9E.01 *et al.* to FERC Gas Tariff, Second Revised Volume 1, to become effective 5/20/08.

*Filed Date:* 05/19/2008.

*Accession Number:* 20080520–0296.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 2, 2008.

*Docket Numbers:* RP08–251–001.

*Applicants:* Transcontinental Gas Pipe Line Corp.

*Description:* Transcontinental Gas Pipe Line Corp submits Fifty-Third Revised Sheet 27 *et al.* to FERC Gas Tariff, Third Revised Volume 1.

*Filed Date:* 05/19/2008.

*Accession Number:* 20080520–0295.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 2, 2008.

*Docket Numbers:* RP08–381–000.

*Applicants:* Questar Southern Trails Pipeline Company.

*Description:* Questar Southern Trails Pipeline Co submits Third Revised Sheet 65 *et al.* to FERC Gas Tariff,

Original Volume 1, to become effective 6/11/08.

*Filed Date:* 05/19/2008.

*Accession Number:* 20080520–0298.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 2, 2008.

*Docket Numbers:* RP08–382–000.

*Applicants:* Wyoming Interstate Company, Ltd.

*Description:* Wyoming Interstate Co, Ltd submits Seventh Revised Sheet 10 *et al.* to FERC Gas Tariff, Second Revised Volume 2, to become effective 7/1/08.

*Filed Date:* 05/19/2008.

*Accession Number:* 20080520–0297.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 2, 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. E8–11918 Filed 5–28–08; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings # 1

May 19, 2008.

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC08–67–000.

*Applicants:* LS Power Development, LLC; Luminus Management, LLC.

*Description:* Supplemental filing of LS Power Development, LLC *et al.* in support of their joint application for approval under section 203 of the Federal Power Act.

*Filed Date:* 05/13/2008.

*Accession Number:* 20080515–0271.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 3, 2008.

*Docket Numbers:* EC08–88–000.

*Applicants:* Black Hills Wyoming, Inc.

Description: Application of Black Hills Wyoming, Inc. for Approval Under Federal Power Act section 203 Authorization for Sale of a Public Utility Facility.

*Filed Date:* 05/16/2008.

*Accession Number:* 20080519–5004.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 6, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers*: EG08–72–000.

*Applicants:* Locust Ridge II, LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Locust Ridge II, LLC.

*Filed Date:* 05/14/2008.

*Accession Number:* 20080514–5064.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 4, 2008.

*Docket Numbers:* EG08–73–000.

*Applicants:* Lempster Wind, LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Lempster Wind, LLC.

*Filed Date:* 05/16/2008.

*Accession Number:* 20080516–5099.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 6, 2008.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER02–579–006.

*Applicants:* Capitol District Energy Center Cogeneration.

*Description:* Notification of Change in Status of Capitol District Energy Center Cogeneration Associates.

*Filed Date:* 05/15/2008.

*Accession Number:* 20080515–5069.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 5, 2008.

*Docket Numbers:* ER02–580–007.

*Applicants:* Pawtucket Power Assoc. Lp.

*Description:* Notification of Change in Status of Pawtucket Power Associates Limited Partnership.

*Filed Date:* 05/15/2008.

*Accession Number:* 20080515–5073.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 5, 2008.

*Docket Numbers:* ER05–968–002.

*Applicants:* Basin Creek Equity Partners L.L.C.

*Description:* Notification of Change in Status of Basin Creek Equity Partners L.L.C.

*Filed Date:* 05/15/2008.

*Accession Number:* 20080515–5070.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 5, 2008.

*Docket Numbers:* ER08–572–002.

*Applicants:* Entergy Services, Inc.

*Description:* Entergy Operating Companies submits Substitute Sheet 653 to their Open Access Transmission Tariff in compliance with the Commission's 4/15/08 Order.

*Filed Date:* 05/15/2008.

*Accession Number:* 20080516–0145.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 5, 2008.

*Docket Numbers:* ER08–743–001.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc. submits Substitute Second Revised Sheet 354 to FERC Electric Tariff, Fifth Revised Volume 1 to their 3/28/08 filing of Open Access transmission Tariff, effective 6/1/08.

*Filed Date:* 05/15/2008.

*Accession Number:* 20080516–0146.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 5, 2008.

*Docket Numbers:* ER08–934–001.

*Applicants:* Locust Ridge II, LLC.

*Description:* Locust Ridge II, LLC submits revision to the Application for Market-Based Rate Authorization filed on 5/9/08 to reflect Locust Ridge II correct name.

*Filed Date:* 05/15/2008.

*Accession Number:* 20080516–0144.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 5, 2008.

*Docket Numbers:* ER08–952–000.
*Applicants:* ISO New England Inc. and New England Power Pool Participants Committee.
*Description:* ISO New England, Inc. and New England Power Pool Participants Committee submits revision to the Forward Capacity Market etc., to be effective 5/15/08.
*Filed Date:* 05/14/2008.
*Accession Number:* 20080516–0028.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 4, 2008.

*Docket Numbers:* ER08–953–000.
*Applicants:* Wisconsin Electric Power Company.
*Description:* Wisconsin Electric Power Company submits revised Facilities Agreement Between Wisconsin Electric and the City of Oconomowoc.
*Filed Date:* 05/14/2008.
*Accession Number:* 20080516–0035.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 4, 2008.

*Docket Numbers:* ER08–954–000.
*Applicants:* Kelson Energy III LLC.
*Description:* Kelson Energy III LC submits its market-based rate tariff, Electric Tariff, Original Volume 1 effective 3/1/08.
*Filed Date:* 05/14/2008.
*Accession Number:* 20080516–0029.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 4, 2008.

*Docket Numbers:* ER08–955–000.
*Applicants:* Southern Company Services, Inc.
*Description:* Georgia Power Company submits Updated Depreciation Rates for use in the calculation of changes for services provided under Southern Company Services, Inc's Open Access Transmission Tariff.
*Filed Date:* 05/14/2008.
*Accession Number:* 20080516–0030.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 4, 2008.

*Docket Numbers:* ER08–956–000.
*Applicants:* Pacific Gas and Electric Company.
*Description:* Pacific Gas and Electric Company submits an amendment to the Generator Special Facilities Agreement for the Contra Costa 8 power project, now known as the Gateway Generating Station etc.
*Filed Date:* 05/15/2008.
*Accession Number:* 20080516–0031.
*Comment Date:* 5 p.m. Eastern Time on Thursday, June 5, 2008.

*Docket Numbers:* ER08–957–000.
*Applicants:* ISO New England Inc.
*Description:* ISO New England Inc request that the Commission accept the First Quarter 2008 Report as filed, effective 4/1/08.
*Filed Date:* 05/15/2008.
*Accession Number:* 20080516–0032.
*Comment Date:* 5 p.m. Eastern Time on Thursday, June 5, 2008.

*Docket Numbers:* ER08–958–000.
*Applicants:* Trans-Allegheny Interstate Line Company.
*Description:* Revised Sheet 3141.01 *et al.* of the Open Access Transmission Tariff of PJM Interconnection LLC, FERC Electric Tariff, Sixth Revised Volume 1 effective on 5/15/08.
*Filed Date:* 05/15/2008.
*Accession Number:* 20080516–0033.
*Comment Date:* 5 p.m. Eastern Time on Thursday, June 5, 2008.

*Docket Numbers:* ER08–959–000.
*Applicants:* Florida Power Corporation.
*Description:* Florida Power Corporation submits informational filing for Progress Energy Florida, Inc's Annual Update for its OATT formula transmission rate.
*Filed Date:* 05/15/2008.
*Accession Number:* 20080516–0034.
*Comment Date:* 5 p.m. Eastern Time on Thursday, June 5, 2008.

*Docket Numbers:* ER08–960–000.
*Applicants:* California Independent System Operator Corporation.
*Description:* California Independent System Operator Corp's Petition for Waiver of Tariff Provisions to Accommodate Transition to Reformed Large Generator Interconnection Procedures and Motion to Shorten Comment Period.
*Filed Date:* 05/15/2008.
*Accession Number:* 20080516–0143.
*Comment Date:* 5 p.m. Eastern Time on Thursday, May 29, 2008.

*Docket Numbers:* ER08–976–000.
*Applicants:* Baltimore Gas and Electric Company.
*Description:* Baltimore Gas and Electric Company, *et al.* Electronic Informational Filing of 2008 Formula Rate Annual Update.
*Filed Date:* 05/15/2008.
*Accession Number:* 20080515–5049.
*Comment Date:* 5 p.m. Eastern Time on Thursday, June 5, 2008.

*Docket Numbers:* ER08–977–000.
*Applicants:* Atlantic City Electric Company.
*Description:* Informational Filing of 2008 Formula Rate Update of Atlantic City Electric Company.
*Filed Date:* 05/15/2008.
*Accession Number:* 20080515–5096.
*Comment Date:* 5 p.m. Eastern Time on Thursday, June 5, 2008.

*Docket Numbers:* ER08–978–000.
*Applicants:* Delmarva Power & Light Company.
*Description:* Informational Filing of 2008 Formula Rate Update of Delmarva Power & Light Company.
*Filed Date:* 05/15/2008.
*Accession Number:* 20080515–5104.
*Comment Date:* 5 p.m. Eastern Time on Thursday, June 5, 2008.

*Docket Numbers:* ER08–979–000.
*Applicants:* Potomac Electric Power Company.
*Description:* Informational Filing of 2008 Formula Rate Update of Potomac Electric Power Company.
*Filed Date:* 05/15/2008.
*Accession Number:* 20080515–5128.
*Comment Date:* 5 p.m. Eastern Time on Thursday, June 5, 2008.

Take notice that the Commission received the following foreign utility company status filings:
*Docket Numbers:* FC07–30–000.
*Applicants:* Calpine Island Cogeneration, LP, Calpine Power, LP
*Description:* Notification of Change of Address on behalf of Harbinger Capital Partners Master Fund I, Ltd., *et al.* under EC08–59, *et al.*
*Filed Date:* 05/16/2008.
*Accession Number:* 20080516–5088.
*Comment Date:* 5 p.m. Eastern Time on Friday, June 6, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

*Docket Numbers:* OA07–34–001.
*Applicants:* Sierra Pacific Resources Operating Compa.
*Description:* Order No. 890 OATT Compliance Filing of the Sierra Pacific Resources Operating Companies under OA07–34.
*Filed Date:* 05/16/2008.
*Accession Number:* 20080519–5023.
*Comment Date:* 5 p.m. Eastern Time on Friday, June 6, 2008.

*Docket Numbers:* OA07–52–003.
*Applicants:* Puget Sound Energy, Inc.
*Description:* Order No. 890 OATT Filing of Puget Sound Energy, Inc. (Corrected First Revised Sheet No. 184).
*Filed Date:* 05/14/2008.
*Accession Number:* 20080514–5100.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 4, 2008.

*Docket Numbers:* OA08–100–001.
*Applicants:* Duke Energy Carolinas, LLC.
*Description:* Supplemental Refund Report of Duke Energy Carolinas, LLC under OA08–100.
*Filed Date:* 05/16/2008.
*Accession Number:* 20080516–5106.
*Comment Date:* 5 p.m. Eastern Time on Friday, June 6, 2008.

*Docket Numbers:* OA08–116–000.
*Applicants:* Wolverine Power Supply Cooperative, Inc.
*Description:* Request for Renewal of Waiver of Standards of Conduct of Wolverine Power Supply Cooperative, Inc. under OA08–116.

*Filed Date:* 05/16/2008.
*Accession Number:* 20080516–5079.
*Comment Date:* 5 p.m. Eastern Time on Friday, June 6, 2008.

Take notice that the Commission received the following public utility holding company filings:
*Docket Numbers:* PH08–26–000.
*Applicants:* FMR LLC, FIL Limited.
*Description:* FERC–65A Exemption Notification of Status as Passive Investors of FMR LLC and FIL Limited.
*Filed Date:* 05/16/2008.
*Accession Number:* 20080516–5084.
*Comment Date:* 5 p.m. Eastern Time on Friday, June 6, 2008.

Take notice that the Commission received the following electric reliability filings:
*Docket Numbers:* RR08–1–002.
*Applicants:* North American Electric Reliability Corp.
*Description:* Compliance Filing of the North American Electric Reliability Corporation in Response to the Commission's February 21 2008 Order.
*Filed Date:* 05/16/2008
*Accession Number:* 20080516–5110.
*Comment Date:* 5 p.m. Eastern Time on Monday, June 16, 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. E8–11920 Filed 5–28–08; 8:45 am]
BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP08–401–000]**

### Natural Gas Pipeline Company of America LLC; Notice of Request Under Blanket Authorization

May 21, 2008.

Take notice that on May 15, 2008, Natural Gas Pipeline Company of America LLC (Natural), 3250 Lacey Road, Suite 700, Downers Grove, Illinois 60515, filed in Docket No. CP08–401–000, a prior notice request pursuant to sections 157.205, 157.208, 157.211, and 157.212 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to construct, own, and operate an interconnection with Golden Pass Pipeline LLC (Golden Pass) to receive re-vaporized liquefied natural gas (LNG), located in Jefferson County, Texas, and initially to deliver gas into Golden Pass to facilitate the commissioning of the new pipeline system, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Natural proposes to construct and operate facilities necessary to receive up to 900 MMcf/day of re-vaporized LNG from Golden Pass (and initially, to deliver natural gas into it for commissioning purposes) at a new interconnect that will be located near Dennis Gahagan Survey, Abstract A–123 in Jefferson County, Texas. Natural proposes to construct two 24-inch taps, approximately 0.4 miles of 24-inch pipe, and appurtenances, on its Louisiana No. 1 and No. 2 Lines to receive the re-vaporized gas. Golden Pass will install and own four 12-inch ultrasonic meter runs, flow control valves, electronic flow measurement and other related equipment. The proposed facilities will provide Natural with a new receipt interconnect and allow Golden Pass to deliver up to 900 MMcf/day. The estimated cost of the project is approximately $2.5 million, and all costs associated with the project will be reimbursed by Golden Pass. The proposed in-service date for the interconnect facilities is September 1, 2008.

Any questions regarding the application should be directed to Norman Watson, Director, Business Development, Natural Gas Pipeline Company of America LLC, 500 Dallas Street, Suite 1000, Houston, Texas 77002, at (713) 369–9219 or Bruce H. Newsome, Vice President, Natural Gas Pipeline Company of America LLC, 3250 Lacey Road, Suite 700, Downers Grove, Illinois 60515, at (630) 725–3070.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205), file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the

Commission's Web site *(http://www.ferc.gov)* under the ''e-Filing'' link.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–11914 Filed 5–28–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP08–402–000]**

### Natural Gas Pipeline Company of America LLC; Notice of Request Under Blanket Authorization

May 21, 2008.

Take notice that on May 15, 2008, Natural Gas Pipeline Company of America LLC (Natural), 3250 Lacey Road, Suite 700, Downers Grove, Illinois 60515, filed in Docket No. CP08–402–000, a prior notice request pursuant to sections 157.205, 157.208, 157.211, and 157.212 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to construct and operate facilities to connect Natural's pipeline system to Kinder Morgan Louisiana Pipeline LLC (KMLP) in Cameron Parish, Louisiana in order to receive re-vaporized liquefied natural gas (LNG) or to deliver natural gas, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Natural proposes to construct and operate facilities necessary to establish a bi-directional interconnect with KMLP at a new interconnect point in Cameron Parish, Louisiana. The facilities include two 30-inch taps, and appurtenances, on Natural's existing Louisiana No. 1 and No. 2 pipelines located south of Highway 82 in Cameron Parish, Louisiana. The facilities will interconnect with Natural's system to Leg 2 of KMLP (a one mile 36-inch pipe) and will support Natural's lease of capacity to KMLP previously approved in Docket No. CP06–448–000. This interconnect will allow Natural to receive re-vaporized LNG from KMLP or to deliver natural gas to KMLP. KMLP will install and own bi-directional ultrasonic meters, a gas filter, electronic flow measurement equipment, and monitoring devices. The estimated cost of the project is approximately $1.03 million and all costs associated with the project will be reimbursed by KMLP. The proposed in-service date for the interconnect facilities is September 1, 2008.

Any questions regarding the application should be directed to Norman Watson, Director, Business Development, Natural Gas Pipeline Company of America LLC, 500 Dallas Street, Suite 1000, Houston, Texas 77002, at (713) 369–9219 or Bruce Newsome, Vice President, Natural Gas Pipeline Company of America LLC, 3250 Lacey Road, Suite 700, Downers Grove, Illinois 60515, at (630) 725–3070.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205), file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–11915 Filed 5–28–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP08–400–000]**

### Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

May 21, 2008.

Take notice that on May 19, 2008, Tennessee Gas Pipeline Company (''Tennessee''), 1001 Louisiana, Houston, Texas 77002, filed in Docket No. CP08–400–000, a prior notice request pursuant to sections 157.205, 157.208(c), and 157.212 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to construct, own, and operate an interconnection with Kinder Morgan Louisiana Pipeline, LLC (''KMLP'') located in Jefferson Davis Parish, Louisiana to receive re-vaporized liquefied natural gas (LNG), all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Tennessee proposes to establish a new interconnection with KMLP on Tennessee's pipeline designated as Line 507C–100 located in Jefferson Davis Parish, Louisiana. Tennessee will install a 20-inch hot tap along with appurtenances. KMLP will install a related tap and metering facilities pursuant to section 7 authorization granted by the Commission in Docket No. CP06–449. The interconnection will allow KMLP to deliver, and Tennessee to receive, up to 500 MMcf per day. The cost of Tennessee's interconnection facilities is estimated to be $392,000 for which Tennessee will be fully reimbursed by KMLP.

Any questions regarding the application should be directed to Jay V. Allen, Senior Counsel, Tennessee Gas Pipeline Company, 1001 Louisiana, Houston, Texas 77002, at (713) 420—5589 or fax (713) 420–1601 or Juan Eligio, Analyst, Certificates & Regulatory Compliance, at (713) 420–3294 or fax (713) 420–1605.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205), file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an

application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *(http://www.ferc.gov)* under the ''e-Filing'' link.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–11913 Filed 5–28–08; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. AD08–5–000]**

### Compliance Workshop; First Notice of Workshop on Regulatory Compliance

May 21, 2008.

The staff of the Federal Energy Regulatory Commission (Commission) will hold a workshop on July 8, 2008, from 9:30 a.m. to 12 noon Eastern Daylight time, in the Commission Meeting Room at the Commission's Washington, DC headquarters, 888 First Street, NE. This workshop will provide a forum for interested participants to share perspectives and information on federal energy regulatory compliance. The workshop will focus, in particular, on the elements of a sound compliance program. One or more of the Commissioners may attend the workshop.

The purpose of this notice is to advise the public of the date and time. More information on the topics to be explored and the format of the workshop will be provided in a subsequent notice.

This workshop will neither be Web-cast nor transcribed. All interested parties are invited, and there is no registration fee to attend.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

Questions about the workshop may be directed to Jamie Jordan, Attorney-Advisor, Office of Enforcement, Division of Investigations, by e-mail at *Jamie.Jordan@ferc.gov* or by telephone at 202–502–6628.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–11916 Filed 5–28–08; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2008–0264; FRL–8572–8]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Protection of Stratospheric Ozone: Recordkeeping and Periodic Reporting of the Production, Import, Recycling, Destruction, Transhipment, and Feedstock Use of Ozone-Depleting Substances (Renewal); EPA ICR No. 1432.29, OMB Control No. 2060–0170

**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, 1432.25, is scheduled to expire on December 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 July 28, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0264 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* EPA–HQ–OAR–2008–0264, Environmental Protection Agency, Mailcode: 6205J, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA–HQ–OAR–2008–0264, Air and Radiation Docket at EPA West, 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0264. 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:** Kirsten Cappel, Stratospheric Protection Division, Office of Atmospheric Programs, (6205J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9556; fax number: (202) 343–2338; e-mail address: *cappel.kirsten@epa.gov*. You may also visit the Ozone Depletion Web site of EPA's Stratospheric Protection Division at *http://www.epa.gov/ozone/strathome.html* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

**SUPPLEMENTARY INFORMATION:**

#### How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2008–0264, which is available for online viewing at *http://www.regulations.gov*, or in person

viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution 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 Air and Radiation Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

**What Information Is EPA Particularly Interested in?**

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

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

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

**What Should I Consider when I Prepare My Comments for EPA?**

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**What Information Collection Activity or ICR Does this Apply to?**

*Affected entities:* Entities potentially affected by this action are producers, importers, and distributors of chlorofluorocarbons and methyl bromide, as well as research institutions using such substances.

*Title:* Agency Information Collection Activities; Proposed Collection; Comment Request; Protection of Stratospheric Ozone: Recordkeeping and Periodic Reporting of the Production, Import, Recycling, Destruction, Transhipment, and Feedstock Use of Ozone-Depleting Substances (Renewal).

*ICR numbers:* EPA ICR No. 1432.29, OMB Control No. 2060–0170.

*ICR status:* EPA ICR 1432.25 is currently scheduled to expire on December 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:** EPA is seeking to renew EPA ICR 1432.25 which authorizes the recordkeeping and reporting requirements established in the regulations stated in 40 CFR part 82, subpart A and as required by the United States' commitments under the international treaty *The Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol). This information collection allows EPA to monitor the United States' compliance with the Protocol and Title VI of the Clean Air Act Amendments of 1990 (CAA).

Under its Protocol commitments, the United States is obligated to cease production and import of Class I controlled substances excluding chlorofluorocarbons (CFCs) that are subject to essential use exemptions, methyl bromide that is subject to critical use exemptions or exemptions for quarantine and preshipment uses or emergency uses, previously used material, and material that will be transformed, destroyed, or exported to developing countries. The Protocol also establishes limits and reduction schedules leading to the eventual phaseout of Class II controlled substances with similar exemptions beyond the phaseout. In addition to the Montreal Protocol, the CAA has its own limits on production and consumption of controlled substances that EPA must adhere to and enforce.

Under 40 CFR 82.13, producers, importers, exporters, distributors, and other entities must meet quarterly, annual, and/or transactional recordkeeping and reporting requirements for Class I ozone-depleting substances (ODS). This information collection is conducted to meet U.S. obligations under the Montreal Protocol. The information collection request is required to obtain a benefit under Title VI of the CAA, added by Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. No. 105–277; October 21, 1998).

The reporting and recordkeeping requirements for Class I ODS will enable EPA to:

1. Ensure compliance with the restrictions on production, import, and export of Class I controlled substances;

2. Allow exempted production and import for certain uses and the consequent tracking of that production and import;

3. Address industry and Federal concerns regarding the illegal import of mislabeled used controlled substances;

4. Satisfy the United States' obligations to report data under Article 7 of the Protocol;

5. Fulfill statutory obligations under Section 603(b) of the CAA for reporting and monitoring;

6. Provide information to report to the U.S. Congress on the production, use, and consumption of Class I controlled substances as statutorily required in Section 603(d) of Title VI of the CAA.

The reported data will enable EPA to:

1. Maintain compliance with the Protocol requirements for annual data submission on the production of ODS; and

2. Analyze technical use data to ensure that exemptions are used in accordance with requirements included in the annual authorization rulemakings.

EPA informs respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR Part 2, Subpart b, and will be disclosed only if EPA determines that the information is not entitled to confidential treatment. If no claim of confidentiality is asserted when the information is received by EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203). Individual reporting data may be claimed as sensitive and will be treated as confidential information in accordance with procedures outlined in 40 CFR Part 2.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.4 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This 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: 1157.

• Frequency of response:

— Producers, importers, holders of essential use allowances, laboratory suppliers, and distributors of QPS methyl bromide (Class I, Group VI substances) are to report to EPA quarterly (45 days after the end of each quarter);

— Exporters, and persons that destroy and transform Class I controlled ODS are to report to EPA annually (45 days after the end of the control period);

— Persons wanting to trade with another Party to the Protocol, undertake interpollutant conversions, transfer allowances, import used Class I controlled substances (i.e. petition) are to submit reports to EPA on a transactional basis.

— All entities may be required to provide other such information that the Administrator may reasonably require to comply with requests from the Ozone Secretariat seeking information required by decisions taken by the Parties to the Montreal Protocol.

• Estimated total average number of responses for each respondent: 1.6.

• Estimated total annual burden hours: 2810 hours.

• Estimated total annual costs: $269,242. This includes an estimated burden cost of $263,662 and an estimated cost of $5,580 for capital investment or maintenance and operational costs.

**Are There Changes in the Estimates from the Last Approval?**

There is a decrease of 5,560 hours in the total estimated respondent burden compared with that identified in the EPA ICR 1432.25 which is currently approved by OMB. This large decrease is primarily due to a decrease in the overall burden for compliance, specifically the hours needed to certify laboratory and QPS uses of ozone depleting substances. The prior estimate for self certification was much higher than the Agency's experience has shown it to be. The burden and cost estimates for the Agency increased largely due to increases in the average hourly wage rate caused by normal inflation. As implementation of electronic reporting via the Agency's central data exchange (CDX) expands to additional segments of the regulated community, EPA expects burden and costs to further decline. EPA anticipated that when the CDX system becomes fully utilized, all required data will be submitted and tracked electronically, thus reducing and/or eliminating reporting by paper.

**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: May 22, 2008.

**Drusilla Hufford,**

*Director, Stratospheric Protection Division.*

[FR Doc. E8–11986 Filed 5–28–08; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[AU Docket No. 08–46; Report No. AUC–08–78–B (Auction 78); DA 08–1090]**

## Auction of AWS–1 and Broadband PCS Licenses Rescheduled for August 13, 2008; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 78

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the procedures and minimum opening bids for the upcoming auction of AWS–1 and Broadband PCS Licenses (Auction 78). This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for the auction.

**DATES:** This auction has been rescheduled from July 29, 2008, to August 13, 2008. Short-form Applications to participate in Auction 78 must be filed before 6:00 p.m. ET on June 19, 2008. The upfront payments deadline for Auction 78 is July 17, 2008, 6:00 p.m. ET. Bidding for Auction No. 78 is scheduled to begin on August 13, 2008.

**FOR FURTHER INFORMATION CONTACT:**

**Wireless Telecommunications Bureau, Auctions Spectrum and Access Division**

For legal questions: Scott Mackoul or Stephen Johnson at (202) 418–0660. For general auction questions: Barbara Sibert at (717) 338–2868.

**Mobility Division**

For Broadband PCS service rule questions: Erin McGrath (legal), Keith Harper (engineering) and Denise Walter (licensing) at (202) 418–0620.

**Broadband Division**

For AWS–1 service rule questions: John Spencer at (202) 418–2487. To request materials in accessible formats (Braille, large print, electronic files or audio format) for people with disabilities, send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at

(202) 418–0530 or (202) 418–0432 (TTY).

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction 78 Procedures Public Notice* which was released on May 16, 2008. The complete texts of the *Auction 78 Procedures Public Notice* including attachments, as well as related Commission documents, are available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction 78 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or Web site: *http://www.BCPIWEB.com*. The *Auction 78 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/78/*.

## I. General Information

### *A. Introduction*

1. The Wireless Telecommunications Bureau (Bureau) announced the procedures and minimum opening bid amounts for the upcoming auction of Advanced Wireless Services (AWS) and broadband Personal Communications Service (PCS) licenses. This auction, which is designated as Auction 78, is rescheduled and will start on August 13, 2008. Auction 78 will offer 55 licenses: 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands (AWS–1) and 20 broadband PCS licenses.

#### i. Background of Proceeding

2. The spectrum associated with licenses to be auctioned in Auction 78 has been either previously licensed and returned to the Commission as a result of license cancellation or termination or offered previously in other auctions but remained unsold.

3. On April 4, 2008, in accordance with Section 309(j)(3) of the Communications Act of 1934, as amended, the Bureau released a public notice seeking comment on competitive bidding procedures to be used in Auction 78. Interested parties submitted one comment and one reply comment in response to the *Auction 78 Comment Public Notice*, 73 FR 20664, April 16, 2008.

#### ii. Licenses To Be Offered in Auction 78

4. A complete list of licenses available for Auction 78 is included as Attachment A of the *Auction 78 Procedures Public Notice*. In addition, Attachment B of the *Auction 78 Procedures Public Notice* provides a map for the broadband PCS E block license in the Walla Walla, WA-Pendleton, OR Basic Trading Area (BTA) market (BTA460) that is available in Auction 78.

### *B. License Descriptions*

#### i. AWS–1 Licenses

5. Auction 78 will offer 35 AWS–1 licenses for which there were no winning bids in Auction 66. These licenses consist of six Regional Economic Area Grouping (REAG) licenses, seven Economic Area (EA) licenses, and 22 Cellular Market Area (CMA) licenses shown in Table 1 of the *Auction 78 Procedures Public Notice*.

#### ii. Broadband PCS Licenses

6. Auction 78 includes 20 broadband PCS licenses in the C, D, E and F frequency blocks in full or partial BTA markets.

7. Certain C block licenses are subject to an eligibility restriction making them available only to entrepreneurs in closed bidding. In order for a bidder to qualify as an entrepreneur, it, along with its attributable investors and affiliates, must have had gross revenues of less than $125 million in each of the last two years and must have less than $500 million in total assets.

8. The Commission adopted this eligibility restriction when it originally established the framework for broadband PCS auctions in the *Competitive Bidding Fifth Report and Order,* 59 FR 37566, July 22, 1994. Specifically, it reserved all C and F block licenses in broadband PCS as set-aside licenses for which eligibility would be limited to entrepreneurs.

9. The Commission amended the entrepreneur eligibility restrictions in 2000. Specifically, it reconfigured the license size for the C block, creating three 10 megahertz licenses out of each 30 megahertz C block license, and divided BTAs into two categories based on population: Tier 1 markets are those BTAs with populations equal to or greater than 2.5 million and Tier 2 markets are the BTAs with populations below 2.5 million. The Commission then adopted open bidding (i.e., bidding open to both entrepreneurs and non-entrepreneurs) for two of the three newly reconfigured 10 megahertz C block licenses in Tier 1 markets, and for one of the three newly reconfigured 10 megahertz C block licenses in Tier 2 markets. The remaining 10 megahertz C block licenses in Tier 1 and 2 were reserved for entrepreneurs. For 15 megahertz C block licenses, the Commission eliminated the entrepreneur eligibility requirements in Tier 1 markets, but maintained them in Tier 2 markets. The Commission also removed the eligibility restriction on all F block licenses regardless of market. The Commission stated that these rules would apply to any subsequent auctions of C or F block licenses, including any spectrum made available or reclaimed from bankruptcy proceedings in the future.

10. Table 2 of the *Auction 78 Procedures Public Notice* cross-references the general rules regarding block/eligibility status/frequencies of broadband PCS licenses in the C, D, E, and F blocks.

11. As indicated in Table 2 of the *Auction 78 Procedures Public Notice,* C1, C2, C3, and C4 block licenses in Tier 2 marked with an asterisk are generally available only to entrepreneurs at auction in closed bidding. However, when the Commission amended the entrepreneur eligibility restrictions in 2000, it also decided to no longer apply this eligibility restriction to any of these licenses that have been previously made available through closed bidding, but not won, in any auction beginning on or after March 23, 1999. Such licenses are instead to be offered in open bidding. As a result, of the 20 broadband PCS licenses available in Auction 78, 11 are open to all bidders and 9 are available only to entrepreneurs in closed bidding.

12. A commenter argues that the Commission should reconsider this eligibility restriction and should make all broadband PCS licenses in Auction 78 available without restriction. The commenter contends that circumstances have changed dramatically since the Commission amended the C block eligibility rules in 2000 and offers a number of policy-based arguments in support of its position.

13. The changes requested by the commenter, however, would require modification of the Commission's rules on entrepreneur eligibility and are therefore outside the scope of this proceeding to establish procedures for conducting Auction 78. Moreover, the arguments put forth by the commenter resemble those considered and rejected by the Commission in 2004 prior to Auction 58. Absent further Commission action, the C block eligibility rules will continue to apply for Auction 78, as they did for licenses offered in Auction 71 last year.

14. Therefore, the entrepreneur eligibility requirements for the C block licenses in Auction 78 that are closed remain in effect. Consequently, the specific broadband PCS licenses to be offered in Auction 78 are described in Table 3 of the *Auction 78 Procedures Public Notice*.

15. Because of the history of licenses for broadband PCS spectrum, some licenses available in Auction 78 cover less bandwidth and fewer frequencies than noted in Table 3. In addition, in some cases, licenses are available for only part of a market. Attachments A and B of the *Auction 78 Procedures Public Notice* provide more details about the broadband PCS licenses that will be offered in Auction 78.

*C. Rules and Disclaimers*

i. Relevant Authority

16. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules set forth in 47 CFR, part 1, Subpart Q including all amendments and clarifications; rules relating to the Advanced Wireless Services and emerging technologies contained in 47 CFR, parts 27 and 101; rules relating to broadband PCS, contained in 47 CFR, part 24; and rules relating to applications, environment, practice and procedure contained in 47 CFR, part 1. Prospective applicants must also be thoroughly familiar with the procedures, terms and conditions (collectively, terms) contained in the *Auction 78 Procedures Public Notice* and the Commission's decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.

17. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

ii. Prohibition of Collusion; Compliance With Antitrust Laws

18. To ensure the competitiveness of the auction process, 47 CFR 1.2105(c) prohibits auction applicants for licenses in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Form 175) as parties with whom they have entered into agreements pursuant to 47 CFR 1.2105(a)(2)(viii).

a. Entities Subject to Anti-Collusion Rule

19. The anti-collusion rule will apply to any applicants that submit short-form applications seeking to participate in a Commission auction and select licenses in the same or overlapping markets (i.e., CMAs, EAs, REAGs or BTAs), regardless of the service. Therefore, in Auction 78, for example, the rule would prohibit an applicant bidding for an AWS–1 EA license and another applicant bidding for a PCS BTA license within that EA from communicating absent an agreement.

20. Under the terms of the rule, applicants that have applied for licenses covering the same or overlapping markets—unless they have identified each other on their short form applications as parties with whom they have entered into agreements under 47 CFR 1.2105(a)(2)(viii)—must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy, which may include communications regarding the post-auction market structure. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.

21. For purposes of this prohibition, 47 CFR 1.2105(c)(7)(i) defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.

22. Information concerning applicants' license selections will not be available to the public. Therefore, the Commission will inform each applicant by letter of the identity of each of the other applicants that has applied for licenses covering any of the same or overlapping geographic areas as the licenses that it has selected in its short-form application.

23. Entities and parties subject to the anti-collusion rule should take special care in circumstances where their employees may receive information directly or indirectly from a competing applicant relating to any competing applicant's bids or bidding strategies. In situations where the anti-collusion rule views the same person as the applicant with respect to two different entities filing competing applications, under Bureau precedent the bids and bidding strategies of one applicant are necessarily conveyed to the other and, absent a disclosed bidding agreement, an apparent violation of the anti-collusion rule occurs. The Bureau has not addressed situations where employees who do not qualify as the applicant (e.g., are not officers or directors) receive information regarding a competing applicant's bids or bidding strategies and whether that information might be deemed to be necessarily conveyed to the applicant. The Bureau notes that the exception to the anti-collusion rule providing that non-controlling interest holders may have interests in more than one competing bidder without violating the anti-collusion rule, provided specified conditions are met (including a certification that no prohibited communications have occurred or will occur), does not extend to controlling interest holders.

b. Prohibition Applies Until Down Payment Deadline

24. 47 CFR 1.2105(c)'s anti-collusion prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction.

25. A commenter recommends modifying and/or clarifying the application of the anti-collusion rule and anonymous bidding procedures after the close of bidding. The commenter proposes that the anti-collusion rule be modified to remain in effect only until the Commission issues the public notice identifying the winning bidders and the high bid amounts. This request seeks amendment of 47 CFR 1.2105(c) and is therefore outside of the scope of this proceeding. The Commission has observed that prohibiting such communications between applicants during the proscribed auction period protects a valid governmental interest without infringing unduly on the First Amendment rights of auction participants.

26. The commenter also requests, in the alternative, that the Commission make clear that applicants can disclose bidding-related information that the Commission has already made public after the close of the auction but before the down-payment deadline. Information contained in a public notice announcing the winning bidders would be public upon release. It is difficult to envision a case in which communication of the bare facts contained in such public information by

an applicant could result in violation of the anti-collusion rule. The Bureau notes, however, that it is the substance and timing of specific communications that are key in determining whether there has been a violation of 47 CFR 1.2105(c). In the absence of such factual context, and given the importance of the anti-collusion rules, the Bureau declines to make further clarification.

27. The Bureau continues to strongly caution applicants that the communication of information that has been made public by the Commission could violate the anti-collusion rule, even if its disclosure might not infringe its limited information procedures. Therefore, applicants should consider the potential consequences of any disclosures. In this regard, the Bureau notes that, upon the release of information after the close of an auction, the applicants in an auction conducted under anonymous bidding procedures are in the same position with regard to the application of the anti-collusion rule as the applicants in an auction conducted without such procedures.

c. Prohibited Communications

28. Applicants for the upcoming Auction 78 and other parties that may be engaged in discussion with such applicants are cautioned of the need to comply with the Commission's anti-collusion rule, 47 CFR 1.2105(c). The anti-collusion rule prohibits not only a communication about an applicant's own bids or bidding strategy, but also a communication of another applicant's bids or bidding strategy. While the anti-collusion rule provisions do not prohibit business negotiations among auction applicants, applicants must remain vigilant so as not to communicate directly or indirectly information that affects, or could affect, bids or bidding strategy, or the negotiation of settlement agreements.

29. The Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly.

30. Applicants are hereby placed on notice that public disclosure of information relating to bidder interests and bidder identities that is confidential at the time of disclosure may violate the anti-collusion rule. This is so even though similar types of information were revealed prior to and during other Commission auctions subject to different information procedures. Bidders should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information. For example, where limited information disclosure procedures are in place, as for Auction 78, a qualified bidder's statement to the press that it has lost bidding eligibility and stopped bidding in the auction could give rise to a finding of an anti-collusion rule violation. Similarly, an applicant's public statement of intent not to participate in Auction 78 bidding could also violate the rule.

31. Applicants for licenses for any of the same or overlapping geographic license areas must not communicate directly or indirectly about bids or bidding strategy. Accordingly, such applicants are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or engineering firm or consulting firm), a violation similarly could occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

32. A violation of the anti-collusion rule could occur in other contexts, such as an individual serving as an officer for two or more applicants. Moreover, the Commission has found a violation of the anti-collusion rule where a bidder used the Commission's bidding system to disclose its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets, and has placed auction participants on notice that the use of its bidding system to disclose market information to competitors will not be tolerated and will subject bidders to sanctions.

33. In addition, when completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's anti-collusion rule, particularly in light of the limited information procedures in effect for Auction 78. Specifically, applicants should avoid including any information in their short-form applications that might convey information regarding their license selection, such as using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

d. Disclosure of Bidding Agreements and Arrangements

34. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications. If parties agree in principle on all material terms prior to the short-form filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under 47 CFR 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with any other applicants for licenses covering any of the same or overlapping geographic areas after the short-form filing deadline.

e. Anti-Collusion Certification

35. By electronically submitting a short-form application following the electronic filing procedures set forth in Attachment C of the *Auction 78 Procedures Public Notice*, each applicant certifies its compliance with 47 CFR 1.2105(c). However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission has stated that it intends to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring. Any applicant found to have violated the anti-collusion rule may be subject to sanctions.

f. Antitrust Laws

36. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of the

Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short-form application. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories horizontally in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another for the other. Similarly, the Bureau has long reminded potential applicants and others that even where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

g. Duty To Report Prohibited Communications; Reporting Procedure

37. If an applicant makes or receives a communication that appears to violate the anti-collusion rule, it must report such communication in writing to the Commission immediately and in no case later than five business days after the communication occurs. The Commission recently clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

38. 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, 47 CFR 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. Applicants are therefore required by 47 CFR 1.65 to report to the Commission any communications they have made to or received from another applicant after the short-form filing deadline that affect or have the potential to affect bids or bidding strategy unless such communications are made to or received from parties to agreements identified under 47 CFR 1.2105(a)(2)(viii).

39. Parties reporting communications pursuant to 47 CFR 1.2105(a)(2) must take care to ensure that any such reports of prohibited communications do not themselves give rise to a violation of the anti-collusion rule. For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection. A party seeking to report such prohibited communications should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection. Such parties are also encouraged to consult with the Auctions and Spectrum Access Division staff if they have any questions about the procedures for submitting such reports. The *Auction 78 Procedures Public Notice* provides additional guidance on procedures for submitting application-related information.

40. Applicants must be aware that failure to comply with the Commission's rules can result in enforcement action.

h. Winning Bidders Must Disclose Terms of Agreements

41. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in any bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.

i. Additional Information Concerning Anti-Collusion Rule

42. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rule may be found in Attachment F of the *Auction 78 Procedures Public Notice.*

iii. Incumbency Issues

a. AWS–1

43. The AWS–1 bands are now being used for a variety of government and non-government services. The 1710–1755 MHz band is currently a government band, which is in the process of transitioning to a commercial band. The incumbents in the 2110–2150 MHz band are private services (including state and local governmental public safety services) and common carrier fixed microwave services. The 2150–2155 MHz band contains incumbents in the Broadband Radio Service (BRS). The Commission previously provided information on incumbency issues for the AWS–1 bands in the *Auction 66 Procedures Public Notice,* 71 FR 20672, April 21, 2006.

44. *Spectrum Relocation Fund.* The Commission established a reserve amount in Auction 66 in order to comply with a statutory requirement aimed at funding the relocation of federal government entities that currently operate in the 1710–1755 MHz band. In order for Auction 66 to close in compliance with the statute, the total winning bids in that auction, net of bidding credits applicable at the close of bidding, were required to equal or exceed a reserve amount of approximately $2.059 billion. At the close of Auction 66, the net total winning bids far exceeded the reserve amount. The Bureau proposes to not establish reserve prices for the 35 AWS–1 licenses being offered in Auction 78.

45. *Relocation of Government Incumbents.* The Commission also issued guidance, along with the National Telecommunications and Information Administration, to assist AWS–1 licensees to begin implementing service during the transition of federal operations from the band while providing interference protection to incumbent federal government operations until they have been relocated to other frequency bands or technologies.

46. *Relocation of Non-Government Incumbents.* On the same day it released the *Auction 66 Procedures Public Notice,* the Commission, among other things, adopted relocation procedures that AWS–1 licensees will follow when relocating incumbent BRS licensees from the 2150–2160/62 MHz portion of the band.

b. Broadband PCS

47. While most of the private and common carrier fixed microwave services (FMS) formerly operating in the 1850–1990 MHz band (and other bands) have been relocated to available frequencies in higher bands or to other media, some FMS licensees may still be operating in the band. Any remaining FMS entities operating in the 1850–1990 MHz band, however, are secondary to PCS operations. FMS licensees, absent

an agreement with the applicable PCS entities or an extension pursuant to 47 CFR 101.79(b) of the Commission's rules, must turn in their authorizations six months following written notice from a PCS entity that such entity intends to turn on a system within the interference range of the incumbent FMS licensee. Further, broadband PCS licensees are no longer responsible for costs associated with relocating an incumbent FMS operation.

c. International Coordination

48. AWS–1 and broadband PCS licensees must not cause harmful interference across the borders with Mexico and Canada. Potential bidders seeking licenses in Auction 78 for geographic areas that are near the Canadian or Mexican borders are encouraged to consult all international agreements with Canada and Mexico. If agreements between the United States, Mexico and Canada have not yet become effective, the same technical restrictions at the border that are adopted for operation between geographic service areas will apply, to the extent they are not in violation of current bilateral agreements and arrangements. When interim arrangements or agreements between the United States, Mexico and Canada are final and become effective, licensees must comply with these agreements. If these agreements are modified in the future, licensees must likewise comply with these modifications.

d. Quiet Zones

49. All licensees must protect the radio quiet zones set forth in the Commission's rules. Licensees are cautioned that they must receive the appropriate approvals directly from the relevant quiet zone entity prior to operating within the areas described in the Commission's rules.

iv. Due Diligence

50. The Bureau cautions potential applicants formulating their bidding strategies to investigate and consider the extent to which these frequencies are occupied. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses being offered in Auction 78. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

51. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction 78 in order to determine the existence of any pending legislative, administrative or judicial proceedings that might affect their decision regarding participation in the auction.

52. Applicants should also be aware that certain pending and future proceedings, including rulemaking proceedings or petitions for rulemaking, applications (including those for modification), requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review, before the Commission may relate to particular applicants or incumbent licensees or the licenses available in Auction 78. Pending and future judicial proceedings may also relate to particular applicants or incumbent licensees, or the licenses available in Auction 78. Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on spectrum licenses available in this auction.

53. Applicants should perform due diligence to identify and consider all proceedings that may affect the spectrum licenses being auctioned and that could have an impact on the availability of spectrum for Auction 78. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the beginning of bidding in the auction.

54. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses being offered.

55. Applicants may obtain information about licenses available in Auction 78, including non-Federal Government incumbent licenses that may have an effect on availability of the AWS–1 licenses, through the Bureau's online licensing databases at *http://wireless.fcc.gov/uls.* Applicants should direct questions regarding the ULS search capabilities to the FCC ULS Technical Support hotline at (877) 480–3201, option two. The hotline is available to assist with questions Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to the hotline are recorded.

56. In addition, to further assist potential bidders in determining the scope of the new AWS entrants' relocation obligations in the 2150–2155 MHz band, the Commission ordered BRS licensees in the 2150–2160/62 MHz band to submit information on the locations and operating characteristics of BRS systems in that band. That information may also be found on ULS at *http://wireless.fcc.gov/uls.*

57. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, applicants may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

58. Potential applicants are strongly encouraged to physically inspect any prospective sites located in, or near, the geographic area for which they plan to bid, and also to familiarize themselves with the environmental review obligations.

v. Use of Integrated Spectrum Auction System

59. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction 78 over the Internet using the Commission's Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

vi. Fraud Alert

60. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction 78 to deceive and defraud unsuspecting investors. Information about deceptive telemarketing investment schemes is available from the Commission as well

as the FTC and SEC. Additional sources of information for potential bidders and investors may be obtained from: (1) the FCC by going to *http://wireless.fcc.gov/csinfo/#fraud* or by telephone at (888) 225–5322 (FCC's Consumer Call Center); (2) the FTC by telephone at (877) FTC–HELP ((877) 382–4357); and (3) the SEC by telephone at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060.

vii. Environmental Review Requirements

61. Licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes. The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's environmental rules for each such facility. The Commission's environmental rules require, among other things, that the licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facilities construction on historic properties, the licensee must follow the provisions of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process. The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee also must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

*D. Auction Specifics*

i. Auction Start Date

62. Bidding in Auction 78 will begin on Wednesday, August 13, 2008.

63. Commenters request that the Bureau postpone the start of bidding in Auction 78. A commenter suggests delaying the start of Auction 78 by four or five weeks, i.e., until September 2008. A commenter contends that participation in an FCC auction presents resource challenges for small and medium-sized companies and notes that conducting bidding during August is difficult when businesses are thinly staffed due to employee vacation schedules. The commenter also asserts that potential bidders need more time to finance licenses won in the recently-concluded 700 MHz auction (Auction 73) and resume business. A commenter supports postponing the auction, noting that a brief delay will afford potential bidders, including small and mid-sized bidders, more time to prepare.

64. The Bureau is not persuaded by the commenters' arguments that a four- or five-week postponement is warranted. Interested parties were able to begin preparations for this auction when the auction was first announced on April 4, 2008, with the release of the *Auction 78 Comment Public Notice.* Nevertheless, the Bureau finds that providing an additional two weeks prior to the start of Auction 78 will promote efficient administration of the auction and provide prospective applicants with additional time for planning and preparation.

65. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Moreover, unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Bidding Methodology

66. The bidding methodology for Auction 78 will be simultaneous multiple round (SMR) bidding. The Commission will conduct this auction over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone.

iii. Pre-Auction Dates and Deadlines

67. The following dates and deadlines apply:

Auction Seminar—June 10, 2008
Short-Form Application (FCC Form 175)
  Filing Window Opens—June 10, 2008; 12:00 noon ET
Short-Form Application (FCC Form 175)
  Filing Window Deadline—June 19, 2008; prior to 6:00 p.m. ET
  Upfront Payments (via wire transfer)—July 17, 2008; 6:00 p.m. ET
  Mock Auction—August 11, 2008
  Auction Begins—August 13, 2008

iv. Requirements for Participation

68. Those wishing to participate in this auction must: (1) Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET, June 19, 2008, following the electronic filing procedures set forth in Attachment C of the *Auction 78 Procedures Public Notice;* (2) submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, July 17, 2008, following the procedures and instructions set forth in Attachment D of the *Auction 78 Procedures Public Notice;* (3) comply with all provisions outlined in the Public Notice and applicable Commission rules.

**II. Short-Form Application (FCC Form 175) Requirements**

*A. General Information Regarding Short-Form Applications*

69. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase of this process, parties desiring to participate in the auction must file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on the applicants' short-form applications and certifications as well as their upfront payments. In the second phase of the process, winning bidders must file a more comprehensive long-form application (FCC Form 601) and have a complete and accurate ownership disclosure information report (FCC Form 602) on file with the Commission.

70. Entities seeking licenses available in Auction 78 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on June 19, 2008, following the procedures prescribed in Attachment C of the *Auction 78 Procedures Public Notice.* Applicants filing a short-form application are subject to the Commission's anti-collusion rules beginning on the deadline for filing. The information provided in its short-form application will be used in determining, among other things, if the applicant is eligible for entrepreneur status and/or for a bidding credit.

71. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically,

financially and otherwise qualified to hold a license. Applicants should read the instructions set forth in Attachment C of the *Auction 78 Procedures Public Notice* carefully and should consult the Commission's rules to ensure that, in addition to the materials described herein, all the information that is required under the Commission's rules is included with their short-form applications.

72. An entity may not submit more than one short-form application for a single auction. If a party submits multiple short-form applications, only one application may become qualified to bid.

73. Applicants also should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. An applicant cannot change the certifying official to its application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

*B. License Selection*

74. An applicant must select the licenses on which it wants to bid from the Eligible Licenses list on its short-form application. To assist applicants in identifying licenses of interest that will be available in Auction 78, the FCC Auction System includes a filtering mechanism that allows an applicant to filter the Eligible Licenses list. The applicant will make selections for one or more of the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may select all the licenses in the customized list or select individual licenses from the list. Applicants also will be able to select licenses from one customized list and then create additional customized lists to select additional licenses.

75. Applicants will not be able to change their license selections after the short-form application filing deadline. Applicants interested in participating in Auction 78 must have selected license(s) available in the respective auction by the short-form application deadline. Applicants must confirm their license selections before the deadline for submitting short-form applications. The FCC Auction System will not accept bids from an applicant on licenses that the applicant has not selected on its short-form application.

*C. Disclosure of Bidding Arrangements*

76. Applicants will be required to identify in their short-form application all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements relating to post-auction market structure.

77. Applicants also will be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it would not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.

78. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants, provided that: (1) The attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (2) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction-related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Further compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.

*D. Ownership Disclosure Requirements*

79. All applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by 47 CFR 1.2105 and 1.2112. Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the applicant. The ownership disclosure standards for the short-form application are prescribed in 47 CFR 1.2105 and 1.2112. Each applicant is responsible for information submitted in its short-form application being complete and accurate.

80. An applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted with an ownership disclosure information report (FCC Form 602) or in a short-form application (FCC Form 175) filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. An applicant is responsible for ensuring that the information submitted in its short-form application for Auction 78 is complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the Auction 78 deadline for filing the short-form application. If any information that was entered automatically needs to be changed, applicants must do so directly in the short-form application.

*E. Designated Entity Provisions*

81. Eligible applicants in Auction 78 may claim designated entity status, as an entrepreneur eligible to bid on closed C block broadband licenses and/or as a small or very small business eligible for bidding credits. Applicants should review carefully the Commission's recent decisions regarding the designated entity provisions.

i. Entrepreneur Eligibility for Closed Bidding

82. Nine broadband PCS C block licenses available in Auction 78 (i.e., certain C1, C3, and C4 block licenses) are restricted to entities that qualify as entrepreneurs.

a. Entrepreneur Eligibility Criteria

83. In determining if an entity qualifies as an entrepreneur, the Commission considers both the total assets and gross revenues of the applicant, its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship. Specifically, as of the short-form application filing deadline, the applicant and its attributable interests must have combined total assets of less than $500 million and must have had combined gross revenues of less than

$125 million in each of the last two years.

b. Asset and Revenue Disclosure on Short-Form Application

84. An entity applying to bid on closed licenses must disclose on its short-form application the total assets and gross revenues for the preceding two years for each of the following: (1) The applicant; (2) its affiliates; (3) its controlling interests; (4) the affiliates of its controlling interests; and (5) the entities with which it has an attributable material relationship. Certification that the gross revenues for each of the preceding two years or the total assets do not exceed the applicable limit is not sufficient.

85. Applicants for closed bidding in Auction 78 should not include existing broadband PCS C and F block licenses in their calculations of total assets; all other Commission licenses, however, must be included in such calculations. Additionally, if an applicant is applying as a consortium of small businesses or very small businesses, this information must be provided for each consortium member.

ii. Bidding Credits for Small and Very Small Businesses

86. A bidding credit represents the amount by which a bidder's winning bid will be discounted. For Auction 78, bidding credits will be available to small businesses and very small businesses, and consortia thereof, for all 35 AWS–1 licenses and six broadband PCS licenses—the three C block licenses available in open bidding and the three F block licenses.

a. Bidding Credit Eligibility Criteria

87. The level of bidding credit is determined as follows: (1) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; and (2) a bidder with attributed average annual gross revenues that do not exceed $15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid.

88. Bidding credits are not cumulative; a qualifying applicant receives either the 15 percent or 25 percent bidding credit on its winning bid, but not both.

89. Bidding credits for applicants that qualify as small or very small businesses will be available for those C block licenses that are available in open bidding and for all F block licenses. Bidding credits are not available for C block licenses subject to closed bidding or for broadband PCS licenses in the D or E blocks.

b. Revenue Disclosure on Short-Form Application

90. An entity applying as a small or very small business must provide gross revenues for the preceding three years for each of the following: (1) The applicant; (2) its affiliates; (3) its controlling interests; (4) the affiliates of its controlling interests; and (5) the entities with which it has an attributable material relationship. Certification that the average annual gross revenues of such entities and individuals for the preceding three years do not exceed the applicable limit is not sufficient. Additionally, if an applicant is applying as a consortium of small businesses or very small businesses, this information must be provided for each consortium member.

iii. Attributable Interests

a. Controlling Interests

91. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, ownership of greater than 50 percent of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis. The following are some common indicia of de facto control: (1) The entity constitutes or appoints more than 50 percent of the board of directors or management committee; (2) the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and (3) the entity plays an integral role in management decisions.

92. Applicants should refer to 47 CFR 1.2110(c)(2) of the Commission's rules and Attachment C of the *Auction 78 Procedures Public Notice* to understand how certain interests are calculated in determining control. For example, pursuant to 47 CFR 1.2110(c)(2)(ii)(F), officers and directors of an applicant are considered to have controlling interest in the applicant.

b. Affiliates

93. Affiliates of an applicant or controlling interest include an individual or entity that: (1) directly or indirectly controls or has the power to control the applicant; (2) is directly or indirectly controlled by the applicant; (3) is directly or indirectly controlled by a third party that also controls or has the power to control the applicant; or (4) has an identity of interest with the applicant. The Commission's definition of an affiliate of the applicant encompasses both controlling interests of the applicant and affiliates of controlling interests of the applicant. For more information regarding affiliates, applicants should refer to 47 CFR 1.2110(c)(5) and Attachment C of the *Auction 78 Procedures Public Notice.*

c. Material Relationships

94. The Commission requires the consideration of certain leasing and resale (including wholesale) relationships—referred to as material relationships—in determining designated entity eligibility, i.e., for bidding credits and entrepreneur status. Material relationships fall into two categories: impermissible and attributable.

95. An applicant or licensee has an impermissible material relationship when it has agreements with one or more other entities for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 50 percent of the spectrum capacity of any of its licenses. If an applicant or a licensee has an impermissible material relationship, it is, as a result, (1) ineligible for the award of designated entity benefits, and (2) subject to unjust enrichment on a license-by-license basis.

96. An applicant or licensee has an attributable material relationship when it has one or more agreements with any individual entity for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 25 percent of the spectrum capacity of any individual license held by the applicant or licensee. The attributable material relationship will cause the gross revenues and, if applicable, total assets of that entity and its attributable interest holders to be attributed to the applicant or licensee for the purposes of determining the applicant's or licensee's (1) eligibility for designated entity benefits and (2) liability for unjust enrichment on a license-by-license basis.

97. The Commission grandfathered material relationships in existence before the release of the *Designated Entity Second Report and Order*, 71 FR 26245, May 5, 2006, meaning that those preexisting relationships alone would not cause the Commission to examine a designated entity's ongoing eligibility for benefits or its liability for unjust enrichment. The Commission did not, however, grandfather preexisting material relationships for determinations of an applicant's or licensee's designated entity eligibility for future auctions or in the context of future assignments, transfers of control,

spectrum leases, or other reportable eligibility events. Rather, the occurrence of any of those eligibility events after the release date of the Designated *Entity Second Report and Order* triggers a reexamination of the applicant's or licensee's designated entity eligibility, taking into account all existing material relationships, including those previously grandfathered.

d. Gross Revenue Exceptions

98. In recent years the Commission has also made other modifications to its rules governing the attribution of gross revenues for purposes of determining designated entity eligibility. For example, the Commission has clarified that, in calculating an applicant's gross revenues under the controlling interest standard, it will not attribute the personal net worth, including personal income, of its officers and directors to the applicant.

99. The Commission has also exempted, from attribution to the applicant, the gross revenues of the affiliates of a rural telephone cooperative's officers and directors if certain conditions specified in 47 CFR 1.2110(b)(3)(iii) of the Commission's rules are met. An applicant claiming this exemption must provide in an attachment an affirmative statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of 47 CFR 1.2110(b)(3)(iii) and supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule. Applicants seeking to claim this exemption must meet all of the conditions. Additional guidance on claiming this exemption may be found in Attachment C of the *Auction 78 Procedures Public Notice.*

e. Bidding Consortia

100. A consortium of small businesses, very small businesses, or entrepreneurs is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business, very small business, or entrepreneur. Thus, each member of a consortium of small businesses, very small businesses, or entrepreneurs that applies to participate in Auction 78 must individually meet the criteria for small businesses, very small businesses, or entrepreneurs. Each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, the affiliates of its controlling interests, and any entities having an attributable material relationship with the member. Although the gross revenues of the consortium members will not be aggregated for purposes of determining the consortium's eligibility as a small business or very small business, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

*F. Tribal Lands Bidding Credit*

101. To encourage the growth of wireless services in federally recognized tribal lands, the Commission has implemented a tribal lands bidding credit. Applicants do not provide information regarding tribal lands bidding credits on their short-form applications. Instead, winning bidders may apply for the tribal lands bidding credit after the auction when they file their more detailed, long-form applications.

*G. Provisions Regarding Former and Current Defaulters*

102. Current defaulters are not eligible to participate in Auction 78, but former defaulters can participate so long as they are otherwise qualified and make upfront payments that are fifty percent more than the normal upfront payment amounts. An applicant is considered a current defaulter when it, its affiliates, its controlling interests, or the affiliates of its controlling interests, are in default on any payment for any Commission licenses (including down payments) or are delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications. An applicant is considered a former defaulter when it, its affiliates, its controlling interests, or the affiliates of its controlling interests, have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but have since remedied all such defaults and cured all of the outstanding non-tax delinquencies.

103. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110 of the Commission's rules, are not in default on any payment for Commission licenses (including down payments) and that they are not delinquent on any non-tax debt owed to any Federal agency. Each applicant must also state under penalty of perjury whether or not it, its affiliates, its controlling interests, and the affiliates of its controlling interests, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution. These statements and certifications are prerequisites to submitting an application to participate in an FCC auction.

104. Applicants are encouraged to review the Bureau's previous guidance on default and delinquency disclosure requirements in the context of the short-form application process. For example, it has been determined that to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of 47 CFR 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline. Parties are also encouraged to coordinate with the Commission's Office of Managing Director or the Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

105. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the red light rule, that implement the Commission's obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States. Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission's competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

106. Applicants are reminded, however, that the Commission's Red

Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's red light status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

*H. Optional Applicant Status Identification*

107. Applicants owned by members of minority groups and/or women, as defined in 47 CFR 1.2110(c)(3), and rural telephone companies, as defined in 1.2110(c)(4), may identify themselves in filling out their short-form applications regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of designated entities in its auctions.

*I. Minor Modifications to Short-Form Applications*

108. Applicants are not permitted to make major modifications to their short-form applications (e.g., change their license selections, change control of the applicant, change the certifying official, or change their size to claim eligibility for a higher bidding credit) after the short-form application deadline. Thus, any change in control of an applicant, resulting from a merger for example, will be considered a major modification to the applicant's short-form application, which will consequently be dismissed.

109. Applicants are, however, permitted to make only minor changes to their short-form applications after the filing deadline. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons.

110. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its short-form application using the FCC Auction System whenever possible.

111. An applicant cannot update its short-form application using the FCC Auction System outside of the initial and resubmission filing windows. In that case, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form applications in ISAS as soon as possible. Moreover, after the filing window has closed, ISAS will not permit applicants to make certain changes, such as legal classification and bidding credit.

112. Any letter describing changes to an applicant's short-form application should be submitted by e-mail to the following address: *auction78@fcc.gov.*

113. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System (ECFS). Parties submitting information related to their applications should use caution to ensure that information contained in their submissions does not contain confidential information or communicate information that would violate the Commission's anti-collusion rule or limited information procedures adopted for Auction 78. A party seeking to submit information that might reflect non-public information, such as an applicant's license selections, upfront payment amount or bidding eligibility, should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the anti-collusion period.

*J. Maintaining Current Information in Short-Form Applications*

114. 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Changes that cause a loss of or reduction in eligibility for a bidding credit must be reported immediately. If an amendment reporting substantial changes is a major amendment, as defined by 47 CFR 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.

115. After the short-form filing deadline, applicants may make only minor changes to their short-form applications. In addition, applicants must submit a letter, briefly summarizing the changes, by e-mail at the following address: *auction78@fcc.gov.* The e-mail summarizing the changes must include a subject or caption referring to Auction 78 and the name of the applicant.

**III. Pre-Auction Procedures**

*A. Auction Seminar—June 10, 2008*

116. On Tuesday, June 10, 2008, the Commission will conduct a seminar for parties interested in participating in Auction 78 at FCC headquarters, located at 445 12th Street, SW., Washington, DC. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff concerning the auction, auction procedures, filing requirements, and other matters related to this auction. To register, please provide the information listed on Attachment G of the *Auction 78 Procedures Public Notice* by fax, e-mail or telephone to the FCC by Friday, June 6, 2008.

*B. Short-Form Applications—Due Prior to 6:00 p.m. ET on June 19, 2008*

117. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment C of the *Auction 78 Procedures Public Notice* to submit a short-form application (FCC Form 175) electronically via the FCC Auction System. This application must be received at the Commission prior to 6:00 p.m. ET on June 19, 2008. Late applications will not be accepted. There is no application fee required when filing a FCC Form 175, but an applicant must submit an upfront payment to be eligible to bid.

118. Applications may generally be filed at any time beginning at noon ET on June 10, 2008, until the filing window closes at 6:00 p.m. ET on June 19, 2008. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their applications multiple times until the filing deadline on June 19, 2008.

119. An applicant must always click on the SUBMIT button on the Certify & Submit screen to successfully submit its short-form application and any modifications, otherwise the application or changes to the application will not be reviewed. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachment C of the *Auction 78 Procedures Public Notice.* FCC Auctions Technical Support is available at (877) 480–3201, option nine; (202) 414–1250; or (202) 414–1255 (text telephone (TTY)).

*C. Application Processing and Minor Corrections*

120. After the deadline for filing short-form applications, the Commission will process all timely submitted applications to determine which are complete, and subsequently will issue a public notice identifying: (1) Those applications that are complete; (2) those applications rejected; and (3) those applications that are incomplete because of minor defects that may be

corrected. The public notice will include the deadline for resubmitting corrected applications.

121. After the June 19, 2008, short-form filing deadline, applicants may make only minor corrections to their applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections, change control of the applicant, change certifying official, or change their size to claim eligibility for a higher bidding credit).

122. Applicants should be aware the Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be submitted by e-mail at the following address: *auction78@fcc.gov.*

*D. Upfront Payments—Due July 17, 2008*

123. In order to be eligible to bid in this auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159 that can be printed and sent by fax to Mellon Bank in Pittsburgh, PA. All upfront payments must be received in the proper account at Mellon Bank by 6 p.m. ET on July 17, 2008.

i. Making Upfront Payments by Wire Transfer

124. Wire transfer payments must be received by 6:00 p.m. ET on July 17, 2008. No other payment method is acceptable. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

125. An applicant must fax a completed FCC Form 159 (Revised 7/05) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the fax cover sheet, applicants should write Wire Transfer—Auction Payment for Auction 78. In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account before the deadline. The applicant is responsible for obtaining confirmation from its financial institution that Mellon Bank has timely received its upfront payment and deposited it in the proper account.

126. Please note that: (1) All payments must be made in U.S. dollars; (2) all payments must be made by wire transfer; (3) upfront payments for Auction 78 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments; and (4) failure to deliver the upfront payment as instructed by the July 17, 2008 deadline will result in dismissal of the application and disqualification from participation in the auction.

ii. FCC Form 159

127. A completed FCC Remittance Advice Form (FCC Form 159, Revised 7/05) must be faxed to Mellon Bank to accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment D of the *Auction 78 Procedures Public Notice.* An electronic pre-filled version of the FCC Form 159 is available after submitting the short-form application. Payors using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank by fax.

iii. Upfront Payments and Bidding Eligibility

128. The Commission has delegated to the Bureau the authority and discretion to determine appropriate upfront payments for each auction. Upfront payments help deter frivolous or insincere bidding, and provide the Commission with a source of funds in the event that the bidder incurs liability during the auction.

129. Applicants that are former defaulters must pay upfront payments 50 percent greater than non-former defaulters. For purposes of this calculation, the applicant includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by 47 CFR 1.2110.

130. Applicants must make upfront payments sufficient to obtain bidding eligibility on the licenses on which they will bid. The Bureau proposed, in the *Auction 78 Comment Public Notice,* that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. Under the Bureau's proposal, in order to bid on a particular license, a qualified bidder must have selected the license(s) on its short-form application and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses selected on its short-form application, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses the applicant selected on its short-form application, but only enough to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold provisionally winning bids at any given time.

131. In the *Auction 78 Comment Public Notice,* the Bureau proposed to calculate upfront payments for Auction 78 on a license-by-license basis using the following formulas based on bandwidth and license area population, with a minimum of $500 per license. The Bureau also proposed to use upfront payment formulas similar to those used in the most recent auctions for AWS–1 licenses (Auction 66) and broadband PCS licenses (Auction 71).

a. AWS–1

132. For AWS–1 licenses offered in Auction 78, the Bureau proposed upfront payments as follows: (1) for licenses covering CMAs or EAs in the 50 states, upfront payment amounts will be calculated as $0.03 per MHz per population (MHz-pop); (2) for the REAG that covers the Gulf of Mexico, the upfront payment amount will be $20,000; and (3) for all remaining licenses, upfront payment amounts will be calculated as $0.01/MHz-pop.

b. Broadband PCS

133. For broadband PCS licenses offered in Auction 78, the Bureau proposed upfront payments as follows: (1) for licenses covering BTAs in the 50 states, upfront payment amounts will be calculated as $0.03/MHz-pop; and (2) for all remaining licenses, upfront payment amounts will be calculated as $0.01/MHz-pop.

134. The Bureau set forth the specific proposed upfront payments and bidding units for each license in Attachment A of the *Auction 78 Comment Public Notice* and sought comment on this proposal. The Bureau did not receive any comments in response to the proposed upfront payments, or on its proposal that the upfront payment

amount would determine a bidder's initial bidding eligibility. Therefore, the Bureau adopts the upfront payments and bidding units it proposed for each license in Auction 78, which are set forth in Attachment A of the *Auction 78 Procedures Public Notice.*

135. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

136. If an applicant is a former defaulter, it must calculate its upfront payment for all licenses by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

137. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information listed in the Auction 78 *Procedures Public Notice* be supplied. Applicants can provide the information electronically during the initial short-form application filing window after the form has been submitted.

*E. Auction Registration*

138. Approximately ten days before the auction, the Bureau will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted short-form applications that are deemed complete and upfront payments that are sufficient to make them eligible to bid.

139. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the short-form application and will include the SecurID(r) tokens that will be required to place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number.

140. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Thursday, August 7, 2008, should call (717) 338–2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

*F. Remote Electronic Bidding*

141. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference—electronic or telephonic—on its short-form application. In either case, each authorized bidder must have its own SecurID(r) token, which the Commission will provide at no charge.

*G. Mock Auction—August 11, 2008*

142. All qualified bidders will be eligible to participate in a mock auction on Monday, August 11, 2008. The mock auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

## IV. Auction Event

143. The first round of bidding for Auction 78 will begin on Wednesday, August 13, 2008. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is to be released approximately 10 days before the start of the auction.

*A. Auction Structure*

i. Simultaneous Multiple Round Auction

144. In the *Auction 78 Comment Public Notice*, the Bureau proposed to auction all licenses in Auction 78 in a single auction using the Commission's standard simultaneous multiple-round (SMR) auction format. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. A bidder may bid on, and potentially win, any number of licenses. Typically, bidding remains open on all licenses until bidding stops on every license.

145. The Bureau also sought comment on using some form of package bidding design for Auction 78. A commenter supported the Bureau's recommendation to not employ package bidding for this auction, arguing that the Auction 78 licenses have no readily identifiable inter-relationships or inter-dependencies with each other. The Bureau agrees and continues to believe that a package bidding design is not likely to offer significant advantages to bidders in Auction 78. Given the nature of the auction inventory, the Bureau concludes that the standard SMR auction format will best meet the needs of bidders in Auction 78. Therefore, the Bureau adopts its proposal to use a SMR auction format without package bidding. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction until bidding stops on every license, allowing bidders to take advantage of synergies that exist among licenses.

ii. Information Available to Bidders Before and During the Auction

146. In the *Auction 78 Comment Public Notice*, the Bureau proposed to withhold, until after the close of bidding, public release of (1) bidders' license selections on their short-form applications, (2) the amounts of bidders' upfront payments and bidding eligibility, and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions. The Bureau proposed to withhold this information irrespective of any pre-auction measurement of likely auction competition.

147. Commenters urge the Commission to not adopt anonymous bidding for Auction 78. The commenters assert that anonymous bidding deprives small to mid-size bidders of valuable information, which in turn reduces the level of participation in the auction and ultimately depresses revenues. A commenter argues that knowing who is bidding during an auction helps bidders determine the value of the licenses, assess whether or not equipment for build-out will be available, and estimate the potential for negotiating roaming agreements—all of which can help small to mid-size bidders acquire favorable financing. A commenter also adds that disclosure of bids and bidders during an auction can help bidders estimate possible signal interference.

148. The Bureau disagrees with the commenters that the results of Auction 73 demonstrate the harms of withholding bidding information were significant to the point where the balance has shifted in favor of

disclosing bidder information in Auction 78. While the Commission has previously acknowledged that revealing bidder identities may provide useful information to some bidders, there is no evidence apart from the commenter's statement that any class of bidders in Auction 73 suffered a competitive disadvantage due to the use of limited information procedures. The Bureau believes that the overall competitive benefits of limited information procedures in Auction 73—from reduced opportunities for bid signaling, retaliatory bidding, or other anti-competitive strategic bidding—far outweigh the disadvantages.

149. The Bureau also notes that the commenter's allegations regarding Auction 73 would not necessarily apply to Auction 78, given the differences between the two auctions. The licenses being offered in Auction 78 are very different from those offered in Auction 73 in terms of the numbers of licenses, amount of spectrum, adjacencies, and the nature of the services. Auction 78 is offering licenses in discrete locations for which adjacent neighbors are already known. In many cases, information on the technologies and services in adjacent license areas may also be available. The Bureau concludes that the pro-competitive benefits of using limited information procedures far outweigh the potential value of revealing bidder identities during this auction of PCS and AWS licenses.

150. More generally, while well-prepared FCC auction participants likely will utilize all information available to them when calculating license values, including, in some cases, information revealed during the auction, the Bureau does not believe that knowing bidder identities and other bidder-related information during the auction process is an essential prerequisite to confident bidding and successful auction participation. The Bureau notes in the *Auction 78 Procedures Public Notice*, and other auction public notices, that the Bureau expects bidders to conduct careful pre-auction due diligence before bidding on a license. There is an increasing amount of external market data available on spectrum license values, as more and more licenses have been auctioned and others traded in secondary transactions, which should help auction participants and their financial backers determine their willingness to pay for licenses.

Hence, the Bureau is not persuaded that disclosure of bidder identity information during the auction is necessary to facilitate bidder license evaluation in Auction 78.

151. Therefore, the Bureau adopts the limited information procedures proposed in the *Auction 78 Comment Public Notice*. Thus, after the conclusion of each round, the Bureau will disclose all relevant information about the bids placed and/or withdrawn except the identities of the bidders performing the actions and the net amounts of the bids placed or withdrawn. As in past auctions conducted with limited information procedures, the Bureau will indicate, for each license, the minimum acceptable bid amount for the next round and whether the license has a provisionally winning bid. After each round, the Bureau will also release, for each license, the number of bidders that placed a bid on the license. Furthermore, the Bureau will indicate whether any proactive waivers were submitted in each round, and will release the stage transition percentage—the percentages of licenses (as measured in bidding units) on which there were new bids—for the round. In addition, bidders can log in to the FCC Auction System to see, after each round, whether their own bids are provisionally winning. The Bureau will provide descriptions and/or samples of publicly-available and bidder-specific (non-public) results files prior to the start of the auction.

152. *Other Issues*. Information disclosure procedures established for this auction will not interfere with the administration of or compliance with the Commission's anti-collusion rule. 47 CFR 1.2105(c)(1) provides that after the short-form application filing deadline, all applicants for licenses in any of the same or overlapping geographic license areas are prohibited from disclosing to each other in any manner the substance of bids or bidding strategies until after the down payment deadline, subject to specified exceptions.

153. In Auction 78, the Commission will not disclose information regarding license selection or the amounts of bidders' upfront payments and bidding eligibility. As in the past, the Commission will disclose the other portions of applicants' short-form applications through its online database, and certain application-based information through public notices.

154. To assist applicants in identifying other parties subject to the anti-collusion rule, the Bureau will notify separately each applicant that has filed a short-form application to participate in a pending auction whether applicants in Auction 78 have applied for licenses in any of the same or overlapping geographic areas as the applicant. Specifically, after the Bureau conducts its initial review of applications to participate in Auction 78, it will send to each applicant in Auction 78 a letter that lists the other applicants that have pending short-form applications for licenses in any of the same or overlapping geographic areas. The list will identify the other applicants by name but will not list their license selections. As in past auctions, additional information regarding other applicants that is needed to comply with 47 CFR 1.2105(c)—such as the identities of other applicants' controlling interests and entities with a greater than ten percent ownership interest—will be available through the publicly accessible online short-form application database.

155. When completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's anti-collusion rule, particularly in light of the Commission's procedures regarding the availability of certain information in Auction 78. While applicants' license selection will not be disclosed until after Auction 78 closes, the Commission will disclose other portions of short-form applications through its online database and public notices. Accordingly, applicants should avoid including any information in their short-form applications that might convey information regarding license selections. For example, applicants should avoid using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

156. If an applicant is found to have violated the Commission's rules or antitrust laws in connection with its participation in the competitive bidding process, the applicant may be subject to various sanctions, including forfeiture of its upfront payment, down payment, or full bid amount and prohibition from participating in future auctions. A commenter advocates a safe-harbor for auction-related statements made by bidders in filings with the U.S. Securities and Exchange Commission (SEC). The commenter suggests that creating this safe harbor would avoid a potential conflict between a bidder's attempt to comply with the Commission's anonymous bidding procedures and SEC disclosure regulations.

157. The Bureau declines to create blanket immunity for statements filed with the SEC because that would violate the intent of the limited information

procedures that the Bureau adopted for Auction 78. The commenter has not persuaded us that the Commission's anonymous bidding procedures are irreconcilable with SEC reporting requirements. The Bureau continues to believe that premature disclosure of the identities of successful bidders in Auction 78, whether to financial institutions, vendors, or others, would undermine the purposes of the Bureau's limited information procedures. Therefore, the Bureau declines to create an exception to its limited information procedures. The Bureau hereby warns applicants that the direct or indirect communication to other applicants or the public disclosure of non-public information, (*e.g.*, bid withdrawals, proactive waivers submitted, reductions in eligibility) could violate the Commission's anonymous bidding procedures and the anti-collusion rule. To the extent an applicant believes that such a disclosure is required by law or regulation, including regulations issued by the Securities and Exchange Commission, the Bureau strongly urges that the applicant consult with the Commission before making such disclosure.

iii. Eligibility and Activity Rules

158. The Bureau will use upfront payments to determine initial eligibility for Auction 78. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Each license is assigned a specific number of bidding units listed in Attachment A of the *Auction 78 Procedures Public Notice.* Bidding units for a given license do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any of the licenses selected on its short-form application as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the licenses it selected on its short-form application. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

159. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific minimum percentage of their current bidding eligibility during each round of the auction.

160. A bidder's activity level in a round is the sum of the bidding units associated with any licenses covered by new and provisionally winning bids. A bidder is considered active on a license in the current round if it is either the provisionally winning bidder at the end of the previous bidding round and does not withdraw the provisionally winning bid in the current round, or if it submits a bid in the current round.

161. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions, the Commission adopts them for Auction 78. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

iv. Auction Stages

162. In the *Auction 78 Comment Public Notice*, the Bureau proposed to conduct the auction in two stages and employ an activity rule. Under the Bureau's proposal a bidder desiring to maintain its current bidding eligibility would be required to be active on licenses representing at least 80 percent of its current bidding eligibility, during each round of Stage One, and at least 95 percent of its current bidding eligibility in Stage Two. The Commission received no comments on this proposal.

163. The Bureau has the discretion to further alter the activity requirements before and/or during the auction as circumstances warrant, and also has other mechanisms by which it may influence the speed of an auction. The Bureau finds that two stages for an activity requirement adequately balances the desire to conclude the auction quickly with giving sufficient time for bidders to consider the status of the bidding and to place bids. Therefore, the Bureau adopts the two stages.

164. Stage One: During the first stage of the auction, a bidder desiring to maintain its current bidding eligibility will be required to be active on licenses representing at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by five-fourths (5/4).

165. Stage Two: During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths (20/19).

CAUTION: Since activity requirements increase in Stage Two, bidders must carefully check their activity during the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by logging into the FCC Auction System. [GPO end indent]

166. Because the foregoing procedures have proven successful in maintaining the proper pace in previous auctions, the Bureau adopts them for Auction 78.

v. Stage Transitions

167. In the *Auction 78 Comment Public Notice,* the Bureau proposed that it would advance the auction to the next stage (i.e., from Stage One to Stage Two) after considering a variety of measures of auction activity, including, but not limited to, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new

bids, and the increase in revenue. The Bureau further proposed that it would retain the discretion to change the activity requirements during the auction. For example, the Bureau could decide not to transition to Stage Two if it believes the auction is progressing satisfactorily under the Stage One activity requirement, or to transition to Stage Two with an activity requirement that is higher or lower than the 95 percent. The Bureau proposed to alert bidders of stage advancements by announcement during the auction. The Bureau received no comments on this issue.

168. The Bureau adopts its proposal for stage transitions. Thus, the auction will start in Stage One. The Bureau will regulate the pace of the auction by announcement. The Bureau retains the discretion to transition the auction to Stage Two, to add an additional stage with a higher activity requirement, not to transition to Stage Two, and to transition to Stage Two with an activity requirement that is higher or lower than 95 percent. This determination will be based on a variety of measures of auction activity, including, but not limited to, the number of new bids and the percentages of licenses (as measured in bidding units) on which there are new bids.

vi. Activity Rule Waivers

169. In the *Auction 78 Comment Public Notice,* the Bureau proposed that each bidder in the auction be provided with three activity rule waivers.

170. The Bureau adopts its proposal to provide bidders with three activity rule waivers.

vii. Auction Stopping Rules

171. For Auction 78, the Bureau proposed to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses. More specifically, bidding will close simultaneously on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids.

172. The Bureau also sought comment on alternative versions of the simultaneous stopping rule for Auction 78:

Option 1. The auction would close for all licenses after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid, or places any new bids on any license on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

Option 2. The auction would end after a specified number of additional rounds. If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) and the auction will close.

Option 3. The auction would remain open even if no bidder places any new bids, applies a waiver, or withdraws any provisionally winning bids. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

173. The Bureau proposed to exercise these options only in circumstances such as where the auction is proceeding unusually slowly or quickly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time or will close prematurely. The Bureau noted that before exercising these options, it is likely to attempt to change the pace of the auction by, for example, changing the number of bidding rounds per day and/or changing minimum acceptable bids.

viii. Auction Delay, Suspension, or Cancellation

174. In the *Auction 78 Comment Public Notice,* the Bureau proposed that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureau received no comment on this issue. The Bureau adopts its proposed rules regarding auction delay, suspension, or cancellation.

*B. Bidding Procedures*

i. Round Structure

175. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

176. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

ii. Reserve Price and Minimum Opening Bids

177. Section 309(j) of the Communications Act of 1934, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for FCC licenses are subject to auction (i.e., because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.

a. Reserve Prices

178. In the *Auction 78 Comment Public Notice,* the Bureau recommended that no reserve price be imposed in Auction 78, noting that when the PCS licenses were offered initially there was no reserve price and that the reserve price for AWS licenses was met in Auction 66. The Bureau adopts its proposal not to establish a reserve price in Auction 78.

b. Minimum Opening Bids

179. The Bureau proposed in the *Auction 78 Comment Public Notice* to establish minimum opening bids for each license, while retaining discretion to lower the minimum opening bids. Specifically, for Auction 78, the Bureau proposed to calculate minimum opening bids on a license-by-license basis.

(i) AWS–1

180. For AWS–1 licenses offered in Auction 78, the Bureau proposed minimum opening bids as follows: (1) For licenses covering CMAs or EAs in the 50 states, minimum opening bid amounts will be calculated as $0.03/MHz-pop; (2) for the REAG that covers the Gulf of Mexico, the minimum opening bid amount will be $20,000; and (3) for all remaining licenses, minimum opening bid amounts will be calculated as $0.01/MHz-pop.

(ii) Broadband PCS

181. For broadband PCS licenses offered in Auction 78, the Bureau

proposed minimum opening bids as follows: (1) For licenses covering BTAs in the 50 states, minimum opening bid amounts will be calculated as $0.03/MHz-pop; and (2) for all remaining licenses, minimum opening bid amounts will be calculated as $0.01/MHz-pop.

182. For all licenses, the results of these calculations are subject to a minimum of $500 per license and are rounded using the Bureau's standard rounding procedure. The Bureau sought comment on this proposal and, in the alternative, on whether, consistent with Section 309(j), the public interest would be served by having no minimum opening bids.

183. The Commission did not receive any comments addressing the proposed minimum opening bid amounts or the formula proposed to calculate them. Accordingly, the Bureau adopts the proposed minimum opening bids and formulas, with a minimum of $500 per license.

184. The Commission did not receive any comments addressing the proposal that the Bureau retains the discretion to reduce minimum opening bid amounts. The Bureau therefore adopts this proposal, noting that the Bureau retains the discretion to reduce the minimum opening bid amounts. The Bureau emphasizes, however, that such discretion will be exercised, if at all, sparingly and early in the auction, i.e., before bidders lose all activity waivers. During the course of the auction, the Bureau will not entertain requests to reduce the minimum opening bid amount on specific licenses.

185. The specific minimum opening bid amounts for each license available in Auction 78 calculated pursuant to the procedure described herein are set forth in Attachment A of the *Auction 78 Procedures Public Notice.*

iii. Bid Amounts

186. In the *Auction 78 Comment Public Notice,* the Bureau proposed that in each round, eligible bidders be able to place a bid on a given license using one or more pre-defined bid amounts. Under the proposal, the FCC Auction System interface will list the acceptable bid amounts for each license. The Commission received no comment on this issue. Based on the Commission's experience in prior auctions, the Bureau adopts the proposals for Auction 78.

a. Minimum Acceptable Bids

187. Under the Bureau's proposed procedures, the first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid on the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus a percentage of that bid amount calculated using the formula. In general, the percentage will be higher for a license receiving many bids than for a license receiving few bids. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.

188. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount (the additional percentage) is calculated at the end of each round, based on an activity index. The activity index is a weighted average of (a) the number of distinct bidders placing a bid on the license, and (b) the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bidders placing a bid on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The additional percentage is determined by adding one to the activity index, and multiplying that sum by a minimum percentage, with the result not to exceed a maximum percentage. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round.

189. The Bureau proposed initially to set the weighting factor at 0.5, the minimum percentage (floor) at 0.1 (10%), and the maximum percentage (ceiling) at 0.2 (20%). At these initial settings, the minimum acceptable bid for a license will generally be between ten percent and twenty percent higher than the provisionally winning bid, depending upon the bidding activity for the license. Equations and examples are shown in Attachment E of the *Auction 78 Procedures Public Notice.*

b. Additional Bid Amounts

190. Any additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage—more specifically, by multiplying the minimum acceptable bid by one plus successively higher multiples of the bid increment percentage. If, for example, the bid increment percentage is five percent, the calculation of the first additional acceptable bid amount is (minimum acceptable bid amount) * (1 + 0.05), or (minimum acceptable bid amount) * 1.05; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, or (minimum acceptable bid amount) * 1.1, etc. The Bureau will round the results of these calculations and the minimum acceptable bid calculations using the Bureau's standard rounding procedures.

191. For Auction 78, the Bureau proposed to set the bid increment percentage at 0.05, so that any additional bid amounts above the minimum acceptable bid would each be 5 percent higher. The Bureau received no comments on this proposal and therefore adopts its proposal to begin the auction with a bid increment percentage of 0.05.

192. The Bureau sought comment on whether it should start Auction 78 with no additional bid amounts or eight additional bid amounts (for a total of nine bid amounts) per license. A commenter recommends starting with eight additional bid amounts, arguing that this would allow bidders to bid closer to their valuation of the spectrum, which, in turn, increases the chance that the licenses will be awarded to those who value them the most.

193. Auction 78 will begin with eight additional bid amounts per license. The Bureau is not persuaded that these additional bid amounts are necessary to provide bidders with adequate ability to express their valuations. The Bureau's experience with past auctions conducted without anonymous bidding procedures indicates that bidders rarely use multiple increment bids as the commenters suggest—to express their final valuations more precisely—but more frequently use jump bids as a means of signaling other bidders. However, given the limited nature of the inventory of licenses offered in Auction 78 and the use of anonymous bidding, the Bureau is not particularly concerned that the additional bid amounts will effectively be used for signaling in this auction.

c. Cap on Increases in Bid Amounts

194. The Bureau also sought comment on whether it should cap (a) the amount by which a minimum acceptable bid for a license may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. No commenters addressed this question.

195. The Bureau will start the auction with a cap of $1 million. This will limit

the amount by which minimum acceptable bids and additional bid amounts may increase. Given the inventory of Auction 78, the Bureau believes that this cap may be useful in preventing very rapid price increases on some licenses, which could potentially discourage bidder participation, inhibit price discovery, and create bid approval issues for bidders.

196. The Bureau retains the discretion to change the minimum acceptable bid amounts, the additional bid amounts, the cap on bid amounts, the number of acceptable bid amounts, and the parameters of the formulas used to calculate minimum acceptable bid amounts and additional bid amounts if it determines that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license basis.

iv. Provisionally Winning Bids

197. At the end of each bidding round, a provisionally winning bid will be determined based on the highest bid amount received for each license. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same license at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

198. In the *Auction 78 Comment Public Notice,* the Bureau proposed to use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a license in a given round (*i.e.*, tied bids). No comments were received on this proposal.

199. Hence, the Bureau adopts the proposal. The FCC Auction System will assign a random number to each bid upon submission. The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. Bidders, regardless of whether they hold a provisionally winning bid, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid.

200. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction 78.

201. A bidder's ability to bid on specific licenses is determined by two factors: (1) The licenses selected on the bidder's short-form application and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those licenses the bidder selected on its short-form application.

202. In each round, eligible bidders will be able to place bids on a given license in one or more pre-defined bid amounts. For each license, the FCC Auction System will list the acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an upload function that allows bidders to upload text files containing bid information.

203. Until a bid has been placed on a license, the minimum acceptable bid amount for that license will be equal to its minimum opening bid amount. Once there are bids on a license, minimum acceptable bids for a license will be determined.

204. During a round, an eligible bidder may submit bids for as many licenses as it wishes, remove bids placed in the current bidding round, withdraw provisionally winning bids from previous rounds, or permanently reduce eligibility. If a bidder submits multiple bids for the same license in the same round—multiple bids on the exact same license, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's current activity.

205. Finally, bidders are cautioned to select their bid amounts carefully because bidders that withdraw a provisionally winning bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

v. Bid Removal and Bid Withdrawal

206. In the *Auction 78 Comment Public Notice,* the Commission proposed bid removal and bid withdrawal procedures. The Bureau sought comment on permitting a bidder to remove a bid before the close of the round in which the bid was placed. With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals of provisionally winning bids on licenses in no more than one round during the course of the auction. The round in which withdrawals are used would be at each bidder's discretion.

207. A commenter recommends allowing each bidder to withdraw an unlimited number of bids in a single round, as proposed in the *Auction 78 Comment Public Notice,* or up to three bids in more than one round. The commenter characterizes the limitation of one bid withdrawal round as ''severe restrictions'' that may have seemed to be necessary in Auction 73 where combinatorial bidding was used for some licenses.

208. The Bureau is not convinced by this line of reasoning. The Commission has conducted some past auctions—particularly those with limited opportunities for license aggregation—with one or no withdrawal rounds. Therefore, the Bureau adopts its proposal.

209. *Bid Removal.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the remove bids function in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, i.e., a bid that is removed does not count toward bidding activity.

210. *Bid Withdrawal.* Once a round closes, a bidder may no longer remove a bid. However, in a later round, a bidder may withdraw provisionally winning bids from previous rounds for licenses using the withdraw bids function in the FCC Auction System. A provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted even if the round has not yet ended.

211. If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the license, which may be less than, or in the case of tied bids, equal to, the amount of the withdrawn bid. The Commission will serve as a ''place holder'' provisionally winning bidder on the license until a new bid is submitted on that license.

212. These procedures will permit bidder flexibility during the auction, and therefore the Bureau adopts them for Auction 78.

213. *Calculation of Bid Withdrawal Payment.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the provisionally winning bid in the same or subsequent auction(s). If a bid

is withdrawn on a license and no subsequent higher bid is placed and/or the license is not won in the same auction, the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any subsequent intervening withdrawn bid, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any final withdrawal payment if there is a subsequent higher bid in the same or subsequent auction(s).

214. 47 CFR 1.2104(g)(1) of the rules sets forth the payment obligations of a bidder that withdraws a high bid on a license during the course of an auction, and provides for the assessment of interim bid withdrawal payments. In the *Auction 78 Comment Public Notice,* the Bureau proposed to establish the percentage at fifteen percent (15%) for Auction 78 and sought comment on the proposal.

215. The Bureau received no comments on this issue and adopts its proposal. The Commission will assess an interim withdrawal payment equal to fifteen percent (15%) of the amount of the withdrawn bids. The fifteen percent (15%) interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. 47 CFR 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.

vi. Round Results

216. Limited information about the results of a round will be made public after the conclusion of the round. Specifically, after a round closes, the Bureau will make available for each license, its current provisionally winning bid amount, the minimum acceptable bid amount for the following round, the amounts of all bids placed on the license during the round, and whether the license is FCC held. The system will also provide an entire license history detailing all activity that has taken place on a license with the ability to sort by round number. The reports will be publicly accessible. Moreover, after the auction, the Bureau will make available complete reports of all bids placed during each round of the auction, including bidder identities.

vii. Auction Announcements

217. The Commission will use auction announcements to announce items such as schedule changes and stage transitions. All auction announcements will be available by clicking a link in the FCC Auction System.

## V. Post-Auction Procedures

218. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, the long-form application (FCC Form 601), the ownership disclosure information report (FCC Form 602), and final payments.

### *A. Down Payments*

219. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 78 to 20 percent of the net amount of its winning bids (gross bids less any applicable small business or very small business bidding credits).

### *B. Final Payments*

220. Each winning bidder will be required to submit the balance of the net amount of its winning bids within 10 business days after the applicable deadline for submitting down payments.

### *C. Long-Form Application (FCC Form 601)*

221. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) for the license(s) they won through Auction 78. Winning bidders that are entrepreneurs and/or small businesses or very small businesses must demonstrate their qualifications to be considered an entrepreneur and/or their eligibility for a small business or very small business bidding credit. Further filing instructions will be provided to winning bidders in the auction closing notice.

222. Winning bidders organized as bidding consortia must comply with the long-form application procedures established in the *CSEA/Part 1 Report and Order,* 71 FR 6992, February 10, 2006. Specifically, each member (or group of members) of a winning consortium seeking separate licenses will be required to file a separate long-form application for its respective license(s). If the license is to be partitioned or disaggregated, the member (or group) filing the long-form application must provide the relevant partitioning or disaggregation agreement in its long-form application. In addition, if two or more consortium members wish to be licensed together, they must first form a legal business entity, and any such entity must meet the applicable designated entity criteria.

### *D. Ownership Disclosure Information Report (FCC Form 602)*

223. Within ten business days after release of the auction closing notice, each winning bidder must also comply with the ownership reporting requirements in 47 CFR 1.913, 1.919, and 1.2112 by submitting an ownership disclosure information report (FCC Form 602) with its long-form application.

224. If an applicant already has a complete and accurate FCC Form 602 on file in ULS, it is not necessary to file a new report, but applicants must verify that the information on file with the Commission is complete and accurate. If the applicant does not have an FCC Form 602 on file, or if it is not complete and accurate, the applicant must submit one.

225. When an applicant submits a short-form application, ULS automatically creates an ownership record. This record is not an FCC Form 602, but may be used to pre-fill the FCC Form 602 with the ownership information submitted on the applicant's short-form application. Applicants must review the pre-filled information and confirm that it is complete and accurate as of the filing date of the long-form application before certifying and submitting the FCC Form 602. Further instructions will be provided to winning bidders in the auction closing notice.

### *E. Tribal Lands Bidding Credit*

226. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a wireline penetration rate equal to or below 85 percent is eligible to receive a tribal lands bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

227. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal lands bidding credit after winning the auction when it files its long-form

application (FCC Form 601). When initially filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal lands bidding credit, for each license won in the auction, by checking the designated box(es). After stating its intent to seek a tribal lands bidding credit, the applicant will have 180 days from the close of the long-form filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f)(3)(vi).

*F. Default and Disqualification*

228. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). The payments include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

229. The percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Accordingly, in the *Auction 78 Comment Public Notice,* the Bureau proposed to set the additional default payment for this auction at ten percent of the applicable bid, consistent with Auctions 66 and 71. The Bureau received no comments on this proposal, and therefore, adopts the proposal.

230. Finally, in the event of a default, the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

*G. Refund of Remaining Upfront Payment Balance*

231. All applicants that submit upfront payments but after the close of the auction are not winning bidders for a license in Auction 78 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

232. Refunds will not be made until after the conclusion of bidding because providing refunds could disclose the activity of particular applicants which would be inconsistent with the anonymous bidding procedures applicable to Auction 78. For these reasons, applicants should not request refunds until after the close of the auction.

Federal Communications Commission.

**Gary D. Michaels,**

*Deputy Chief, Auctions and Spectrum Access Division, WTB.*

[FR Doc. E8–12013 Filed 5–28–08; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Federal Advisory Committee Act

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of Charter Renewal.

**SUMMARY:** In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), the purpose of this notice is to announce that the Federal Communications Commission (FCC) has renewed the charter for the ''WRC–11 Advisory Committee'' for a two-year period through May 23, 2010. The WRC–11 Advisory Committee is a federal advisory committee under the Federal Advisory Committee Act.

**DATES:** Renewed through May 23, 2010.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW.,Room TW–C305, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Alexander Roytblat, Designated Federal Official, WRC–11 Advisory Committee, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418–7501. E-mail: *Alexander.Roytblat@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** The GSA has renewed the charter of the WRC–11 Advisory Committee (Committee) through May 23, 2010. The Committee will continue to provide to the FCC advice, technical support, and recommended proposals relating to the preparation of United States proposals and positions for the 2011 World Radiocommunication Conference (WRC–11). The Advisory Committee has been renamed the Advisory Committee for the 2011 Radiocommunication Conference (or simply, WRC–11 Advisory Committee), and its scope of activities has been amended to address issues contained in the agenda for WRC–11. In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, this notice advises interested persons of the renewal of the WRC–11 Advisory Committee.

Federal Communications Commission.

**Helen Domenici,**

*Chief, International Bureau.*

[FR Doc. E8–12011 Filed 5–28–08; 8:45 am]

BILLING CODE 6712–01–P

## 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 collections of information titled: Acquisition Services Information Requirements (3064–0072), Account Based Disclosures in Connection with Federal Reserve Regulations E, CC, and DD (3064–0084), and Prompt Corrective Actions (3064–0115).

**DATES:** Comments must be submitted on or before July 28, 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), Counsel, 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 at the address identified above.

**SUPPLEMENTARY INFORMATION:**

Proposal to renew the following currently approved collections of information:

1. *Title:* Acquisition Services Information Requirements.

*OMB Number:* 3064–0072.

This OMB Number covers the following items:

*Forms Currently in Use:* FDIC Background Investigation Questionnaire for Contractor Personnel Management Officials, Form 1600/04 (1–03). FDIC Contractor Representation and Certifications, Form 3700/04A (8–02).

FDIC Background Investigation Questionnaire for Contractor, Form 1600/07 (8–02).

FDIC Notice and Authorization Pertaining to Consumer Reports, Form 1600/10 (10–02).

FDIC Integrity and Fitness Representations and Certifications, Form 3700/12 (11–03).

FDIC Leasing Representations and Certifications Form 3700/44 (10–01).

*Discontinued Forms in This Collection:* FDIC Contractor Application, Form 3700/13 (5–02). Contractor Past Performance RFP Reference Check Questionnaire, 3700/29 (10–01). Contractor Application Revision Request, Form 3700/33 (8–98).

*Frequency of Response:* On occasion.

*Affected Public:* Any contractors who wish to do business, have done business, or are currently under contract with the FDIC.

*Estimated Number of Respondents:* 12,546.

*Estimated Time per Response:* .43 hours.

*Total Annual Burden:* 5,403 hours.

*General Description of Collection:* The collection involves the submission of information on various forms by contractors who wish to do business, have done business, or are currently under contract with the FDIC. The information is used to: Enter contractors on the FDIC's nationwide contractor database, the National Contractor System (NCS); ensure compliance with established contractor ethics regulations (12 CFR Part 366); obtain information on a contractor's past performance for proposal evaluation purposes; review a potential lessor's fitness and integrity prior to entering into a lease transaction; provide notice and authorization for obtaining consumer reports for employment purposes or performance under a contract; and document contractor change requests.

2. *Title:* Account Based Disclosures in Connection With Federal Reserve Regulations E, CC, and DD.

*OMB Number:* 3064–0084.

*Frequency of Response:* On occasion.

*Affected Public:* State chartered banks that are not members of the Federal Reserve System.

*Estimated Number of Respondents:* 5,300.

*Total Annual Burden:* 920,589 hours.

*General Description of Collection:* This FDIC information collection provides for the application of Regulations E (Electronic Fund Transfers), CC (Availability of Funds), and DD (Truth in Savings) to State nonmember banks. Regulations E, CC, and DD are issued by the Federal Reserve Board of Governors (FRB) to ensure, among other things, that consumers are provided adequate disclosures regarding accounts, including electronic fund transfer services, availability of funds, and fees and annual percentage yield for deposit accounts. Generally, the Regulation E disclosures are designed to ensure consumers receive adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer (EFT) services provided to them so that they can make informed decisions. Institutions offering EFT services must disclose to consumers certain information, including: initial and updated EFT terms, transaction information, the consumer's potential liability for unauthorized transfers, and error resolution rights and procedures.

Like Regulation E, Regulation CC has consumer protection disclosure requirements. Specifically, Regulation CC requires depository institutions to make funds deposited in transaction accounts available within specified time periods, disclose their availability policies to customers, and begin accruing interest on such deposits promptly. The disclosures are intended to alert customers that their ability to use deposited funds may be delayed, prevent unintentional (and costly) overdrafts, and allow customers to compare the policies of different institutions before deciding at which institution to deposit funds. Depository institutions must also provide an awareness disclosure regarding substitute checks. The regulation also requires notice to the depositary bank and to a customer of nonpayment of a check.

Regulation DD also has similar consumer protection disclosure requirements that are intended to assist consumers in comparing deposit accounts offered by institutions, principally through the disclosure of fees, the annual percentage yield, and other account terms. Regulation DD requires depository institutions to disclose yields, fees, and other terms concerning deposit accounts to consumers at account opening, upon request, and when changes in terms occur. Depository institutions that provide periodic statements are required to include information about fees imposed, interest earned, and the annual percentage yield (APY) earned during those statement periods. It also contains rules about advertising deposit accounts.

Although the FRB regulations require institutions to retain evidence of compliance with the disclosure requirements, the regulations do not specify the types of records that must be retained.

3. *Title:* Prompt Corrective Action.

*OMB Number:* 3064–0115.

*Frequency of Response:* On occasion.

*Affected Public:* All insured depository institutions.

*Estimated Number of Respondents:* 19.

*Estimated Time per Response:* 4 hours.

*Total Annual Burden:* 76 hours.

*General Description of Collection:* The Prompt Corrective Action provisions in Section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) permits and, in some cases requires, the Federal Deposit Insurance Corporation (FDIC) and other federal banking agencies to take certain supervisory actions when FDIC-insured institutions fall within one of five capital categories. They also restrict or prohibit certain activities and require the submission of a capital restoration plan when an insured institution becomes undercapitalized.

**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; (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 23nd day of May, 2008.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. E8–11945 Filed 5–28–08; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Web site (*http://www.fmc.gov*) or contacting the Office of Agreements (202) 523–5793 or *tradeanalysis@fmc.gov*.

*Agreement No.:* 010071–035.

*Title:* Cruise Lines International Association Agreement.

*Parties:* American Cruise Lines, Inc.; Azamara Cruises; Carnival Cruise Lines; Celebrity Cruises, Inc.; Costa Cruise Lines; Crystal Cruises; Cunard Line; Disney Cruise Line; Holland America Line; Hurtigruten, Inc.; Majestic America Line; MSC Cruises; NCL Corporation; Oceania Cruises; Orient Lines; Princess Cruises; Regent Seven Seas Cruises; Royal Caribbean International; Seabourn Cruise Line; SeaDream Yacht Club; Silversea Cruises, Ltd. and Windstar Cruises.

*Filing Party:* Farhad R. Alavi, Esq.; Holland & Knight LLP; 2099 Pennsylvania Avenue, NW., Suite 100; Washington, DC 20006.

*Synopsis:* The amendment would add AMA Waterways as parties to the agreement.

*Agreement No.:* 010982–043.

*Title:* Florida-Bahamas Shipowners and Operators Association.

*Parties:* Atlantic Caribbean Line, Inc.; Bernuth Lines, Ltd.; Crowley Liner Services, Inc.; Pioneer Shipping Ltd.; Seaboard Marine, Ltd.; Seafreight Line, Ltd.; and Tropical Shipping and Construction Co., Ltd.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment deletes Nina (Bermuda) Ltd. dba FTD Shipping Line as a party to the agreement.

*Agreement No.:* 011953–004.

*Title:* Florida Shipowners Group Agreement.

*Parties:* The member lines of the Caribbean Shipowners Association and the Florida-Bahamas Shipowners and Operators Association.

*Filing Party:* Wayne R. Rhode, Esq.; Sher & Blackwell, LLP; 1800 M Street, NW. Suite 900, Washington, DC 20036.

*Synopsis:* The amendment deletes Nina (Bermuda) Ltd. dba FTD Shipping Line as a party to the agreement.

*Agreement No.:* 201186.

*Title:* Mobile Container Terminal Cooperative Working Agreement.

*Parties:* APM Terminals North America, Inc.; CMA CGM, S.A.; Maersk, Inc. as agent to A.P. Moeller-Maersk; Mobile Container Terminal, LLC; and Terminal Link USA, LLC.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell, LLP; 1850 M Street, NW. Suite 900, Washington, DC 20036.

*Synopsis:* The agreement would authorize APM and Terminal Link to form and operate a limited liability company, Mobile Container, to operate a new container terminal at the Port of Mobile. The agreement also provides that CMA/Terminal Link and APM will not compete with Mobile Container's operations at Mobile.

*Agreement No.:* 201187.

*Title:* Port of Seattle/Port of Tacoma Puget Sound Air Quality Discussion Agreement.

*Parties:* Port of Seattle and Port of Tacoma.

*Filing Party:* Thomas H. Tanaka, Esq.; Senior Port Counsel; Port of Seattle; PO Box 1209; Seattle, WA 98111.

*Synopsis:* The Agreement would authorize the parties to discuss and reach agreement on measures addressing environmental issues arising from port operations.

Dated: May 23, 2008.

By Order of the Federal Maritime Commission.

**Karen V. Gregory,**

*Assistant Secretary.*

[FR Doc. E8–12018 Filed 5–28–08; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission,Washington, DC 20573.

**Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants**

Cargois Inc., 2700 Coyle Ave., Elk Grove Village, IL 60007. Officer: Souck-Sin Lee, Treasurer (Qualifying Individual).

Forward System Logistics Inc., 145–54 156th Street, Jamaica, NY 11434. Officers: Po Shan Wong, Vice President (Qualifying Individual), Carrie Law, President.

Manila Cargo, 675 Hegenberger Road, Ste. 251, Oakland, CA 94623. Gerardo R. DeGuzman, Sole Proprietor.

Scarbrough International Express Lines, Ltd. dba Six Lines, Ltd. dba Six Pack, 10841 Ambassador Drive, Kansas City, MO 64153. Officers: Roger L. Scarbrough, President (Qualifying Individual), Cynthia J. Scarbrough, Secretary.

Mak International Shipping, LLC, 1500 North Main Street, Crown Point, IN 46307. Officers: Mitro Kutanovski, Owner (Qualifying Individual).

Hongwu Logistics (USA) Inc., 211 N. Huntington Ave., Ste. 18, Monterey Park, CA 91754. Officer: Guanying Liu, President (Qualifying Individual).

**Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant**

TRB Group, Inc. dba Unishippers dba TRB Group Ocean Lines, 2012 E. Phelps, Suite A, Springfield, MO 65802. Officer: Terrell R. Barkett, President (Qualifying Individual).

Global Trade Logistics, LLC, 1122 S. 900 E., Provo, UT 84606. Officers: Justin Boudreau, Member/Manager (Qualifying Individual), Darrell Jakins, Member.
Fox Global Logistics Corporation, 5692 Conifer Drive, La Palma, CA 90823. Officers: Wen Sho Wang, Secretary (Qualifying Individual), Kenny Lee, President.
Chronos International Cargo Corp., 6030 NW 99th Ave., Ste. 407, Doral, FL 33178. Officer: Paula L. Almeida, President (Qualifying Individual).
Sealaska Global Logistics, LLC, 13810 SE Eastgate Way, Bellevue, WA 98005. Officers: Edward M. Davis, General Manager (Qualifying Individual), Jeffrey W. Zammit, President.
Intergroup Consolidators, Inc., 8045 NW 68th Street, Miami, FL 33166. Officers: Aymee C. Garabito, Vice President (Qualifying Individual), Antonio J. Jaquez, President.
PNGL (USA) Inc., 17121 S. Central Ave., Unit 2K, Pacifica Industrial Park, Carson, CA 90746. Officer: Werner Staub, President (Qualifying Individual).
Mohawk Customs & Shipping (Rochester) LLC dba Mohawk Global Logistics (ROC), 52 Marway Circle, Ste. 1, Rochester, NY 14624. Officer: Michael Bronowich, Vice President (Qualifying Individual).
Motherlines, Inc., 11 Sunrise Plaza, Ste. 305, Valley Stream, NY 11580. Officer: Jin-Hwang Lee, Secretary (Qualifying Individual).
Express Shipping Service International, LTD. dba Express International, 2250 B 59 Street, Brooklyn, NY 11204. Officers: Michael Aronov, President (Qualifying Individual), Michael Gorodetsky, Vice President.
WTA USA Inc., 1510 Midway Court, Ste. E203, Elk Grove Village, IL 60007. Officers: Marcela Lundgren, Vice President (Qualifying Individual), Gerard W. Lawler, President.
SDS Global Logistics, Inc., 52–09 31st Place, Long Island City, NY 11101. Officer: Stephen P. Nelson, Vice President (Qualifying Individual).
Trident Logistics Inc., 3 University Plaza, Ste. 405, Hackensack, NJ 07601. Officer: Yongsuk A. Lim, President (Qualifying Individual).
J & V International Shipping Corp., 806 Arcadia Ave., Ste. 4, Arcadia, CA 91007. Officer: Vivian Wei Liu, President (Qualifying Individual).
Earthlink Cargo and Customs Service, 605 West 104th Place, Los Angeles, CA 90044. Officer: Jon Soh, CEO (Qualifying Individual).
GMS Logistics, Inc., 20819 Currier Road, 2nd Floor, Ste. 400, City of Industry, CA 91789. Officers: Ying Liu, CEO (Qualifying Individual), Hungyu Tsuei, Secretary.
M.E. Dey & Co., Inc., 5007 South Howell Ave., Ste. 300, Milwaukee, WI 53207. Officer: Randall Kupfer, Vice President (Qualifying Individual).
SDV (USA) Inc., 150–10 132nd Ave., Jamaica, NY 11430. Officer: Philippe A. Naudin, President (Qualifying Individual).

**Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants**

MWT Logistics, LLC, 18861 SW Martinazzi Ave., Ste. 203A, Tualatin, OR 97062. Officers: Sheri L. Parshall, Vice President (Qualifying Individual), Troy M. Johnson, President.
APM Global Logistics USA Inc., Giralda Farms, Madison Ave., P.O. Box 880, Madison, NJ 07940–0880. Officer: Jan K. Anderson, Vice President (Qualifying Individual).
Maersk Logistics USA Inc., Giralda Farms, Madison Ave., P.O. Box 880, Madison, NJ 07940–0880. Officer: Nick Fafoutis, Sen. Dir. Area Sales Manager (Qualifying Individual).
Eastern Freight Forwarders, Inc., 100 West Middle Road, Riviera Beach, FL 33404. Officer: Jack M. Bahl, President (Qualifying Individual).

Dated: May 23, 2008.

**Karen V. Gregory,**

*Assistant Secretary.*

[FR Doc. E8–12017 Filed 5–28–08; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 12, 2008.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

*1. Carolyn V. Kothmann, Carl G. Kothmann, Benny F. Kothmann, Dora L. Wright, LaVerne C. Kothmann*, all of Menard, Texas, Stanley C. Kothmann, Southlake, Texas, and Kaddo F. Kothmann, Garden City, Texas, to acquire voting shares of Menard Bancshares, Inc., and thereby indirectly acquire voting shares of Menard National Bank, both of Menard, Texas.

Board of Governors of the Federal Reserve System, May 23, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E8–11951 Filed 5–28–08; 8:45 am]

BILLING CODE 6210–01–S

## 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 June 23, 2008.

**A. Federal Reserve Bank of Atlanta** (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

*1. Caja de Ahorros y Monte de Piedad de Madrid, and Caja Madrid Cibeles S.A.*, both of Madrid, Spain, and CM Florida Holdings, Inc., Coral Gables, Florida, to become bank holding companies by acquiring 83 percent of the voting shares of City National Bancshares, Inc., and thereby acquire City National Bank of Florida, both of Miami, Florida.

Board of Governors of the Federal Reserve System, May 23, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E8–11950 Filed 5–28–08; 8:45 am]

**BILLING CODE 6210–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Subcommittee for Dose Reconstruction Reviews (SDRR), Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention, announces the following meeting for the aforementioned subcommittee:

*Time and Date:* 9 a.m.–5 p.m., June 10, 2008.

*Place:* Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, Kentucky 41018. Telephone (859) 334–4611, Fax (859) 334–4619.

*Status:* Open to the public, but without a public comment period. To access by conference call dial the following information 1 (866) 659–0537, Participant Pass Code 9933701.

In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

*Background:* The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2009.

*Purpose:* The Advisory Board is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee for Dose Reconstruction Reviews was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction.

*Matters To Be Discussed:* The agenda for the Subcommittee meeting includes the discussion of cases under review on the 6th, 7th, and 8th sets of individual dose reconstruction; selection of cases for future review; and discussion of the summary report on the first 100 cases.

The agenda is subject to change as priorities dictate.

ABRWH determines that agency business requires its consideration of this matter on less than 15 days notice to the public and that no earlier notice of this meeting was possible.

*Contact Person for More Information:* Christine Branche, Ph.D., Executive Secretary, NIOSH, CDC, 395 E. Street, SW., Suite 9200, Washington, DC 20201, Telephone (513)533–6800, Toll Free 1(800)35–NIOSH, E-mail *ocas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 20, 2008.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E8–11941 Filed 5–28–08; 8:45 am]

**BILLING CODE 4163–19–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

### Centers for Medicare & Medicaid Services

### Notice of Hearing: Reconsideration of Disapproval of Texas State Plan Amendment (SPA) 07–020

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice of Hearing.

**SUMMARY:** This notice announces an administrative hearing to be held on July 8, 2008, at the CMS Dallas Regional Office, 1301 Young Street, Suite 833, Room 1196, Dallas, Texas 75202, to reconsider CMS' decision to disapprove Texas SPA 07–020.

*Closing Date:* Requests to participate in the hearing as a party must be received by the presiding officer by June 13, 2008.

**FOR FURTHER INFORMATION CONTACT:** Benjamin Cohen, Presiding Officer, CMS, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244, Telephone: (410) 786–3169.

**SUPPLEMENTARY INFORMATION:** This notice announces an administrative hearing to reconsider CMS' decision to disapprove Texas SPA 07–020 which was submitted on July 20, 2007, and disapproved on February 22, 2008.

Under this SPA, the State would guarantee that, at the request of a hospital impacted as a result of a federally declared natural disaster, disproportionate share hospital (DSH) payments to that hospital would remain level from the prior year. In addition, the SPA would amend the conversion factors that expire August 31, 2007, and would update cost reporting citations that have changed due to a format change in the CMS Hospital and Hospital Health Care Complex Cost Report.

The amendment was disapproved because it does not comply with the requirements of section 1902(a)(13)(A) of the Social Security Act (the Act) together with the hospital specific limits under 1923(g)(1) of the Act.

The hearing will involve the following issues:

- Compliance with section 1923(g) of the Act. Whether the proposed State plan language concerning DSH payments assures compliance with hospital specific payment limits for current year DSH payments, and sufficient documentation of such compliance;
- Applicability of section 1923(e)(2) of the Act providing an exception to the section 1923(g) limits. Whether section

1923(e)(2) provides an exception to section 1923(g), and, if so, whether the State meets the criteria for such an exception; and

• Clarification of the status of State plan amendment components that address changes to conversion factors and updates to cost reporting citations based on changes to the CMS Hospital Cost Report. If the State does not prevail on the first two issues, whether the State is asking the hearing officer to withdraw affected components of the State plan amendment and remand remaining components for a determination of whether approval is warranted.

Section 1116 of the Act and Federal regulations at 42 CFR Part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. CMS is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Texas announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Chris Traylor, State Medicaid Director, Texas Health and Human Services Commission, P.O. Box 13247, Austin, TX 78711.

Dear Mr. Traylor: I am responding to your request for reconsideration of the decision to disapprove the Texas State plan amendment (SPA) 07–020, which was submitted on July 20, 2007, and disapproved on February 22, 2008.

Under this SPA, the State would guarantee that, at the request of a hospital impacted as a result of a federally declared natural disaster, disproportionate share hospital (DSH) payments to that hospital would remain level from the prior year. In addition, the SPA would amend the conversion factors that expire August 31, 2007, and would update cost reporting citations that have changed due to a format change in the Centers for Medicare & Medicaid Services' (CMS) Hospital and Hospital Health Care Complex Cost Report.

The amendment was disapproved because it does not comply with the requirements of section 1902(a)(13)(A) of the Social Security Act (the Act) together with the hospital specific limits under 1923(g)(1) of the Act.

The hearing will involve the following issues:

• Compliance with section 1923(g) of the Act. Whether the proposed State plan language concerning DSH payments assures compliance with hospital specific payment limits for current year DSH payments, and sufficient documentation of such compliance;

• Applicability of section 1923(e)(2) of the Act providing an exception to the section 1923(g) limits. Whether section 1923(e)(2) provides an exception to section 1923(g) and, if so, whether the State meets the criteria for such an exception; and

• Clarification of the status of SPA components that address changes to conversion factors and updates to cost reporting citations based on changes to the CMS Hospital and Hospital Health Care Complex Cost Report. If the State does not prevail on the first two issues, whether the State is asking the hearing officer to withdraw affected components of the SPA and remand remaining components for a determination of whether approval is warranted.

I am scheduling a hearing on your request for reconsideration to be held on July 8, 2008, at the CMS Dallas Regional Office, 1301 Young Street, Suite 833, Room 1196, Dallas, Texas 75202, in order to reconsider the decision to disapprove SPA 07–020. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed by Federal regulations at 42 CFR Part 430.

I am designating Mr. Benjamin Cohen as the presiding officer. If these arrangements present any problems, please contact the presiding officer at (410) 786–3169. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing.

Sincerely,
Kerry Weems,
*Acting Administrator.*

Section 1116 of the Social Security Act (42 U.S.C. 1316; 42 CFR 430.18).

(Catalog of Federal Domestic Assistance program No. 13.714, Medicaid Assistance Program.)

Dated: May 20, 2008.

**Kerry Weems,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. E8–12022 Filed 5–28–08; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

### Privacy Act of 1974; Report of a Modified or Altered System of Records

**AGENCY:** Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

**ACTION:** Notice of a modified or altered system of records.

**SUMMARY:** The Privacy Act of 1974 and section 1106 of the Social Security Act (the Act) explain when and how CMS may use and disclose the personal data of people with Medicare. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) added requirements for releasing and using personal data. To meet these additional requirements, CMS proposes to modify the existing system of records (SOR) titled ''Medicare Drug Data Processing System (DDPS),'' System No. 09–70–0553, established at 70 FR 58436 (October 6, 2005). Under this modification we are clarifying the statutory authorities for which these data are collected and disclosed. The original SOR notice cited the statutory section governing CMS's payment of Part D plan sponsors (Social Security Act § 1860D–15) that limits the uses of the data collected to purposes related to plan payment and oversight of plan payment. However, the broad authority of § 1860D–12(b)(3)(D) authorizes CMS to collect, use and disclose Part D data for broader purposes related to CMS's responsibilities for program administration and research. Furthermore the authority under § 1106 of the Act allows the Secretary to use and disclose data pursuant to a regulation, which in this case would be 42 CFR 423.505. CMS has published a final rule in order to clarify our statutory authority and explain how we propose to implement the broad authority of § 1860D–12(b)(3)(D) and 1106 of the Act. This SOR is being revised to reflect our intended use of this broader statutory authority.

In addition to updating this SOR to reflect our broader statutory authority, CMS proposes to make the following modifications to the DDPS system:

• Revise published routine use number 1 to include CMS grantees that perform a task for the agency.

• Add a new routine use number 2 to allow the use and disclosure of information to other Federal and state agencies for accurate payment of

Medicare benefits; to fulfill a requirement or allowance of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and to help Federal/state Medicaid programs that may need information from this system.

- Broaden the scope of routine use number 4 to allow the use and disclosure of specified data as described in CMS's Part D data final rule, 42 CFR 423.505(m) to other government agencies, States or external organizations, in accordance with the minimum data necessary policy and Federal law.
- Delete published routine use number 5 which authorizes disclosure to support constituent requests made to a congressional representative.
- Broaden the scope of routine use number 7 and 8, to include combating ''waste,'' in addition to fraud and abuse that result in unnecessary cost to federally-funded health benefit programs.
- Revise language regarding routine uses disclosures to explain the purpose of the routine use and make clear CMS's intention to use and disclose personal information contained in this system.
- Reorder and prioritize the routine uses.
- Update any sections of the system affected by the reorganization or revision of routine uses because of MMA provisions or regulations promulgated based on MMA provisions.
- Update language in the administrative sections to be consistent with language used in other CMS SORs.

The primary purpose of this system is to collect, maintain, and process information on all Medicare covered, and as many non-covered drug events as possible, for people with Medicare who have enrolled into a Medicare Part D plan. The system helps CMS determine appropriate payment of covered drugs. It will also provide for processing, storing, and maintaining drug transaction data in a large-scale database, while putting data into data marts to support payment analysis. CMS would allow the expanded use and disclosure of information in this system to: (1) Support regulatory, analysis, oversight, reimbursement, operational, and policy functions performed within the agency or by a contractor, consultant, or a CMS grantee; (2) support another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) assist Medicare Part D sponsors; (4) support an individual or organization with projects that provide transparency in health care on a broad-scale enabling consumers to compare the quality and price of health care services for a research, evaluation, or epidemiological or other project related to protecting the public's health, the prevention of disease or disability, the restoration or maintenance of health, or for payment related purposes; (5) assist Quality Improvement Organizations; (6) support lawsuits involving the agency; and (7) combat fraud, waste, and abuse in certain Federally funded health benefits programs.

**DATES:** *Effective Dates:* CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on May 22, 2008. To ensure that all parties have adequate time in which to comment, the modified system, including routine uses, will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

**ADDRESSES:** The public should send comments to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Mail stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., Eastern Time zone.

**FOR FURTHER INFORMATION CONTACT:** Alissa Deboy, Director, Division of Drug Plan Policy & Analysis, Medicare Drug Benefit Group, Centers for Beneficiary Choices, CMS, Room C1–26–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–6041 or e-mail at *Alissa.Deboy@cms.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In December 2003, Congress added Part D under Title XVIII when it passed the Medicare Prescription Drug, Improvement, and Modernization Act. The Act allows Medicare to pay plans to provide Part D prescription drug coverage as described in Title 42, Code of Federal Regulations (CFR) § 423.301. The Act allows Medicare to pay Part D sponsors in one of four ways: 1. Direct subsidies; 2. Premium and cost-sharing subsidies for qualifying low-income individuals (low-income subsidy); 3. Federal reinsurance subsidies; and 4. Risk-sharing. Throughout this notice, the term ''sponsor'' means all entities that provide Part D prescription drug coverage and submit claims data to CMS for payment calculations.

As a condition of payment, all Part D sponsors must submit data and information necessary for CMS to carry out payment provisions (§ 1860D–15(c)(1)(C) and (d)(2) of the Act, and 42 CFR 423.322). In addition, these data may be disclosed to other entities, pursuant to § 1860D–12(b)(3)(D) and 42 CFR 423.505(b)(8) and (f), (l), and (m)) for the purposes described in the routine uses described in this SOR notice. Furthermore, this data may be disclosed pursuant to § 1106 of the Act.

This notice explains how CMS would collect data elements on Part D prescription drug events (PDE data, also called ''claims'' data) according to the statute. Data elements such as beneficiary, plan, pharmacy and prescriber identifiers would be used to validate claims and meet other legislative requirements or initiatives such as quality monitoring, program integrity, and payment oversight. In addition, the original 37 data elements submitted as part of the prescription drug event data would be used for other purposes as allowed by § 1860D–12 and its implementing regulations.

In addition, summary prescription drug claim information based on the original 37 elements maintained in this system will be used to (1) generate reports to Congress and the public on overall statistics associated with the operation of the Medicare prescription drug program; (2) conduct evaluations of the overall Medicare program; (3) make legislative proposals to the Congress regarding Federal health care programs; (4) conduct demonstration and pilot projects and make recommendations for improving the economy, efficiency or effectiveness of the Medicare program; (5) support care coordination and disease management programs; (6) support quality improvement, performance measurement, and public reporting activities; (7) populate personal health care records; and (8) as otherwise permitted under 42 CFR 423.505.

In addition to the individually identifiable information identified in section I. B. (Data in the System) below, we will maintain the following data elements, which may be used under the authority of sections 1860D–12 and D–15 as noted above: Identification of pharmacy where the prescription was filled; indication of whether drug was compounded or mixed; indication of prescriber instruction regarding

substitution of generic equivalents or order to ''dispense as written;'' quantity dispensed (for example, number of tablets, grams, milliliters, or other unit); days supply; fill number; dispensing status and whether the full quantity is dispensed at one time, or the quantity is partially filled; identification of coverage status, such as whether the product dispensed is covered under the plan benefit package or under Part D or both. This code also identifies whether the drug is being covered as part of a Part D supplemental benefit; indication of whether unique pricing rules apply, for example because of an out-of-network or Medicare as Secondary Payer services; indication of whether the beneficiary has reached the annual out-of-pocket threshold, which triggers reduced beneficiary cost-sharing and the reinsurance subsidy; ingredient cost of the product dispensed; dispensing fee paid to pharmacy; sales tax; for covered Part D drugs, the amount of gross drug costs that are both below and above the annual out-of-pocket threshold; amount paid by patient and not reimbursed by a third party (such as co-payments, coinsurance, or deductibles); amount of third party payment that would count toward a beneficiary's true out-of-pocket (TrOOP) costs in meeting the annual out-of-pocket threshold, such as payments on behalf of a beneficiary by a qualifying State Pharmacy Assistance Program (SPAP); low-income cost-sharing subsidy amount (if any); and reduction in patient liability due to non-TrOOP-eligible payers paying on behalf of the beneficiary (which would exclude payers whose payments count toward a beneficiary's true out of pocket costs, such as SPAPs amounts paid by the plan for basic prescription drug coverage and amounts paid by plan for benefits beyond basic prescription drug coverage).

## I. Description of the Modified System of Records

### *A. Statutory and Regulatory Basis for System*

This system is mandated and authorized under provisions of the Medicare Prescription Drug, Improvement, and Modernization Act, amending the Social Security Act by adding Part D under Title XVIII (§§ 1860D–15(c)(1)(C) and (d)(2), as described in Title 42, Code of Federal Regulations (CFR) 423.301 *et.seq.* as well as1860D–12(b)(3)(D) and 1106 of the Act, as described in 42 CFR 423.505(b)(8) and (f),(l), and (m).

### *B. Data in the System*

This system collects and maintains individually identifiable information on Medicare beneficiaries who have enrolled in a Medicare Part D plan and individually identifiable data on prescribing health care professionals and referring/servicing pharmacies. The data includes, but is not limited to, summary prescription drug claim data and individually identifiable beneficiary information such as: health insurance claim number, card holder identification number, date of service, gender, other identifying data, and optionally, the patient's date of birth. Identifying information of prescribing health care providers include the prescriber identification number and qualifier and the pharmacy service provider ID and qualifier.

## II. Agency Policies, Procedures, and Restrictions on Routine Uses

A. Below are CMS' policies and procedures for giving out individually identifiable information maintained in the system. CMS would only use and disclose the minimum data necessary to achieve the purpose of the DDPS if the following requirements are met:

1. The information or use of the information is consistent with the reason that the data is being collected;
2. The individually identifiable information is necessary to complete the project (taking into account the risk to the privacy of the individual);
3. The organization receiving the information establishes administrative, technical, and physical protections to prevent unauthorized use of the information;
4. The organization removes or destroys the information that allows the individual to be identified at the earliest time;
5. The organization generally agrees to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed; and
6. The data are valid and reliable.

The Privacy Act allows CMS to give out identifiable and non-identifiable information for routine uses without an individual's consent/authorization. The identifiable data described in this notice is listed under Section I. B. above.

## III. Routine Uses of Data

A. In addition to those entities specified in the Privacy Act of 1974, CMS may use and disclose information from the DDPS without the consent of the individual for routine uses pursuant to sections 1860D–15 and 1860D–12(b)(3)(D) of the Social Security Act . Below are the modified routine uses for releasing information without individual consent that CMS would add or modify in the DDPS.

1. To support Agency contractors, consultants, or CMS grantees who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this SOR.

CMS occasionally contracts out or makes other arrangements for certain functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant, or CMS grantee whatever information is necessary for the contractor, consultant, or grantee to fulfill its duties. In these situations, safeguards are provided in the contract/similar agreement prohibiting the contractor, consultant, or grantee from using or disclosing the information for any purpose other than that described in the contract/similar agreement and requires the contractor, consultant, or grantee to destroy all information at the completion of the contract or similar agreement.

2. To assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS' payment of Medicare benefits,

b. Administer a Federal health benefits program or fulfill a Federal statute or regulatory requirement or allowance that implements a health benefits program funded in whole or in part with Federal funds,

c. Access data required for Federal/state Medicaid programs, or

Other Federal or state agencies in their administration of a Federal health program may require DDPS information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

In addition, disclosure under this routine use may be used by state agencies pursuant to agreements with the HHS for determining Medicare or Medicaid eligibility, for determining eligibility of recipients of assistance under titles IV, XVIII, and XIX of the Act, and for the administration and operation of the Medicare and Medicaid programs including quality

improvement and care coordination. Data will be disclosed to the state only on those individuals who are or were patients under the services of a program within the state or who are residents of that state.

3. To support Part D Sponsors, pharmacy benefit managers, claims processors, and other Prescription Drug Event submitters, in protecting their own members (and former members for the periods enrolled in a given plan) against medical expenses of their enrollees without the beneficiary's authorization, and having knowledge of the occurrence of any event affecting (a) an individual's right to any such benefit or payment, or (b) the initial right to any such benefit or payment, for the purpose of coordination of benefits with the Medicare program and implementation of the Medicare Secondary Payer provision at 42 U.S.C. 1395y (b). Information to be disclosed shall be limited to Medicare utilization data necessary to perform that specific function. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a Third Party Administrator;

b. Utilize the information solely for the purpose of processing the individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers may need data in order to support evaluations and monitoring of Medicare claims information, including proper reimbursement for services.

4. To assist an individual or organization with research, an evaluation, or an epidemiological or other project related to protecting the public's health, the prevention of disease or disability, restoration or maintenance of health, or for payment related purposes. This includes projects that provide transparency in health care on a broad-scale enabling consumers to compare the quality and price of health care services. CMS must:

a. Determine if the use or disclosure of data violate legal limitations under which the record was provided, collected, or obtained;

b. Determine that the purpose for the use or disclosure of information:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form,

(2) Is of sufficient importance to warrant the effect or risk on the privacy of the individual, and

(3) Meets the objectives of the project;

c. Requires the recipient of the information to:

(1) Establish reasonable administrative, technical, and physical protections to prevent unauthorized use or disclosure of information,

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification for retaining such information, and

(3) No longer use or disclose information except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another research project, under these same conditions and with written CMS approval;

(c) For an audit related to the research;

(d) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit; or

(e) When required by Federal law.

d. Get signed, written statements from the entity receiving the information that they understand and will follow all provisions in this notice.

e. Complete and submit a Data Use Agreement (CMS Form 0235) in accordance with current CMS policies.

CMS anticipates that there will be many legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

5. To support Quality Improvement Organizations (QIO) in the claims review process, or with studies or other review activities performed in accordance with Part B of Title XI of the Act. QIOs can also use the data for outreach activities to establish and maintain entitlement to Medicare benefits or health insurance plans.

QIOs will work to implement quality improvement and performance measurement programs, provide consultation to CMS, its contractors, and to state agencies. QIOs will assist the state agencies in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity assessment, and prepare summary information for disclosure to CMS.

6. To assist the Department of Justice (DOJ), court, or adjudicatory body when there is a lawsuit in which the Agency, any employee of the Agency in his or her official capacity or individual capacity (if the DOJ agrees to represent the employee), or the United States Government is a party or CMS' policies or operations could be affected by the outcome. The information must be both relevant and necessary to the lawsuit, and the use of the records is for a purpose that is compatible with the purpose for which CMS collected the records.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS' policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court, or adjudicatory body involved.

7. To support a CMS contractor that assists in the administration of a CMS health benefits program or a grantee of a CMS-administered grant program if the information is necessary, in any capacity, to combat fraud, waste, or abuse in such program. CMS will only provide this information if CMS can enter into a contract or grant for this purpose.

CMS must be able to give a contractor or CMS grantee necessary information in order to complete their contractual responsibilities. In these situations, protections are provided in the contract prohibiting the contractor or grantee from using or releasing the information for any purpose other than that described in the contract. It also requires the contractor or grantee to return or destroy all information when the contract ends.

8. To support another Federal agency or any United States government jurisdiction (including any state or local governmental agency) if the information is necessary, in any capacity, to combat fraud, waste, or abuse in a health benefits program that is funded in whole or in part by Federal funds.

Other agencies may require DDPS information for the purpose of combating fraud, waste, or abuse in such federally-funded programs.

*B. Additional Circumstances Affecting Routine Use Disclosures*

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, Subparts A and E) 65 FR 82462 (December 28, 2000), use and disclosure of information that are otherwise allowed by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy

of Individually Identifiable Health Information.'' (See 45 CFR 164.512(a)(1).)

In addition, CMS will not give out information that is not directly identifiable if there is a possibility that a person with Medicare could be identified because the sample is small enough to identify participants. CMS would make exceptions if the information is needed for one of the routine uses or if it's required by law.

## IV. Safeguards and Protections

CMS has protections in place for authorized users to make sure they are properly using the data and there is no unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system cannot use or disclose data until the recipient agrees to implement appropriate management, operational and technical safeguards that will protect the confidentiality, integrity, and availability of the information and information systems.

This system would follow all applicable Federal laws and regulations, and Federal, HHS, and CMS security and data privacy policies and standards. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002 (when applicable); the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to all pertinent National Institute of Standards and Technology publications, the HHS Information Systems Program Handbook, and the CMS Information Security Handbook.

## V. Effects on Individual Rights

CMS does not anticipate a negative effect on individual privacy as a result of giving out personal information from this system. CMS established this system in accordance with the principles and requirements of the Privacy Act and would collect, use, and disclose information that follow these requirements. CMS would only give out the minimum amount of personal data to achieve the purpose of the system. Use and disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of releasing the data. CMS has assigned a higher level of security clearance for the information maintained in this system in an effort to provide added security and protection of individuals' personal information and, if feasible, ask that once the information is no longer needed that it be returned or destroyed.

CMS would take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy, or other personal or property rights. CMS would collect only information necessary to perform the system's functions. In addition, CMS would only give out information if the individual, or his or her legal representative has given approval, or if allowed by one of the exceptions noted in the Privacy Act.

Dated: May 22, 2008.

**Charlene Frizzera,**

*Chief Operating Officer, Centers for Medicare & Medicaid Services.*

## SYSTEM NO.

09–70–0553.

### SYSTEM NAME:

Medicare Drug Data Processing System (DDPS), HHS/CMS/CBC.

### SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

### SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at various contractor sites.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system collects and maintains individually identifiable information on all people with Medicare who have enrolled into a Medicare Part D plan and individually identifiable data on prescribing health care professional, referring/servicing physician, and providers.

### CATEGORIES OF RECORDS IN THE SYSTEM:

The data includes, but is not limited to, summary prescription drug claim data and individually identifiable beneficiary information such as: Beneficiary name, address, city, state, ZIP code, card holder identification number, date of service, gender, demographic, other identifying data, and optionally, the patient's date of birth. Identifying information of prescribing health care professional and providers of services and referring/servicing physician include provider/physician name, title, address, city, state, ZIP code, e-mail address, telephone numbers, fax number, state licensure number, Social Security Numbers, Federal tax identification numbers, prescriber identification number, assigned provider number (facility, referring/servicing physician), Drug Enforcement Agency (DEA) assigned identification number, and numerous other data elements related to the processing of the prescription drug claim.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is mandated under provisions of the Medicare Prescription Drug, Improvement, and Modernization Act, amending the Social Security Act by adding Part D under Title XVIII (§§ 1860D–15(c)(1)(C) and (d)(2)), as described in Title 42, Code of Federal Regulations (CFR) 423.301 *et seq.* as well as1860D–12(b)(3)(D) and 1106 of the Act, as described in 42 CFR 423.505(b)(8), (f), (l), and (m).

### PURPOSE(S) OF THE SYSTEM:

The primary purpose of this system is to collect, maintain, and process information on all Medicare covered, and as many non-covered drug events as possible, for people with Medicare who have enrolled into a Medicare Part D plan. The system will help CMS determine appropriate payment of covered drugs. It will also provide for processing, storing, and maintaining drug transaction data in a large-scale database, while putting data into data marts to support payment analysis. CMS would allow the expanded release of information in this system to: (1) Support regulatory, analysis, oversight, reimbursement, operational and policy functions performed within the agency or by a contractor, consultant, or a CMS grantee; (2) help another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) assist Medicare Part D sponsors; (4) support an individual or organization with projects that provide transparency in health care on a broad-scale enabling consumers to compare the quality and price of health care services or for a research, evaluation, or epidemiological or other project related to protecting the public's health, the prevention of disease or disability, the restoration or maintenance of health, or for payment related purposes; (5) assist Quality Improvement Organizations; (6) support lawsuits involving the agency; and (7) combat fraud, waste, and abuse in certain Federally funded health benefits programs.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:**

**A. ENTITIES WHO MAY RECEIVE DISCLOSURES UNDER ROUTINE USE:**

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may use and disclose information from the DDPS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We propose to establish or modify the following routine use disclosures of information maintained in the system:

1. To support Agency contractors, consultants, or CMS grantees who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

2. To assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent pursuant to agreements with CMS to:

a. Contribute to the accuracy of CMS's payment of Medicare benefits;

b. Administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. Access data required for Federal/state Medicaid programs.

3. To support Part D Prescription Drug sponsors, pharmacy benefit managers, claims processors, and other Prescription Drug Event submitters, in protecting their own members (and former members for the periods enrolled in a given plan) against medical expenses of their enrollees without the beneficiary's authorization, and having knowledge of the occurrence of any event affecting (a) an individual's right to any such benefit or payment, or (b) the initial right to any such benefit or payment, for the purpose of coordination of benefits with the Medicare program and implementation of the Medicare Secondary Payer provision at 42 U.S.C. 1395y(b). Information to be disclosed shall be limited to Medicare utilization data necessary to perform that specific function. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a Third Party Administrator;

b. Utilize the information solely for the purpose of processing the individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

4. To assist an individual or organization with research, an evaluation, or an epidemiological or other project related to protecting the public's health, the prevention of disease or disability, restoration or maintenance of health, or for payment related purposes. This includes projects that provide transparency in health care on a broad-scale enabling consumers to compare the quality and price of health care services. CMS must:

a. Determine if the use or disclosure of data violate legal limitations under which the record was provided, collected, or obtained;

b. Determine that the purpose for the use or disclosure of information:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect or risk on the privacy of the individual; and

(3) Meets the objectives of the project;

c. Requires the recipient of the information to:

(1) Establish reasonable administrative, technical, and physical protections to prevent unauthorized use or disclosure of information;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification for retaining such information; and

(3) No longer use or disclose information except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another research project, under these same conditions and with written CMS approval;

(c) For an audit related to the research;

(d) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit; or

(e) When required by Federal law.

d. Get signed, written statements from the entity receiving the information that they understand and will follow all provisions in this notice.

e. Complete and submit a Data Use Agreement (CMS Form 0235) in accordance with current CMS policies.

5. To support Quality Improvement Organization (QIO) with claims review process or with studies or other review activities performed in accordance with Part B of Title XI of the Social Security Act. QIOs can also use the data for outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

6. To assist the Department of Justice (DOJ), court, or adjudicatory body when there is a lawsuit in which the Agency, any employee of the Agency in his or her official capacity or individuals capacity (if the DOJ agrees to represent the employee), or the United States Government is a part of CMS' policies or operations could be affected by the outcome. The information must be both relevant and necessary to the lawsuit, and the use of records is for a purpose that is compatible with the purpose for which CMS collected records.

7. To support a CMS contractor that assists in the administration of a CMS health benefits program, or a grantee of a CMS-administered grant program, if the information is necessary, in any capacity, to combat fraud, waste, or abuse in such program. CMS will only provide this information if CMS can enter into a contract or grant for this purpose.

8. To support another Federal agency or any United States government jurisdiction (including any state, or local governmental agency), if the information is necessary, in any capacity to combat fraud, waste or abuse in a health benefits program funded in whole or in part by Federal funds.

**B. ADDITIONAL CIRCUMSTANCES AFFECTING ROUTINE USE DISCLOSURES:**

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, Subparts A and E) 65 FR 82462 (12–28–00) release of information that are otherwise allowed by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164–512 (a)(1).)

In addition, CMS will not give out information that is not directly identifiable if there is a possibility that

a person with Medicare could be identified because the sample is small enough to identify participants. CMS would make exceptions if the information is needed for one of the routine uses or if it's required by law.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored on both tape cartridges (magnetic storage media) and in a DB2 relational database management environment (DASD data storage media).

**RETRIEVABILITY:**

Information is most frequently retrieved by HICN, provider number (facility, physician, IDs), service dates, and beneficiary state code.

**SAFEGUARDS AND PROTECTIONS:**

CMS has protections in place for authorized users to make sure they are properly using the data and there is no unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system cannot use or disclose data until the recipient agrees to implement appropriate management, operational and technical safeguards that will protect the confidentiality, integrity, and availability of the information and information systems.

This system would follow all applicable Federal laws and regulations, and Federal, HHS, and CMS security and data privacy policies and standards. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002 (when applicable); the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to all pertinent National Institute of Standards and Technology publications, the HHS Information Systems Program Handbook, and the CMS Information Security Handbook.

**RETENTION AND DISPOSAL:**

Records are maintained with identifiers for all transactions after they are entered into the system for a period of 20 years. Records are housed in both active and archival files. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from the Department of Justice.

**SYSTEM MANAGER AND ADDRESS:**

Director, Centers for Beneficiary Choices, CMS, Mail stop C5–19–07, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

**NOTIFICATION PROCEDURE:**

For purpose of notification, the subject individual should write to the system manager who will require the system name, and the retrieval selection criteria (e.g., HICN, facility/pharmacy number, service dates, etc.).

**RECORD ACCESS PROCEDURE:**

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5 (a)(2).)

**CONTESTING RECORD PROCEDURES:**

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

**RECORD SOURCE CATEGORIES:**

Summary prescription drug claim information contained in this system is obtained from the Part D Sponsor daily and monthly drug event transaction reports, Medicare Beneficiary Database (09–70–0530), and other payer information to be provided by the TROOP Facilitator.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. E8–11949 Filed 5–28–08; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket Nos. FDA–2007–E–0461 (formerly Docket No. 2007E–0424), FDA–2007–E–0165 (formerly Docket No. 2007E–0425), FDA–2007–E–0459 (formerly Docket No. 2007E–0146)]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; LUCENTIS

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for LUCENTIS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of patents which claim that human biological product.

**ADDRESSES:** Submit written or electronic comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD, 20993–0002, 301–796–3602.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective

and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biologic product LUCENTIS (ranibizumab). LUCENTIS is indicated for the treatment of patients with neovascular (wet) age-related macular degeneration. Subsequent to this approval, the Patent and Trademark Office received patent term restoration applications for LUCENTIS (U.S. Patent Nos. 6,407,213; 6,884,879; and 7,060,269) from Genentech, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In letters dated July 24, 2007, and November 21, 2007, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of LUCENTIS represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for LUCENTIS is 2,430 days. Of this time, 2,247 days occurred during the testing phase of the regulatory review period, while 183 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: November 6, 1999. The applicant claims October 7, 1999, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was November 6, 1999, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262)*: December 30, 2005. The applicant claims December 29, 2005, as the date the biologics license application (BLA) for LUCENTIS (BLA 125156/0) was initially submitted. However, FDA records indicate that BLA 125156/0 was submitted on December 30, 2005.

3. *The date the application was approved*: June 30, 2006. FDA has verified the applicant's claim that BLA 125156/0 was approved on June 30, 2006.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension for U.S. Patent Nos. 6,407,213; 6,884,879; and 7,060,269, this applicant seeks 378 days; 307 days or 17 days, respectively, of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by July 28, 2008. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 25, 2008. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: May 8, 2008.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. E8–12007 Filed 5–28–08; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

**[Docket No. FDA–2007–M–0467] (formerly Docket No. 2007M–0408), [Docket No. FDA–2007–M–0481] (formerly Docket No. 2007M–0467), [Docket No. FDA–2007–M–0480] (formerly Docket No. 2007M–0409), [Docket No. FDA–2007–M–0472] (formerly Docket No. 2007M–0413), [Docket No. FDA–2007–M–0468] (formerly Docket No. 2007M–0446), [Docket No. FDA–2007–M–0494] (formerly Docket No. 2007M–0380), [Docket No. FDA–2007–M–0493] (formerly Docket No. 2007M–0411), [Docket No. FDA–2007–M–0492] (formerly Docket No. 2007M–0410), [Docket No. FDA–2007–M–0490] (formerly Docket No. 2007M–0415), [Docket No. FDA–2007–M–0491] (formerly Docket No. 2007M–0447]**

## Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Division of Dockets Management.

**ADDRESSES:** Submit written requests for copies of summaries of safety and effectiveness data to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in Table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

**FOR FURTHER INFORMATION CONTACT:** Samie Allen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4013.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule that revised 21 CFR 814.44(d) and 814.45(d) to discontinue individual publication of PMA approvals and denials in the **Federal Register**. Instead, the agency now posts this information on the Internet on FDA's home page at *http://www.fda.gov*. FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from October 1, 2007, through December 31, 2007. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM OCTOBER 1, 2007, THROUGH DECEMBER 31, 2007.

| PMA No./Docket No. | Applicant | TRADE NAME | Approval Date |
|---|---|---|---|
| P000009 (S4)/2007M–0408 | Biotronik, Inc. | TACHOS DR ATRIAL TX IMPLANTABLE CARDIOVERTER DEFIBRILLATOR ICD SYSTEM | September 9, 2002 |
| P060031/2007M–0467 | Bio-Rad Laboratories | BIO–RAD MONOLISA ANTI–HBC EIA | April 27, 2007 |
| P060005/2007M–0409 | Siemens Medical Solutions Diagnostics | IMMULITE/IMMULITE 1000 & IMMULITE 2000 FREE PSA ASSAYS | May 11, 2007 |
| P060017/2007M–0413 | Veridex, LLC | GENESEARCH BREAST LYMPH NODE (BLN) ASSAY | July 16, 2007 |
| P040040/2007M–0446 | AGA Medical Corp. | AMPLATZER MUSCULAR VSD | September 7, 2007 |
| P070009/2007M–0380 | Obtech Medical GMBH | REALIZE ADJUSTABLE GASTRIC BAND MODEL 2200–X | September 28, 2007 |
| P070012/2007M–0411 | Medtronic Vascular | EXPONENT SELF-EXPANDING CAROTIC STENT SYSTEM WITH OVER THE WIRE OR RAPID EXHANGE DELIVERY SYSTEM | October 23, 2007 |
| P060038/2007M–0410 | Carbomedics, Inc. | MITROFLOW AORTIC PERICARDIAL HEART VALVE | October 23, 2007 |
| H990002/2007M–0415 | Genzyme Biosurgery | EPICEL (CULTURED EPIDERMAL AUTOGRAFTS) | October 25, 2007 |
| P060035/2007M–0447 | Abbott Laboratories | ARCHITECT CORE-M REAGENT KIT/CALIBRATORS/CONTROLS | November 6, 2007 |

## II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/cdrh/pmapage.html*.

Dated: May 16, 2008.

**Daniel G. Schultz,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. E8–12012 Filed 5–28–08; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed Collection; Comment Request; The Prevalence and Incidence of HIV Molecular Variants and Their Correlation With Risk Behaviors and HIV Treatment in Brazilian Blood Donors

**SUMMARY:** 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 National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to the Office of Management and Budget (OMB) for review and approval.

*Proposed Collection: Title:* The Prevalence and Incidence of HIV Molecular Variants and Their Correlation With Risk Behaviors and HIV Treatment in Brazilian Blood Donors. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* Establishing and monitoring viral prevalence and incidence rates, and identifying risk behaviors for HIV incidence among blood donors, are critical to assessing and reducing risk of HIV transmission through blood transfusion. Identifying donation samples from donors with recent HIV infection is particularly critical as it enables characterization of

the viral subtypes currently transmitted within the screened population and hence most likely to ''break-through'' routine screening measures (*i.e.*, peri-seroconversion window period donations). Molecular surveillance of incident HIV infections in blood donors not only characterizes genotypes of recently infected donors for purposes of blood safety, but also enables documentation of the rates of primary transmission of anti-viral drug resistant strains in the community, serving a public health role in identifying new HIV infections for anti-retroviral treatment. Both a prospective surveillance and a case-control design are proposed to enroll all eligible HIV seropositives detected at three blood centers in Brazil (São Paulo, Belo Horizante, and Recífe) plus a satellite center in Rio de Janeiro. A comparison of epidemiological risk profiles will be made between the seropositive donors and a group of randomly selected seronegative donors.

There are three study aims. Laboratory studies (LS–EIA testing and sequencing of pol region) on linked specimens from all enrolled HIV cases, will allow for estimation of HIV prevalence and incidence relative to genotype and putative route of infection. Data derived from molecular genotyping, including drug resistant genotypes, will be provided, along with counseling, to all enrolled HIV positive donors to facilitate their clinical care via referral to the Brazilian national HIV treatment system. Our findings will be compared to trends in prevalence, incidence and molecular variants from studies of the general population and high risk populations in Brazil, thus allowing for broad monitoring of the HIV epidemic in Brazil and assessment of the impact of donor selection criteria on these parameters. Finally, HIV cases and a group of controls, through responses to a questionnaire, will provide data on HIV risk behaviors among prospective blood donors. This HIV risk behavior data will be used as covariates in the molecular surveillance analyses described above, as well as aid in assessing whether modifications may be needed to Brazil's routine blood center operational donor screening questionnaire.

The study participants will return to their local blood center for the administration of an informed consent form, explaining the confidential nature of the research study as well as the risks and benefits to their participation. Once enrolled, they will be asked to complete the self-administered risk factor questionnaire. In addition, a small blood sample will be collected from each HIV seropositive participant to be used for the genotyping and drug resistance testing. The results of the drug resistance testing will be communicated back to the seropositive participants during an in-person counseling session at the blood center. Defining prevalence and incidence in blood donors and residual risk of HIV transmission by transfusions may lead to new regulations and blood safety initiatives in Brazil. The data can be used to project the yield, safety impact and cost effectiveness of implementing enhanced testing strategies such as combination antigen-antibody assays and/or NAT. Determination of HIV risk factors in donors (first time versus repeat donor status; volunteer versus replacement status; demographics and risk behaviors) will support policy discussions over strategies to recruit the safest possible donors in Brazil. The findings from this project will also complement similar monitoring of HIV prevalence, incidence, transfusion risk and molecular variants in the U.S. and other funded international REDS-II sites, thus allowing direct comparisons of these parameters on a global level.

*Frequency of Response*: Once. *Affected Public:* Individuals. *Type of Respondents*: Adult Blood Donors. The annual reporting burden is as follows: *Estimated Number of Respondents:* 2,000; *Estimated Number of Responses per Respondent*: 1; *Average Burden of Hours per Response*: 0.40 (including administration of the informed consent form and questionnaire completion instructions); and *Estimated Total Annual Burden Hours Requested:* 800. The annualized cost to respondents is estimated at: $5,200 (based on $6.50 per hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

| Estimated number of respondents | Estimated number of responses per respondent | Average burden hours per response | Estimated total annual burden hours requested |
|---|---|---|---|
| 2,000 | 1 | 0.40 | 800 |

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. George Nemo, Project Officer, NHLBI, Two Rockledge Center, Room 9144, 6701 Rockledge Drive, MSC 7950, Bethesda, MD 20892–7950, or call 301–435–0065, orE-mail your request to *nemog@nih.gov.*

*Comments Due Date*: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: May 20, 2008.

**George Nemo,**

*Project Officer, NHLBI, National Institutes of Health.*

[FR Doc. E8–11921 Filed 5–28–08; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S.

Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Telomerase Suppressor Compositions and Methods for Diagnosis and Treatment of Cancer**

*Description of Technology:* Lung cancer is responsible for one-third of all cancer related deaths. Although tobacco smoking is a major cause of lung cancer, epidemiological studies have provided evidence for the involvement of genetic factors in the disease onset. For now there are no reliable markers for the early lung cancer diagnostics and no effective treatment except resection of the tumor on early stages. As a result, it is difficult to diagnose lung cancer without invasive methods and before significant progression of the disease has occurred.

NIH inventors have recently discovered that a gene called CCDC36 (LELA1) is frequently inactivated in patients with non-small cell lung cancer (NSCLC). In many instances of lung cancer, particularly early onset NSCLC, one copy of CCDC36 will be lost due to the chromosomal deletion while the other will be inactivated by promoter methylation. This results in reduction or loss of CCDC36 gene expression. In addition, several single nucleotide polymorphisms (SNPs) found in the gene appeared to be associated with the early onset NSCLC. CCDC36 gene replacement could be utilized as a potential therapeutic strategy.

*Applications*

Detection of SNPs associated with early onset NSCLC can be potentially used to diagnose predisposition.

Detection of chromosomal loss of CCDC36 and/or its methylation status in lung cancer can be used to diagnose NSCLC.

Treatment of NSCLC using CCDC36-based therapeutics.

*Advantages*

Early detection of NSCLC has the potential to improve prognosis of lung cancer patient.

Non-invasive nature of the test is beneficial to patient comfort.

*Benefits*

There is no current genetic test for early onset NSCLC, providing an excellent market opportunity.

Developing a diagnostic test for lung cancer will have significant social benefits, allowing the early detection and treatment of lung cancer patients.

*Inventors:* Tatiana Dracheva et al. (NCI).

*Patent Status:* PCT Application No. PCT/US2008/059800 filed 09 Apr 2008 (HHS Reference No. E–265–2007/0–PCT–01).

*Licensing Status:* Available for licensing.

*Licensing Contact:* David A. Lambertson, Ph.D.; 301–435–4632; *lambertsond@mail.nih.gov.*

*Collaborative Research Opportunity:* The National Cancer Institute, Center for Cancer Research, Laboratory of Human Carcinogenesis is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize ''Unique Genetic Changes in CCDC36 Gene That Are Associated with Early Onset Lung Cancer.'' Please contact John D. Hewes, Ph.D., at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

**Muramyl Dipeptide as a Therapeutic Agent for Inflammation**

*Description of Technology:* The nucleotide-binding oligomerization domain 2 (NOD2) protein plays a key role in innate immunity as a sensor of muramyl dipeptide (MDP), a breakdown product of bacterial peptidoglycan. Bacterial peptidoglycan promotes the innate immune response through the activation of Toll-like receptor 2 (TLR2), which ultimately provokes inflammation. Activation of NOD2 by MDP negatively regulates the activity of TLR2, and thus reduces inflammation.

The inventors have demonstrated that administration of MDP prevents the development of experimental colitis in mice. They have also determined that MDP reduces pro-inflammatory cytokine production from multiple Toll-like receptors, and that this reduction arises from the induction of IFN regulatory factor 4 (IRF4). The technology includes methods of treating or preventing inflammation associated with an autoimmune disorder, particularly inflammatory bowel disease, via administration of muramyl peptide; also included are methods of reducing symptoms characteristic of inflammation via administration of muramyl peptide.

*Applications:* This technology has potential as an anti-inflammatory therapy for autoimmune or other inflammation-associated diseases, particularly inflammatory bowel diseases such as Crohn's disease and ulcerative colitis.

*Market:* Approximately 1.8 million people suffer from inflammatory bowel disease in the major pharmaceutical markets. In the United States alone, there are approximately 300,000 to 500,000 people with inflammatory bowel disease, as estimated by the National Institute of Diabetes and Digestive and Kidney Diseases, NIH.

*Development Status: In vivo* data are available in an experimental colitis mouse model, and *in vitro* data supporting mechanism of action also are available.

*Inventors:* Warren Strober *et al.* (NIAID).

*Relevant Publication:* T. Watanabe et al. Muramyl dipeptide activation of nucleotide-binding oligomerization domain 2 protects mice from experimental colitis. J Clin Invest. 2008 Feb;118(2):545–559.

*Patent Status:* PCT Application No. PCT/US2007/086117 filed 30 Nov 2007 (HHS Reference No. E–110–2006/0–PCT–02).

*Licensing Status:* This technology is available for exclusive or non-exclusive licensing.

*Licensing Contact:* Tara Kirby, Ph.D.; 301–435–4426; *tarak@mail.nih.gov.*

*Collaborative Research Opportunity:* The NIAID Laboratory of Host Defenses, Mucosal Immunity Section, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact either Rosemary Walsh or Charles Rainwater at 301–496–2644 for more information.

**Treatment and Diagnosis of Cancer, Diabetes and Other Disorders Using Adrenomedullin Peptides and Antibodies**

*Description of Technology:* Adrenomedullin (AM), a 52-amino acid regulatory peptide, is expressed in a wide range of tissues, and has a variety of biological roles. AM was initially identified as a vasodilator, and the effects of AM and its fragments in the cardiovascular system have been widely studied. AM also has important effects on renal function, cell growth, glucose

metabolism, and regulation of hormone secretion, and has antimicrobial activity.

This technology claims AM peptides and antibodies, which would be useful in the development of a therapeutic or for diagnostics use. Also claimed are methods of inhibiting tumor cell growth using AM peptides, in particular in a patient suffering from a lung tumor. Claims are also directed to methods of treating a subject with AM-associated conditions, including diabetes, pregnancy, neurological disease, inflammation, or bone development. Finally, methods are claimed for diagnosing or monitoring a disease where AM levels are altered.

Also available is a murine monoclonal antibody, MoAb-G6, which was raised against an AM peptide. This antibody neutralizes AM bioactivity, and reacts with the processed form of AM, but not the preprohormone. This antibody would be useful not only for research use, but also as part of a diagnostic assay for measurement or detection of AM.

*Applications*

Peptide- or antibody-based therapeutics for cancer, diabetes, inflammation or other AM-associated disease.

Diagnostic tools for the detection of AM-positive tumors or other AM-associated conditions.

Research use of AM peptides and antibodies.

*Development Status:* This technology is currently in the pre-clinical stage of development.

*Inventors:* Frank Cuttitta et al. (NCI).

*Related Publications*

1. A Martínez et al. Regulation of insulin secretion and blood glucose metabolism by adrenomedullin. Endocrinology. 1996 Jun;137(6):2626–2632.

2. E Zudaire et al. The central role of adrenomedullin in host defense. J Leukoc Biol. 2006 Aug;80(2):237–244.

3. E Zudaire et al. Adrenomedullin is a cross-talk molecule that regulates tumor and mast cell function during human carcinogenesis. Am J Pathol. 2006 Jan;168(1):280–291.

*Patent Status:*

U.S. Patent Serial No. 6,320,022 issued 20 Nov 2001 (HHS Reference No. E–206–1995/3–US–04).

U.S. Patent Serial No. 7,101,548 issued 05 Sept 2006 (HHS Reference No. E–206–1995/3–US–10).

U.S. Patent Application No. 11/517,599 filed 05 Sept 2006 (HHS Reference No. E–206–1995/3–US–11).

Foreign counterparts in Australia, Canada, France, Germany, Great Britain, and Japan.

*Related Technologies*

HHS Reference No. E–256–1999/0—Determination of Adrenomedullin-Binding Proteins.

HHS Reference No. E–294–2002/0—A New Target for Angiogenesis and Anti-Angiogenesis Therapy.

*Licensing Status:* Available for exclusive or non-exclusive licensing.

*Licensing Contact:* Tara Kirby, Ph.D.; 301–435–4426; *tarak@mail.nih.gov.*

*Collaborative Research Opportunity:* The National Cancer Institute Angiogenesis Core Facility is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Use of Adrenomedullin Peptides and Antibodies in the Treatment and Diagnosis of Cancer, Diabetes and other Disorders. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: May 21, 2008.

**Steven M. Ferguson,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. E8–11919 Filed 5–28–08; 8:45 am]

BILLING CODE 4140–01–P

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 26, 2008, 1 p.m. to June 26, 2008, 3 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on May 16, 2008, 73 FR 28489–28490.

The meeting will be held June 24, 2008, 2 p.m. to 3 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: May 20, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–11785 Filed 5–28–08; 8:45 am]

BILLING CODE 4140–01–M

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 23, 2008, 8 a.m. to June 24, 2008, 5 p.m., Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102 which was published in the **Federal Register** on May 16, 2008, 73 FR 28489–28490.

The meeting will be held one day only June 23, 2008, from 8 a.m. to 7 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: May 20, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–11787 Filed 5–28–08; 8:45 am]

BILLING CODE 4140–01–M

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 17, 2008, 1 p.m. to June 17, 2008, 3 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on May 15, 2008, 73 FR 28121–28122.

The meeting will be held June 20, 2008, 11 a.m. to 2 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: May 20, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–11788 Filed 5–28–08; 8:45 am]

BILLING CODE 4140–01–M

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Neurotechnology Study Section, June 3, 2008, 8 a.m. to June 4, 2008, 5 p.m., Grand Hyatt, 345 Stockton Street, San Francisco, CA

94108 which was published in the **Federal Register** on May 15, 2008, 73 FR 28121–28122.

The meeting was cancelled due to a lack of quorum.

Dated: May 20, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–11789 Filed 5–28–08; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 2, 2008, 8 a.m. to June 2, 2008, 11:30 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on May 15, 2008, 73 FR 28121–28122.

The meeting title has been changed to ''Clinical Endocrinology''. The meeting is closed to the public.

Dated: May 20, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–11794 Filed 5–28–08; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 24, 2008, 1 p.m. to June 24, 2008, 3 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on May 16, 2008, 73 FR 28489–28490.

The meeting will be held June 25, 2008, 3 p.m. to 5 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: May 20, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–11795 Filed 5–28–08; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center on Minority Health and Health Disparities; 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 Center on Minority Health and Health Disparities Special Emphasis Panel; NCMHD Conference Grant Review.

*Date:* June 20, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Lorrita Watson, PhD, National Center on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892–5465, (301) 402–1366, *watsonl@mail.nih.gov*.

Dated: May 16, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–11674 Filed 5–28–08; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center on Minority Health and Health Disparities; 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 Center on Minority Health and Health Disparities Special Emphasis Panel; Loan Repayment Program for Health Disparities and Clinical Research—Panel D.

*Date:* June 23, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Lorrita Watson, PhD, National Center on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892–5465, (301) 402–1366, *watsonl@mail.nih.gov.*

Dated: May 20, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–11796 Filed 5–28–08; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel; AA–3 Member Conflict.

*Date:* June 4, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Crowne Plaza Hotel, 877 Georgia Avenue, Silver Spring, MD 20910.

*Contact Person:* Philippe Marmillot, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Rm 3045, Bethesda, MD 20892, 301–443–2861, *marmillotp@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 19, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–11645 Filed 5–28–08; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Unsolicited P01.

*Date:* June 16, 2008.

*Time:* 12 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Lucy A. Ward, DVM, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–594–6635, *lward@niaid.nih.gov.*

*Name of Committee:* Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases B Subcommittee.

*Date:* June 18, 2008.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Gary S. Madonna, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–496–3528, *gm12w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 19, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–11646 Filed 5–28–08; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; NIMH Chemical Synthesis and Drug Supply Program.

*Date:* June 25, 2008.

*Time:* 12 p.m. to 2 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Peter J. Sheridan, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center,6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892, 301–443–1513, *psherida@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 19, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–11672 Filed 5–28–08; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; Methods of Statistical Analysis of DNA Sequence Data for Studies Relating Variation to Disease.

*Date:* June 25, 2008.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Vinod Charles, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; ITVC Conflicts I.

*Date:* July 1, 2008.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Marina Broitman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 19, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–11673 Filed 5–28–08; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental & Craniofacial Research; 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 Dental and Craniofacial Research Special Emphasis Panel; Review R21s.

*Date:* June 18, 2008.

*Time:* 10 a.m. to 11:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6706 Democracy Blvd., Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Mario Rinaudo, MD, Scientific Review Officer, Scientific Review Branch, National Institute of Dental & Craniofacial Research, National Institutes of Health, 6701 Democracy Blvd. (DEM 1), RM 670 MSC4878, Bethesda, MD 20892, 301–594–2904, *mrinaudo@nidcr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 16, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–11675 Filed 5–28–08; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel; Ethanol and Behavioral Genetics and Blood Brain Barrier.

*Date:* July 3, 2008.

*Time:* 10 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 5635 Fishers Lane, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Philippe Marmillot, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Rm 3045, Bethesda, MD 20892, 301–443–2861, *marmillotp@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 19, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–11716 Filed 5–28–08; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Asprin Trial.

*Date:* June 25, 2008.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Bethesda, MD 20892,(Telephone Conference Call).

*Contact Person:* Alicja L. Markowska, PhD, DSC, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Nutrient Signaling.

*Date:* July 10, 2008.

*Time:* 12 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Bita Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Autphagy in Aging.

*Date:* July 17, 2008.

*Time:* 12 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway, 7201 Wisconsin Avenue, Suite 2c212, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Elaine Lewis, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging,Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue,Bethesda, MD

20892, 301–402–7707, *elainelewis@nia.nih.gov.*

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Brain Aging and Functional Restoration.

*Date:* July 22, 2008.

*Time:* 12 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gate Way, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Elaine Lewis, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging,Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue,Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 20, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–11793 Filed 5–28–08; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of Dietary Supplements (ODS) Methods and Reference Materials Program—Vitamin Methodology Workshop; Correction Notice

Notice is hereby given that the meeting notice which we previously published in the **Federal Register** on May 20, 2008 (73 FR 29140–29141) concerning the workshop to be held on Monday, July 7th and Tuesday, July 8th, 2008 at the Marriott Gaithersburg Washingtonian Center Hotel in Gaithersburg, Maryland 20878, contained an error. The contact e-mail address information for Mr. Mike Bykowski that we provided in the notice was incorrect. It should read: *mbykowski@csionweb.com.*Mr. Bykowski also may be reached by telephone at 301–670–2070.

Dated: May 21, 2008.

**Joseph M. Betz,**

*Office of Dietary Supplements, National Institutes of Health.*

[FR Doc. E8–11923 Filed 5–28–08; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

**[DHS–2008–0039]**

### Collection of Alien Biometric Data Upon Exit From the United States at Air and Sea Ports of Departure; United States Visitor and Immigrant Status Indicator Technology Program

**AGENCY:** National Protection and Programs Directorate, Department of Homeland Security.

**ACTION:** Notice of Hearing.

**SUMMARY:** The Department of Homeland Security (DHS), United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Program, is issuing this notice to advise the public of a public hearing on June 13, 2008, in Arlington, Virginia, on ''Collection of Alien Biometric Data upon Exit from the United States at Air and Sea Ports of Departure,'' docket DHS–2008–0039.

**DATES:** The hearing will be held on Friday, June 13, 2008, from 9:30 a.m. to 4 p.m., Eastern Daylight Time.

**ADDRESSES:** The hearing will be held at the Hyatt Regency Crystal City at Ronald Reagan Washington National Airport, 2799 Jefferson Davis Highway, Arlington, Virginia, 22202.

**FOR FURTHER INFORMATION CONTACT:** Helen V. deThomas, US–VISIT, Department of Homeland Security; 1616 North Fort Myer Drive, 18th Floor, Arlington, Virginia, 22209 or by telephone at (202) 298–5200 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** On April 24, 2008, The Department of Homeland Security (DHS), United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Program, published a notice of proposed rulemaking ''Collection of Alien Biometric Data upon Exit from the United States at Air and Sea Ports of Departure,'' at 73 FR 22065. The sixty-day public comment period for this proposed rule concludes on June 23, 2008. DHS has received a number of requests to extend the sixty-day comment period. Because the Department is operating under a statutory deadline for implementation of a US–VISIT air exit system, however, DHS will not be able to extend the comment period for this rulemaking action. In lieu of extending the comment period, DHS will hold a public hearing on this proposed rule at 9:30 a.m. on June 13, 2008, at the Hyatt Regency Crystal City at Ronald Reagan Washington National Airport, 2799 Jefferson Davis Highway, Arlington, Virginia, 22202. US–VISIT will accept written and oral comments on the proposed rule during this meeting. All comments received during this public meeting will be included in the public docket (DHS–2008–0039) for this rulemaking action.

Although DHS will accept comments on any aspect of this proposed rule, the most helpful comments would specifically address discrete elements of the proposed rule, including on-point operational and financial data and the potential economic and business impacts of the performance standards proposed under this rule, including the alternatives discussed in this proposed rule and the underlying assumptions and analyses related to those alternatives. The most useful comments would include information on how DHS could accomplish the requirements of the proposed rule and any alternatives that would accomplish the result embodied in the proposed rule that would reduce the burden on travelers and the travel industry without sacrificing accuracy in the collection of biometric information. DHS also is interested in public comment on the regulatory impact assessment supporting this proposed rule, including:

- The cost models of each alternative, including all assumptions that underlie the labor costs;
- Any cost-sharing alternatives to the proposals presented between the carriers and the Government;
- The assumptions and numbers used to develop the carrier and Government alternatives; and
- The potential for cost savings for alternatives not included as options in the proposed rule.

Anyone wishing to speak and/or make a presentation during the public meeting must contact Helen V. deThomas, US–VISIT, Department of Homeland Security, by telephone at (202) 298–5200 (not a toll-free number), by facsimile at (202) 298–5201, or by e-mail at *helen.dethomas@dhs.gov,* not later than June 10, 2008, three business days prior to the hearing date and provide three copies of any written statement or presentation materials so that they may be placed on the agenda. US–VISIT reserves the right to limit the number of presenters and the time allowed for presentations to accommodate numerous presenters with different points of view.

Additionally, if you need accommodations because of a disability or require additional information, please

contact Helen V. deThomas at the above telephone number or e-mail address.

**Shonnie Lyon,**

*Acting Deputy Director, US–VISIT.*

[FR Doc. E8–12021 Filed 5–28–08; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2008–0081]**

### Collection of Information Under Review by Office of Management and Budget: OMB Control Numbers: 1625–0077

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) requesting an extension of their approval for the following collection of information: 1625–0077, Security Plans for Ports, Vessels, Facilities, and Outer Continental Shelf Facilities and Other Security-Related Requirements. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Please submit comments on or before June 30, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2008–0081] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) or to OIRA. To avoid duplication, please submit your comments by only one of the following means:

(1) Electronic submission. (a) To Coast Guard docket at *http://www.regulation.gov.* (b) To OIRA by e-mail to: *oira_submission@omb.eop.gov*.

(2) Mail or Hand delivery. (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) To OIRA, 725 17th Street, NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(3) Fax. (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in time, mark the fax to the attention of the Desk Officer for the Coast Guard.

The DMF maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov.*

Copies of the complete ICRs are available through this docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters, (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

**SUPPLEMENTARY INFORMATION:** The Coast Guard invites comments on whether this information collection request should be granted based on it being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR addressed. Comments to Coast Guard must contain the docket number of this request, [USCG 2007–0081]. For your comments to OIRA to be considered, it is best if they are received on or before June 30, 2008.

*Public participation and request for comments:* We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

*Submitting comments:* If you submit a comment, please include the docket number [USCG–2008–0081], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them. The Coast Guard and OIRA will consider all comments and material received during the comment period.

*Viewing comments and documents:* Go to *http://www.regulations.gov* to view documents mentioned in this notice as being available in the docket. Enter the docket number [USCG–2008–0081] in the Search box, and click, ''Go>>.'' You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or by visiting *http://DocketsInfo.dot.gov.*

**Previous Request for Comments**

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (73 FR 10458, February 27, 2008) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments.

**Information Collection Request**

*Title:* Security Plans for Ports, Vessels, Facilities, and Outer Continental Shelf Facilities and Other Security-Related Requirements.

*OMB Control Number:* 1625–0077.

*Type Of Request:* Extension of currently approved collection.

*Affected Public:* Vessel and facility owners and operators.

*Forms:* CG–6025 and CG–6025A.

*Abstract:* This information collection is associated with the maritime security requirements mandated by the Maritime Transportation Security Act (MTSA) of 2002. Security assessments, security plans, and other security-related requirements are found in Title 33 CFR chapter I, subchapter H, and 33 CFR parts 120 and 128. This information is needed to determine if vessels and facilities are in compliance with certain security standards.

*Burden Estimate:* The estimated burden has decreased from 1,883,457 hours to 1,278,068 hours a year.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: May 21, 2008.

**D.T. Glenn,**

*Rear Admiral, U. S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.*

[FR Doc. E8–11917 Filed 5–28–08; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice; 60-day notice and request for comments; Extension, without change, of a currently approved collection, OMB Number 1660–0040, FEMA Form 81–93.

**SUMMARY:** The Federal Emergency Management Agency, 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 a continuing information collection. In accordance with the Paperwork Reduction Act of 1995 this notice seeks comments concerning renewal of the Standard Flood Hazard Determination Form, FEMA Form 81–93.

**SUPPLEMENTARY INFORMATION:** FEMA is seeking to extend the use of the Standard Flood Hazard Determination Form, required by Title V, Section 528 of the National Flood Insurance Reform Act of 1994 (NFIRA). The form records the determination of whether a structure is located within an identified Special Flood Hazard Area and whether flood insurance is available. Federally-regulated lender institutions are mandated to complete this form for any loan made, increased, extended, renewed, or purchased.

**Collection of Information**

*Title:* Standard Flood Hazard Determination Form.

*Type of Information Collection:* Extension, without change, of a currently approved collection.

*OMB Number:* 1660–0040.

*Form Numbers:* FEMA Form 81–93.

*Abstract:* On September 23, 1994, the President signed the Riegle Community Development and Regulatory Improvement Act of 1994. Title V of this Act is the National Flood Insurance Reform Act (NFIRA). Section 528 of the NFIRA requires that FEMA develop a standard hazard determination form for recording the determination of whether a structure is located within an identified a Special Flood Hazard Area and whether flood insurance is available. Section 528 of the NFIRA also requires the use of this Form by regulating lending institutions, federal agent lenders, the Federal National Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association for any loan made, increased, extended, renewed, or purchased by these entities.

*Affected Public:* Business or other for-profit.

*Estimated Total Annual Burden Hours:* 10,890,000 hours.

ANNUAL BURDEN HOURS

| Data collection activity/instrument | Number of respondents | Frequency of responses | Hour burden per response | Annual responses | Total annual burden hours |
|---|---|---|---|---|---|
| | (A) | (B) | (C) | (D) = (A × B) | (C × D) |
| FEMA Forms 81–93 | 33,000,000 | 1 | 0.33 (20 minutes) | 33,000,000 | 10,890,000 |
| Total | 33,000,000 | 1 | 0.33 | 33,000,000 | 10,890,000 |

*Estimated Cost:* The estimated annualized cost to respondents based on wage rate categories is $295,119,000.00. The estimated annual cost to the Federal Government is $100,200.

*Comments:* Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments must be submitted on or before July 28, 2008.

**ADDRESSES:** Interested persons should submit written comments to Office of Management, Records Management Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, 1800 S. Bell Street, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Contact Ava Hammond, Program Specialist, Mitigation Division at (202) 646–7045 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: May 15, 2008.

**John A. Sharetts-Sullivan,**

*Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. E8–11998 Filed 5–28–08; 8:45 am]

BILLING CODE 9110–11–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1758–DR]**

### Arkansas; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1758-DR), dated May 20, 2008, and related determinations.

**EFFECTIVE DATE:** May 20, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 20, 2008, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Arkansas resulting from severe storms, flooding, and tornadoes beginning on May 2, 2008, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kenneth M. Riley, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Arkansas have been designated as adversely affected by this declared major disaster:

Benton, Cleburne, Conway, Crittenden, Grant, Lonoke, Mississippi, Pulaski, Saline, and Van Buren Counties for Individual Assistance.

Cleburne, Conway, Crittenden, Grant, Lonoke, and Van Buren Counties for Public Assistance. Direct Federal assistance is authorized.

All counties within the State of Arkansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance (CFDA) Numbers are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–11995 Filed 5–28–08; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1751–DR]**

### Arkansas; Amendment No. 9 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Arkansas (FEMA–1751–DR), dated March 26, 2008, and related determinations.

**EFFECTIVE DATE:** May 22, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Arkansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 26, 2008.

Perry County for Individual Assistance (already designated for Public Assistance.)

Calhoun County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–11994 Filed 5–28–08; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1740-DR]**

### Indiana; Amendment No. 4 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1740–DR), dated January 30, 2008, and related determinations.

**EFFECTIVE DATE:** May 20, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 30, 2008.

Allen and Fulton Counties for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance (CFDA) Numbers are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–11997 Filed 5–28–08; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1755–DR]**

### Maine; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Maine (FEMA–1755–DR), dated May 9, 2008, and related determinations.

**EFFECTIVE DATE:** May 14, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective May 14, 2008.

(The following Catalog of Federal Domestic Assistance (CFDA) Numbers are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–12001 Filed 5–28–08; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1753–DR]**

### Mississippi; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–1753–DR), dated May 8, 2008, and related determinations.

**EFFECTIVE DATE:** May 19, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective May 19, 2008.

(The following Catalog of Federal Domestic Assistance (CFDA) Numbers are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–12004 Filed 5–28–08; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1756–DR]**

### Oklahoma; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–1756–DR), dated May 14, 2008, and related determinations.

**EFFECTIVE DATE:** May 13, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for

this disaster is closed effective May 13, 2008.

(The following Catalog of Federal Domestic Assistance (CFDA) Numbers are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–12016 Filed 5–28–08; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1757–DR]**

### Kentucky; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1757–DR), dated May 19, 2008, and related determinations.

**EFFECTIVE DATE:** May 19, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 19, 2008, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky resulting from severe storms, tornadoes, flooding, mudslides, and landslides during the period of April 3–4, 2008, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, W. Michael Moore, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the Commonwealth of Kentucky have been designated as adversely affected by this declared major disaster:

Anderson, Crittenden, Fleming, Fulton, Hancock, Hopkins, Lewis, Livingston, McLean, Nicholas, Ohio, Spencer, and Woodford Counties for Public Assistance.

All counties within the Commonwealth of Kentucky are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance (CFDA) Numbers are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–12005 Filed 5–28–08; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1756–DR]**

### Oklahoma; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1756–DR), dated May 14, 2008, and related determinations.

**EFFECTIVE DATE:** May 14, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 14, 2008, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oklahoma resulting from severe storms, tornadoes, and flooding beginning on May 10, 2008, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program also will be limited to 75

percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Justin A. Dombrowski, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following area of the State of Oklahoma has been designated as adversely affected by this declared major disaster:

Ottawa County for Individual Assistance.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance (CFDA) Numbers are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–11999 Filed 5–28–08; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5187–N–36]**

## Data Collection for the Housing Counseling Outcome Evaluation

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The study is designed to gather statistically accurate information on outcomes realized by clients of HUD-funded housing counseling agencies seeking assistance to either purchase a home (pre-purchase clients) or to resolve or prevent a mortgage delinquency (foreclosure mitigation clients). Up to 30 agencies receiving HUD-funding for housing counseling will be recruited to participate voluntarily in the study, with the goal of recruiting 1,000 pre-purchase and 1,000 foreclosure mitigation counseling clients. Each client participating in the study will be asked to complete a baseline questionnaire at the time they are enrolled in the study. Each counseling agency participating will be asked to complete service tracking surveys, for client each time that client is assisted, and counselor information surveys.

**DATES:** *Comments Due Date: June 30, 2008.*

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–NEW) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

### This Notice Also Lists the Following Information

*Title of Proposal:* Data Collection for the Housing Counseling Outcome Evaluation.

*OMB Approval Number:* 2528–NEW.

*Form Numbers:* None.

*Description of the Need for the Information and its Proposed Use:* The study is designed to gather statistically accurate information on outcomes realized by clients of HUD-funded housing counseling agencies seeking assistance to either purchase a home (pre-purchase clients) or to resolve or prevent a mortgage delinquency (foreclosure mitigation clients). Up to 30 agencies receiving HUD-funding for housing counseling will be recruited to participate voluntarily in the study, with the goal of recruiting 1,000 pre-purchase and 1,000 foreclosure mitigation counseling clients. Each client participating in the study will be asked to complete a baseline questionnaire at the time they are enrolled in the study. Each counseling agency participating will be asked to complete service tracking surveys, for each client each time that client is assisted, and counselor information surveys.

*Frequency of Submission:* On occasion, Other one time.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting Burden | 2,060 | 1 | | 2.45 | | 5,060 |

*Total Estimated Burden Hours:* 5,060.
*Status:* New Collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 22, 2008.

**Lillian L. Deitzer,**

*Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.*

[FR Doc. E8–11897 Filed 5–28–08; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R8–ES–2008–N00134; 81430–1112–0000–F2]**

### Proposed Low Effect Habitat Conservation Plan for the Maintenance and Operations on the Calnev 8-Inch and 14-Inch Pipelines, Cajon and Lytle Creek Wash, San Bernardino County, CA

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

**ACTION:** Notice of availability.

**SUMMARY:** Calnev Pipeline Company LLC (applicant) has applied to the U.S. Fish and Wildlife Service (Service) for a 5-year incidental take permit for one covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for ''take'' of the endangered San Bernardino kangaroo rat (*Dipodomys Merriami parvus*) associated with the proposed pipeline inspection and repair projects in the City of Rialto and unincorporated San Bernardino County, California. A conservation program to minimize and mitigate for the project activities would be implemented as described in the proposed Maintenance and Operations on the Calnev 8-inch and 14-inch Pipelines, Cajon and Lytle Creek Wash, San Bernardino County, California Habitat Conservation Plan (proposed HCP), which would be implemented by the applicant.

We are requesting comments on the permit application and on the preliminary determination that the proposed HCP qualifies as a ''Low-effect'' Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the Environmental Action Statement (EAS) and the associated Low Effect Screening Form, which are also available for public review.

**DATES:** Written comments should be received on or before June 30, 2008.

**ADDRESSES:** Comments should be addressed to the Field Supervisor, Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92011. Written comments may be sent by facsimile to (760) 918–0638.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone: (760) 431–9440.

**SUPPLEMENTARY INFORMATION:**

#### Availability of Documents

Individuals wishing copies of the application, proposed HCP, and EAS should immediately contact the Service by telephone at (760) 431–9440 or by letter to the Carlsbad Fish and Wildlife Office. Copies of the proposed HCP and EAS also are available for public inspection during regular business hours at the Carlsbad Fish and Wildlife Office [see **ADDRESSES**].

#### Background

Section 9 of the Act and its implementing Federal regulations prohibit the take of animal species listed as endangered or threatened. Take is defined under the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a) of the Act, the Service may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

The applicant is seeking a permit for take of the San Bernardino kangaroo rat during the life of the permit. This species is referred to as the ''SBKR'' in the proposed HCP. The SBKR is restricted western San Bernardino and Riverside counties.

The applicant proposes to perform routine inspection and repair work along 8-inch and 14-inch petroleum product pipelines within the Lytle and Cajon Creek Wash in the City of Rialto and unincorporated San Bernardino County, California. The purpose of the project is to ensure safe and effective transfer of petroleum products within these pipelines. The applicant proposes to expose, inspect and repair pipelines as necessary to ensure safe and effective operations. Each dig will impact approximately 0.02 acre of land, and this permit would authorize a maximum of 0.5 acre of impact in total. We anticipate that some SBKR may be lost within the 0.5 acre of SBKR occupied habitat. The project is within designated critical habitat for the SBKR.

The applicant proposes to minimize and mitigate the effects to the SBKR associated with the covered activities by fully implementing the HCP. The purpose of the proposed HCP's conservation program is to promote the biological conservation of the SBKR. The HCP includes measures to minimize impacts to SBKR by containing the project footprint, minimizing activities that may directly impact individual SBKR, and promoting recovery of impacted habitat. Impacts would be confined to previously impacted areas, and exposed areas would be replaced with the original soils and associated seed bank. The applicant proposes to mitigate impacts to the SBKR through purchase of 1 credit within the Cajon Creek Conservation Bank in San Bernardino County, California. For each individual repair project, the applicant would subtract from the credit at a 2:1 ratio such that no more than 0.5 acre of impact would be authorized by this permit.

The Proposed Action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to minimize and mitigate impacts of the project on the SBKR. One alternative to the taking of the listed species under the Proposed Action is considered in the proposed HCP. Under the No Action Alternative, no permit would be issued, and no maintenance or conservation would occur. This Alternative was not chosen because it would result in no repairs or necessary maintenance to

existing pipelines, which would increase the risk of impacts to the public, property, and environment.

The Service has made a preliminary determination that approval of the proposed HCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1) and as a ''low-effect'' plan as defined by the Habitat Conservation Planning Handbook (November 1996). Determination of Low-effect Habitat Conservation Plans is based on the following three criteria: (1) Implementation of the proposed HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) Implementation of the proposed HCP would result in minor or negligible effects on other environmental values or resources; and (3) Impacts of the proposed HCP, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources which would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the proposed HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, we will issue a permit to Calnev Pipeline Company, LLC for the incidental take of the San Bernardino kangaroo rat from petroleum pipeline repair and maintenance in the City of Rialto and unincorporated San Bernardino County, California.

Dated: May 21, 2008.

**Jim A. Bartel,**

*Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.*

[FR Doc. E8–11939 Filed 5–28–08; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Notice of Submission of Information Collection to the Office of Management and Budget for Reinstatement

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** The Department of the Interior is submitting the information collection, titled the Bureau of Indian Education Higher Education Grant Application Form, OMB Control #1076–0101, for reinstatement. The Higher Education Grant Application Form needs to be reinstated because it expired during the renewal process.

**DATES:** Submit comments on or before June 30, 2008.

**ADDRESSES:** Submit comments on the information collection to the Desk Officer for the Department of the Interior, by facsimile at (202) 395–6566 or you may send an e-mail to: *OIRA_DOCKET@omb.eop.gov*. Send copies of comments to the Bureau of Indian Education, Department of the Interior, 1849 C Street, NW., MS 3609 MIB, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** You may request further information or obtain copies of the information collection request submission from Keith Neves, Bureau of Indian Education, 1849 C Street, NW., MS 3609 MIB, Washington, DC 20240, 202–208–3601.

**SUPPLEMENTARY INFORMATION:** The Bureau of Indian Education Higher Education Grant Program Annual Report Form (OMB #1076–0106) was published in a 60 day comment notice which included the Higher Education Grant Application Form, OMB #1076–0101 on October 16, 2007 (72 FR 58680). A review of the Higher Education Grant Program Annual Report Form (OMB #1076–0106) determined the information collected no longer needs clearance because it is information already gathered under Higher Education Grant Application Form, OMB #1076–0101. Tribal employees, under Pub. L. 93–638 acting as Federal agents, prepared the report. The information collection under 1076–0101 is mandatory to be considered for a benefit.

*Request for Comments:* The Bureau of Indian Education requests you to send your comments on this collection of information to the locations listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of this collection of information for the proper performance of the functions of the agency, including whether the collection of information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and costs) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology. Please note that an agency may not sponsor nor request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the Bureau of Indian Education location listed in the **ADDRESSES** section, room 3609, during the hours of 8 a.m. to 4 p.m. EDT, Monday through Friday except for legal holidays. Before including your address, telephone number, e-mail address or other personally identifiable information, be advised that your entire comment including your personally identifiable information may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so. We do not consider anonymous comments. All comments from representatives of businesses or organizations will be made available for review. We may withhold comments from review for other reasons.

OMB has up to 60 days to make a decision on the submission for renewal, but may make the decision after 30 days. Therefore, to receive the best consideration of your comments, you should submit them closer to 30 days than 60 days.

*Title of the Collection of Information:* Bureau of Indian Education Higher Education Grant Application, 25 CFR 40.

*OMB Control Number:* 1076–0101.

*Type of Review:* Reinstatement.

*Brief Description of the Collection of Information:* Respondents receiving a benefit must annually complete the

form to demonstrate unmet financial need for consideration of a grant.

*Respondents:* Tribal members and students.

*Estimated Number of Respondents:* 14,000.

*Estimated Time per Response:* 1 hour.

*Proposed Frequency of Response:* Annual.

*Total Annual Burden Hours:* 14,000 hours.

Dated: May 19, 2008.

**Sanjeev ''Sonny'' Bhagowalia,**

*Chief Information Officer—Indian Affairs.*

[FR Doc. E8–11959 Filed 5–28–08; 8:45 am]

**BILLING CODE 4310–6W–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent to Repatriate Cultural Items: University of New Hampshire, Durham, NH

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the University of New Hampshire, Durham, NH, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The University of New Hampshire has consulted with the Western Abenaki coalition representatives of the Abenaki Nation of New Hampshire, a non-federally recognized Indian group, and Cowasuck Band of the Pennacook-Abenaki People, a non-federally recognized Indian group. The University of New Hampshire also engaged Independent Archeological Consulting, LLC, which performed an inventory of the entire University of New Hampshire collection and issued a report in 2006.

In March 1999, the New Hampshire Division of Historical Resources, acting on behalf of the University of New Hampshire and three other museums, presented a disposition proposal to the NAGPRA Review Committee for culturally unidentifiable Native American human remains. The Review Committee considered the proposal at its May 1999 meeting. On January 11, 2000, the Departmental Consulting Archeologist, writing on behalf of the Secretary of the Interior, transmitted the authorization to effect disposition. The published Notice of Inventory Completion for the disposition of the human remains to the Abenaki Nation of Missisquoi on behalf of a coalition of Western Abenaki groups, including the Abenaki Nation of New Hampshire and Cowasuck Band of the Pennacook–Abenaki People, non–federally recognized Indian groups, is in the **Federal Register** of July 9, 2002 (FR Doc 02–17090, pages 45536–45539). After disposition of the human remains, the University of New Hampshire found funerary objects that had been associated with the human remains. Under NAGPRA, 43 CFR 10.2 (d)(2)(ii), the funerary objects are now considered to be unassociated funerary objects.

In 1975, human remains representing a minimum of four individuals were removed from the Rocks Road site (also known as the Seabrook Station site), Rockingham County, NH, during excavations by Dr. Charles Bolian of the University of New Hampshire. The human remains were transferred to the New Hampshire Division of Historical Resources for curation in 1999. No known individuals were identified. The human remains were repatriated to the Abenaki Nation of Missisquoi on behalf of a coalition of Western Abenaki groups. Subsequently, the University of New Hampshire discovered among its collections certain cultural items associated with these burials, but not previously reported. The 10 unassociated funerary objects are one lot of 4 pottery sherds and one lot of 6 lithic materials (including copper points recorded but missing). The University also discovered 13 boxes of soil infill from these burials.

During consultation, representatives of the Abenaki Nation of New Hampshire, a non–federally recognized Indian group, and Cowasuck Band of the Pennacook–Abenaki People, a non–federally recognized Indian group, reviewed the collection and identified the cultural items as funerary objects associated with the Rocks Road burials.

The Rocks Road site has a radiocarbon date from associated charcoal of 650 B.P. Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000–2000 B.C.) through the Historic period (post–A.D. 1500). The Eastern Abenaki and Wampanoag appear also to have cultural ties to coastal New Hampshire in the Historic period.

In 1975, human remains representing a minimum of three individuals were removed from the Seabrook Marsh site in Seabrook, NH, by Dr. Charles Bolian and Brian Robinson of the University of New Hampshire. The human remains were transferred in 1999 to the New Hampshire Division of Historical Resources for curation. No known individuals were identified. The human remains were dispositioned to the Abenaki Nation of Missisquoi on behalf of a coalition of Western Abenaki groups. Subsequently, the University of New Hampshire discovered among its collections certain cultural items associated with these burials, but not previously reported. The 19 unassociated funerary objects are one lot of 10 lithic materials (including several rocks recorded but missing) and one lot of 9 faunal remains (not including swordfish swords reported but missing).

During consultation, representatives of the Abenaki Nation of New Hampshire, a non–federally recognized Indian group, and Cowasuck Band of the Pennacook–Abenaki People, a non–federally recognized Indian group, reviewed the collection and identified the cultural items as funerary objects associated with the Seabrook Marsh burials. The Independent Archeological Consulting, LLC report speculates that one lithic artifact (a small quartzite blade of a projectile point) may be associated with one of the three burials and is included in the lot of lithic materials.

The Seabrook Marsh site is dated to the Late Archaic period (4000–2000 B.C.) based on radiocarbon dating. Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000–2000 B.C.) through the Historic period (post–A.D. 1500). The Eastern Abenaki and Wampanoag appear also to have cultural ties to coastal New Hampshire in the Historic period.

Officials of the University of New Hampshire have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 29 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a

specific burial site of a Native American individual. Officials of the University of New Hampshire also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Abenaki Nation of New Hampshire, a non–federally recognized Indian group, and Cowasuck Band of the Pennacook–Abenaki People, a non–federally recognized Indian group.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Bruce Mallory, Provost and Executive Vice President, University of New Hampshire, Thompson Hall 207, Durham, NH 03824, telephone (603) 862–3290, before June 30, 2008. Disposition of the unassociated funerary objects to the Abenaki Nation of New Hampshire, a non–federally recognized Indian group, and the Cowasuck Band of the Pennacook–Abenaki People, a non–federally recognized Indian group, may proceed after that date if no additional claimants come forward.

The University of New Hampshire is responsible for notifying the Aroostook Band of Micmac Indians of Maine; Houlton Band of Maliseet Indians of Maine; Mashpee Wampanoag Tribe; Passamadquoddy Tribe of Maine; Penobscot Tribe of Maine; Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts; Abenaki Nation of Missisquoi, non–federally recognized Indian group; Abenaki Nation of New Hampshire, non–federally recognized Indian group; Cowasuck Band of the Pennacook–Abenaki People, a non–federally recognized Indian group; First Nation of New Hampshire, a non–federally recognized Indian group; and Wampanoag Confederacy, a non–federally recognized Indian group, that this notice has been published.

Dated: April 29, 2008

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–11989 Filed 5–28–08; 8:45 am]

**BILLING CODE 4312–50–S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion: Hastings Museum of Natural and Cultural History, Hastings, NE

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of Hastings Museum of Natural and Cultural History, Hastings, NE. The human remains were removed from Douglas County, NE.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Hastings Museum of Natural and Cultural History professional staff in consultation with representatives of the Omaha Tribe of Nebraska; Otoe–Missouria Tribe of Indians, Oklahoma; Pawnee Nation of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

On an unknown date, human remains representing a minimum of three individuals were removed from unknown sites in the area of Omaha, Douglas County, NE. The human remains were donated to the Hastings Museum by A.M. Brooking and cataloged between 1926 and 1931 (03194, 03195, 03196). No known individuals were identified. No associated funerary objects are present.

On an unknown date, human remains representing a minimum of one individual were removed from an unknown site in the area of Omaha, Douglas County, NE. The human remains were donated to the Hastings Museum by J.E. Wallace and cataloged between 1926 and 1931 (01611). No known individual was identified. No associated funerary objects are present.

The above human remains have been identified in morphology reports as being of Native American descent. The region near Omaha has been occupied by numerous cultures that have been identified in the archeological records. These cultures include Plains Woodland, Central Plains Tradition, Oneota, and historic tribes of the Oto–Missouria and Omaha. Pawnee oral tradition states that the Central Plains Tradition people are ancestors to the Arikara and Pawnee, and possibly the Wichita. According to Pawnee oral history, the Plains Woodlands people are ancestors to the Pawnee, Mandan, Arikara, Hidatsa, and Crow. Oral history information has some of the people of Mill Creek staying behind and becoming part of the Central Plains Tradition based on common oral traditions through origin and corn stories.

Museum officials have determined based on museum records, geographic location, Pawnee oral tradition, and anthropological research that the Central Plains Tradition people are ancestors to the Arikara and Pawnee, and possibly the Wichita. In addition, museum officials have determined based on museum records, geographic location, and oral tradition that the Plains Woodland people are ancestors of the Arikara, Crow, Hidatsa, Mandan, and Pawnee.

Based on museum records, geographical location, and morphology reports, museum officials have determined that the human remains are possibly Plains Woodland, Central Plains Tradition, Oneota, Omaha, or Oto–Missiouria. Descendants of the Plains Woodland, Central Plains Tradition, Oneota, Omaha, or Oto–Missiouria are members of the Crow Tribe of Montana; Omaha Tribe of Nebraska; Otoe–Missouria Tribe of Indians, Oklahoma; Pawnee Nation of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and Wichita and Affiliated Tribes, Oklahoma.

The Arikara, Pawnee, and Wichita have entered into an agreement that human remains and funerary objects located between the Missouri River and the Smokey Hill River shall be claimed by the Pawnee Nation of Oklahoma. The Hidatsa have agreed that the Pawnee shall make the claim for the human remains and cultural items affiliated with the Plains Woodland from Nebraska. The Omaha Tribe of Nebraska; Otoe–Missouria Tribe of Indians, Oklahoma; Ponca Tribe of Indians of Oklahoma; and Ponca Tribe of Nebraska also have agreed to allow the Pawnee Nation of Oklahoma to claim the human remains.

Officials of the Hastings Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of four individuals of Native American ancestry. Officials of the Hastings Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Crow Tribe of Montana; Omaha Tribe of Nebraska; Otoe–Missouria Tribe of Indians, Oklahoma; Pawnee Nation of Oklahoma; Ponca

Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and Wichita and Affiliated Tribes, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Teresa Kreutzer–Hodson, Hastings Museum of Natural and Cultural History, 1330 N Burlington, PO Box 1286, Hastings, NE 68902, telephone (402) 461–2399, before June 30, 2008. Repatriation of the human remains to the Pawnee Nation of Oklahoma may proceed after that date if no additional claimants come forward.

The Hastings Museum of Natural and Cultural History is responsible for notifying the Crow Tribe of Montana; Omaha Tribe of Nebraska; Otoe–Missouria Tribe of Indians, Oklahoma; Pawnee Nation of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and Wichita and Affiliated Tribes, Oklahoma that this notice has been published.

Dated: March 27, 2008

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–12000 Filed 5–28–08; 8:45 am]

**BILLING CODE 4312–50–S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Human Remains in the Possession of the Bernice Pauahi Bishop Museum, Honolulu, HI; Correction

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession and control of the Bishop Museum, Honolulu, HI. The human remains were removed from Lanai Island, HI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the Native Hawaiian Organizations to whom the human remains will be repatriated.

In the **Federal Register** of October 10, 2002 (FR Doc 02–25871, pages 63151–63152), paragraph numbers 6 and 7 are corrected by substituting the following paragraphs:

Officials of the Bishop Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native Hawaiian ancestry. Officials of the Bishop Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native Hawaiian human remains and Hui Kakoʻo and Hui Malama I Na Kupuna O Hawaii Nei. Lastly, officials of the Bishop Museum have determined that Hui Kakoʻo is the most appropriate claimant for repatriation of the human remains.

Representatives of any other Native Hawaiian Organization that believes itself to be culturally affiliated with the human remains should contact Betty Lou Kam, Vice President, Cultural Studies, Bishop Museum, 1525 Bernice Street, Honolulu, HI 96817, telephone (808) 848–4144, before June 30, 2008. Repatriation to Hui Kakoʻo will proceed after that date if no additional claimants come forward.

The Bishop Museum is responsible for notifying Hui Kakoʻo, Lanaʻi Island Burial Council, Hui Malama I Na Kupuna O Hawaii Nei, and Office of Hawaiian Affairs.

Dated: April 23, 2008

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–12003 Filed 5–28–08; 8:45 am]

**BILLING CODE 4312–50–S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion: Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Robert S. Peabody Museum of Archaeology at Phillips Academy, Andover, MA. The human remains were removed from Barnstable County, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Robert S. Peabody Museum of Archaeology professional staff in consultation with representatives of the Wampanoag Repatriation Confederation, on behalf of the Mashpee Wampanoag Tribe; Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts; and Assonet Band of the Wampanoag Nation, a non–federally recognized Indian group.

In 1951, a human remain representing a minimum of one individual was removed from the Rich Site (19–BN–163) in Barnstable County, MA, by Harold Curtis. The human remains were transferred at an unknown date to Ross Moffett and later donated to the Robert S. Peabody Museum of Archaeology in 1969. No known individual was identified. No associated funerary objects are present.

The isolated tooth documented in this inventory appears to come from the ''black earth and shell'' strata, an upper level of the site that is presumably a Middle Woodland/Late Woodland occupation. The Rich site (19–BN–163) is one of several sites on the Outer Cape that reflects a pattern of year–round occupation and increasing sedentism in the late Middle Woodland to the Late Woodland (Massachusetts Historical Commission 1987 Historic and Archaeological Resources of Cape Cod and the Islands). In addition to the area around Truro, where the Rich site is located, other comparable cores on the Outer Cape include Wellfleet Harbor and the Nauset area in Eastham. In each site, there is a concentration of settlement not previously seen in the archeological record and strong evidence for year–round occupation. This includes floral and faunal data, as well as an array of site locations (and orientations) in each core area that fits the known range of seasonally exploited resources (Francis P. McManamon, ed. Chapters in the Archaeology of Cape Cod, Volumes I and II, 1984). Concomitant with this evidence for year–round occupation are mortuary data that indicate a significantly different pattern than evident on earlier sites. This includes the use of defined cemeteries, as well as ossuaries, which elsewhere in the Northeast are strongly

linked with sedentary, tribal people (McManamon, Bradley and Magennis, The Indian Neck Ossuary, 1986). This pattern appears to occur elsewhere along the southern end of the Gulf of Maine and along the southern New England coast to Narragansett Bay and possibly beyond, and first becomes visible during the late Middle Woodland and continues to characterize Wampanoag subsistence patterns throughout the Late Woodland/Contact Periods.

Distinct patterns of material culture and distribution for late Middle Woodland/Late Woodland sites such as the Rich site have been documented by many researchers (Ross Moffett, ''A Review of Cape Cod Archaeology,'' Bulletin of the Massachusetts Historical Society, XIX(1) 1957; William Ritchie The Archaeology of Martha's Vineyard, 1969; McManamon 1984). ''[T]he first intensive peopling of the Cape region'' occurred during the Middle Woodland period and these sites were marked by ''nearly all of the earlier shell heap and black midden accumulations'' associated with grit–tempered pottery and stemmed points (Moffett 1957: 5). Although minor changes in ceramic form and decoration occur, current evidence indicates continuity rather than change in the material culture of late Middle Woodland through Late Woodland period sites (Ritchie 1969; McManamon 1984 I & II). The Massachusetts Historical Commission notes that the presence of Large Triangles is typical in Late Woodland Period assemblages (Michael J. Connolly, Historic and Archaeological Resources of Cape Cod and the Islands, 1987).

Various European explorers and settlers documented the presence of Pokanoket (Wampanoag) people in southeastern Massachusetts, including Cape Cod during the late 16th and early 17th century. Historical sources used to identify Wellfleet inside Pamet/Wampanoag territory include William Wood, New England Prospect,1865; William Bradford, Of Plymouth Plantation, 1987; and Daniel Gookin, Historical Collections of the Indians in New England, 1970. Contemporary scholarship continues to document the presence of Wampanoag/Pamet people in this area including, Trigger, Bruce, ed., Handbook of North American Indians, v.15, 1978: 177–181, and Gibson, Susan B., ed., Burr's Hill: A Seventeenth Century Wampanoag Burial Ground in Warren, Rhode Island,1980. Wampanoag presence has also been demonstrated in the Massachusetts Historical Commissions two volumes on Cape Cod and Southeastern Massachusetts (Massachusetts Historical Commission 1982 Historic and Archaeological Resources of Southeast Massachusetts, and 1987 Historic and Archaeological Resources of Cape Cod and the Islands).

Other critical sources that identify the Mashpee Wampanoag Tribe as the present–day descendants of these people include Russell Peters, The Wampanoags of Mashpee, 1987; William S. Simmons, Spirit of the New England Tribes: Indian History and Folklore, 1620–1984, 1986; and Jack Campisi, The Mashpee Indians: Tribe on Trial, 1991. Writing about the numerous Wampanoag communities throughout southeastern Massachusetts, William Simmons explains, ''(F)rom the late seventeenth century to the early twentieth century, many of these enclaves either coalesced with others or simply died out, leaving two principal concentrations of Wampanoag at Gay Head on Martha's Vineyard and at Mashpee.'' Russell Peters' text is an important document from the perspective of the Mashpee community documenting their continued existence as a tribe.

The Mashpee Wampanoag Tribe; Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts; Assonet Band of the Wampanoag Nation, a non–federally recognized Indian group, and Wampanoag Repatriation Confederation, a non–federally recognized Indian group; provided verbal evidence during consultations for the Rich Site to have existed within the ancestral area of the Wampanoag.

Officials of the Robert S. Peabody Museum of Archaeology have found, based on the preponderance of the evidence, including consultation evidence and scholarship, that a shared group identity can be reasonably traced between the inhabitants of the Rich site (19–BN–163) for the periods represented in the museum's collections and the present–day Wampanoag Tribes of Massachusetts.

Officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remain described above represent the physical remains of one individual of Native American ancestry. Officials of the Robert S. Peabody Museum of Archaeology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Mashpee Wampanoag Tribe and Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts.

Furthermore, officials of the Robert S. Peabody Museum of Archaeology have determined that there is a cultural relationship between the Native American human remains and the Assonet Band of the Wampanoag Nation, a non–federally recognized Indian group.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Malinda S. Blustain, Director, Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA 01810, telephone (978) 749–4490, before June 30, 2008. Repatriation of the human remains to the Wampanoag Repatriation Confederation on behalf of the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Tribe, and Assonet Band of the Wampanoag Nation, a non–federally recognized Indian group may proceed after that date if no additional claimants come forward.

The Robert S. Peabody Museum of Archaeology is responsible for notifying the Mashpee Wampanoag Tribe; Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts; Assonet Band of the Wampanoag Nation, a non–federally recognized Indian group; and Wampanoag Repatriation Confederation, a non–federally recognized Indian group that this notice has been published.

Dated: April 18, 2008

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–11993 Filed 5–28–08; 8:45 am]

BILLING CODE 4312–50–S

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion: Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Robert S. Peabody Museum of Archaeology at Phillips Academy, Andover, MA. The human remains and associated funerary objects were removed from Maricopa County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25

U.S.C. 3003 (d) (3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Robert S. Peabody Museum of Archaeology professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Navajo Nation of Arizona, New Mexico & Utah; Salt River Pima–Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

In 1898, human remains representing a minimum of three individuals were removed from Kalfus Ruins, Maricopa County, AZ, by Warren K. Moorehead for Robert S. Peabody, whose collection later became the basis for the Robert S. Peabody Museum of Archaeology at its founding in 1901. No known individuals were identified. The two associated funerary objects are one red and black slipped bowl and one black–on–red cremation jar in which the human remains were found.

Archeological evidence indicates Kalfus Ruins is a classic period Hohokam site in the center of what is commonly known as the heart of Hohokam occupation. Archeological evidence is supported by architectural forms, burial practices, and the associated funerary objects.

In 1898, human remains representing a minimum of three individuals were removed from Ruins Five Miles South of Phoenix, Maricopa County, AZ, by Warren K. Moorehead for Robert S. Peabody. No known individuals were identified. The 109 associated funerary objects are 1 cremation jar, in which the human remains and the other associated funerary objects were found; 4 shark teeth; 1 lot of fragmentary faunal remains, some of which are calcined; 9 unmodified minerals; 1 possible slate palette fragment; 19 unmodified stones; 2 unmodified non–human teeth; 63 modified and unmodified shell fragments; 1 brachiopid fossil; 2 trilobite fossils; 2 crinoid stem fossils; 1 small ceramic cylinder; 1 possible projectile point stem; and 2 chert flakes.

The Ruins Five Miles South of Phoenix site is located in the center of what is commonly known as the heart of Hohokam occupation. Archeological evidence is supported by architectural forms, burial practices, and the associated funerary objects.

In 1898, human remains representing a minimum of one individual were removed from Ruins near Phoenix, Maricopa County, AZ, by Warren K. Moorehead for Robert S. Peabody. No known individual was identified. The 70 associated funerary objects are 8 fragmentary faunal remains, 3 ceramic sherds, and 59 shell fragments some of which are possibly beads.

On an unknown date, human remains representing a minimum of one individual were found in a drawer of material from Southern Arizona which also contained shell beads from the ''Ruins about Phoenix'' site. It is reasonably believed to be the same site as ''Ruins near Phoenix,'' which was one of a number of adobe sites outside of Phoenix surveyed and excavated by Warren K. Moorehead in 1898 for Robert S. Peabody. The exact location of the site is unclear. The ledger notes do not mention any human remains found with shell beads. It is likely this tooth was separated from the other human remains from Ruins near Phoenix collected by Mr. Moorehead. No known individual was identified. No associated funerary objects are present.

The Ruins near Phoenix site is located in the center of what is commonly known as the heart of Hohokam occupation. Archeological evidence is supported by architectural forms, burial practices, and the associated funerary objects.

A relationship of shared group identity can be reasonably traced between Hohokam culture, which dates from about A.D. 300 to A.D. 1450, and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima–Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona. These four Indian Tribes are one cultural group known as the O'odham (anthropologically known as the Pima and Papago.) The Piipaash (anthropologically known as the Maricopa) are a separate and distinct culture that is present in two of the four tribes. The four groups are separated by political boundaries designated through the adoption/assignment of reservations by the Federal Government, not by any cultural differences.

The O'odham people commonly refer to their ancestors as ''the Huhugam.'' The term ''Huhugam'' refers to all of the ancestors from the first of the O'odham people to walk the earth to those who have perished during modern times. The term ''Hohokam'' is an English adaptation of the word Huhugam, and has become known in the larger society as an archeological culture. The term Huhugam is often mistaken for the word Hohokam, although the terms do not have the same meaning and are not interchangeable. The four O'odham Indian tribes claim cultural affiliation to the Hohokam archeological cultures, as well as to all others present in their aboriginal claims area during the time before European contact in what is known today as Arizona and Mexico. These affiliations include several other archeological cultures including (but not limited to) the Archaic, Paleo–Indian, Salado, Patayan, and Sinagua.

A written report, ''The Four Southern Tribes and the Hohokam of the Phoenix Basin,'' provided to the museum by the Salt River Pima–Maricopa Indian Community provides a preponderance of evidence for a relationship of shared group identity between the Hohokam culture and the present–day O'odham. The evidence in the report is archeological, linguistic, oral tradition, ethnography, kinship, and biological. Linguistic evidence indicates that all the O'odham speak different dialects of the same Uto–Aztecan language. O'odham communities were historically recorded as living in the Gila River area by Jesuit missionaries in A.D. 1687. In the 1700s, when written records about the O'odam began, they occupied at least seven rancherias. At the time of European contact, the O'odham, who occupied land previously inhabited by the Hohokam, mirrored the Hohokam in many ways. The Hohokam were desert agriculturalists who developed an elaborate system of irrigation canals to irrigate their crops. At European contact the O'odham were documented to also be desert agriculturalist who utilized irrigation canals and rivers. Based on scientific evidence, scholars view the complex irrigation systems of the O'odham and the Hohokam as evidence for a cultural continuity between the two that involved the ability to control mass labor in order to construct and maintain these canals. The Hohokam had a distinct settlement pattern that consisted of small farmsteads scattered throughout the landscape. The O'odham practiced this same type of settlement pattern. There was a general architectural style through the Hohokam Period to the historic O'odham Period that exhibited a trend from quadrangular to round structures through time.

A relationship of shared group identity can also reasonably be traced between Hohokam culture and the Hopi

Tribe, as well as the Zuni Tribe. Based on O'odham oral tradition, some of the people occupying the Hohokam area migrated north and joined the Zuni and Hopi (''The Four Southern Tribes and the Hohokam of the Phoenix Basin''). On May 23, 1994, the Hopi Tribal Council issued Resolution H–70–94 declaring its formal cultural affinity and affiliation with the Hohokam cultural group. On June 26, 2006, official representatives of the Hopi Tribe restated Hopi's shared group identity with Hohokam culture. On July 11, 1995, the Zuni Tribe issued a ''Statement of Cultural Affiliation with Prehistoric and Historic Cultures.'' In the statement, the Zuni Tribe stated a relationship of shared group identity with Hohokam culture based on oral teachings and traditions, ethnohistoric documentation, historic documentation, archeological documentation, and other evidence. On June 19, 2006, official representatives of the Zuni Tribe described migration routes which may cross the Hohokam occupation area.

Officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of eight individuals of Native American ancestry. Officials of the Robert S. Peabody Museum of Archaeology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 181 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Robert S. Peabody Museum of Archaeology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima–Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Malinda Blustain, Director, Robert S. Peabody Museum of Archaeology, Phillips Academy, 175 Main Street, Andover, MA 01810, telephone (978) 749–4493, before June 30, 2008. Repatriation of the human remains and associated funerary objects to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima–Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Robert S. Peabody Museum of Archaeology is responsible for notifying the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Navajo Nation of Arizona, New Mexico & Utah; Salt River Pima–Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: April 24, 2008

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–12002 Filed 5–28–08; 8:45 am]

**BILLING CODE 4312–50–S**

---

## DEPARTMENT OF THE INTERIOR

## National Park Service

## Notice of Inventory Completion: Texas Archeological Research Laboratory, The University of Texas at Austin, Austin, TX

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, of the completion of the inventory of human remains in the possession of the Texas Archeological Research Laboratory, The University of Texas at Austin, Austin, TX. The human remains were removed from the Spiro site, 41LF42, LeFlore County, OK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d) (3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Texas Archeological Research Laboratory, The University of Texas at Austin professional staff and representatives of the Caddo Nation of Oklahoma and Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

At an unknown date, human remains representing a minimum of one individual were removed from Craig Mound at the Spiro Site, 41LF42, LeFlore County, OK. The date and circumstances surrounding the removal is unknown, but probably relate to the looting of the site that was occurring at the time. In 1936, the human remains were donated to the Texas Memorial Museum at The University of Texas at Austin by W.A. Rikard. At an unknown date, the human remains were transferred to the collections at the Texas Archeological Research Laboratory. No known individual was identified. No associated funerary objects are present.

It is believed by many archeologists that the Caddo and Wichita were both culturally descended from the Spiro peoples. The site is located within an area archeologically and ethnographically considered to have been occupied by a group ancestral to both the Caddo and Wichita. Based upon geographical, biological, archeological, historic evidence, and expert opinion, officials of the Texas Archeological Research Laboratory reasonably believe the Caddo and Wichita are culturally affiliated with the human remains. Descendants of the Caddo are members of the Caddo Nation of Oklahoma. Descendants of the Wichita are members of the Wichita and Affiliated Tribes, Oklahoma.

Officials of the Texas Archeological Research Laboratory have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Texas Archeological Research Laboratory also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Caddo Nation of Oklahoma and Wichita and Affiliated Tribes, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Darrell Creel, Director, Texas Archeological Research Laboratory, The University of Texas at Austin, 1 University Station R7500, Austin, TX 78712–0714, telephone (512) 471–6007, before June 30, 2008. Repatriation of the human remains to the Caddo Nation of Oklahoma and

Wichita and Affiliated Tribes, Oklahoma may proceed after that date if no additional claimants come forward.

The Texas Archeological Research Laboratory is responsible for notifying the Caddo Nation of Oklahoma and Wichita and Affiliated Tribes, Oklahoma that this notice has been published.

Dated: March 31, 2008

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–11990 Filed 5–28–08; 8:45 am]

BILLING CODE 4312–50–S

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Effigy Mounds National Monument, Harpers Ferry, IA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the U.S. Department of the Interior, National Park Service, Effigy Mounds National Monument, Harpers Ferry, IA. The human remains were removed from Allamakee and Clayton Counties, IA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the superintendent, Effigy Mounds National Monument.

A detailed assessment of the human remains was made by Effigy Mounds National Monument professional staff and Iowa Office of the State Archeologist professional staff in consultation with representatives of the Ho–Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Otoe–Missouria Tribe of Indians, Oklahoma; Prairie Island Indian Community in the State of Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Shakopee Mdewakanton Sioux Community of Minnesota; Upper Sioux Community, Minnesota; and Winnebago Tribe of Nebraska.

At an unknown date, human remains representing a minimum of two individuals were removed from Waukon Junction Rockshelter in Allamakee County, IA, by unknown persons. No further information regarding the site is known. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of three individuals were removed from Marquette Rockshelter in Clayton County, IA, by unknown persons. No further information regarding the site is known. No known individuals were identified. No associated funerary objects are present.

Officials of Effigy Mounds National Monument have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of five individuals of Native American ancestry. Officials of Effigy Mounds National Monument also have determined that, pursuant to 25 U.S.C. 3001 (2), a relationship of shared group identity cannot reasonably be traced between the Native American human remains and any present–day Indian tribe.

The Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. In September 2007, Effigy Mounds National Monument requested that the Review Committee recommend disposition of six culturally unidentifiable human remains to the Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; and Sac & Fox Tribe of the Mississippi in Iowa as the aboriginal occupants of the lands encompassing the present–day Effigy Mounds National Monument. One individual of the six referenced in the request has since been determined to be part of a repatriated bundle burial. Its inclusion in the request to the Review Committee was an error and it is not included in this notice.

Effigy Mounds National Monument is located within the area covered by the Treaty of September 21, 1832 between the Sauk and Fox tribes and the United States (Stat. L. VII 374), and the national monument is located within the area covered by the November 23, 1973 final award of the Indian Claims Commission to the Sauk and Fox tribes (4 Ind. Cl. Comm. 367 [1957]). The Review Committee considered the proposal at its October 15–16, 2007 meeting and recommended disposition of the human remains to the Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; and Sac & Fox Tribe of the Mississippi in Iowa.

A November 28, 2007, letter on behalf of the Secretary of the Interior from the Designated Federal Official, transmitted the authorization for the park to effect disposition of the physical remains of the culturally unidentifiable individuals to the three Indian tribes listed above contingent on the publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Phyllis Ewing, superintendent, Effigy Mounds National Monument, 151 HWY 76, Harpers Ferry, IA 52146, telephone (563) 873–3491, before June 30, 2008. Disposition of the human remains to the Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; and Sac & Fox Tribe of the Mississippi in Iowa may proceed after that date if no additional claimants come forward.

Effigy Mounds National Monument is responsible for notifying the Ho–Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Otoe–Missouria Tribe of Indians, Oklahoma; Prairie Island Indian Community in the State of Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Shakopee Mdewakanton Sioux Community of Minnesota; Upper Sioux Community, Minnesota; and Winnebago Tribe of Nebraska that this notice has been published.

Dated: April 18, 2008

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–11988 Filed 5–28–08; 8:45 am]

BILLING CODE 4312–50–S

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion: Oregon State University, Department of Anthropology, Corvallis, OR

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of Oregon State

University, Department of Anthropology, Corvallis, OR. The human remains were removed from Douglas County, OR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Oregon State University, Department of Anthropology professional staff in consultation with representatives of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon.

In the summer of 1978, human remains representing a minimum of one individual were removed from 35DO83 in Douglas County, OR. No known individual was identified. No associated funerary objects are present.

Site 35DO83 was excavated on privately owned land by Oregon State University archeologists in conjunction with the Confederated Tribes of Coos, Lower Umpqua and Siuslaw of Oregon in 1978. The site includes a prehistoric component and well–documented Lower Umpqua village. Of the human remains discovered at the site, a femur and several teeth were returned to the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon during the excavation. The three additional molars were found in the Department of Anthropology's archeology collections in winter 2007. Collection and site records, as well as consultation with archeologists and the tribe, indicate that the human remains are Native American.

According to tribal consultation, 35DO83 is located within the ancestral territory of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon as outlined in Resolution No. 910–010. The site holds significant archeological, oral history, and burial information for the tribes.

Officials of the Oregon State University, Department of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Oregon State University, Department of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. David McMurray, Oregon State University Department of Anthropology, 238 Waldo Hall, Corvallis, OR 97331, telephone (541) 737–45215, before June 30, 2008. Repatriation of the human remains to the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon may proceed after that date if no additional claimants come forward.

Oregon State University, Department of Anthropology is responsible for notifying the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon; Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon; Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Siletz Reservation, Oregon; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Coquille Tribe of Oregon; Cow Creek Band of Umpqua Indians of Oregon; Klamath Tribes, Oregon; and Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington that this notice has been published.

Dated: March 31, 2008

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–11991 Filed 5–28–08; 8:45 am]

**BILLING CODE 4312–50–S**

---

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Opening an Area to Off Road Vehicle Use on Bureau of Reclamation Lands at Belle Fourche Reservoir, SD

**AGENCY:** Bureau of Reclamation, DOI.

**ACTION:** Notice.

**SUMMARY:** In accordance with 43 CFR 420 ''Off Road Vehicle Use'', the Bureau of Reclamation is opening a 35 acre area to off-road-vehicle (ORV) use at Belle Fourche Reservoir. The legal description of the ORV area is: T. 9 N., R. 4 E., Section 18, SE1/4 NE1/4 and NE1/4 SE1/4. The ORV area will allow Reclamation to direct and concentrate ORV use and effectively enforce elimination of unmanaged ORV use at other areas of the reservoir. The ORV area would be open to dirt bikes and 4-wheelers and other similar size vehicles but not to full size vehicles. Reclamation will provide for law enforcement patrols and inspections of the area.

Regulations for the ORV area will be posted at the entrance. The perimeter will be marked by signs or fences. ORV use will only be allowed within this area. Outside of the ORV area, motorized vehicles will be restricted to established gravel or paved roads and must be legally licensed and operated by a licensed driver in accordance with South Dakota State law. The regulations for the Belle Fourche Reservoir ORV area are as follows:

*Requirements—vehicles:* Each off-road vehicle that is operated on Reclamation lands shall meet the following requirements: (a) It shall conform to applicable State laws and vehicle registration requirements. (b) It shall be equipped with a proper muffler and spark arrestor in good working order and in constant operation. The spark arrestor must conform to Forest Service Spark Arrestor Standard 5100–1a, and there shall be no muffler cutout, bypass, or similar device. (c) It shall have adequate brakes and, for operation from dusk to dawn, working headlights and taillights.

*Requirements—operators:* (a) Operators shall comply with any applicable State laws pertaining to off-road vehicles. (b) Each operator of an off-road vehicle operated on Reclamation lands shall possess a valid motor vehicle operator's permit or license; or, if no permit or license is held, he/she shall be accompanied by or under the immediate supervision of a person holding a valid permit or license. (c) During the operation of snowmobiles, trail bikes, and any other off road vehicle the operator shall wear safety equipment, generally accepted or prescribed by applicable State law or local ordinance for use of the particular activity in which he/she is participating. (d) No person may operate an off-road vehicle (1) in a reckless, careless or negligent manner; (2) in excess of established speed limits; (3) while under the influence of alcohol or drugs; (4) in a manner likely to cause irreparable damage or disturbance of the land, wildlife, vegetative resources, or archeological and historic values of resources; or (5) in a manner likely to become an unreasonable nuisance to other users of Reclamation or adjacent lands.

**DATES:** The ORV Area will be open for public use by May 23, 2008.

**ADDRESSES:** Copies of the public scoping notice that was issued for this proposal, map of the ORV area, and copies of the regulations can be obtained by writing to: Area Manager, Bureau of

Reclamation, Dakotas Area Office, P.O. Box 1017, Bismarck, ND 58502.

**FOR FURTHER INFORMATION CONTACT:** Joseph E. Hall, Chief, Resource Management Division, Bureau of Reclamation, Dakotas Area Office, P.O. Box 1017, Bismarck, ND 58502; Telephone: 701–221–1208; or Fax to 701–250–4326.

**SUPPLEMENTARY INFORMATION:** The public has been notified of this action through scoping letters sent to agencies, adjacent landowners, and other interested individuals, newspaper articles, and a public presentation. Reclamation will inspect the ORV area regularly in accordance with 43 CFR 420.21(c). The ORV area shall be closed if it is causing adverse effects on the soil, vegetation, wildlife, wildlife habitat, or cultural or historical resources. It also shall be monitored to determine if it is adversely affecting water delivery from Belle Fourche Reservoir, adjacent landowners, or other uses of the reservoir.

Dated: May 22, 2008.

**Dennis E. Breitzman,**

*Area Manager, Dakotas Area Office.*

[FR Doc. E8–11960 Filed 5–28–08; 8:45 am]

BILLING CODE 4310–MN–P

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review: Comment Request

May 19, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number) / e-mail: *king.darrin@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: Bridget Dooling, OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316 / Fax: 202–395–6974 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Employment Standards Administration.

*Type of Review:* Extension without change of a currently approved collection.

*Title of Collection:* Housing Terms and Conditions for MSPA Workers.

*OMB Control Number:* 1215–0146.

*Form Numbers:* WH–521.

*Total Estimated Number of Respondents:* 1,300.

*Total Estimated Annual Burden Hours:* 650.

*Total Estimated Annual Cost Burden:* $0.

*Affected Public:* Farms.

*Description:* Migrant and Seasonal Agricultural Worker Protection Act (MSPA) section 201(c) requires all Farm Labor Contractors (FLCs), Agricultural Employers (AGERs), and Agricultural Associations (AGASs) providing housing to any migrant agricultural worker to post in a conspicuous place at the site of the housing, or present to the migrant worker, a written statement of any housing occupancy terms and conditions. See 29 U.S.C. 1821(c); 29 CFR 500.75(f). In addition, MSPA section 201(g) requires these FLCs, AGERs, and AGASs to give such information in English, or as necessary and reasonable, in a language common to the workers. See 29 U.S.C. 1821(g); 29 CFR 500.1(i)(2), .75(a), (f)–(g). This provision also requires the Department of Labor (DOL) to make optional forms available to provide the required disclosures. See 29 U.S.C. 1821(g); 29 CFR 500.1(i)(2), .75(a), (g).

The Wage and Hour Division (WHD) of the DOL created optional Form WH–521 to provide an easy method for FLCs, AGERs, and AGASs to post at the site of the housing or present MSPA housing terms and conditions to migrant agricultural workers, as required under the Act. Among other things, the form specifically identifies the name and address of the entity providing the housing, the name of the person in charge of the housing, and any charges for the housing, utilities, and meals. The form also ensures that workers receive information that enables them to understand the terms and conditions under which they may occupy the housing, as the MSPA requires. The WHD publishes Form WH–521 in English and Spanish. For additional information, see related notice published at 73 FR 10470 on February 27, 2008.

*Agency:* Employment Standards Administration.

*Type of Review:* Extension without change of a currently approved collection.

*Title of Collection:* Rehabilitation Plan and Award.

*OMB Control Number:* 1215–0182.

*Form Numbers:* OWCP–44.

*Total Estimated Number of Respondents:* 7,000.

*Total Estimated Annual Burden Hours:* 1,169.

*Total Estimated Annual Cost Burden:* $0.

*Affected Public:* Business or other for-profit.

*Description:* The Form OWCP–44 is the form used to report the status of a rehabilitation case, submitted by the contractor vocational rehabilitation counselor during an ongoing vocational rehabilitation effort, and to request prompt adjudicatory claims action based on events arising during that effort. For additional information, see related notice published at 73 FR 9358 on February 20, 2008.

**Darrin A. King,**

*Acting Departmental Clearance Officer.*

[FR Doc. E8–11896 Filed 5–28–08; 8:45 am]

BILLING CODE 4510–CF–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–63,093]**

### Saint-Gobain Vetrotex America, Including On-Site Leased Workers From Industrial Outsourcing, Wichita Falls, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility To Apply for Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility to Apply for Alternative Trade Adjustment Assistance on April 25, 2008, applicable to workers of Saint-Gobain Vetrotex America, Wichita Falls, Texas. The notice was published in the **Federal Register** on May 13, 2008 (73 FR 27560).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of continuous strand fiberglass products.

New information shows that leased workers of Industrial Outsourcing were employed on-site at the Wichita Falls, Texas location of Saint-Gobain Vetrotex America. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers of Industrial Outsourcing working on-site at the Wichita Falls, Texas location of the subject firm.

The intent of the Department's certification is to include all workers employed at Saint-Gobain Vetrotex America, Wichita Falls, Texas who were adversely affected by increased imports.

The amended notice applicable to TA–W–63,093 is hereby issued as follows:

''All workers of Saint-Gobain Vetrotex America, including on-site leased workers from Industrial Outsourcing, Wichita Falls, Texas, who became totally or partially separated from employment on or after March 19, 2007, through April 25, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.'' and

I further determine that all workers of Saint-Gobain Vetrotex America, including on-site leased workers from Industrial Outsourcing, Wichita Falls, Texas, are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 21st day of May 2008.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–11904 Filed 5–28–08; 8:45 am]

**BILLING CODE 4510–FN–P**

---

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of May 12 through May 16, 2008.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

**Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–62,869; Columbia Lighting, A Division of Hubbel Lighting, Spokane, WA: August 20, 2007.

TA–W–63,040; Thos. Moser Cabinetmakers, Auburn, ME:March 17, 2007.

TA–W–63,141; GEA Bloomington Production Operations, LLC, A Subsidiary of General Electric, Bloomington, IN:April 3, 2007.

TA–W–63,257; Webb Wheel Products, A Subsidiary of TheMarmon Group, OES Business Unit, Silam Springs, AR:April 25, 2007.

TA–W–63,269; Daimler Trucks North America, LLC, ASubsidiary of Daimler A.G., Freightline TrucksDivision, Cleveland, NC: April 22, 2007.

TA–W–63,314; MJ Wood Products, Inc., dba Vermont PrecisionWoodworks, Morrisville, VT: May 5, 2007.

TA–W–62,807; Magna Donnelly Engineered Glass, HollandWindows Division, On-Site Leased Workers of Manpower,Holland, MI: February 5, 2007.

TA–W–62,833; MegTec Systems, Inc., A Subsidiary of SequaCorporation, DePere, WI: February 11, 2007.

TA–W–63,070; Alamac American Knits LLC, Lumberton, NC:March 18, 2007.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–62,992; Rain Bird Corporation, CommercialManufacturing Division, Tucson, AZ: March 6, 2007.

TA–W–63,140; IntriCon Tibbetts Corporation, Division of IntriCon Corporation, Camden, ME: April 1, 2007.

TA–W–63,149; Astro Air L.P., Division of Luvata GranadaLLC, Jacksonville, TX: March 5, 2007.

TA–W–63,155; Amphenol–TCS, A Subsidiary of AmphenolCorporation, Nashua, NH: March 11, 2007.

TA–W–63,210; Parkview Metal Products, LLC, On-Site LeasedWorkers From Kelly Services, Las Cruces, NM:April 8, 2007.

TA–W–63,242; Perry Marketing Corporation, A Division of Perry Manufacturing Co., Miami, FL: April 23, 2007.

TA–W–63,252; LSI Corporation, On-Site Leased Workers FromThe Arnold Group, Spherion, Volt and Staffmark, Wichita, KS: April 24, 2007.

TA–W–63,258; Pass and Seymour/Legrand, Workers ProducingTurnlok Receptacles, Whitsett, NC: April 25, 2007.

TA–W–63,265; Intel Corporation, California Technology andManufacturing Group, Santa Clara, CA: April 24, 2007.

TA–W–63,301; Quebecor World Northeast Graphics, Inc., Workers of Ahead Human Resources, North Haven, CT:May 2, 2007.

TA–W–63,337; Adapt Identification, Marlboro, NJ: May 7, 2007.

TA–W–63,338; Crane Plumbing, LLC, Dallas Acrylic Plant, Dallas, TX: April 23, 2007.

TA–W–63,236; Avaya, Inc., Unified Communications Division, Information Solutions, Organization, Westminster, CO:April 22, 2007.

TA–W–63,244; RFMD, Gallimore Dairy Road Test Operations, Greensboro, NC: April 24, 2007.

TA–W–63,322; ATP Manufacturing, LLC, A Subsidiary of Newgrange Group, LLC, North Smithfield, RI: May 5,2007.

TA–W–63,323; J-Sport Company, Millersburg, OH: May 5, 2007.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–63,111; Brodnax Mills, Inc., Brodnax, VA: March 31, 2007.

TA–W–63,292; Syncreon-US, Formerly Know as TDS.US, Jefferson North Assembly Operation, Detroit, MI:April 29, 2007.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.None.

**Negative Determinations for Alternative Trade Adjustment Assistance**

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.None.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

**Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–63,004; James Hardie Building Products, Inc., Blandon, PA.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–62,284; Parker Hannifin Corporation, Hose ProductsDivision, Eastlake, OH.

TA–W–62,802; Shorewood Packaging Corporation, A Subsidiary of International Paper, Home Entertainment Division,Edison, NJ.

TA–W–62,815; R and G Mold and Engineering, Inc., Grandville, MI.

TA–W–63,011; B. Walter and Company, Wabash, IN.

TA–W–63,080; Chrysler, LLC, Belvidere Assembly Plant, Belvidere, IL.

TA–W–63,119; Permacel St. Louis, Inc., St. Louis, MO.

TA–W–63,291; Highland Metals Distribution, Inc., dba TanksManufacturing, LLC, Lakeview, OR.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–62,842; Norton Lumber Company, Inc., White City, OR.

TA–W–62,955; Pitney Bowes, Tech Central Infrastructure andSupport Services, Danbury, CT.

TA–W–63,134; Dutch Mundy Chevrolet, Independence, VA.

TA–W–63,193; JP Morgan Chase and Co., JP Morgan AssetManagement, Fiduciary Administration—Court Accounting,Troy, MI.

TA–W–63,280; Sears Holdings Management Company, Tucker SupportCenter, Tucker, GA.

TA–W–63,281; J. L. Bray and Son, Inc., Salida, CA.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of May 12 through May 16, 2008. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 21, 2008.

**Linda G. Poole,**

*Certifying Officer, Division Of Trade Adjustment Assistance.*

[FR Doc. E8–11902 Filed 5–28–08; 8:45 am]

**BILLING CODE 4510–FN–P**

---

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 9, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 9, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 21st day of May 2008.

**Erin FitzGerald,**

*Acting Director, Division of Trade Adjustment Assistance.*

APPENDIX

[TAA petitions instituted between 5/12/08 and 5/16/08]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 63362 | Mavrick Metal Stamping, Inc. (State) | Mancelona, MI | 05/12/08 | 04/24/07 |
| 63363 | Times Fiber Communications (Comp) | Chatham, VA | 05/12/08 | 05/09/08 |
| 63364 | Domtar Industries, Inc. (Comp) | Nekoosa, WI | 05/12/08 | 05/09/08 |
| 63365 | Pentair Filtration, Inc. (IUECWA) | Sheboygan, WI | 05/12/08 | 05/09/08 |
| 63366 | Tetra Pak (State) | Minneapolis, MN | 05/12/08 | 05/09/08 |
| 63367 | Novatech Electro Luminescent (State) | Chino, CA | 05/12/08 | 05/06/08 |
| 63368 | Eco Building Systems/Oxford Homes (Wkrs) | Oxford, ME | 05/12/08 | 05/09/08 |
| 63369 | Wisconsin Die Casting (Comp) | Milwaukee, WI | 05/12/08 | 04/28/08 |
| 63370 | Ranger Ind. Inc. (Wkrs) | Tinton Falls, NJ | 05/12/08 | 05/06/08 |
| 63371 | Sumitomo Electric Wintec America (Comp) | Edmonton, KY | 05/12/08 | 05/09/08 |
| 63372 | Frank L. Wells Company/Wellsco Controls, Inc. (Wkrs) | Kenosha, WI | 05/13/08 | 05/12/08 |
| 63373 | The Stinehour Press, LLC (Comp) | Lunenburg, VT | 05/13/08 | 05/12/08 |
| 63374 | Mount Vernon Mills, Trion Denim Mill (State) | Trion, GA | 05/13/08 | 05/12/08 |
| 63375 | Boston Coach (Wkrs) | Everett, MA | 05/13/08 | 05/09/08 |

APPENDIX—Continued

[TAA petitions instituted between 5/12/08 and 5/16/08]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 63376 | Oxford Furniture Company, Inc. (Wkrs) | Ecru, MS | 05/13/08 | 05/06/08 |
| 63377 | Agilent Technologies (State) | Santa Rosa, CA | 05/14/08 | 05/12/08 |
| 63378 | SL Montevideo Technology, Inc. (State) | Montevideo, MN | 05/14/08 | 05/09/08 |
| 63379 | Plastech (State) | Shreveport, LA | 05/14/08 | 05/12/08 |
| 63380 | La-z-Boy Utah of LZB Manufacturing, Inc. (Comp) | Tremonton, UT | 05/14/08 | 05/13/08 |
| 63381 | Merix Forest Grove (State) | Forest Grove, OR | 05/14/08 | 05/12/08 |
| 63382 | Stanley/National (Wkrs) | Sterling, FL | 05/14/08 | 05/08/08 |
| 63383 | WT Solutions (Wkrs) | St. Johnsbury, VT | 05/14/08 | 05/05/08 |
| 63384 | Invensys Appliance Controls (Wkrs) | West Plains, MO | 05/14/08 | 05/01/08 |
| 63385 | Cadence Innovation (Wkrs) | Troy, MI | 05/14/08 | 05/12/08 |
| 63386 | Carm Newsome Hosiery, Inc. (Comp) | Fort Payne, AL | 05/15/08 | 04/30/08 |
| 63387 | Todco Division (Wkrs) | Fresno, CA | 05/15/08 | 05/14/08 |
| 63388 | The News and Observer Publishing Company (Comp) | Raleigh, NC | 05/15/08 | 05/14/08 |
| 63389 | The Apparel Group/Chaseline (Wkrs) | Reidsville, NC | 05/15/08 | 05/12/08 |
| 63390 | Hickory Business Furniture, Inc. (Wkrs) | Hickory, NC | 05/15/08 | 05/14/08 |
| 63391 | Pope and Talbot (AFLCIO) | Halsey, OR | 05/15/08 | 05/13/08 |
| 63392 | First American Real Estate Tax Service (Wkrs) | Exton, PA | 05/15/08 | 05/12/08 |
| 63393 | Fawn Plastics (Comp) | Middlesex, NC | 05/15/08 | 05/14/08 |
| 63394 | Serigraph, Inc. (Wkrs) | West Bend, WI | 05/16/08 | 05/13/08 |
| 63395 | Connector Products (Rep) | Rolling Meadows, IL | 05/16/08 | 05/15/08 |
| 63396 | Panasonic Electronic Devices Corporation of America (Comp). | Knoxville, TN | 05/16/08 | 05/15/08 |
| 63397 | Skyline Corporation (State) | Bossier City, LA | 05/16/08 | 05/12/08 |
| 63398 | Chromalox (Comp) | Orfordville, WI | 05/16/08 | 05/14/08 |
| 63399 | Kik Custom Products, Inc. (Comp) | Cumberland, RI | 05/16/08 | 05/12/08 |
| 63400 | Gateway, Inc. (Comp) | North Sioux City, SD | 05/16/08 | 05/14/08 |

[FR Doc. E8–11901 Filed 5–28–08; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–63,386]**

### Carm Newsome Hosiery; Fort Payne, AL; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 15, 2008 in response to a petition filed by a company official on behalf of workers of Carm Newsome Hosiery, Inc., Fort Payne, Alabama.

The Department issued a negative determination (TA–W–63,029) applicable to the petitioning group of workers on May 6, 2008. The investigative period of that determination and the present case are the same, and no new information or change in circumstances is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 21st day of May 2008.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–11900 Filed 5–28–08; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–62,202]**

### CCC Associates, Eurocast Division, Montgomery, AL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 26, 2007, in response to a worker petition filed by a company official on behalf of workers of CCC Associates, Eurocast Division, Montgomery, Alabama.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 4th day of October 2007.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–11903 Filed 5–28–08; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–63,165]**

### Maco Steel, Inc.; Belmont, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 9, 2008, in response to a petition filed on behalf of workers at Maco Steel, Inc., Belmont, Michigan.

The petition dated March 27, 2008, regarding the investigation has been deemed invalid. In order to establish a valid petition, there must be at least three petitioners who were terminated no more than one year from the petition date. On further review, it became apparent that two of the three workers who signed the subject petition were terminated in 2006, more than one year from the date on the petition. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 21st day of May 2008.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–11905 Filed 5–28–08; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–63,213]**

### Mitsubishi Kagaku Imaging Corporation; Chesapeake, VA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 18, 2008, in response to a petition filed by a company official on behalf of workers at Mitsubishi Kagaku Imaging Corporation, Chesapeake, Virginia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 20th day of May 2008.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–11907 Filed 5–28–08; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–63,182]**

### Stark Candy Company, a Division of New England Confectionary Company, Pewaukee, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 14, 2008 in response to a worker petition filed by a company official on behalf of workers of Stark Candy Company, a division of New England Confectionary Company, Pewaukee, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 20th day of May 2008.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–11906 Filed 5–28–08; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–63,320]**

### Wyeth Company: Andover, MA; Cambridge, MA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 6, 2008 in response to a worker petition filed by the Massachusetts Workforce Development on behalf of workers at Wyeth Company, Andover and Cambridge, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 21st day of May 2008.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–11908 Filed 5–28–08; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment Standards Administration

### Proposed Revision of the Approval of Information Collection Requirements

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposal to extend OMB approval of the information collection issued OMB Control Number 1215–0032 (Application for Authority to Employ Full-Time Students at Subminimum Wages in Retail/Service Establishments or Agriculture) and to combine it with the information collection controlled under number 1215–0080 (Application for Authority for an Institution of Higher Education to Employ Its Full-Time Students at Subminimum Wages Under Regulations 29 CFR Part 519). The title of the revised information collection will be: Applications to Employ Full-time Students at Subminimum Wages in Retail or Service Establishments, Agriculture, and Institutions of Higher Education (WH–200, WH–201, WH–202). A copy of the revised information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before July 28, 2008.

**ADDRESSES:** Ms. Hazel Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0419, fax (202) 693–1451, E-mail *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

**SUPPLEMENTARY INFORMATION**

*I. Background:* Fair Labor Standards Act (FLSA) sections 14(b)(1)–(3), 29 U.S.C. 214(b)(1)–(3), require the Secretary of Labor, to the extent necessary to prevent curtailment of opportunities for employment, to provide certificates authorizing the employment of full-time students at not less than 85 percent of the applicable minimum wage or less than $1.60, whichever is higher, in (1) retail or service establishments and agriculture (*See* 29 CFR 519.1(a)); and (2) institutions of higher education (*See* 29 CFR 519.11(a)). These provisions set limits on such employment as well as prescribe safeguards to protect the full-time students so employed and the full-time employment opportunities of other workers. *See* 29 CFR 519.1(b), 519.11(b). Forms WH–200, WH–201, and WH–202 are voluntary-use application forms an authorized representative of an employer may prepare and sign to request a certificate authorizing the employment of full-time students at subminimum wages. Form WH–200 requests authority to employ more than six full-time students at subminimum wages at a named establishment in a monthly amount not exceeding (1) 10 percent of the total monthly hours worked by all employees of that establishment or (2) specific percentages, based on historic employment data, of total employee hours. Form WH–202 requests authority to employ up to six full-time students at subminimum wages throughout the employer's enterprise on any given day. Form WH–201 requests authority for an

institution of higher education to pay subminimum wages to its full-time students employed by the institution. The reverse side of Form WH–201 also serves as a *Notice of Temporary Authority* the institution of higher education may post that provides temporary authority allowing it to employ full-time students at subminimum wages for 30 days after forwarding the properly completed application to the Wage and Hour Division (WHD). The authority under Form WH–201 remains in effect for one year-unless the WHD denies the application within 30 days, issues a certificate with modified terms or conditions, or expressly extends the 30-day review period. The 1215–0032 information collection is currently approved for use through November 30, 2008, and the 1215–0080 information collection is currently approved for use through December 31, 2008.

*II. Review Focus:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

*III. Current Actions:* The Department of Labor seeks approval for the revision of this currently approved information collection in order to determine whether to grant or deny subminimum wage authority to the applicant(s); to allow employers to request a certificate authorizing payment of subminimum wages to full-time students and thereby increase job opportunities for such students, if approved.

*Type of Review:* Revision.

Agency: Employment Standards Administration.

*Title:* Applications to Employ Full-time Students at Subminimum Wages in Retail or Service Establishments, Agriculture, and Institutions of Higher Education.

*OMB Number:* 1215–0032.

*Agency Numbers:* WH–200, WH–201, WH–202.

*Affected Public:* Business or other for-profit, Farms, Not-for-profit institutions.

*Total Respondents:* 389.

*Total Annual Responses:* 389.

*Estimated Time per Response:* 15 minutes.

*Estimated Total Burden Hours:* 97.

*Frequency:* On occasion.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $171.16.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 22, 2008.

**Hazel Bell,**

*Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

[FR Doc. E8–11911 Filed 5–28–08; 8:45 am]

BILLING CODE 4510–27–P

## NATIONAL COUNCIL ON DISABILITY

### Youth Advisory Committee Meeting (Teleconference)

**AGENCY:** National Council on Disability (NCD).

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, NCD gives notice that the Youth Advisory Committee will hold a meeting by teleconference on the date and time noted below. This teleconference meeting is open to the public.

*Date and Time:* Friday, June 20, 2008, 4 p.m. EDT.

*Place:* National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

*Status:* All parts of this conference call will be open to the public. People interested in observing the teleconference meeting should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for this conference call.

*Agenda:* Roll call, announcements, reports, new business, adjournment. A detailed agenda will be posted 10 days before each meeting at *http://www.ncd.gov/newsroom/advisory/youth/youth.htm.*

**CONTACT PERSON FOR MORE INFORMATION:** Gerrie Drake Hawkins, Ph.D., Senior Program Analyst, National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov* (e-mail).

*Accommodations:* People needing reasonable accommodations should notify NCD at least two weeks before this teleconference meeting.

*Youth Advisory Committee Mission:* The purpose of NCD's Youth Advisory Committee is to provide advice to NCD on various issues, such as NCD's planning and priorities.

Dated: May 21, 2008.

**Michael C. Collins,**

*Executive Director.*

[FR Doc. E8–11935 Filed 5–28–08; 8:45 am]

BILLING CODE 6820–MA–P

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 28284; 812–13475]**

### Matrix Capital Group, Inc. and Matrix Defined Trusts; Notice of Application

May 22, 2008.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application under (a) section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 2(a)(35), 14(a), 19(b), 22(d) and 26(a)(2)(C) of the Act and rules 19b–1 and rule 22c–1 thereunder and (b) sections 11(a) and 11(c) of the Act for approval of certain exchange and rollover privileges.

**APPLICANTS:** Matrix Capital Group, Inc. (''Matrix'') and Matrix Defined Trusts.[1]

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain unit investment trusts to: (a) Impose sales charges on a deferred basis and waive the deferred sales charge in certain cases; (b) offer unitholders certain exchange and rollover options; (c) publicly offer units without requiring the Depositor to take for its own account or place with others $100,000 worth of units; and (d) distribute capital gains resulting from the sale of portfolio

[1] 1 Applicants also request relief for existing and future series (collectively, ''Series'') of Matrix Defined Trusts and of other unit investment trusts sponsored by a Depositor (''Trusts''). The ''Depositors'' are Matrix and any entity controlling, controlled by or under common control with Matrix. Any future Trust and Series that relies on the requested order will comply with the terms and conditions of the application. All presently existing Trusts that currently intend to rely on the requested order are named as applicants.

securities within a reasonable time after receipt.

**FILING DATES:** The application was filed on January 15, 2008 and amended on May 21, 2008.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 16, 2008, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, 335 Madison Avenue, 11th Floor, New York, NY 10017.

**FOR FURTHER INFORMATION CONTACT:** Laura L. Solomon, Senior Counsel, at (202) 551–6915, or Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549–1520 (telephone (202) 551–5850).

## Applicants' Representations

1. Matrix Defined Trusts is a unit investment trust (''UIT'') registered under the Act Any future Trust will be a UIT that will be registered under the Act. Matrix, a New York corporation, is registered under the Securities Exchange Act of 1934 as a broker-dealer and is the depositor of Matrix Defined Trusts. Each Trust will be sponsored by a Depositor. Each Series will be created by a trust indenture between the Depositor and a banking institution or trust company as trustee (''Trustee'').

2. The Depositor acquires a portfolio of securities, which it deposits with the Trustee in exchange for certificates representing units of fractional undivided interest in the Series' portfolio (''Units''). The Units are offered to the public through the Depositor and dealers at a price which, during the initial offering period, is based upon the aggregate market value of the underlying securities, or, the aggregate offering side evaluation of the underlying securities if the underlying securities are not listed on a securities exchange, plus a front-end sales charge. The Depositor may reduce the sales charge in compliance with rule 22d–1 under the Act in certain circumstances, which are disclosed in the Series' prospectus.

3. The Depositor currently intends, but is not legally obligated to maintain a secondary market for Units of outstanding Series. Other broker-dealers may or may not maintain a secondary market for Units of a Series. If a secondary market is maintained, investors will be able to purchase Units on the secondary market at the current public offering price plus a front-end sales charge. If such a market is not maintained at any time for any Series, holders of the Units (''Unitholders'') of that Series may redeem their Units through the Trustee.

### *A. Deferred Sales Charge and Waiver of Deferred Sales Charge under Certain Circumstances*

1. Applicants request an order to the extent necessary to permit one or more Series to impose a sales charge on a deferred basis (''DSC''). For each Series, the Depositor would set a maximum sales charge per Unit, a portion of which may be collected ''up front'' (*i.e.*, at the time an investor purchases the Units). The DSC would be collected subsequently in installments (''Installment Payments'') as described in the application. The Depositor would not add any amount for interest or any similar or related charge to adjust for such deferral.

2. When a Unitholder redeems or sells Units, the Depositor intends to deduct any unpaid DSC from the redemption or sale proceeds. When calculating the amount due, the Depositor will assume that Units on which the DSC has been paid in full are redeemed or sold first. With respect to Units on which the DSC has not been paid in full, the Depositor will assume that the Units held for the longest time are redeemed or sold first. Applicants represent that the DSC collected at the time of redemption or sale, together with the Installment Payments and any amount collected up front, will not exceed the maximum sales charge per Unit. Under certain circumstances, the Depositor may waive the collection of any unpaid DSC in connection with redemptions or sales of Units. These circumstances will be disclosed in the prospectus for the relevant Series and implemented in accordance with rule 22d–1 under the Act.

3. Each Series offering Units subject to a DSC will state the maximum charge per Unit in its prospectus. In addition, the prospectus for such Series will include the table required by Form N–1A (modified as appropriate to reflect the difference between UITs and open-end management investment companies) and a schedule setting forth the number and date of each Installment Payment, along with the duration of the collection period. The prospectus also will disclose that portfolio securities may be sold to pay an Installment Payment if distribution income is insufficient and that securities will be sold pro rata or a specific security will be designated for sale.

### *B. Exchange Option and Rollover Option*

1. Applicants request an order to the extent necessary to permit Unitholders of a Series to exchange their Units for Units of another Series (''Exchange Option'') and Unitholders of a Series that is terminating to exchange their Units for Units of a new Series of the same type (''Rollover Option''). The Exchange Option and Rollover Option would apply to all exchanges of Units sold with a front-end sales charge or DSC.

2. A Unitholder who purchases Units under the Exchange Option or Rollover Option would pay a lower sales charge than that which would be paid for the Units by a new investor. The reduced sales charge will be reasonably related to the expenses incurred in connection with the administration of the DSC program, which may include an amount that will fairly and adequately compensate the Depositor and participating underwriters and brokers for their services in providing the DSC program.

3. Pursuant to the Exchange Option, an adjustment would be made if Units of any Series are exchanged within five months of their acquisition for Units of a Series with a higher sales charge (''Five Months Adjustment''). An adjustment also would be made if Units on which a DSC is collected are exchanged for Units of a Series that imposes a front-end sales charge and the exchange occurs before the DSC collected (plus any amount collected up front on the exchanged Units) at least equals the per Unit sales charge on the acquired Units (''DSC Front-End Exchange Adjustment''). If an exchange involves either the Five Months Adjustment or the DSC Front-End Exchange Adjustment, the Unitholder would pay the greater of the reduced sales charge or an amount which, together with the sales charge already

paid on the exchanged Units, equals the normal sales charge on the acquired Units on the date of the exchange. With appropriate disclosures, the Depositor may waive such payment. Further, the Depositor would reserve the right to vary the sales charge normally applicable to a Series and the charge applicable to exchanges, as well as to modify, suspend, or terminate the Exchange Option as set forth in the conditions to the application.

**Applicants' Legal Analysis**

*A. DSC and Waiver of DSC*

1. Section 4(2) of the Act defines a ''unit investment trust'' as an investment company that issues only redeemable securities. Section 2(a)(32) of the Act defines a ''redeemable security'' as a security that, upon its presentation to the issuer, entitles the holder to receive approximately his or her proportionate share of the issuer's current net assets or the cash equivalent of those assets. Rule 22c–1 under the Act requires that the price of a redeemable security issued by a registered investment company for purposes of sale, redemption or repurchase be based on the security's current net asset value (''NAV''). Because the collection of any unpaid DSC may cause a redeeming Unitholder to receive an amount less than the NAV of the redeemed Units, applicants request relief from section 2(a)(32) and rule 22c–1.

2. Section 22(d) of the Act and rule 22d–1 under the Act require a registered investment company and its principal underwriter and dealers to sell securities only at the current public offering price described in the investment company's prospectus, with the exception of sales of redeemable securities at prices that reflect scheduled variations in the sales load. Section 2(a)(35) of the Act defines the term ''sales load'' as the difference between the sales price and the portion of the proceeds invested by the depositor or trustee. Applicants request relief from section 2(a)(35) and section 22(d) to permit waivers, deferrals or other scheduled variations of the sales load.

3. Under section 6(c) of the Act, the Commission may exempt classes of transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their proposal meets the standards of section 6(c). Applicants state that the provisions of section 22(d) are intended to prevent (a) riskless trading in investment company securities due to backward pricing, (b) disruption of orderly distribution by dealers selling shares at a discount, and (c) discrimination among investors resulting from different prices charged to different investors. Applicants assert that the proposed DSC program will present none of these abuses. Applicants further state that all scheduled variations in the sales load will be disclosed in the prospectus of each Series and applied uniformly to all investors, and that applicants will comply with all the conditions set forth in rule 22d–1.

4. Section 26(a)(2)(C) of the Act, in relevant part, prohibits a trustee or custodian of a UIT from collecting from the trust as an expense any payment to the trust's depositor or principal underwriter. Because the Trustee's payment of the DSC to the Depositor may be deemed to be an expense under section 26(a)(2)(C), applicants request relief under section 6(c) from section 26(a)(2)(C) to the extent necessary to permit the Trustee to collect Installment Payments and disburse them to the Depositor. Applicants submit that the relief is appropriate because the DSC is more properly characterized as a sales load.

*B. Exchange Option and Rollover Option*

1. Sections 11(a) and 11(c) of the Act prohibit any offer of exchange by a UIT for the securities of another investment company unless the terms of the offer have been approved in advance by the Commission. Applicants request an order under sections 11(a) and 11(c) for Commission approval of the Exchange Option and the Rollover Option. Applicants state that the Five Months Adjustment and the DSC Front-End Exchange Adjustment in certain circumstances are appropriate to maintain the equitable treatment of various investors in each Series.

*C. Net Worth Requirement*

1. Section 14(a) of the Act requires that a registered investment company have $100,000 of net worth prior to making a public offering. Applicants state that each Series will comply with this requirement because the Depositor will deposit more than $100,000 of securities. Applicants assert, however, that the Commission has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Applicants state that, under this interpretation, a Series would not satisfy section 14(a) because of the Depositor's intention to sell all the Units of the Series.

2. Rule 14a–3 under the Act exempts UITs from section 14(a) if certain conditions are met, one of which is that the UIT invest only in ''eligible trust securities,'' as defined in the rule. Applicants state that they may not rely on rule 14a–3 because certain Series (collectively, ''Equity Series'') will invest all or a portion of their assets in equity securities or shares of registered investment companies which do not satisfy the definition of eligible trust securities.

3. Applicants request an exemption under section 6(c) of the Act to the extent necessary to exempt the Equity Series from the net worth requirement in section 14(a). Applicants state that the Series and the Depositor will comply in all respects with the requirements of rule 14a–3, except that the Equity Series will not restrict their portfolio investments to ''eligible trust securities.''

*D. Capital Gains Distribution*

1. Section 19(b) of the Act and rule 19b–1 under the Act provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. Rule 19b–1(c), under certain circumstances, exempts a UIT investing in eligible trust securities (as defined in rule 14a–3) from the requirements of rule 19b–1. Because the Equity Series do not limit their investments to eligible trust securities, however, the Equity Series will not qualify for the exemption in paragraph (c) of rule 19b–1. Applicants therefore request an exemption under section 6(c) from section 19(b) and rule 19b–1 to the extent necessary to permit capital gains earned in connection with the sale of portfolio securities to be distributed to Unitholders along with the Equity Series' regular distributions. In all other respects, applicants will comply with section 19(b) and rule 19b–1.

2. Applicants state that their proposal meets the standards of section 6(c). Applicants assert that any sale of portfolio securities would be triggered by the need to meet Trust expenses, Installment Payments, or by redemption requests, events over which the Depositor and the Equity Series do not have control. Applicants further state that, because principal distributions must be clearly indicated in accompanying reports to Unitholders as a return of principal and will be relatively small in comparison to normal dividend distributions, there is

little danger of confusion from failure to differentiate among distributions.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

*A. DSC Relief and Exchange and Rollover Options*

1. Whenever the Exchange Option or the Rollover Option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) no such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the Exchange Option or the Rollover Option, or to delete a Series which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of Units of the Series under section 22(e) of the Act and the rules and regulations promulgated thereunder, or (ii) a Series temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

2. An investor who purchases Units under the Exchange Option or the Rollover Option will pay a lower sales charge than that which would be paid for the Units by a new investor.

3. The prospectus of each Series offering exchanges or rollovers and any sales literature or advertising that mentions the existence of the Exchange Option or Rollover Option will disclose that the Exchange Option and the Rollover Option are subject to modification, termination or suspension without notice, except in certain limited cases.

4. Any DSC imposed on a Series' Units will comply with the requirements of subparagraphs (1), (2) and (3) of rule 6c–10(a) under the Act.

5. Each Series offering Units subject to a DSC will include in its prospectus the disclosure required by Form N–1A relating to deferred sales charges (modified as appropriate to reflect the differences between UITs and open-end management investment companies) and a schedule setting forth the number and date of each Installment Payment.

*B. Net Worth Requirement*

1. Applicants will comply in all respects with the requirements of rule 14a–3, except that the Equity Series will not restrict their portfolio investments to ''eligible trust securities.''

For the Commission, by the Division of Investment Management, under delegated authority.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E8–11943 Filed 5–28–08; 8:45 am]

**BILLING CODE 8010–01–P**

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IA–2736 / 803–189]**

## Slick Enterprises, Inc.; Notice of Application

May 22, 2008.

**AGENCY:** Securities and Exchange Commission (''SEC'' or ''Commission'').

**ACTION:** Notice of application for exemption under the Investment Advisers Act of 1940 (''Advisers Act'').

*Applicant:* Slick Enterprises, Inc. (''Applicant'').

*Relevant Advisers Act Sections:* Exemption requested under section 202(a)(11)(G) of the Advisers Act from section 202(a)(11) of the Advisers Act.

*Summary of Application:* Applicant requests that the Commission issue an order declaring it and its employees acting within the scope of their employment to be persons not within the intent of section 202(a)(11) of the Advisers Act, which defines the term ''investment adviser.''

*Filing Dates:* The application was filed on October 25, 2005, and was amended and restated on March 23, 2007, March 18, 2008, and May 19, 2008.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 20, 2008 and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

Persons may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Applicant, Slick Enterprises, Inc., c/o Phyllis Slick Cowell, President, P.O. Box 5958, Winston-Salem, North Carolina 27113.

**FOR FURTHER INFORMATION CONTACT:** Daniel S. Kahl, Branch Chief, or David W. Blass, Assistant Director, at (202) 551–6787 (Office of Investment Adviser Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 100 F Street, NE., Washington DC 20549–0102 (telephone (202) 551–5850).

**Applicant's Representations**

1. Applicant was incorporated in 2002 and operates as the ''family office'' for the members of the Slick family. Applicant provides investment advisory services to: (i) The estate of Earl Slick, his widow Jane Pierce Slick, and Earl and Jane Slick's lineal descendants (including by adoption) and spouses of their lineal descendants (collectively the ''Slick Family''); (ii) entities wholly owned by the member of the Slick Family and trusts all of the beneficiaries of which are members of the Slick Family (each such entity or trust is a ''Slick Family Investment Entity''); and (iii) foundations created and funded by the Slick Family (''Slick Family Foundations'' and, together with the Slick Family and the Slick Family Investment Entities, the ''Slick Family Clients''). Applicant also provides services, such as management, administrative, and tax services which do not constitute investment advice under the Advisers Act to various partnerships, limited liability companies, limited liability partnerships, and other entities that were created by members of the Slick Family to invest in or to operate other businesses or real estate, but which are not wholly owned by Slick Family Clients (each a ''Slick Single Purpose Entity'').

2. Applicant is owned exclusively by one or more members of the Slick Family, and its Board of Directors is composed entirely of members of the Slick Family as of the date of this notice. Applicant represents that it may have directors in the future that are not members of the Slick Family, but that at all times a majority of the Directors will be members of the Slick Family.

3. Applicant represents that, as a ''family office,'' it provides to Slick Family Clients advice on investments in

public and private securities and real estate, as well as the following services: Determining and implementing asset allocations, estate and tax planning, insurance reviews, preparation and analysis of financial statements, real estate management services, safekeeping and physical handling of securities, collection of income from securities, keeping of books of accounts and records, preparation of filing of tax returns, and payment of certain household and personal expenses of members of the Slick Family.

4. Applicant represents that it provides clerical, administrative, and tax-related services to Slick Single Purpose Entities, but provides no investment advice on securities to any Slick Single Purpose Entity or to any other person that is not a Slick Family Client.

5. Applicant represents that it charges fees sufficient only to cover its costs for providing services and that the fees are not designed to generate a profit.

6. Applicant represents that it will not hold itself out to the public as an investment adviser. Applicant further represents that it is not listed in any phone book or any other directory as an in investment adviser.

7. Applicant represents that it does not engage in any advertising or conduct marketing activities, and that it will not solicit or accept as an investment advisory client any person that is not a Slick Family Client.

**Applicant's Legal Analysis**

1. Section 202(a)(11) of the Advisers Act defines the term ''investment adviser'' to mean ''any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. * * *'' Section 202(a)(11)(G) of the Advisers Act authorizes the SEC to exclude from the definition of ''investment adviser'' persons that are not within the intent of section 202(a)(11).

2. Section 203(a) of the Advisers Act requires investment advisers to register with the SEC. Section 203(b) of the Advisers Act provides exemptions from this registration requirement.

3. Applicant represents that it currently relies on the registration exemption provided in section 203(b)(3) of the Advisers Act because it has only eight clients. Applicant represents, however, that this exemption will operate as a constraint on its ability to provide advisory services to Slick Family Clients, as children in the Slick Family cease to be minors and leave their childhood households. Applicant also represents that it is not prohibited from registering with the Commission under Section 203A(a) because it has assets under management of $25,000,000 or more.

4. Applicant requests that the SEC declare it and its employees acting within the scope of their employment to be persons not within the intent of section 202(a)(11). Applicant states that there is no public interest in requiring that it or its employees acting within the scope of their employment be registered under the Advisers Act because Applicant offers investment advisory services only to Slick Family Clients. Applicant further states that it was organized to be the ''family office'' for the Slick Family, and that will continue to be the sole purpose for its existence.

**Applicant's Conditions**

1. Applicant will offer and provide investment advisory services only to Slick Family Clients and will not hold itself out to the public as an investment adviser.

2. Members of the Slick Family will at all times comprise a majority of the Board of Directors of the Applicant.

3. Applicant will at all times be owned, directly or indirectly, exclusively by one or more members of the Slick Family.

For the SEC, by the Division of Investment Management, under delegated authority.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E8–11942 Filed 5–28–08; 8:45 am]

BILLING CODE 8010–01–P

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57848; File No. 4–443]**

## Joint Industry Plan; Notice of Filing and Order Approving on a Temporary Basis Amendment No. 1 to the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options

May 22, 2008.

**I. Introduction**

On May 15, 2008, May 15, 2008, May 13, 2008, May 6, 2008, May 13, 2008, May 7, 2008, May 13, 2008, and May 8, 2008, the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), Chicago Board Options Exchange, Incorporated (''CBOE''), the International Securities Exchange, LLC (''ISE''), The NASDAQ Stock Market LLC (''Nasdaq''), NYSE Arca Inc. (''NYSE Arca''), the Philadelphia Stock Exchange, Inc. (''Phlx''), and the Options Clearing Corporation (''OCC'') respectively, filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 11A of the Securities Exchange Act [1] of 1934 (''Act'') and Rule 608 thereunder,[2] Amendment No. 1 to the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (''the Options Listing Procedures Plan'' or ''OLPP'').[3] The amendment would provide a uniform time frame for the introduction of new Long-term Equity AnticiPation (''LEAP'' or ''LEAPS'') series on equity option classes, options on Exchange Traded Funds (''ETFs''), or options on Trust Issued Receipts (''TIRs''). This order summarily puts into effect Amendment No. 1 on a temporary basis not to exceed 120 days and solicits comment on Amendment No. 1 from interested persons.[4]

**II. Description of the Proposed Amendment**

Amendment No. 1 proposes to adopt a uniform time frame for the introduction of new LEAP series on equity option classes, options on ETFs, or options on TIRs.[5] Currently, new January LEAPS are introduced shortly after the groups of LEAPS with the least

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] On July 6, 2001, the Commission approved the OLPP, which was originally proposed by the Amex, CBOE, ISE, OCC, Phlx, and Pacific Exchange, Inc. (k/n/a NYSE Arca). *See* Securities Exchange Act Release No. 44521, 66 FR 36809 (July 13, 2001). On February 5, 2004, BSE was added as a sponsor to the OLPP. *See* Securities Exchange Act Release No. 49199, 69 FR 7030 (February 12, 2004). On March 21, 2008, Nasdaq was added as a sponsor to the OLPP. *See* Securities Exchange Act Release No. 57546 (March 21, 2008), 73 FR 16393 (March 27, 2008).

[4] A proposed amendment may be put into effect summarily upon publication of notice of such amendment, on a temporary basis not to exceed 120 days, if the Commission finds that such action 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 or otherwise in furtherance of the purposes of the Act. *See* 17 CFR 242.608(b)(4).

[5] In Item 3, ''Implementation of Amendments,'' of their respective submissions, the Participants to the OLPP inadvertently included a sentence indicating that (in addition to Amendment No. 1) each Exchange would need to submit proposed rule changes for Commission approval to implement Amendment No. 1. The Participants to the OLPP have subsequently concluded that no rule changes are necessary for Amendment No. 1 to be implemented and submitted letters to correct the inadvertent reference in Item 3.

time to expiration are converted to a conventional expiration symbol, generally when they have less than nine months to expiration.

By agreeing to a uniform time frame for the introduction of new LEAP series, the Participants to the OLPP intend to mitigate the number of option series available for trading during certain times of the year. The Participants to the OLPP intend that this will in turn lessen the rate of increase in quote traffic, because quotes will not be generated in the not-yet-available series.

In 2007, if this proposal had been in effect, the industry would have eliminated one and a half billion (1,500,000,000) quotes over the three months of June, July, and August, out of just less than 100 billion quotes over all, for a savings of 1.5%. The affected series, however, generated less than three million (3,000,000) contracts traded in the same period, out of more than seven hundred eighty million (780,000,000) contracts total industry volume, or approximately .38%. The exchanges agree that the benefit from reduced quoting levels greatly exceeds the small cost in missed business.

Previously, in an order dated September 8, 1999, as confirmed in a letter from the Director of the Division of Market Regulation dated September 13, 2000, the Commission directed the then-current options exchanges to act jointly to develop strategies to address overall capacity concerns.

The amendment also grants authority to the Participants to the OLPP to coordinate the date of introduction of new LEAP classes, so as to provide the least disruption on the options industry by having the flexibility to avoid holidays, expiration periods, and industry wide tests which are scheduled from time to time.

## III. Discussion

After careful consideration, the Commission finds that the proposed amendment to the OLPP is consistent with the requirements of the Act and the rules and regulations thereunder.[6] In particular, the Commission finds that the proposed amendment is consistent with the provisions of Section 11A of the Act[7] and Rule 608 of Regulation NMS thereunder,[8] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets. Specifically, the Commission believes that by adopting a uniform time frame for the introduction of new LEAP series on equity option classes, options on ETFs, and options on TIRs, the options exchanges will reduce the number of option series available for trading during certain times of the year, and thus may reduce increases in the options quote rate because market participants will not be submitting quotes in the not-yet-available LEAP series. In addition, the Commission finds that it is appropriate to put Amendment No. 1 into effect summarily upon publication of this notice on a temporary basis. The Commission believes that such action is appropriate in the public interest, for the protection of investors, and the maintenance of fair and orderly markets because it will allow the options exchanges to implement the initiative to reduce quote message traffic beginning immediately.[9]

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether proposed Amendment No. 1 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 Numbers 4–443 in 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 Numbers 4–443. These file numbers 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 Section, 100 F Street, NE., Washington, DC 20549–1090 on 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 Exchanges. 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 4–443 and should be submitted on or before June 19, 2008.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 11A of the Act,[10] and Rule 608 thereunder[11] that proposed Amendment No. 1 be, and it hereby is, approved on a temporary basis until September 19, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E8–11930 Filed 5–28–08; 8:45 am]

**BILLING CODE 8010–01–P**

---

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

## In the Matter of: e.Spire Communications, Inc., Empire of Carolina, Inc., Genfinity Corp. GSI Securitization Ltd. (n/k/a GSI Securitization, Inc.), Interliant, Inc. (n/k/a I Successor Corp.), Namibian Minerals Corp., Nix Co., Ltd. (n/k/a Global Energy Resources, Inc.) Number Nine Visual Technology Corp. (n/k/a International Precious Minerals Group, Inc.) NVID International, Inc., Oncor, Inc., and USCI, Inc.; Order of Suspension of Trading

May 27, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of e.Spire Communications, Inc., including but not limited to its debt securities, because it

[6] In approving this amendment, the Commission has considered its impact on efficiency, competition, and capital formation. *See* U.S.C. 78c(f).

[7] 15 U.S.C. 78k–1.

[8] 17 CFR 242.608(b)(4).

[9] The Commission notes that the options exchanges need not submit proposed rule changes for Commission approval in order to implement this initiative to mitigate quote traffic. *See supra* note 5.

[10] 15 U.S.C. 78k–1.

[11] 17 CFR 242.608(b)(4).

[12] 17 CFR 200.30–3(a)(29).

has not filed any periodic reports since the period ended September 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Empire of Carolina, Inc. because it has not filed any periodic reports since the period ended September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Genfinity Corp. because it has not filed any periodic reports since the period ended December 31, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of GSI Securitization Ltd. (n/k/a GSI Securitization, Inc.) because it has not filed any periodic reports since the period ended September 30, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Interliant, Inc. (n/k/a I Successor Corp.) because it has not filed any periodic reports since the period ended December 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Namibian Minerals Corp. because it has not filed any periodic reports since the period ended March 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Nix Co., Ltd. (n/k/a Global Energy Resources, Inc.) because it has not filed any periodic reports since the period ended December 31, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Number Nine Visual Technology Corp. (n/k/a International Precious Minerals Group, Inc.) because it has not filed any periodic reports since the period ended October 2, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of NVID International, Inc. because it has not filed any periodic reports since the period ended June 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Oncor, Inc. because it has not filed any periodic reports since the period ended June 30, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of USCI, Inc. because it has not filed any periodic reports since the period ended June 30, 2001.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies, including but not limited to the debt securities of e.Spire Communications, Inc., is suspended for the period from 9:30 a.m. EDT on May 27, 2008, through 11:59 p.m. EDT on June 9, 2008.

By the Commission.

**Florence Harmon,**

*Acting Secretary.*

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 08–1307 Filed 5–27–08; 11:37 am]

BILLING CODE 8010–01–P

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57847; File No. SR–ISE–2008–29]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change Relating to the Price Improvement Mechanism

May 21, 2008.

### I. Introduction

On March 20, 2008, the International Securities Exchange, LLC (''ISE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow members to enter orders into the Price Improvement Mechanism (''PIM'') at a price that matches the national best bid or offer (''NBBO'') when the ISE market is inferior to the NBBO. The proposed rule change was published for comment in the **Federal Register** on April 14, 2008.[3] The Commission received one comment letter regarding the proposal.[4] This order approves the proposed rule change.

### II. Description of the Proposal

The PIM currently allows certain ISE members to enter two-sided orders (''Crossing Transaction'') for execution at a price that improves upon the NBBO.[5] The customer side of these orders is then exposed to other members to give them an opportunity to participate in the trade at the proposed cross price or better. The Exchange proposes to extend the application of the PIM to permit a member to enter an order (''Agency Order'') into the PIM at a price that is equal to the NBBO when the ISE's best bid or offer (''ISE BBO'') is inferior to the NBBO. When the ISE BBO equals the NBBO, the member will continue to be required to enter a price at least one cent better than the NBBO.[6]

The Commission received one comment letter regarding the proposed rule change.[7] The commenter expresses concern that ISE's proposal would lead to greater rates of internalization and reduced amounts of price improvement being made available to public customers on ISE, especially to small orders under 50 contracts.[8] The commenter further believes that the proposal would reduce the incentive for market participants to quote at the NBBO on ISE.[9]

### III. Discussion and Commission Findings

After carefully considering the proposal and the comment submitted, 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] and, in particular, the requirements of section 6 of the Act.[11] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57632 (April 8, 2008), 73 FR 20079.

[4] *See* letter from Lisa J. Fall, General Counsel, Boston Options Exchange (''BOX''), to Nancy M. Morris, Secretary, Commission, dated May 14, 2007 (''BOX Comment'').

[5] *See* Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (approving rules implementing the PIM).

[6] *See* ISE Rule 723(b)(1).

[7] *See* BOX Comment, *supra* note 4.

[8] *Id.* at 1 and 5.

[9] *Id.* at 4.

[10] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

The Commission believes that the proposal will continue to provide customers with an opportunity for price improvement over the NBBO. The Commission notes that once a Crossing Transaction is submitted into the PIM auction, the Crossing Transaction may not be cancelled.[13] Therefore, the Agency Order submitted to the PIM auction when ISE's BBO is not equal to the NBBO will be guaranteed an execution price of at least the NBBO and, moreover, will be given an opportunity for execution at a price better than the NBBO.

The Commission does not agree with the concerns raised by the commenter. Under the proposal, the PIM will continue to provide an opportunity for customer orders to receive an execution at a price better than NBBO. All orders entered into the PIM will continue to be exposed to all ISE members before the submitting member can execute against the Agency Order. Moreover, the Commission believes the proposal may increase the likelihood of members entering Agency Orders into the PIM because the member will only be required to guarantee an execution at the NBBO when ISE's BBO is not equal to the NBBO, which would provide additional customer orders an opportunity for price improvement over the NBBO. The proposal also may encourage increased participation in a PIM by ISE members willing to trade with an agency order at the NBBO but not better than the NBBO. Increased participation by ISE members would decrease the proportion of an Agency Order that would be internalized by the submitting member.[14]

The Commission thus believes that ISE's proposal is consistent with the requirements of the Act.

## IV. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[15] that the proposed rule change (File No. SR–ISE–2008–29), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E8–11931 Filed 5–28–08; 8:45 am]

**BILLING CODE 8010–01–P**

[13] *See* ISE Rule 723(b)(3).

[14] *See* ISE Rule 723(d)(4).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57844; File No. SR–Phlx–2008–39]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Permanent Approval of the Exchange's Directed Order Program

May 21, 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 May 20, 2008, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt, on a permanent basis, a pilot program concerning Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM)[3] and Automatic Execution System (AUTO–X), and Exchange Rule 1014, Obligations And Restrictions Applicable To Specialists And Registered Options Traders. Specifically, the current pilot program covers: (1) Exchange Rule 1080(l), Directed Orders, under which Exchange specialists, Streaming Quote Traders (''SQTs''),[4] and Remote Streaming Quote Traders (''RSQTs'')[5] trading on the Exchange's electronic options trading platform, Phlx XL,[6] receive Directed Orders (as defined below); and (2) Exchange Rule 1014(g)(viii), which sets forth the trade allocation algorithm for electronically executed and allocated trades involving Directed Orders. This proposal is in connection with a pilot program that is currently scheduled to expire on May 27, 2008.[7] The text of the proposed rule change is available at the Phlx, the Commission's Public Reference Room, and *http://www.phlx.com/exchange/phlx_rule_fil.html*.

### 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 Phlx 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 Phlx 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 adopt, on a permanent basis, a pilot that: (i) permits specialists, SQTs, and RSQTs assigned in options that trade on Phlx XL to receive directed orders (''Directed Orders'')[8] from a member or member organization (''Order Flow Provider'' or ''OFP'')[9] that submits, as agent, a customer order to the Exchange electronically, and (ii) establishes a trade allocation algorithm for Directed Orders that are electronically executed and allocated to reward such Directed Specialists, SQTs,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] AUTOM is the Exchange's electronic order delivery, routing, execution, and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution features. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. AUTOM is today more commonly referred to as Phlx XL. *See* Exchange Rule 1080.

[4] An SQT is an Exchange Registered Options Trader who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. *See* Exchange Rule 1014(b)(ii)(A).

[5] An RSQT is a participant in the Exchange's electronic trading system, Phlx XL, who has received permission from the Exchange to trade in options for his own account and to generate and submit option quotations electronically from off the floor of the Exchange through AUTOM in eligible options to which such RSQT has been assigned. *See* Exchange Rule 1014(b)(ii)(B).

[6] *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR–Phlx–2003–59).

[7] *See* Securities Exchange Act Release No. 55803 (May 23, 2007), 72 FR 30413 (May 31, 2007) (SR–Phlx–2007–37).

[8] *See* Exchange Rule 1080(l)(i)(A).

[9] *See* Exchange Rule 1080(l)(i)(B).

and RSQTs [10] with a participation guarantee for attracting such order flow to the Exchange. The proposed rule is subject to a pilot program scheduled to expire on May 27, 2008.[11]

Pursuant to Exchange Rule 1080(l), OFPs must transmit Directed Orders to a particular specialist, SQT, or RSQT through AUTOM. If the Exchange's disseminated best bid or offer is at the National Best Bid or Offer (''NBBO'') when the Directed Order is received, the Directed Order is automatically executed on Phlx XL and allocated to the orders and quotes represented in the Exchange's quotation. A Directed Specialist, SQT, or RSQT will receive a participation allocation pursuant to Exchange Rule 1014(g)(viii) if the Directed Specialist, SQT, or RSQT was quoting at the NBBO at the time that the Directed Order was received.[12] Otherwise, the automatic execution will be allocated to those quotations and orders at the NBBO pursuant to Exchange Rule 1014(g)(vii).[13] The specialist will manually execute Directed Orders that are received when the Exchange is not quoting at the NBBO.[14]

The Exchange believes that the current pilot program rewards specialists, SQTs, and RSQTs for actively engaging in marketing activities and establishing relationships with OFPs that generate Directed Orders sent to the Exchange by such OFPs. The Exchange believes that the permanent adoption of this rule will continue to result in additional order flow to the Exchange, thus adding depth and liquidity to the Exchange's markets, and enabling the Exchange to continue to compete effectively with other options exchanges for order flow.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [15] in general and furthers the objectives of Section 6(b)(5) of the Act [16] in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by continuing to permit specialists, SQTs, and RSQTs trading options on Phlx XL to receive Directed Orders and by encouraging the capture of order flow on the Exchange by rewarding Directed Order recipients with a participation guarantee in trades involving Directed Orders.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2008–39 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–Phlx–2008–39. 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 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2008–39 and should be submitted on or before June 19, 2008.

**IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change**

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [17] and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[18] Section 6(b)(5) requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Exchange's Directed Order program was approved on a pilot basis.[19] The Exchange has asked the Commission to approve the Exchange's program on a permanent basis. For the reasons noted by the Commission when it initially approved the Exchange's Directed Order program on a pilot basis, the Commission continues to believe that the program does not jeopardize market integrity or the incentive for market participants to post competitive quotes. Accordingly,

[10] The term ''Directed Specialist, RSQT, or SQT'' means a specialist, RSQT, or SQT that receives a Directed Order. *See* Exchange Rule 1080(l)(i)(C). The word ''Directed'' modifies all three; that is, it is referring to a Directed Specialist, Directed SQT, and Directed RSQT.

[11] *See* note 7 *supra.*

[12] *See* Exchange Rule 1080(l)(ii).

[13] *See* Exchange Rule 1080(l)(iii).

[14] *See* Exchange Rule 1080(l)(iv).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f.

[18] 15.U.S.C. 78f(b)(5).

[19] The Commission initially approved the Exchange's Directed Order program on a one-year pilot basis to expire on May 27, 2006. *See* Securities Exchange Act Release No. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (SR–Phlx–2004–91). The Commission subsequently extended to the pilot period for an additional one-year period to expire on May 27, 2007. *See* Securities Exchange Act Release No. 53870 (May 25, 2006), 71 FR 31251 (June 1, 2006) (SR–Phlx–2006–27). The Commission again extended the pilot for another one-year period to expire on May 27, 2008. *See* note 7 *supra.*

the Commission finds that the proposal is consistent with the Act.[20]

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change would allow the Exchange's Directed Order program to continue without disruption. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[21] for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**.

**V. Conclusion**

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–Phlx–2008–39) is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E8–11932 Filed 5–28–08; 8:45 am]

**BILLING CODE 8010–01–P**

[20] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57842; File No. SR–NASDAQ–2008–031]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend Rule 4350 Related to the Direct Registration Programs

May 20, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2008, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

[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**

Nasdaq proposes to modify the requirement for a foreign private issuer to be eligible to rely on an exception to the requirement to participate in a Direct Registration Program and to clarify the applicability of the requirement to book-entry-only securities. Nasdaq will implement the proposed change related to book-entry-only securities immediately upon approval and the proposed change affecting foreign private issuers on March 31, 2009.

The text of the proposed rule change is below. Proposed new language is in italicized; proposed deletions are in brackets.[3]

**Rule 4350. Qualitative Listing Requirements for Nasdaq Issuers Except for Limited Partnerships**

(a) Applicability

(1) Foreign Private Issuers. A foreign private issuer may follow its home country practice in lieu of the requirements of Rule 4350, provided, however, that such an issuer shall: Comply with Rules 4350(b)(1)(B), 4350(j) and 4350(m), have an audit committee that satisfies Rule 4350(d)(3), and ensure that such audit committee's members meet the independence requirement in Rule 4350(d)(2)(A)(ii). *In addition, a foreign private issuer must be eligible to participate in a Direct Registration Program, as required by Rule 4350(l), unless prohibited from complying by a law or regulation in its home country.* A foreign private issuer that follows a home country practice in lieu of one or more provisions of Rule 4350 shall disclose in either its annual reports filed with the Commission or on its website each requirement of Rule 4350 that it does not follow and shall describe the home country practice followed by the issuer in lieu of such requirements. In addition, a foreign private issuer making its initial public offering or first U.S. listing on Nasdaq shall make the same disclosures in either its registration statement or on its website.

(2)—(5) No change.

(b)—(k) No change.

(l) Direct Registration Program

(1) All securities initially listing on Nasdaq on or after January 1, 2007, must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act. This provision does not extend to: (i) Additional classes of securities of companies which already have securities listed on Nasdaq; (ii) companies which immediately prior to such listing had securities listed on another registered securities exchange in the U.S; or, (iii) [non-equity] securities which are book-entry-only.

(2)*(A) Except as indicated in paragraph (2)(B) below, on* [On] and after March 31, 2008, all securities listed on Nasdaq (except [non-equity] securities which are book-entry-only) must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act.

(B) *Until March 31, 2009, a foreign private issuer may follow its home country practice in lieu of the requirements of this Rule 4350(l), provided, however, that such an issuer must follow the requirements of Rule 4350(a) and IM–4350–6 for doing so. Thereafter, the listed securities of such issuers (except securities which are book-entry-only) must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act unless prohibited from complying by a law or regulation in its home country.*

(3) No change.

(m)–(n) No change.

**IM 4350–6 Applicability**

1. Foreign Private Issuer Exception and Disclosure. A foreign private issuer (as defined in Rule 3b–4 under the Exchange Act) listed on Nasdaq may follow the practice in such issuer's home country (as defined in General Instruction F of Form 20–F) in lieu of some of the provisions of Rule 4350, subject to several important exceptions. First, such an issuer shall comply with Rule 4350(b)(1)(B) (Disclosure of Going Concern Opinion), Rule 4350(j) (Listing Agreement) and Rule 4350(m) (Notification of Material Noncompliance). Second, such an issuer shall have an audit committee that satisfies Rule 4350(d)(3). Third, members of such audit committee shall meet the criteria for independence referenced in Rule 4350(d)(2)(A)(ii) (the criteria set forth in Rule 10A–3(b)(1), subject to the exemptions provided in Rule 10A–3(c) under the Exchange Act). *Fourth, a foreign private issuer must comply with Rule 4350(l) (Direct Registration Program) unless prohibited from complying by a law or regulation in its home country.* Finally, a foreign private issuer that elects to follow home

[3] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaq.complinet.com.*

country practice in lieu of a requirement of Rule 4350 shall submit to Nasdaq a written statement from an independent counsel in such issuer's home country certifying that the issuer's practices are not prohibited by the home country's laws *and, in the case of a company prohibited from complying with Rule 4350(l), certifying that a law or regulation in the home country prohibits such compliance.* In the case of new listings, this certification is required at the time of listing. For existing issuers, the certification is required at the time the company seeks to adopt its first non-compliant practice. In the interest of transparency, the rule requires a foreign private issuer to make appropriate disclosures in the issuer's annual filings with the Commission (typically Form20–F or 40–F), and at the time of the issuer's original listing in the United States, if that listing is on Nasdaq, in its registration statement (typically Form F–1, 20–F, or 40–F); alternatively, the issuer may provide these disclosures in English on its website. The issuer shall disclose each requirement of Rule 4350 that it does not follow and include a brief statement of the home country practice the issuer follows in lieu of the requirements of Rule 4350. If the disclosure is only available on the website, the annual report and registration statement should so state and provide the web address at which the information may be obtained.

2.–4. No change.

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

Nasdaq proposes to modify the requirements related to its Direct Registration Program rule to provide that the requirement to be eligible to participate in a Direct Registration Program applies to a foreign private issuer, unless the law or regulations in the company's home country prohibit compliance with the requirement, and to clarify the application of the requirement to securities held in book-entry-only form.

Nasdaq's rule permits a foreign private issuer to follow its home country practice in lieu of certain requirements of Rule 4350, including the requirement that securities be eligible to participate in a Direct Registration Program. Nasdaq proposes to modify this requirement so that a foreign private issuer could only follow its home country practice with respect to the requirement that securities be eligible to participate in a Direct Registration Program if the issuer is prohibited from complying with this requirement by the laws or regulations in the issuer's home country. In order to assure that foreign private issuers have adequate time to take necessary actions to come into compliance with the proposed rule, Nasdaq proposes that until March 31, 2009, such issuers can continue to rely on the prior version of the exception to this requirement.

In addition, Nasdaq's rule excludes from the requirement to be eligible to participate in a Direct Registration Program ''non-equity securities which are book-entry-only.'' Nasdaq proposes to modify this requirement to exclude all book-entry-only securities because ownership of such securities is already recorded only on the books and records of the issuer and are not held in certificated form. As such, these securities would already avail themselves of the advantages that the Direct Registration Program is designed to promote. If a security ceases to be book-entry-only, that security would then be required to be eligible to participate in a Direct Registration Program.

(2) Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(5) of the Act, in particular, in that the proposal is designed to, among other things, prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[6] The proposed rule change modifies Nasdaq's rules relating to the Direct Registration Programs to require a foreign private issuer to comply with the Nasdaq's rules unless the foreign private issuer is prohibited from doing so and to exclude from the proposed requirement securities that are book-entry-only and therefore already enjoy the same benefits of a Direct Registration System.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Nasdaq 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, as amended.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S–NASDAQ–2008–031 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary,

[4] The Commission has modified portions of the text of the summaries prepared by the Nasdaq.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–031. 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of Nasdaq and on Nasdaq's Web site, *http://www.nasdaq.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2008–031 and should be submitted on or before June 19, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E8–11940 Filed 5–28–08; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

**DATES:** Submit comments on or before July 28, 2008.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Walter C. Intlekofer, Chief, Office of Portfolio Management, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW., 8th floor, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Walter C. Intlekofer, Chief, Office of Portfolio Management, Office of Financial Assistance, 202–205–7543. *walter.intlekofer@sba.gov;* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

**SUPPLEMENTARY INFORMATION:** SBA will collect this information form CDC's and certain 7(a) lenders to determine CDC's eligibility to liquidate and litigate loans and to access the risks and costs of liquidation and litigation actions proposed by CDC's and 7(a) lenders.

*Title:* ''7(a) and 504 Liquidation & Litigation Procedures.''

*Description of Respondents:* CDC's and certain 7(a) lenders.

*Form Number:* N/A.

*Annual Responses:* 1,060.

*Annual Burden:* 3,890.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. E8–11955 Filed 5–28–08; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending January 25, 2008

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* DOT–OST–2008–0029.

*Date Filed:* January 25, 2008.

*Due Date for Answers, Conforming Applications, or Motion To Modify Scope:* February 15, 2008.

*Description:* Application of Family Airlines Incorporated requesting a certificate of public convenience and necessity authorizing it to engage in scheduled interstate air transportation of persons, property and mail.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. E8–12006 Filed 5–28–08; 8:45 am]

BILLING CODE 4910–9X–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activity Seeking OMB Approval

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

**ACTION:** Notice.

**SUMMARY:** The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 31, 2008, vol. 73, no. 62, page 16922. The information is needed to determine an applicant's eligibility for an award of attorney's fees and other expenses under the Equal Access to Justice Act.

**DATES:** Please submit comments by June 30, 2008.

**FOR FURTHER INFORMATION CONTACT:** Carla Mauney at *Carla.Mauney@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Federal Aviation Administration (FAA)**

*Title:* Implementation to the Equal Access to Justice Act.

*Type of Request:* Extension without change of a currently approved collection.

*OMB Control Number:* 2120–0539.

*Forms(s):* There are no FAA forms associated with this collection.

*Affected Public:* An estimated 17 Respondents.

*Frequency:* This information is collected on occasion.

*Estimated Average Burden Per Response:* Approximately 40 hours per response.

*Estimated Annual Burden Hours:* An estimated 680 hours annually.

*Abstract:* The information is needed to determine an applicants eligibility for an award of attorney's fees and other expenses under the Equal Access to Justice Act.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 20, 2008.

**Carla Mauney,**

*FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. E8–11784 Filed 5–28–08; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activity Seeking OMB Approval

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

**ACTION:** Notice.

**SUMMARY:** The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 31, 2008, vol. 73, no. 62, page 16923. This collection of information is necessary to determine how satisfied applicants are with the automated staffing solution.

**DATES:** Please submit comments by June 30, 2008.

**FOR FURTHER INFORMATION CONTACT:** Carla Mauney at *Carla.Mauney@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

**Federal Aviation Administration (FAA)**

*Title:* Federal Aviation Administration, SWIFT Customer Satisfaction Survey.

*Type of Request:* Extension without change of a currently approved collection.

*OMB Control Number:* 2120–0699.

*Forms(s):* There are no FAA forms associated with this collection.

*Affected Public:* An estimated 50,000 Respondents.

*Frequency:* This information is collected on occasion.

*Estimated Average Burden Per Response:* Approximately 3 minutes per response.

*Estimated Annual Burden Hours:* An estimated 2,500 hours annually.

*Abstract:* This collection of information is necessary to determine how satisfied applicants are with the automated staffing solution. The information will enable the FAA to improve and enhance its automated staffing process.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, May 19, 2008.

**Carla Mauney,**

*FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. E8–11825 Filed 5–28–08; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activity Seeking OMB Approval

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

**ACTION:** Notice.

**SUMMARY:** The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 31, 2008, vol. 73, no. 62, pages 16923–16924. To determine regulatory compliance, there is a need for airmen to maintain records of certain training and recentness of experience.

**DATES:** Please submit comments by June 30, 2008.

**FOR FURTHER INFORMATION CONTACT:** Carla Mauney at Carla.Mauney@faa.gov.

**SUPPLEMENTARY INFORMATION:**

**Federal Aviation Administration (FAA)**

*Title:* Certificated Training Centers—Simulator Rule, Part 142.

*Type of Request:* Extension without change of a currently approved collection.

*OMB Control Number:* 2120–0570.

*Forms(s):* There are no FAA forms associated with this collection.

*Affected Public:* An estimated 108 Respondents.

*Frequency:* This information is collected on occasion.

*Estimated Average Burden Per Response:* Approximately 1,177.5 hours per response.

*Estimated Annual Burden Hours:* An estimated 127,180 hours annually.

*Abstract:* To determine regulatory compliance, there is a need for airmen to maintain records of certain training and recentness of experience; training center have to maintain records of students' training, employee qualification and training, and training program approvals.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

*Comments are invited on:* Whether the proposed collection of information

is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 19, 2008.

**Carla Mauney,**

*FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. E8–11826 Filed 5–28–08; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Approval of Finding of No Significant Impact (FONSI) on an Environmental Assessment (EA); Quad City International Airport, Moline, IL

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

**ACTION:** Notice of Approval of Documents.

**SUMMARY:** The Federal Aviation Administration (FAA) is issuing this notice to advise the public of the approval of a Finding of No Significant Impact (FONSI) on an Environmental Assessment for proposed Federal actions at Quad City International Airport, Molline, Illinois. The FONSI specifies that the proposed federal actions and local development projects are consistent with existing environmental policies and objectives as set forth in the National Environmental Policy Act of 1969 and will not significantly affect the quality of the environment.

A description of the proposed Federal actions is: (a) To issue an environmental finding to allow approval of the Sponsor's Proposed Action/ALP for the development listed above; (b) to issue final airspace determinations for the development listed above, (c) to issue a final determination of potential airspace obstructions to navigable airspace per an aeronautical study outlines under 14 CFR Part 77, (d) to issue a final certification that the proposed aeronautical development is reasonably necessary for use in air commerce or for national defense, (e) issuance of finding for Intergovernmental review of Federal Programs, (f) to include the issuance of an environmental justice finding, (g) to include the issuance of a wetland finding, (h) to include the issuance of a floodplain finding, (i) to include the approval for any necessary funding, installation and/or relocation, certification and operation of navigation aids, and (j) to include any preparation and/or revisions to Standard Instrument Approach Procedures (SIAP).

The items in the local airport development project are to:

Rehabilitate Runway 9–27 and Midfield intersection. Construct, light and mark a 100' x 6,500' temporary Runway 10–28 to be ultimately used as Taxiway P, including grading and drainage. Construct, light and mark connecting Taxiways to temporary Runway 10–28/Taxiway P, including grading and drainage and remove existing connecting Taxiways. Convert temporary Runway 10–28 to Taxiway P, upon decommissioning of temporary runway use, including paved shoulders, marking, lighting, NAVAID relocation and Standard Instrument Approach Procedures (SlAP) decommissioning. Relocate western airport service road outside temporary Runway 10–28's Runway Safety Area, including grading and drainage and remove portion of existing service road. Construct Runway 9–27 paved shoulders, including grading and drainage. Rehabilitate Runway 9–27 lighting. Widen portion of Taxiway K to 75 feet, including lighting, marking, grading and drainage. Install Localizer to temporary Runway 10. Install PAPI's to temporary Runways 10 and 28. Install REIL's to temporary Runways 10 and 28. Relocate temporary Runway 10 28 localizer to Runway 13. Relocate temporary Runway 10–28 PAPI's to Runways 9 and 23. Relocate windsock and segmented circle. Relocate Remote Processing Unit (RPU). Obtain borrow from existing Airport, including tree clearing (southern sites), for Taxiway P. Stockpile borrow material, temporarily, for Taxiway P, if necessary. Create Standard Instrument Approach Procedures (SIAP) for temporary Runways 10 and 28, Runways 13 and 31. Floodplain encroachment of approximately 0.92 acres, covered under Statewide Permit Number 6. Wetland encroachment of approximately 0.07 acres, covered by Nationwide Permit numbers 14 and 33. Construct, light and mark Taxiway N, including grading and drainage. Raze Civil Air Patrol building. Construct Rental Car Quick Turn Around Facility, including fueling and wash facilities, and rental car/employee auto parking expansion, including grading and drainage. Acquire approximately 9 acres of land, in fee simple title, including relocation assistance for two businesses.

Copies of the environmental decision and the EA are available for public information review during regular business hours at the following locations:

1. Quad City International Airport, 2200 69th Avenue, Moline, IL 61265.
2. Division of Aeronautics-Illinois Department of Transportation, One Langhorne Bond Drive, Capital Airport, Springfield, IL 62707.
3. Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 320, Des Plaines, Illinois 60018.

**FOR FURTHER INFORMATION CONTACT:** Amy B. Hanson, Environmental Protection Specialist, Federal Aviation Administration, Chicago Airports District Office, Room 320, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Ms. Hanson can be contacted at (847) 294–7354 (voice), (847) 294–7046 (facsimile) or by E-Mail at *amy.hanson@faa.gov*.

Issued in Des Plaines, Illinois on May 14, 2008.

**Jim Keefer,**

*Manager, Chicago Airports District Office, FAA, Great Lakes Region.*

[FR Doc. E8–11827 Filed 5–28–08; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Eighth Meeting, Special Committee 215 Aeronautical Mobile Satellite (Route) Services Next Generation Satellite Services and Equipment

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

**ACTION:** Notice of RTCA Special Committee 215, Aeronautical Mobile Satellite (Route) Services, Next Generation Satellite Services and Equipment.

**SUMMARY:** The FAA is issuing this notice to advise the public of a third meeting of RTCA Special Committee 215, Aeronautical Mobile Satellite (Route) Services, Next Generation Satellite Services and Equipment.

**DATES:** The meeting will be held June 25–26, 2008, 9 a.m.

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805 Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202)

833–9434; Web site *http://www.rtca.org* for directions.

**Note:** It is expected that the Eighth Plenary will approve DO–262 Revision A for final submission to the Pro grain Management Committee (PMC). Dress is Business Casual.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 215 meeting. The agenda will include:

- June 25, 2008:
- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks);
- Review and Approval of Agenda for Eighth Plenary;
- Review and Approval of Seventh Meeting Summary (215–026; RTCA Paper No. 1 16–08/SC215–020);
- DO–262A:
  - FRAC: Resolution of Comments;
  - Final Plenary Approval of Agenda for Eighth Plenary;
  - Review of PMC Approval Process and Next Steps;
  - Review of Draft Antenna TSO (K. Blomgren);
- DO–270 Normative Appendix:
  - Report from Drafting Group;
  - Subnetwork Operational Approval Process;
  - Review and Discussion of FAA Advisory Circular (D. Robinson);
- Closing Plenary Session (Any Other Business, Review of Next Plenary Dates, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 15, 2008.

**Robert L. Bostiga,**

*RTCA Advisory Committee (Acting).*

[FR Doc. E8–11823 Filed 5–28–08; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Noise Exposure Map Notice; Fort Worth Alliance Airport, Fort Worth, TX

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the revised future noise exposure map submitted by the city of Fort Worth for Fort Worth Alliance Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 is in compliance with applicable requirements.

**EFFECTIVE DATE:** The effective date of the FAA's determination on the future noise exposure map is May 16, 2008.

**FOR FURTHER INFORMATION CONTACT:** Paul Blackford, Mr. Paul Blackford, Federal Aviation Administration, 2601 Meacham Blvd. Fort Worth, Texas 76137–0650, (817) 222–5607.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the revised future noise exposure map submitted for Fort Worth Alliance Airport is in compliance with applicable requirements of Part 150, effective May 16, 2008. Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the future noise exposure map and accompanying documentation submitted by the city of Fort Worth. The documentation that constitutes the ''future noise exposure map'' as defined in section 150.7 of Part 150 includes: Section 5.0, Exhibits 5.3, 5.4, and 5.5. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on May 16, 2008.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas; Mr. Kent Penney, Airport Systems Director, City of Fort Worth, Aviation Department, 4201 N. Main St., Suite 200, Fort Worth, Texas. Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Fort Worth, Texas, May 16, 2008.

**Kelvin L. Solco,**

*Manager, Airports Division.*

[FR Doc. E8–11828 Filed 5–28–08; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Noise Exposure Map Notice for Monterey Peninsula Airport, Monterey, California

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Monterey Peninsula Airport District, California for Monterey Peninsula Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements.

**EFFECTIVE DATE:** The effective date of the FAA's determination on the noise exposure maps is May 9, 2008.

**FOR FURTHER INFORMATION CONTACT:** David B. Kessler, AICP, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, Los Angeles, California 90009–Telephone: 310/725–3615.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for Monterey Peninsula Airport are in compliance with applicable requirements of Part 150, effective May 9, 2008. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by Monterey Peninsula Airport District, California. The documentation that constitutes the ''Noise Exposure Maps'' as defined in section 150.7 of Part 150 includes: Exhibit 1 ''2007 CNEL Noise Exposure Contours Map,'' and Exhibit 2—''2012 CNEL Noise Exposure Contours Map.'' The Noise Exposure Maps contain current and forecast information including the depiction of the airport and its boundaries, the runway configurations, land uses such as residential, open space, commercial/office, community facilities, libraries, churches, open space, infrastructure, vacant and warehouse and those areas within the Community Noise Equivalent Level (CNEL) 65, 70, and 75 noise contours. Estimates for the number of people within these contours for the year 2007 are shown in Table 4B. Estimates of the future residential population within the 2012 noise contours are shown in Table 4D. Exhibit 3M displays the location of noise monitoring sites. Flight tracks for the existing and the five-year forecast Noise Exposure Maps are found in Exhibits 3E, 3F, 3G, and 3H. The type and frequency of aircraft operations (including nighttime operations) are found in Tables 2L and 2P. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on May 9, 2008.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Planning and Environmental Division, APP–400, 800 Independence Avenue, SW., Washington, DC 20591;

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261;

Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010–1303;

Thomas Greer, General Manager, Monterey Peninsula Airport, 200 Fred Kane Drive #200, Monterey, CA 93940.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California on May 9, 2008.

**Mark A. McClardy,**

*Manager, Airports Division, AWP–600, Western-Pacific Region.*

[FR Doc. E8–11824 Filed 5–28–08; 8:45 am]

**BILLING CODE 4910–13–M**

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**[Docket ID OCC–2008–0007]**

**FEDERAL RESERVE SYSTEM**

**[Docket No. OP–1292]**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

**[Docket No. OTS–2008–0003]**

**NATIONAL CREDIT UNION ADMINISTRATION**

## Illustrations of Consumer Information for Hybrid Adjustable Rate Mortgage Products

**AGENCIES:** Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); and National Credit Union Administration (NCUA) (collectively, the Agencies).

**ACTION:** Final Guidance—Illustrations of Consumer Information for Hybrid Adjustable Rate Mortgage Products.

**SUMMARY:** The Agencies are publishing four documents that set forth Illustrations of Consumer Information for Hybrid Adjustable Rate Mortgage Products. The illustrations are intended to assist institutions in implementing the consumer protection portion of the Interagency Statement on Subprime Mortgage Lending adopted on July 10, 2007, and in providing information to consumers on hybrid adjustable rate mortgage (ARM) products as recommended by that interagency statement. The illustrations are not model forms and institutions may choose not to use them.

**EFFECTIVE DATE:** May 29, 2008.

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Michael Bylsma, Director, Stephen Van Meter, Assistant Director, Carolle Kim, Attorney, Community and Consumer Law Division, (202) 874–5750; or Joseph A. Smith, Group Leader, Mortgage Banking & Securitization, Retail Credit Risk, (202) 874–5170.

*Board:* Kathleen C. Ryan, Counsel, or Jamie Z. Goodson, Attorney, Division of Consumer and Community Affairs, (202) 452–3667. For users of Telecommunication Device for Deaf only, call (202) 263–4869.

*FDIC:* Luke H. Brown, Associate Director, Compliance Policy Branch, (202) 898–3842, Samuel Frumkin, Senior Policy Analyst, Division of Supervision and Consumer Protection, (202) 898–6602; or Richard Foley, Counsel, Legal Division, (202) 898–3784.

*OTS:* Glenn Gimble, Senior Project Manager, Compliance and Consumer Protection Division, (202) 906–7158, or Suzanne McQueen, Consumer Regulations Analyst, Compliance and Consumer Protection Division, (202) 906–6459.

*NCUA:* Matthew J. Biliouris, Program Officer, Examination and Insurance, (703) 518–6360.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On March 8, 2007, the Agencies published the Interagency Statement on Subprime Mortgage Lending (Subprime Statement) for comment. 72 FR 10533 (March 8, 2007). After carefully reviewing and considering all comments received, the Agencies published the Subprime Statement (applicable to all banks and their subsidiaries, bank holding companies and their nonbank subsidiaries, savings institutions and their subsidiaries, savings and loan holding companies and their subsidiaries, and credit unions) in final form on July 10, 2007. 72 FR 37569 (July 10, 2007).

The Subprime Statement set forth recommended practices to ensure that consumers have clear and balanced information about certain hybrid adjustable rate mortgage products during the product selection process, not just upon submission of an application or at consummation of the loan. This information should address the relative benefits and risks of these products and describe their costs, terms, features, and risks to the borrower.

Some industry group commenters on the proposed Subprime Statement asked the Agencies to provide uniform disclosures for these products, or to publish illustrations of the consumer information contemplated by the Subprime Statement similar to those previously proposed by the Agencies in connection with nontraditional mortgage products. (These illustrations were subsequently revised and published in final form.[1]) The Agencies determined that illustrations of the consumer information contemplated by the Subprime Statement may be useful to institutions as they seek to ensure that consumers receive the information they need about the material features of these loans. On August 14, 2007, the Agencies published for comment two Proposed Illustrations of Consumer Information for Subprime Mortgage Lending (Proposed Illustrations). 72 FR 45495 (Aug. 14, 2007).

The two Proposed Illustrations consisted of (1) a narrative explanation of some of the key features of certain ARM loans that are identified in the Subprime Statement, including payment shock, responsibility for taxes and insurance, prepayment penalties,[2] balloon payments, and increased costs associated with stated income or reduced documentation loans, and (2) a chart with numerical examples that is designed to show the potential consequences of payment shock in a concrete, readily understandable manner for a loan structured with a discounted interest rate for the first two years.

The Agencies requested comment on all aspects of the Proposed Illustrations. Specifically, commenters were asked to address whether the illustrations, as proposed, would be useful to institutions, including community banks, seeking to implement the ''Consumer Protection Principles'' portion of the Subprime Statement, or whether changes should be made. The Agencies also encouraged specific comment on whether the illustrations, as proposed, would be useful in promoting consumer understanding of the risks and material terms of certain ARM products, as described in the Subprime Statement, or whether changes should be made. Additionally, the Agencies sought comment on whether the information in the Proposed Illustrations is set forth in a clear manner and format; whether these illustrations or a modified form should be adopted by the Agencies; and whether additional illustrations relating to certain ARM products would be useful to consumers and institutions. Finally, the Agencies requested information on any consumer testing that commenters may have conducted in connection with comparable disclosures.

After considering the comments received, the Agencies are now issuing final illustrations of consumer information for certain hybrid ARMs. The Subprime Statement recommended that communications with consumers, including advertisements, oral statements, and promotional materials, provide clear and balanced information about the relative benefits, costs, terms, features, and risks of certain ARM

[1] Illustrations of Consumer Information for Nontraditional Mortgage Products, 72 FR 31825 (June 8, 2007).

[2] Federal credit unions are prohibited from charging prepayment penalties. 12 CFR 701.21.

products to the borrower. This includes information about the risk of payment shock, the ramifications of prepayment penalties, balloon payments, and a lack of escrow for taxes and insurance, and any pricing premium associated with a stated income or reduced documentation loan program.

Use of the illustrations is entirely voluntary. Accordingly, there is no Agency requirement or expectation that institutions must use the illustrations in their communications with consumers. Institutions seeking to follow the recommendations set forth in the Subprime Statement may, at their option, elect to:

- Use the illustrations;
- Provide information based on the illustrations, but expand, abbreviate, or otherwise tailor any information in the illustrations as appropriate to reflect, for example:
  - The institution's product offerings, such as by deleting information about loan products and loan terms not offered by the institution and by revising the illustrations to reflect specific terms currently offered by the institution;
  - The consumer's particular loan requirements or qualifications;
  - Current market conditions, such as by changing the loan amounts, interest rates, and corresponding payment amounts to reflect current local market circumstances;
  - Other material information relating to the loan consistent with the Subprime Statement; and
  - The results of consumer testing of the illustrations or comparable disclosures; or
- Provide the information described in the Subprime Statement, as appropriate, in an alternate format.

To assist institutions that wish to use the illustrations, the Agencies will be posting each of the illustrations on their respective Web sites in a form that can be downloaded and printed for easy reproduction. The Agencies also will develop and post Spanish-language versions of the illustrations on their respective Web sites. Additionally, in response to concerns that the interest rates used in Illustrations Nos. 2A, 2B, and 2C may become outdated with changes in market interest rates—and consistent with the Agencies' intention, expressed above, that the illustrations may be modified to reflect, among other things, current market conditions—the Agencies also will be posting on their respective Web sites a template that can be used by institutions that wish to modify the information presented in these illustrations to reflect more current interest rates (and corresponding payment amounts).

## II. Overview of the Comments

Collectively, the Agencies received approximately 25 comment letters on the proposal, including comments from one federal regulatory agency, a group of three associations of state banking and consumer protection agencies, six financial institutions, ten trade organizations, two community organizations, and five individuals.

Most commenters encouraged the Agencies to adopt the illustrations. These commenters stated that the illustrations would be useful to financial institutions, including community banks, seeking to implement the consumer protection principles of the Subprime Statement. At least one commenter also noted that the illustrations would help reduce implementation costs and compliance burden.

Several trade organizations supported making use of the illustrations voluntary. These commenters also urged the Agencies to notify their examiners that use of the illustrations is not required to show compliance with the Subprime Statement. One of these commenters stated that in developing the illustrations the Agencies have appropriately balanced the need for institutions to provide meaningful disclosures and the need to avoid unnecessary burdens. On the other hand, one community organization advocated that use of the illustrations should be made mandatory to prevent consumer confusion due to lack of uniform disclosures from lender to lender.

Many commenters suggested that the Proposed Illustrations could confuse consumers about whether the illustrations are describing features of hybrid ARMs generally or, instead, describing the mortgage they are actually considering or being offered. These commenters suggested modifying the illustrations by revising statements that appear specific to a particular borrower and loan product. Other commenters, however, suggested modifying the illustrations so that they would be based on the actual loan product or product choices lenders will offer to the particular applicant, and include more loan-specific details.

Commenters also suggested changes to make the illustrations more accurately reflect the actual terms of products prevalent in the market. For example, it was noted that the illustrations focused on hybrid ARM products structured with a discounted interest rate for the first two years. Due to recent market developments, such products have become uncommon, and have been replaced, to some extent, by products with somewhat longer discounted initial interest rate periods.

Finally, commenters made a number of suggestions to change the wording, format, or content of the illustrations in order to improve the accuracy, clarity, or usefulness of the illustrations for consumers.

## III. Final Illustrations

After carefully considering all of the comments received, the Agencies have decided to publish the proposed illustrations in final form, with some modifications.[3] Additionally, the Agencies believe that issuing these materials as nonmandatory illustrations will provide institutions with the flexibility needed to tailor the materials to their own circumstances and consumer needs.

In response to commenter concerns, the Agencies have made three sets of changes to the proposed illustrations, as described more fully below. The first change relates to the language and format of Illustration No. 1. The Agencies have modified this illustration so it clearly will be a general description of the features of the products covered by the Subprime Statement, rather than a loan-specific disclosure. Second, the Agencies have included additional versions of Illustration No. 2 to provide institutions with illustrations reflecting products that may be more prevalent in the market, and to show how institutions might provide this information when they offer multiple products subject to the Subprime Statement. Finally, the Agencies have adopted a number of wording and format changes to improve the readability and usefulness of the illustrations for consumers, and to make it easier for consumers to understand the key risks of the products covered by the Subprime Statement.

### *A. Proposed Illustration No. 1*

As noted above, several commenters suggested that Illustration No. 1 should generally describe features found in the subprime ARM products covered by the Subprime Statement. Given that the Subprime Statement called for early delivery—during the product selection process—of the consumer information contemplated in the Statement, the Agencies agree that it could be inappropriate and confusing for Illustration No. 1 to appear to set forth

[3] The Agencies are using a different title for this final guidance than for the proposed guidance to reflect more closely the types of mortgage products covered by the Subprime Statement.

specific loan terms. At this stage, consumers have not yet selected a specific loan, and institutions likely will not have performed the credit underwriting necessary to determine all of the terms that may be offered to the consumer. In view of these uncertainties, and in light of the fact that hybrid ARMs may include various combinations of the risks and features highlighted in the Subprime Statement, it would not be possible for this narrative description to convey loan-specific information in a way that would be accurate or relevant for all consumers. For these reasons, attempting to include loan-specific information would frustrate one of the Agencies' primary goals in issuing these illustrations: Namely, to create a set of documents that institutions can use to satisfy the expectations outlined in the Subprime Statement.[4]

Accordingly, in order to make clear that this illustration is simply a generic description of key risks and features that may be found in the products covered by the Subprime Statement, and to improve readability and usefulness, the Agencies have made substantial changes to proposed Illustration No. 1, and have adopted, to a large extent, the format used in the Agencies' nontraditional mortgage product illustrations.[5] Most significantly, the document has been revised and reformatted to emphasize the risk of payment shock present in all products covered by the Subprime Statement, as opposed to other features (such as prepayment penalties) that may (or may not) be found in any particular loan.[6] These other features are now described under a general heading, ''Additional Information.'' The Agencies also believe that distinguishing between the inherent and potential risks of these products, and formatting the document accordingly, helps to make the document easier to use and understand. The Agencies also have revised the language in the subject matter headings of the ''Additional Information'' portion of the document. These changes are designed to conform to the approach used in the nontraditional mortgage product illustrations and to clarify that the features described therein are not necessarily included in the loan to be offered to the consumer.

The Agencies also adopted several suggestions from commenters to place more emphasis on the nature of the risks associated with obtaining a hybrid ARM product of the type covered by the Subprime Statement, and to focus consumers' attention on those risks. For example, the Agencies have added language directing consumers not to assume that they will be able to refinance their ARM to a lower rate in the future. The final illustration also states that consumers ''need to know'' whether the monthly payment includes taxes and insurance, whether their loan would have a prepayment penalty or balloon payment, and whether obtaining a ''full documentation'' loan would be more cost-effective.

Other recommendations were adopted by the Agencies to improve the clarity or usefulness of the document for consumers. For example, Illustration No. 1 was modified to reflect interest rate indexes more likely to be used by lenders in the current market.

The Agencies decided not to adopt a number of specific suggestions made by commenters. Some of these suggestions were largely duplicative of information already contained in the document, or otherwise would have made the document too lengthy and less consumer-friendly. Other comments would have provided substantive advice to consumers about particular features and terms, and were inconsistent with the purpose of the illustration to provide important information in an objective, balanced manner. One commenter representing the credit union industry suggested deleting the reference to prepayment penalties in Illustration No. 1 on the grounds that federal credit unions are not permitted to charge such penalties. The Agencies did not adopt this suggestion, however, because the illustrations are designed for the use of all institutions supervised by any of the Agencies. As noted above, institutions may tailor the information in the illustrations as appropriate to reflect, for example, their own product offerings. Other suggested changes that were not adopted would not, in the Agencies' view, have enhanced the clarity or usefulness of the illustration for consumers.

*B. Proposed Illustration No. 2*

After reviewing and considering the comments, the Agencies have retained Proposed Illustration No. 2—a chart comparing payment obligations on a fixed rate loan and an ARM with a discounted interest rate for the first two years—but have re-designated the illustration as Illustration No. 2A. In response to the comments and market changes, the Agencies also have included two additional versions of Proposed Illustration No. 2 for institutions to consider using. Comments on Illustration No. 2, as well as external data reviewed, indicate that hybrid ARM products structured with a discounted interest rate for the first five years may have become more prevalent in the current market than similar products structured with a discounted interest rate for the first two years. Accordingly, the Agencies have added a similar chart, designated as Illustration No. 2B, that compares payment obligations on a fixed rate loan and an ARM with a discounted interest rate for the first five years. Institutions may believe that Illustration No. 2B is more helpful than Illustration No. 2A to consumers considering loans whose initial rate remains in effect for a longer period of time. In addition, the Agencies have added a third chart, designated as Illustration No. 2C, that compares payment obligations on three products: A fixed rate loan; an ARM with a discounted interest rate for the first two years; and an ARM with a discounted rate for five years. Institutions that would like to present information about multiple products they offer on a single page, rather than providing a separate illustration for each product, may find this third chart to be useful.[7] The Agencies also adopted a number of minor wording changes, including changes in the left column of the illustration to clarify that the interest rate conditions specified therein are specifically referring to movement in index interest rates, and not the interest rate increases required by the terms of the hybrid ARM loan. The Agencies also changed the assumed interest rate increase in the final row of the left column to be more consistent with the illustration's assumptions about product structure, and thereby less likely to produce consumer confusion. The Agencies did not adopt some suggestions made by commenters because they would require the provision of loan-specific information

[4] In this regard, the Agencies note that institutions will continue to have obligations under the Truth in Lending Act, Real Estate Settlement Procedures Act, and other laws to provide consumers with timely, loan-specific information.

[5] Illustrations of Consumer Information for Nontraditional Mortgage Products, 72 FR 31825 (June 8, 2007).

[6] The title of this illustration also has been revised, in response to commenter suggestions, to stress that the document includes important facts about any adjustable rate mortgage with a reduced initial interest rate.

[7] Illustrations Nos. 2A, 2B, and 2C reflect typical interest rates for these products at the time the Agencies issued the Subprime Statement, and embody other assumptions about typical features of these products. For example, they reflect assumptions that: the fully-indexed rate is 4.5 percentage points higher than the initial rate (based on an initial index rate of 5.5 percent and a margin of 6 percent); the first interest rate adjustment cannot exceed 3 percentage points; subsequent interest rate adjustments may not exceed 1.5 percentage points; and the applicable interest rate may never be more than 6 percentage points higher than the initial rate.

that could not feasibly or accurately be presented in the early product selection process. However, as noted above, institutions that wish to modify the information presented in these illustrations will be able to access relevant templates on the respective Web sites of the Agencies and insert more loan-specific information. Some recommendations also were not adopted because, on balance, they would unreasonably increase or duplicate the information already included or would not otherwise appear to improve the clarity or usefulness of the information presented for consumers.

The final illustrations appear below.

**BILLING CODE 4810–33–C, 6210–01–C, 6714–01–C, 6720–01–C, 7335–01–C**

Illustration 1

## Important Facts About Adjustable Rate Mortgages with a Reduced Initial Interest Rate

Whether you are buying a house or refinancing your mortgage, this information can help you decide if an adjustable rate mortgage (ARM) is right for you. ARMs can be complicated, and it is important for you to understand the features and risks of these loans. **If you do not understand how ARMs work, you should not sign any ARM loan contracts, and you might want to consider other loans, including fixed rate loans.**

**With an ARM, the interest rate and monthly payment on the loan is not fixed and may increase.**

- The interest rate changes over time according to a formula – typically, a base interest rate (index rate) plus a certain percent (margin).
- For example, the rate could equal the one year U.S. Treasury rate plus 4 percent or the rate of the 6 month "LIBOR" index plus 3 percent.
- If the base interest rate increases, your interest rate and monthly payment will also increase.

**If an ARM has a reduced interest rate for an initial period – for example, the first 2 years or first 5 years of the loan – the rate and the monthly payment may increase significantly. When that initial period is over:**

- The interest rate and monthly payment may increase significantly even if the index rate stays the same.
- The interest rate and monthly payment will increase even more if the index rate increases.

**Do not assume that you will be able to refinance an ARM to a lower rate in the future.**

### Additional Information

► **Payments for taxes and insurance.** In some mortgages, your monthly payment includes both principal and interest and an "escrow" amount to cover real estate taxes and insurance. Your lender then pays your taxes and insurance out of these escrow funds. In other mortgages, your monthly payment covers only principal and interest, and you are responsible for budgeting for and paying real estate taxes and insurance premiums when the bills arrive. These costs can be substantial. When you are comparing mortgages, or deciding whether you can afford one, you need to know whether or not the monthly payment includes an amount to cover taxes and insurance.

► **Prepayment penalties.** Some mortgages require you to pay a large prepayment penalty if you sell your home or refinance during the first few years of the loan – which you may need to do if your interest rate, and therefore your payment, is about to increase significantly, or if your circumstances change and you must sell your home before the prepayment period expires. The amount of the penalty will be added to your loan payoff amount. A prepayment penalty can make it difficult, or very expensive, to sell your home or refinance. You need to know whether your loan has a prepayment penalty, how much it is, and how long it will apply.

► **Balloon payments.** Most mortgages are set up so that you pay off the loan gradually by the monthly payments that you make over the loan term (for example, 30 years). Some mortgages, however, are set up with "balloon payments" – you make the same monthly payments that you would for a 30-year loan, but after a shorter period of time (for example, 10 years), you will owe one large final payment of the entire remaining balance of the loan. If you are unable to make the balloon payment when it is due, you would need to refinance your loan – or sell your home. You need to know whether your loan has a balloon payment.

► **No Doc/Low Doc Loans.** Be aware that "reduced documentation" or "stated income" loans usually have higher interest rates or other costs compared to "full documentation" loans that are available if you document your income, assets, and liabilities. These higher costs can be substantial.

Illustration 2A

## SAMPLE MORTGAGE COMPARISON

*(Not actual loans available)*

**Sample Loan Amount $200,000 – 30-Year Term – Interest Rates For Example Purposes Only**

| | **Fixed Rate Mortgage**<br>7.5% | **Reduced Initial Rate "2/28" ARM**<br>7% for two years, then adjusting to variable rate based on index interest rate, subject to annual rate caps;<br>10% rate in Year 3;<br>11.5% rate in Year 4;<br>13% maximum ARM rate in Years 5-30 |
|---|---|---|
| | **REQUIRED MONTHLY PAYMENTS**<br>(includes $200 per month for real estate tax and insurance escrow) | |
| **Years 1-2** | **$1,598** | **$1,531** |
| **Year 3 – even if index interest rate does not change** | **$1,598** | **$1,939** |
| **Year 4 – even if index interest rate does not change** | **$1,598** | **$2,152** |
| **Year 5 – if index interest rate rises 1.5% (maximum ARM rate)** | **$1,598** | **$2,370** |

Illustration 2B

## SAMPLE MORTGAGE COMPARISON

*(Not actual loans available)*

**Sample Loan Amount $200,000 – 30-Year Term – Interest Rates For Example Purposes Only**

| | **Fixed Rate Mortgage**<br>7.5% | **Reduced Initial Rate "5/25" ARM**<br>7% for five years, then adjusting to variable rate based on index interest rate, subject to annual rate caps;<br>10% rate in Year 6;<br>11.5% rate in Year 7;<br>13% maximum ARM rate in Years 8-30 |
|---|---|---|
| | **REQUIRED MONTHLY PAYMENTS**<br>(includes $200 per month for real estate tax and insurance escrow) | |
| **Years 1-5** | **$1,598** | **$1,531** |
| **Year 6 – even if index interest rate does not change** | **$1,598** | **$1,910** |
| **Year 7 – even if index interest rate does not change** | **$1,598** | **$2,109** |
| **Year 8 – if index interest rate rises 1.5% (maximum ARM rate)** | **$1,598** | **$2,311** |

Illustration 2C

## SAMPLE MORTGAGE COMPARISON

*(Not actual loans available)*

**Sample Loan Amount $200,000 – 30-Year Term – Interest Rates For Example Purposes Only**

| | Fixed Rate Mortgage<br>7.5% | Reduced Initial Rate "5/25" ARM<br>7% for five years, then adjusting to variable rate based on index interest rate, subject to annual rate caps; 10% rate in Year 6; 11.5% rate in Year 7; 13% maximum ARM rate could apply in Years 8-30 | Reduced Initial Rate "2/28" ARM<br>7% for two years, then adjusting to variable rate based on index interest rate, subject to annual rate caps; 10% rate in Year 3; 11.5% rate in Years 4-7; 13% maximum ARM rate could apply in Years 5-30 |
|---|---|---|---|
| | REQUIRED MONTHLY PAYMENTS<br>If Index Interest Rate Stays the Same<br>(includes $200 per month for real estate tax and insurance escrow) | | |
| Years 1-2 | $1,598 | $1,531 | $1,531 |
| Year 3 | $1,598 | $1,531 | $1,939 |
| Year 4 | $1,598 | $1,531 | $2,152 |
| Year 5 | $1,598 | $1,531 | $2,152 |
| Year 6 | $1,598 | $1,910 | $2,152 |
| Year 7 | $1,598 | $2,109 | $2,152 |
| Year 8 – if index interest rate rises 1.5% (maximum ARM rate) | $1,598 | $2,311 | $2,359 |

Dated: May 15, 2008.

**John C. Dugan,**

*Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System, May 20, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

Dated at Washington, DC, the 19th day of May, 2008.

By order of the Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

Dated: May 7, 2008.

By the Office of Thrift Supervision.

**John Reich,**

*Director.*

By the National Credit Union Administration on May 20, 2008.

**JoAnn M. Johnson,**

*Chairman.*

[FR Doc. E8–11850 Filed 5–28–08; 8:45 am]

**BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P, 7535–01–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Changes to Identifying Information of Entity Designated on May 15, 2008, Pursuant to Executive Order 1312978

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing changes to the identifying information associated with one entity previously designated on May 15, 2008, pursuant to Executive Order 13405 of June 16, 2006, ''Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus.''

**DATES:** The changes by the Director of OFAC of the identifying information for the entity identified in this notice pursuant to Executive Order 13405 is effective on May 20, 2008.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

**SUPPLEMENTARY INFORMATION:**

#### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

#### Background

On June 16, 2006, the President issued Executive Order 13405 (the ''Order'') pursuant to, inter alia, the International Emergency Economic Powers Act (50 U.S.C. 1701–06). In the Order, the President declared a national emergency to address political repression, electoral fraud, and public corruption in Belarus. The Order imposes economic sanctions on persons responsible for actions or policies that undermine democratic processes or institutions in Belarus. The President identified ten individuals as subject to the economic sanctions in the Annex to the Order.

Section 1 of the Order blocks, with certain exceptions, all property, and interests in property, that are in, or hereafter come within, the United States or the possession or control of United States persons for persons listed in the Annex and those persons determined by the Secretary of the Treasury, after consultation with the Secretary of State, to satisfy any of the criteria set forth in subparagraphs (a)(ii)(A) through (a)(ii)(E) of Section 1.

On May 15, 2008, the Director of OFAC, in consultation with the Secretary of State, designated, pursuant to one or more of the criteria set forth in Section 1, subparagraphs (a)(ii)(A) through (a)(ii)(E) of the Order, three entities whose names have been added to the list of Specially Designated Nationals and whose property and interests in property are blocked, pursuant to the Order.

OFAC has made changes to the identifying information associated with the following entity previously designated on May 15, 2008, pursuant to the Order:

1. BELARUSIAN OIL TRADE HOUSE (a.k.a. BELARUSIAN OIL TRADING HOUSE; a.k.a. BELARUSIAN OIL TRADING HOUSE REPUBLICAN SUBSIDIARY UNITARY ENTERPRISE; a.k.a. BELARUSIAN OIL TRADING HOUSE REPUBLICAN UNITARY SUBSIDIARY; a.k.a. BOTH; a.k.a. UE BELARUSIAN OIL TRADE HOUSE), Dzerzhinsky Avenue, 73, Minsk 220116, Belarus; Prospect Dzerzhinskogo, 73, Minsk 220116, Belarus; 73 Derzhinsky Ave., Minsk 220116, Belarus; Business Registration Document # UNP 101119568 (Belarus) [BELARUS].

The listing now appears as the following:

1. BELARUSIAN OIL TRADE HOUSE (a.k.a. BELARUSIAN OIL TRADING HOUSE; a.k.a. BELARUSIAN OIL TRADING HOUSE REPUBLICAN SUBSIDIARY UNITARY ENTERPRISE; a.k.a. BELARUSIAN OIL TRADING HOUSE REPUBLICAN UNITARY SUBSIDIARY; a.k.a. BOTH; a.k.a. UE BELARUSIAN OIL TRADE HOUSE, a.k.a. UNITED TRADING SITE, a.k.a. WWW.BNTDTORG.BY, a.k.a. WWW.BNTD.BY), Dzerzhinsky Avenue, 73, Minsk 220116, Belarus; Prospect Dzerzhinskogo, 73, Minsk 220116, Belarus; 73 Derzhinsky Ave., Minsk 220116, Belarus; Business Registration Document # UNP 101119568 (Belarus) [BELARUS]

Dated: May 20, 2008.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. E8–11987 Filed 5–28–08; 8:45 am]

**BILLING CODE 4811–45–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of Meeting.

**SUMMARY:** An open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, July 22, 2008.

**FOR FURTHER INFORMATION CONTACT:** Dave Coffman at 1–888–912–1227 or 206–220–6096.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel will be held Tuesday, July 22, 2008, from 9 am. Pacific Time to 10:30 a.m. Pacific Time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096, or you can contact us at *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: May 15, 2008.

**Richard Morris,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E8–11782 Filed 5–28–08; 8:45 am]

BILLING CODE 4830–01–M

## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Women Veterans will meet on June 19, 2008 in room 230 at 810 Vermont Avenue, NW., Washington, DC from 8:30 a.m.-4:30 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by VA designed to meet such needs. The Committee will make recommendations to the Secretary regarding such programs and activities.

On June 19, the agenda will include final review and editing of the 2008 Advisory Committee on Women Veterans report, discussion and planning of the fall Advisory Committee meeting, and discussion of the Advisory Committee's role at the 2008 National Summit on Women Veterans' Issues—which will be held at the Westin Washington, DC City Center June 20–22, 2008.

Any member of the public wishing to attend should contact Ms. Shannon L. Middleton, Department of Veterans Affairs, Center for Women Veterans (OOW), 810 Vermont Avenue, NW., Washington, DC 20420. Ms. Middleton may be contacted either by phone at (202) 461–6193, by fax at (202) 273–7092, or by e-mail at *OOW@mail.va.gov.* Interested persons may attend, appear before, or file statements with the Committee. Written statements must be filed before the meeting, or within 10 days after the meeting.

Dated: May 22, 2008.

By Direction of the Secretary.

**E. Philip Riggin,**

*Committee Management Officer.*

[FR Doc. E8–11948 Filed 5–28–08; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### Clinical Science Research and Development Service Cooperative Studies Scientific Evaluation Committee; Notice of Meetings

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Clinical Science Research and Development Service Cooperative Studies Scientific Evaluation Committee will be held on June 17, 2008, at the Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC. The session is scheduled to begin at 8:30 a.m. and end at 4 p.m.

The Committee advises the Chief Research and Development Officer through the Director of the Clinical Science Research and Development Service on the relevance and feasibility of proposed projects and the scientific validity and propriety of technical details, including protection of human subjects.

The session will be open to the public for approximately 30 minutes at the start of the meeting for the discussion of administrative matters and the general status of the program. The remaining portion of the session will be closed to the public for the Committee's review, discussion and evaluation of research and development applications.

During the closed portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. As provided by section 10(d) of Public Law 92–463, as amended, closing portions of this meeting is in accordance with 5 U.S.C. 552b(c)(6) and (c)(9)(B).

Those who plan to attend should contact Dr. Grant Huang, Deputy Director, Cooperative Studies Program (125), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 254–0183.

Dated: May 22, 2008.

By Direction of the Secretary.

**E. Philip Riggin,**

*Committee Management Officer.*

[FR Doc. E8–11947 Filed 5–28–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
May 29, 2008

# Part II

# The President

## Proclamation 8261—National Hurricane Preparedness Week, 2008

Federal Register
Vol. 73, No. 104
Thursday, May 29, 2008

# Presidential Documents

**Title 3—**

## The President

**Proclamation 8261 of May 23, 2008**

## National Hurricane Preparedness Week, 2008

**By the President of the United States of America**

**A Proclamation**

National Hurricane Preparedness Week highlights the vital importance of being prepared when natural disasters strike.

Tropical storms can cause destruction over entire regions and claim the lives of many of our citizens. We can help reduce vulnerability in our communities by encouraging all citizens to be prepared and to work together. Maintaining emergency supply kits and family communication plans, and knowing what to do in an emergency can help save lives. For more information on hurricane preparedness, Americans can visit ready.gov and fema.gov to find checklists and other valuable resources to help them get prepared.

My Administration continues to support efforts to strengthen how Americans prepare for and respond to disasters. The National Oceanic and Atmospheric Administration works to predict and track storms so that citizens are more aware of potential storms. The Department of Homeland Security's Federal Emergency Management Agency (FEMA) has improved communication between Federal, State, local government, and the private sector in order to help citizens stay informed and receive the help they need. By working together, we can better prepare for, respond to, and recover from hurricanes and reduce the harm to our citizens and our communities.

As hurricane season approaches, we also express our gratitude to the volunteers and first responders who help their fellow citizens in their time of need.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 25 through May 31, 2008, as National Hurricane Preparedness Week. I call upon government agencies, private organizations, schools, and the media to share information about hurricane preparedness. I also urge all Americans living in vulnerable coastal areas to take appropriate measures and precautions to protect themselves, their homes, and their communities against the effects of hurricanes.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of May, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-second.

[FR Doc. 08–1310
Filed 5–28–08; 8:50 am]
Billing code 3195–01–P

Federal Register

Thursday,
May 29, 2008

# Part III

# Department of Transportation

## Federal Aviation Administration

**14 CFR Part 97**

**Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 97**

**[Docket No. 30610; Amdt. No. 3271]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective May 29, 2008. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Directory of the **Federal Register** as of May 29, 2008.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; or

4. 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.*

*Availability*—All SIAPs are available online free of charge. Visit *http://nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

### The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

### Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under DOT Regulatory Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on May 16, 2008.

**James J. Ballough,**

*Director, Flight Standards Service.*

### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

| FDC date | State | City | Airport | FDC No. | Subject |
|---|---|---|---|---|---|
| 04/09/08 | WI | ASHLAND | JOHN F. KENNEDY MEMORIAL | 8/2073 | VOR OR GPS RWY 2, AMDT 5. THIS NOTAM PUBLISHED IN TL 08–11 IS HEREBY RESCINDED IN ITS ENTIRETY. |
| 04/09/08 | WI | ASHLAND | JOHN F. KENNEDY MEMORIAL | 8/2074 | VOR OR GPS RWY 31, AMDT 6. THIS NOTAM PUBLISHED IN TL 08–11 IS HEREBY RESCINDED IN ITS ENTIRETY. |
| 05/01/08 | IN | BRAZIL | BRAZIL CLAY COUNTY | 8/5740 | VOR OR GPS RWY 9, AMDT 7. |
| 05/01/08 | OH | WEST UNION | ALEXANDER SALAMON | 8/5742 | RNAV (GPS) RWY 23, ORIG. |
| 05/01/08 | OH | WEST UNION | ALEXANDER SALAMON | 8/5744 | NDB RWY 23, AMDT 4. |
| 05/01/08 | OK | OKLAHOMA CITY | SUNDANCE AIRPARK | 8/5750 | VOR RWY 17, AMDT 1A. |
| 05/01/08 | OK | MC ALESTER | MC ALESTER REGIONAL | 8/5751 | VOR/DME RWY 19, AMDT 2A. |
| 05/01/08 | IA | ATLANTIC | ATLANTIC MUNI | 8/5763 | TAKEOFF MINIMUMS AND (OBSTACLE) DEPARTURE PROCEDURES AMDT 5. |
| 05/01/08 | IA | BLOOMFIELD | BLOOMFIELD MUNI | 8/5765 | TAKEOFF MINIMUMS AND (OBSTACLE) DEPARTURE PROCEDURES ORIG. |
| 05/01/08 | OK | OKLAHOMA CITY | SUNDANCE AIRPARK | 8/5783 | LOC RWY 17, ORIG–B. |
| 05/01/08 | IA | IOWA CITY | IOWA CITY MUNI | 8/5784 | TAKEOFF MINIMUMS AND (OBSTACLE) DEPARTURE PROCEDURES AMDT 3. |
| 05/01/08 | OK | PAULS VALLEY | PAULS VALLEY MUNI | 8/5785 | RNAV (GPS) RWY 35, ORIG. |
| 05/01/08 | OK | OKLAHOMA CITY | WILEY POST | 8/5790 | VOR RWY 35R, AMDT 3B. |
| 05/01/08 | OK | BUFFALO | BUFFALO MUNI | 8/5791 | NDB A, AMDT 2. |
| 05/05/08 | FL | MARCO ISLAND | MARCO ISLAND | 8/6005 | GPS RWY 35, ORIG. |
| 05/05/08 | FL | MARCO ISLAND | MARCO ISLAND | 8/6006 | VOR/DME RWY 17, AMDT 6A. |
| 05/06/08 | AK | SAND POINT | SAND POINT | 8/6322 | TAKEOFF MINIMUMS AND (OBSTACLE) DEPARTURES, AMDT 2. |
| 05/06/08 | AK | COLD BAY | COLD BAY | 8/6326 | ILS OR LOC/DME RWY 14, AMDT 17A. |
| 05/06/08 | CA | FULLERTON | FULLERTON MUNI | 8/6328 | TAKEOFF MINIMUMS AND (OBSTACLE) DEPARTURES, AMDT 4. |
| 05/07/08 | AK | KENAI | KENAI MUNI | 8/6565 | ILS OR LOC RWY 19R, AMDT 3. |
| 05/07/08 | AK | KENAI | KENAI MUNI | 8/6566 | RNAV (GPS) RWY 1L, AMDT 1. |
| 05/07/08 | AK | KENAI | KENAI MUNI | 8/6567 | VOR RWY 19R, AMDT 18. |
| 05/07/08 | AK | KENAI | KENAI MUNI | 8/6568 | VOR/DME RWY 1L, AMDT 7. |
| 05/07/08 | AK | KENAI | KENAI MUNI | 8/6569 | RNAV (GPS) RWY 19R, AMDT 1. |
| 05/08/08 | CA | SACRAMENTO | SACRAMENTO EXECUTIVE | 8/6696 | ILS OR LOC RWY 2, AMDT 22C. |
| 05/08/08 | KY | LEXINGTON | BLUE GRASS | 8/6744 | ILS OR LOC RWY 4, AMDT 17. |
| 05/08/08 | ME | BIDDEFORD | BIDDEFORD MUNI | 8/6750 | GPS RWY 6, ORIG. |
| 05/08/08 | ME | BIDDEFORD | BIDDEFORD MUNI | 8/6751 | VOR RWY 6, ORIG. |
| 05/08/08 | CT | WINDSOR LOCKS | BRADLEY INTL | 8/6787 | ILS OR LOC RWY 33, AMDT 9. |
| 05/08/08 | HI | LANAI CITY | LANAI | 8/6878 | VOR OR TACAN OR GPS RWY 3, AMDT 6A. |
| 02/28/08 | MT | BILLINGS | BILLINGS LOGAN INTL | 8/6884 | ILS OR LOC RWY 10L, AMDT 24B. |
| 05/09/08 | SD | PIERRE | PIERRE REGIONAL | 8/7011 | RNAV (GPS) RWY 31, ORIG. |
| 05/09/08 | SD | PIERRE | PIERRE REGIONAL | 8/7012 | VOR/DME OR TACAN RWY 7, AMDT 5. |
| 05/09/08 | SD | PIERRE | PIERRE REGIONAL | 8/7013 | VOR OR TACAN RWY 25, ORIG–A. |
| 05/09/08 | SD | PIERRE | PIERRE REGIONAL | 8/7014 | ILS OR LOC RWY 31, AMDT 12. |
| 05/12/08 | KY | LOUISVILLE | LOUISVILLE INTL-STANDIFORD FIELD. | 8/7111 | ILS OR LOC RWY 17R, ORIG–B. |
| 05/12/08 | AZ | TUCSON | TUCSON INTL | 8/7141 | RNAV (GPS) RWY 21, ORIG. |
| 05/12/08 | AZ | TUCSON | TUCSON INTL | 8/7142 | VOR/DME OR TACAN RWY 29R, AMDT 2B. |
| 05/12/08 | AZ | TUCSON | TUCSON INTL | 8/7143 | RNAV (GPS) RWY 11R, ORIG–A. |

| FDC date | State | City | Airport | FDC No. | Subject |
|---|---|---|---|---|---|
| 05/12/08 | AZ | TUCSON | TUCSON INTL | 8/7145 | RNAV (GPS) Z RWY 29R, AMDT 2. |
| 05/12/08 | AZ | TUCSON | TUCSON INTL | 8/7146 | RNAV (GPS) Z RWY 11L, AMDT 1. |
| 05/12/08 | AZ | TUCSON | TUCSON INTL | 8/7147 | TAKEOFF MINIMUMS AND (OBSTACLE) DEPARTURE PROCEDURES, AMDT 4. |
| 05/12/08 | AZ | TUCSON | TUCSON INTL | 8/7150 | RNAV (GPS) RWY 3, ORIG–A. |
| 05/12/08 | AZ | TUCSON | TUCSON INTL | 8/7151 | RNAV (GPS) RWY 29L, ORIG–A. |
| 05/13/08 | OR | PORTLAND | PORTLAND INTL | 8/7235 | RNAV (GPS) RWY 28L, ORIG. |
| 05/13/08 | WA | SEATTLE | SEATTLE-TACOMA INTL | 8/7236 | RNAV (GPS) RWY 16L, AMDT 1. |
| 05/13/08 | CA | MODESTO | MODESTO CITY-CO-HARRY SHAM FLD. | 8/7237 | VOR/DME RWY 28R, ORIG. |
| 05/13/08 | CA | CHINO | CHINO | 8/7238 | RNAV (GPS) RWY 26R, ORIG–A. |
| 05/13/08 | TX | ALICE | ALICE INTERNATIONAL | 8/7298 | RNAV (GPS) RWY 13, ORIG–A. |
| 05/13/08 | TX | ALICE | ALICE INTERNATIONAL | 8/7299 | VOR RWY 31, AMDT 13. |
| 05/13/08 | TX | ALICE | ALICE INTERNATIONAL | 8/7300 | RNAV (GPS) RWY 31, AMDT 1A. |
| 05/13/08 | TX | ALICE | ALICE INTERNATIONAL | 8/7301 | VOR A, AMDT 15. |
| 05/13/08 | AZ | TUCSON | TUCSON INTL | 8/7338 | VOR OR TACAN RWY 11L, AMDT 1. |
| 05/13/08 | NM | ANGEL FIRE | ANGEL FIRE | 8/7385 | RNAV (GPS) RWY 17, AMDT 1A. |
| 05/13/08 | VA | FREDERICKSBURG | SHANNON | 8/7391 | NDB RWY 24, AMDT 2A. |
| 05/13/08 | VA | FREDERICKSBURG | SHANNON | 8/7393 | GPS RWY 24, ORIG. |
| 05/13/08 | MO | ST. LOUIS | SPIRIT OF ST. LOUIS | 8/7395 | TAKEOFF MINIMUMS AND (OBSTACLE) DEPARTURE PROCEDURES ORIG. |
| 05/13/08 | SD | WATERTOWN | WATERTOWN REGIONAL | 8/7398 | LOC/DME BC RWY 17, AMDT 9A. |
| 05/13/08 | SD | WATERTOWN | WATERTOWN REGIONAL | 8/7399 | ILS RWY 35, AMDT 10A. |
| 05/13/08 | SD | WATERTOWN | WATERTOWN REGIONAL | 8/7400 | VOR/DME OR TACAN RWY 35, AMDT 11A. |
| 05/13/08 | SD | WATERTOWN | WATERTOWN REGIONAL | 8/7401 | NDB OR GPS RWY 35, AMDT 8A. |
| 05/14/08 | IN | INDIANAPOLIS | GREENWOOD MUNI | 8/7449 | RNAV (GPS) RWY 19, AMDT 1. |
| 05/14/08 | FL | MARCO ISLAND | MARCO ISLAND | 8/7461 | GPS RWY 17, ORIG–A. |
| 05/14/08 | AK | BARROW | WILEY POST-WILL ROGERS MEM | 8/7465 | LOC/DME BC RWY 24, AMDT 3B. |
| 05/14/08 | AK | BARROW | WILEY POST-WILL ROGERS MEM | 8/7467 | RNAV (GPS) RWY 6, ORIG–A. |
| 05/15/08 | IA | MASON CITY | MASON CITY MUNI | 8/7521 | ILS OR LOC RWY 36, AMDT 6B. |
| 05/15/08 | IA | MASON CITY | MASON CITY MUNI | 8/7522 | VOR/DME RWY 18, AMDT 4A. |
| 05/15/08 | IA | MASON CITY | MASON CITY MUNI | 8/7523 | LOC BC RWY 18, AMDT 6A. |
| 05/14/08 | MN | MINNEAPOLIS | MINNEAPOLIS-ST. PAUL INTL-WOLD-CHAMBERLAIN. | 8/7524 | RNAV (GPS) RWY 4, AMDT 1. |
| 05/15/08 | IA | MASON CITY | MASON CITY MUNI | 8/7525 | RNAV (GPS) RWY 18, AMDT 1. |
| 05/15/08 | IA | MASON CITY | MASON CITY MUNI | 8/7526 | VOR RWY 36, AMDT 6A. |
| 05/15/08 | IA | MASON CITY | MASON CITY MUNI | 8/7527 | RNAV (GPS) RWY 30, ORIG. |
| 05/15/08 | IA | MASON CITY | MASON CITY MUNI | 8/7528 | RNAV (GPS) RWY 36, ORIG–A. |
| 05/15/08 | NM | ALBUQUERQUE | ALBUQUERQUE INTL SUNPORT | 8/7569 | ILS RWY 8, AMDT 5D. |
| 05/15/08 | TX | AMARILLO | TRADEWIND | 8/7575 | TAKE OFF MINIMUMS AND (OBSTACLE) DEPARTURE PROCEDURE AMDT 2. |
| 05/15/08 | TX | ANDREWS | ANDREWS COUNTY | 8/7576 | TAKE OFF MINIMUMS AND (OBSTACLE) DEPARTURE PROCEDURES ORIG. |
| 05/15/08 | WI | PHILLIPS | PRICE COUNTY | 8/7577 | NDB OR GPS RWY 6, AMDT 1. |
| 05/15/08 | WI | PHILLIPS | PRICE COUNTY | 8/7578 | NDB OR GPS RWY 24, AMDT 3. |

[FR Doc. E8–11765 Filed 5–28–08; 8:45 am]

**BILLING CODE 4910–13–P**

# Reader Aids

**Federal Register**

Vol. 73, No. 104

Thursday, May 29, 2008

## CUSTOMER SERVICE AND INFORMATION

| | |
|---|---|
| **Federal Register/Code of Federal Regulations** | |
| General Information, indexes and other finding aids | **202–741–6000** |
| **Laws** | **741–6000** |
| **Presidential Documents** | |
| Executive orders and proclamations | **741–6000** |
| **The United States Government Manual** | **741–6000** |
| **Other Services** | |
| Electronic and on-line services (voice) | **741–6020** |
| Privacy Act Compilation | **741–6064** |
| Public Laws Update Service (numbers, dates, etc.) | **741–6043** |
| TTY for the deaf-and-hard-of-hearing | **741–6086** |

## ELECTRONIC RESEARCH

### World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register**

### E-mail

**FEDREGTOC-L** (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

**FEDREGTOC-L** and **PENS** are mailing lists only. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

## FEDERAL REGISTER PAGES AND DATE, MAY

23939–24138 ..... 1
24139–24496 ..... 2
24497–24850 ..... 5
24851–25502 ..... 6
25503–25960 ..... 7
25961–26312 ..... 8
26313–26940 ..... 9
26941–27458 .....12
27459–27712 .....13
27713–28024 .....14
28025–28318 .....15
28319–28698 .....16
28699–29036 .....19
29037–39386 .....20
39387–29684 .....21
29685–29976 .....22
29977–30268 .....23
30269–30454 .....27
30455–30726 .....28
30727–31014 .....29

## CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**2 CFR**

1200 .....24139

**3 CFR**

**Proclamations:**
8247 .....24133
8248 .....24135
8249 .....24137
8250 .....25501
8251 .....25503
8252 .....26311
8253 .....27457
8254 .....27713
8255 .....27715
8256 .....29383
8257 .....29385
8258 .....29977
8259 .....30725
8260 .....30725
8261 .....31013

**Executive Orders:**
13047 (See Notice of May 16, 2008) .....29035
13303 (See Notice of May 20, 2008) .....29683
13310 (See Notice of May 16, 2008) .....29035
13315 (See Notice of May 20, 2008) .....29683
13338 (See Notice of May 7, 2008) .....26939
13350 (See Notice of May 20, 2008) .....29683
13364 (See Notice of May 20, 2008) .....29683
13399 (See Notice of May 7, 2008) .....26939
13438 (See Notice of May 20, 2008) .....29683
13448 (See Notice of May 16, 2008) .....29035
13460 (See Notice of May 7, 2008) .....26939
13464 (See Notice of May 7, 2008) .....24491
13464 (See Notice of May 16, 2008) .....29035

**Administrative Orders:**
Memorandums:
Memorandum of May 6, 2008 .....27717
Notices:
Notice of May 7, 2008 .....26939
Notice of May 16, 2008 .....29035
Notice of May 20, 2008 .....29683
Presidential Determinations:
No. 2008-19 of May 5, 2008 .....27719

**5 CFR**

250 .....24851
351 .....29387
550 .....30455
591 .....30727
733 .....28025
2429 .....27459

**Proposed Rules:**
532 .....30526
9901 .....29882

**6 CFR**

**Proposed Rules:**
5 .....28060, 28062, 28066

**7 CFR**

28 .....30734
56 .....28026
59 .....28606
70 .....28026
305 .....24851, 30271
318 .....24851
319 .....25505
915 .....26941
932 .....26313
944 .....26941
1005 .....26315
1007 .....26315
1160 .....29389
1212 .....29390
1221 .....25398
1240 .....29390
1427 .....30274
1767 .....30277
2902 .....27928, 27958, 27978

**Proposed Rules:**
319 .....24886, 28372, 28377
1230 .....30001

**8 CFR**

103 .....28026
299 .....28026

**Proposed Rules:**
214 .....26340
248 .....26340

**9 CFR**

82 .....30291

**Proposed Rules:**
2 .....26344
93 .....28382
94 .....30002
145 .....30528
146 .....30528
147 .....30528

**10 CFR**

1 .....30456
19 .....30456
20 .....30456
30 .....30456
40 .....30456

50 ....30456
52 ....30456
55 ....30456
60 ....30456
61 ....30456
63 ....30456
70 ....30456
71 ....30456
72 ....30456
73 ....30456
76 ....30456
**Proposed Rules:**
34 ....27771
35 ....27773, 29445
50 ....26349, 30321
600 ....28385
1024 ....28385

**12 CFR**

201 ....25505
229 ....28319
585 ....30736
613 ....30460
700 ....30476
704 ....30476
705 ....30476
707 ....30476
708b ....30476
711 ....30476
713 ....30476
716 ....30476
723 ....30476
760 ....30476
792 ....30476
**Proposed Rules:**
222 ....28966, 30814
226 ....28866
227 ....28904
230 ....28739
261a ....25594
535 ....28904
706 ....28904
712 ....23982
721 ....30818
741 ....23982

**14 CFR**

21 ....24497
25 ....29037
27 ....30454
29 ....30454
39 ....23939, 23942, 24141, 24143, 24145, 24147, 24149, 24151, 24153, 24155, 24157, 24160, 24162, 24164, 24168, 24856, 24858, 24864, 25961, 25962, 25967, 25970, 25974, 25977, 25984, 25986, 25990, 25997, 26316, 26318, 26475, 29042, 29405, 29407, 29410, 29414, 29421, 29423, 30737, 30743, 30746, 30749, 30752, 30755, 30760, 30763, 30765
60 ....26478
71 ....25506, 25999, 27721, 28032, 28320
73 ....30767
95 ....23944
97 ....24171, 27721, 27725, 30769, 31008
121 ....25506
234 ....29426
382 ....27614
1210 ....28033
**Proposed Rules:**
39 ....23988, 23990, 23993, 23995, 24887, 25597, 25599, 25601, 25606, 25609, 25612, 26043, 26045, 26351, 27475, 27477, 27479, 28751, 28754, 28756, 29085, 29087, 29089, 29091, 29716, 29720, 30003, 30005, 30007, 30009
71 ....26047, 26048, 27481, 28764, 30820, 30822, 30823, 30824, 30825, 30827, 30828, 30829
91 ....26049
93 ....29626
125 ....26049
135 ....26049

**15 CFR**

774 ....26000
902 ....29979, 30504
**Proposed Rules:**
909 ....30322
923 ....29093

**16 CFR**

316 ....29654
**Proposed Rules:**
317 ....25614
640 ....28966
698 ....28966, 30814

**17 CFR**

270 ....29044
**Proposed Rules:**
230 ....26876
232 ....26876
239 ....26876
240 ....26876
249 ....26876

**18 CFR**

1b ....29431
35 ....25832
381 ....23946
**Proposed Rules:**
35 ....29450, 30543
40 ....30326
385 ....29451

**19 CFR**

**Proposed Rules:**
111 ....30328

**20 CFR**

401 ....25507
402 ....25507
403 ....26001
411 ....29324
416 ....28033
**Proposed Rules:**
655 ....29942
656 ....29942

**21 CFR**

101 ....23947, 30299
111 ....27727
522 ....28036, 29685
529 ....25507
866 ....29052
1301 ....29685
**Proposed Rules:**
201 ....30831

**22 CFR**

**Proposed Rules**
121 ....28863

**24 CFR**

891 ....29983
**Proposed Rules**
3500 ....26953

**25 CFR**

292 ....29354

**26 CFR**

1 ....26321, 26322, 27728, 27729, 28699, 29054, 30301
301 ....27728, 27729
**Proposed Rules:**
1 ....24186, 28765, 30330
301 ....27775

**27 CFR**

**Proposed Rules:**
19 ....26200

**29 CFR**

4002 ....29985
4044 ....28037
**Proposed Rules:**
403 ....27346

**30 CFR**

57 ....29058
75 ....27729
926 ....27730
**Proposed Rules:**
219 ....30331
732 ....24120
785 ....24120
870 ....24120
872 ....24120

**31 CFR**

592 ....29433

**32 CFR**

199 ....30478
204 ....23953
706 ....24173, 29434, 29435, 30479
**Proposed Rules:**
199 ....24509
322 ....28767

**33 CFR**

100 ....25508, 26002, 26005, 26007, 27460, 28038, 30771
101 ....25562
102 ....25562
104 ....25562, 29060
105 ....25562
106 ....25562
117 ....24866, 27744, 29688, 29690, 30480
155 ....24497
156 ....24497
165 ....26017, 26019, 27460, 27745, 28039, 28321, 28704, 28707, 29987, 30481, 30483, 30773
**Proposed Rules:**
110 ....26054, 27775
117 ....24510, 28069, 29722, 29723
151 ....30014, 30322
160 ....27778
165 ....24513, 24889, 24899, 24901, 24904, 25624, 29725, 30555, 30560, 30868
385 ....29094

**34 CFR**

8 ....27747
**Proposed Rules:**
5b ....26056
300 ....27690

**36 CFR**

261 ....30305
**Proposed Rules:**
242 ....29579

**37 CFR**

**Proposed Rules:**
201 ....25627, 29071

**38 CFR**

1 ....29852
3 ....24868, 30485
14 ....29852
17 ....26945
19 ....29852
20 ....29852
21 ....30486
38 ....27462
74 ....29024

**39 CFR**

111 ....25508, 25509, 28041
**Proposed Rules:**
111 ....26353, 29455

**40 CFR**

9 ....25098
51 ....24174, 28321, 29691, 30775
52 ....23957, 23959, 24174, 24175, 24500, 24868, 25516, 26019, 28321, 29436, 29691, 30308
60 ....24870, 29691, 30308
61 ....24870
62 ....24870
63 ....24870
70 ....24174
71 ....24174
80 ....26325
81 ....29073, 29436
85 ....25098
86 ....25098
89 ....25098
92 ....25098
94 ....25098
180 ....25518, 25524, 25528, 25533, 27748, 27756, 30492, 30498
268 ....27761
271 ....29987
300 ....26025
1033 ....25098
1039 ....25098
1042 ....25098
1065 ....25098
1068 ....25098
**Proposed Rules:**
50 ....29095, 29184
51 ....29184, 30870
52 ....23998, 24187, 24515, 26059, 26355, 27783, 27786, 27788, 27791, 28071, 29731, 30029, 30340, 30342, 30345, 30347, 30350, 30352, 30355, 30873
53 ....29184

58 ....29184
60 ....30355
81 ....30029
180 ....28391, 29456
261 ....28768
704 ....24187
720 ....24187
721 ....24187
723 ....24187
761 ....28786

**41 CFR**

51-3 ....28043
51-4 ....28043
61-300 ....28710
302-17 ....25539, 28726

**42 CFR**

412 ....24871, 26788, 29699
405 ....30190
413 ....30190
417 ....30190
423 ....30664
**Proposed Rules:**
413 ....25918
418 ....24000, 30355
422 ....28556
423 ....28556

**44 CFR**

64 ....24178
65 ....26026, 28044, 28046
67 ....25542, 25560, 26030, 28350
153 ....28357
**Proposed Rules:**
67 ....24036, 25633, 26060, 28073, 28394, 30356, 30359

**45 CFR**

2102 ....29711
**Proposed Rules:**
88 ....29096
144 ....30030
1606 ....27483, 30563
1623 ....27483, 30563

**46 CFR**

10 ....25562, 29060
12 ....25562
15 ....25562, 29060
389 ....30783

**47 CFR**

0 ....25566
1 ....25420
2 ....25420
15 ....28727
20 ....25566
24 ....24180
25 ....25420, 25591
27 ....24180, 26032
54 ....28727, 29712
64 ....28049, 28057
68 ....25566
73 ....25420, 28361, 30316, 30789
74 ....25420
76 ....24502
90 ....25420
97 ....25420
**Proposed Rules:**
0 ....29582
1 ....29582, 30563
2 ....29582
15 ....30591
27 ....26067, 29582
54 ....30591
73 ....28400, 30875
76 ....24515
90 ....29582

**48 CFR**

204 ....27464
215 ....27464
231 ....27464
252 ....27464
3001 ....30317
3002 ....25592, 30317
3009 ....30317
3013 ....30317
3036 ....24881
6101 ....26947
6102 ....26947
6103 ....26947
6104 ....26947
6105 ....26947
9904 ....23961
**Proposed Rules:**
3 ....28407
9 ....28407
12 ....28407
52 ....28407
5432 ....28788

**49 CFR**

29 ....24139
565 ....28370
1572 ....25562
**Proposed Rules:**
18 ....24188
19 ....24188
107 ....24519
192 ....26953
512 ....26071
523 ....24352
531 ....24190, 24352
533 ....24190, 24352
534 ....24352
536 ....24352
537 ....24352
544 ....24906
605 ....28790

**50 CFR**

13 ....29075
17 ....23966, 28212, 28306
22 ....29075
300 ....30504
660 ....25592
229 ....23970
622 ....24883, 24884, 29989
648 ....24885, 29990, 30790
660 ....23971, 26325, 30811
679 ....24184, 23339, 27473, 27768, 28733, 30000, 30318, 30524
680 ....29979, 30319
**Proposed Rules:**
17 ....24910, 24911, 24915, 25354, 27483, 27900, 28080, 28084, 28094, 28410, 29096, 29294, 29471, 30361, 30596
20 ....30712
80 ....24523
100 ....29579
600 ....24922
635 ....24922
648 ....24936, 29098
660 ....29104
665 ....30038
679 ....30598, 30875, 30876
700 ....27998

## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT MAY 29, 2008

**COMMERCE DEPARTMENT**
**National Oceanic and Atmospheric Administration**
Fisheries Off West Coast States:
Coastal Pelagic Species Fisheries; Annual Specifications; published 5-29-08

**ENVIRONMENTAL PROTECTION AGENCY**
Approval and Promulgation of Air Quality Implementation Plans:
Delaware; Control of Stationary Generator Emissions; published 4-29-08
Redesignation of the Forest County Potawatomi Community Reservation to a PSD Class I Area; Wisconsin; published 4-29-08
Virginia; published 4-29-08
Approval and Promulgation of Implementation Plans:
Kentucky; Tennessee Valley Authority Paradise Facility State Implementation Plan Revision; published 4-29-08
Dispute Resolution With the State of Michigan:
Redesignation of the Forest County Potawatomi Community Reservation to a PSD Class I Area; published 4-29-08
Dispute Resolution With the State of Wisconsin:
Redesignation of the Forest County Potawatomi Community Reservation to a PSD Class I Area; published 4-29-08
Outer Continental Shelf Air Regulations:
Consistency Update for California; published 4-29-08

**FEDERAL COMMUNICATIONS COMMISSION**
Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television; published 5-29-08

**HOMELAND SECURITY DEPARTMENT**
**Coast Guard**
Long Range Identification and Tracking of Ships; published 4-29-08

**TRANSPORTATION DEPARTMENT**
**Federal Aviation Administration**
Airworthiness Directives:
EADS SOCATA Model TBM 700 Airplanes; published 5-9-08
Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments; published 5-29-08

**TREASURY DEPARTMENT**
**Thrift Supervision Office**
Prohibited Service at Savings and Loan Holding Companies Extension of Expiration Date of Temporary Exemption; published 5-29-08

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**
**Animal and Plant Health Inspection Service**
Karnal Bunt; Removal of Regulated Areas in Texas; comments due by 6-6-08; published 4-7-08 [FR E8-07194]
Movement of Hass Avocados From Areas Where Mexican Fruit Fly or Sapote Fruit Fly Exist; comments due by 6-2-08; published 4-2-08 [FR E8-06799]

**AGRICULTURE DEPARTMENT**
**Food and Nutrition Service**
Child Nutrition Programs:
Women, Infants, and Children Special Supplemental Nutrition Programs—
Food Packages; revisions; comments due by 6-3-08; published 12-6-07 [FR E7-23033]
Special Supplemental Nutrition Program for Women, Infants and Children (WIC):
Implementation of Nondiscretionary WIC Certification and General Administrative Provisions; comments due by 6-2-08; published 3-3-08 [FR E8-03880]

**COMMERCE DEPARTMENT**
**Industry and Security Bureau**
Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 6-2-08; published 4-2-08 [FR E8-06685]

**DEFENSE DEPARTMENT**
Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 6-2-08; published 5-2-08 [FR E8-09718]
Federal Acquisition Regulation:
Contractor Performance Information; FAR Case 2006-022; comments due by 6-2-08; published 4-2-08 [FR E8-06795]
TRICARE:
Outpatient Hospital Prospective Payment System (OPPS); comments due by 6-2-08; published 4-1-08 [FR E8-06514]
TRICARE; Reimbursement of Critical Access Hospitals (CAHs); comments due by 6-4-08; published 5-5-08 [FR E8-09800]

**DEFENSE DEPARTMENT**
**Navy Department**
Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 6-2-08; published 5-2-08 [FR E8-09712]

**ENVIRONMENTAL PROTECTION AGENCY**
Acequinocyl; Pesticide Tolerance; comments due by 6-2-08; published 4-2-08 [FR E8-06699]
Approval and Promulgation of Air Quality Implementation Plans:
Pennsylvania; Warren County Area; comments due by 6-2-08; published 5-1-08 [FR E8-09613]
West Virginia: Transportation Conformity Requirement; comments due by 6-2-08; published 5-2-08 [FR E8-09608]
West Virginia; Transportation Conformity Requirements; comments due by 6-2-08; published 5-2-08 [FR E8-09611]
Approval and Promulgation of Implementation Plans:
Georgia; Enhanced Inspection and Maintenance Plan; comments due by 6-4-08; published 5-5-08 [FR E8-09735]
Environmental Statements; Notice of Intent:
Coastal Nonpoint Pollution Control Programs; States and Territories—
Florida and South Carolina; Open for comments until further notice; published 2-11-08 [FR 08-00596]
Ferric Citrate; Inert Ingredient; Exemption From the Requirement of a Tolerance; comments due by 6-2-08; published 4-2-08 [FR E8-06818]
Pesticide Tolerance:
Dicamba; comments due by 6-2-08; published 4-2-08 [FR E8-06674]
Flonicamid; comments due by 6-2-08; published 4-2-08 [FR E8-06668]
Polychlorinated Biphenyls; Manufacturing (Import) Exemption for Veolia ES Technical Solutions, L.L.C.; comments due by 6-5-08; published 4-21-08 [FR E8-08560]

**FEDERAL COMMUNICATIONS COMMISSION**
Carriage of Digital Television Broadcast Signals; Implementation of the Satellite Home Viewer Improvement Act of 1999:
Local Broadcast Signal Carriage Issues and Retransmission Consent Issues; comments due by 6-4-08; published 5-5-08 [FR E8-09747]

**FEDERAL RESERVE SYSTEM**
Privacy Act Regulation; comments due by 6-6-08; published 5-7-08 [FR E8-09927]

**FEDERAL TRADE COMMISSION**
Prohibitions on Market Manipulation and False Information in Subtitle B of the Energy Independence and Security Act of 2007; comments due by 6-6-08; published 5-7-08 [FR E8-10102]

**GENERAL SERVICES ADMINISTRATION**
Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 6-3-08; published 4-4-08 [FR E8-07051]
Federal Acquisition Regulation:
Contractor Performance Information; FAR Case 2006-022; comments due by 6-2-08; published 4-2-08 [FR E8-06795]

**HEALTH AND HUMAN SERVICES DEPARTMENT**
**Agency for Healthcare Research and Quality**
Agency Information Collection Activities; Proposals,

Submissions, and Approvals; comments due by 6-2-08; published 4-3-08 [FR E8-06761]

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 6-2-08; published 4-2-08 [FR E8-06887]

**HOMELAND SECURITY DEPARTMENT**

**Coast Guard**

Drawbridge Operation Regulation; Permanent Change to Operating Schedule:

Wabash River, IL; comments due by 6-4-08; published 5-5-08 [FR E8-09813]

Drawbridge Operations:

Potomac River, Oxon Hill, MD and Alexandria, VA; comments due by 6-2-08; published 4-18-08 [FR E8-08514]

Safety Zone; Rochester Harborfest, Lake Ontario at the Genesee River, Rochester, NY; comments due by 6-5-08; published 5-6-08 [FR E8-10001]

Safety Zone; Swim the Bay Event, Presque Isle Bay, Erie, PA; comments due by 6-4-08; published 5-5-08 [FR E8-09814]

Safety Zone; Ybor Summer Weekly Fireworks - Ybor Turning Basin, Tampa Bay, FL; comments due by 6-5-08; published 5-6-08 [FR E8-10002]

**HOMELAND SECURITY DEPARTMENT**

**Federal Emergency Management Agency**

National Flood Insurance Program; Assistance to Private Sector Property Insurers; Write-Your-Own Arrangement; comments due by 6-2-08; published 4-3-08 [FR E8-06898]

Proposed Flood Elevation Determinations; Correction; comments due by 6-2-08; published 5-1-08 [FR E8-09271]

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Financial Assistance:

Wildlife Restoration, Sport Fish Restoration, Hunter Education and Safety; comments due by 6-4-08; published 5-5-08 [FR E8-09785]

**LABOR DEPARTMENT**

**Labor Statistics Bureau**

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 6-3-08; published 4-4-08 [FR E8-06965]

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 6-3-08; published 4-4-08 [FR E8-07051]

Federal Acquisition Regulation:

Contractor Performance Information; FAR Case 2006-022; comments due by 6-2-08; published 4-2-08 [FR E8-06795]

**NATIONAL CREDIT UNION ADMINISTRATION**

Guidance Regarding Prohibitions Imposed by Section 205(d) of the Federal Credit Union Act; comments due by 6-3-08; published 4-4-08 [FR E8-06031]

**PEACE CORPS**

Claims Against the Government Under the Federal Tort Claims Act; comments due by 6-5-08; published 4-22-08 [FR E8-08658]

**PERSONNEL MANAGEMENT OFFICE**

Voting Rights Program; comments due by 6-6-08; published 4-7-08 [FR E8-07142]

**SMALL BUSINESS ADMINISTRATION**

Small Business Size Standards:

Waiver of the Nonmanufacturer Rule; comments due by 6-2-08; published 5-16-08 [FR E8-10980]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness Directives:

Boeing Model 747 100 Series Airplanes; Supplemental Notice of Proposed Rulemaking; Reopening of Comment Period; comments due by 6-2-08; published 5-7-08 [FR E8-10060]

Bombardier Model CL 600 2B19 (Regional Jet Series 100 & 440) Airplanes; comments due by 6-6-08; published 5-7-08 [FR E8-10097]

Cirrus Design Corp. Models SR20 and SR22 Airplanes; comments due by 6-2-08; published 4-2-08 [FR E8-06786]

Hawker Beechcraft Corporation Models B200, B200GT, B300, and B300C Airplanes; comments due by 6-6-08; published 4-7-08 [FR E8-06959]

Honeywell International, Inc.; TFE731 4, 4R, 5, 5AR, 5BR, and 5R Series Turbofan Engines; comments due by 6-3-08; published 4-4-08 [FR E8-06993]

Pilatus Aircraft Ltd. PC-6 Series Airplanes; comments due by 6-2-08; published 5-1-08 [FR E8-09589]

Modification of Area Navigation Route Q-110 and Jet Route J-73; Florida; comments due by 6-2-08; published 4-17-08 [FR E8-08227]

**TRANSPORTATION DEPARTMENT**

**Pipeline and Hazardous Materials Safety Administration**

Hazardous Materials:

Improving the Safety of Railroad Tank Car Transportation of Hazardous Materials; comments due by 6-2-08; published 4-1-08 [FR E8-06563]

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Amendment of Matching Rule for Certain Gains on Member Stock; Guidance Under Section 1502; comments due by 6-5-08; published 3-7-08 [FR E8-04571]

Amendment of Matching Rule for Certain Gains on Member Stock; Guidance; Correction; comments due by 6-5-08; published 4-11-08 [FR Z8-04571]

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

**Passed over the President's veto:**

**H.R. 2419/P.L. 110–234**

Food, Conservation, and Energy Act of 2008 (May 22, 2008; 122 Stat. 923)

**Last List May 23, 2008**

## Public Laws Electronic Notification Service (PENS)

**PENS** is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

**Note:** This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.