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

**WHEN:** Tuesday, April 15, 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



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Federal Register

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

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-0347; Directorate Identifier 2007-NM-253-AD; Amendment 39-15437; AD 2008-06-25]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Model A330 and A340 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:

Two A330 operators have reported that the guide shaft of the Refuel Isolation Valve has been broken away from the main casting and entered the fuel tank. The Supplier Investigation evidenced that water builds-up in the cavity of the Refuel Isolation Valve and freezes during flight. When refuel pressure is applied to the piston, the ice restricts the piston travel on one side leading to an asymmetric movement of the piston resulting in breakage of the guide shaft. A non-bonded metallic object within the fuel tank can result [in] a potential ignition source, which in combination with a lightning strike constitutes an unsafe condition.

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

**DATES:** This AD becomes effective April 23, 2008.

The Director of the Federal Register approved the incorporation by reference

of certain publications listed in this AD as of April 23, 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:** Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1138; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 19, 2007 (72 FR 71828). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Two A330 operators have reported that the guide shaft of the Refuel Isolation Valve has been broken away from the main casting and entered the fuel tank. The Supplier Investigation evidenced that water builds-up in the cavity of the Refuel Isolation Valve and freezes during flight. When refuel pressure is applied to the piston, the ice restricts the piston travel on one side leading to an asymmetric movement of the piston resulting in breakage of the guide shaft. A non-bonded metallic object within the fuel tank can result [in] a potential ignition source, which in combination with a lightning strike constitutes an unsafe condition.

For the reasons described above, this Airworthiness Directive (AD) requires replacement of the affected Refuel Isolation Valve with a more robust valve similar to that designed for the A380.

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

##### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

##### Revised Service Information

We have reviewed Airbus Service Bulletins A330-28-3103 and A340-28-

4120, both Revision 01, both dated January 11, 2008. We referred to the original issues, both dated July 17, 2007, as the appropriate sources of service information for accomplishing certain actions specified in the NPRM. We find that no additional work is required by these revisions. Therefore, we have changed paragraph (f) of this AD to refer to Revision 01 of Airbus Service Bulletins A330-28-3103 and A340-28-4120. We have also changed paragraph (f) to give credit to operators who have accomplished the actions in accordance with Airbus Service Bulletins A330-28-3103 and A340-28-4120, both dated July 17, 2007.

##### Conclusion

We have determined that air safety and the public interest require adopting the AD with the changes described previously. These changes 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 34 products of U.S. registry. We also estimate that it will take about 14 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 \$8,000 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 costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the

AD on U.S. operators to be \$310,080, or \$9,120 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:

**2008-06-25 Airbus:** Amendment 39-15437. Docket No. FAA-2007-0347; Directorate Identifier 2007-NM-253-AD.

#### Effective Date

(a) This airworthiness directive (AD) becomes effective April 23, 2008.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to the Airbus Model A330 and A340 airplanes identified in paragraphs (c)(1) and (c)(2) of this AD; certificated in any category; all certified models; all serial numbers.

(1) Model A330 and A340 airplanes except those on which Airbus Modification 55664 has been embodied in production or Airbus Service Bulletin A330-28-3103, A340-28-4120, or A340-28-5044 has been embodied in service.

(2) Model A330-300 series airplanes on which Airbus Modification 40176 (optional LH (left hand) coupling) has been embodied in production or Airbus Service Bulletin A330-28-3018 (optional LH coupling) has been embodied in service; except those on which Airbus Modification 56148 has been embodied in production or Airbus Service Bulletin A330-28-3103 has been embodied in service.

#### Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

#### Reason

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

Two A330 operators have reported that the guide shaft of the Refuel Isolation Valve has been broken away from the main casting and entered the fuel tank. The Supplier Investigation evidenced that water builds-up in the cavity of the Refuel Isolation Valve and freezes during flight. When refuel pressure is applied to the piston, the ice restricts the piston travel on one side leading to an asymmetric movement of the piston resulting in breakage of the guide shaft. A non-bonded metallic object within the fuel tank can result

[in] a potential ignition source, which in combination with a lightning strike constitutes an unsafe condition.

For the reasons described above, this Airworthiness Directive (AD) requires replacement of the affected Refuel Isolation Valve with a more robust valve similar to that designed for the A380.

### Actions and Compliance

(f) Unless already done, do the following actions in accordance with the instructions defined in Airbus Service Bulletins A330-28-3103 and A340-28-4120, both Revision 01, both dated January 11, 2008; and A340-28-5044, dated July 17, 2007; as applicable. Actions done before the effective date of this AD in accordance with Airbus Service Bulletins A330-28-3103 and A340-28-4120, both dated July 17, 2007, are acceptable for compliance with the corresponding requirements of this AD.

(1) Within 18,000 flight hours from the effective date of this AD: Replace the refuel isolation valve(s); and re-identify the refuel/defuel coupling in accordance with the instructions defined in the applicable service bulletin.

(2) For refuel Isolation Valve and Refuel/Defuel Coupling Spare units: From the effective date of this AD, no person may install an affected refuel isolation valve unit or an affected refuel/defuel coupling unit as a replacement part on an aircraft, unless it has been modified in accordance with the instructions defined in the applicable service bulletin.

### 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1138; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB)

has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

**Related Information**

(h) Refer to MCAI EASA Airworthiness Directive 2007-0239, dated September 3, 2007; and Airbus Service Bulletins A330-28-3103 and A340-28-4120, both Revision 01, both dated January 11, 2008; and A340-28-5044, dated July 17, 2007; for related information.

**Material Incorporated by Reference**

(i) You must use the applicable Airbus service bulletin specified in Table 1 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus, 1 Rond Point

Maurice Bellonte, 31707 Blagnac Cedex, France.

(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>.

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Revision	Date
A330-28-3103 .....	01 .....	January 11, 2008.
A340-28-4120 .....	01 .....	January 11, 2008.
A340-28-5044 .....	Original .....	July 17, 2007.

Issued in Renton, Washington, on March 9, 2008.

**Stephen P. Boyd,**

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-5275 Filed 3-18-08; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2007-29030; Directorate Identifier 2006-NM-284-AD; Amendment 39-15432; AD 2008-06-20]

**RIN 2120-AA64**

**Airworthiness Directives; Fokker Model F.28 Mark 0070, 0100, 1000, 2000, 3000, and 4000 Airplanes**

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

**ACTION:** Final rule.

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

Subsequent to accidents involving Fuel Tank System explosions in flight \* \* \* and on ground, \* \* \* Special Federal Aviation Regulation 88 (SFAR88) \* \* \* required a safety review of the aircraft Fuel Tank System \* \* \*.

\* \* \* \* \*

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' \* \* \*.

These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

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

**DATES:** This AD becomes effective April 23, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 23, 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, FAA, Transport Airplane Directorate, 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 August 21, 2007 (72 FR 46572). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Subsequent to accidents involving Fuel Tank System explosions in flight \* \* \* and on ground, the FAA published Special Federal Aviation Regulation 88 (SFAR 88) in June 2001. SFAR 88 required a safety review of the aircraft Fuel Tank System to determine that the design meets the requirements of

FAR (Federal Aviation Regulation) § 25.901 and § 25.981(a) and (b).

A similar regulation has been recommended by the JAA (Joint Aviation Authorities) to the European National Aviation Authorities in JAA letter 04/00/02/07/03-L024 of 3 February 2003. The review was requested to be mandated by NAA's (National Aviation Authorities) using JAR (Joint Aviation Regulation) § 25.901(c), § 25.1309.

In August 2005 EASA published a policy statement on the process for developing instructions for maintenance and inspection of Fuel Tank System ignition source prevention (EASA D 2005/CPRO, [http://www.easa.eu.int/home/cert\\_policy\\_statements\\_en.html](http://www.easa.eu.int/home/cert_policy_statements_en.html)) that also included the EASA expectations with regard to compliance times of the corrective actions on the unsafe and the not unsafe part of the harmonised design review results. On a global scale the TC (type certificate) holders committed themselves to the EASA published compliance dates (see EASA policy statement). The EASA policy statement has been revised in March 2006: the date of 31-12-2005 for the unsafe related actions has now been set at 01-07-2006.

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' as defined in FAA's memo 2003-112-15 'SFAR 88—Mandatory Action Decision Criteria'. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

This EASA Airworthiness Directive mandates the Fuel System Airworthiness Limitations, comprising maintenance/inspection tasks and Critical Design Configuration Control Limitations (CDCCL) for the type of aircraft, that resulted from the design reviews and the JAA recommendation and EASA policy statement mentioned above.

The corrective action includes revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness for certain airplanes, and

the FAA-approved maintenance program for certain other airplanes, to incorporate new limitations for fuel tank systems. You may obtain further information by examining the MCAI in the AD docket.

#### Actions Since the NPRM Was Issued

Since we issued the NPRM, we have received Fokker Service Bulletin SBF28-28-050, Revision 1, dated January 8, 2008. (We referred to Fokker Service Bulletin F28/28-050, dated June 30, 2006, in the NPRM as an appropriate source of service information for accomplishing the required actions.) Revision 1 of the service bulletin includes editorial changes, changes to certain CDCCL control references, and changes to the compliance paragraph. We have changed paragraphs (f) and (h) of the AD to refer to Revision 1 of the service bulletin. We have also added a new paragraph (f)(5) to the AD to specify, in part, that actions done before the effective date of this AD in accordance with Fokker Service Bulletin F28/28-050, dated June 30, 2006, are acceptable for compliance with the corresponding requirements of this AD.

Operators should note that we have excluded the CDCCL component titled "Level Control Pilot Valve Solenoid, jiffy junction," from the requirements of paragraph (f)(2)(i) of this AD. Fokker 70/100 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE-672, Issue 2, specifies that the appropriate reference for this CDCCL control has not yet been published. Therefore, we cannot include it in the requirements of this AD. We may consider additional rulemaking to address this item when the reference is available.

#### Comments

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

#### Request To Refer to Later Revision of Report

SAM Airlines requests that we revise paragraph (f) of the AD to refer to Fokker 70/100 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE-672, Issue 2, dated December 1, 2006. SAM Airlines points out that EASA AD 2006-0208, dated July 12, 2006 (a parallel EASA Airworthiness Directive for this AD), includes provisions to use Issue 1 of the report "or later approved revisions." However, the NPRM does not allow for use of later approved revisions of this report as an acceptable

means of compliance. SAM Airlines would like to know if the use of later revisions of the report would require approval through the provisions of paragraph (g)(1) of the NPRM.

We agree with the commenter's request. In the NPRM, we referred to Issue 1, dated January 31, 2006, of the report as the appropriate source of service information for accomplishing the required actions. Issue 2 of the report includes the CDCCL control references, as published in the June 1, 2006, revision of the airplane maintenance manual. Issue 2 also changes task descriptions for the fuel ALIs in accordance with the Maintenance Review Board document.

We have revised paragraphs (f) and (h) of this AD to refer to Issue 2 of the report. We have also specified in the new paragraph (f)(5) of the AD that actions done before the effective date of this AD in accordance with Issue 1 of Report SE-672 are acceptable for compliance with the corresponding requirements of this AD. We also revised paragraph (f)(4) of this AD to allow the use of later revisions of the report, if those revisions are approved by the Manager, International Branch, ANM-116, FAA, or the European Aviation Safety Agency (EASA), or its delegated agent.

#### Request To Remove Reference to Service Information in Certain Paragraphs

SAM Airlines also requests that we remove the reference to Fokker Service Bulletin F28/28-050, dated June 30, 2006, from paragraphs (f)(1)(i) and (f)(2)(i) of the NPRM. SAM Airlines points out that those paragraphs apply only to Fokker Model F.28 Mark 0070 and 0100 airplanes, which are not included in Fokker Service Bulletin F28/28-050.

We agree with SAM Airlines for the reason stated. We infer that SAM Airlines also requests we remove the reference to Fokker 70/100 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE-672, Issue 1, dated January 31, 2006, from paragraphs (f)(1)(ii) and (f)(2)(ii) of the NPRM because those paragraphs apply only to Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes, which are not included in Report SE-672. We have revised paragraphs (f)(1)(i), (f)(1)(ii), (f)(2)(i), and (f)(2)(ii) of the AD to refer only to the applicable documents.

#### Request To Clarify Changes to Maintenance Program

SAM Airlines also requests that we clarify paragraphs (f)(1)(i) and (f)(2)(i) of the NPRM regarding what changes are being made to the maintenance program. SAM states that the meaning of the word "limits" in paragraph (f)(1)(i) of the NPRM is unclear. In SAM Airlines' interpretation, the intended action in paragraph (f)(1)(i) is to incorporate into the aircraft maintenance program the intervals of the fuel ALI tasks. If so, SAM Airlines requests that we revise the wording to say: "\* \* \* Instructions for Continued Airworthiness and incorporate the Fuel ALI tasks and intervals specified in Fokker \* \* \*."

SAM Airlines also explains that accomplishing the CDCCL is unscheduled and requires distinguishing which inspection is needed in addition to the normal maintenance task. Therefore, it is not practical to incorporate the CDCCL into the aircraft maintenance program, as specified in paragraph (f)(2)(i) of the NPRM. SAM Airlines suggests the following wording to clarify paragraph (f)(2)(i) of the NPRM: "\* \* \* Instructions for Continued Airworthiness and adhere to the CDCCL requirements as defined in Fokker \* \* \*."

We agree that clarification is necessary. This AD requires affected operators to revise their copies of their Airworthiness Limitations document to incorporate the fuel system limitation inspections. This consists of the inspections, thresholds, and intervals. We have added these terms to paragraphs (f)(1)(i) and (f)(1)(ii) of this AD. The AD also requires revising the Airworthiness Limitations Section (ALS) to incorporate the CDCCLs as defined in the applicable service information.

Further, for airplanes that do not have an ALI, this AD requires that operators revise the maintenance program to include the ALI inspections, thresholds, and intervals. It also requires incorporation of the CDCCLs as defined in the applicable service information to ensure that the specified design configurations are maintained whenever any work is performed.

Subsequently, section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)) requires an affected operator to comply with the revised Airworthiness Limitations document. Ensuring that one's maintenance program and the actions of its maintenance personnel are in accordance with the Airworthiness

Limitations is required, but not by the AD. According to 14 CFR 91.403(c), no person may operate an aircraft for which airworthiness limitations have been issued unless those limitations have been complied with. Therefore, there is no need to further expand the requirements of the AD beyond that which was proposed because 14 CFR 91.403(c) already imposes the appropriate required action after the airworthiness limitations are revised.

#### Explanation of Additional Changes Made to This AD

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

- In most ADs, we adopt a compliance time allowing a specified amount of time after the AD's effective date. In this case, however, the FAA has already issued regulations that require operators to revise their maintenance/inspection programs to address fuel tank safety issues. The compliance date for these regulations is December 16, 2008. To provide for coordinated implementation of these regulations and this AD, we are including this same compliance date in paragraphs (f)(1) and (f)(2) of this AD.

- We have simplified the language in Note 1 of this AD to clarify that an operator must request approval for an alternative method of compliance (AMOC) if an operator cannot accomplish the required inspections because an airplane has been previously modified, altered, or repaired in the areas addressed by the required inspections.

#### Conclusion

We 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 determined that these changes 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 18 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of 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 \$1,440, 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

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.

[www.regulations.gov](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:

**2008-06-20 Fokker Services B.V.:**  
Amendment 39-15432. Docket No. FAA-2007-29030; Directorate Identifier 2006-NM-284-AD.

#### Effective Date

(a) This airworthiness directive (AD) becomes effective April 23, 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; and Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes, serial numbers 11003 through 11241, 11991 and 11992, certificated in any category.

**Note 1:** 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 according to paragraph (g)(1) 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.

#### Subject

(d) Transport Association (ATA) of America Code 28: Fuel.

**Reason**

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

Subsequent to accidents involving Fuel Tank System explosions in flight \* \* \* and on ground, the FAA published Special Federal Aviation Regulation 88 (SFAR 88) in June 2001. SFAR 88 required a safety review of the aircraft Fuel Tank System to determine that the design meets the requirements of FAR (Federal Aviation Regulation) § 25.901 and § 25.981(a) and (b).

A similar regulation has been recommended by the JAA (Joint Aviation Authorities) to the European National Aviation Authorities in JAA letter 04/00/02/07/03–L024 of 3 February 2003. The review was requested to be mandated by NAA's (National Aviation Authorities) using JAR (Joint Aviation Regulation) § 25.901(c), § 25.1309.

In August 2005 EASA published a policy statement on the process for developing instructions for maintenance and inspection of Fuel Tank System ignition source prevention (EASA D 2005/CPRO, [http://www.easa.eu.int/home/cert\\_policy\\_statements\\_en.html](http://www.easa.eu.int/home/cert_policy_statements_en.html)) that also included the EASA expectations with regard to compliance times of the corrective actions on the unsafe and the not unsafe part of the harmonised design review results. On a global scale the TC (type certificate) holders committed themselves to the EASA published compliance dates (see EASA policy statement). The EASA policy statement has been revised in March 2006: The date of 31–12–2005 for the unsafe related actions has now been set at 01–07–2006.

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' as defined in FAA's memo 2003–112–15 'SFAR 88—Mandatory Action Decision Criteria'. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

This EASA Airworthiness Directive mandates the Fuel System Airworthiness Limitations, comprising maintenance/inspection tasks and Critical Design Configuration Control Limitations (CDCCL) for the type of aircraft, that resulted from the design reviews and the JAA recommendation and EASA policy statement mentioned above.

The corrective action includes revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness for certain airplanes, and the FAA-approved maintenance program for certain other airplanes, to incorporate new limitations for fuel tank systems.

**Actions and Compliance**

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

(1) Within 3 months after the effective date of this AD or before December 16, 2008, whichever occurs first, do the action in paragraph (f)(1)(i) or (f)(1)(ii) of this AD, as applicable. For all identified tasks, the initial compliance time starts from the effective date

of this AD. The repetitive inspections must be accomplished thereafter at the intervals not to exceed those specified in Fokker 70/100 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–672, Issue 2, dated December 1, 2006; or Fokker Service Bulletin SBF28–28–050, Revision 1, dated January 8, 2008; as applicable; except as provided by paragraphs (f)(3), (f)(4), and (g)(1) of this AD.

(i) For Model F.28 Mark 0070 and 0100 airplanes: Revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate the inspections, thresholds, and intervals specified in Fokker 70/100 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–672, Issue 2, dated December 1, 2006.

(ii) For Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes: Incorporate into the FAA-approved maintenance inspection program the inspections, thresholds, and intervals specified in Fokker Service Bulletin SBF28–28–050, Revision 1, dated January 8, 2008.

(2) Within 3 months after the effective date of this AD or before December 16, 2008, whichever occurs first, do the action in paragraph (f)(2)(i) or (f)(2)(ii) of this AD, as applicable.

(i) For Model F.28 Mark 0070 and 0100 airplanes: Revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate the CDCCLs as defined in Fokker 70/100 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–672, Issue 2, dated December 1, 2006, except for the CDCCL component titled "Level Control Pilot Valve Solenoid, jiffy junction."

(ii) For Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes: Incorporate into the FAA-approved maintenance inspection program the CDCCLs as defined in Fokker Service Bulletin SBF28–28–050, Revision 1, dated January 8, 2008.

(3) Where Fokker 70/100 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–672, Issue 2, dated December 1, 2006; and Fokker Service Bulletin SBF28–28–050, Revision 1, dated January 8, 2008; allow for exceptional short-term extensions, an exception is acceptable to the FAA if it is approved by the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(4) After accomplishing the actions specified in paragraphs (f)(1) and (f)(2) of this AD, no alternative inspection, inspection interval, or CDCCL may be used, unless the inspection, interval, or CDCCL is part of a later revision of Fokker 70/100 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–672, Issue 2, dated December 1, 2006; or Fokker Service Bulletin SBF28–28–050, Revision 1, dated January 8, 2008; as applicable; that is approved by the Manager, ANM–116, International Branch, Transport Airplane

Directorate, FAA, or the European Aviation Safety Agency (EASA), or its delegated agent, or unless the inspection, interval, or CDCCL is approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (g)(1) of this AD.

(5) Actions done before the effective date of this AD in accordance with Fokker 70/100 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–672, Issue 1, dated January 31, 2006; or Fokker Service Bulletin F28/28–050, dated June 30, 2006; are acceptable for compliance with the corresponding requirements of this AD.

**Note 2:** For Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes, after an operator complies with the requirements of paragraphs (f)(1)(ii) and (f)(2)(ii) of this AD, those paragraphs do not require that operators subsequently record accomplishment of those requirements each time an applicable action is accomplished according to that operator's FAA-approved maintenance inspection program.

**FAA AD Differences**

**Note 3:** 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, 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 European Aviation Safety Agency (EASA) Airworthiness Directive 2006–0206, dated June 11, 2006; EASA Airworthiness Directive 2006–0208, dated July 12, 2006; Fokker 70/100 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control

Limitations (CDCCL) Report SE-672, Issue 2, dated December 1, 2006; and Fokker Service Bulletin SBF28-28-050, Revision 1, dated January 8, 2008; for related information.

#### Material Incorporated by Reference

(i) You must use Fokker 70/100 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE-672, Issue 2, dated December 1, 2006; and Fokker Service Bulletin SBF28-28-050, Revision 1, dated January 8, 2008; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Venep, 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 March 9, 2008.

**Stephen P. Boyd,**

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

[FR Doc. E8-5142 Filed 3-18-08; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2008-0034 Directorate Identifier 2007-CE-097-AD; Amendment 39-15428; AD 2008-06-16]

RIN 2120-AA64

#### Airworthiness Directives; Pacific Aerospace Corporation, Ltd Model 750XL Airplanes

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

**ACTION:** Final rule.

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

DCA/750XL/3A is prompted by a report from the manufacturer of the possibility that

wiring loom protective sleeving is not fitted to aircraft S/N 107 through to 134. AD applicability revised to include aircraft up to S/N 134.

To prevent fretting damage to the wiring loom that may lead to arcing in proximity to the fuel vent lines and the possibility of fire \* \* \*.

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

**DATES:** This AD becomes effective April 23, 2008.

On April 23, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at 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:** Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; fax: (816) 329-4090.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

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 January 18, 2008 (73 FR 3417). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

DCA/750XL/3A is prompted by a report from the manufacturer of the possibility that wiring loom protective sleeving is not fitted to aircraft S/N 107 through to 134. AD applicability revised to include aircraft up to S/N 134.

To prevent fretting damage to the wiring loom that may lead to arcing in proximity to the fuel vent lines and the possibility of fire \* \* \*.

##### Comments

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

##### Conclusion

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

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

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

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

#### Costs of Compliance

We estimate that this AD will affect 7 products of U.S. registry. We also estimate that it will take about 0.5 work-hour per product to comply with basic requirements of this AD. The average labor rate is \$80 per work-hour. Required parts will cost about \$30 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$490 or \$70 per product.

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

#### Examining the AD Docket

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

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

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

##### § 39.13 [Amended]

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

**2008-06-16 Pacific Aerospace Corporation, Ltd.:** Amendment 39-15428; Docket No. FAA-2008-0034; Directorate Identifier 2007-CE-097-AD.

#### Effective Date

(a) This airworthiness directive (AD) becomes effective April 23, 2008.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Model 750XL airplanes, serial numbers 102 through 134, certificated in any category.

**Note 1:** The applicability of this AD takes precedence over Pacific Aerospace Corporation Limited Mandatory Service

Bulletin PACSB/XL/009, issue 2, revised July 23, 2004.

#### Subject

(d) Air Transport Association of America (ATA) Code 39: Electrical Wiring.

#### Reason

(e) The mandatory continuing airworthiness information (MCAI) states: DCA/750XL/3A is prompted by a report from the manufacturer of the possibility that wiring loom protective sleeving is not fitted to aircraft S/N 107 through to 134. AD applicability revised to include aircraft up to S/N 134.

To prevent fretting damage to the wiring loom that may lead to arcing in proximity to the fuel vent lines and the possibility of fire, inspect the main wiring loom on the right hand side of the aircraft adjacent to the frames at station 114.34" and 118.84", per PACSB/XL/009 issue 2, to ensure that two pieces of protective sleeving are fitted.

The effectivity of the service information is serial number (S/N) 102 through 106. The MCAI expanded the applicability to S/N 102 through 134.

#### Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within the next 100 hours time-in-service (TIS) after April 23, 2008 (the effective date of this AD), inspect the main wiring loom on the right hand side of the aircraft adjacent to the frames at station 114.34" and 118.84" to ensure there are two pieces of protective sleeving installed following Pacific Aerospace Corporation Limited Mandatory Service Bulletin PACSB/XL/009, issue 2, revised July 23, 2004.

(2) If you find the protective sleeves are missing as a result of the inspection required by paragraph (f)(1) of this AD, before further flight, install protective sleeves following Pacific Aerospace Corporation Mandatory Service Bulletin PACSB/XL/009, issue 2, revised July 23, 2004.

#### FAA AD Differences

**Note 2:** This AD differs from the MCAI and/or service information as follows: No differences.

#### Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; fax: (816) 329-4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

#### Material Incorporated by Reference

(h) You must use Pacific Aerospace Corporation Limited Mandatory Service

Bulletin PACSB/XL/009, issue 2, revised July 23, 2004, 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 Pacific Aerospace Limited, Hamilton Airport, Private Bag, 3027 Hamilton, New Zealand; telephone: +64 7-843-6144; facsimile: +64 7-843-6134.

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

Issued in Kansas City, Missouri, on March 7, 2008.

**Kim Smith,**

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

[FR Doc. E8-5062 Filed 3-18-08; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-0346; Directorate Identifier 2007-NM-202-AD; Amendment 39-15436; AD 2008-06-24]

RIN 2120-AA64

#### Airworthiness Directives; Boeing Model 737-300, -400, and -500 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Boeing Model 737-300, -400, and -500 series airplanes. This AD requires an inspection to determine the manufacturer and manufacture date of the oxygen masks in the passenger service unit and the lavatory and attendant box assemblies, corrective action if necessary, and other specified action. This AD results from a report that several passenger masks with broken in-line flow indicators were found following a mask deployment. We are issuing this AD to prevent the in-line flow indicators of the passenger oxygen masks from fracturing and separating, which could inhibit oxygen flow to the masks and consequently result in exposure of the passengers and cabin attendants to hypoxia following a depressurization event.

**DATES:** This AD is effective April 23, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 23, 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:** Susan Letcher, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM-150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6474; 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 certain Model Boeing 737-300, -400, and -500 series airplanes. That NPRM was published in the **Federal Register** on December 19, 2007 (72 FR 71830). That NPRM proposed to require an inspection to determine the manufacturer and manufacture date of the oxygen masks in the passenger service unit (PSU) and the lavatory and attendant box assemblies, corrective action if necessary, and other specified action.

##### Comments

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

##### Conclusion

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

#### Costs of Compliance

There are about 1,956 airplanes of the affected design in the worldwide fleet. This AD affects about 646 airplanes of U.S. registry. The required actions take about 16 work hours per airplane, for an average of 180 oxygen masks per airplane distributed in about 45 PSUs/oxygen boxes, at an average labor rate of \$80 per work hour. Required parts cost about \$6 per oxygen mask, or \$1,080 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is \$1,524,560, or \$2,360 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:

**2008-06-24 Boeing:** Amendment 39-15436. Docket No. FAA-2007-0346; Directorate Identifier 2007-NM-202-AD.

#### Effective Date

(a) This airworthiness directive (AD) is effective April 23, 2008.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Boeing Model 737-300, -400, and -500 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 737-35-1099, dated April 9, 2007.

#### Unsafe Condition

(d) This AD results from a report that several passenger masks with broken in-line flow indicators were found following a mask deployment. We are issuing this AD to prevent the in-line flow indicators of the passenger oxygen masks from fracturing and separating, which could inhibit oxygen flow to the masks and consequently result in exposure of the passengers and cabin attendants to hypoxia following a depressurization event.

#### Compliance

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

#### Inspection and Related Investigative/Corrective Actions if Necessary

(f) Within 60 months after the effective date of this AD, do a general visual inspection to determine the manufacturer and manufacture date of the oxygen masks in the passenger service unit and the lavatory and attendant box assemblies, and do the applicable corrective action and other specified action, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737-35-1099, dated April 9, 2007; except where the service bulletin specifies repairing the oxygen mask assembly, replace it with a new

or modified oxygen mask assembly having an improved flow indicator. The corrective action and other specified action must be done before further flight.

**Note 1:** Boeing Special Attention Service Bulletin 737-35-1099 refers to B/E Aerospace Service Bulletin 174080-35-01, dated February 6, 2006; and Revision 1, dated May 1, 2006; as additional sources of service information for modifying the oxygen mask assembly by replacing the flow indicator with an improved flow indicator.

#### Alternative Methods of Compliance (AMOCs)

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

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

#### Material Incorporated by Reference

(h) You must use Boeing Special Attention Service Bulletin 737-35-1099, dated April 9, 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](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on March 9, 2008.

**Stephen P. Boyd,**

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

[FR Doc. E8-5276 Filed 3-18-08; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-0396; Directorate Identifier 2007-NM-282-AD; Amendment 39-15438; AD 2008-06-26]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Model A330-200, A330-300, A340-200, and A340-300 Series 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:

One A320 operator has reported a disbond on the composite rudder control rod. Investigations conducted by the supplier revealed that this disbond is due to an incorrect low volume of resin in the fibre composite. The supplier and AIRBUS have confirmed that some rudder control rods installed on A330 and A340-200/-300 aircraft before delivery or delivered as spare are also affected by this defect. Rudder control rod rupture can lead, in the worst case, in combination with a yaw damper runaway to an unsafe condition.

\* \* \* \* \*

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

**DATES:** This AD becomes effective April 23, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 23, 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:** Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1138; 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 January 10, 2008 (73 FR 1842). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

One A320 operator has reported a disbond on the composite rudder control rod. Investigations conducted by the supplier revealed that this disbond is due to an incorrect low volume of resin in the fibre composite. The supplier and AIRBUS have confirmed that some rudder control rods installed on A330 and A340-200/-300 aircraft before delivery or delivered as spare are also affected by this defect. Rudder control rod rupture can lead, in the worst case, in combination with a yaw damper runaway to an unsafe condition.

In order to prevent such situation, this Airworthiness Directive (AD) requires a one time detailed visual inspection to identify the affected rods and to replace those affected by this issue.

The unsafe condition is reduced control of the airplane. You may obtain further information by examining the MCAI in the AD docket.

### Comments

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

### Conclusion

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

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

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

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

### Costs of Compliance

We estimate that this AD will affect about 8 products of U.S. registry. We also estimate that it will take about 6 work-hours per product to comply with

the basic requirements of this AD. The average labor rate is \$80 per work-hour. Labor costs may be covered under warranty as described in the service information. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$3,840, or \$480 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:

**2008-06-26 Airbus:** Amendment 39-15438, Docket No. FAA-2007-0396; Directorate Identifier 2007-NM-282-AD.

##### Effective Date

(a) This airworthiness directive (AD) becomes effective April 23, 2008.

##### Affected ADs

(b) None.

##### Applicability

(c) This AD applies to Airbus Model A330-200, A330-300, A340-200, and A340-300 series airplanes, certificated in any category, all certified models, having manufacturing serial numbers (MSNs) as specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) For Model A330-200 and A330-300 series airplanes: MSN 0315, 0323, 0333, 0337, 0338, 0342, 0344, 0346, 0349, 0350, 0351, 0356, 0357, 0370, 0375, 0388, 0389, 0398, 0400, 0404, 0407, 0408, 0412, 0427, 0432, 0454, 0493 and 0539.

(2) For Model A340-200 and A340-300 series airplanes: MSN 0318, 0319, 0321, 0325, 0327, 0329, 0331, 0332, 0335, 0347, 0352, 0354, 0355, 0359, 0363, 0367, 0373, 0374, 0377, 0378, 0379, 0381, 0385, 0387, 0390, 0395, 0399, 0411, 0413, 0415, 0433, 0434, 0435, 0450 and 0474.

##### Subject

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

##### Reason

(e) The mandatory continuing airworthiness information (MCAI) states: One A320 operator has reported a disbond on the composite rudder control rod. Investigations conducted by the supplier revealed that this disbond is due to an incorrect low volume of resin in the fibre composite. The supplier and AIRBUS have confirmed that some rudder control rods installed on A330 and A340-200/-300

aircraft before delivery or delivered as spare are also affected by this defect. Rudder control rod rupture can lead, in the worst case, in combination with a yaw damper runaway to an unsafe condition.

In order to prevent such situation, this Airworthiness Directive (AD) requires a one time detailed visual inspection to identify the affected rods and to replace those affected by this issue.

The unsafe condition is reduced control of the airplane.

#### Actions and Compliance

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

(1) Within 600 flight hours after the effective date of this AD, identify the part number (P/N) and serial number (S/N) of all rudder control rods installed on the subject airplanes; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330-27-3157 or A340-27-4156, both dated August 8, 2007, as applicable.

(2) If the P/N and S/N of any rudder control rod identified in paragraph (f)(1) of this AD is not identified in Batch 1, Batch 2a, or Batch 2b of Figure 3 of Airbus Service Bulletin A330-27-3157 or A340-27-4156, both dated August 8, 2007, no further action is required for that control rod, except as provided by paragraph (f)(6) of this AD.

(3) If the P/N and S/N of any rudder control rod identified in paragraph (f)(1) of this AD is identified in Batch 1 of Figure 3 of Airbus Service Bulletin A330-27-3157 or A340-27-4156, both dated August 8, 2007: Within 18 months after the identification required by paragraph (f)(1) of this AD, replace the affected rudder control rod with a new rudder control rod, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330-27-3157 or A340-27-4156, as applicable.

(4) If the P/N and S/N of any rudder control rod identified in paragraph (f)(1) of this AD is identified in Batch 2a of Figure 3 of Airbus Service Bulletin A330-27-3157 or A340-27-4156, both dated August 8, 2007: Within 1,400 flight hours after the identification required by paragraph (f)(1) of this AD, replace the affected control rod with a new rudder control rod, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330-27-3157 or A340-27-4156, as applicable.

(5) If the P/N and S/N of any rudder control rod identified in paragraph (f)(1) of this AD is identified in Batch 2b of Figure 3 of Airbus Service Bulletin A330-27-3157 or A340-27-4156, both dated August 8, 2007, do the actions described in paragraph (f)(5)(i) or (f)(5)(ii) of this AD, as applicable, at the compliance time specified in paragraph (f)(5)(i) or (f)(5)(ii), as applicable.

(i) For any rudder control rod having P/N 22205-08 and S/N 1000094651: Within 600 flight hours after the identification required by paragraph (f)(1) of this AD, replace the rudder control rod with a new rudder control rod, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330-27-3157 or A340-27-4156, both dated August 8, 2007, as applicable.

(ii) For all rudder control rods not identified in paragraph (f)(5)(i) of this AD:

Within 6 months after the identification required by paragraph (f)(1) of this AD, replace the rudder control rods with new rudder control rods, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330-27-3157 or A340-27-4156, both dated August 8, 2007, as applicable.

(6) As of the effective date of this AD, no person may install, on any airplane, any rudder control rod unit having a P/N and S/N identified in Batch 1, Batch 2a, or Batch 2b of Figure 3 of Airbus Service Bulletin A330-27-3157 or A340-27-4156, both dated August 8, 2007.

#### FAA AD Differences

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

#### Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM-116, 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1138; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

#### Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2007-0246, dated September 5, 2007; Airbus Service Bulletin A330-27-3157, dated August 8, 2007; and Airbus Service Bulletin A340-27-4156, dated August 8, 2007; for related information.

#### Material Incorporated by Reference

(i) You must use Airbus Service Bulletin A330-27-3157, excluding Appendix 01, dated August 8, 2007; or Airbus Service Bulletin A340-27-4156, excluding Appendix 01, dated August 8, 2007; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of

this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

(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 March 9, 2008.

**Stephen P. Boyd,**

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

[FR Doc. E8-5255 Filed 3-18-08; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA-2007-28944; Directorate Identifier 2006-NM-239-AD; Amendment 39-15430; AD 2008-06-18]**

**RIN 2120-AA64**

#### **Airworthiness Directives; Airbus Model A300 Series Airplanes and Airbus Model A300-600 Series 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:

[T]he detection of cracks on multiple aircraft in lower skin panel No. 2 forward of access panel 575FB/675FB held on the rear dummy spar, inboard of rib 9, fuselage side, aft of the rear spar.

This area of structure has been subjected to several repairs and modifications in previous years.

The AIRBUS Service Bulletins (SB) A300-57-0177 at Revision 3 and A300-57-6029 at Revision 4 define the various configurations for the mandatory inspections to be conducted in order to control or correct the development of cracks which could affect the structural integrity of the aircraft.

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

**DATES:** This AD becomes effective April 23, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 23, 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 Stafford, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1622; fax (425) 227-1149.

#### **SUPPLEMENTARY INFORMATION:**

##### **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 August 16, 2007 (72 FR 45978). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

This Airworthiness Directive (AD) is published subsequent to the detection of cracks on multiple aircraft in lower skin panel No. 2 forward of access panel 575FB/675FB held on the rear dummy spar, inboard of rib 9, fuselage side, aft of the rear spar.

This area of structure has been subjected to several repairs and modifications in previous years.

The AIRBUS Service Bulletins (SB) A300-57-0177 at Revision 3 and A300-57-6029 at Revision 4 define the various configurations for the mandatory inspections to be conducted in order to control or correct the development of cracks which could affect the structural integrity of the aircraft.

The MCAI requires various repetitive inspections (detailed visual, high frequency eddy current, X-ray) of the wing lower skin panel and associated internal support structure for cracking and, if necessary, corrective measures (modifying the lower panel inboard of rib 9 aft of the rear spar and repairing cracks). 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 considered the comments received.

#### **Request To Revise Applicability of NPRM**

FedEx requests that we revise the applicability of the NPRM to exclude

certain airplanes which have already been modified. FedEx states that airplanes having post-production modification 11178 (identified as Config. 14 in Airbus Service Bulletin A300-57-6029, Revision 06, dated March 23, 2007) installed should not be included in the service bulletin, as the Limit of Validity (LOV) for the airframe is close enough to the inspection thresholds for post-production modification 11178 to consider the modification as sufficient without specific follow-up maintenance requirements. FedEx therefore requests that we consider revising the applicability of the NPRM to exclude airplanes that have production modification 11178 installed, and asserts that if the LOV is extended, an airworthiness limitations instruction (ALI) could be added for the post mod inspection requirements.

We don't agree. These airplanes must be inspected before they reach their current LOV as it could not be demonstrated that extending the thresholds up to the revised LOV would provide an acceptable level of safety. Operators are provided some relief as the inspection is estimated to be 2 work-hours, which will not have significant impact on airplane maintenance. We have not changed the AD in this regard.

#### **Request To Simplify Compliance Intervals**

FedEx states it has 69 A300-600 aircraft affected by the NPRM and, so far, has had no problems with the wing skin at the intersection of the rear spar to the dummy spar inboard of Rib 9. FedEx states it finds Airbus Service Bulletin A300-57-6029, Revision 06, to be overly complex, constituting an undue burden to implement into its records system. We infer that FedEx is requesting that we reduce or streamline the inspection thresholds and intervals in the NPRM.

We do not agree with this request. The fatigue load spectrum differs from one airplane model to another. To reduce the number of inspection programs specified in the service bulletin, it would be necessary to require the more conservative compliance times which would place an excessive burden on some operators. However, operators are always permitted to accomplish the requirements of an AD before the required compliance time. Therefore, an operator with several Model A300-600 airplanes may choose to streamline the process by inspecting all those models using the most stringent compliance time specified in the AD. If an operator decides that more compliance time is

needed, the operator may request an AMOC in accordance with paragraph (g)(1) of the AD. We have not changed the AD in this regard.

#### **Request To Add Optional Terminating Action**

FedEx requests that we add an optional terminating action to the NPRM. FedEx states that, for airplanes not found to be cracked that have not been previously repaired, an equivalent level of safety could be obtained by modifying the airplane in accordance with Airbus Service Bulletin A300-57-6064 (which describes procedures for installing internal and external reinforcing plates on bottom skin panel No. 2, a stiffener for the support structure, and a new cleat) prior to accumulating 10,000 total flight cycles or within 380 flight cycles after the effective date of the AD, whichever is later. FedEx states that some of its airplanes already have this modification installed, and asserts, therefore, that credit should be given for installing this modification using Revision 0 through 4 of Airbus Service Bulletin A300-57-6064. FedEx asserts that providing this terminating action would place the airplane beyond the LOV and make further follow-up inspections unnecessary, thereby enhancing safety and greatly simplifying compliance tracking.

We do not agree with this request. Fatigue and damage tolerance analysis has shown that, after installing modification 11178 as described in Airbus Service Bulletin A300-57-6064, this area must still be inspected to control or correct the development of cracks. Therefore, we have not changed the AD in this regard. However, operators may request an AMOC for adjustments to compliance times in accordance with paragraph (g)(1) of the AD.

#### **Clarification of Typographical Error in Service Information**

Airbus Service Bulletin A300-57-0177, Revision 05, dated March 23, 2007, specifies repetitive inspections for cracking if Airbus Service Bulletin A300-57-022 has not been embodied. Service Bulletin A300-57-022 does not exist. This AD correctly requires doing repetitive inspections for cracking if Airbus Service Bulletin A300-57-0222 (modification 11178H5410) has not been embodied.

#### **Conclusion**

We reviewed the available data, including the comments received, and determined that air safety and the

public interest require adopting the AD as proposed.

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

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 162 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of 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 \$25,920, or \$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:

**2008-06-18 Airbus:** Amendment 39-15430. Docket No. FAA-2007-28944; Directorate Identifier 2006-NM-239-AD.

#### Effective Date

(a) This airworthiness directive (AD) becomes effective April 23, 2008.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Airbus Model A300 series airplanes and Model A300-600 series airplanes; certificated in any category; all certified models, all serial numbers.

#### Subject

(d) Wings.

#### Reason

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

This Airworthiness Directive (AD) is published subsequent to the detection of cracks on multiple aircraft in lower skin panel No. 2 forward of access panel 575FB/675FB held on the rear dummy spar, inboard of rib 9, fuselage side, aft of the rear spar.

This area of structure has been subjected to several repairs and modifications in previous years.

The AIRBUS Service Bulletins (SB) A300-57-0177 at Revision 3 and A300-57-6029 at Revision 4 define the various configurations for the mandatory inspections to be conducted in order to control or correct the development of cracks which could affect the structural integrity of the aircraft.

The MCAI requires doing repetitive inspections (detailed visual, high frequency eddy current, x-ray) of the wing lower skin panel and associated internal support structure for cracking and, if necessary, doing corrective measures (modifying the lower panel inboard of rib 9 aft of the rear spar and repairing cracks).

#### Actions and Compliance

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

(1) Except as provided by paragraphs (f)(1)(i), (f)(1)(ii), (f)(1)(iii), and (f)(1)(iv) of this AD: At the threshold specified in paragraph 1.E.(2) of Airbus Service Bulletin A300-57-0177, Revision 05, dated March 23, 2007; or A300-57-6029, Revision 06, dated March 23, 2007; as applicable; perform the inspection of the wing lower skin panel and associated internal support structure aft of the rear spar and inboard of rib 9 and apply applicable corrective measures in accordance with Airbus Service Bulletin A300-57-0177, Revision 05, dated March 23, 2007; or A300-57-6029, Revision 06, dated March 23, 2007; as applicable. All applicable corrective measures must be done at the applicable times specified in paragraph 1.E.(2) and the Accomplishment Instructions of the applicable service bulletin.

(i) Where the tables in paragraph 1.E.(2), "Accomplishment Timescale," of the service bulletins specify a grace period for doing the actions, this AD requires that the actions be done within the specified grace period relative to the effective date of this AD.

(ii) Where the tables in paragraph 1.E.(2)(e), "Config 04," of Airbus Service Bulletin A300-57-0177, Revision 05, specify an inspection interval but not an initial threshold, this AD requires that the actions be done within the specified interval after inspecting in accordance with Table 1A or 1B, as applicable, for Configuration 01 airplanes described in the service bulletin and thereafter at the inspection interval specified in the tables in paragraph 1.E.(2)(e), "Config 04," of Airbus Service Bulletin A300-57-0177, Revision 05.

(iii) Where the tables in paragraph 1.E.(2)(f), "Config 05," of Airbus Service Bulletin A300-57-6029, Revision 06, specify an inspection interval but not an initial threshold, this AD requires that the actions be done within the specified interval after inspecting in accordance with Table 1A or

1B, as applicable, for configuration 01 of the service bulletin and thereafter at the inspection interval specified in the tables in paragraph 1.E.(2)(f), "Config 05," of A300-57-6029, Revision 06.

(iv) All crack lengths specified in Airbus Service Bulletin A300-57-0177, Revision 05, and A300-57-6029, Revision 06, are considered "not to exceed" lengths.

(2) Repeat the inspection at the intervals in, and according to the instructions defined in, Airbus Service Bulletin A300-57-0177, Revision 05, dated March 23, 2007; or A300-57-6029, Revision 06, dated March 23, 2007; as applicable; except where Service Bulletin A300-57-0177, Revision 05, specifies repetitive inspections for cracking if Airbus Service Bulletin A300-57-022 has not been embodied, this AD requires doing repetitive inspections for cracking if Airbus Service Bulletin A300-57-0222 (modification 11178H5410) has not been embodied.

(3) Report to Airbus the first inspection results, whatever they may be, at the applicable time specified in paragraph (f)(3)(i) or (e)(f)(ii) of this AD.

(i) If the inspection was done after the effective date of this AD, submit the report within 30 days after the inspection.

(ii) If the inspection was accomplished prior to the effective date of this AD, submit the report within 30 days after the effective date of this AD.

(4) Actions accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A300-57-0177, Revision 03, dated May 29, 2006; Airbus Service Bulletin A300-57-0177, Revision 04, dated January 5, 2007; Airbus Service Bulletin A300-57-6029, Revision 04, dated May 29, 2006; or Airbus Service Bulletin A300-57-6029, Revision 05, dated October 23, 2006; are considered acceptable for compliance with the corresponding action specified in this AD.

#### FAA AD Differences

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

#### Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Stafford, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1622; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they

are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the

provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

**Related Information**

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2006-0282, dated September 12, 2006; and the service information in Table 1 of this AD; for related information.

TABLE 1.—SERVICE INFORMATION

Airbus Service Bulletin	Revision level	Date
A300-57-0177 .....	05	March 23, 2007.
A300-57-0222 .....	01	March 13, 2006.
A300-57-6029 .....	06	March 23, 2007.
A300-57-6064 .....	04	March 9, 2006.

**Material Incorporated by Reference**

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

(1) The Director of the Federal Register approved the incorporation by reference of

this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

(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>.

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin	Revision level	Date
A300-57-0177 .....	05	March 23, 2007.
A300-57-6029 .....	06	March 23, 2007.

Issued in Renton, Washington, on March 7, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-5149 Filed 3-18-08; 8:45 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2007-0201; Directorate Identifier 2007-NM-163-AD; Amendment 39-15433; AD 2008-06-21]

RIN 2120-AA64

**Airworthiness Directives; McDonnell Douglas Model DC-10-10 and DC-10-10F Airplanes, Model DC-10-15 Airplanes, Model DC-10-30 and DC-10-30F (KC-10A and KDC-10) Airplanes, Model DC-10-40 and DC-10-40F Airplanes, Model 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 all McDonnell Douglas airplane models 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. For certain airplanes, this AD also requires the initial accomplishment of a certain repetitive AWL inspection to phase in that inspection, 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 a fuel tank explosion and consequent loss of the airplane.

**DATES:** This AD is effective April 23, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 23, 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:** Philip C. Kush, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5263; 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 all McDonnell Douglas Model DC-10-10 and DC-10-10F airplanes, Model DC-10-15 airplanes, Model DC-10-30 and DC-10-30F (KC-10A and KDC-10)

airplanes, Model DC-10-40 and DC-10-40F airplanes, Model 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 November 19, 2007 (72 FR 64957). That NPRM proposed to require 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. For certain airplanes, that NPRM also proposed to require the initial accomplishment of a certain repetitive AWL inspection to phase in that inspection, and repair if necessary.

### Comments

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

### Changes Made to This AD

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

- We have added a new paragraph (k) 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 Trijet Special Compliance Item Report, MDC-02K1003, Revision C, dated July 24, 2007 (hereafter referred to as "Report MDC-02K1003"), 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 simplified the language in 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.

### Request To Revise Note 1

Boeing requests that we revise Note 1 of the NPRM to clarify that deviations from the AWLs specified in Report MDC-02K1003, should be approved as an AMOC according to paragraph (k) of the NPRM. Boeing states that Note 1 of the NPRM might be interpreted to mean that the AWLs specified in Report

MDC-02K1003 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 "deviation from" in the last sentence.
- Delete the words "(g), (h), or" and "as applicable" from the last sentence.

As stated previously, we have simplified the language in Note 1 of this AD for standardization with other similar ADs. The language the commenter requests 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-02K1003. 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, 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-02K1003."
- 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-02K1003" 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-02K1003 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 final rule.

### Request To Refer to Additional Sources of Service Information

FedEx states that, for certain CDCCLs, Appendix B of Report MDC-02K1003 does not refer to the applicable service information (e.g., airplane maintenance manual (AMM), standard wire practices manual, structural repair manual) for accomplishing the required maintenance action. FedEx also states that Boeing has determined where the CDCCLs should be added to the AMM and what verbiage should be used, and that this information has been published as a list on Boeing's website. FedEx, therefore, requests that we revise paragraphs (g) and (h) of the proposed AD to refer to this list or other Boeing documents that clearly identify the manual changes corresponding to each CDCCL in Report MDC-02K1003.

We disagree with revising this AD as requested by the commenter. For some CDCCLs, Boeing formatted Report MDC-02K1003 to provide specific information, where appropriate, concerning the limitations and necessary actions to maintain CDCCLs and ALIs. For other CDCCLs, Boeing has revised the applicable service information to ensure compatibility with those CDCCLs. This revised service information is readily available to affected operators; therefore, there is no need to be more specific for these particular CDCCLs. No change to this final rule is necessary.

### Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed 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 300 airplanes of the affected design in the worldwide fleet. This AD affects about 180 airplanes of U.S. registry. The required actions take about 1 work hour per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is \$14,400, or \$80 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:

**2008-06-21 McDonnell Douglas:**  
Amendment 39-15433. Docket No. FAA-2007-0201; Directorate Identifier 2007-NM-163-AD.

#### Effective Date

(a) This airworthiness directive (AD) is effective April 23, 2008.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to all McDonnell Douglas Model DC-10-10 and DC-10-10F airplanes, Model DC-10-15 airplanes, Model DC-10-30 and DC-10-30F (KC-10A and KDC-10) airplanes, Model DC-10-40 and DC-10-40F airplanes, Model MD-10-10F and MD-10-30F airplanes, and Model MD-11 and MD-11F airplanes, certificated in any category.

**Note 1:** 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) in accordance with paragraph (l) 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) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

#### Service Information Reference

(f) The term "Report MDC-02K1003" as used in this AD, means the Boeing Trijet Special Compliance Item Report, MDC-02K1003, Revision C, dated July 24, 2007.

#### Revise the FAA-Approved Maintenance Program

(g) For Model DC-10-10 and DC-10-10F airplanes, Model DC-10-15 airplanes, Model DC-10-30 and DC-10-30F (KC-10A and KDC-10) airplanes, and Model DC-10-40 and DC-10-40F 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-02K1003. Accomplishing the revision in accordance with a later revision of Report MDC-02K1003 is an acceptable method of compliance if the revision is approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

#### Revise the AWLs Section

(h) For Model MD-10-10F and MD-10-30F airplanes, and Model MD-11 and MD-11F airplanes: Before December 16, 2008, revise the AWLs section of the Instructions for Continued Airworthiness to incorporate the information specified in Appendixes B, C, and D of Report MDC-02K1003, except that the initial inspection required by paragraph (i) of this AD must be done at the applicable compliance time specified in that paragraph. Accomplishing the revision in accordance with a later revision of Report MDC-02K1003 is an acceptable method of compliance if the revision is approved by the Manager, Los Angeles ACO.

#### Initial Inspection and Repair if Necessary

(i) For Model MD-11 and MD-11F airplanes: Within 60 months after the effective date of this AD, do a detailed inspection of the metallic overbraiding and red-wrap tape installed on the tail tank fuel quantity indication system (FQIS) wiring to verify if the metallic overbraiding or red-wrap tape is damaged or shows signs of deterioration, in accordance with ALI 20-2 of Appendix C of Report MDC-02K1003. If any discrepancy is found during the inspection, repair the discrepancy before further flight in accordance with ALI 20-2 of Appendix C of Report MDC-02K1003. Accomplishing the actions required by this paragraph in accordance with a later revision of Report MDC-02K1003 is an acceptable method of compliance if the revision is approved by the Manager, Los Angeles ACO.

**Note 2:** 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."

#### No Reporting Requirement

(j) Although Report MDC-02K1003 specifies to submit certain information to the manufacturer, this AD does not require that action.

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

(k) After accomplishing the applicable actions specified in paragraphs (g), (h), and (i) 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 Report MDC-02K1003 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 (l) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(l)(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**

(m) You must use Boeing Trijet Special Compliance Item Report, MDC-02K1003, Revision C, dated July 24, 2007, to do the actions required by this AD, unless the AD specifies otherwise. This document has the following effective pages:

Page No.	Revision level shown on page	Date shown on page
Title Page, iii-iv, B24, B38	C	July 24, 2007.
ii, B2, B21, B26, B27, B34, B40, B41, C6, C7	B	August 9, 2007.
1, B1, B3-B20, B22, B23, B25, B28-B33, B35-B37, B39, C1-C5, D1	A	December 15, 2005.
A1-A3	Original	May 17, 2002.

(This document does not include Page ii. The "Table of Contents" section of the document refers to Item 28-3 on Page B27; however, Item 28-3 is on Page B29 of the document. The revision dates are only specified in the "Index of Pages" section of the document.)

(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](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on March 9, 2008.

**Stephen P. Boyd,**

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

[FR Doc. E8-5145 Filed 3-18-08; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 61, 91, and 135**

**[Docket No. FAA-2006-24981; Amendment Nos. 61-119, 91-301, and 135-114]**

**RIN 2120-A182**

**Special Federal Aviation Regulation No. 108—Mitsubishi MU-2B Series Airplane Special Training, Experience, and Operating Requirements; Notice of OMB Approval for Information Collection**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; notice of Office of Management and Budget approval for information collection.

**SUMMARY:** This notice announces the Office of Management and Budget's (OMB) approval of the information collection requirement for Special Federal Aviation Regulation (SFAR) No. 108, which was published on February 6, 2008.

**DATES:** The FAA received OMB approval for the information collection requirements in SFAR No. 108 on March 3, 2008. SFAR No. 108, which includes these information collection requirements, will become effective on April 7, 2008. The compliance date is February 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ron Baker, General Aviation and Commercial Division, Commercial Operations Branch, AFS-800, Federal Aviation Administration, Room 835, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8212; facsimile (202) 267-5094.

**SUPPLEMENTARY INFORMATION:** On February 6, 2008, the FAA published the final rule, "Special Federal Aviation Regulation No. 108—Mitsubishi MU-2B Series Airplane Special Training, Experience, and Operating Requirements" (73 FR 7034). The rule created new pilot training, experience, and operating requirements for persons operating the Mitsubishi MU-2B series airplane. The rule contained information collection requirements that had not yet been approved by the Office of Management and Budget at the time of publication. In the **DATES** section of the rule, the FAA noted that affected parties did not need to comply with the information collection requirements until OMB approved the FAA's request to collect the information.

In accordance with the Paperwork Reduction Act, OMB approved that request on March 3, 2008, and assigned the information collection OMB Control

Number 2120-0725. The FAA request was approved by OMB without change and expires on March 31, 2011. This notice is to inform affected parties of the approval and to announce that the information collection requirements of SFAR No. 108 will become effective when the final rule becomes effective on April 7, 2008.

**Authority for This Rulemaking**

The Federal Aviation Administration's (FAA) authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA to issue, rescind, and revise the rules. This rulemaking is promulgated under the authority described in Subtitle VII, Aviation Programs, Part A, Air Commerce and Safety, Subpart III, Safety, section 44701, General Requirements. Under section 44701 the FAA is charged with prescribing regulations setting the minimum standards for practices, methods, and procedures necessary for safety in air commerce. This regulation is within the scope of that authority because it will set the minimum level of safety to operate the Mitsubishi MU-2B.

Issued in Washington, DC, on March 13, 2008.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

[FR Doc. E8-5470 Filed 3-18-08; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

[Docket No. FAA-2007-0243; Airspace Docket No. 07-ANE-93]

**Establishment of Class E Airspace; Farmington, ME**

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

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** This action confirms the effective date of a direct final rule that establishes a Class E airspace area to support Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedures (IAPs) that serve the Franklin Memorial Hospital in Farmington, ME.

**DATES:** Effective 0901 UTC, [Effective upon Publication]. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Daryl Daniels, Airspace Specialist, System Support, AJO2-E2B.12, FAA Eastern Service Center, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305-5581; fax (404) 305-5572.

**SUPPLEMENTARY INFORMATION:**

**Confirmation of Effective Date**

The FAA published this direct final rule with a request for comments in the **Federal Register** on December 19, 2007 (72 FR 71761). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 14, 2008. No adverse comments were received, and thus this notice confirms that effective date.

Issued in College Park, GA, on February 26, 2008.

**Mark D. Ward,**

*Manager, System Support Group, Eastern Service Center.*

[FR Doc. E8-5166 Filed 3-18-08; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

[Docket No. FAA-2007-0244; Airspace Docket No. 07-ANE-94]

**Establishment of Class E Airspace; Skowhegan, ME**

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

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** This action confirms the effective date of a direct final rule that establishes a Class E airspace area to support Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedures (IAPs) that serve the Redington-Fairview General Hospital, Skowhegan, ME.

**DATES:** Effective 0901 UTC, March 19, 2008. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Daryl Daniels, Airspace Specialist, System Support, AJO2-E2B.12, FAA Eastern Service Center, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305-5581; fax (404) 305-5572.

**SUPPLEMENTARY INFORMATION:**

**Confirmation of Effective Date**

The FAA published this direct final rule with a request for comments in the **Federal Register** on December 19, 2007 (72 FR 71760). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 14, 2008. No adverse comments were received, and thus this notice confirms that effective date.

Issued in College Park, GA, on February 26, 2008.

**Mark D. Ward,**

*Manager, System Support Group, Eastern Service Center.*

[FR Doc. E8-5169 Filed 3-18-08; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

[Docket No. FAA-2008-0162; Airspace Docket No. 08-AEA-15]

**Establishment of Class E Airspace; Sunbury, PA**

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

**ACTION:** Direct final rule, request for comments.

**SUMMARY:** This action establishes Class E Airspace at Sunbury, PA to support a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed for medical flight operations into the Sunbury Community Hospital Airport. This action enhances the safety and management of Instrument Flight Rule (IFR) operations by providing that required controlled airspace to protect for this approach around Sunbury, PA.

**DATES:** Effective 0901 UTC, June 5, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before May 5, 2008.

**ADDRESSES:** Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001; Telephone: 1-800-647-5527; Fax: 202-493-2251. You must identify the Docket Number FAA-2008-0162; Airspace Docket No. 08-AEA-15, at the beginning of your comments. You may also submit and review received comments through the Internet at <http://www.regulations.gov>.

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

**FOR FURTHER INFORMATION CONTACT:**

Daryl Daniels, Airspace Specialist, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5581.

**SUPPLEMENTARY INFORMATION:****The Direct Final Rule Procedure**

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

**Comments Invited**

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed 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 **Federal Register's** Web page at <http://www.gpoaccess.gov/fr/index.html>. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to

modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2008-0162; Airspace Docket No. 08-AEA-15." The postcard will be date stamped and returned to the commenter.

**The Rule**

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Sunbury, PA, providing the controlled airspace required to support the new Copter Area Navigation (RNAV) Global Positioning System (GPS) 306 Point in Space (PinS) approach developed for the Sunbury Community Hospital Airport. In today's environment where speed of treatment for medical injuries is imperative, landing sites have been developed for helicopter medical Lifeguard flights or Lifeflights at the local hospitals. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required for Instrument Flight Rules (IFR) operations and to encompass all Instrument Approach Procedures (IAPs) to the extent practical, therefore, the FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish a 6-mile radius Class E5 airspace area around the Point in Space Missed Approach Point (MAP), WUVPU Waypoint, that serves the Sunbury Community Hospital Airport at Sunbury, PA. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R, signed August 15, 2007, effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

**Agency Findings**

The regulations adopted herein 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 various levels of government. Therefore, it is determined

that this final rule does not have federalism implications under Executive Order 13132.

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, is non-controversial and unlikely to result in adverse or negative comments. 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 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.

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 airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace near the Sunbury Community Hospital Airport in Sunbury, PA.

**Lists of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (Air).

**Adoption of the Amendment:**

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

**PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS**

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, effective September 15, 2007, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

\* \* \* \* \*

**AEA PA E5 Sunbury, PA [New]**

Sunbury Community Hospital Airport  
(Lat. 40°51'42" N., long. 76°46'39" W.)  
WUVPU Waypoint

(Lat. 40°51'24" N., long. 76°45'55" W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6-mile radius of the WUVPU Waypoint serving the Sunbury Community Hospital Airport.

\* \* \* \* \*

Issued in College Park, Georgia, on February 25, 2008.

**Mark D. Ward,**

*Manager, System Support Group, Eastern Service Center.*

[FR Doc. E8-5168 Filed 3-18-08; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2008-0161; Airspace Docket No. 08-AEA-14]

**Establishment of Class E Airspace; Susquehanna, PA**

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

**ACTION:** Direct final rule, request for comments.

**SUMMARY:** This action establishes Class E Airspace at Susquehanna, PA to support a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed for medical flight operations into the Susquehanna High School. This action enhances the safety and management of Instrument Flight Rule (IFR) operations by providing that required controlled airspace to protect for this approach around Susquehanna, PA.

**DATES:** Effective 0901 UTC, June 5, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming

amendments. Comments for inclusion in the Rules Docket must be received on or before May 5, 2008.

**ADDRESSES:** Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building, Ground Floor, Room W12 2 140, 1200 New Jersey, SE., Washington, DC 20590-0001; Telephone: 1-800-647-5527; Fax: 202-493-2251. You must identify the Docket Number FAA-2008-0161; Airspace Docket No. 08-AEA-14, at the beginning of your comments. You may also submit and review received comments through the Internet at <http://www.regulations.gov>.

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

**FOR FURTHER INFORMATION CONTACT:**

Melinda Giddens, System Support Group, Eastern Service Center, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5610.

**SUPPLEMENTARY INFORMATION:****The Direct Final Rule Procedure**

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

**Comments Invited**

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed 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 Federal Register's Web page at <http://www.gpoaccess.gov/fr/index.html>. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2008-0161; Airspace Docket No. 08-AEA-14." The postcard will be date stamped and returned to the commenter.

**The Rule**

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Susquehanna, PA providing the controlled airspace required to support the new Copter Area Navigation (RNAV) Global Positioning System (GPS) 168 Point in Space (PinS) approach developed to facilitate helicopter arrival and departures at Susquehanna High School. In today's environment where speed of treatment for medical injuries is imperative, landing sites have been developed for helicopter medical Lifeguard flights or Lifeflights; this is one of those sites. Controlled airspace,

known as Class E5 airspace, extending upward from 700 feet Above Ground Level (AGL) is required to encompass all Instrument Approach Procedures (IAPs) to the extent practical and for general Instrument Flight Rule (IFR) operations. The FAA is amending part 71 Title 14, Code of Federal Regulations (14 CFR part 71), by establishing a 6-mile radius Class E5 airspace area around the Point in Space Missed Approach Point (MAP), ZERGU Waypoint, that serves the Susquehanna High School in Susquehanna, PA. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R, signed August 15, 2007 effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

#### Agency Findings

The regulations adopted herein 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 various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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, is non-controversial and unlikely to result in adverse or negative comments. 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 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.

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 airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace near the Susquehanna High School in Susquehanna, PA.

#### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

#### Adoption of the Amendment

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

#### PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

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

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

##### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, effective September 15, 2007, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

\* \* \* \* \*

#### AEA PA E5 Susquehanna, PA [New]

Susquehanna High School  
(Lat. 41°56'59" N., long. 75°35'20" W.)  
ZERGU Waypoint  
(Lat. 41°58'11" N., long. 75°35'17" W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6-mile radius of the ZERGU Waypoint serving the Susquehanna High School.

\* \* \* \* \*

Issued in College Park, Georgia, on February 25, 2008.

**Mark D. Ward,**

*Manager, System Support Group, Eastern Service Center.*

[FR Doc. E8–5167 Filed 3–18–08; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2007–0060; Airspace Docket No. 07–ACE–1]

#### Establishment of Low Altitude Area Navigation Routes (T-Routes); St. Louis, MO

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes two low altitude Area Navigation (RNAV) routes, designated T–251 and T–272, in the St. Louis, MO, terminal area. T-routes are low altitude Air Traffic Service routes, based on RNAV, for use by aircraft that have instrument flight rules (IFR)-approved Global Positioning System (GPS)/Global Navigation Satellite System (GNSS) equipment. Minor changes to the coordinates for the RIVRS, IL, Intersection and the Foristell, MO, VORTAC have been made to correct rounding errors. The FAA is taking this action to enhance safety and improve the efficient use of the navigable airspace in the St. Louis, MO, terminal area.

**DATES:** *Effective Date:* 0901 UTC, June 5, 2008. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

#### SUPPLEMENTARY INFORMATION:

##### History

On November 29, 2007, the FAA published in the **Federal Register** a notice of proposed rulemaking (72 FR 67588) to establish two low altitude Area Navigation (RNAV) routes, designated T–251 and T–272, in the St. Louis, MO, terminal area. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received objecting to the proposal.

Low altitude RNAV routes are published in paragraph 6011 of FAA Order 7400.9R signed August 15, 2007 and effective on September 15, 2007, which is incorporated by reference in 14

CFR 71.1. The low altitude RNAV routes listed in this document will be published subsequently in that Order.

**The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 to establish two low altitude RNAV routes, T-251 and T-272, in the St. Louis, MO, terminal area. These T-routes for use by GPS/GNSS-equipped aircraft enhance safety and facilitate the more flexible and efficient use of the navigable airspace for en route IFR operations transitioning through and around the St. Louis Class B airspace area.

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.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes low altitude Area Navigation routes (T-routes) at St. Louis, MO.

**Environmental Review**

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," paragraph 311a, 311b, and 311k. This airspace action is not expected to cause any potentially significant environmental impacts, and no

extraordinary circumstances exist that warrant preparation of an environmental assessment.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Amendment**

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

**PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS**

■ 1. The authority citation for 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 FAA Order 7400.R, Airspace Designations and Reporting Points, signed August 15, 2007 and effective September 15, 2007, is amended as follows:

*Paragraph 6011 United States Area Navigation Routes.*

\* \* \* \* \*

**T-251 Farmington, MO to RIVRS, IL [New]**

Farmington, Mo (Fam) .....	Vortac .....	(Lat. 37°40'24" N., long. 90°14'03" W.)
Foristell, Mo (Ftz) .....	Vortac .....	(Lat. 38°41'40" N., long. 90°58'16" W.)
Rivrs, Il .....	Int .....	(Lat. 39°25'21" N., long. 90°55'57" W.)

\* \* \* \* \*

**T-272 Hallsville, MO to Vandalia, IL [New]**

Hallsville, Mo (Hlv) .....	Vortac .....	(Lat. 39°06'49" N., long. 92°07'42" W.)
Vandalia, Il (Vla) .....	Vortac .....	(Lat. 39°05'37" N., long. 89°09'45" W.)

\* \* \* \* \*

Issued in Washington, DC, on March 12, 2008.

**Ellen Crum,**

*Acting Manager, Airspace and Rules Group.*  
[FR Doc. E8-5370 Filed 3-18-08; 8:45 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 97**

**[Docket No. 30598; Amdt. No. 3261]**

**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 March 19, 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 March 19, 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](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

*Availability—*All SIAPs are available online free of charge. Visit [nfdc.faa.gov](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 March 7, 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
02/07/08	OK	OKLAHOMA CITY	WILL ROGERS WORLD	8/3279	ILS OR LOC/DME RWY 35L, ORIG.
02/22/08	MD	FREDERICK	FREDERICK MUNI	8/5772	VOR-A, AMDT 2A.
02/22/08	MD	FREDERICK	FREDERICK MUNI	8/5773	ILS OR LOC RWY 23, AMDT 5A.
02/22/08	MD	FREDERICK	FREDERICK MUNI	8/5774	RNAV (GPS) Y RWY 23, AMDT 1.
02/22/08	MD	FREDERICK	FREDERICK MUNI	8/5775	RNAV (GPS) Z RWY 23, ORIG-A.
02/22/08	VA	LEESBURG	LEESBURG EXECUTIVE	8/5776	LOC RWY 17, AMDT 2A.
02/22/08	VA	LEESBURG	LEESBURG EXECUTIVE	8/5777	RNAV (GPS) RWY 17, AMDT 1.
02/22/08	VA	LEESBURG	LEESBURG EXECUTIVE	8/5778	VOR OR GPS-A, AMDT 1A.
02/22/08	MD	LEONARDTOWN	ST MARYS COUNTY RGNL	8/5779	RNAV (GPS) RWY 11, ORIG-A.
02/26/08	NJ	NEWARK	NEWARK LIBERTY INTL	8/6057	COPTER ILS/DME RWY 4L, AMDT 1B.
02/26/08	MA	VINEYARD HAVEN	MARTHAS VINEYARD	8/6058	ILS OR LOC RWY 24, AMDT 2.
02/27/08	CT	GROTON/NEW LONDON	GROTON-NEW LONDON	8/6059	ILS OR LOC RWY 5, AMDT 11.
02/27/08	MA	HYANNIS	BARNSTABLE MUNI-BOARDMAN/ POLANDO FIELD.	8/6060	ILS OR LOC RWY 15, AMDT 3.
02/27/08	ME	PORTLAND	PORTLAND INTL JETPORT	8/6061	ILS OR LOC RWY 29, AMDT 2.
02/27/08	VT	BURLINGTON	BURLINGTON INTL	8/6062	ILS OR LOC/DME RWY 15, AMDT 23.
02/27/08	NY	NEW YORK	LA GUARDIA	8/6063	ILS RWY 13, ORIG-B.
02/27/08	NY	ISLIP	LONG ISLAND MAC ARTHUR	8/6064	ILS RWY 24, AMDT 2B.
02/27/08	NY	ISLIP	LONG ISLAND MAC ARTHUR	8/6065	ILS RWY 6, AMDT 22.
02/27/08	VA	LYNCHBURGH	LYNCHBURGH RGNL/PRESTON GLENN FLD.	8/6066	ILS OR LOC RWY 4, AMDT 16.
02/27/08	VA	RICHMOND	RICHMOND INTL	8/6067	ILS RWY 16, AMDT 8.
03/03/08	FL	MIAMI	MIAMI INTL	8/6068	ILS OR LOC RWY 9, AMDT 9A.
02/27/08	NH	PORTSMOUTH	PORTSMOUTH INTL AT PEASE	8/6069	ILS OR LOC RWY 16, AMDT 1.
03/03/08	TN	NASHVILLE	NASHVILLE INTL	8/6070	ILS RWY 20L, AMDT 4A.
03/03/08	TN	NASHVILLE	NASHVILLE INTL	8/6071	ILS RWY 2C, ORIG-C.
03/03/08	FL	GAINESVILLE	GAINESVILLE RGNL	8/6075	ILS OR LOC RWY 29, AMDT 12C.
03/03/08	GA	MACON	MIDDLE GEORGIA REGIONAL	8/6076	ILS OR LOC/DME RWY 5, ORIG-A.
03/03/08	FL	WEST PALM BEACH	PALM BEACH INTL	8/6077	ILS OR LOC RWY 9L, AMDT 24A.
03/03/08	NC	RALEIGH/DURHAM	RALEIGH-DURHAM INTL	8/6078	ILS RWY 5R, AMDT 26B.
03/03/08	NC	WILMINGTON	WILMINGTON INTL	8/6079	ILS OR LOC RWY 24, ORIG.
03/03/08	NC	WILMINGTON	WILMINGTON INTL	8/6080	ILS OR LOC RWY 35, AMDT 20D.
03/03/08	KY	COVINGTON	CINCINNATI/NORTHERN KENTUCKY INTL.	8/6081	ILS OR LOC RWY 9, AMDT 17.
02/27/08	NY	ROCHESTER	GREATER ROCHESTER INTL	8/6082	ILS OR LOC RWY 22, AMDT 6.
03/03/08	NC	GREENSBORO	PIEDMONT TRIAD INTL	8/6084	ILS RWY 5, AMDT 5A.
03/03/08	KY	LOUISVILLE	LOUISVILLE INTL-STANDIFORD FLD	8/6086	ILS RWY 17R, ORIG-A.
03/03/08	NC	ASHEVILLE	ASHEVILLE REGIONAL	8/6087	ILS RWY 34, AMDT 23F.
02/27/08	WV	HUNTINGTON	TRI-STATE/MILTON J. FERGUSON	8/6088	ILS OR LOC RWY 12, AMDT 12.
03/03/08	AL	MOBILE	MOBILE REGIONAL	8/6089	ILS OR LOC RWY 14, AMDT 30.
03/03/08	AL	MOBILE	MOBILE REGIONAL	8/6090	ILS OR LOC RWY 32, AMDT 6A.
03/03/08	AL	MONTGOMERY	MONTGOMERY REGIONAL (DANNELLY FIELD).	8/6091	ILS OR LOC RWY 10, AMDT 23D.
02/27/08	PA	PITTSBURGH	ALLEGHENY COUNTY	8/6092	ILS RWY 28, AMDT 28.
02/27/08	PA	ALLENTOWN	LEHIGH VALLEY INTL	8/6094	ILS OR LOC RWY 6, AMDT 22.
03/03/08	FL	ORLANDO	EXECUTIVE	8/6095	ILS OR LOC RWY 7, AMDT 22A.
03/03/08	MS	MERIDIAN	KEY FIELD	8/6096	ILS OR LOC RWY 1, AMDT 23B.
03/03/08	SC	COLUMBIA	COLUMBIA METROPOLITAN	8/6097	ILS RWY 29, AMDT 3E.
03/03/08	SC	COLUMBIA	COLUMBIA METROPOLITAN	8/6098	ILS RWY 5, AMDT 1A.
02/28/08	MI	PONTIAC	OAKLAND COUNTY INTER- NATIONAL.	8/6420	ILS RWY 9R, AMDT 11B.
02/28/08	IN	EVANSVILLE	EVANSVILLE REGIONAL	8/6421	ILS RWY 22, AMDT 20B.
02/28/08	IN	TERRE HAUTE	TERRE HAUTE INTL-HULMAN FIELD	8/6422	ILS RWY 5, AMDT 22C.
02/28/08	LA	SHREVEPORT	SHREVEPORT REGIONAL	8/6425	ILS RWY 32, AMDT 4A.
02/28/08	LA	LAKE CHARLES	LAKE CHARLES REGIONAL	8/6426	ILS RWY 15, AMDT 20.
02/28/08	NE	GRAND ISLAND	CENTRAL NEBRASKA REGIONAL	8/6428	ILS RWY 35, AMDT 9B.
02/28/08	IN	INDIANAPOLIS	INDIANAPOLIS INTL	8/6430	ILS OR LOC RWY 14, AMDT 5A.

FDC date	State	City	Airport	FDC No.	Subject
02/28/08	LA	BATON ROUGE	BATON ROUGE METRO, RYAN FIELD.	8/6431	ILS RWY 13, AMDT 27A.
02/28/08	KS	TOPEKA	FORBES FIELD	8/6432	ILS OR LOC RWY 31, AMDT 9C.
02/28/08	KS	WICHITA	WICHITA MID-CONTINENT	8/6433	ILS OR LOC RWY 19R, AMDT 5B.
02/28/08	KS	WICHITA	WICHITA MID-CONTINENT	8/6434	ILS RWY 1R, AMDT 17.
02/28/08	NE	LINCOLN	LINCOLN	8/6451	ILS OR LOC RWY 18, AMDT 6D.
02/28/08	NE	LINCOLN	LINCOLN	8/6452	ILS RWY 36, AMDT 11C.
02/28/08	ND	FARGO	HECTOR INTL	8/6453	ILS OR LOC RWY 18, ORIG.
02/28/08	ND	FARGO	HECTOR INTL	8/6454	ILS OR LOC RWY 36, ORIG-B.
02/28/08	WI	APPLETON	OUTAGAMIE COUNTY REGIONAL	8/6455	ILS OR LOC RWY 3, AMDT 17.
02/28/08	TX	EL PASO	EL PASO INTL	8/6459	ILS RWY 22, AMDT 32.
02/28/08	TX	HOUSTON	GEORGE BUSH INTERCONTINENTAL/HOUSTON.	8/6460	ILS OR LOC RWY 33R, AMDT 12.
02/28/08	IA	WATERLOO	WATERLOO REGIONAL	8/6462	ILS OR LOC RWY 12, AMDT 8D.
02/28/08	IA	CEDAR RAPIDS	THE EASTERN IOWA	8/6463	ILS OR LOC RWY 9, AMDT 17.
02/28/08	ND	MINOT	MINOT INTL	8/6464	ILS OR LOC RWY 31, AMDT 10.
03/03/08	IL	PEORIA	GREATER PEORIA REGIONAL	8/6465	ILS OR LOC RWY 31, AMDT 7.
02/28/08	MI	LANSING	CAPITAL CITY	8/6466	ILS RWY 10R, AMDT 9B.
02/28/08	MI	GRAND RAPIDS	GERALD R. FORD INTL	8/6467	ILS RWY 35, ORIG-C.
02/28/08	MI	GRAND RAPIDS	GERALD R. FORD INTL	8/6468	ILS RWY 8R, AMDT 5E.
02/28/08	MI	GRAND RAPIDS	GERALD R. FORD INTL	8/6469	ILS RWY 26L, AMDT 20B.
02/28/08	MI	SAGINAW	MBS INTL	8/6470	ILS RWY 5, AMDT 10.
02/28/08	AR	FORT SMITH	FORT SMITH RGNL	8/6508	ILS OR LOC RWY 25, AMDT 21B.
03/03/08	IL	CHICAGO	CHICAGO-O HARE INTL	8/6509	ILS OR LOC RWY 4R, AMDT 6G.
03/03/08	IL	MOLINE	QUAD CITY INTL	8/6511	ILS OR LOC RWY 27, AMDT 1.
03/03/08	IL	MOLINE	QUAD CITY INTL	8/6512	ILS OR LOC RWY 9, AMDT 30.
03/03/08	IL	CHAMPAIGN/URBANA	UNIVERSITY OF ILLINOIS-WILLARD	8/6513	ILS OR LOC RWY 32R, AMDT 11C.
02/28/08	IA	DUBUQUE	DUBUQUE REGIONAL	8/6514	ILS OR LOC RWY 36, ORIG-C.
02/28/08	TX	CORPUS CHRISTI	CORPUS CHRISTI INTL	8/6515	ILS RWY 13, AMDT 26B.
02/28/08	IA	DES MOINES	DES MOINES INTL	8/6516	ILS RWY 5, ORIG.
02/28/08	TX	WACO	WACO REGIONAL	8/6517	ILS OR LOC RWY 19, AMDT 15B.
02/28/08	LA	MONROE	MONROE REGIONAL	8/6518	ILS OR LOC RWY 4, AMDT 22.
02/28/08	LA	LAFAYETTE	LAFAYETTE REGIONAL	8/6521	ILS OR LOC RWY 22L, AMDT 4E.
03/03/08	IL	BLOOMINGTON/NORMAL	CENTRAL IL REGL ARPT AT BLOOMINGTON-NORMAL.	8/6522	ILS OR LOC RWY 29, AMDT 9.
03/01/08	IN	SOUTH BEND	SOUTH BEND REGIONAL	8/6523	ILS OR LOC RWY 27L, AMDT 35A.
02/28/08	MO	SPRINGFIELD	SPRINGFIELD-BRANSON NATIONAL	8/6526	ILS OR LOC RWY 2, AMDT 17A.
02/28/08	MI	BATTLE CREEK	W K KELLOGG	8/6527	ILS RWY 23, AMDT 17B.
02/28/08	MI	DETROIT	DETROIT METROPOLITAN WAYNE COUNTY.	8/6528	ILS RWY 22R, AMDT 1A.
02/28/08	MI	DETROIT	DETROIT METROPOLITAN WAYNE COUNTY.	8/6529	ILS RWY 27R, AMDT 11.
02/28/08	MI	DETROIT	DETROIT METROPOLITAN WAYNE COUNTY.	8/6530	ILS RWY 27L, AMDT 2.
02/28/08	TX	FORT WORTH	FORT WORTH MEACHAM INTL	8/6544	ILS OR LOC RWY 16, AMDT 8.
02/28/08	TX	DALLAS	DALLAS LOVE FIELD	8/6546	ILS OR LOC RWY 31R, AMDT 4.
02/28/08	TX	SAN ANTONIO	SAN ANTONIO INTL	8/6547	ILS RWY 30L, AMDT 9.
02/28/08	WI	GREEN BAY	AUSTIN STRAUBEL INTERNATIONAL.	8/6552	ILS OR LOC RWY 36, AMDT 8.
02/28/08	WI	GREEN BAY	AUSTIN STRAUBEL INTERNATIONAL.	8/6553	ILS RWY 6, AMDT 21A.
02/29/08	SD	SIOUX FALLS	JOE FOSS FIELD	8/6647	ILS OR LOC RWY 3, AMDT 27C.
02/29/08	TX	ABILENE	ABILENE REGIONAL	8/6648	ILS RWY 35R, AMDT 6D.
03/03/08	IL	BELLEVILLE	SCOTT AFB/MIDAMERICA	8/6715	ILS RWY 14R, ORIG-A.
03/03/08	IL	BELLEVILLE	SCOTT AFB/MIDAMERICA	8/6716	ILS RWY 32R, ORIG-A.
03/01/08	OH	WILMINGTON	AIRBORNE AIRPARK	8/6718	ILS RWY 4R, ORIG-A.
03/01/08	AR	NORTHWEST ARKANSAS REGIONAL.	FAYETTEVILLE/SPRINGDALE/ROGERS.	8/6719	ILS OR LOC/DME RWY 34, AMDT 1.
03/03/08	GA	AUGUSTA	AUGUSTA REGIONAL AT BUSH FIELD.	8/6775	ILS OR LOC RWY 17, AMDT 8.

FDC date	State	City	Airport	FDC No.	Subject
03/03/08	FL	TALLAHASSE	TALLAHASSEE REGIONAL	8/6776	ILS OR LOC/DME RWY 36, AMDT 24.
03/03/08	FL	JACKSONVILLE	JACKSONVILLE INTL	8/6777	ILS RWY 25, AMDT 1.
03/03/08	FL	PENSACOLA RGNL	PENSACOLA	8/6779	ILS RWY 17, AMDT 13E.
03/03/08	ID	IDAHO FALLS	IDAHO FALLS REGIONAL	8/6831	ILS RWY 20, AMDT 11C.
03/03/08	CA	OAKLAND	METROPOLITAN OAKLAND INTL	8/6832	ILS OR LOC/DME RWY 27R, AMDT 35.
03/03/08	CO	WALKER FIELD	GRAND JUNCTION	8/6833	ILS OR LOC RWY 11, AMDT 15.
03/03/08	OR	PENDLETON	EASTERN OREGON REGIONAL AT PENDLETON.	8/6834	ILS OR LOC/DME RWY 25, AMDT 24.
03/03/08	OR	SALEM	MCNARY FLD	8/6835	ILS OR LOC RWY 31, AMDT 28.
03/03/08	GA	AUGUSTA REGIONAL AT BUSH FIELD.	AUGUSTA	8/6839	ILS OR LOC RWY 35, AMDT 27.
03/03/08	IN	INDIANAPOLIS	INDIANAPOLIS INTL	8/6845	ILS OR LOC RWY 23R, AMDT 3.
03/03/08	WA	WALLA WALLA	WALLA WALLA REGIONAL	8/6870	ILS OR LOC RWY 20, AMDT 8A.
03/03/08	WA	SEATTLE	SEATTLE-TACOMA INTL	8/6871	ILS OR LOC/DME RWY 34C, AMDT 1.
03/06/08	AK	BARROW	WILEY POST-WILL ROGERS MEM ...	8/6872	ILS OR LOC/DME RWY 6.
03/03/08	CA	SANTA MARIA	SANTA MARIA PUB/CAPT G ALLAN HANCOCK FLD.	8/6873	ILS RWY 12, AMDT 9D.
03/03/08	WY	CHEYENNE	CHEYENNE RGNL/JERRY OLSON FIELD.	8/6874	ILS OR LOC RWY 27, AMDT 34A.
03/03/08	WA	MOSES LAKE	GRANT COUNTY INTL	8/6875	ILS OR LOC RWY 32R, AMDT 20.
03/03/08	CA	SAN FRANCISCO	SAN FRANCISCO INTERNATIONAL	8/6876	ILS OR LOC RWY 28L, AMDT 22.
03/03/08	CA	SAN FRANCISCO	SAN FRANCISCO INTERNATIONAL	8/6877	ILS OR LOC RWY 34L, AMDT 7.
03/03/08	CA	ONTARIO	ONTARIO INT	8/6878	ILS OR LOC RWY 8L, AMDT 8A.
03/03/08	CA	SANTA ANA	JOHN WAYNE-ORANGE COUNTY ...	8/6879	ILS RWY 19R, AMDT 11A.
03/03/08	CA	SANTA ROSA	CHARLES M. SCHULZ-SONOMA COUNTY.	8/6882	ILS RWY 32, AMDT 16.
03/03/08	CO	DENVER	DENVER INTERNATIONAL	8/6883	ILS OR LOC RWY 25, AMDT 2A.
03/03/08	OR	BILLINGS	BILLINGS LOGAN INTL	8/6884	ILS OR LOC RWY 10L, AMDT 24B.
03/03/08	WA	BELLINGHAM	BELLINGHAM INTL	8/6885	ILS OR LOC RWY 16, AMDT 5.
03/03/08	WA	TRI-CITIES	PASCO	8/6886	ILS OR LOC RWY 21R, AMDT 11A.
03/03/08	ID	POCATELLO	POCATELLO REGIONAL	8/6887	ILS OR LOC RWY 21, AMDT 26A.
03/06/08	AK	DEADHORSE	DEADHORSE	8/6932	ILS OR LOC/DME RWY 5, AMDT 2.
3/062008	AK	FAIRBANKS	FAIRBANKS INTL	8/6935	ILS RWY 19R, AMDT 21A.
03/04/08	IL	CHICAGO	CHICAGO-O HARE INTL	8/7007	ILS OR LOC RWY 22R, AMDT 7C.
03/04/08	IL	DECATUR	DECATUR	8/7008	ILS OR LOC RWY 6, AMDT 13C.
03/04/08	CA	SAN JOSE	NORMAN Y. MINETA SAN JOSE INTERNATIONAL.	8/7024	ILS OR LOC/DME RWY 30L, AMDT 22.
03/04/08	ID	POCATELLO	POCATELLO REGIONAL	8/7029	ILS OR LOC RWY 21, AMDT 26A.
03/04/08	WA	YAKIMA	YAKIMA AIR TERMINAL/MCALLISTER FIELD.	8/7054	ILS RWY 27, AMDT 26C.
03/05/08	CA	FRESNO	FRESNO YOSEMITE INTL	8/7206	RNAV (GPS) RWY 11L, ORIG.
03/05/08	CA	FRESNO	FRESNO YOSEMITE INTL	8/7207	VOR/DME OR TACAN RWY 29R, AMDT 1.
03/05/08	CA	FRESNO	FRESNO YOSEMITE INTL	8/7208	VOR/DME OR TACAN RWY 11L, AMDT 1.
03/05/08	CA	FRESNO	FRESNO YOSEMITE INTL	8/7210	LOC RWY 11L, AMDT 1A.

[FR Doc. E8-5171 Filed 3-18-08; 8:45 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 97**

[Docket No. 30597; Amdt. No. 3260]

**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 March 19, 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 March 19, 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](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 [nfdc.faa.gov](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 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 regulatory 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 SIAPs, 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 procedure 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 March 7, 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 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:

*Effective 10 Apr 2008*

Blytheville, AR, Arkansas Intl, RNAV (GPS) RWY 18, Amdt 1.  
 Blytheville, AR, Arkansas Intl, RNAV (GPS) RWY 36, Amdt 1.  
 Blytheville, AR, Arkansas Intl, Takeoff Minimums and Obstacle DP, Orig.  
 Chicago, IL, Chicago Midway Intl, Takeoff Minimums and Obstacle DP, Amdt 10.  
 Wichita, KS, Wichita Mid-Continent, Takeoff Minimums and Obstacle DP, Orig.  
 Coldwater, MI, Branch County Memorial, RNAV (GPS) RWY 7, Amdt 1.  
 Coldwater, MI, Branch County Memorial, RNAV (GPS) RWY 25, Orig.  
 Coldwater, MI, Branch County Memorial, VOR RWY 7, Amdt 5.  
 Coldwater, MI, Branch County Memorial, VOR/DME RWY 25, Orig.  
 Coldwater, MI, Branch County Memorial, VOR RWY 25, Orig-A, CANCELLED.  
 Coldwater, MI, Branch County Memorial, Takeoff Minimums and Obstacle DP, Amdt 4.  
 Jackson, MN, Jackson Muni, NDB RWY 13, Amdt 10.  
 Higginsville, MO, Higginsville Industrial Muni, RNAV (GPS) RWY 16, Amdt 1.  
 Higginsville, MO, Higginsville Industrial Muni, RNAV (GPS) RWY 34, Amdt 1.  
 Tulsa, OK, Tulsa Intl, VOR OR TACAN RWY 26, Amdt 23.  
 Antigo, WI, Langlade County, RNAV (GPS) RWY 16, Amdt 1.  
 Antigo, WI, Langlade County, RNAV (GPS) RWY 34, Amdt 1.  
 Antigo, WI, Langlade County, NDB RWY 16, Amdt 6.  
 Antigo, WI, Langlade County, Takeoff Minimums and Obstacle DP, Orig.  
 Milton, WV, Ona Airpark, Takeoff Minimums and Obstacle DP, Amdt 2.

*Effective 05 Jun 2008*

Meeker, CO, Meeker, Takeoff Minimums and Obstacle DP, Amdt 1.

Telluride, CO, Telluride Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1.  
 Bartow, FL, Bartow Muni, Takeoff Minimums and Obstacle DP, Orig.  
 Bozeman, MT, Gallatin Field, NDB RWY 12, Amdt 5, CANCELLED.

Redmond, OR, Roberts Field, NDB OR GPS RWY 22, Amdt 1A, CANCELLED.  
 Ephrata, WA, Ephrata Muni, Takeoff Minimums and Obstacle DP, Amdt 2.  
 On February 25, 2008 (73 FR 9935), the FAA published an Amendment in Docket No. 30593, Amdt No. 3256 to Part 97 of the Federal Aviation Regulations under section 97.33, effective April 10, 2008, which is hereby rescinded:

Lanai City, HI, Lanai, ILS OR LOC RWY 3, Orig-A.

On February 25, 2008 (73 FR 9935), the FAA published Amendments in Docket No. 30593, Amdt No. 3256 to Part 97 of the Federal Aviation Regulations under section 97.33, effective April 10, 2008, which are hereby corrected to be effective March 13, 2008:

Bishop, CA, Eastern Sierra Rgnl, RNAV (GPS) Y RWY 12, Orig.

Bishop, CA, Eastern Sierra Rgnl, RNAV (GPS) Z RWY 12, Orig.

On February 25, 2008 (73 FR 9935), the FAA published an Amendment in Docket No. 30593, Amdt No. 3256 to Part 97 of the Federal Aviation Regulations under section 97.33, effective April 10, 2008, which are hereby corrected to be effective July 31, 2008:  
 Woodward, OK, West Woodward, NDB RWY 17, Amdt 3, CANCELLED.

[FR Doc. E8–5172 Filed 3–18–08; 8:45 am]

**BILLING CODE 4910–13–P**

## COMMERCE DEPARTMENT

### Industry and Security Bureau

#### 15 CFR Part 738

#### Commerce Control List Overview and the Country Chart

##### *CFR Correction*

In Title 15 of the Code of Federal Regulations, Parts 300 to 799, revised as of January 1, 2008, in part 738, in Supplement No. 1, on page 244, an “X” is added in the entry for Tonga under the heading CC3.

[FR Doc. 08–55506 Filed 3–18–08; 8:45 am]

**BILLING CODE 1505–01–D**

## PEACE CORPS

#### 22 CFR Part 310

#### Governmentwide Debarment and Suspension (Nonprocurement)

##### *CFR Correction*

In Title 22 of the Code of Federal Regulations, Parts 300 to 1799, revised

as of April 1, 2007, on page 49, the appendix to Part 310 is removed.

[FR Doc. 08–55503 Filed 3–18–08; 8:45 am]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

#### Income Taxes

##### *CFR Correction*

In Title 26 of the Code of Federal Regulations, Part 1 (§ 1.1551 to End), revised as of April 1, 2007, on page 439, in § 1.6654–2, in the undesignated paragraph following paragraph (d)(2)(ii)(B), make the following changes:

1. In the first sentence, after the word “attributable”, insert the words “to months in such partnership taxable”; and

2. At the beginning of the third sentence, remove the words “In addition, a partner shall include in his taxing after December” and add the words “In addition, a partner shall include in his taxable income and, for taxable years beginning after December” in their place.

[FR Doc. 08–55505 Filed 3–18–08; 8:45 am]

**BILLING CODE 1505–01–D**

## ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 52 and 81

[EPA–R09–OAR–2006–0583, FRL–8542–6]

#### Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of California; PM–10; Affirmation of Determination of Attainment for the San Joaquin Valley Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing its proposal to affirm its October 30, 2006, determination that the San Joaquin Valley nonattainment area (SJV or the Valley) in California has attained the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). EPA proposed to affirm the determination of attainment in order to take comment on the exclusion from a

determination of attainment of PM-10 exceedances that were caused by exceptional events. EPA is concurring with the State's request to flag exceedances which occurred in the SJV as being caused by exceptional events, i.e., high winds. EPA is also concurring with the Santa Rosa Rancheria Tribe's request to flag, as due to an exceptional event, PM-10 exceedances which occurred on tribal lands located within the boundaries of the SJV. EPA is further finding that these exceedances at the Santa Rosa Rancheria (SRR) should be excluded from use in determining attainment because the exceedances occurred while the monitor was operating in very close proximity to construction activities and, as such, the monitor was not properly sited during that time for purposes of comparison to the NAAQS. As a result, EPA is affirming its determination that the SJV has attained the PM-10 standard based on EPA's evaluation of quality-assured data through 2006.

In addition, EPA did not receive comments on how the Agency addressed the issues raised in petitions for reconsideration and withdrawal of EPA's 2006 determination of attainment, filed by Earthjustice on behalf of the Sierra Club, Latino Issues Forum and others, and thus we are denying the petitions.

**DATES:** *Effective Date:* This rule is effective on April 18, 2008.

**ADDRESSES:** EPA has established docket number EPA-R09-OAR-2006-0583 for this action. The index to the docket is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Doris Lo, EPA Region IX, (415) 972-3959, [lo.doris@epa.gov](mailto:lo.doris@epa.gov) or Bob Pallarino, EPA Region IX, (415) 947-4128, [pallarino.bob@epa.gov](mailto:pallarino.bob@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

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#### I. Summary of Proposed Action

On August 27, 2007, EPA proposed to affirm its determination that the SJV has attained the 24-hour NAAQS for PM-10. 72 FR 49046.<sup>1</sup> EPA issued this proposed rule in order to take comment on the exclusion of several PM-10 exceedances that were caused by exceptional events, and, in the case of the SRR, improper siting of the monitor for purposes of comparison to the NAAQS. These exceedances are summarized in Table 1 in the proposed rule. *Id.* at 49047. For a more detailed discussion of the related background for the SJV and of the proposal, please refer to the proposed rule.

#### II. Public Comments and EPA Responses

EPA received three comment letters supporting the proposal to affirm the attainment determination. These comments were submitted by the California Cotton Ginners and Growers Association, the Tulare County Farm Bureau and the Western United Dairymen. In general, these commenters support the cases that are made for the exceptional event exceedances and discuss the many control measures and efforts that have been made to achieve attainment. The commenters also point to the SJV's continued efforts to achieve further air quality improvements under the PM-2.5 plan development. One commenter provides information to show that no cotton harvesting was occurring in September 2006. Finally, the commenters question the representativeness of the 2000 comment letters received by EPA in response to our July 19, 2006, attainment determination proposal (71 FR 40952) since the majority of the commenters appear to reside outside the SJV.

EPA received three adverse comment letters. Two were from private citizens from the state of Tennessee and one was from Earthjustice, representing Sierra Club, Latino Issues Forum, Medical Advocates for Healthy Air, the Steven and Michele Kirsch Foundation, Tri-Valley CAREs, Concerned Residents of Lockwood Valley, Fresno Coalition Against the Misuse of Pesticides,

California Communities Against Toxics, Fresno Metro Ministry, Coalition for Clean Air, Center for Biological Diversity, and the Association of Irrigated Residents.<sup>2</sup> The majority of the comments discussed below are raised by Earthjustice.

EPA notes that although it received numerous specific comments on the September 22, 2006, October 25, 2006, and the SRR exceedances, no adverse comments are directed specifically at EPA's finding that exceedances monitored on December 8, 2006, at Corcoran and Bakersfield-Golden State Highway (Bakersfield) were caused by an exceptional high wind event. Thus, EPA does not address any substantive issues regarding these exceedances in its responses to comments.

In subsection A. below we respond to the extensive comments raised by Earthjustice. In subsection B. we respond to comments raised by other parties.

#### A. Earthjustice Comments

##### 1. Overview Comments

*Comment 1:* Earthjustice explains that its comments analyze EPA's proposed affirmation rule under the new Exceptional Events Rule (EER). 72 FR 13560 (March 22, 2007). In this regard, Earthjustice states that, "assuming EPA has the discretion to apply the new rule," EPA's decision to do so is completely arbitrary given that the San Joaquin Valley Air Pollution Control District (District or SJVAPCD) prepared its analyses under EPA's prior policies and did not invoke the new regulatory requirements.

*Response 1:* EPA addressed the issue of the applicability of the new EER to the events at issue in this rulemaking in its proposed affirmation rule. EPA explained that the statutory provision upon which the new rule is based, CAA section 319, as amended by section 6013 of the Safe Accountable Flexible Efficient-Transportation Equity Act: A Legacy for Users (SAFE-TEA-LU) of 2005, provides that the Agency's pre-existing guidance documents continue to apply until the effective date of the rule. CAA section 319(b)(4). As mandated by section 319, EPA finalized and published the final EER in March 2007. This rule became effective on May 21, 2007, requiring EPA to follow the rule in making exceptional events determinations after that date.

<sup>1</sup> On October 17, 2006, EPA finalized its determination that the SJV attained the NAAQS for PM-10 and on October 30, 2006, EPA published this determination in the **Federal Register**. 71 FR 63642.

<sup>2</sup> The proposal provided a 30 day comment period ending on September 26, 2007. EPA received a request for an additional 30 days to comment and granted that request extending the comment period until October 26, 2007. 72 FR 53743 (September 20, 2007).

Therefore, in making and publishing its determination after the effective date of the EER, EPA followed its procedures and criteria in evaluating the State's exceptional events demonstrations. 72 FR at 49048.

Although EPA followed the EER in this particular instance, and believes it should be followed in most cases, the Agency recognized that there might be certain instances where EPA had not yet made a decision on a state's already completed and submitted demonstration of an exceptional event and these demonstrations were thus caught midstream. In those instances, EPA concluded that a state could choose for a limited period to comply with either the provisions of the rule or those of the Agency's existing policies and, that if asked, EPA would act under the policy on a grandfathering rationale for a short time period. EPA continues to believe that this transitional policy was reasonable in the absence of an explicit statutory directive addressing that situation. Here, the State did not indicate that its submissions should be evaluated under the existing policies. Therefore, EPA applied the rule, which was already effective, when it made its determinations on the exceptional events in the SJV.

*Comment 2:* Earthjustice, citing case law, states that EPA must provide a rational basis to support its conclusions regarding the exclusion of monitoring data showing NAAQS exceedances and that its decisions must have a "substantial basis in facts." Earthjustice cites 40 CFR 50.14(c)(3)(iii) and CAA section 319(b)(3)(B), respectively, for the propositions that for EPA's determination here the District must provide actual evidence to support its claims and that the occurrence of an exceptional event must be "demonstrated by reliable, accurate data." Earthjustice claims that even under a weight of evidence standard there must be evidence supporting the specific findings and that reliance on a plausible story is not enough.

*Response 2:* EPA agrees with Earthjustice's characterization of the general demonstration, as stated in our summary of its comment above, that must be made in order to exclude data showing NAAQS exceedances. EPA believes that it has, both in the proposed affirmation rule and this final rule, provided a rational basis supported by reliable, accurate data for its conclusions that the September, October and December 2006 PM-10 exceedances in the SJV were caused by exceptional events. See 72 FR at 59050-49063 and our responses to comments below.

*Comment 3:* Regarding its contention concerning the lack of reliable and accurate data, Earthjustice cites EPA's statements in the proposed affirmation rule at 72 FR at 49053 that activity levels on September 22, 2006 were "constant" and that reasonable controls were in place to control particulate matter while providing only general or anecdotal evidence in the form of non-specific District inspector observations and "discussions with representatives of agricultural and industrial operations." Citing CAA section 319(b)(3)(B), Earthjustice claims that this does not satisfy the statutory requirement that "exceptionality" be based on reliable, accurate data.

*Response 3:* In the section of the proposed affirmation rule cited by Earthjustice we discussed our conclusion that the State's documentation demonstrates that the exceedances at Corcoran, Bakersfield and Oildale on September 22, 2006 would not have occurred but for the wind event on this day. EPA based this conclusion on the totality of the evidence presented by the State which included, but was not limited to, the information on activity levels and control measures singled out by Earthjustice. For the additional factors EPA considered in reaching its conclusion, see section V.A.2.d. in our proposed affirmation rule (72 FR at 49053) and our responses to comments below.

*Comment 4:* Earthjustice claims that EPA offers no evidence to support the construction claims regarding the SRR. It asserts that EPA cannot say what if anything was occurring on the days in question, where it was occurring, or why it could not be reasonably controlled. Earthjustice also maintains that EPA cannot show that construction activity at the SRR is related to the measured exceedances and, as a result, EPA cannot show the required "clear causal relationship." Further, EPA cannot say when these events occurred and why these allegedly ongoing activities only resulted in exceedances during the same period that monitors in other areas of the SJV started monitoring exceedances. Earthjustice argues that EPA cannot make the required "but for" showing at the SRR because EPA cannot show that there was an event in the first place. Earthjustice further contends that EPA did not provide adequate evidence, including written accounts, that the construction activity took place on the days the exceedances occurred. Earthjustice claims that "no one was able to produce any written account, in the form of contractor records, work orders, schedules, or anything else that

would confirm that construction activity did, in fact, take place on the days in question." Finally, Earthjustice states that "mere post hoc speculation and anecdotal accounts of what probably happened does not establish a basis for waiving these data."

*Response 4:* First, Earthjustice notes that EPA proposed to exclude the SRR violations on two grounds: (1) The monitor was not properly sited, and (2) the nearby construction activity was an exceptional event. Earthjustice concedes that "[b]oth of these conclusions seem reasonable if the activity can be shown to have occurred on the days the monitor recorded violations." Earthjustice Comments (EC) at 23.<sup>3</sup> Earthjustice contends, however, that EPA did not provide "any such evidence."

Contrary to Earthjustice's assertion, EPA in its proposed affirmation rule provided a demonstration that construction activity, involving the grading and paving of parking lots, took place in close proximity to the SRR monitor during the period the exceedances at the SRR monitor occurred, and that this activity caused the exceedances. EPA in its proposal set forth information derived from eyewitness accounts, meteorological data, contemporaneous tracking reports, and an account of an EPA expert's own visit to the site. 72 FR at 49060-49063. EPA did include written documentation of the events at issue. This written documentation included sample tracking reports that accompanied the filters from the monitors and described the conditions at the time of the monitoring, and an EPA expert's report of his site visit and interviews of witnesses to the events. There is no requirement in the EER that documentation of events include specific types of written documentation, such as those cited by Earthjustice.<sup>4</sup> Nor

<sup>3</sup> Earthjustice concedes, moreover, that under the EER the requirements for tribal governments appear to be "much more flexible \* \* \*" and "[i]t would not take much to make these demonstrations." EC at 22.

<sup>4</sup> Note that we are not specifying what will be required as a minimum level of documentation in all cases because facts and circumstances will vary significantly based on, among other things, geography, meteorology and the relative complexity of source contributions to measured concentrations in any particular location. 72 FR at 13573. A particular instance may require more or less documentation, depending on the particular facts or circumstances. The simplest demonstrations could consist of newspaper accounts or satellite images to demonstrate that an event occurred together with daily and seasonal average ambient concentrations to demonstrate an unusually high ambient concentration level, which is clearly indicative of an exceptional impact. Such is the case with events such as volcanic eruptions and nearby forest fires.

is there any requirement for specific types of documentation for EPA to demonstrate its alternative ground for excluding the data under principles established in 40 CFR part 58, appendix E, that during the period of the nearby construction the monitor was not properly sited for purposes of collecting data for comparison to the NAAQS. 72 FR at 49060–49061.

EPA's findings were supported by information from interviews with three individuals with firsthand knowledge of the activities that took place near the monitor, as well as by contemporaneous documentation from filter sample tracking reports. These individuals were the SRR environmental technician responsible for overseeing the operation of the monitor, the SRR construction superintendent, and a private environmental consultant working for the Santa Rosa Rancheria EPA (SRREPA). The construction superintendent and the consultant concurred with the SRR environmental technician's recollection that grading and paving of the parking lots took place in September and October 2006, and the environmental technician concluded that these activities caused the exceedances on September 14 and 20, 2006 and later in October, when the initial paving had to be removed and the parking lot repaved.

EPA's July 18, 2007, Memorandum, "On-Site Visit to Santa Rosa Rancheria," from Bob Pallarino, EPA, to Sean Hogan, EPA (Site Visit Memorandum), contains the following account:

The construction activity entailed grading and leveling the ground, application of sub-base material, and paving with asphalt. The parking lot was first paved in September and it is this project which [the SRR environmental technician] believed caused the exceedances on September 14 and 20. \* \* \* the first paving \* \* \* had to be removed and the parking lot repaved.<sup>5</sup> It is this second part of the paving project which [the environmental technician] believed caused the October exceedance. \* \* \* [T]he SRR environmental consultant stated that he had witnessed these construction activities during September and October, 2006. \* \* \* The construction supervisor concurred with [the environmental technician's] recollection of the construction activity \* \* \*.

Site Visit Memorandum at 2–3.

The information about the timing of the construction activity, from witnesses with both firsthand and expert

knowledge, is confirmed by documentation from the California Air Resources Board (CARB) sample tracking reports that the SRREPA environmental technician filled out at the time the samples were obtained, and forwarded to CARB along with the monitored samples. The SRREPA technician observed the "sampling conditions" at the time the monitor was operating and noted on the sample tracking forms, which are completed with each sampling run, that there was "construction nearby." This was signified by the letter "J". Earthjustice ignores this corroborating documentation, cited by EPA in its proposal, and included in the rulemaking docket. 72 FR at 49062. It is significant that these sample tracking forms were prepared before the filters from the monitors were sent to and analyzed by the lab. Thus at the time the technician noted that nearby construction was occurring during the monitoring, he could not have known whether or not an exceedance was recorded that day.

EPA's proposal also showed that the meteorological data lend support to the environmental technician's account of the events of the days in question. The winds on the three days that exceeded the NAAQS were predominantly from the northwest, north and northeast. This would indicate that any dust-producing activity north and northeast of the monitor would result in high concentrations of geologic dust being blown towards the monitor. Site Visit Memorandum at 2.

Further corroboration of the impact of the construction on the monitor came from EPA's assessment of the proximity of the monitoring site to the nearby parking lots. EPA's onsite inspection ascertained that one of the parking lots was within 25 feet of the monitor, and the other was within 100 feet. 72 FR at 49062.

Reinforcing EPA's conclusion that construction activities near the monitor caused the exceedances was the fact, pointed to in the proposed rule, that after completion of the paving projects, average PM-10 concentrations dropped by more than 50 percent. *Id.*

Since the proposal, EPA has obtained further documentation that the exceedances occurred during the period of construction activity in close proximity to the monitor. The Facility Director of the Tribe's hotel and casino has provided EPA with a letter stating that asphalt work on the parking lots close to the monitoring station was completed between August 15 and November 4, 2006. Enclosed with the letter was a billing statement from the

Tribe's general contractor for the period up to August 15, 2006. The statement shows that work on the parking lots close to the monitor remained to be completed after August 15. The letter from the Facility Director states that at the time of the monitored exceedances, there were earthmoving activities nearby and paving activities near the site of the monitor "in a large area for parking for Tribal Administrators and for our customers."

Thus, in addition to the documentation available at the time of the proposal, EPA has provided a letter from the Tribe and a billing statement from the general contractor that support the conclusion that paving work was occurring at the time of the exceedances.

Earthjustice argues that because exceedances did not occur on other days when construction activities were occurring, this indicates that construction did not cause the exceedances in September and October 2006. But this argument is misleading. Generally, varying degrees, types and locations of the construction activity, and changing meteorological conditions lead to varying impacts on the monitor. The fact that construction activities did not cause exceedances on some days does not mean that they were not responsible for the exceedances that occurred on other days. In addition, although Earthjustice claims that two days of violations at the SRR "correlate well with violations seen in other parts of the Valley," no other violations were monitored in the Valley on September 14 and 20 and October 26, 2006.

Earthjustice also claims that EPA "still needs to make the other required showings" for exceptional events, "including that these sources were reasonably controlled." EC at 22. EPA made these showings in its proposal, and Earthjustice did not raise any specific grounds to challenge them. See 72 FR at 49061–49062. In its proposal EPA, after discussing whether the construction activity's impact on the monitor was reasonably controllable, concluded that "under the particular set of circumstances presented here, for the purposes of evaluating the 'reasonably controllable' criterion of the EER, we deem this criterion to have been satisfied." EPA found that even if control measures had been employed, we cannot be certain they would have prevented exceedances at the monitor, and that EPA's monitor siting rules provide that the monitor should not be operated at such a time and place for the purposes for determining attainment. 72 FR at 49062. We note that the criteria under the EER do not apply for the

*Id.* More documentation would be needed to support situations that are not as straightforward.

<sup>5</sup> The Site Memorandum stated that the first paving project "did not pass inspection and the paving had to be removed and the parking lot repaved." The Facility Manager in his letter of December 2007 referred to the first paving of the parking lot as "temporary."

purposes of our alternative ground, that the monitor was not properly sited. See 72 FR at 49060–49061. Thus EPA is finalizing its determination that there are two independent bases for determining that the exceedances recorded at the SRR in September and October, 2006 should be excluded from consideration in determining whether the SJV has attained the PM–10 standard: (1) The monitor was not properly sited, under the principles established in part 58, appendix E, and (2) the construction activity constitutes an exceptional event under EPA's EER.

*Comment 5:* Earthjustice states that EPA cannot point to any statutory or regulatory authority that allows it to treat wind-entrained particulate matter pollution from land that has been disturbed by human activities, i.e., agriculture or construction as “natural.” Earthjustice observes that, while EPA cites preamble language in the EER regarding high winds, this language was never codified even though the final rule does contain provisions relating to the treatment of other anthropogenic sources such as fireworks and prescribed fire. Earthjustice suggests that even though a natural event is defined in 40 CFR 50.1(k) as “an event in which human activity plays little or no direct causal role,” EPA attempts to define an event in which wind-entrained dust from agricultural and industrial operations as natural. Earthjustice cites legislative history of the 1990 Clean Air Act Amendments (CAAA) to support its contention that this result defies logic and flies in the face of Congressional intent as evidenced by Congress's refusal to excuse dust storms from Mono and Owens lakebeds because they were human-caused. Earthjustice claims that if the measures in place are not enough to prevent exceedances due to wind-entrained dust, then Congress intended that additional controls be required.

*Response 5:* Section 319, as amended, defines an exceptional event as an event that affects air quality, is not reasonably preventable or controllable, is a natural event or is an event caused by human activity that is unlikely to recur at a particular location. Under this definition, for an event to qualify as an exceptional event, both natural events and events caused by human activity must be events that are not reasonably preventable or controllable. Therefore, Earthjustice's conclusion that designating an event “natural” would “allow air agencies to avoid controls” is erroneous. An agency flagging data as due to an exceptional event, including a high wind event, will be required to show that the event was not reasonably

preventable or controllable. In the preamble to the final rule, EPA explained how it would evaluate whether an agency had been able to successfully demonstrate that an event met this criteria by taking into account the controls in place, the wind speed, and other factors. 72 FR at 13565–13566, 13576–13577. As explained elsewhere in our responses to comments below, in this particular instance the District's Regulation VIII (general fugitive dust rules) and Rule 4550 which limits fugitive dust emissions specifically from agricultural operations through Conservation Management Practices (CMPs) were in place. In addition, the District has adopted and is implementing EPA-approved best available control measures (BACM) for all significant sources of PM–10 in the SJV.

Earthjustice incorrectly states that if an event is classified as a natural event, a state would be able to “avoid controls.” In the proposed EER, EPA explained that it was proposing to treat high wind events that result in exceedances or violations as a natural event provided a clear causal relationship between the wind event and the measured exceedance was established and contributing anthropogenic activities were “reasonably well-controlled.”<sup>6</sup> In the final rule, after considering the comments on high wind events including on the terminology and the definition, EPA adopted an approach that considers high winds a natural event if contributing anthropogenic activities are controlled through “reasonable and appropriate measures.” 72 FR at 13566. To qualify as a natural event (a subset of exceptional events under the rule) a state must demonstrate, among others, that dust from contributing anthropogenic sources was “reasonably well-controlled at the time the event occurred.” 72 FR at 13576. The EER, therefore, has already defined what constitutes a high wind event through appropriate notice and comment rulemaking. Thus, the question of whether a high wind that causes exceedances or violations due to entrainment of dust from anthropogenic sources can be defined as a natural event is not an issue that is open for comment in this rulemaking. In this

case, the Agency has only asked for comments on whether the particular high wind event met the criteria and procedures established under the rule, e.g., establishing a causal connection, reasonable controls on anthropogenic sources, wind speed and direction, etc., and not on whether these criteria are appropriate.

Earthjustice cites to the legislative history of the 1990 CAAA, for the discussion on Owens and Mono lakebeds where Congress indicated that diversion of water from these lakes created an anthropogenic source of dust. From this Earthjustice contrives an overly-broad conclusion that any “dust from lands disturbed by human activity” must be treated as an anthropogenic rather than a natural event. Under this proposition gale-force winds, for example of 100 mph, in an urban area could not be treated as a natural event because human activity would be a contributing factor.

As a matter of record, the legislative history also demonstrates that EPA concurred with Congress that the diversion of water created an anthropogenic source of dust in the Owens and Mono lakebeds. Pub. L. 101–549, CAA Amendments of 1990 House Report No. 101–290(l), May 17, 1990. EPA, however, does not interpret the statutory language in a manner that considers any anthropogenic contribution to a natural event as transforming it into an anthropogenic event. In the Mono and Owens lakebed situation, EPA believed that the anthropogenic contribution was such that dust blown from those areas should be treated as anthropogenic rather than natural events. In other high winds instances, however, where there were anthropogenic contributions with adequate controls in place, EPA treated the high wind events as natural events.

In its Natural Events Policy, EPA stated that it would treat a high wind event as a natural event even if the dust originated from anthropogenic sources, provided best available control measures were in place. Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation to Regional Air Directors, “Areas Affected by PM–10 Natural Events,” May 30, 1996 (NEP) at 7. Congress was cognizant of EPA's existing policies on natural and anthropogenic events and how EPA interpreted and implemented these policies. In amending section 319, Congress specifically required EPA to continue to apply its NEP during the exceptional events rulemaking process, an unlikely action if it disagreed with EPA's interpretation of natural events. Section 319 (b)(4)(B). Under the NEP,

<sup>6</sup> EPA made this statement in the context of PM–2.5 because at the time, the Agency was considering adopting the PM10–2.5 standard and noted that states would be expected to have appropriate controls for contributing anthropogenic emissions under the definition of the proposed PM10–2.5 indicator. The Agency, eventually, did not finalize the PM10–2.5 indicator and instead retained the 24-hour PM–10 standard.

EPA treated high wind events as natural events and reasonably well-controlled if contributing anthropogenic sources had BACM in place. NEP at 7. During the exceptional events rulemaking, EPA sought comment on a number of options for mitigation requirements, including whether to continue to require BACM for such events. After considering all comments on the proposed options, EPA explained in the preamble to the final rule that it would continue to require that anthropogenic sources contributing to high wind events be well-controlled through reasonable and appropriate measures. 72 FR at 13566. EPA, therefore, believes its interpretation of a high wind event as set forth in the preamble to the EER conforms to congressional intent and the requirements of section 319.

Also, in response to Earthjustice's assertion that EPA cites no statutory or regulatory authority that permits us to treat high wind as a natural event, as discussed above, Congress was aware of EPA's interpretation of natural events as evidenced by the statutory reference to the NEP (Section 319(b)(4)(B)) and it is self-evident that volcanic, seismic, high wind, and other similar events are natural events under section 50.1(k) of the EER. Therefore, EPA did not find it necessary to specifically list these events as exceptional events in the final rule. When asking for comments in the proposed rule, we noted that some of these exceptional events (including volcanic, seismic and high wind events) have "unusual characteristics" and needed a fuller discussion in the preamble regarding how states may meet the requirements established in the EER. 71 FR at 12605. EPA believed that this explanation in the preamble was sufficient to assist states in developing their demonstration requirements and did not make it necessary to specifically list these events as exceptional events in the final rule.

*Comment 6:* Earthjustice claims that even if EPA had codified the preamble language allowing dust from lands disturbed by human activity to be excused, EPA offers no evidence to show whether the sources that allegedly were responsible for the dust were reasonably well controlled at the time the event occurred. Earthjustice states that EPA must show that the sources were actually controlled, not just that they were subject to controls. Earthjustice believes that reasonable controls would have prevented dust from being entrained by the stated wind speeds and that if the winds at issue picked up the large amounts of particulate concentrations claimed, then by definition, these sources were not

reasonably controlled. With respect to September 22, 2006, Earthjustice asserts that the fact that the District claims that the dust came from anthropogenic sources being scoured by winds under 25 mph for a short period of time means that reasonable measures could not have been in place. Therefore, Earthjustice claims that either the dust was not caused by wind or the sources did not have reasonable controls that would have prevented the event. With respect to October 25, 2006, Earthjustice asserts that none of the 90 inspections conducted by the District was in or around the Lemoore/Corcoran area where the dust allegedly originated.

*Response 6:* With respect to reasonable controls, in the preamble to the EER we explained that "ambient particulate matter concentrations due to dust being raised by unusually high winds will be treated as due to uncontrollable natural events where \* \* \* the dust originated from anthropogenic sources within the State, that are determined to have been reasonably well-controlled at the time that the event occurred, or from anthropogenic sources outside the State.\* \* \* In cases where anthropogenic sources are determined to have contributed to exceedances or violations due to high wind events at air quality monitoring sites, per our decision in this rulemaking concerning the action that States must take to mitigate the impact of exceptional events on public health \* \* \* States must take reasonable and appropriate measures to mitigate the impact associated with the event on public health." 72 FR at 13576-13577.

As we observed in our proposed affirmation rule, Regulation VIII and District Rule 4550 were in place at the time of the events in question. Furthermore, we noted that EPA has approved the District's BACM demonstration for all significant sources of PM-10 in the SJV as meeting CAA section 189(b)(1)(B). See 72 at 49053 and 49057. Moreover, the District conducted numerous inspections of PM-10 sources in the SJV on September 22 and October 25, 2006. Thus controls beyond those deemed "reasonable" were being implemented and enforced in the SJV on those dates.

Contrary to Earthjustice's apparent belief, there is nothing in either the preamble to the EER or the rule itself that requires EPA to show that all sources were "actually controlled" at the time of the events. Moreover, there are thousands of fugitive dust sources in

the SJV,<sup>7</sup> an area of nearly 25,000 square miles which constitutes approximately 16 percent of the geographic area of California. 2003 PM10 Plan for the SJV at 2-1. As a result it would be a practical impossibility for the District, a publicly-funded agency, to determine whether every source was in compliance with its regulations on any given day, the standard Earthjustice evidently espouses. The fact that the District conducted 90 inspections on October 25, 2006 and none was in Lemoore or Corcoran simply illustrates the magnitude of the task Earthjustice suggests should be mandatory for the exclusion of data from an exceptional event.

Finally, Earthjustice presents no support for its contention that controls on anthropogenic sources beyond those already in place would have prevented dust from being entrained by the stated wind speeds. Earthjustice simply asserts (see comment 7) without evidence that there are numerous measures available that could have prevented or reduced entrainment of particulate matter. As we have shown, reasonable controls were in place on the days in question and the exceedances occurred notwithstanding those controls. See also our response to comment 7 below.

*Comment 7:* Earthjustice further asserts that there are numerous measures available that could have reduced or prevented the entrainment of particulate matter by winds above the entrainment threshold of 18 mph, many of which are included but not required by the District's agricultural CMP rule and Regulation VIII. Earthjustice provides a number of examples that it claims are effective in reducing or eliminating erosion and transport of soil particles during high wind events. Earthjustice concludes that even assuming 100 percent compliance with the agricultural CMP rule and Regulation VIII, "not one of these measures is required to be in place by these so-called BACM level controls." Thus Earthjustice alleges that sources could be 100 percent in compliance with District rules and still not be doing anything to prevent wind-generated entrainment of particulates.

*Response 7:* As we stated in the preamble to the EER, where wind speed results in particulate matter exceedances, a clear causal relationship must be demonstrated between the exceedances measured at the air quality monitoring site and the high wind event

<sup>7</sup> For example, the District has approved over 6,000 applications under Rule 4550. "Conservation Management Practices Program Report for 2005." January 19, 2006, SJVAPCD at 5.

in question in order for data affected by these events to be excluded under the weight of evidence approach. 72 FR at 13566, footnote 11. We further stated that "EPA will consider in the weight of evidence analysis winds that produce emissions contributed to by anthropogenic activities that have been controlled to the extent possible through use of all reasonably available reasonable and appropriate measures." *Id.*

EPA approved Regulation VIII as BACM on February 17, 2006 (71 FR 8461) and Rule 4550 as BACM on February 14, 2006 (71 FR 7683). The control measures in these rules are designed to reduce fugitive dust emissions. A number of the measures that sources can choose in compliance with the rules are also specifically designed to reduce or prevent entrainment of particulate matter during wind events. See, for example, in the "List of Conservation Management Practices," May 20, 2004, for Rule 4550 in the "Cropland—Other" category the following measures: alternate till, bulk materials control, cover crops, permanent crops, surface roughening, wind barrier.

EPA determines what controls constitute "all reasonably available reasonable and appropriate measures" on a case by case basis. With regard to the SJV, EPA has agreed with the District's finding that "\* \* \* unlike other arid western PM-10 serious nonattainment areas, the SJV does not have a regular and repeated windblown dust problem." 71 FR at 7686. In addition, in responding to a comment on its proposed approval of the 2003 PM-10 serious area plan for the SJV, EPA observed that "[o]nly five PM-10 exceedance days spanning a 13-year period were identified as associated with strong winds." 69 FR 30006, 30033 (May 26, 2004). Under these circumstances, EPA believes that it was not necessary for the District's rules to mandate the selection of windblown dust measures and that the BACM controls being implemented in the SJV constitute "all reasonably available reasonable and appropriate measures."

*Comment 8:* Earthjustice argues that the events at issue cannot be claimed as exceptional because the District did not make its demonstration according to the procedures outlined in the EER. Specifically, Earthjustice states that while EPA relies on demonstrations prepared by the District in April and May 2007, the only opportunity for public comment provided by the District was on the February 2007 version of the analysis. Moreover, Earthjustice states, only 15 calendar

days were provided for comment on the February version and the preamble to EPA's EER provides for a 30-day comment period. Earthjustice states that to the extent that EPA believes preamble statements to be enforceable, the event cannot be deemed exceptional because the District did not meet the procedural requirements in the EER. Earthjustice also asserts that since the District's rationale for flagging the September 22, 2006 exceedances changed so markedly as to make comments on the first draft irrelevant, the documentation should have been put out for a second round of public comment. Earthjustice further states that insofar as the EER applies to EPA's affirmation action, the District also failed to meet its procedural requirements that documentation justifying exclusion must be submitted no later than 12 months before a regulatory decision is made. Here, Earthjustice asserts, EPA based its regulatory decision to find the SJV in attainment on the exclusion of data before any demonstration supporting the exclusion was drafted by the State.

*Response 8:* The public did have an adequate opportunity for review and comment on the State's documentation of the exceptional events. Earthjustice complains that the State did not provide a 30-day comment period on the documentation of exceptional events, and further contends that there was no opportunity to review and comment after the District revised this documentation. EPA's EER provides that a state that has flagged data as being due to an exceptional event and that is requesting exclusion of the data shall "after notice and opportunity for public comment, submit a demonstration" to EPA, along with any public comments it received. 40 CFR 50.14(c)(3)(i).

With respect to Earthjustice's first contention regarding the 30-day comment period, the EER contains no such requirement. The language cited by Earthjustice that purports to characterize 30 days as a requirement is found in the preamble only, 72 FR 13574, and does not reflect the language of the rule. Thus, while indicative of a period that EPA would deem reasonable, the preamble language regarding a 30-day comment period does not serve to make such a period mandatory. Nor does it mean that a shorter comment period should be deemed unreasonable. Earthjustice concedes that in February 2007 the District provided a two week comment period for its initial documentation of the September, October and December 2006 exceedances. The District received no comments or requests for extension

of the comment period.<sup>8</sup> On March 21, 2007, Earthjustice filed with EPA a petition to withdraw EPA's October 2006 attainment determination, which cited to and discussed the District's initial documentation. This petition, however, was directed to EPA and not to the District or the State. Earthjustice, having failed to request an extension of the comment period and to address comments to the District and the State, cannot now be heard to complain about the length of the initial comment period.

Subsequently, the District posted on the "Public Notices" section of its Web site revised versions of the documentation for exceedances on these three days at issue, and thus the revised documentation was also available for public review and comment. These revised versions modified and clarified the technical analysis of the high wind events. For the September 22 event, the District posted on its Web site a revised set of documentation, dated April 20, and CARB subsequently submitted it to EPA. The District submitted an Addendum to CARB on May 23, 2007, which it again posted on its Web site, and CARB later submitted it to EPA. 72 FR at 49050. For the October 25 event, the District posted on its Web site a revised set of documentation, dated April 23, and CARB again subsequently submitted it to EPA. 72 FR at 49054. For the December 8, 2006 event, which Earthjustice does not contest is an exceptional event, the District revised its documentation and submitted it to CARB on May 23, 2007, and posted it on its Web site. At CARB's request the District made further revisions which it submitted to CARB on June 6, 2007, and posted on its Web site. 72 FR at 49057. The State later submitted it to EPA. *Id.*

Thus each set of revised documentation was available to the public in the "Public Notices" section of the District's Web site for months prior to EPA's August 15, 2007 issuance of its proposed rule, and EPA has found no indication that comments were submitted or inquiries received about the revised documentation. EPA therefore believes that there was adequate opportunity for the public to comment on the revised demonstrations made by the District and CARB. The fact remains that no comments were submitted to the District or CARB on the original versions of the documentation, nor does it appear that there were any requests for an extension of the comment period that closed on March 5,

<sup>8</sup> Contrary to Earthjustice's contention (EC at 3, footnote 3), EPA in its proposal did nothing to "hide" the date that the documentation became available. EPA simply stated that the documentation became available in February.

2007. Similarly, EPA knows of no comments or requests regarding the comment period that were submitted on the subsequent versions of the documentation that were posted on the District's Web site.

Earthjustice further contends that EPA has failed to meet the requirement that a demonstration be submitted to EPA no later than 12 months "prior to the date" a regulatory decision "must" be made by EPA. EER, section 50.14(c)(3)(i). We note initially that this section of the EER is designed for EPA's benefit, to furnish adequate time to review documentation, and it is thus for EPA to determine whether we require the full time allotted by the rule.

Furthermore, in the preamble we "recognize that special circumstances could dictate more expedited data delivery, flagging, and minimal demonstrations \* \* \*." 72 FR at 13571. In this case, where EPA is acting to affirm a prior attainment determination that recognized the need for additional evaluation of preliminary data, EPA finds there is value in proceeding expeditiously to obtain and review the State's documentation of those data and surrounding exceptional events. Moreover, this action to affirm EPA's attainment determination is not a regulatory decision that "must" be made by a certain date, and therefore the 12-month requirement is not applicable. Finally we note that the bulk of the revised documentation for the September and October 2006 exceedances at issue here was submitted to EPA in April and May 2007, well in advance of EPA's final regulatory decision in this rulemaking. Thus EPA finds that, for all the reasons set forth above, the timing of submission of the documentation here was adequate for purposes of section 50.14(c)(3)(i) of the EER.

Earthjustice also complains that in issuing the October 2006 determination of attainment, EPA made the determination to finally concur in the flagging of exceptional events prior to receiving the State's documentation. The procedural validity of the October 2006 determination, and whether it provided adequate notice and comment, is not at issue in today's rulemaking. Thus Earthjustice's contentions with regard to notice and comment issues arising from the October 2006 rulemaking are misplaced here.

Moreover, Earthjustice's contentions are belied by the facts. EPA's October 2006 determination of attainment made clear that the data showing exceedances on September 22, 2006 were preliminary. EPA stated that once quality-assured data were available,

EPA would review those data and CARB's request with respect to them, evaluate whether the data qualified for exclusion as caused by exceptional events, and determine whether the determination should be withdrawn.<sup>9</sup> See discussion in EPA's proposed affirmation rule, 72 FR at 49064. See also 71 FR 63642.

In today's rulemaking EPA has fulfilled its promise by providing ample opportunity for comment on the State's documentation and EPA's evaluation of exceedances under the EER prior to issuing a final concurrence. As EPA noted in its proposed affirmation rule, our purpose here is not to take comment on the issues raised by the 2006 attainment determination, except to the extent that they affect EPA's ability to determine that the SJV continued to attain the PM-10 standard through 2006. 72 FR at 49047. The October 2006 rulemaking, which is not at issue in this current action, did not purport to be a final concurrence on the State's exceptional events documentation for the September 22, exceedances. Today's rulemaking addresses quality-assured data for September, October and December 2006, for which the State has provided exceptional events documentation.

*Comment 9:* Earthjustice states that EPA argues that at the time of the attainment finding the Agency merely deferred its determination of the impact of the preliminary data until they could be quality assured and the State had an opportunity to show that the exceedance was caused by an exceptional event. Earthjustice claims that the data at issue had in fact been processed by the CARB laboratory and thus already quality assured by the State when EPA was notified of the September 22, 2006 exceedances. In this respect, Earthjustice believes that EPA mischaracterized CARB's October 17, 2006 letter to EPA to mean that the data from the filter analyses were preliminary. Thus, Earthjustice concludes that EPA's decision not to consider the September 22 exceedances in its October 17, 2006 attainment finding is a violation of law and an abuse of discretion. Earthjustice also states that this violation of the Administrative Procedure Act (APA) cannot be cured with this rulemaking's post-hoc rationalization. Earthjustice interprets 40 CFR 51.14(c)(2)(ii) to mean that an exceedance must be considered

an exceedance unless and until EPA gives final concurrence following a thorough, convincing, publicly reviewed demonstration that the data can be ignored.

*Response 9:* As noted in the response to comment 8 above, the adequacy and validity of the October 2006 rulemaking is not at issue in this proceeding. Whether the APA was violated in that rulemaking is not at issue here. In this current rulemaking, EPA thoroughly reviewed and proposed to concur with the documentation submitted by the State, and provided full opportunity for public review and comment before finalizing its concurrence with the flags, and before excluding the data from a final determination of attainment. The purpose of this rulemaking is to assess the quality-assured data and documentation of exceptional events claims in the context of notice and comment rulemaking. Thus, even if, for the sake of argument, we accept Earthjustice's contentions that there were procedural deficiencies in the October 2006 rulemaking, EPA would have cured any such deficiencies with the procedures it has followed in this rulemaking.

In any event, Earthjustice is incorrect in its assertions that, at the time of the October 2006 rulemaking, data for September 22, 2006 were not preliminary and had been quality assured. The data for the September 22 exceedances were plainly preliminary. An EPA staff employee e-mailed a CARB branch chief an informal request to "find out if there was any preliminary data available from the ARB lab." E-mail from Bob Pallarino, EPA, to Karen Magliano, Chief, Air Quality Data Branch, Planning and Technical Support Division, CARB, October 12, 2006. On October 13, 2006 she forwarded to EPA an informal e-mail originating from a CARB staffer. The e-mail included data from filter analyses of several monitors, which set forth numerical values representing monitored data. That e-mail stated clearly: "Of course, all the data is preliminary." E-mail from Scott Randall, Inorganic Laboratory Section, Northern Laboratory Branch, CARB, to Cliff Popejoy, Inorganic Laboratory Section, Northern Laboratory Branch, CARB, October 13, 2006 (forwarded to Bob Pallarino by Karen Magliano). Thus, CARB represented and EPA reasonably believed that the data showing monitored exceedances were "preliminary" and not quality assured. Indeed, EPA believed that the normal data validation and verification processes had not been undertaken, and that, in fact, the data had not been

<sup>9</sup> As EPA noted in its proposed affirmation rule, EPA's October, 2006 final determination did not ignore the exceedances that occurred in October 2006 since these occurred eight days after EPA promulgated its final determination of attainment. 72 FR at 49064.

submitted to EPA's Air Quality System (AQS) database<sup>10</sup> or certified by CARB. The message that the CARB staffer sent was in response to an informal request from EPA staff, and in that context EPA did not consider it an official CARB submission of data. The informal and preliminary nature of the information is further indicated by the fact that the numerical values for PM-10 reported in the e-mail were not accompanied by scientific units, which would be essential documentation in any official submission of quality-assured data, and could only be inferred by EPA based on usual practice.

EPA did not therefore, as Earthjustice contends, "mischaracterize" the data from the filter analyses, when it described the data as "preliminary." EC at 11, footnote 9. CARB itself characterized the data as preliminary when it forwarded them to EPA.

In any event, as noted above, what is at issue in this rulemaking is EPA's concurrence on the exceptional events documentation for quality-assured data subsequent to EPA's October 2006 determination, and not the procedural validity of that prior determination. It is clear in this rulemaking that EPA is determining to finally concur on the State's flagging of the data only after

EPA has conducted notice and comment rulemaking on documentation that the State has submitted to support those flags.

*Comment 10:* For the wind events, Earthjustice maintains that the data offered by the District and relied upon by EPA does not demonstrate a "clear causal relationship" because exceedances were being measured before the events occurred.

*Response 10:* EPA disagrees with Earthjustice's conclusion for the reasons discussed below. Initially it is important to understand that the 24-hour PM-10 NAAQS, 150 µg/m<sup>3</sup>, is a 24-hour average concentration. This means that individual hourly concentrations at any given monitoring location may exceed 150 µg/m<sup>3</sup>, but until all 24 hours of a day are sampled a complete daily reading cannot be calculated. Therefore it is incorrect to characterize the data, as Earthjustice does, as showing that NAAQS exceedances were measured before the wind events.

To support its contention, Earthjustice states that fugitive dust sources in the Lemoore area on September 22 and October 25, 2006 could not have caused the Corcoran NAAQS exceedances since the first hourly PM-10 concentrations exceeding 150 µg/m<sup>3</sup> at Corcoran occurred either an hour before or at the

same time as the Lemoore meteorological station recorded wind speeds exceeding the District's threshold wind speed. From these facts, Earthjustice concludes that since the monitor was already recording an hourly concentration above the NAAQS before the dust-laden winds from Lemoore<sup>11</sup> arrived on September 22 and October 25, the monitor could not have been impacted by them.

In evaluating this conclusion it is instructive to look at any number of days where the level of an hourly PM-10 concentration at Corcoran exceeded the level of the 24-hour NAAQS, yet the 24-hour average concentration for the day did not exceed the NAAQS. October 26 and 27, 2006, March 26 and 27, 2007, April 17, 2007, May 2 and 21, 2007, and June 5, 2007, all experienced one or more hours exceeding the level of the NAAQS yet the NAAQS for the day was not exceeded. See Table 1 below. The most extreme example is April 17, 2007, on which four continuous hourly concentrations greater than 150 µg/m<sup>3</sup> were recorded from 4:00 p.m. Pacific Standard Time (PST) through 7 p.m. PST (181, 466, 460, 236 µg/m<sup>3</sup>, respectively), yet the overall 24-hour average concentration for that day was only 91 µg/m<sup>3</sup>.

TABLE 1.—NON-EXCEEDANCE DAYS WITH ONE OR MORE HOURLY PM-10 CONCENTRATIONS ABOVE 150 µG/M<sup>3</sup> AS MEASURED AT CORCORAN

Hour*	Oct 26 2006 (µg/m <sup>3</sup> )	Oct 27 2006 (µg/m <sup>3</sup> )	Mar 26 2007 (µg/m <sup>3</sup> )	Mar 27 2007 (µg/m <sup>3</sup> )	Apr 17 2007 (µg/m <sup>3</sup> )	May 2 2007 (µg/m <sup>3</sup> )	May 21 2007 (µg/m <sup>3</sup> )	Jun 5 2007 (µg/m <sup>3</sup> )
0	157	79	8	0	27	18	17	21
1	143	135	11	0	26	14	16	15
2	146	126	8	1	30	13	15	12
3	147	89	11	3	31	11	13	13
4	161	69	9	3	29	12	15	24
5	175	91	10	3	63	26	16	24
6	194	221	22	5	73	23	25	22
7	232	184	19	7	34	25	28	19
8	115	158	16	0	34	20	35	14
9	66	149	12	8	33	13	42	18
10	53	107	2	1	22	16	59	23
11	92	117	6	18	21	16	66	35
12	128	86	8	122	15	20	72	61
13	128	70	17	162	26	22	74	87
14	133	91	7	152	54	25	85	77
15	115	69	7	190	138	28	84	254
16	126	87	18	54	181	151	94	169
17	152	116	19	86	466	239	195	145
18	151	140	128	47	460	61	180	173
19	145	116	407	8	236	27	127	235
20	161	126	48	17	136	13	108	65

<sup>10</sup>Data from air monitors operated by state and local agencies in compliance with EPA monitoring requirements must be submitted to AQS. Heads of monitoring agencies annually certify that these data are accurate to the best of their knowledge. See 71 FR at 40953.

<sup>11</sup>Throughout this final rule when we refer to Lemoore, Corcoran and Bakersfield, we mean the

Lemoore area, the Corcoran area, and the Bakersfield area. When analyzing data, the State, District and EPA use information collected from specific points where the monitors are located, whether meteorological monitors or PM-10 monitors. Since it is not possible, due to finite resources, to monitor pollutant or meteorological parameters in every location, monitoring locations are chosen to be representative of larger areas. The

size of the area represented by a monitor is dependent on a number of factors, including, but not limited to, the parameter being measured (e.g., wind speed, PM-10 concentration), the overall terrain (e.g., urban, rural, valley, etc.) and any localized characteristics that may influence the parameter being measured (e.g., obstructions such as buildings or trees).

TABLE 1.—NON-EXCEEDANCE DAYS WITH ONE OR MORE HOURLY PM-10 CONCENTRATIONS ABOVE 150 µg/m³ AS MEASURED AT CORCORAN—Continued

Hour*	Oct 26 2006 (µg/m³)	Oct 27 2006 (µg/m³)	Mar 26 2007 (µg/m³)	Mar 27 2007 (µg/m³)	Apr 17 2007 (µg/m³)	May 2 2007 (µg/m³)	May 21 2007 (µg/m³)	Jun 5 2007 (µg/m³)
21 .....	147	118	16	15	34	14	66	34
22 .....	124	141	4	9	14	29	61	27
23 .....	130	105	0	10	7	16	66	49
Daily Average .....	137	116	34	38	91	36	65	67

Source: EPA Air Quality System Database.

\* Hours are in PST. All State and local ambient air pollutant monitoring equipment in California operates on PST all year and is never adjusted for Daylight Savings Time. For example, hour 12 in the table is 1 p.m. Pacific Daylight Time (PDT).

Thus, as can be seen from Table 1 and the discussion above, Earthjustice is incorrect when it concludes that dust-laden winds from Lemoore could not have affected the Corcoran monitor on September 22 and October 25, 2006 because concentrations above the level of the NAAQS were recorded at the monitor before the winds arrived. By failing to account for all 24 hours of the day, Earthjustice has misinterpreted how EPA determines compliance with the 24-hour PM-10 NAAQS.

Earthjustice further states that fugitive dust sources in the Lemoore area on September 22 and October 25, 2006 could not have caused the Corcoran NAAQS exceedances since the first hourly PM-10 concentrations exceeding the level of the NAAQS at Corcoran occurred either an hour before or at the same time as the Lemoore meteorological station recorded wind speeds exceeding the 18 mph threshold speed.<sup>12</sup> Earthjustice notes that on September 22 the 6:00 a.m. hourly PM-10 concentration at Corcoran exceeded the level of the NAAQS and wind

speeds recorded in Lemoore did not exceed the threshold wind speed until 7 a.m. On October 25 the Corcoran hourly PM-10 concentration first exceeded the level of the NAAQS at 6 a.m., the same time the Lemoore meteorological station recorded winds in excess of the threshold speed.<sup>13</sup> However, as set forth below, the data show that on September 22 the winds at Lemoore began exceeding the threshold speed at 6 a.m. PST, and likely began affecting the concentrations at the Corcoran monitor by the time concentrations were recorded at 7 a.m. PST.<sup>14</sup> On October 25, the winds recorded at Lemoore exceeded the threshold speed at 5 a.m. PST and likely affected the concentrations recorded at the Corcoran monitor beginning at 6 a.m. PST. Thus on both days there was at most a period of one or two hours where the concentrations at the monitor that exceeded the standard might not have been attributable to the winds from Lemoore.

Nevertheless, based upon meteorological data, EPA believes that

the high concentrations measured beginning at 7 a.m. PST on September 22 and 6 a.m. on October 25 and continuing throughout the day were due to transport of dust by high winds in the Lemoore area, and thus resulted in the exceedance of the 24-hour NAAQS. In reaching this conclusion, EPA evaluated the available hourly concentration data from the Corcoran monitoring site<sup>15</sup> from October 1, 2006 through June 30, 2007 to determine how often the Corcoran site recorded high hourly concentrations in the morning. While high morning concentrations were relatively rare in the data we evaluated, when they do occur they do not always result in a 24-hour average concentration that exceeds the NAAQS. Table 2 below compares days with high morning concentrations, October 26 and 27, 2006, that did not exceed the 24-hour NAAQS with September 22 and October 25, 2006, days with high morning concentrations that ultimately did exceed the 24-hour NAAQS.

TABLE 2.—CORCORAN HOURLY CONCENTRATIONS ON SEPTEMBER 22, OCTOBER 25, OCTOBER 26 AND OCTOBER 27, 2006

Hour (standard time)	September 22, 2006 (conc. µg/m³)	October 25, 2006 (conc. µg/m³)	October 26, 2006 (conc. µg/m³)	October 27, 2006 (conc. µg/m³)
0 .....	63	84	157	79
1 .....	39	57	143	135
2 .....	51	38	146	126
3 .....	64	42	147	89
4 .....	55	30	161	69
5 .....	78	39	175	91

<sup>12</sup> The State cites a 2002 California Regional PM-10/PM-2.5 Air Quality Study (2002 CRPAQS Study) that established a dust-generating wind speed threshold of 17.8 mph to support its conclusion that these wind speeds were sufficient to erode soils and entrain dust into the atmosphere as well as to exacerbate the entrainment of dust from the anthropogenic activities. See our proposal at 72 FR at 49052.

<sup>13</sup> As will be discussed further below, EPA uncovered an error in the reporting of the meteorological data from Lemoore. The data for Lemoore winds were reported in the State's documentation in PDT as opposed to the other

meteorological and PM-10 concentration data which were reported in PST. This means that the wind speeds increased an hour earlier than had previously been reported in the State's documentation. Therefore when Earthjustice refers to wind data from Lemoore at 6 a.m. and 7 a.m., the actual times were 5 a.m. and 6 a.m. PST.

<sup>14</sup> Hourly concentrations recorded by PM-10 continuous monitors are reported in the beginning hour. That is, an hourly average concentration calculated from readings taken between the hours of 7 a.m. and 8 a.m. would be reported as the average hourly concentration for 7 a.m.

<sup>15</sup> In October 2006, the SJVAPCD began the routine submittal of continuous PM-10 data to EPA's AQS database. These data are recorded with a special purpose Federal Equivalent Method (FEM) monitor and the District began submitting these data in response to new requirements contained in EPA's revised monitoring regulations (71 FR 61236, October 17, 2006). Prior to this regulation revision, air monitoring agencies were not required to submit special purpose monitoring data to the AQS database. Therefore, the amount of certified pollutant data available for our analysis is limited to October 1, 2006 through September 30, 2007.

TABLE 2.—CORCORAN HOURLY CONCENTRATIONS ON SEPTEMBER 22, OCTOBER 25, OCTOBER 26 AND OCTOBER 27, 2006—Continued

Hour (standard time)	September 22, 2006 (conc. µg/m³)	October 25, 2006 (conc. µg/m³)	October 26, 2006 (conc. µg/m³)	October 27, 2006 (conc. µg/m³)
6	170	269	194	221
7	306	346	232	184
8	519	651	115	158
9	531	674	66	149
10	725	777	53	107
11	695	794	92	117
12	521	681	128	86
13	318	580	128	70
14	276	510	133	91
15	247	302	115	69
16	269	179	126	87
17	283	184	152	116
18	258	180	151	140
19	223	178	145	116
20	150	166	161	126
21	144	201	147	118
22	138	183	124	141
23	144	150	130	105
Daily average	261	304	137	116

Source: EPA Air Quality System Database, "Natural Event Documentation, Corcoran, Oildale and Bakersfield, California, September 22, 2006" San Joaquin Valley Unified Air Pollution Control District, April 20, 2007 and "Natural Event Documentation, Corcoran and Bakersfield, California, October 25, 2006," San Joaquin Valley Unified Air Pollution Control District, April 23, 2007.

As can be seen from Table 2, early morning hourly concentrations on October 26 and 27, 2006 were comparable to morning hourly values on September 22 and October 25, 2006. All of these days recorded high early morning hourly values. However, the hourly concentrations on September 22 and October 25, 2006 continue to increase throughout the morning and into the afternoon and evening while the hourly concentrations for October 26 and 27 begin to decrease after hour 7 and then later increase slightly in the

afternoon and evening. As discussed above, we believe the increasing concentrations for the morning and afternoon for September 22 and October 25 are associated with an increase in hourly wind speeds, as measured in Lemoore. Even if we assume that several of the hours of high early morning concentrations at Corcoran on September 22 and October 25 were caused by something other than windblown dust, we have shown that there would not have been an exceedance of the 24-hour NAAQS that

day without the subsequent high hourly concentrations that were caused by windblown dust transported from the Lemoore area.

Moreover, an evaluation of meteorology in the Lemoore area on October 26 and 27, 2007 shows that the wind conditions on September 22 and October 25, 2006 were much different from October 26 and 27, days that had high morning concentrations but ultimately did not exceed the 24-hour NAAQS. Table 3 below summarizes this information.

TABLE 3.—CORCORAN HOURLY PM-10 CONCENTRATIONS AND LEMOORE HOURLY WIND SPEEDS FOR SEPTEMBER 22, OCTOBER 25, OCTOBER 26 AND OCTOBER 27, 2006

Hour	September 22, 2006		October 25, 2006		October 26, 2006		October 27, 2006	
	Conc. µg/m³	Lemoore wind-speed (mph)	Conc. (µg/m³)	Lemoore wind-speed (mph)	Conc. (µg/m³)	Lemoore wind-speed (mph)	Conc. (µg/m³)	Lemoore wind-speed (mph)
0	63	12	84	10	157	3	79	7
1	39	9	57	10	143	0	135	6
2	51	10	38	10	146	7	126	7
3	64	8	42	17	147	7	89	6
4	55	10	30	16	161	8	69	6
5	78	8	39	22	175	9	91	7
6	170	21	269	22	194	3	221	6
7	306	21	346	22	232	0	184	3
8	519	28	651	26	115	0	158	0
9	531	29	674	29	66	0	149	3
10	725	23	777	31	53	5	107	6
11	695	17	794	30	92	3	117	5
12	521	17	681	28	128	0	86	3
13	318	21	580	26	128	0	70	5
14	276	14	510	22	133	0	91	6
15	247	5	302	20	115	0	69	7
16	269	10	179	14	126	5	87	7

TABLE 3.—CORCORAN HOURLY PM-10 CONCENTRATIONS AND LEMOORE HOURLY WIND SPEEDS FOR SEPTEMBER 22, OCTOBER 25, OCTOBER 26 AND OCTOBER 27, 2006—Continued

Hour	September 22, 2006		October 25, 2006		October 26, 2006		October 27, 2006	
	Conc. (µg/m³)	Lemoore wind-speed (mph)	Conc. (µg/m³)	Lemoore wind-speed (mph)	Conc. (µg/m³)	Lemoore wind-speed (mph)	Conc. (µg/m³)	Lemoore wind-speed (mph)
17 .....	283	9	184	3	152	3	116	5
18 .....	258	6	180	6	151	5	140	6
19 .....	223	8	178	8	145	7	116	.....
20 .....	150	7	166	9	161	6	126	8
21 .....	144	9	201	8	147	8	118	0
22 .....	138	0	183	8	124	8	141	3
23 .....	144	7	150	.....	130	6	105	8
Daily Average .....	261	.....	304	.....	137	.....	116	.....

Source: EPA AQS Database, Mesowest historical meteorological data, Mesowest, <http://www.met.utah.edu/mesowest/>.

From this tabulation we can see that while hourly concentrations measured at Corcoran exceeded the level of the NAAQS during the morning hours on all four days, it was only on September 22 and October 25, 2006 that sustained high winds in the central SJV, represented by data from the Lemoore area, generated enough fugitive dust to cause an increase in the hourly concentrations in Corcoran recorded at and after 7 a.m. PST on September 22 and at and after 6 a.m. PST on October 25. These increases in hourly concentrations throughout the morning hours were a result of the high winds that occurred in the Lemoore area. Therefore it is incorrect to conclude, as Earthjustice does, that the State cannot show a causal connection between the winds and the 24-hour PM-10 exceedances at Corcoran on September 22, 2006 simply because the monitor recorded an hourly concentration above the level of the NAAQS at the same time winds in the Lemoore area began to exceed the threshold wind speed. Further, contrary to Earthjustice's contention, the winds at Lemoore on October 25, 2006 exceeded the threshold for entrainment prior to the time that increased concentrations were recorded at Corcoran and likely affected those concentrations.

Finally, the timing of the wind speeds shows an increase an hour earlier than was previously reported, and thus a corresponding earlier impact on the monitor. In evaluating the State's documentation we uncovered an error in how the meteorological data from the Lemoore meteorological station was reported. In both its April 20, 2007 "Natural Event Documentation, Corcoran, Oildale and Bakersfield, September 22, 2006," and its April 23, 2007 "Natural Event Documentation, Corcoran and Bakersfield, October 25,

2006," the District reported the Lemoore meteorological data in PDT as opposed to PST. This was confirmed when EPA independently obtained data for the Lemoore meteorological monitoring station. As noted previously in Table 1, all State and local ambient air pollutant monitoring equipment in California operates on PST year round and is never adjusted for Daylight Savings Time. Therefore, the information presented in Table 3 of the State's April 20, 2007 documentation and Table 1 of the State's April 23, 2007 documentation incorrectly lists the time when winds in Lemoore reached the threshold wind speeds.

As can be seen in Table 3 above and Tables 4 and 5 below, which reflect the proper times for reported wind speeds, on September 22, 2006 winds at Lemoore reached 21 mph, exceeding the threshold wind speed, at 6 a.m. PST, which would be 7 a.m. PDT. On October 25, 2006 winds at Lemoore reached 22 mph at 5 a.m. PST, which would be 6 a.m. PDT. This adjustment strengthens the State's demonstration by showing that the winds in Lemoore affected the PM-10 concentrations at Corcoran and Bakersfield an hour earlier than originally reported in the documentation.

*Comment 11:* Earthjustice asserts that the one run of the model that EPA relies on demonstrates that there is no connection between the events in and around Lemoore and the exceedances measured in Bakersfield and Oildale.

*Response 11:* The model to which Earthjustice refers is the Hybrid Single-Particle Lagrangian Integrated Trajectory model (HYSPLIT). However, contrary to Earthjustice's assertion, EPA did not rely on the State's HYSPLIT analysis to make its decision to concur with the State's demonstration of causal connection. Rather, in its proposal, EPA

noted the limitations of the HYSPLIT model, describing it merely as offering some support to the State's demonstration that winds were of the appropriate intensity and direction to move a plume of dust from the central SJV to the Bakersfield area.<sup>16</sup> See 72 FR at 49052. EPA is concurring with the State's causal connection demonstration based on actual meteorological data recorded on September 22 and October 25, 2006 which show winds of the appropriate intensity and direction occurring at the appropriate times.

The State's demonstration included actual meteorological data that showed that there were wind speeds between Corcoran and Bakersfield that exceeded the threshold wind velocities. For example, the State's demonstration for September 22 included meteorological data from a monitoring station in Alpaugh (15 miles SSE of Corcoran) which showed winds in excess of the 18 mph threshold at 9:00 am PST and in the 15-16 mph range until 12 pm PST. Wind gusts at Bakersfield Meadow Field Airport also approached the threshold wind speed, with a gust speed of 17 mph recorded at 12:30 p.m. PST. The hourly concentrations in the Bakersfield area began to exceed the level of the PM-10 NAAQS at noon and stayed above 200 µg/m³ for the remainder of the day. We discussed the transport of dust from the Lemoore and Corcoran

<sup>16</sup> The Oildale monitoring site does not record hourly PM-10 concentrations but uses a manual PM-10 sampler that provides only 24-hour average concentrations. The Bakersfield-Golden State Highway monitoring site utilizes both a manual sampler for average 24-hour PM-10 concentrations and a continuous PM-10 analyzer to provide hourly concentrations. Since the Bakersfield-Golden State Highway site and the Oildale site are relatively close to each other (3.5 miles apart), we believe it is appropriate to use the Bakersfield-Golden State Highway continuous analyzer to characterize the temporal distribution of hourly concentrations at both sites.

areas in our proposal at 72 FR at 49052 for September 22 and at 49055–49056 for October 25. As we indicated, the winds between Lemoore and Corcoran and Corcoran and Bakersfield were sufficient to keep entrained dust suspended so that it could be transported.

As part of our review of the State’s documentation we researched whether any other publicly available

meteorological data supported the State’s demonstration and found that wind data collected at Allensworth State Park (20 miles SE of Corcoran) also recorded wind speeds on September 22, 2006 in excess of the 18 mph. While most of the wind speeds recorded in Alpaugh and Allensworth State Park in the late morning and afternoon hours did not exceed the threshold wind speed, we believe these wind speeds

were sufficient to transport suspended PM–10 from the Corcoran area to the Bakersfield area. See our proposed rule at 72 FR at 49052. The wind direction from all of the sites on September 22 is consistent with the south, southeast transport of dust (i.e., winds from the north and northwest) from the Lemoore area to Corcoran and the Bakersfield area as demonstrated by Table 4 below.

TABLE 4.—SEPTEMBER 22, 2006 DAYTIME HOURLY WINDSPEEDS AND CONCENTRATION DATA FOR THE CENTRAL AND SOUTHERN SJV

Hour	Lemoore WS/WD/gusts	Corcoran conc. (µg/m³)	Alpaugh WS*WD	Allensworth State Park WS/WD	Bakersfield conc. (µg/m³)
6	21/NW	170	5.5/W	3/WSW	74
7	21/NW	306	3.3/WSW	6/NNE	104
8	28/NNW/35	519	9.7/NNW	20/NNW	78
9	29/NNW/37	531	19.1/NNW	35	114
10	23/NW/30	725	15.2/NNW	15/NW	103
11	17/NNW/24	695	15.5/NNW	8/NW	139
12	17/NNW/25	521	16.1/NW	ND	168
13	21/NNW	318	13.6/NW	2/3	196
14	14/NNE	276	12.1/NW	7/NW	239
15	5/N	247	12.1/NW	8/WNW	294
16	10/N	269	10.2/NW	7/NNW	285
17	9/NNW	283	9.7/NNW	5/NNW	281
18	6/N	258	5.5/NNW	1/WSW	270

ND—No Data.

Source: “Natural Event Documentation, Corcoran, Oildale and Bakersfield, California, September 22, 2006,” San Joaquin Valley Unified Air Pollution Control District, April 20, 2007; “Addendum, Natural Event Documentation, Corcoran, Oildale and Bakersfield, California, September 22, 2006,” San Joaquin Valley Unified Air Pollution Control District, May 23, 2007; Mesowest historical meteorological data, *Mesowest*, <http://www.met.utah.edu/mesowest/>.

\*Wind Speed data at Alpaugh adjusted to 10 meter AGL based on conversion formula in the “Addendum, Natural Event Documentation, Corcoran, Oildale and Bakersfield, California, September 22, 2006,” San Joaquin Valley Unified Air Pollution Control District, May 23, 2007 at 13.

For October 25, the State included all available meteorological data in its documentation.<sup>17</sup> These data support the demonstration that winds between the Corcoran and Bakersfield areas were sufficient to transport dust on October 25. We believe that the wind speed and direction data collected at Alpaugh and

Bakersfield Meadow airport, while not exceeding the threshold wind speed, show that the winds in this portion of the SJV on October 25 were sufficient to transport suspended PM–10 from the Corcoran area to the Bakersfield area. See our proposed rule at 72 FR at 49052. The wind direction from all of the sites

during the daytime hours on October 25 is consistent with the south, southeast transport of dust (i.e., winds from the north and northwest) from the Lemoore area to Corcoran and the Bakersfield area as demonstrated by Table 5 below.

TABLE 5.—HOURLY DAYTIME WINDSPEEDS AND CONCENTRATION DATA FOR CENTRAL AND SOUTHERN SJV ON OCTOBER 25, 2006

Hour	Lemoore WS/WD/gusts	Corcoran conc. (µg/m³)	Alpaugh WS*WD	Bkrsfld Meadow Airport WS/WD	Bkrsfld conc. (µg/m³)
6	22/NNW/30	269	3.5/SSW	5/ESE	97
7	22/NNW/32	346	2.9/W	6/E	89
8	26/NW/36	651	5.6/NW	0	88
9	29/NNW/39	674	17.0/NNW	10/NW	123
10	31/NW/37	777	16.5/NNW	9/WNW	148
11	30/NW/40	794	16.8/NNW	12/W	177
12	28/NNW/38	681	15.6/NNW	12/WNW	195
13	26/NNW/35	580	14.8/NNW	6/ND	222
14	22/NNW/31	510	13.2/NNW	7/ND	415
15	20/NW /26	302	13.3/NNW	7/NW	406
16	14/NNW	179	12.7/NNW	3/WNW	393
17	3/N	184	6.5/NW	5/NW	416

<sup>17</sup> See “Natural Event Documentation, Corcoran and Bakersfield, California, October 25, 2006,” April 23, 2007 at 44–74.

TABLE 5.—HOURLY DAYTIME WINDSPEEDS AND CONCENTRATION DATA FOR CENTRAL AND SOUTHERN SJV ON OCTOBER 25, 2006—Continued

Hour	Lemoore WS/WD/gusts	Corcoran conc. (µg/m <sup>3</sup> )	Alpaugh WS*/WD	Bkrsfld Meadow Airport WS/WD	Bkrsfld conc. (µg/m <sup>3</sup> )
18 .....	6/N .....	180	4.4/WNW .....	3/NW .....	403

ND—No data available.

Source: “Natural Event Documentation, Corcoran and Bakersfield, California, October 25, 2006,” San Joaquin Valley Unified Air Pollution Control District, April 23, 2007; Mesowest historical meteorological data, *Mesowest*, <http://www.met.utah.edu/mesowest/>.

\* Wind Speed data at Alpaugh adjusted to 10 meter above ground level (AGL) based on the conversion formula in “Natural Event Documentation, Corcoran, Oildale and Bakersfield, California, October 25, 2006,” San Joaquin Valley Unified Air Pollution Control District, April 23, 2007 at 25.

In its documentation the State also included the results of a HYSPLIT model run by the District to identify source regions for the parcels of air that impacted the Corcoran and Bakersfield monitors on September 22 and October 25, 2006. The District explicitly stated that the models were not intended to quantify particulate concentrations but simply were used to support its view of the origin of the particulate matter that impacted the monitors at Corcoran and Bakersfield. As stated in the proposed rule, EPA agrees that this model run supports the conclusions drawn from the meteorological data presented. See 72 FR at 49052 and 49056.

In its comment letter on the proposed affirmation rule, Earthjustice relies on its own computer simulations using the HYSPLIT model and appears to claim that, based on its own HYSPLIT analyses, the winds in the Lemoore area could not have carried sufficient quantities of particulate matter to Bakersfield to cause exceedances of the PM-10 NAAQS. In order to evaluate Earthjustice’s HYSPLIT analyses, EPA also performed computer simulations using the HYSPLIT model. However, we took a different approach because we believe that Earthjustice’s HYSPLIT analyses do not represent a comprehensive depiction of the dust event.<sup>18</sup>

While Earthjustice used trajectories starting at zero meters in height and took a two-dimensional approach in assessing the wind event, we took a more appropriate three-dimensional approach. The EPA approach recognizes that the dust did not stay at zero meters in height above ground but instead

mixed up higher into the atmosphere where stronger winds occurred that caused the transport to be faster than Earthjustice’s HYSPLIT analyses indicated. For September 22 and October 25, 2006, for the morning start times, EPA ran trajectories at three heights: 10 meters, 100 meters and 250 meters. These heights were used to approximate the transport from near the surface, near the middle and near the top of the mixed layer<sup>19</sup> as shown by the HYSPLIT model.

On September 22, 2006, based on the meteorological data and our HYSPLIT runs, the high winds that began in the Lemoore area around 6 a.m. PST eroded and then transported dust that started to affect the PM-10 concentrations measured in the Corcoran area by 7 a.m. PST. See Figure 1, “Forward Trajectories at 10, 100, & 250 meters, Lemoore Area to Corcoran, September 22, 2006, 6 a.m. to 8 a.m. PST.”<sup>20</sup> From Corcoran and eastward, some of the dust may have been transported more towards the Sierra foothills. See Figure 2, “Forward Trajectories at 250 meters, Lemoore to Corcoran and Bakersfield, September 22, 2006, 6 a.m. to 1 p.m. PST.” West of Corcoran, the dust was transported southward towards Bakersfield, beginning to affect that area between the hours of 12 p.m. and 1 p.m. PST. See Figure 2 and Figure 3, “Forward Trajectories at 10, 100, & 250 meters, Lemoore Area to Bakersfield, September 22, 2006, 6 a.m. to 1 p.m. PST.” Based on hourly PM-10 values, the peak concentration of dust, 725 µg/m<sup>3</sup>, occurred at about 10 a.m. PST in Corcoran and a PM-10 value of 294 µg/m<sup>3</sup> occurred at about 3 p.m. PST in

Bakersfield. See Table 4 above. See also our response to comment 21 below.

On October 25, 2006, the scenario was similar to September 22, 2006. EPA’s HYSPLIT runs support a finding that the high winds that began in the Lemoore area around 5 a.m. PST eroded and then transported dust that started to affect the PM-10 concentrations measured in the Corcoran area by about 6 a.m. PST. See Figure 4, “Forward Trajectories at 10, 100, & 250 meters, Lemoore Area to Corcoran, October 25, 2006, 5 a.m. to 7 a.m. PST.” From Corcoran and eastward, some of the dust may have been transported more towards the Sierra foothills. West of Corcoran, the dust was transported southward towards Bakersfield, starting to affect that area between 11 a.m. and 12 p.m. PST. See Figure 5, “Forward Trajectories at 250 meters, Lemoore to Corcoran and Bakersfield, October 25, 2006, 5 a.m. to 11 a.m. PST” and Figure 6, “Forward Trajectories at 10, 100, & 250 meters, Lemoore Area to Bakersfield, October 25, 2006, 5 a.m. to 11 a.m. PST.” The peak concentration of dust in Corcoran occurred around 11 a.m. PST with a PM-10 value of 794 µg/m<sup>3</sup>. The peak concentration of dust in Bakersfield was more obscure with a peak at about 5 p.m. PST and a PM-10 value of 416 µg/m<sup>3</sup>. See Table 5 above.

EPA believes that our HYSPLIT analyses depict more accurately than Earthjustice’s runs the windblown dust events of September 22 and October 25 because, in addition to accounting for the various heights above ground level, we accounted for the wind flows within the Valley more comprehensively. We recognized that the winds over the eastern portion of the Valley tended to move towards the east, winds over the western portion of the valley tended to move more towards the south, and that there was a transition area in between where winds moved southeast directly from the Lemoore area to Bakersfield. See Figures 2 and 5 above. Thus we believe that our HYSPLIT analyses were sufficient to provide a general overview of the direction and speed of dust

<sup>18</sup> EPA does agree in part with the Jan Null declaration (EC, Exhibit H) in which he states that the data used by the District in the HYSPLIT model, EDAS (ETA Data Assimilation System) meso-scale data, is too coarse to account fully for both the complex terrain in and around the SJV and for the close proximity of the stations being examined. However, Earthjustice and EPA also used the EDAS meso-scale data which are of sufficient resolution to account for the general overall wind flow in the southern SJV and thus provide a coarse simulation of wind trajectories within the Valley.

<sup>19</sup> The mixed layer is the unstable layer of the atmosphere in direct contact with the surface of the Earth. The daytime mixed layer is characterized by vigorous turbulent mixing. This means that air or dust laden air at any height within the mixed layer can impact the surface due to the mixing caused by turbulence.

<sup>20</sup> The EPA Figures referenced in this final rule are available in the docket for this rulemaking action and are listed in section I.I.C. below.

transport in the San Joaquin Valley and support the contention of dust transport from the Lemoore area to the Corcoran and Bakersfield areas. Our analyses are also in general agreement with the measured wind data provided by the State which do account for the complex terrain of the Valley.

We note again that our concurrence with the State's causal connection demonstration is based on the meteorological data for September 22 and October 25, 2006 discussed above. We believe the HYSPLIT model supports this demonstration by showing that the winds were of the appropriate intensity and direction to move a plume of dust from the central SJV to the Bakersfield areas on those days.

*Comment 12:* Earthjustice claims that the exceedances in the SJV cannot be deemed to be in excess of normal historical fluctuations because they occur regularly and at a similar level every fall and are therefore no different from the exceedances used to designate the SJV nonattainment in the first place. Thus Earthjustice believes there are no "unusual activities" as EPA states, because the exceedances at issue here were caused by the same dust-generating activities that cause exceedances every year.

*Response 12:* As we discussed in our proposed rule at 72 FR 49052, for EPA to concur with a state's claim that an exceptional event caused an exceedance, the state must show that the event is associated with concentrations that are beyond the normal historical fluctuations. See 40 CFR 50.14(c)(3)(iii)(C).

When the SJV was designated nonattainment for PM-10 in 1991 by operation of law (56 FR 11101, March 15, 1991), the District had not implemented the BACM for PM-10 that are currently in place. Since 1991, the State of California and the SJVAPCD have adopted many rules and rule amendments that have led to significant reductions in PM-10 and oxides of nitrogen (NO<sub>x</sub>) emissions. These rules include, as discussed above, BACM for fugitive dust sources such as unpaved and paved roads, vacant lots, construction sites, etc. (Regulation VIII) and BACM for agricultural sources (Rule 4550—Conservation Management Practices). See Section 8, "Natural Event Documentation, Corcoran, Oildale and Bakersfield, California, September 22, 2006," April 20, 2006. These BACM rules for fugitive dust and agricultural sources were adopted and implemented in mid- to late 2004. See 71 FR 8461 and 71 FR 7683. Given the vast changes in regulatory requirements for PM-10 sources, the dust-generating activities in

the early 1990's are not, as Earthjustice suggests, comparable to those after the full implementation of BACM in the SJV. Therefore we do not believe that the September 22 and October 25, 2006<sup>21</sup> exceedances are the result of the same type of dust-generating activities that caused the area to originally become nonattainment. Nor do we believe that Earthjustice has substantiated its claim that they are.

We originally evaluated whether the September 22 and October 25, 2006 exceedances exceeded normal historical fluctuations in our proposed rule. See 72 FR at 49053 and 49056. In response to Earthjustice's comment on the proposed rule that this EER criterion had not been satisfactorily demonstrated by the State's documentation, EPA undertook a further analysis of the data collected at the sites that exceeded the 24-hour PM-10 NAAQS on September 22, 2006 (Corcoran, Bakersfield-Golden State Highway and Oildale) and October 25, 2006 (Corcoran and Bakersfield-Golden State Highway). EPA included data from 1993 to 2006 in our analysis.<sup>22</sup> Our statistical analysis shows the annual percentile values of the data from each of the three sites. In the preamble to our EER, we state that a comparison of the exceedance data to the historical 95th percentile values is appropriate for determining the level of evidence or documentation a state needs to provide in order for EPA to concur with its flagging request. Extremely high concentrations relative to the 95th percentile values would require a lesser amount of documentation to demonstrate that an event affected air quality. See 72 FR at 13569.

For Corcoran, when we examine all data collected since 1993,<sup>23</sup> it is clear that the 95th percentile values have consistently been below the level of the 24-hour PM-10 NAAQS and since 1999 the Corcoran site has not recorded a 95th percentile value greater than 117

<sup>21</sup> With respect to the exceedances at the Santa Rosa Rancheria, in the proposed rule EPA showed that the concentrations measured during the construction activity were in excess of normal historical fluctuations and that after completion of the paving project average PM-10 concentrations dropped by more than 50 percent. 72 FR at 49062.

<sup>22</sup> 1993 was chosen as the starting point for data analysis because that is the year that the SJV was classified as a serious PM-10 nonattainment area.

<sup>23</sup> From 1993 through 1998, the Corcoran site collected PM-10 data on a once every sixth day schedule using a Federal Reference Method (FRM) monitor. Beginning in 1999 the Corcoran PM-10 site has been collecting data on a once every third day schedule using FRM monitors. In October 2006 the SJVAPCD began operating a continuous monitor designated as a Federal Equivalent Method (FEM) monitor at the site to provide everyday PM-10 data to the public. The State and SJVAPCD report all data from these monitors to the EPA's AQS database.

µg/m<sup>3</sup>. The 95th percentile value recorded at Corcoran in 2006 was less than 100 µg/m<sup>3</sup>. Therefore, our analysis of all the data collected at Corcoran over the past 14 years indicates that the September 22 and October 25, 2006 exceedances were clearly beyond the normal range of annual concentrations recorded at this site. See Figure 7, "Annual Peak Day PM10 Concentrations at Corcoran."

As with the Corcoran data, we performed a statistical analysis of the data collected at the Bakersfield-Golden State Highway site using data from 1993 to 2006 and calculated the annual percentile values. From this analysis it is clear that the 95th percentile values at Bakersfield were consistently less than the level of the 24-hour PM-10 NAAQS. In 2006 the 95th percentile value at Bakersfield-Golden State Highway was 101 µg/m<sup>3</sup>. Therefore our analysis of the Bakersfield-Golden State Highway data shows that the September 22 and October 25, 2006 exceedances were beyond the normal range of data recorded at this site during the past 14 years. See Figure 8, "Annual Peak Day PM10 Concentrations at Bakersfield."

Finally, our analysis of the data collected at Oildale also shows that the exceedance recorded at that site on September 22, 2006 was outside the normal range of historical values. As with the other two sites discussed above, the 95th percentile values recorded at Oildale during the past 14 years were consistently below the level of the NAAQS and the 95th percentile value in 2006 was 111 µg/m<sup>3</sup>. Again, our analysis of the Oildale data indicates that the September 22, 2006 exceedance recorded at this site was outside the normal historical fluctuation of data for the past 14 years. See Figure 9, "Annual Peak Day PM10 Concentrations at Oildale."

Therefore, our analysis of all the annual data from 1993 through 2006 shows that the September 22 and October 25, 2006 exceedances are in excess of normal fluctuations.

To address Earthjustice's specific concern that these exceedances occur routinely in the fall months, defined by Earthjustice as the months of September, October and November,<sup>24</sup> we performed the same statistical test on the Corcoran data using only those values recorded during those months. From this test it is clear that the 95th percentile values for all years since 1998 do not exceed the level of the 24-hour PM-10 NAAQS. The highest 95th percentile value since 1998 was a 146 µg/m<sup>3</sup> recorded in 2003. Again, this

<sup>24</sup> EC at 15.

analysis demonstrates that the September 22 and October 25, 2006 exceedances recorded in Corcoran, even when we use seasonally adjusted data, were in excess of the normal historical fluctuations. See Figure 10, "Annual Peak Fall Day PM10 Concentrations at Corcoran."

At the Bakersfield monitor, 95th percentile values for the fall months have been lower than the level of 24-hour PM-10 NAAQS since 2000, with the highest 95th percentile value recorded in that year at 145  $\mu\text{g}/\text{m}^3$ . In 2006, the fall months' 95th percentile value was 100  $\mu\text{g}/\text{m}^3$ . These values show that the exceedances measured on September 22 and October 25 were outside the historical fluctuation of data for the fall months. See Figure 11, "Annual Peak Fall Day PM10 Concentrations at Bakersfield."

Finally for Oildale, our analysis of the fall 95th percentile values shows that since 1996 the 95th percentile values have not exceeded the level of the NAAQS and 1996 had the highest 95th percentile value (138  $\mu\text{g}/\text{m}^3$ ), with the exception of the September 22, 2006 concentration of 162  $\mu\text{g}/\text{m}^3$ . Even though the 95th percentile value in the fall of 2006 exceeded the level of the NAAQS, when we look at the historical fall data for Oildale this value does stand out as outside the normal range. See Figure 12, "Annual Peak Fall Day PM10 Concentrations at Oildale."

Therefore, our analysis of the data from 1993 through 2006 for the months of September through November shows that the September 22 and October 25, 2006 exceedances were in excess of normal fluctuations.

*Comment 13:* Earthjustice argues that EPA cannot make the required "but for" showing for the locations other than the SRR because either the model shows that the winds did not blow toward the monitors or the monitoring data show that the standard was being exceeded even before the alleged dust-laden winds arrived.

*Response 13:* With respect to the September 22, 2006 exceedance, see our responses to comments 10, 11, 16 and 21. With respect to October 25, 2006 see our responses to comments 10, 11 and 43. We also discussed the "but for" demonstration included in the State's documentation in detail in our proposed action. See 72 FR 49053, 49056–49057.

*Comment 14:* Earthjustice also argues that to make its "but for" showing EPA asserts that no "unusual activities" occurred during the exceedance period and implies that something "extra" must have happened which would mean that an area would either have violations every day or never and that

EPA would then have to conclude that unless an area violates every day, any violation must be the product of some exceptional, nonrecurring event. Earthjustice believes that EPA's reliance on this type of argument to make the "but for" claim is arbitrary and capricious."

*Response 14:* Earthjustice takes out of context EPA's consideration of the fact that there were no other unusual activities at the time of the September 22 and October 25, 2006 exceedances to draw some extreme conclusions, such as that the Agency would have to conclude "that unless an area violates every day, any violation must be the product of some exceptional nonrecurring event." In this connection, Earthjustice misunderstands EPA's application of the weight of evidence approach to the "but for" demonstration. In the preamble to the EER, EPA explained that it would use a "weight of evidence-based approach to demonstrate that there would not have been an exceedance or violation but for the event." 72 FR at 13570–13571. EPA explained that through analyses it was possible to demonstrate that an exceedance would not have occurred but for the event; however, this analysis does not require a precise estimate of the estimated air quality impact from the event. 72 FR at 13570.

In applying this weight of evidence approach, EPA considered the totality of circumstances surrounding the events for the exceedance days. EPA included in its consideration, an evaluation of the coarse particles, information about geologic dust, values representing excess geologic contributions, comparison of "adjusted" PM-10 values with typical average concentrations during similar periods, information about control measures, readings on days before and after the exceedance days, and whether any unusual or out of the ordinary activities occurred on such days. See 72 FR at 49053. Monitor readings on the days before and after the event days indicated no violations. EPA therefore looked to see if on the specific event days there were activities that were different or unusual as compared to the days when there were no exceedances in order to rule those in or out as contributing to the exceedance. Contrary to Earthjustice's contention that any time there is a violation EPA would conclude that it is due to some exceptional nonrecurring event, the lack of unusual activities was just one of the factors that EPA considered in reaching its determination based on the weight of evidence analyses. Thus, EPA's consideration of whether or not there were unusual activities in this context is

neither arbitrary nor capricious as Earthjustice claims.

2. Comments Specific to September 22, 2006—Corcoran, Bakersfield and Oildale

*Comment 15:* Earthjustice claims that in order to show that an event has affected air quality, a demonstration must be made that the event "caused a specific air pollution concentration" and that the data to be waived are directly due to the event. Earthjustice asserts that the District did not provide evidence that demonstrates how enough particulate matter pollution could have been generated in and transported from one remote area of the SJV to multiple monitors in distant locations within the time period of the event. In this regard, Earthjustice states that while the District cites a study that allegedly establishes a threshold at which wind begins to erode PM (sustained winds of 18 mph or gusts of 22.4 mph), there is no basis for the claim espoused by both the District and EPA that winds below this threshold velocity can then transport particulate matter pollution long distances. To support this assertion Earthjustice cites EPA's recent rulemaking (71 FR 61144, 61146, October 17, 2006) establishing new PM standards in which EPA concluded that "thoracic coarse particles generally deposit rapidly on the ground or other surfaces and are not readily transported across urban or broader areas."

*Response 15:* Earthjustice states that in order to show that an event affected air quality the State must quantify the amount of PM-10 initially generated at a source location. In our proposed rule we stated that this criterion (affecting air quality) is met by establishing that the event is associated with a measured exceedance in excess of normal historical fluctuations, including background, and there is a clear causal connection between the event and the exceedance. 72 FR at 49051. We also discussed how these criteria were met. *Id.* at 49051–49052.

Earthjustice seems to be suggesting that in order to meet the criterion "affects air quality" the State should have used an air quality model such as AERMOD or CalPuff to show the behavior of fugitive dust. In other words, Earthjustice is asking for a modeling demonstration that would show, quantitatively, that a given amount (either in the form of an emission rate or initial ambient concentrations at the source regions) can produce a particular concentration at a receptor point (e.g., monitoring site location). This type of modeling, at the scale Earthjustice is suggesting, is not an

appropriate tool for use in this type of application because it cannot be performed with any degree of accuracy.

The State included in its documentation the results of a study that determined the threshold wind speed needed to erode geologic material and entrain the resulting particles into the atmosphere.<sup>25</sup> Earthjustice states that there is no basis for the claim that lower wind speeds could transport dust long distances.

While the State did not provide information from a specific study to demonstrate wind speeds sufficient to transport PM-10 suspended in the atmosphere, EPA believes it is reasonable to conclude, as the State did, that if an 18 mph wind is sufficient to erode and entrain coarse particles into the atmosphere, a lower wind speed is sufficient to keep particles already entrained in the atmosphere suspended, and to subsequently transport them considerable distances. To erode geological material on the ground and cause it to be suspended in the air, winds must have enough kinetic energy to overcome the attractive forces between particles, in addition to gravitational forces. High winds also tend to cause large particles to collide with each other, making them break apart and become more likely to be lifted up. For particles that have already been lifted well above ground level, winds need only have enough occasional upward component (due to turbulence) to overcome gravitational settling. Also, winds aloft may have been stronger (and had more turbulence) than suggested by the ground based measurements.

As presented in Table 3 of the State's documentation, the wind speeds between Lemoore and Corcoran, measured at Corcoran, reached a maximum speed of 11 mph between hours 6 and 12. See "Natural Event Documentation, Corcoran, Oildale and Bakersfield, California, September 22, 2006," San Joaquin Valley Unified Air Pollution Control District, April 20, 2007. Winds in the region between Corcoran and Bakersfield, measured at

Alpough and Allensworth State Park, reached 16 mph and 15 mph, respectively, between hours 10 and 16.<sup>26</sup> EPA believes that wind speeds of this intensity were sufficient to transport PM-10 from the central SJV to the Bakersfield area.

Regarding Earthjustice's reference to the PM coarse NAAQS final rule, EPA was noting the difference in expected transport distances for PM-2.5 versus PM coarse. Note that we stated that coarse particles generally deposit rapidly on the ground or other surfaces and are not readily transported across urban or broader areas. 71 at 61146. When comparing PM-2.5 and PM coarse in urban settings it is true that PM-2.5 is a more regional pollutant and can spread over great distances. PM coarse particles in urban areas, under meteorological conditions that do not involve high winds, generally are considered more of a localized pollutant problem. The statement cited by Earthjustice was not meant to imply that under windy conditions PM coarse particles would not be subject to transport. The exceedances that occurred in both Corcoran and the Bakersfield area on September 22 and October 25, 2006 were the result of windblown and transported dust from a predominantly rural area.

Comment 16: Earthjustice provides a chart that it states demonstrates the range of sustained wind speeds in key areas of the central and southern SJV on September 22, 2006 with corresponding hourly PM-10 concentrations. With respect to this chart, Earthjustice, citing EPA Raw Data Reports, asserts the following:

\* \* \* there was a period of a few hours where the alleged wind speed threshold was exceeded at the Lemoore Naval Air Station monitoring site, which is located northwest of the city of Lemoore. The maximum sustained wind speeds ranged from 21 to 29 miles per hour between the hours of 7 a.m. and 11 a.m., and again exceeded the alleged threshold at 1 p.m. The maximum peak gusts (i.e., momentary bursts of wind) recorded at the Lemoore NAS ranged from 30-40 miles per hour between the hours of 9 a.m. and 11 a.m. However, just 10 miles southeast of the

Lemoore NAS at the Santa Rosa Rancheria, sustained winds never got any higher than 14.1 miles per hour \* \* \*. In Corcoran, sustained winds reached only 9.6 miles per hour, and Bakersfield experienced nothing stronger than 7.8 mile-per-hour sustained winds \* \* \*. None of the winds experienced outside of northwest Lemoore were capable of eroding soils and so none of these areas could have contributed any wind-entrained dust to the PM-10 concentrations recorded on September 22, 2006.

Response 16: As discussed in our response to comment 10, the Lemoore wind speeds included in the State's documentation were reported in PDT and not in PST. The Corcoran and Bakersfield PM-10 hourly concentration data were reported in PST which means that the winds in Lemoore began to exceed the threshold wind speed at 6 a.m. PST. The times for the wind speed data in the Earthjustice chart need to be adjusted accordingly.

While we do not have monitoring data at every location, contrary to Earthjustice's comment, there are data that show the threshold wind speed was exceeded not only in the Lemoore area but at other locations in the central and southern SJV on September 22, 2006. The Lemoore station showed the most intense wind speeds in the area and the data are used to represent the conditions in the area centered around Lemoore. The nearest meteorological station to Lemoore is the Santa Rosa Rancheria monitoring station, located about 11 miles SE of Lemoore. However, the fact that the winds at the SRR did not exceed the threshold velocity does not prove that there were no wind speeds above the threshold between Lemoore and Corcoran. We obtained wind data from other meteorological stations in the central SJV such as Tranquility (30 miles NW of Lemoore), Selma (20 miles NE of Lemoore), Kettleman Hills (20 miles SSW of Lemoore), Hanford Municipal Airport (17 miles east of Lemoore), Hanford (18 miles east of Lemoore) and Allensworth State Park (43 miles SW of Lemoore). Wind speed data from these sites are presented in the Table 6 below.

TABLE 6.—SEPTEMBER 22, 2006 MORNING WIND SPEEDS AT METEOROLOGICAL MONITORING STATIONS IN THE CENTRAL SAN JOAQUIN VALLEY

Time (a.m. PST)	Tranquility (hour/gust)	Selma (hour/gust)	Lemoore (hour/gust)	Kettleman Hills (hour/gust)	Hanford Airport (hour/gust)	Hanford (hour/gust)	Allensworth State Park (hour)
6:20 .....	9/12 .....	6/7 .....	ND .....	ND .....	ND .....	4/10 .....	ND
6:30 .....	10/10 .....	5/9 .....	ND .....	ND .....	ND .....	5/8 .....	ND

<sup>25</sup> Subtask Memorandum, "3.3 How Well Do Measurements Characterize Critical Meteorological Features," Dave Bush, T & B Systems, August 24, 2004.

<sup>26</sup> Wind speeds at Allensworth State park reached 20 mph and 35 mph at hours 8 and 9. This indicates that while the area around Lemoore was identified as the source for the PM-10 on September 22, 2006,

additional PM-10 was likely generated by winds in the region between Corcoran and Bakersfield.

TABLE 6.—SEPTEMBER 22, 2006 MORNING WIND SPEEDS AT METEOROLOGICAL MONITORING STATIONS IN THE CENTRAL SAN JOAQUIN VALLEY—Continued

Time (a.m. PST)	Tranquility (hour/gust)	Selma (hour/gust)	Lemoore (hour/gust)	Kettleman Hills (hour/gust)	Hanford Airport (hour/gust)	Hanford (hour/gust)	Allensworth State Park (hour)
6:45	8/12	5/7	ND	ND	ND	5/8	3
7:00	9/11	6/9	21	16/24	17/ND	5/7	6
7:20	13/12	7/6	ND	ND	ND	5/11	7
7:35	13/14	7/7	ND	ND	ND	5/11	ND
7:45	14/14	8/9	28	17/24	15/ND	7/10	38
8:05	15/19	10/10	26	ND	ND	8/12	5
8:15	13/19	12/10	31	ND	ND	9/12	20
8:30	21/20	14/14	28/35	ND	ND/26	9/17	21
8:45	23/23	8/16	ND/35	ND	ND	7/18	9
9:00	20/23	12/15	29/38	18	15/ND	5/21	2
9:20	18/27	12/18	24/40	ND	ND	4/18	35
9:35	21/25	9/15	ND	ND	ND	5/16	6
9:45	17/25	6/16	ND/37	ND	ND	8/18	2
10:05	17/24	9/13	23/ND	20/27	10/ND	7/16	15
10:15	17/26	5/13	ND	ND	ND	4/11	3
10:35	17/23	7/7	ND	ND	ND	ND/13	9
10:50	14/23	8/12	ND/30	ND	ND	ND/13	0
11:05	16/21	7/7	17/ND	17/32	10/ND	ND/11	ND
11:15	12/22	7/12	ND	ND	ND	ND	8
11:30	14/20	1/9	ND	ND	ND	ND	10
11:35	15/23	ND/8	ND/24	ND/24	ND	ND	ND
11:45	ND/23	6/9	ND	ND	ND	ND	0
11:50	ND/23	ND/5	ND	ND	ND	ND	ND
12:00	ND/16	0	14/	17/ND	10/ND	ND	ND

Source: Mesowest historical meteorological data, Mesowest, <http://www.met.utah.edu/mesowest/>.  
 ND—No Data available.

Earthjustice includes data in its chart only from locations which had recorded lower wind speeds on the morning of September 22, 2006. We addressed the lower intensity winds at Corcoran and Bakersfield in our proposed rule, and the fact that the winds between Lemoore and Corcoran and Bakersfield were capable of keeping in suspension the particulate matter that the winds at Lemoore had suspended. See 72 FR at 49052. Earthjustice does not include data from the other meteorological sites in the general area of the central SJV that show winds that were comparable to those recorded at the Lemoore Naval Air Station meteorological site. Data from these other meteorological sites, as shown above, indicate that nearly all recorded hourly wind speeds on September 22, 2006 were in excess of the threshold wind speed of 18 mph between 6 a.m. and 12 noon PST. Recorded gusts at some of these sites were also in the 20–30 mph range during the morning hours. It is likely that there were other places along the path from Lemoore to Bakersfield that experienced wind speeds above the threshold velocity but there were no wind instruments to document it.

Therefore, Earthjustice’s statement that none of the winds experienced outside of northwest Lemoore were capable of eroding soils is simply not true. Based on actual recorded wind

data, wind speeds in the central SJV on the morning of September 22, 2006 were high not just in Lemoore but throughout this portion of the Valley. Moreover, as pointed out above, even if the winds outside of Lemoore were not capable of eroding soil, the winds between Lemoore and Corcoran and Bakersfield were capable of keeping in suspension the particulate matter that the winds in the area around Lemoore had entrained.

*Comment 17:* Earthjustice states that no attempt was made to explain how high winds that began at 7 a.m. on September 22, 2006 caused violating PM–10 levels at a monitor 25 miles away starting at 6 a.m.

*Response 17:* See responses to comments 10 and 11.

*Comment 18:* Earthjustice asserts that EPA failed to demonstrate that the concentrations measured on September 22, 2006 could have been caused by the wind-generated erosion of soils from agricultural and industrial sources in the Lemoore area. Earthjustice states that all EPA offered as evidence is a study establishing a threshold velocity at which soil erosion may begin to occur, but that EPA has not analyzed whether the study’s threshold wind speed is appropriate for the Lemoore area. Earthjustice argues that the scouring of soil by winds depends on much more than simply the speed of the wind and that EPA has not attempted to

analyze factors pertinent to fugitive dust generation such as the soil class and erodibility in the Lemoore area, the types and stages of crop cover present at the time the winds occurred, the specific activities occurring in the area that contributed to PM–10 concentrations, or the specific measures employed by sources to reduce or prevent wind erosion. Earthjustice maintains that this information should have been evaluated to help determine whether or not the winds in Lemoore could have realistically generated the levels of PM–10 observed on September 22, 2006.

*Response 18:* EPA has demonstrated that the concentrations measured on September 22, 2006 were caused by windblown dust generated in the Lemoore area. As stated above in response to comment 10, the State’s documentation included a threshold wind speed needed to erode soils and entrain the resulting particulate matter in the atmosphere. This wind speed study was part of the 2002 CRPAQS Study. The wind speed study was performed in Angiola, California, which is located about 8 miles SW of Corcoran and 34 miles SW of Lemoore. Based on the soil map included in the State’s documentation, the soil type in Angiola is the same as those in Lemoore and Corcoran. See “Natural Event Documentation, Corcoran, Oildale and

Bakersfield, California, September 22, 2006.” San Joaquin Valley Unified Air Pollution Control District, April 20, 2007 at 76. Thus the threshold velocity at which soil erodes identified in the study is appropriate for the Lemoore and Corcoran areas.

Reviewing the graphic in the State’s documentation, we see that crop types throughout the areas in question are predominantly field crops. *Id.* at 77. Other sources in this rural portion of the SJV could include, but are not limited to, agricultural activities, unpaved roads and construction activity. These types of sources are all subject to BACM. *Id.* at 32–33. These BACM are part of the approved serious area PM–10 plan for the SJV. See 69 FR 30006. Therefore, EPA did in fact evaluate the principal factors identified by Earthjustice, including wind speed, sources and whether they were controlled. See also our proposed rule at 72 FR 49051 and 49053.

*Comment 19:* Earthjustice states that EPA must find that the documentation demonstrates a clear causal relationship between a measured exceedance and the alleged event. In this respect, Earthjustice, relying on a declaration of Jan Null (Null declaration), argues that the District’s documentation concocts a barely-plausible story of severe scouring by winds not much greater than the alleged minimum velocity for entrainment, followed by rapid transport from one remote west-Valley location (Lemoore) down to Corcoran, where huge amounts of particulate matter were deposited on the monitor in order to cause violations, yet enough pollution was kept entrained by much slower winds to continue on for 60 miles down to Bakersfield and Oildale in substantial enough quantities to also cause violations in those locations. Earthjustice concludes that this “story” is unsupported by reliable meteorological evidence.

*Response 19:* As discussed in EPA’s proposed rule (72 FR 49046) and in responses to comments 11 and 16, the State did provide reliable meteorological data to support its demonstration that winds in the central and southern SJV were of the appropriate intensity and direction to cause and transport fugitive dust to the affected monitors at Corcoran and Bakersfield. EPA relied on these data, as well as other publicly available data, to concur with the State’s request to find that the exceedances of the NAAQS on September 22, 2006 were due to an exceptional event.

Furthermore, Earthjustice mischaracterizes the data used to support this action. It is not the case

that winds were not much greater than the threshold wind speed of 18 mph; rather they were at times significantly higher and widespread in the central SJV. See Table 6 above. Winds between Lemoore and Corcoran were of the appropriate direction and intensity to transport windblown dust to Corcoran, 25 miles away. Winds in the areas south of Corcoran and north of Bakersfield were of sufficient intensity to transport suspended PM–10 the 55 miles from Corcoran to Bakersfield.<sup>27</sup> The timing, direction and intensity of the winds and hourly PM–10 concentrations at Bakersfield all support the demonstration of transport presented by the State. Based on the weight of evidence presented, EPA has concluded the State’s documentation shows a clear causal relationship between the wind event and the exceedances in contrast to the “barely-plausible story” Earthjustice alleges.

*Comment 20:* Earthjustice states that the Figure 1 in the Null declaration shows that winds originating in Lemoore at 7 am, which is when the data in the record show elevated winds began, may have traveled to Corcoran, arriving around noon. However, Earthjustice states that because the Corcoran monitor began reading exceedances of the PM–10 standard at 6 a.m., EPA cannot claim the winds caused the Corcoran exceedance.

*Response 20:* See our responses to comments 10 and 11.

*Comment 21:* Earthjustice claims that the Figures 1, 2 and 3 in the Null declaration show that the winds that did reach Corcoran proceeded northeast toward the Sierra foothills and did not move in the direction of Bakersfield.

*Response 21:* As discussed in our response to comment 11 above, EPA assumed a more realistic three-dimensional approach to using the HYSPLIT model than Earthjustice’s two-dimensional approach. We also used a small range of starting points for our HYSPLIT runs, recognizing that simply because the available Lemoore meteorological data were from a single point at the Lemoore Naval Air Station, the data from that point represent meteorological conditions over a wider area. See footnote 11 above.

Based on our more realistic inputs, we initiated three HYSPLIT runs, one

<sup>27</sup> There may have been some deposition and dispersion of the dust plume, as discussed in our proposal at 72 FR at 49052, but enough material remained suspended to impact the Bakersfield area. The fact that the 24-hour average PM–10 concentrations in Bakersfield and Oildale were 157 µg/m<sup>3</sup> and 162 µg/m<sup>3</sup> compared to the 215 µg/m<sup>3</sup> recorded at Corcoran certainly indicates that some deposition or dispersion occurred along the 55 mile pathway.

starting half way between Lemoore and Kettleman City (about 11 miles southwest from Lemoore), one at Lemoore, and one about 11 miles northeast of Lemoore. EPA chose these two different starting locations outside of Lemoore because, based on the trajectory model, they more precisely depict the potential source regions for Corcoran, which is more east than south of Lemoore, and Bakersfield, which is more south than east of Lemoore. Since the Lemoore station can be considered representative of a larger area than Lemoore itself, the starting locations are considered part of the Lemoore area and dust was entrained from that entire area. Also, in support of that assumption, Hanford, which is about 15 miles east northeast of Lemoore, and Kettleman Hills, about 22 miles southwest of Lemoore, reported wind speeds above the threshold for the entrainment of dust.

The results of our HYSPLIT runs show that from Corcoran and eastward, some of the dust may have been transported more towards the Sierra foothills, but west of Corcoran the dust was transported southward towards Bakersfield. See Figures 1, 2, and 3. These results are in general agreement with Jan Null’s statement that:

\* \* \* winds out of Kettleman City continued down the western-most side of the San Joaquin Valley, essentially following the contours of the Coastal Range. This is not unusual behavior for winds on the west side of the Valley, which are generally faster than winds in the rest of the Valley due to the orientation of the Sacramento and San Joaquin Valleys.

Null declaration at 11. Between Lemoore and Kettleman City, the winds were in transition from heading towards the east near Corcoran and following the Coastal Range as happened around Kettleman City. This caused the winds in a portion of that transition area to go in a direct path towards Bakersfield. In contrast to EPA’s inputs to the HYSPLIT model, the inputs used by Jan Null did not reflect the wind flow structure in the Valley and did not demonstrate a comprehensive view of the meteorological events that took place during that day.

*Comment 22:* Earthjustice believes that EPA was “dazzled” by the District’s use of the HYSPLIT model even though the model is not an appropriate tool for post hoc simulation of localized meteorology and EPA did no analyses of its own. Earthjustice further states that the District’s single run does not show the connection between Lemoore winds and the violating monitors that EPA apparently thinks it does.

*Response 22:* See our response to comments 10, 11 and 21.

*Comment 23:* Earthjustice maintains that the winds just south of Lemoore, in and around Corcoran and between Corcoran and Bakersfield never exceeded the “alleged” threshold velocity to entrain dust and the winds originating in Lemoore that did exceed such threshold could not have carried sufficient particles of PM on to Bakersfield and Oildale. Earthjustice concludes therefore that the timing, wind trajectories and the basic physics of wind movement do not support a causal connection between the Lemoore winds and the September 22, 2006 exceedances.

*Response 23:* See responses to comments 11 and 16.

*Comment 24:* Earthjustice notes that the District highlights a single data point showing sustained winds of 15.2 mph for one hour in Alpaugh. Earthjustice believes this is troubling because the District is relying on data from the California Irrigation Management Information System (CIMIS) monitoring network that the T & B Systems Report says should be used with “extreme caution.” Earthjustice also believes that it is suspicious that the District puts forth data from this source while simultaneously providing almost none of the data it collects from its own meteorological sensors which are collocated with the monitors that record PM-10 concentrations.

*Response 24:* Earthjustice quotes from the T & B Systems Report without providing the context of the warning to use the data with “extreme caution.” In its report, T & B Systems state:

CIMIS—This data set should be used with extreme caution. Two significant issues regarding the CIMIS data were noted. First, the fact that wind measurements are made at 2 meters instead of 10 meters appears to result in the reported wind speeds decreasing by about 30 percent relative to those made at 10 meters. This can be corrected, for the most part, by using the standard power law adjustment. Second, the results brought about significant questions about the alignment of the wind direction system, with possible misalignments as much as 30° noted. This potential problem was noted at a significant number of sites investigated. The QA program for the CIMIS network is not known.

“T & B Systems Contribution to CRPAQS Initial Data Analysis of Field Program Measurements, Final Report Contract 2002–06,” Technical & Business Systems, Inc., November 9, 2004 at 3.

The issue of the height of the measurements taken at CIMIS’ meteorological stations was addressed

by the State in its documentation.<sup>28</sup> Winds measured at two meters above ground level (AGL) are generally lower than those measured at the standard 10 meters.

Regarding the alignment of the wind direction system, there were many other meteorological stations that provided data on wind direction and these showed that the winds were predominantly from the north and northwest on September 22, 2006.

Any uncertainty regarding the quality assurance for the CIMIS data would carry more weight if we were relying solely on the CIMIS data. Most of the meteorological data included in the State’s documentation<sup>29</sup> as well as the additional data obtained by EPA<sup>30</sup> and used to evaluate this exceptional event demonstration were from the District’s meteorological stations and National Weather Service meteorological networks. Since the District does not operate any monitoring stations between Corcoran and Bakersfield, it did not have any District-collected meteorological data for this region.

*Comment 25:* Earthjustice believes that the District did little more than a blind search for the areas of the SJV that experienced winds that exceeded the “alleged” entrainment level and then concluded that pollution on September 22, 2006 must have originated from that area.

*Response 25:* EPA believes that the State and EPA conducted a thorough evaluation of the possible cause of the September 22, 2006 exceedances and considered potential sources, conditions and control measures at the time of the exceedances. We discuss in additional detail in our response to comment 16 the fact that a number of locations in the central SJV besides Lemoore experienced high winds on that day. After a consideration of the most likely cause of the exceedances and after evaluating all the circumstances, the State concluded that the unusually high winds in the Lemoore area caused the exceedances in Corcoran and Bakersfield on September 22, 2006. The State then established in its documentation the causal connection between the winds in the Lemoore area

and the exceedances at Corcoran and Bakersfield.

*Comment 26:* Earthjustice asserts that neither the District nor EPA offers any basis for the statement in the proposed rule at 72 FR 49051 that “wind speeds [in Corcoran], though not sufficient to erode dust, were sufficient to keep entrained and transported dust from the high winds at Lemoore suspended for the period during which the exceedances occurred.” Earthjustice further asserts that because winds 10 miles southeast of Lemoore at the SRR never exceeded the entrainment threshold and no other relevant location outside of the area northwest of Lemoore experienced erosive winds, there is very little basis for the conclusion that a clear causal relationship exists between dust entrained in Lemoore and violations of the standard in Corcoran, Oildale and Bakersfield.

*Response 26:* See responses to comments 10, 11, 15 and 16.

*Comment 27:* Earthjustice asserts that EPA fails to show that the exceedances at Corcoran, Bakersfield and Oildale were outside normal historical concentrations. Earthjustice claims that dust-intensive agricultural activities occur in the fall and that none of the September 22, 2006 exceedances are significantly beyond the normal fluctuating range of air quality concentrations in the SJV. Earthjustice presents a chart that it says demonstrates that the September 22, 2006 readings are within the historical range of PM-10 concentrations observed over the past 15 years during the fall season.

*Response 27:* See our response to comment 12 above.

*Comment 28:* Earthjustice states that EPA suggests in the Exceptional Events Rule that a contemporary comparison of all seasonally-adjusted data is appropriate for determining historical frequency of the measurements in question. However, Earthjustice says, because fall is the season with the highest PM-10 concentrations, the comparison is most appropriately made by looking at historical data from September through November.

Earthjustice claims that because the District’s documentation limits its comparison to September measurements over a 7 year period, the result is a “typical value” based only on the “relatively good days monitored.”

*Response 28:* See our response to comment 12 above.

*Comment 29:* Earthjustice maintains that EPA asserts that because the September 22, 2006 measurements were higher than what the District claims is

<sup>28</sup> “Addendum, Natural Event Documentation, Corcoran, Oildale and Bakersfield, California, September 22, 2006,” May 23, 2007 at 13.

<sup>29</sup> “Natural Event Documentation, Corcoran, Oildale and Bakersfield, California, September 22, 2006,” San Joaquin Valley Unified Air Pollution Control District, April 20, 2007; “Addendum, Natural Event Documentation, Corcoran, Oildale and Bakersfield, California, September 22, 2006,” San Joaquin Valley Unified Air Pollution Control District, May 23, 2007.

<sup>30</sup> Mesowest historical meteorological data, Mesowest, <http://www.met.utah.edu/mesowest/>.

the “typical value” for the month of September, these violations must have been caused by an exceptional event. Earthjustice claims that with this argument EPA is saying that any PM-10 exceedance should be ignored as exceptional which is an absurd assumption that would render the NAAQS meaningless.

*Response 29:* EPA did not decide to exclude the data from September 22, 2006 from its attainment finding simply because the data were outside of the typical range of values normally seen in these areas. The EER has a number of criteria that need to be met in order for us to concur with a State’s request to exclude data from consideration, including a demonstration that the event affected air quality, a causal connection between the event and the exceedance value recorded, an analysis demonstrating that the recorded exceedance was outside the normal fluctuation of the data, and a demonstration that “but for” the event the exceedance would not have occurred. EPA evaluates how the State meets all of these criteria, in addition to the procedural requirements of the EER and determines, based on the weight of the totality of the evidence presented, whether to concur with the State’s request. In this case, EPA believes that the State has met the “weight-of-evidence” standard and has demonstrated that the cause of the exceedances on September 22, 2006 was a high wind exceptional event. See also our response to comment 12.

*Comment 30:* Earthjustice states that if EPA had compared the September 22, 2006 data to data from other days on which exceedances occurred, it would have found that the September 22, 2006 readings are typical of bad air days in the fall in the SJV and therefore would not have been able to dismiss these violations as “in excess of normal fluctuations.”

*Response 30:* See response to comment 12.

*Comment 31:* Earthjustice states that it reviewed EPA’s AQS reports of monitoring data from the past ten years and found that in Corcoran, 50 percent of all FRM readings showing elevated levels of PM-10 occur in September and October and that 95 percent occur in the period from September to January. Earthjustice states that although the numbers are lower in Bakersfield and Oildale, with 31 percent and 29 percent of elevated PM-10 readings, respectively, occurring in September and October, these numbers do not paint the picture of exceptionality the District and EPA claim. Instead, Earthjustice declares, these numbers

confirm that the concentrations recorded on September 22, 2006 were within the normal historical range of PM-10 concentrations experienced in the central and southern SJV during the fall PM season when concentrations are historically at their highest.

*Response 31:* As discussed in our response to comment 12, EPA analyzed data from these sites and determined that the concentrations recorded on September 22 and October 25, 2006 were well outside the normal historical fluctuation of data normally recorded at these sites. In its comment, Earthjustice analyzes what it states are “elevated levels” of PM-10 concentrations that were recorded at the Corcoran, Oildale, and Bakersfield-Golden State Highway sites. Earthjustice asserts that an “elevated level” is “defined by EPA” as 90  $\mu\text{g}/\text{m}^3$  or greater.<sup>31</sup> This is not the case. For the source of its definition, Earthjustice cites a **Federal Register** notice in which EPA proposed to approve a PM-10 maintenance plan for Wallula, Washington. In that proposed rule the 90  $\mu\text{g}/\text{m}^3$  or greater was a figure employed by the Washington State Department of Ecology for use in modeling a PM-10 maintenance demonstration. 70 FR 38076 (July 1, 2005). EPA did not endorse or adopt this level as a definition of what constitutes “elevated levels” of PM-10 for the purposes of performing an analysis of historical fluctuations for the EER, and Earthjustice’s evaluation of “elevated levels” at the SJV monitoring sites is not based on an EPA definition of what constitutes “elevated levels” for this purpose.

*Comment 32:* Earthjustice claims that the “but for” test requires a showing that without the winds scouring the soils near Lemoore, the monitors in Corcoran, Bakersfield, and Oildale would not have recorded violations of the PM-10 standard and that such a showing cannot be made. Specifically, Earthjustice asserts that the monitor in Corcoran was violating the PM-10 standard on September 22, 2006 before the winds in Lemoore even picked up. Earthjustice states that Table 3 of the District’s April 20, 2007 documentation shows that the continuous monitor in Corcoran was recording concentrations in excess of 150  $\mu\text{g}/\text{m}^3$  starting at 6 a.m. Earthjustice further maintains that Jan Null in his declaration states that there is no way the winds in Lemoore could transport entrained dust instantaneously from Lemoore to Corcoran.

*Response 32:* We address these issues in our responses to comments 10, 11, 16 and 21. In our proposed rule we also

discussed how the State met the “but for” criteria. 72 FR at 49053.

*Comment 33:* Earthjustice further asserts that the winds in Corcoran never even got above 11 miles per hour, so local wind entrainment of particulate matter is not a factor. Earthjustice concludes that activities in and around Corcoran must have been responsible for the high PM-10 concentrations on September 22, 2006, not winds from Lemoore.

*Response 33:* We addressed the lower wind speed issue in Corcoran in our proposed rule at 72 FR 49052 and also in our responses to comments 10 and 15. As we discussed in the proposed rule, the lower wind speeds in Corcoran do not preclude the transport of dust from the areas northwest of Corcoran. The wind data from September 22, 2006 show high winds in the area centered around Lemoore. It was this area northwest of Corcoran that contributed PM-10 to the air parcel that impacted the monitors at Corcoran and Bakersfield. While any sources in the local area represented by the Corcoran monitor may have contributed some PM-10 to the total 24-hour average, it was the wind-generated dust from the area of Lemoore that contributed enough PM-10 to cause the monitor to record an exceedance of the 24-hour PM-10 NAAQS.

Given the evaluation of all information and circumstances surrounding the exceedance at the Corcoran monitor on September 22, 2006, the weight of evidence supports the conclusion that the windblown dust from the area of Lemoore rather than contributions from sources in the area represented by the Corcoran PM-10 monitor were the “but for” cause of the exceedance.

*Comment 34:* Earthjustice argues that, even if 6 hours worth of readings from the Corcoran continuous monitor were removed starting at 11 a.m., in order to account for the 6 hours during which winds in Lemoore exceeded the alleged threshold velocity, there is still a violation of the PM-10 standard. Therefore, Earthjustice concludes, there is no way the District can argue and EPA can concur that winds from Lemoore were the cause of the violation of the PM-10 standard in Corcoran on September 22, 2006.

*Response 34:* As discussed in the preamble to the EER, EPA’s historical practice has been to exclude a daily measured value in its entirety when an exceptional event causes that value. See 72 FR at 13572. EPA is not aware of the existence of precise and universally applicable techniques that are administratively and technically

<sup>31</sup> EC at 6, footnote 16.

feasible and that could support partial adjustment of air quality data. Thus, the approach suggested by Earthjustice is not viable and is not permitted by the EER except in some very limited cases not applicable here. See also response to comments 10.

Moreover, Earthjustice suggests that the winds from Lemoore began affecting the Corcoran monitor at 11 a.m. In fact the Lemoore area experienced winds higher than the threshold wind speed beginning at 6 a.m. PST and these winds likely began affecting the monitor at Corcoran between 7 and 8 a.m. PST (the value reported for 7 a.m. PST). See response to comment 10. When the winds at Lemoore decreased to levels below the threshold wind speed at 2 p.m. PST, the dust entrained in the atmosphere most likely still continued to impact the Corcoran monitor, though we see a leveling off and then gradual decrease in hourly PM-10 concentrations from that point forward. See Table 3 above in our response to comment 10. We further addressed this timing question by performing our own HYSPLIT analyses. See response to comment 11 above. The result of our analysis of the winds on September 22 supports the State's demonstration that winds originating in the area around Lemoore starting at 6 a.m. PST could have transported dust and impacted the Corcoran monitor within one to two hours. See Figures 1 and 2.

Earthjustice appears to assume that particles are deposited as soon as winds decrease below the threshold speed for entrainment; in fact, PM-10 particles remain in suspension for many hours after being entrained and, as in the case of Corcoran, continued to affect concentrations recorded at the monitor until the early evening hours of September 22, 2006. Thus, Earthjustice assumes that the windblown dust started to affect the concentrations monitored at Corcoran many hours later than it did in fact, and that it ceased to impact the monitor many hours before it did in fact. Thus EPA believes that the impact on the monitor started earlier and ended later than Earthjustice contends, and was thus the "but for" cause of the exceedance.

*Comment 35:* Earthjustice maintains that there is no support for the claim that but for the winds originating in Lemoore, the monitors in Bakersfield and Oildale would not have exceeded the PM-10 standard. Earthjustice states that Jan Null shows in Figures 1, 2 and 3 in his declaration that the winds originating in Lemoore may have reached Corcoran at some point in the day, but they certainly did not continue on to Bakersfield and Oildale.

Earthjustice states that the trajectories of winds out of Lemoore and Corcoran were decidedly away from Bakersfield and could not have carried particulate matter to Bakersfield and Oildale to cause the violations of the standard seen in these locations. Earthjustice states that Figure 4 in Jan Null's declaration shows that, in fact, any winds arriving in Bakersfield by 1 p.m. were slow and moving in a circular pattern up from the southwest. Further, Earthjustice asserts that, as illustrated in Table A-1 of the District's May Addendum to its April 20, 2007 documentation, wind speeds in the Bakersfield area never reached speeds capable of eroding soils.

*Response 35:* We have previously addressed the issue of dust transport to Bakersfield in our responses to comments 10, 11, 15, 16 and 21. EPA does not contend that the wind speeds in Bakersfield reached the speeds necessary to erode and entrain dust, but rather that windblown dust from the area beginning in Lemoore and moving south affected the monitors in Bakersfield.

The trajectory calculation that Jan Null used for Bakersfield was not illustrative of the complete meteorological scenario. Again, he used a single trajectory calculation starting at zero meters height which does not account for the third dimension of height of the dust above ground level. In HYSPLIT runs performed by EPA, forward trajectory calculations within the mixed layer starting between Lemoore and Kettleman Hills show transport directly to Bakersfield within 7 hours.

In addition, the circular wind pattern or eddy near Bakersfield discussed by Earthjustice was produced by a HYSPLIT analysis using a backward trajectory. However there appears to be a discrepancy between forward trajectories and backward trajectories produced by the HYSPLIT model. In source-receptor determinations, forward trajectories are considered more appropriate in determining precise locations of sources because they more accurately account for where the weather is coming from. EPA's forward trajectories did not show any indication of an eddy. The eddies that Earthjustice states occurred around Bakersfield are around 15 km in size for September 22, 2006. Since the EDAS meteorological data used for the trajectories has 40 km spacing between each grid point or meteorological data point, it is not of high enough resolution to accurately represent an eddy in the 15 km size range. There is too much uncertainty to conclude that there is an eddy because it is less than one grid cell spacing in

dimension and would be considered a sub-grid scale feature. Thus, EPA's HYSPLIT runs, using more appropriate height levels in the atmosphere and forward trajectories, support the conclusion that the winds transported dust from the Lemoore area and caused the exceedances recorded at the monitors in the timeframe of the exceedances.

*Comment 36:* Earthjustice argues that, in evaluating the "but for" demonstration, no attempt was made to determine which of the many diverse sources that contribute to particulate matter concentrations in the SJV might have been contributing to the pollution load and in what quantities on September 22, 2006. Earthjustice concludes that for EPA to declare that no "unusual activities" were taking place on this day is to say that the same dust-generating sources that have always caused periodic violations of the standards in the fall were again responsible for exceedances.

*Response 36:* See responses to comments 6, 12 and 14.

### 3. Comments Specific to October 25, 2006—Corcoran and Bakersfield

*Comment 37:* Earthjustice states that the documentation for the exceedances on October 25, 2006 is remarkably similar to that of September 22, 2006, and as such, suffers from the same significant flaws. Earthjustice also states that since the meteorology for both days was very similar, much of its analysis for September 22, 2006 also applies to October 25, 2006. Earthjustice provides a chart which it contends shows that wind speeds in Lemoore on October 25 were very similar to wind speeds on September 22. With respect to this chart, Earthjustice asserts the following:

\* \* \* there was a period of several hours during which the alleged wind speed threshold was exceeded in northwest Lemoore at the Naval Air Station monitor, though again wind speeds at the Santa Rosa Rancheria monitor only 10 miles southeast never reached that threshold. \* \* \* Winds in Corcoran never got above 11.3 miles per hour and Bakersfield, likewise, did not exceed the District's alleged entrainment threshold with maximum winds just under seven miles per hour. \* \* \* Further, the District can point to no data between Lemoore and Bakersfield that show winds capable of entraining dust, offering instead only data from CIMIS stations located far to the north and west that experienced higher wind speeds on October 25, 2006. As has already been established by Mr. Null, higher wind speeds on the west side of the Valley along the Coastal Range are not unusual due to the orientation of the Sacramento and San Joaquin Valleys. \* \* \*

*Response 37:* To the extent there are similarities between Earthjustice's

analyses for September 22 and October 25, 2006, EPA's responses to comments regarding September 22 are also applicable.

In addition, EPA notes that the wind speeds in the central SJV, as represented by the meteorological monitoring station at Lemoore, on October 25 were quite high, reaching hourly average speeds of 31 mph and gusts of up to 40 mph, and were sustained at levels above the threshold wind speed for 11 hours (5 a.m. to 3 p.m. PST),<sup>32</sup> as shown in Table 5 above. We do not contend that the wind speeds in the vicinity of

Corcoran and Bakersfield were sufficient to entrain dust but, like September 22, 2006, the windblown dust generated in the Lemoore area in the central SJV was the "but for" cause of the exceedances recorded in Corcoran and Bakersfield on October 25, 2006. Moreover, the wind speeds that occurred in between Lemoore and Corcoran and Bakersfield were of sufficient speed to transport the entrained dust from Lemoore to the affected areas. *Id.*

Earthjustice again selectively presents meteorological data to support its own

position and neglects to include other data that support the State's demonstration. From the data supplied by the State in its documentation as well as additional publicly available data, it is clear that wind speeds in Lemoore, as well as throughout the central San Joaquin Valley, were either in excess of the threshold wind speed for entrainment (18 mph) or of sufficient intensity to transport dust from the Lemoore area to Corcoran and the southern SJV. See Table 7 below.

TABLE 7.—OCTOBER 25, 2006 DAYTIME WIND SPEEDS AT METEOROLOGICAL MONITORING STATIONS IN THE CENTRAL SAN JOAQUIN VALLEY

Hour	Mendota (hour/gust)	Tranquility (hour/gust)	Lemoore (hour/gust)	Hanford Airport (hour/gust)	Kettleman Hills (hour/gust)	Alpaugh (hour)	Wasco (hour/dir/gust)
6	12/ND	9/15	22/30	17/23	11/21	3.5	2/SW/3
7	15/20	10/17	22/32	15/ND	20/28	2.9	0
8	18/25	13/19	26/36	17/ND	15/27	5.6	7/NNW/15
9	17/30	20/22	29/39	24/29	19/32	16.9	5/NE/18
10	22/31	17/21	31/37	20/28	25/35	16.5	9/N/22
11	22/30	15/20	30/40	15/24	25/35	16.8	7/N/15
12	21/28	17/20	28/38	12/21	24/45	15.6	6/N/16
13	20/28	15/23	26/35	12/ND	25/34	14.8	8/N/16
14	18/29	18/19	22/31	9/ND	21/35	13.2	2/NNE/10
15	12/23	10/18	20/26	12/18	22/33	13.3	ND/N/12
16	15/20	8/17	14/ND	8/16	15/28	12.7	3/N/7
17	8/17	4/10	3/ND	8/ND	9/22	6.5	2/N/ND
18	5/6	1/5	6/ND	6/ND	10/14	4.4	0

Source: Mesowest historical meteorological data, Mesowest, <http://www.met.utah.edu/mesowest/>. ND—No Data available.

South of Corcoran, wind speeds measured at Alpaugh,<sup>33</sup> 15 miles SSE of Corcoran and 44 miles NW of Bakersfield, were close to exceeding the threshold wind speed and as such were sufficient to transport particulate matter from the Lemoore area to Bakersfield as discussed above and in our proposed action. Furthermore, meteorological data from a station in Wasco, 40 miles SSE of Corcoran and 25 miles NW of Bakersfield and not part of the CIMIS network, recorded data that indicate that the daytime winds, while not high enough to erode soils, were predominantly from the north.

*Comment 38:* Earthjustice states that like the documentation for September 22, 2006, the District's documentation for the alleged October event also fails to analyze the actual ability of the area to generate particulate matter concentrations in quantities great enough to cause the exceedances, fails to provide anything more than anecdotal evidence of activity levels and compliance with dust controls, and

therefore fails to demonstrate that the winds in Lemoore affected air quality at all. Earthjustice states that, like the case for the September 22 demonstration, a claim that the wind entrained significant amounts of dust requires looking at more than just the wind speeds in the area. There are many factors that EPA and the District failed to support with any reliable and accurate data, starting with whether there was any dust available to be entrained.

*Response 38:* See responses to comments 6, 14 and 18. As is the case with the September 22, 2006 documentation, the State has evaluated a variety of factors and circumstances to demonstrate that windblown dust caused the exceedances on October 25. See "Natural Event Documentation, Corcoran and Bakersfield, California, October 25, 2006," San Joaquin Valley Unified Air Pollution Control District, April 23, 2007 at section 7.

The State also provided information on the inspection and compliance

activities that were conducted on October 25, 2006. Section 9.2 of the State's documentation lists the number of inspections and the location of inspection activity and indicates that the District was actively enforcing its rules on October 25, 2006. Two newspaper accounts of the high winds that occurred on October 25, 2006 provide independent verification of meteorological conditions. This type of documentation has been historically used to support these types of exceptional events requests. EPA's EER states that the simplest demonstrations could consist of newspaper accounts or satellite images to demonstrate that an event occurred together with daily and seasonal average ambient concentrations to demonstrate an unusually high ambient concentration level, which is clearly indicative of an exceptional impact. 72 FR at 13573.

*Comment 39:* Earthjustice states that, as explained in its comments for September 22, 2006, the generation of particulate matter from winds of the

<sup>32</sup> As discussed in response to comment 10 above, the meteorological data for Lemoore must be adjusted to correct for Daylight Savings Time.

<sup>33</sup> See response to comment 24.

type experienced on October 25, 2006 could have been controlled or prevented had reasonable controls been required of dust-producing sources. Earthjustice believes that the fact that the District is trying to blame winds only slightly above the alleged wind speed threshold, and significantly below the velocities at which the aforementioned controls stop being effective, suggests that either winds could not have entrained dust or the reasonable measures referenced in the proposal were not actually in place at the time of the event.

*Response 39:* See responses to comments 5, 6 and 7. The winds in the Lemoore area on October 25 were not "slightly above" the wind speed threshold but rather included sustained high winds between 26 and 31 mph with gusts ranging from 26 to 40 mph. These wind speeds were clearly sufficient to entrain and transport PM-10.

*Comment 40:* Earthjustice states that high winds entraining dust may qualify as a natural event, but it also believes the source of the dust is of equal importance under the law. Earthjustice states that EPA admits that on October 25, 2006, the wind-entrained particulate matter originated from anthropogenic sources such as agricultural and industrial activities, but that under the EER, only "an event in which human activity plays little or no direct causal role" can be considered a natural event. Earthjustice states that Congress did not intend for exceptional events to include sources that are caused by human activity. Alternatively, Earthjustice states that the source of the dust cannot be considered a non-recurring human activity, as agricultural and industrial activities are a constant source of emissions in the Valley.

*Response 40:* See response to comment 5. Also, regarding Earthjustice's argument that dust from agricultural and industrial activities cannot be considered a non-recurring human activity because these activities are a constant source of emissions in the Valley, EPA does not consider (and has not stated anywhere) that normal agricultural and industrial activities are "non-recurring human activity" because such human activities often recur on a regular basis. By contrast, examples of non-recurring human activities may include major construction projects such as highways if they meet the criteria and requirements established in the EER. However, a recurring natural event such as a high wind event may entrain dust from anthropogenic sources. The entrainment of dust from "reasonably controlled sources" such as agricultural sources does not convert a

natural event that qualifies as a high wind event into a recurring human activity which appears to be the result Earthjustice is seeking.

*Comment 41:* Earthjustice states that, like the September 22, 2006 documentation, the District did not provide the requisite amount of time for public comment on its October 25, 2006 documentation and did not re-publish its final documentation after radically changing its rationale. These procedural deficiencies alone should give EPA pause in considering the District's requests to flag this data.

*Response 41:* See response to comment 8.

*Comment 42:* Earthjustice states that since the meteorology on October 25, 2006 is so similar to that of September 22, 2006, it is not surprising that a causal connection cannot be established for October 25 either. Earthjustice points out that the Corcoran monitor began reading concentrations above the national standard at 6:00 am, the same time that the winds in Lemoore, 25 miles away, began exceeding the District's alleged wind speed threshold at the same time. Earthjustice believes that it should go without saying that it is not possible for winds in Lemoore to transport entrained dust to Corcoran instantaneously, which is what would have to be the case if we are to believe the District's claims that those winds caused the exceedances in Corcoran, and that therefore, something other than the Lemoore winds caused the initial exceedances recorded at that monitor.

*Response 42:* See responses to comments 10 and 11.

*Comment 43:* Earthjustice states that even if we were to assume that the winds carried dust from Lemoore to Corcoran, the trajectory of those winds does not support the conclusion that the dust then moved down to Bakersfield. Earthjustice cites Figure 7 in the Null declaration which shows that winds originating in Lemoore moved on a due-east path toward Hanford and Corcoran and continued on toward the Sierra foothills. Jan Null uses HYSPLIT to determine the source of wind parcels arriving in Bakersfield at noon, which is approximately when the exceedances began, and shows that the same slow eddy effect that occurred on September 22, 2006 was also occurring in Bakersfield on October 25, 2006, which means that the winds impacting Bakersfield during the time of the exceedances were coming in slowly from the southwest. Figure 8 in the Null declaration.

*Response 43:* As discussed in our responses to comments 11 and 21 above, EPA assumed a more realistic three

dimensional approach to using the HYSPLIT model than did Jan Null. We also used a small range of starting points for our HYSPLIT runs, recognizing that although the available Lemoore meteorological data were from a point located at the Lemoore Naval Air Station, the data represent conditions over a wider area. See footnote 11 above.

As with our analysis of the September 22, 2006 event, we initiated three HYSPLIT runs for October 25, 2006, one starting half way between Lemoore and Kettleman City (about 11 miles southwest from Lemoore), one at Lemoore, and one about 11 miles northeast of Lemoore. On October 25, 2006, the HYSPLIT trajectory presented by Null in Figure 7 of his declaration indicates that the winds starting in Lemoore went to the east southeast. However, EPA's HYSPLIT runs initiated half way between Lemoore and Kettleman City, northwest of Corcoran, demonstrate that the winds continued down the SJV towards Bakersfield, along a path just west of Corcoran. See Figures 5 and 6 above. Between Lemoore and Kettleman City, the winds were in transition from heading towards the east near Corcoran and following the Coastal Range as happened around Kettleman City. This caused the winds in a portion of that transition area to go in a direct path towards Bakersfield. See Figure 5.

For Bakersfield, Null used a trajectory in Figure 8 of his declaration at zero meters height to show the same eddy effect occurring on October 25 as on September 22. Again, this height does not take into account dust mixing up into the atmosphere. In EPA's HYSPLIT runs, more appropriate forward trajectories were used which showed that dust coming from the Lemoore area could have reached Bakersfield within about 6 hours. See Figure 6. They also did not show any indication of the eddy effect near Bakersfield that Earthjustice found with back trajectories. *Id.* and response to comment 35. This supports the conclusion that dust-laden winds from the Lemoore area reached Bakersfield on October 25, 2006 consistent with the impacts reflected at the Bakersfield monitor.

*Comment 44:* Earthjustice states that while the District and EPA cite wind speeds averaging 12 miles per hour in Alpaugh, an area 15 miles south of Corcoran, neither agency provides a basis for concluding that such winds could transport and keep suspended the plume of entrained dust that was allegedly carried to Bakersfield, nor do they explain how the evidence provided

even suggests such transport could have taken place.

*Response 44:* See responses to comments 11, 15 and 43. EPA finds that the documentation does establish a clear causal relationship between the winds in Lemoore and the exceedances in Corcoran and Bakersfield. See “Natural Event Documentation, Corcoran and Bakersfield, California, October 25, 2006,” San Joaquin Valley Unified Air Pollution Control District, April 23, 2007. Earthjustice neglects to consider that the CIMIS data need to be adjusted, as discussed in the State’s documentation, due to the fact that CIMIS stations collect data at 2 meters above ground level as opposed to the standard 10 meter height. *Id.* at 25. See also response to comment 24. When this adjustment is made, we can see that the wind speeds at Alpaugh would have been approximately 25 percent higher at 10 meters than at 2 meters. Winds at nearly 17 mph were recorded from 9 a.m. to 11 a.m. PST, dropping to between 15 mph and 13 mph between 12 p.m. and 3 p.m. PST. The lower wind speeds recorded at stations farther south, such as Shafter and Arvin, are consistent with the State’s demonstration that after the winds in the central SJV transported particulate matter southward, lower wind speeds in the Bakersfield area facilitated the settling of the particulates at the monitoring station.

*Comment 45:* Earthjustice states that while the readings from October 25, 2006 were relatively high, they were probably not beyond the normal historical fluctuations experienced in the Valley in late October. Earthjustice also states that fall is when the Valley’s PM-10 concentrations are at their highest and also the peak season for many dusty crops in the Valley.

*Response 45:* See our responses to comment 7 and 12 above.

*Comment 46:* Earthjustice states that EPA’s “but for” analysis for the October 25, 2006 event is based entirely on speculation and conjecture and that EPA cannot say for sure what activities were taking place in the areas of Corcoran or Bakersfield and cannot say for sure that without the alleged high winds in Lemoore the monitors in Corcoran and Bakersfield would not have exceeded the standard.

*Response 46:* See responses to comments 6 and 7 and EPA’s “but for” analysis in our proposed rule at 72 FR 49056–49057. EPA’s conclusion is not based on speculation and conjecture but rather on the weight of evidence presented.

*Comment 47:* Earthjustice states that since the HYSPLIT analyses provided

both by the District and by meteorologist Jan Null contradict the claim that the winds from Lemoore had a sufficient speed or trajectory to impact Corcoran and Bakersfield, and because the Corcoran and Bakersfield monitors were already measuring exceedances of the PM-10 standard before the winds from Lemoore could have arrived, EPA cannot conclude that the District has established that “but for” the winds in Lemoore, the exceedances would not have occurred.

*Response 47:* See responses to comments 10, 11, 21, 43 and 44.

#### B. Other Comments

*Comment 48:* A commenter notes that the concept of exceptional events for air quality purposes is “a bad idea” because they provide a loophole to gut the intent of the original regulation. The commenter expresses concern that discarding data related to exceptional events would substantially weaken the regulation designed to protect the health of residents in an area. In the particular instance of the SJV, the commenter notes that the exceptional events were high winds and construction activity. According to the commenter, these events should not be used to justify poor air quality because high winds are a natural occurrence and construction activity occurs repeatedly. The commenter expresses concern that exceptional events not be used as “additional excuses to rationalize bad air on certain days.”

*Response 48:* Congress amended section 319 of the CAA and required EPA to establish regulations governing the review and handling of air quality monitoring data influenced by exceptional events. In amending section 319, Congress indicated that states should not have to prepare and implement regulatory strategies designed to remedy poor air quality when their air quality is affected by events beyond their reasonable control. To accomplish this goal, Section 319, as amended, defined an exceptional event and required EPA to set certain minimum substantive and procedural requirements before data could be excluded as due to an exceptional event. In response, as described below, EPA proposed regulations for exceptional events in March 2006 and sought public comments on its proposal. See 71 FR 12592 (March, 10, 2006). In March 2007, after considering all comments received, EPA published its final rule on exceptional events which became effective on May 21, 2007. 72 FR 13560. During the exceptional events rulemaking process, EPA took comments on the definition of

exceptional events, the substantive and procedural requirements for an event to qualify as an exceptional event and appropriate mitigation measures in these circumstances. In this rulemaking on air quality in the SJV, EPA is neither seeking nor considering comments on the concept of exceptional events, which activities would constitute exceptional events, and/or whether air quality data may be excluded due to such events. EPA has already addressed these issues in its EER. Comments about the concept of exceptional events and whether such events should be considered in air quality determinations have been decided in the exceptional events rulemaking process and thus are outside the scope of this rulemaking.

The commenter also notes that as a general matter high winds should not be considered an exceptional event because they are natural occurrences. EPA has discussed high wind events extensively in the preambles to both the proposed and the final rules on exceptional events. The EER indicates the circumstances under which high winds can qualify for treatment as exceptional events. Again, these general issues were decided in the EER and EPA did not reopen comment on that general issue in this SJV rulemaking. The commenter does not provide data relevant to whether the high winds in this instance meet the provisions of the EER, the issue under consideration in this rulemaking action.

The commenter asserts that “construction is always occurring” and therefore data related to these events should not be excluded. Not all construction activity qualifies as an exceptional event. A construction activity, like other exceptional events must meet the definitional, substantive and procedural requirements specified in the EER. For example, for any construction activity to be considered an exceptional event, it must meet the definition of an exceptional event, including for anthropogenic events such as construction, that it is an event that is unlikely to recur at that location. Thus, by definition, construction activity that is “always occurring” at a particular location is not an exceptional event under the rule.

*Comment 49:* The commenter states that he is unfamiliar with details of the SJV case but wishes to comment on the concept of exceptional events and expressed his view that such events should not be considered in air quality determinations. The commenter believes that there are a wide variety of loopholes such as permitting rounding down of numbers, exclusion of three worst days and using three year

averages for final attainment which “degrade the rigor of the standard.” According to the commenter, excluding air quality data affected by exceptional events further softens the initial regulation. In the SJV case, the commenter questions why the construction activity was not limited to periods when the atmosphere could “handle the load.” In addition, the commenter discusses the construction of an asphalt plant in a local community and notes that during the construction of such a plant, officials sought to exclude data on certain days because they attributed the poor air quality to interstate transport. The commenter also refers to the treatment of fires in his area.

*Response 49:* With respect to that portion of the comment concerning the concept of exceptional events, see response to comment 48. In response to the commenter’s question about why the construction activity was not limited to periods when the atmosphere could handle the load, EPA notes that air quality “load” is not an issue for the SRR area where construction contributed to the exceptional event. There have been no exceedances or air quality issues in the SRR area either before or after the construction activity. As explained in the proposed rule, the monitor in the SRR was affected by the construction activity because it was in such close proximity to the construction activity (25–100 feet). 72 FR at 49062. The monitor has not recorded any exceedances since the construction activity at the parking lot was completed. The comments on the construction of the asphalt plant and the fires do not relate to issues in the SJV area and thus are outside the scope of this rulemaking.

#### C. List of EPA Figures in Docket

- Figure 1. “Forward Trajectories at 10, 100, & 250 meters, Lemoore Area to Corcoran, September 22, 2006, 6 a.m. to 8 a.m. PST,” March 6, 2008.
- Figure 2. “Forward Trajectories at 250 meters, Lemoore to Corcoran and Bakersfield, September 22, 2006, 6 a.m. to 1 p.m. PST,” March 6, 2008.
- Figure 3. “Forward Trajectories at 10, 100, & 250 meters, Lemoore Area to Bakersfield, September 22, 2006, 6 a.m. to 1 p.m. PST,” March 6, 2008.
- Figure 4. “Forward Trajectories at 10, 100, & 250 meters, Lemoore Area to Corcoran, October 25, 2006, 5 a.m. to 7 a.m. PST,” March 6, 2008.
- Figure 5. “Forward Trajectories at 250 meters, Lemoore to Corcoran to Bakersfield, October 25, 2006, 5 a.m. to 11 a.m. PST,” March 6, 2008.

- Figure 6. “Forward Trajectories at 10, 100, & 250 meters, Lemoore Area to Bakersfield, October 25, 2006, 5 a.m. to 11 a.m. PST,” March 6, 2008.
- Figure 7. “Annual Peak Day PM10 Concentrations at Corcoran,” March 6, 2008.
- Figure 8. “Annual Peak Day PM10 Concentrations at Bakersfield,” March 6, 2008.
- Figure 9. “Annual Peak Day PM10 Concentrations at Oildale,” March 6, 2008.
- Figure 10. “Annual Peak Fall Day PM10 Concentrations at Corcoran (September, October, November Data Only),” March 6, 2008.
- Figure 11. “Annual Peak Fall Day PM10 Concentrations at Bakersfield (September, October, November Data Only),” March 6, 2008.
- Figure 12. “Annual Peak Fall Day PM10 Concentrations at Oildale (September, October, November Data Only),” March 6, 2008.

#### III. Final Action

For the reasons set forth in detail in EPA’s proposed rule and in today’s final rule, including the responses to comments, EPA is concurring with the State’s and the Santa Rosa Rancheria Tribe’s requests to flag exceedances occurring in 2006 as being caused by exceptional events. (i.e., high winds and construction activity in very close proximity to the monitor, respectively). In addition, as set forth in its proposed rule, EPA is finding that the monitor at the Santa Rosa Rancheria was not properly sited for purposes of collecting data for comparison to the NAAQS during the period that exceedances were monitored in 2006. EPA is thus concluding that the exceedances that are the subject of these requests should be excluded from use in determining whether the SJV has attained the PM–10 NAAQS. EPA is finalizing its proposal to affirm the determination of attainment for the SJV, based on quality-assured data through December, 2006.<sup>34</sup>

For the reasons set forth in its proposed rule and in this final rule, EPA is denying the December 29, 2006 petition for reconsideration and the March 21, 2007 petition for withdrawal of EPA’s 2006 determination of attainment filed by Earthjustice on behalf of the Sierra Club, Latino Issues Forum, and others.

<sup>34</sup> The District has flagged exceedances occurring on July 4, 2007 and January 4, 2008 as being caused by exceptional events. We intend to address these exceedances in the future.

#### IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely makes a determination based on air quality data, and imposes no additional requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175 (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.” As discussed in our proposed rule, several Indian tribes have reservations located within the boundaries of the SJV. EPA is aware of only one tribe in the SJV that operates a PM–10 monitor, the Santa Rosa Rancheria. Prior to and since the proposed rule, EPA has consulted with representatives of the Santa Rosa Rancheria Tribe on the data recorded by its monitor, and the flagging of the data, and will continue to work with the Tribe, as provided for in Executive Order 13175. Accordingly, EPA has addressed Executive Order 13175 to the extent that it applies to this action. This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely makes a determination based on air quality data and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency actions by directing agencies to identify and address, as

appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations. Today's action involves determinations based on air quality considerations and affirms that the SJV attained the PM-10 NAAQS. It will not have disproportionately high and adverse effects on any communities in the area, including minority and low-income communities.

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures that otherwise satisfy the provisions of the Clean Air Act. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 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. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *May 19, 2008*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. (See section 307(b)(2).)

### List of Subjects

#### 40 CFR Parts 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

#### 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated March 7, 2008.

Wayne Nastri,

Regional Administrator, Region 9.

[FR Doc. E8-5188 Filed 3-18-08; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2007-0876; FRL-8344-1]

#### Spinetoram; Pesticide Tolerance; Technical Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; technical correction.

**SUMMARY:** EPA issued a final rule in the **Federal Register** of October 10, 2007, concerning the establishment of a tolerance for the combined residues of the insecticide spinetoram. This document is being issued to correct a technical error, specifically, the omission of the complete tolerance expression under Unit V. and in the regulatory text section of the final rule.

**DATES:** This final rule is effective March 19, 2008.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2007-0876. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [www.regulations.gov](http://www.regulations.gov) website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in [www.regulations.gov](http://www.regulations.gov). Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly

available only in hard copy form.

Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

#### FOR FURTHER INFORMATION CONTACT:

Bonaventure Akinlosotu, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 605-0653; e-mail address: [akinlosotu.bonaventure@epa.gov](mailto:akinlosotu.bonaventure@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using [www.regulations.gov](http://www.regulations.gov), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>.

##### II. What Does this Correction Do?

The final rule, identified as FR Doc. E7-19947 that published in the **Federal Register** of October 10, 2007 (72 FR 57492) (FRL-8149-9) is corrected to fix a technical error, specifically, the omission of the complete tolerance expression for the combined residues of the insecticide spinetoram under Unit V. (page 57498, second column) and in the regulatory text section (page 57499, first column) of the final rule.

Unit V. **Conclusion**, on page 57498, second column, is corrected to read as follows:

"Therefore, the tolerance is established for the combined residues of the insecticide spinetoram, expressed as a combination of XDE-175-J: 1-H-as-indaceno[3,2-d]oxacyclododecin-7,15-dione, 2-[(6-deoxy-3-O-ethyl-2,4-di-O-methyl-a-L-mannopyranosyl)oxy]-13-[[[(2R,5S,6R)-5-(dimethylamino)tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,4,5,5a,5b,

6,9,10,11,12,13,14,16a,16b-hexadecahydro 14-methyl-, (2R,3aR,5aR,5bS,9S, 13S,14R,16aS,16bR); XDE-175-L: 1H-as-indaceno[3,2-d]oxacyclododecin-7,15-dione, 2-[(6-deoxy-3-O-ethyl-2,4-di-O-methyl-a-L-mannopyranosyl)oxy]-13-[[[(2R,5S,6R)-5-(dimethylamino)tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9, 10,11,12,13,14,16a,16b-tetradecahydro-4,14-dimethyl-, (2S,3aR,5aS,5bS, 9S,13S,14R,16aS,16bS); ND-J: (2R,3aR,5aR,5bS,9S,13S,14R,16aS,16bR)-9-ethyl-14-methyl-13-[[[(2S,5S,6R)-6-methyl-5-(methylamino)tetrahydro-2H-pyran-2-yl]oxy]-7,15-dioxo-2,3,3a,4,5,5a,5b, 6,7,9,10,11,12,13,14,15,16a,16b-octadecahydro-1H-as-indaceno[3,2-d] oxacyclododecin-2-yl 6-deoxy-3-O-ethyl-2,4-di-O-methyl-alpha-L-mannopyranoside; and NF-J: (2R,3S,6S)-6-[[[(2R,3aR,5aR,5bS,9S, 13S,14R,16aS,16bR)-2-[(6-deoxy-3-O-ethyl-2,4-di-O-methyl-alpha-L-mannopyranosyl)oxy]-9-ethyl-14-methyl-7,15-dioxo-2,3,3a,4,5,5a,5b,6,7,9,10,11,12,13,14,15,16a, 16b-octadecahydro-1H-as-indaceno[3,2-d] oxacyclododecin-13-yl]oxy]-2-methyltetrahydro-2H-pyran-3-yl(methyl)formamide.”

### III. Why is this Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the Agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical correction final without prior proposal and opportunity for comment, because this final rule corrects a technical error and does not otherwise change the original requirements of the final rule. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

### IV. Do Any of the Statutory and Executive Order Reviews Apply to this Action?

This final rule corrects a technical error and does not otherwise change the requirements in the final rule. As a technical correction, this action is not subject to the statutory and Executive Order review requirements. For information about the statutory and Executive Order review requirements as they related to the final rule, see Unit VI. in the **Federal Register** of October 10, 2007.

### V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report to each House of

the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

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

Dated: March 4, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR part 180 is corrected as follows:

### PART 180—[AMENDED]

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

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

■ 2. In § 180.635, the introductory text for paragraph (a) is revised to read as follows:

#### § 180.635 Spinetoram; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the insecticide spinetoram, expressed as a combination of XDE-175-J: 1-H-as-indaceno[3,2-d]oxacyclododecin-7,15-dione, 2-[(6-deoxy-3-O-ethyl-2,4-di-O-methyl-a-L-mannopyranosyl)oxy]-13-[[[(2R,5S,6R)-5-(dimethylamino)tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,4,5,5a,5b, 6,9,10,11,12,13,14,16a,16b-hexadecahydro 14-methyl-, (2R,3aR,5aR,5bS,9S, 13S,14R,16aS,16bR); XDE-175-L: 1H-as-indaceno[3,2-d]oxacyclododecin-7,15-dione, 2-[(6-deoxy-3-O-ethyl-2,4-di-O-methyl-a-L-mannopyranosyl)oxy]-13-[[[(2R,5S,6R)-5-(dimethylamino)tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9, 10,11,12,13,14,16a,16b-tetradecahydro-4,14-dimethyl-, (2S,3aR,5aS,5bS, 9S,13S,14R,16aS,16bS); ND-J: (2R,3aR,5aR,5bS,9S,13S,14R,16aS,16bR)-9-ethyl-14-methyl-13-[[[(2S,5S,6R)-6-methyl-5-(methylamino)tetrahydro-2H-pyran-2-yl]oxy]-7,15-dioxo-2,3,3a,4,5,5a,5b,6,7,9,10,11,12,13,14, 15,16a,16b-octadecahydro-1H-as-indaceno[3,2-d]oxacyclododecin-2-yl 6-deoxy-3-O-ethyl-2,4-di-O-methyl-alpha-

L-mannopyranoside; and NF-J: (2R,3S,6S)-6-[[[(2R,3aR,5aR,5bS,9S, 13S,14R,16aS,16bR)-2-[(6-deoxy-3-O-ethyl-2,4-di-O-methyl-alpha-L-mannopyranosyl)oxy]-9-ethyl-14-methyl-7,15-dioxo-2,3,3a,4,5,5a,5b,6,7,9, 10,11,12,13,14,15,16a,16b-octadecahydro-1H-as-indaceno[3,2-d] oxacyclododecin-13-yl]oxy]-2-methyltetrahydro-2H-pyran-3-yl(methyl)formamide, in or on the following raw agricultural commodities:

\* \* \* \* \*

[FR Doc. E8-5402 Filed 3-18-08; 8:45 am]

BILLING CODE 6560-50-S

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2007-0178; FRL-8353-2]

### Prothioconazole; Pesticide Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for combined residues of prothioconazole and prothioconazole-dethio, calculated as parent, in or on soybean, forage; soybean, seed; soybean, hay; and sugar beet, roots. Bayer CropScience requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** This regulation is effective March 19, 2008. Objections and requests for hearings must be received on or before May 19, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2007-0178. To access the electronic docket, go to <http://www.regulations.gov>, select “Advanced Search,” then “Docket Search.” Insert the docket ID number where indicated and select the “Submit” button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in [www.regulations.gov](http://www.regulations.gov). Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Bryant Crowe, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-0025; e-mail address: [crowe.bryant@epa.gov](mailto:crowe.bryant@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

###### B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>, you may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of EPA’s tolerance regulations at 40 CFR part 180 through the Government Printing Office’s pilot e-CFR site at <http://www.gpoaccess.gov/ecfr>.

###### C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2007-0178 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before May 19, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA-HQ-OPP-2007-0178, by one of the following methods:

•**Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

•**Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

•**Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket’s normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

##### II. Petition for Tolerance

In the **Federal Register** of June 27, 2007 (72 FR 35237) (FRL-8133-4), and in the **Federal Register** of July 12, 2006 (71 FR 39313) (FRL-8074-9), EPA issued notices pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (6F7134 and 6F7073, respectively) by Bayer CropScience, P.O. Box 12014, 2 T.W. Alexander Dr., Research Triangle. These petitions requested that 40 CFR 180.626 be amended by establishing a tolerance for combined residues of the fungicide prothioconazole, 2-[2-(1-chlorocyclopropyl)-3-(2-chlorophenyl)-2-hydroxypropyl]-1,2-dihydro-3H-1,2,4-triazole-3-thione, and prothioconazole-desthio, in or on soybean, forage at 5 parts per million (ppm); soybean, seed at 0.15 ppm; soybean, hay at 22 ppm; and sugar beet, roots at 0.25 ppm and sugar beet, tops at 9 ppm. Those notices referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available to the public in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filings.

##### III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is “safe.” Section 408(b)(2)(A)(ii) of FFDCA defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....” These provisions were added to FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of

and to make a determination on aggregate exposure for the petitioned-for tolerance for combined residues of prothioconazole, and prothioconazole-desthio, calculated as parent, in or on soybean, forage at 4.5 ppm; soybean, seed at 0.15 ppm; soybean, hay at 17 ppm; sugar beet, roots at 0.25 ppm. Sugar beet, tops do not need a tolerance because they are not a human food commodity. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

#### A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Prothioconazole has low acute toxicity by oral, dermal, and inhalation routes. It is not a dermal sensitizer, or a skin or eye irritant. Prothioconazole-desthio also has low acute toxicity by oral, dermal, and inhalation routes. It is not a dermal sensitizer, or a skin irritant, but it is a slight eye irritant. Subchronic studies show that the target organs at the LOAEL include the liver, kidney, urinary bladder, thyroid and blood. Significant clinical chemistry findings were also made. NOAEL/LOAEL values across the family of chemicals (i.e., prothioconazole, and prothioconazole-desthio and prothioconazole sulfonic acid potassium salt metabolites) in the toxicity database indicate that prothioconazole-desthio is a most toxic chemical. In addition to the target organs and effects observed in the subchronic studies (i.e., liver, kidney, urinary bladder, thyroid, hematology and clinical chemistry), chronic toxicity at the LOAEL also included body weight and food consumption changes, and toxicity to the lymphatic and GI systems. The relative potency of prothioconazole-desthio was greater than prothioconazole.

Studies in the rat and mouse, using both prothioconazole and prothioconazole-desthio, showed no evidence of carcinogenicity. The data show that dosing was adequate, except in the rat cancer study using prothioconazole, where the dosing was considered too high.

The data indicate that prothioconazole and the three metabolites evaluated (i.e., prothioconazole-desthio, prothioconazole sulfonic acid potassium salt, and prothioconazole-deschloro)

variously produce pre-natal developmental effects at levels equal to or below maternally toxic levels. Prothioconazole-desthio is the most toxic orally and dermally, with LOAELs significantly below that of the other chemicals. The rabbit is the more sensitive species. Lastly, prothioconazole-desthio is a developmental neurotoxicant, producing changes in brain morphometrics and increases in the occurrence of peripheral nerve lesions in the neonate. A NOAEL was not determined, since these observations were looked for only at the high dose level. Reproduction studies in the rat, conducted using prothioconazole and prothioconazole-desthio, suggested that these chemicals may not be primary reproductive toxicants. Reproductive and offspring toxicities were observed only in the presence of parental toxicity. Indeed, the parental LOAELs are lower. The data show that prothioconazole-desthio is more toxic by an order of magnitude. The nature of parental toxicity is similar to what was observed in the subchronic studies, such as body weight and food consumption changes, liver effects, etc. Reproductive effects included decreases in reproductive indices such as those that indicate pup survival and growth. Offspring toxicity was manifested by decreased pup weights and malformations such as cleft palate.

Specific information on the studies received and the nature of the adverse effects caused by prothioconazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at <http://www.regulations.gov>. The referenced document is available in the docket established by this action, which is described under **ADDRESSES**, and is identified as "Prothioconazole: Human Health Risk Assessment for Proposed Uses on Soybeans and Sugarbeets" in that docket.

#### B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the LOC to take into account uncertainties inherent in the

extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <http://www.epa.gov/oppfead1/trac/science>; <http://www.epa.gov/pesticides/factsheets/riskassess.htm>; and <http://www.epa.gov/pesticides/trac/science/aggregate.pdf>.

A summary of the toxicological endpoints for prothioconazole used for human risk assessment can be found at <http://www.regulations.gov> in the document "Prothioconazole: Human Health Risk Assessment for Proposed Uses on Soybeans and Sugarbeets" at page 24 in docket ID number EPA-HQ-OPP-2007-0178.

#### C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to prothioconazole, EPA considered exposure under the petitioned-for tolerances as well as all existing prothioconazole tolerances in 40 CFR 180.626. EPA assessed dietary exposures from prothioconazole residues in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994-1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA relied

upon average residues and 100% percent crop treated (PCT) information.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA [1994-1996, and 1998] CSFII. As to residue levels in food, EPA relied upon anticipated residues, and 100% percent crop treated (PCT) information for all commodities.

iii. *Cancer.* The available toxicology studies in the mouse and rat showed no increase in tumor incidence, and therefore the Agency has concluded that neither prothioconazole, nor its metabolites are carcinogenic. Thus classified, by the Agency, as "Not Likely to be Carcinogenic to Humans" according to the 2005 Cancer Guidelines. Consequently, a quantitative dietary cancer assessment was not performed.

iv. *Anticipated residue information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must pursuant to FFDCA section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for prothioconazole in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of prothioconazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <http://www.epa.gov/oppefed1/models/water/index.htm>.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of prothioconazole for acute exposures are estimated to be 29 parts per billion (ppb) for surface water and 0.67 ppb for

ground water. The EDWCs for chronic exposures are estimated to be 13 ppb for surface water and 0.67 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 29 ppb was used to assess the contribution from drinking water. For chronic dietary risk assessment, the water concentration of value 13 ppb was used to assess the contribution from drinking water. EPA used the EDWCs from surface water only in assessing the risk from prothioconazole because the EDWCs from groundwater are minimal in comparison to surface water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Prothioconazole is not registered for use on any sites that would result in residential exposure.

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

Prothioconazole is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events (EPA, 2002). In conazoles, however, a variable pattern of toxicological responses is found. Some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles

share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's website at <http://www.epa.gov/pesticides/cumulative>.

Prothioconazole is a triazole-derived pesticide. This class of compounds can form the common metabolite, 1,2,4-triazole and two triazole conjugates (triazolylalanine and triazolylacetic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including prothioconazole, U.S. EPA conducted a human health risk assessment for exposure to 1,2,4-triazole, triazolylalanine, and triazolylacetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (e.g., use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (i.e., high end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X FQPA safety factor for the protection of infants and children. The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment is found in the propiconazole reregistration docket at <http://www.regulations.gov>, Docket Identification (ID) Number EPA-HQ-OPP-2005-0497.

#### D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional ("10X") tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines, based on reliable data, that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* Available evidence from rat developmental toxicity studies with prothioconazole (oral) and its desthio (oral and dermal) and sulfonic acid K salt (oral) metabolites, rabbit developmental with desthio metabolite (oral), and rat developmental neurotoxicity with desthio metabolite (oral), as well as a multi-generation reproduction study with the desthio metabolite, indicates that there is concern for prenatal toxicity. Effects include skeletal structural abnormalities, such as cleft palate, deviated snout, malocclusion, and extra ribs; developmental delays; other effects include changes in brain morphometry, peripheral nerve lesions, and death.

Available data also show that the skeletal effects such as extra ribs are not completely reversible after birth in the rat, but persist as development continues. Data from the developmental neurotoxicity study also show that brain morphometry is abnormal postnatally, and there is an increased incidence of lesions of the peripheral nerves postnatally.

3. *Conclusion.* The toxicity database for prothioconazole (and its metabolites) is adequate for endpoint selection for exposure risk assessment scenarios and for FQPA evaluation, with the exception of the lack of data on brain morphometry at the lower and mid doses from the developmental neurotoxicity study. Data on brain morphometry at these doses have now been submitted and is currently in review.

Effects are seen in the 2-generation reproduction studies in rats; developmental studies in rats and rabbits; and a developmental neurotoxicity study in rats which suggest that pups are more susceptible: Pup effects were seen at levels below the LOAELs for maternal toxicity and, in general, were of comparable or greater severity compared to the effects observed in adults. Additionally, there is uncertainty concerning the LOAEL/NOAEL for developmental effects seen in the developmental neurotoxicity study in rats (abnormal brain morphometry at high dose) due to a lack of information on brain morphometry at lower doses. Given that both quantitative and qualitative sensitivity was observed in pups in several studies and in more than one species and in at least one of these studies there is uncertainty concerning identification of the LOAEL/NOAEL for developmental effects, the additional 10X factor for the protection of infants and children is being retained.

#### *E. Aggregate Risks and Determination of Safety*

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and cPAD. The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to prothioconazole will occupy 76% of the aPAD for the population group (females 13 years and older).

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to prothioconazole from food and water will utilize 94% of the cPAD for the population group (infants less than 1 year old). There are no residential uses for prothioconazole that result in chronic residential exposure to prothioconazole.

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Prothioconazole is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Prothioconazole is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population.* The available studies in the mouse and rat show no increase in tumor incidence, therefore the Agency has concluded that neither prothioconazole nor its metabolites are carcinogenic, and are classified "Not likely to be Carcinogenic to Humans" according to the 2005 Cancer Guidelines. Therefore, prothioconazole is not expected to pose a cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes

that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to prothioconazole residues.

#### **IV. Other Considerations**

##### *A. Analytical Enforcement Methodology*

Adequate enforcement methodology are available to enforce the tolerance expression, consisting of liquid chromatography/tandem mass spectrometry (LC/MS/MS) for both plant and livestock commodities, using tandem mass spectrometry electrospray ionization in both the positive and negative modes. Both methods (LC/MS/MS Method RPA JA/03/01 for plants and LC/MS/MS Method Bayer Report No. 200537 for animals) have successfully passed tolerance method validation at ACB/BEAD. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

##### *B. International Residue Limits*

There are no maximum residue limits (MRLs) (tolerances) established for prothioconazole in Codex or in Mexico.

#### **V. Conclusion**

Therefore, tolerances are established for combined residues of prothioconazole, 2-[2-(1-chlorocyclopropyl)-3-(2-chlorophenyl)-2-hydroxypropyl]-1,2-dihydro-3H-1,2,4-triazole-3-thione, and prothioconazole-desthio,  $\alpha$ -(1-chlorocyclopropyl)- $\alpha$ -[(2-chlorophenyl)methyl]-1H-1,2,4-triazole-1-ethanol, calculated as parent, in or on the following commodities: soybean, forage at 4.5 ppm; soybean, seed at 0.15 ppm; soybean, hay at 17 ppm; sugar beet, roots at 0.25 ppm. A tolerance is not needed for sugar beet tops because it is not a human food commodity.

#### **VI. Statutory and Executive Order Reviews**

This final rule establishes a tolerance under section 408(d) of FFDCFA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, 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) or Executive Order 13045,

entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

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

**VII. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will

submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

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

Dated: March 10, 2008.

**Lois Rossi,**  
Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

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

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

■ 2. Section 180.626 is amended by adding alphabetically entries to the table in paragraph (a)(1) to read as follows:

**§ 180.626 Prothioconazole; tolerances for residues.**

- (a) \* \* \*
- (1) \* \* \*

Commodity	Parts per million
* * * *	*
Beet, sugar, roots .....	0.25
* * * *	*
Soybean, forage .....	4.5
Soybean, hay .....	17
Soybean, seed .....	0.15
* * * *	*

\* \* \* \* \*

[FR Doc. E8-5290 Filed 3-18-08; 8:45 am]

**BILLING CODE 6560-50-S**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

[FRL-8543-9; EPA-HQ-SFUND-2007-0685, EPA-HQ-SFUND-2007-0686, EPA-HQ-SFUND-2007-0687, EPA-HQ-SFUND-2007-0688, EPA-HQ-SFUND-2007-0689, EPA-HQ-SFUND-2006-0242, EPA-HQ-SFUND-2007-0691, EPA-HQ-SFUND-2007-0692, EPA-HQ-SFUND-2007-0693, EPA-HQ-SFUND-2007-0694, EPA-HQ-SFUND-2007-0695, EPA-HQ-SFUND-2007-0696]

RIN 2050-AD75

**National Priorities List, Final Rule**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA” or “the Act”), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”) include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (“NPL”) constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (“EPA” or “the Agency”) in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds 12 sites to the General Superfund Section of the NPL.

**DATES:** *Effective Date:* The effective date for this amendment to the NCP is April 18, 2008.

**ADDRESSES:** For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see section II, “Availability of Information to the Public” in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Terry Jeng, phone: (703) 603-8852, e-mail: [jeng.terry@epa.gov](mailto:jeng.terry@epa.gov), State, Tribal and Site Identification Branch; Assessment and Remediation Division; Office of Superfund Remediation and Technology Innovation (mail code 5204P); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue, NW.; Washington, DC 20460; or the Superfund Hotline, phone (800) 424-

9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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**I. Background**

*A. What Are CERCLA and SARA?*

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (“CERCLA” or “the Act”), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutants or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (“SARA”), Public Law 99–499, 100 Stat. 1613 *et seq.*

*B. What Is the NCP?*

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes “criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action.” “Removal” actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

*C. What Is the National Priorities List (NPL)?*

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of “releases” and the highest priority “facilities” and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the “General Superfund Section”), and one of sites that are owned or operated by other Federal agencies (the “Federal Facilities Section”). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (HRS) score and determining whether the facility is placed on the NPL. EPA’s role is less extensive than at other sites.

*D. How Are Sites Listed on the NPL?*

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (“HRS”), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS

evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) pursuant to 42 U.S.C. 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2); (3) the third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release;
- EPA determines that the release poses a significant threat to public health; and
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

#### *E. What Happens to Sites on the NPL?*

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions \* \* \*." 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

#### *F. Does the NPL Define the Boundaries of Sites?*

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the "Jones Co. plant site") in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the Remedial Investigation ("RI") "is a process undertaken \* \* \* to determine the nature and extent of the problem presented by the release" as more information is developed on site contamination, and which is generally performed in an interactive fashion with the Feasibility Study ("FS") (40 CFR

300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the Agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

#### *G. How Are Sites Removed From the NPL?*

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

- (i) Responsible parties or other persons have implemented all appropriate response actions required;
- (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or
- (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

#### *H. May EPA Delete Portions of Sites from the NPL as They Are Cleaned Up?*

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use.

**I. What Is the Construction Completion List (CCL)?**

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see EPA's Internet site at <http://www.epa.gov/superfund>.

**J. What Is the Sitewide Ready for Anticipated Use Measure?**

The Sitewide Ready for Anticipated Use measure (formerly called Sitewide Ready-for-Reuse measure) represents important Superfund accomplishments and the measure reflects the high priority EPA places on considering anticipated future land use as part of our remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0-36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment, including current and future land users, in a manner that allows contaminated properties to be restored to environmental and economic vitality

while ensuring protectiveness for current and future land users. For further information, please go to <http://www.epa.gov/superfund/programs/.recycle/tools/sitewide.htm>.

**II. Availability of Information to the Public**

**A. May I Review the Documents Relevant to This Final Rule?**

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

An electronic version of the public docket is available through [www.regulations.gov](http://www.regulations.gov) (see table below for Docket Identification numbers). Although not all Docket materials may be available electronically, you may still access any of the publicly available Docket materials through the Docket facilities identified below in section II D.

Site name	City/State	FDMS Docket ID No.
Lusher Street Ground Water Contamination	Elkhart, IN	EPA-HQ-SFUND-2007-0685.
Plating, Inc.	Great Bend, KS	EPA-HQ-SFUND-2007-0686.
Washington County Lead District—Old Mines	Old Mines, MO	EPA-HQ-SFUND-2007-0687.
Washington County Lead District—Potosi	Potosi, MO	EPA-HQ-SFUND-2007-0688.
Washington County Lead District—Richwoods	Richwoods, MO	EPA-HQ-SFUND-2007-0689.
Sherwin-Williams/Hilliards Creek	Gibbsboro, NJ	EPA-HQ-SFUND-2006-0242.
Chem-Fab	Doylestown, PA	EPA-HQ-SFUND-2007-0691.
San German Ground Water Contamination	San German, PR	EPA-HQ-SFUND-2007-0692.
Donna Reservoir and Canal System	Donna, TX	EPA-HQ-SFUND-2007-0693.
Midessa Ground Water Plume	Odessa, TX	EPA-HQ-SFUND-2007-0694.
San Jacinto River Waste Pits	Harris County, TX	EPA-HQ-SFUND-2007-0695.
Hidden Lane Landfill	Sterling, VA	EPA-HQ-SFUND-2007-0696.

**B. What Documents Are Available for Review at the Headquarters Docket?**

The Headquarters Docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. For sites that received comments during the comment period, the Headquarters Docket also contains a Support Document that includes EPA's responses to comments.

**C. What Documents Are Available for Review at the Regional Dockets?**

The Regional Dockets contain all the information in the Headquarters Docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the

Regional Dockets. For sites that received comments during the comment period, the Regional Docket also contains a Support Document that includes EPA's responses to comments.

**D. How Do I Access the Documents?**

You may view the documents, by appointment only, after the publication of this rule. The hours of operation for the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional Dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters, U.S. Environmental Protection Agency, CERCLA Docket Office, 1301 Constitution Avenue, EPA West, Room 3340, Washington, DC 20004; (202) 566-1744.

The contact information for the Regional Dockets is as follows: Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund

Records and Information Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114-2023; (617) 918-1417.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007-1866; (212) 637-4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; (215) 814-5364.

Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW., 9th floor, Atlanta, GA 30303; (404) 562-8862.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SRC-7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; (312) 353-5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF-RA, Dallas, TX 75202-2733; (214) 665-7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; (913) 551-7335.  
 Gwen Christiansen, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR-B, Denver, CO 80202-1129; (303) 312-6463.  
 Dawn Richmond, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne

Street, San Francisco, CA 94105; (415) 972-3097.  
 Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mail Stop ECL-115, Seattle, WA 98101; (206) 553-2782.

*E. How May I Obtain a Current List of NPL Sites?*

You may obtain a current list of NPL sites via the Internet at <http://www.epa.gov/superfund/> (look under the Superfund sites category) or by contacting the Superfund Docket (see contact information above).

**III. Contents of This Final Rule**

*A. Additions to the NPL*

This final rule adds the following 12 sites to the NPL, all to the General Superfund Section:

State	Site name	City/county
IN	Lusher Street Ground Water Contamination	Elkhart.
KS	Plating, Inc	Great Bend.
MO	Washington County Lead District—Old Mines	Old Mines.
MO	Washington County Lead District—Potosi	Potosi.
MO	Washington County Lead District—Richwoods	Richwoods.
NJ	Sherwin-Williams/Hilliards Creek	Gibbsboro.
PA	Chem-Fab	Doylestown.
PR	San German Ground Water Contamination	San German.
TX	Donna Reservoir and Canal System	Donna.
TX	Midessa Ground Water Plume	Odessa.
TX	San Jacinto River Waste Pits	Harris County.
VA	Hidden Lane Landfill	Sterling.

*B. What Did EPA Do With the Public Comments It Received?*

EPA reviewed all comments received on the sites in this rule and responded to all relevant comments.

Four sites had no comments following proposal: Washington County Lead District—Richwoods (MO), Chem-Fab (PA), Midessa Ground Water Plume (TX), and Plating, Inc (KS). One comment supporting cleanup was incorrectly submitted to the Plating, Inc. docket because of an erroneous docket number, but actually was discussing Hidden Lane Landfill (VA). Two sites had only comments favoring listing and/or suggesting cleanup was needed:

Lusher Street Ground Water Contamination (IN) and Donna Reservoir and Canal System (TX). One site, San Jacinto River Waste Pits (TX), had a number of comments favoring listing and cleanup. One of the comments urged EPA not only to list the site but also to consider environmental targets, which were not used in scoring the site. EPA will change the HRS scoring record to indicate environmental targets were not scored but should be considered when EPA performs more extensive investigation under the RI/FS. One other comment on the site requested an extension of the comment period due to a delay of one week in receiving materials. EPA extended the comment period one week but received no additional comments.

EPA received nine comments on the Hidden Lane Landfill (VA) proposed site. None of the comments opposed listing; they asked the site be cleaned up

quickly and offered suggestions for how best to accomplish this. EPA will keep citizens informed of the site investigation and clean up alternatives, and will offer citizens an opportunity to comment on cleanup options before final remedies are determined. One of the nine comments, from the Loudoun County Board of Supervisors, discussed land use policies and legislative actions by the county at the site. The comment also specifically stated the county did not oppose listing, but mentioned several clerical errors in the documentation record for which the county sought clarification/correction. None of the errors affected the listing score, but EPA will make changes in the documentation record to correct the errors, mostly related to site history and the misidentification of the values for one sample not used in scoring.

Four sites received adverse comments on the HRS score and/or listing. These site comments are being addressed individually in response to comments documents available concurrently with the publication of this final rule. These sites are San German Ground Water Contamination (PR), Washington County Lead District—Old Mines (MO), Washington County Lead District—Potosi (MO), and Sherwin-Williams/Hilliards Creek (NJ). Please refer to the docket for EPA's responses to these comments.

EPA also received a comment, not directed at any particular site, for all sites in the April 19, 2006, proposed rule. The comment suggested that listing is inconsistent with the separation of powers doctrine and listing these sites

should only be done by Congress. The Supreme Court has stated that "when Congress confers decision-making authority upon agencies [it] must lay down by legislative act an intelligible principle to which the person or body authorized to act is directed to conform." *Whitman v. American Trucking Ass'ns, Inc.*, 531 U.S. 457, 472 (2001) (internal citation and punctuation omitted). The Court also noted that "[i]n the history of the Court we have found the requisite 'intelligible principle' lacking in only two statutes, one of which provided literally no guidance for the exercise of discretion, and the other of which conferred authority to regulate the entire economy on the basis of no more precise a standard than stimulating the economy by assuring 'fair competition.'" *Id.* at 474. CERCLA section 105(a)(8)(A) provides several considerations for EPA when "determining priorities among releases or threatened releases throughout the United States" and listing decisions are based upon these considerations, under CERCLA section 105(a)(8)(B). Accordingly, EPA may properly make NPL listing determinations.

All comments that were received by EPA are contained in the Headquarters Docket and are also listed in EPA's electronic public Docket and comment system at [www.regulations.gov](http://www.regulations.gov).

#### IV. Statutory and Executive Order Reviews

##### A. Executive Order 12866: Regulatory Planning and Review

###### 1. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is “significant” and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines “significant regulatory action” as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

###### 2. Is This Final Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a “significant regulatory action” under the terms of Executive Order 12866 and is therefore not subject to OMB review.

##### B. Paperwork Reduction Act

###### 1. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

###### 2. Does the Paperwork Reduction Act Apply to This Final Rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

##### C. Regulatory Flexibility Act

###### 1. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

###### 2. How Has EPA Complied With the Regulatory Flexibility Act?

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA section 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

##### D. Unfunded Mandates Reform Act

###### 1. What Is the Unfunded Mandates Reform Act (UMRA)?

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, 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 by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Before EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires 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, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments

to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

## 2. Does UMRA Apply to This Final Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding \$100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

### *E. Executive Order 13132: Federalism*

What Is Executive Order 13132 and Is It Applicable to This Final Rule?

*Executive Order 13132*, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the 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.”

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct

compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation. 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

#### 1. What Is Executive Order 13175?

*Executive Order 13175*, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 6, 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.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

#### 2. Does Executive Order 13175 Apply to This Final Rule?

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this final rule.

### *G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

#### 1. What Is Executive Order 13045?

*Executive Order 13045*: “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that:

(1) is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

#### 2. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage*

#### Is this Rule Subject to Executive Order 13211?

This rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

### *I. National Technology Transfer and Advancement Act*

#### 1. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

1. Has EPA Submitted This Rule to Congress and the General Accounting Office?

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, that includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted 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 rule is not a “major rule” as defined by 5 U.S.C. 804(2).

2. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency’s actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the

Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: An annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

3. What Could Cause a Change in the Effective Date of This Rule?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President

signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS v. Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington v. EPA*, 86 F.3d 1214, 1222 (DC Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: March 10, 2008.

Susan Parker Bodine,

Assistant Administrator, Office of Solid Waste and Emergency Response.

■ 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes <sup>a</sup>
IN .....	Lusher Street Ground Water Contamination .....	Elkhart.	*
KS .....	Plating, Inc .....	Great Bend.	*
MO ....	Washington County Lead District—Old Mines .....	Old Mines.	*
MO ....	Washington County Lead District—Potosi .....	Potosi.	*

TABLE 1.—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes <sup>a</sup>
MO	Washington County Lead District—Richwoods	Richwoods.	
NJ	Sherwin-Williams/Hilliards Creek	Gibbsboro.	
PA	Chem-Fab	Doylestown.	
PR	San German Ground Water Contamination	San German.	
TX	Donna Reservoir and Canal System	Donna.	
TX	Midessa Ground Water Plume	Odessa.	
TX	San Jacinto River Waste Pits	Harris County.	
VA	Hidden Lane Landfill	Sterling.	

<sup>a</sup> A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (HRS score need not be ≥ 28.50).  
 C = Sites on Construction Completion list.  
 S = State top priority (HRS score need not be ≥ 28.50).  
 P = Sites with partial deletion(s).

\* \* \* \* \*

[FR Doc. E8-5557 Filed 3-18-08; 8:45 am]

BILLING CODE 6560-50-P

**OFFICE OF PERSONNEL  
MANAGEMENT**

**48 CFR Part 2152**

**Precontract Provisions and Contract  
Clauses**

*CFR Correction*

In Title 48 of the Code of Federal Regulations, Parts 1500 to 2899, revised as of October 1, 2007, on page 440, in section 2152.370, reinstate paragraphs (a) and (b) before the table to read as follows:

**2152.370 Use of the matrix.**

(a) The matrix in this section lists the FAR and LIFAR clauses to be used with the FEGLI Program contract. The clauses are to be incorporated in the contract in full text.

(b) Certain contract clauses are mandatory for FEGLI Program contracts. Other clauses are to be used only when made applicable by pertinent sections of the FAR or LIFAR. An “M” in the “Use Status” column indicates that the clause is mandatory. An “A” indicates that the

clause is to be used only when the applicable conditions are met.

\* \* \* \* \*

[FR Doc. 08-55504 Filed 3-18-08; 8:45 am]

BILLING CODE 1505-01-S

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**49 CFR Part 1**

[Docket No. OST 2008-0103]

RIN 2105-AD73

**Organization and Delegation of Powers  
and Duties; Secretarial Succession**

**AGENCY:** Office of the Secretary of Transportation (OST), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment will revise the order of Secretarial succession for the Department. This action is taken on the Department’s initiative.

**DATES:** *Effective Date:* March 19, 2008.

**FOR FURTHER INFORMATION CONTACT:** Donna O’Berry, Office of the Assistant General Counsel for Operations, Department of Transportation, 1200 New Jersey Avenue, SE., Room W96-317, Washington, DC 20590; Telephone (202) 366-6136.

**SUPPLEMENTARY INFORMATION:**

**Background**

In 49 CFR 1.26, the order of succession to act as Secretary of Transportation is set forth as follows: The Deputy Secretary, Under Secretary of Transportation for Policy, General Counsel, Assistant Secretary for Aviation and International Affairs, Assistant Secretary for Transportation Policy, Assistant Secretary for Budget and Programs, Assistant Secretary for Governmental Affairs, Assistant Secretary for Administration, Federal Aviation Administrator, Federal Aviation Administration Regional Administrator, Southwest Region, Federal Aviation Administrator Regional Administrator, Great Lakes Region.

Section 102(e) of title 49, United States Code, authorizes the Secretary to prescribe the order of succession for the Department’s Assistant Secretaries and the General Counsel. We are updating our Secretarial Order of Succession to reflect recent Secretarial decisions concerning the order of succession for Assistant Secretaries of Transportation.

As this rule relates solely to Departmental organization, procedures, and practice, notice and comment on it are unnecessary under 5 U.S.C. 553(b). In addition, the Secretary finds that security and continuity of operations

interests constitute good cause for making this rule effective upon publication pursuant to 5 U.S.C. 553(d)(2).

**Regulatory Analyses and Notices**

*A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule is not considered a significant regulatory action under Executive Order 12866 (“Regulatory Planning and Process”), and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). There are no costs associated with this rule.

*B. Executive Order 13132*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This final rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States. Therefore, the consultation requirements of Executive Order 13132 do not apply.

*C. Executive Order 13175*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

*D. Regulatory Flexibility Act*

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedure Act (5 U.S.C. 553), the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

*E. Paperwork Reduction Act*

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*F. Unfunded Mandates Reform Act*

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

**List of Subjects in 49 CFR Part 1**

Authority delegations (Government agencies), Organization and functions (Government agencies).

■ In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

**PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES**

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

**Authority:** 49 U.S.C. 322; 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub. L. 106–159, 113 Stat. 1748; Pub. L. 107–71, 115 Stat. 597; Pub. L. 107–295, 116 Stat. 2064; Pub. L. 107–295, 116 Stat. 2065; Pub. L. 107–296, 116 Stat. 2135; 41 U.S.C. 414; Pub. L. 108–426, 118 Stat. 2423.

■ 2. Amend § 1.26 by revising paragraph (a) to read as follows:

**§ 1.26 Secretarial succession.**

(a) The following officials, in the order indicated, shall act as Secretary of Transportation, in case of the absence or disability of the Secretary, until the absence or disability ceases, or in the case of a vacancy, until a successor is appointed. Notwithstanding the provisions of this section, the President retains discretion, to the extent permitted by the law, to depart from this order in designating an acting Secretary of Transportation.

- (1) Deputy Secretary.
- (2) Under Secretary of Transportation for Policy.
- (3) General Counsel.
- (4) Assistant Secretary for Budget and Programs.
- (5) Assistant Secretary for Transportation Policy.
- (6) Assistant Secretary for Governmental Affairs.
- (7) Assistant Secretary for Aviation and International Affairs.
- (8) Assistant Secretary for Administration.
- (9) Federal Aviation Administrator.
- (10) Federal Aviation Administration Regional Administrator, Southwest Region.
- (11) Federal Aviation Administration Regional Administrator, Great Lakes Region.

\* \* \* \* \*

Issued in Washington, DC on March 10, 2008.

**Mary E. Peters,**

*Secretary of Transportation.*

[FR Doc. E8–5543 Filed 3–18–08; 8:45 am]

**BILLING CODE 4910–62–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 071106671–8403–03]

RIN 0648–XD67

**Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2008 Sablefish Total Allowable Catch in the West Yakutat and Southeast Outside Districts; Correction**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Correction to a final rule; request for comments.

**SUMMARY:** NMFS is adjusting the 2008 total allowable catch (TAC) amounts for sablefish in the West Yakutat and Southeast Outside Districts. This action is necessary because NMFS has determined that these TACs were incorrectly specified in the **Federal Register** on February 27, 2008 (73 FR 10562). This action will ensure the sablefish TAC does not exceed the appropriate amount based on the best available scientific information for sablefish in the West Yakutat and Southeast Outside Districts. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), March 14, 2008, through 2400 hrs, A.l.t., December 31, 2008. Comments must be received at the following address no later than 4:30 p.m., A.l.t., March 31, 2008.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648–XD67, 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; or
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: 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 (for example, name, address, etc.) 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 PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:**  
Mary Furuness, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the Gulf of Alaska (GOA) according to the FMP prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 sablefish TAC was incorrectly specified as 1,950 mt in the West Yakutat and 3,390 mt in the Southeast Outside Districts of the GOA in the 2008 and 2009 harvest specifications for groundfish in the GOA (73 FR 10562, February 27, 2008). In November 2007, the Council's GOA Plan Team compiled the final 2007 Stock Assessment and Fisheries Evaluation (SAFE) report for the GOA groundfish fisheries, dated November 2007. Due to an inadvertent error, incorrect amounts from the 2007 SAFE report for West Yakutat and Southeast Outside sablefish were presented to the Council, its Statistical and Scientific Committee, and its Advisory Panel. These amounts were 1,950 mt for West Yakutat and 3,390 mt for Southeast Outside. The correct amount should have been 2,120 mt for West Yakutat and 3,220 mt for Southeast Outside and are found in the 2007 SAFE report for sablefish. This results in a 170 mt increase for West Yakutat and a

decrease of 170 mt for Southeast Outside. The Council adopted the incorrect amounts and Secretary of Commerce published the incorrect amounts in the 2008 and 2009 final harvest specifications for groundfish in the GOA (73 FR 10562, February 27, 2008).

In accordance with 50 CFR 679.25(a)(1)(iii) and § 679.25(a)(2)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2007 SAFE report for this fishery, the current West Yakutat and Southeast Outside TACs were incorrectly specified. Consequently, the Regional Administrator is adjusting the 2008 West Yakutat TAC to 2,120 mt and the Southeast Outside TAC to 3,220 mt.

Pursuant to § 679.20(a)(4), Table 3 of the 2008 and 2009 final harvest specifications for groundfish in the GOA (73 FR 10562, February 27, 2008) is revised for the 2008 sablefish TACs consistent with this adjustment.

**TABLE 3 - FINAL 2008 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ALLOCATIONS TO HOOK-AND-LINE AND TRAWL GEAR**

(values are rounded to the nearest metric ton)

Area/District	TAC	Hook-and-line apportionment	Trawl apportionment
Western	1,890	1,512	378
Central	5,500	4,400	1,100
West Yakutat <sup>1</sup>	2,120	1,853	267
Southeast Outside	3,220	3,220	0
Total	12,730	10,985	1,745

<sup>1</sup>Represents an allocation of 5 percent of the combined Eastern Regulatory Area sablefish TAC to trawl gear in the WYK District.

The hook-and-line apportionment of the sablefish TAC is further allocated as to the sablefish Individual Fishing Program (IFQ). For illustrative purposes, this adjustment would change an IFQ allocation of 10,000 pounds based on 88,472 quota share units in the West Yakutat District to 11,010 pounds. This adjustment would change an IFQ allocation of 10,000 pounds based on 143,562 quota share units in Southeast Outside District to 9,499 pounds. The decrease of the Southeast Outside TAC affects 445 IFQ permits.

#### Correction

In rule FR Doc. E8-3531 published on February 27, 2008 (73 FR 10562) make the following correction: In Table 3 on page 10570, correct the "1,950" TAC for the West Yakutat district to read "2,120" and correct the "3,390" TAC for the Southeast Outside district to read "3,220".

#### Classification

This action responds to the best available information on stock abundance for the fishery. The Assistant Administrator for Fisheries, NOAA (AA), 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) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would raise conservation concerns as the sablefish TAC in the Southeast Outside District based on the best scientific information available would be exceeded. The sablefish IFQ hook-and-line fishery opened on March 8, 2008. If this inseason adjustment is not effective immediately, the hook-and-line sablefish allocations will be incorrect. U.S. fishing vessels have demonstrated the capacity to catch the TAC allocations in these fisheries. An IFQ permit holder is allocated a dedicated and transferable amount of

fish for the year. Constituents are each allocated amounts from several pounds that may be harvested in one fishing trip, to many thousands of pounds. It is possible that some IFQ permit holders, particularly of Southeast Outside sablefish IFQ, have at this time already exceeded the amount that a corrected permit would authorize. Immediate effectiveness of this inseason adjustment will allow NMFS to issue correct IFQ allocations. The immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources based on the best available scientific information, and to give the fishing industry the earliest possible opportunity to plan its fishing operations.

Also, it would constrain fishermen in West Yakutat District from realizing economic benefits from correct allocations of IFQ and would allow for harvests in the Southeast Outside District that exceed the appropriate allocations for sablefish.

NMFS was unable to publish a notice providing time for public comment because NMFS only became aware from a member of the industry of the incorrectly specified TAC as of March 6, 2008, and the IFQ fishery opened March 8, 2008. Additional time for prior public comment would raise conservation concerns for the sablefish allocation in the Southeast Outside District.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until March 31, 2008.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 14, 2008.

**Samuel D. Rauch III**

*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

[FR Doc. 08-1053 Filed 3-14-08; 4:27 pm]

**BILLING CODE 3510-22-S**

# Proposed Rules

Federal Register

Vol. 73, No. 54

Wednesday, March 19, 2008

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2006-24261; Directorate Identifier 2006-NE-12-AD]

RIN 2120-AA64

#### Airworthiness Directives; General Electric Company Aircraft Engines (GEAE) CT7-8A Turboshift Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) for certain GEAE CT7-8A turboshift engines. That AD currently requires initial and repetitive inspections of the electrical chip detectors for the No. 3 bearing. This proposed AD would require removing certain GEAE CT7-8A turboshift engines within 6,200 cycles-since-new. This proposed AD results from investigation for the root causes of two failures of the No. 3 bearing. We are proposing this AD to prevent failure of the No. 3 bearing due to contamination by Aluminum Oxide, which could result in a possible dual in-flight shutdown of the engines.

**DATES:** We must receive any comments on this proposed AD by May 19, 2008.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays.

- *Fax:* (202) 493-2251.

Contact General Electric Aircraft Engines CT7 Series Turboprop Engines, 1000 Western Ave., Lynn, MA 01910; telephone (781) 594-3140, fax (781) 594-4805, for the service information identified in this proposed AD.

#### FOR FURTHER INFORMATION CONTACT:

Christopher Richards, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: [christopher.j.richards@faa.gov](mailto:christopher.j.richards@faa.gov); telephone (731) 238-7133; fax (781) 238-7199.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2006-24261; Directorate Identifier 2006-NE-12-AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

##### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday,

except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

##### Discussion

The FAA proposes to amend 14 CFR part 39 by superseding AD 2006-06-51, Amendment 39-14566 (71 FR 19627, April 17, 2006). That AD requires:

- Within 25 hours time-in-service after the effective date of that AD, inspecting the electrical chip detector assembly.

- Staggering the inspection intervals so the chip detectors on both engines on the same helicopter are not inspected at the same time.

- Thereafter, within 25 hours time-since-last inspection, performing a repetitive inspection, and

- If the chip detector assembly contains any bearing material, replacing the engine.

That AD was the result of two failures of the No. 3 bearing in GEAE CT7-8A turboshift engines. That condition, if not corrected, could result in a possible dual in-flight shutdown of the engines.

##### Actions Since AD 2006-06-51 Was Issued

Since we issued that AD, GEAE has developed new procedures for flushing Aluminum Oxide hard particle contamination from the air cavity of the engine structure's front frame after the manufacturing process and for assembling the No. 3 bearing to the engine. Based on that new flushing procedure, we are proposing to:

- Delete the requirements to inspect the electrical chip detector, and

- Require removing any engine that has a serial number (SN) listed in Table 1 of this proposed AD unless the front frame was flushed and the No. 3 bearing replaced, and

- Prohibit installing any engine that has a SN listed in Table 1 of this proposed AD unless the front frame was flushed and the No. 3 bearing replaced.

##### Relevant Service Information

We have reviewed and approved the technical contents of GEAE Service Bulletin (SB) CT7-8 S/B 72-0017, dated

October 18, 2007, that describes procedures for flushing the engine front frame and replacing the No. 3 bearing.

### FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For that reason, we are proposing this AD, which would require removing certain GEAE CT7-8A turboshaft engines, listed by SN in this proposed AD, from service within 6,200 cycles-since-new, and, after the effective date of the proposed AD, would prohibit installing certain GEAE CT7-8A turboshaft engines, listed by SN in this proposed AD.

### Costs of Compliance

We estimate that this proposed AD would affect 29 engines installed on helicopters of U.S. registry. We also estimate that it would take about 66.0 work-hours per engine to perform the proposed actions, and that the average labor rate is \$80 per work-hour. Required parts would cost about \$3,476 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be \$253,924

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed 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. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39-14566 (71 FR 19627, April 17, 2006) and by adding a new airworthiness directive to read as follows:

#### General Electric Company Aircraft Engines:

Docket No. FAA-2006-24261;  
Directorate Identifier 2006-NE-12-AD.

#### Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by May 19, 2008.

#### Affected ADs

(b) This AD supersedes AD 2006-06-51, Amendment 39-14566.

#### Applicability

(c) This AD applies to General Electric Company Aircraft Engines (GEAE) CT7-8A turboshaft engines that have a serial number (SN) listed in Table 1 of this AD. These engines are installed on, but not limited to, Sikorsky S92 helicopters.

TABLE 1.—AFFECTED ENGINES BY SERIAL NUMBER

Engine Serial No.		
947205	947228	947254
947206	947230	947255
947207	947232	947256
947208	947233	947258
947209	947235	947260
947210	947238	947261
947211	947240	947262
947212	947241	947263
947214	947242	947265
947215	947243	947266
947217	947244	947274
947218	947245	947277
947219	947247	947278
947220	947248	947279
947221	947249	947280
947223	947250	947284
947225	947253	947285

### Unsafe Condition

(d) This AD results from investigation for the root causes of two failures of the No. 3 bearing. We are issuing this AD to prevent failure of the No. 3 bearing due to contamination by Aluminum Oxide, which could result in a possible dual in-flight shutdown of the engines.

### 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.

(f) No further action is required if:

(1) Your engine has an SN that is not listed in Table 1 of this AD, or

(2) Your engine has an SN listed in Table 1 of this AD, but the engine log specifies that the front frame was flushed and the No. 3 bearing was replaced.

### Engines With SNs Listed in Table 1 of This AD

(g) For engines with an SN listed in Table 1 of this AD, within 6,200 cycles-since-new, remove engine from service.

### Installation Prohibition

(h) After the effective date of this AD, do not install any engine that has an SN listed in Table 1 of this AD unless the front frame was flushed and the No. 3 bearing was replaced. GEAE Service Bulletin (SB) CT7-8 S/B 72-0017, dated October 18, 2007, contains information on flushing the front frame and replacing the No. 3 bearing.

### Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, FAA, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

### Related Information

(j) GEAE SB No. CT7-8 S/B 72-0017, dated October 18, 2007, pertains to the subject of this AD.

(k) Contact Christopher Richards, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park,

Burlington, MA 01803; e-mail: [christopher.j.richards@faa.gov](mailto:christopher.j.richards@faa.gov); telephone (731) 238-7133; fax (781) 238-7199, for more information about this AD.

Issued in Burlington, Massachusetts, on March 12, 2008.

**Robert J. Ganley,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. E8-5492 Filed 3-18-08; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2008-0327; Directorate Identifier 2007-SW-21-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Agusta S.p.a. Model A109E and A119 Helicopters**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the specified helicopters. This proposed AD results from a mandatory continuing airworthiness information (MCAI) AD originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The European Aviation Safety Agency (EASA), the Technical Agent for Italy, with which we have a bilateral agreement, states in the MCAI:

Some cases of interference between the hydraulic pipe, P/N 109-0761-65-103, and the tail rotor control rod assembly have been detected on Model A109E helicopters.

The interference, if not corrected, could damage the hydraulic pipes and lead to the loss of the hydraulic system No. 1 in flight. This AD \* \* \* is issued to extend the same mandatory corrective actions to A119 model due to its design similarity with A109E.

The proposed AD would require actions that are intended to address this unsafe condition.

**DATES:** We must receive comments on this proposed AD by April 18, 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.

You may get the service information identified in this proposed AD from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605-222595.

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

**FOR FURTHER INFORMATION CONTACT:** Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193-0110, telephone (817) 222-5123, fax (817) 222-5961.

#### **SUPPLEMENTARY INFORMATION:**

##### **Streamlined Issuance of AD**

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

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

##### **Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2008-0327; Directorate Identifier 2007-SW-21-AD" at the beginning of

your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

##### **Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued an MCAI in the form of EASA AD No. 2007-0231, dated August 23, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for these Italian-certificated products. The MCAI states:

Some cases of interference between the hydraulic pipe, P/N 109-0761-65-103, and the tail rotor control rod assembly have been detected on Model A109E helicopters.

The interference, if not corrected, could damage the hydraulic pipes and lead to the loss of the hydraulic system No. 1 in flight. This AD \* \* \* is issued to extend the same mandatory corrective actions to A119 model due to its design similarity with A109E.

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

##### **Relevant Service Information**

Agusta has issued Bollettino Tecnico (BT) No. 109EP-73, dated December 4, 2006, applicable to Model A109E helicopters, and BT No. 119-22, dated July 11, 2007, applicable to Model A119 helicopters. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

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

These model helicopters have been approved by the aviation authority of Italy, and are approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

##### **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. However, this AD requires replacement of hydraulic lines within 180 days, unless previously accomplished, instead of replacing the hydraulic lines on the dates specified in the MCAI. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information. These differences are highlighted in the "Differences Between the FAA AD and the MCAI" section in the proposed AD.

### Costs of Compliance

We estimate that this proposed AD would affect about 78 helicopters of U.S. registry and that it would take about 2 work-hours per helicopter to inspect and 16 work-hours per helicopter to replace the hydraulic lines. The average labor rate is \$80 per work-hour. Required parts would cost about \$562 per helicopter, assuming these parts are no longer under warranty. However, because the service information lists these parts as covered under warranty, we have assumed that there will be no charge for these parts.

Therefore, as we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$112,320, or \$1,440 per helicopter.

### Authority for This Rulemaking

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

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

### Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national

Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**Agusta. S.p.a.:** Docket No. FAA-2008-0327; Directorate Identifier 2007-SW-21-AD.

#### Comments Due Date

- (a) We must receive comments by April 18, 2008.

#### Other Affected ADs

- (b) None.

#### Applicability

- (c) This AD applies to Agusta S.p.a. Model A109E and A119 helicopters, with hydraulic lines, part number (P/N) 109-0761-64-103 or P/N 109-0761-65-103, installed, certificated in any category.

#### Reason

- (d) The mandatory continuing airworthiness information (MCAI) states: Some cases of interference between the hydraulic pipe, P/N 109-0761-65-103, and the tail rotor control rod assembly have been detected on Model A109E helicopters.

The interference, if not corrected, could damage the hydraulic pipes and lead to the loss of the hydraulic system No. 1 in flight. This AD \* \* \* is issued to extend the same mandatory corrective actions to A119 model due to its design similarity with A109E.

### Actions and Compliance

- (e) Within the next 50 hours time-in-service (TIS), unless accomplished previously, and thereafter at intervals not to exceed 100 hours TIS:

(1) Inspect for interference between the hydraulic lines, P/N 109-0761-64-103 and P/N 109-0761-65-103, and the tail rotor control rod assembly, P/N 109-0032-01-41, in accordance with the Compliance Instructions, Part I, paragraph 3, of Agusta Bollettino Tecnico (BT) No. 109EP-73, dated December 4, 2006 (BT A109E), which is applicable to Model A109E helicopters, or BT 119-22, dated July 11, 2007 (BT 119-22), which is applicable to Model A119 helicopters.

(2) If you find interference between the hydraulic lines and the tail rotor control rod assembly, replace the hydraulic lines, P/N 109-0761-64-103 and P/N 109-0761-65-103, with hydraulic lines, P/N 109-0763-96-101 and P/N 109-0763-97-101, respectively, in accordance with the Compliance Instructions, Part II of BT A109E or BT 119-22, whichever is applicable to your model helicopter.

(f) Within 180 days, replace hydraulic lines, P/N 109-0761-64-103 and P/N 109-0761-65-103, with hydraulic lines, P/N 109-0763-96-101 and P/N 109-0763-97-101, respectively, in accordance with the Compliance Instructions, Part II, of BT A109E or BT 119-22, whichever is applicable to your model helicopter.

### Differences Between the FAA AD and the MCAI

(g) This AD requires replacement of hydraulic lines, P/N 109-0761-64-103 and P/N 109-0761-65-103, within 180 days, unless previously accomplished, instead of replacing the hydraulic lines on the dates specified in the MCAI.

### Subject

(h) Air Transport Association of America (ATA) Code 2910—Main Hydraulic System.

### Other Information

- (i) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Regulations and Policy Group, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193-0110, telephone (817) 222-5123, fax (817) 222-5961.

(2) *Airworthy Product:* Use only FAA-approved corrective actions. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent) if the State of Design has an appropriate bilateral agreement with the United States. You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB)

has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

#### Related Information

(j) MCAI EASA AD No 2007-0231, dated August 23, 2007 contains related information.

Issued in Fort Worth, Texas, on March 10, 2008.

**Mark R. Schilling,**

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

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## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Parts 4001, 4211, and 4219

RIN 1212-AB07

#### Methods for Computing Withdrawal Liability; Reallocation Liability Upon Mass Withdrawal; Pension Protection Act of 2006

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule amends PBGC's regulation on Allocating Unfunded Vested Benefits to Withdrawing Employers (29 CFR part 4211) to implement provisions of the Pension Protection Act of 2006 (Pub. L. c109-280) that provide for changes in the allocation of unfunded vested benefits to withdrawing employers from a multiemployer pension plan, and that require adjustments in determining an employer's withdrawal liability when a multiemployer plan is in critical status. Pursuant to PBGC's authority under section 4211(c)(5) of ERISA to prescribe standard approaches for alternative methods, the proposed rule would also amend this regulation to provide additional modifications to the statutory methods for determining an employer's allocable share of unfunded vested benefits. In addition, pursuant to PBGC's authority under section 4219(c)(1)(D) of ERISA, this proposed rule would amend PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) to improve the process of fully allocating a plan's total unfunded vested benefits among all liable employers in a mass withdrawal. Finally, this proposed rule would amend PBGC's regulation on Terminology (29 CFR part 4001) to reflect a definition of a "multiemployer plan" added by the Pension Protection Act of 2006.

**DATES:** Comments must be submitted on or before May 19, 2008.

**ADDRESSES:** Comments, identified by Regulation Information Number (RIN 1212-AB07), may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.
- *E-mail:* [reg.comments@pbgc.gov](mailto:reg.comments@pbgc.gov).
- *Fax:* 202-326-4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026.

Comments received, including personal information provided, will be posted to <http://www.pbgc.gov>. Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, or calling 202-326-4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4040.)

**FOR FURTHER INFORMATION CONTACT:** John H. Hanley, Director; Catherine B. Klion, Manager; or Constance Markakis, Attorney; Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026; 202-326-4024. (TTY and TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

#### SUPPLEMENTARY INFORMATION:

##### Background

Under section 4201 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 ("ERISA"), an employer that withdraws from a multiemployer pension plan may incur withdrawal liability to the plan. Withdrawal liability represents the employer's allocable share of the plan's unfunded vested benefits determined under section 4211 of ERISA, and adjusted in accordance with other provisions in sections 4201 through 4225 of ERISA. Section 4211 prescribes four methods that a plan may use to allocate a share of unfunded vested benefits to a withdrawing employer, and also provides for possible modifications of those methods and for the use of allocation methods other than those prescribed. In general, changes to a plan's allocation methods are subject to the approval of the Pension Benefit Guaranty Corporation ("PBGC").

Under section 4211(b)(1) of ERISA (the "presumptive method"), the amount of unfunded vested benefits allocable to a withdrawing employer is the sum of the employer's proportional share of: (i) The unamortized amount of the change in the plan's unfunded vested benefits for each plan year for which the employer has an obligation to contribute under the plan (*i.e.*, multiple-year liability pools) ending with the plan year preceding the plan year of employer's withdrawal; (ii) the unamortized amount of the unfunded vested benefits at the end of the last plan year ending before September 26, 1980, with respect to employers who had an obligation to contribute under the plan for the first plan year ending after such date; and (iii) the unamortized amount of the reallocated unfunded vested benefits (amounts the plan sponsor determines to be uncollectible or unassessable) for each plan year ending before the employer's withdrawal. Each amount described in (i) through (iii) is reduced by 5 percent for each plan year after the plan year for which it arose. An employer's proportional share is based on a fraction equal to the sum of the contributions required to be made under the plan by the employer over total contributions made by all employers who had an obligation to contribute under the plan, for the five plan years ending with the plan year in which such change arose, the five plan years preceding September 26, 1980, and the five plan years ending with the plan year such reallocation liability arose, respectively (the "allocation fraction").

Section 4211(c)(1) of ERISA generally prohibits the adoption of any allocation method other than the presumptive method by a plan that primarily covers employees in the building and construction industry ("construction industry plan"), subject to regulations that allow certain adjustments in the denominator of an allocation fraction.

Under section 4211(c)(2) of ERISA (the "modified presumptive method"), a withdrawing employer is liable for a proportional share of: (i) The plan's unfunded vested benefits as of the end of the plan year preceding the withdrawal (less outstanding claims for withdrawal liability that can reasonably be expected to be collected and the amounts set forth in (ii) below allocable to employers obligated to contribute in the plan year preceding the employer's withdrawal and who had an obligation to contribute in the first plan year ending after September 26, 1980); and (ii) the plan's unfunded vested benefits as of the end of the last plan year ending before September 26, 1980 (amortized

over 15 years), if the employer had an obligation to contribute under the plan for the first plan year ending on or after such date. An employer's proportional share is based on the employer's share of total plan contributions over the five plan years preceding the plan year of the employer's withdrawal and over the five plan years preceding September 26, 1980, respectively. Plans that use this method fully amortize their first pool as of 1995. Then, employers that withdraw after 1995 are subject to the allocation of unfunded vested benefits as if the plan used the "rolling-5 method" discussed below.

Under section 4211(c)(3) of ERISA (the "rolling-5 method"), a withdrawing employer is liable for a share of the plan's unfunded vested benefits as of the end of the plan year preceding the employer's withdrawal (less outstanding claims for withdrawal liability that can reasonably be expected to be collected), allocated in proportion to the employer's share of total plan contributions for the last five plan years ending before the withdrawal.

Under section 4211(c)(4) of ERISA (the "direct attribution method"), an employer's withdrawal liability is based generally on the benefits and assets attributable to participants' service with the employer, as of the end of the plan year preceding the employer's withdrawal; the employer is also liable for a proportional share of any unfunded vested benefits that are not attributable to service with employers who have an obligation to contribute under the plan in the plan year preceding the withdrawal.

Section 4211(c)(5)(B) of ERISA authorizes PBGC to prescribe by regulation standard approaches for alternative methods for determining an employer's allocable share of unfunded vested benefits, and adjustments in any denominator of an allocation fraction under the withdrawal liability methods. PBGC has prescribed, in § 4211.12 of its regulation on Allocating Unfunded Vested Benefits to Withdrawing Employers, changes that a plan may adopt, without PBGC approval, in the denominator of the allocation fractions used to determine a withdrawing employer's share of unfunded vested benefits under the presumptive, modified presumptive and rolling-5 methods.

#### **Pension Protection Act of 2006 Changes**

The Pension Protection Act of 2006, Public Law 109-280 ("PPA 2006"), which became law on August 17, 2006, makes various changes to ERISA withdrawal liability provisions. Section 204(c)(2) of PPA 2006 added section

4211(c)(5)(E) of ERISA, which permits a plan, including a construction industry plan, to adopt an amendment that applies the presumptive method by substituting a different plan year (for which the plan has no unfunded vested benefits) for the plan year ending before September 26, 1980. Such an amendment would enable a plan to erase a large part of the plan's unfunded vested benefits attributable to plan years before the end of the designated plan year, and to start fresh with liabilities that arise in plan years after the designated plan year.

Additionally, sections 202(a) and 212(a) of PPA 2006 create new funding rules for multiemployer plans in "critical" status, allowing these plans to reduce benefits and making the plans' contributing employers subject to surcharges. New section 305(e)(9) of ERISA and section 432(e)(9) of the Internal Revenue Code ("Code") provide that such benefit adjustments and employer surcharges are disregarded in determining a plan's unfunded vested benefits and allocation fraction for purposes of determining an employer's withdrawal liability, and direct PBGC to prescribe simplified methods for the application of these provisions in determining withdrawal liability. (PPA 2006 also makes other changes affecting the withdrawal liability provisions under ERISA that are not addressed in this proposed rule.)

#### **Overview of Proposed Rule**

This proposed rule would amend PBGC's regulation on Allocating Unfunded Vested Benefits to Withdrawing Employers (29 CFR part 4211) to implement the above-described changes made by PPA 2006.

The proposed rule would also make changes unrelated to PPA 2006. Under its authority to prescribe alternatives to the statutory methods for determining an employer's allocable share of unfunded vested benefits, the proposed rule would also amend part 4211 to broaden the rules and provide more flexibility in applying the statutory methods. PBGC has identified certain modifications that may be advantageous to plans because they reduce administrative burdens for plans using the presumptive method and may assist plans in attracting new employers in the case of the modified presumptive method.

In addition, in the case of a plan termination by mass withdrawal, section 4219(c)(1)(D) of ERISA provides that the total unfunded vested benefits of the plan must be fully allocated among all liable employers in a manner not inconsistent with regulations

prescribed by PBGC. PBGC has determined that the fraction for allocating this "reallocation liability" under PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (20 CFR part 4219) does not adequately capture the liability of employers who had little or no initial withdrawal liability. Accordingly, this proposed rule would amend part 4219 to revise the allocation fraction for reallocation liability.

#### **Proposed Regulatory Changes**

##### *Withdrawal Liability Methods*

Under section 4211(c)(5)(E) of ERISA, added by PPA 2006, a plan using the presumptive withdrawal liability method in section 4211(b) of ERISA, including a construction industry plan, may be amended to substitute a plan year that is designated in a plan amendment and for which the plan has no unfunded vested benefits, for the plan year ending before September 26, 1980. For plan years ending before the designated plan year and for the designated plan year, the plan will be relieved of the burden of calculating changes in unfunded vested benefits separately for each plan year and allocating those changes to the employers that contributed to the plan in the year of the change. As the plan must have no unfunded vested benefits for the designated plan year, employers withdrawing from the plan after the modification is effective will have no liability for unfunded vested benefits arising in plan years ending before the designated plan year. PBGC proposes to amend § 4211.12 of its regulation on Allocating Unfunded Vested Benefits to Withdrawing Employers to reflect this new statutory modification to the presumptive method.

In addition, PBGC proposes to expand § 4211.12 to permit plans to substitute a new plan year for the plan year ending before September 26, 1980, *without regard* to the amount of a plan's unfunded vested benefits at the end of the newly designated plan year. This change would allow plans using the presumptive method to aggregate the multiple liability pools attributable to prior plan years and the designated plan year. It would thus allow such plans to allocate the plan's unfunded vested benefits as of the end of the designated plan year among the employers who have an obligation to contribute under the plan for the first plan year ending on or after such date, based on the employer's share of the plan's contributions for the five-year period ending before the designated plan year. Thereafter, the plan would apply the

regular rules under the presumptive method to segregate changes in the plan's unfunded vested benefits by plan year and to allocate individual plan year liabilities among the employers obligated to contribute under the plan in that plan year.

PBGC believes this modification to the presumptive method will ease the administrative burdens of plans that lack the actuarial and contributions data necessary to compute each employer's allocable share of annual changes in unfunded vested benefits occurring in plan years as far back as 1980. Note, however, that this modification does not apply to a construction industry plan, because PBGC may prescribe only adjustments in the denominators of the allocation fractions for such plans.<sup>1</sup>

PBGC also proposes to amend § 4211.12 to permit plans using the modified presumptive method to designate a plan year that would substitute for the last plan year ending before September 26, 1980. This proposal provides for the allocation of substantially all of a plan's unfunded vested benefits among employers who have an obligation to contribute under the plan, while enabling plans to split a single liability pool for plan years ending after September 25, 1980, into two liability pools. The first pool based on the plan's unfunded vested benefits as of the end of the newly designated plan year, allocated among employers who have an obligation to contribute under the plan for the plan year immediately following the designated plan year, and a second pool based on the unfunded vested benefits as of the end of the plan year prior to the withdrawal (offset in the manner described above for the modified presumptive method). For a period of time, this modification would reduce new employers' liability for unfunded vested benefits of the plan before the employer's participation, which could assist plans in attracting new employers and preserving the plan's contribution base. The proposal would not require PBGC approval for adoption.

For each of these modifications, the proposed rule would clarify that a plan's unfunded vested benefits, determined with respect to plan years ending after the plan year designated in the plan amendment, are reduced by the

value of the outstanding claims for withdrawal liability that can reasonably be expected to be collected for employers who withdrew from the plan in or before the designated plan year.

*Withdrawal Liability Computations for Plans in Critical Status—Adjustable Benefits*

PPA 2006 establishes additional funding rules for multiemployer plans in "endangered" or "critical" status under section 305 of ERISA and section 432 of the Code. The sponsor of a plan in critical status (less than 65 percent funded and/or meets any of the other defined tests) is required to adopt a rehabilitation plan that will enable the plan to cease to be in critical status within a specified period of time. Notwithstanding section 204(g) of ERISA or section 411(d)(6) of the Code, as deemed appropriate by the plan sponsor, based upon the outcome of collective bargaining over benefit and contribution schedules, the rehabilitation plan may include reductions to "adjustable benefits," within the meaning of section 305(e)(8) of ERISA and section 432(e)(8) of the Code. New section 305(e)(9) of ERISA and section 432(e)(9) of the Code provide, however, that any benefit reductions under subsection (e) must be disregarded in determining a plan's unfunded vested benefits for purposes of an employer's withdrawal liability under section 4201 of ERISA. (Also, under ERISA sections 305(f)(2) and (f)(3), and Code sections 432(f)(2) and (f)(3), a plan is limited in its payment of lump sums and similar benefits after a notice of the plan's critical status is sent, but any such benefit limits must be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability.)

Adjustable benefits under section 305(e)(8) of ERISA and section 432(e)(8) of the Code include benefits, rights and features under the plan, such as post-retirement death benefits, 60-month guarantees, disability benefits not yet in pay status; certain early retirement benefits, retirement-type subsidies and benefit payment options; and benefit increases that would not be eligible for a guarantee under section 4022A of ERISA on the first day of the initial critical year because the increases were adopted (or, if later, took effect) less than 60 months before such date. An amendment reducing adjustable benefits may not affect the benefits of any participant or beneficiary whose benefit commencement date is before the date on which the plan provides notice that the plan is or will be in critical status

for a plan year; the level of a participant's accrued benefit at normal retirement age also is protected.

Under section 4213 of ERISA, a plan actuary must use actuarial assumptions that, in the aggregate, are reasonable and, in combination, offer the actuary's best estimate of anticipated experience in determining the unfunded vested benefits of a plan for purposes of determining an employer's withdrawal liability (absent regulations setting forth such methods and assumptions). Section 4213(c) provides that, for purposes of determining withdrawal liability, the term "unfunded vested benefits" means the amount by which the value of nonforfeitable benefits under the plan exceeds the value of plan assets.

The proposed rule amends the definition of "nonforfeitable benefits" in § 4211.2 of PBGC's regulation on Allocating Unfunded Vested Benefits to Withdrawing Employers, and the definition of "unfunded vested benefits" in § 4219.2 of PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability, to include adjustable benefits that have been reduced by a plan sponsor pursuant to ERISA section 305(e)(8) or Code section 432(e)(8), to the extent such benefits would otherwise be nonforfeitable benefits.

Section 305(e)(9)(C) of ERISA and section 432(e)(9)(C) of the Code direct PBGC to prescribe simplified methods for the application of this provision in determining withdrawal liability. PBGC intends to issue guidance on simplified methods at a later date.

*Withdrawal Liability Computations for Plans in Critical Status—Employer Surcharges*

Under section 305(e)(7) of ERISA, added by section 202(a) of PPA 2006, and under section 432(e)(7) of the Code, added by section 212(a) of PPA 2006, each employer otherwise obligated to make contributions for the initial plan year and any subsequent plan year that a plan is in critical status must pay to the plan for such plan year a surcharge, until the effective date of a collective bargaining agreement that includes terms consistent with the rehabilitation plan adopted by the plan sponsor. Section 305(e)(9) of ERISA and section 432(e)(9) of the Code provide, however, that any employer surcharges under paragraph (7) must be disregarded in determining an employer's withdrawal liability under section 4211 of ERISA, except for purposes of determining the unfunded vested benefits attributable to an employer under section 4211(c)(4) (the direct attribution method) or a

<sup>1</sup> Under ERISA section 4211(c)(1), construction industry plans are limited to the presumptive allocation method, except that PBGC may by regulation permit adjustments in any denominator under section 4211 (including the denominator of a fraction used in the presumptive method by construction industry plans) where such adjustment would be appropriate to ease the administrative burdens of plan sponsors. See ERISA section 4211(c)(5)(D), 29 CFR 4211.11(b) and 4211.12.

comparable method approved under section 4211(c)(5) of ERISA.

The presumptive, modified presumptive and rolling-5 methods of allocating unfunded vested benefits allocate the liability pools among participating employers based on the employers' contribution obligations for the five-year period preceding the date the liability pool was established or the year of the employer's withdrawal (depending on the method or liability pool). Under section 4211 of ERISA, the numerator of the allocation fraction is the total amount required to be contributed by the withdrawing employer for the five-year period, and the denominator of the allocation fraction is the total amount contributed by all employers under the plan for the five-year period.

The proposed rule amends PBGC's regulation on Allocating Unfunded Vested Benefits to Withdrawing Employers (part 4211) by adding a new § 4211.4 that excludes amounts attributable to the employer surcharge under section 305(e)(7) of ERISA and section 432(e)(7) of the Code from the contributions that are otherwise includable in the numerator and the denominator of the allocation fraction under the presumptive, modified presumptive and rolling-5 methods. Pursuant to section 305(e)(9) of ERISA and section 432(e)(9) of the Code, a simplified method for the application of this principle is provided below in the form of an illustration of the exclusion of employer surcharge amounts from the allocation fraction.

*Example:* Plan X is a multiemployer plan that has vested benefit liabilities of

\$200 million and assets of \$130 million as of the end of its 2015 plan year. During the 2015 plan year, there were three contributing employers. Two of three employers were in the plan for the entire five-year period ending with the 2015 plan year. One employer was in the plan during the 2014 and 2015 plan years only. Each employer had a \$4 million contribution obligation each year under a collective bargaining agreement. In addition, for the 2011, 2012, and 2013 plan years, employers were liable for the automatic employer surcharge under section 305(e)(7) of ERISA and section 432(e)(7) of the Code, at a rate of 5% of required contributions in 2011 and 10% of required contributions in 2012 and 2013. The following table shows the contributions and surcharges owed for the five-year period.

Year	Employer A (\$ in millions)		Employer B (\$ in millions)		Employer C (\$ in millions)	
	Contribution	Surcharge	Contribution	Surcharge	Contribution	Surcharge
2011 .....	\$4	\$0.2	\$4	\$0.2	.....	.....
2012 .....	4	0.4	4	0.4	.....	.....
2013 .....	4	0.4	4	0.4	.....	.....
2014 .....	4	0	4	0	\$4	\$0
2015 .....	4	0	4	0	4	0
5-year total .....	20	1.0	20	1.0	8	0

Employers A, B and C contributed \$48 million during the five-year period, excluding surcharges, and \$50 million including surcharges. Under the rolling-5 method, the unfunded vested benefits allocable to an employer are equal to the plan's unfunded vested benefits as of the end of the last plan year preceding the withdrawal, multiplied by a fraction equal to the amount the employer was required to contribute to the plan for the last five plan years preceding the withdrawal over the total amount contributed by all employers for those five plan years (other adjustments are also required).

Employer A's share of the plan's unfunded vested benefits in the event it withdraws in 2016 is \$29.17 million, determined by multiplying \$70 million (the plan's unfunded vested benefits at the end of 2015) by the ratio of \$20 million to \$48 million. Employer B's allocable unfunded vested benefits are identical to Employer A's, and the amount allocable to Employer C is \$11.66 million (\$70 million multiplied by the ratio of \$8 million over \$48 million). The \$2.0 million attributable to the automatic employer surcharge is excluded from contributions in the allocation fraction.

*Reallocation Liability Upon Mass Withdrawal*

Section 4219(c)(1)(D) of ERISA applies special withdrawal liability rules when a multiemployer plan terminates because of mass withdrawal (*i.e.*, the withdrawal of every employer under the plan) or when substantially all employers withdraw pursuant to an agreement or arrangement to withdraw, including a requirement that the total unfunded vested benefits of the plan be fully allocated among all employers in a manner not inconsistent with PBGC regulations. To ensure that all unfunded vested benefits are fully allocated among all liable employers, § 4219.15(b) of PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability requires a determination of the plan's unfunded vested benefits as of end of the plan year of the plan termination, based on the value of the plan's nonforfeitable benefits as of that date less the value of plan assets (benefits and assets valued in accordance with assumptions specified by PBGC), less the outstanding balance of any initial withdrawal liability (assessments without regard to the occurrence of a mass withdrawal) and any redetermination liability

(assessments for de minimis and 20-year cap reduction amounts) that can reasonably be expected to be collected.

Pursuant to § 4219.15(c)(1), each liable employer's share of this "reallocation liability" is equal to the amount of the reallocation liability multiplied by a fraction—

(i) The numerator of which is the sum of the employer's initial withdrawal liability and any redetermination liability, and

(ii) The denominator of which is the sum of all initial withdrawal liabilities and all the redetermination liabilities of all liable employers.

PBGC believes the current allocation fraction for reallocation liability must be modified to address those situations in which employers—who would otherwise be liable for reallocation liability—have little or no initial withdrawal liability or redetermination liability and, therefore, have a zero (or understated) reallocation liability. Such situations may arise, for example, where an employer withdraws from the plan before the mass withdrawal valuation date, but has no withdrawal liability under the modified presumptive and rolling-5 methods because either (i) the plan has no unfunded vested benefits as of the end of the plan year preceding the

plan year in which the employer withdrew, or (ii) the plan did not require the employer to make contributions for the five-year period preceding the plan year of withdrawal. In these cases, if the employer's withdrawal is later determined to be part of a mass withdrawal for which reallocation liability applies under section 4219 of ERISA, the employer would not be liable for any portion of the reallocation liability.

A plan's status may change from funded to underfunded between the end of the plan year before the employer withdraws and the mass withdrawal valuation date as a result of differences in the actuarial assumptions used by the plan's actuary in determining unfunded vested benefits under sections 4211 and 4219 of ERISA, or due to investment losses that reduce the value of the plan's assets, among other reasons. Likewise, an employer may not have paid contributions for purposes of the allocation fraction used to determine the employer's initial withdrawal liability if the plan provided for a "contribution holiday" under which employers were not required to make contributions.

PBGC believes the absence of initial withdrawal liability should not generally exempt an otherwise liable employer from reallocation liability. By shifting reallocation liability away from some employers, the allocable share of other employers in a mass withdrawal is increased, and the risk of a loss of benefits to participants and to PBGC is increased. To ensure that reallocation liability is allocated broadly among all liable employers, PBGC proposes to amend § 4219.15(c) of the Notice, Collection, and Redetermination of Withdrawal Liability regulation to replace the current allocation fraction based on initial withdrawal liability with a new allocation fraction for determining an employer's allocable share of reallocation liability.

The proposed formula would allocate the plan's unfunded vested benefits based on the employer's contribution base units relative to the plan's total contribution base units for the three plan years preceding the employer's withdrawal from the plan. The numerator would consist of the withdrawing employer's average contribution base units during the three plan years preceding the withdrawal, and the denominator would consist of the average of all the employers' contribution base units during the three plan years preceding the withdrawal. Section 4001(a)(11) of ERISA defines a "contribution base unit" as a unit with respect to which an employer has an obligation to contribute under a

multiemployer plan, e.g., an hour worked. PBGC proposes a similar definition for purposes of § 4219.15 of the Notice, Collection, and Redetermination of Withdrawal Liability regulation.

PBGC also proposes to amend § 4219.1 of the regulation on Notice, Collection, and Redetermination of Withdrawal Liability to implement a provision under new section 4221(g) of ERISA, added by section 204(d)(1) of PPA 2006, which relieves an employer in certain narrowly defined circumstances of the obligation to make withdrawal liability payments until a final decision in the arbitration proceeding, or in court, upholds the plan sponsor's determination that the employer is liable for withdrawal liability based in part or in whole on section 4212(c) of ERISA. The regulation would state that an employer that complies with the specific procedures of section 4221(g) (or a similar provision in section 4221(f) of ERISA, added by Pub. L. 108-218) is not in default under section 4219(c)(5)(A).

#### *Definition of Multiemployer Plan*

Section 1106 of PPA 2006 amended the definition of a "multiemployer" plan in section 3(37)(G) of ERISA and section 414(f)(6) of the Code to allow certain plans to elect to be multiemployer plans for all purposes under ERISA and the Code, pursuant to procedures prescribed by PBGC. PBGC proposes to amend the definition of a "multiemployer plan" under § 4001.2 of its regulation on Terminology (29 CFR part 4001) to add a definition that is parallel to the definition in section 3(37)(G) of ERISA and section 414(f)(6) of the Code.

#### **Applicability**

The changes relating to modifications to the statutory methods prescribed by PBGC for determining an employer's share of unfunded vested benefits would be applicable to employer withdrawals from a plan that occur on or after the effective date of the final rule, subject to section 4214 of ERISA (relating to plan amendments). Changes in the fraction for allocating reallocation liability would be applicable to plan terminations by mass withdrawals (or by withdrawals of substantially all employers pursuant to an agreement or arrangement to withdraw) that occur on or after the effective date of the final rule.

The change relating to the presumptive method made by PPA 2006 would be applicable to employer withdrawals occurring on or after

January 1, 2007, subject to section 4214 of ERISA.

The changes relating to the effect of PPA 2006 benefit adjustments and employer surcharges for purposes of determining an employer's withdrawal liability would be applicable to employer withdrawals from a plan and plan terminations by mass withdrawals (or withdrawals of substantially all employers pursuant to an agreement or arrangement to withdraw) occurring for plan years beginning on or after January 1, 2008.

The change in the definition of a multiemployer plan is effective August 17, 2006. The change in section 4221(g) of ERISA made by PPA 2006 would be effective for any person that receives a notification under ERISA section 4219(b)(1) on or after August 17, 2006, with respect to a transaction that occurred after December 31, 1998.

#### **Compliance With Rulemaking Requirements**

##### *E.O. 12866*

The PBGC has determined, in consultation with the Office of Management and Budget, that this rule is a "significant regulatory action" under Executive Order 12866. The Office of Management and Budget has therefore reviewed this notice under E.O. 12866. Pursuant to section 1(b)(1) of E.O. 12866 (as amended by E.O. 13422), PBGC identifies the following specific problems that warrant this agency action:

- This regulatory action implements the PPA 2006 amendment to section 4211(c)(5) of ERISA that permits a plan using the presumptive method to substitute a specified plan year for which the plan has no unfunded vested benefits for the plan year ending before September 26, 1980. The proposed rule would provide necessary guidance on the application of this modification to the specific provisions of the presumptive method under section 4211(b) of ERISA. Also, because the statutory amendment lacks specificity in describing how to compute unfunded vested benefits, the rule clarifies the need to reduce the plan's unfunded vested benefits for plan years ending on or after the last day of the designated plan year by the value of all outstanding claims for withdrawal liability reasonably expected to be collected from withdrawn employers as of the end of the designated plan year.

- Existing modifications to the statutory withdrawal liability methods not subject to PBGC approval are outmoded and restrictive and an expansion of the modifications is

consistent with statutory changes under PPA 2006. This problem is significant because the current rules impose significant administrative burdens on plans and impede flexibility needed by multiemployer plans to attract new employers.

- This regulatory action implements the PPA 2006 amendment to section 305(e)(9) of ERISA and section 432(e)(9) of the Code requiring plans in critical status to disregard reductions in adjustable benefits and employer surcharges in determining a plan's unfunded vested benefits for purposes of an employer's withdrawal liability. The rule is necessary to conform the definition of nonforfeitable benefits and the allocation fraction based on employer contributions under PBGC's regulations to the statutory changes.

- The rule would revise the allocation fraction for reallocation liability, which applies when a multiemployer plan terminates by mass withdrawal, to ensure that reallocation liability is allocated broadly among all liable employers.

#### *Regulatory Flexibility Act*

PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this proposed rule would not have a significant economic impact on a substantial number of small entities. Specifically, the amendments would have the following effect:

- A statutory change under PPA 2006 provides plans with a "fresh start" option in determining withdrawal liability when an employer withdraws from a multiemployer plan. This rule clarifies the application of this fresh start option and extends the option to other withdrawal liability calculations. Under these amendments, plans may avoid costly and burdensome year-by-year calculations of unfunded vested benefits and employers' allocable shares of such benefits for years as far back as 1980; alternatively, these amendments may help plans attract new employers by shielding them from unfunded liabilities that arose in the past. Any changes to a plan's withdrawal liability method are adopted at the discretion of each plan's governing board of trustees. Accordingly, there is no cost to compliance.

- A statutory change under PPA requires plans in "critical" status to disregard reductions in adjustable benefits and employer surcharges in determining an employer's withdrawal liability. This rule would clarify the exclusion of any surcharges from the allocation fraction consisting of employer contributions, and the

exclusion of the cost of any reduced benefits from the plan's unfunded vested benefits. The rule simply applies the statutory provisions and imposes no significant burden beyond the burden imposed by statute. Furthermore, more than 88 percent of all multiemployer pension plans have 250 or more participants.

- Another amendment in the rule would revise the fraction for allocating reallocation liability (unfunded vested benefits as of the end of the plan year of a plan's termination) among employers when a plan terminates in a mass withdrawal. Plans routinely maintain the contribution records necessary to apply the new fraction in place of the old fraction for this purpose. Moreover, a majority of all plans that terminate in a mass withdrawal have more than 250 participants at the time of termination. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 do not apply.

#### **List of Subjects**

##### *20 CFR Part 4001*

Business and industry, Organization and functions (Government agencies), Pension insurance, Pensions, Small businesses.

##### *29 CFR Part 4211*

Pension insurance, Pensions, Reporting and recordkeeping requirements.

##### *29 CFR Part 4219*

Pensions, Reporting and recordkeeping requirements.

For the reasons given above, PBGC proposes to amend 29 CFR parts 4001, 4211 and 4219 as follows.

#### **PART 4001—TERMINOLOGY**

1. The authority citation for part 4001 continues to read as follows:

**Authority:** 29 U.S.C. 1301, 1302(b)(3).

##### **§ 4001.2 [Amended]**

2. In § 4001.2, the definition of *Multiemployer plan* is amended by adding at the end the sentence "Multiemployer plan also means a plan that elects to be a multiemployer plan under ERISA section 3(37)(G) and Code section 414(f)(6), pursuant to procedures prescribed by PBGC and the approval of an election by PBGC."

#### **PART 4211—ALLOCATING UNFUNDED VESTED BENEFITS TO WITHDRAWING EMPLOYERS**

3. The authority citation for part 4211 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3); 1391(c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), (c)(5)(D), and (f).

##### 4. In § 4211.2—

a. The first sentence is amended by removing the words "nonforfeitable benefit,".

b. The definition of *Unfunded vested benefits* is amended to add the words " , as defined for purposes of this section," between the words "plan" and "exceeds".

c. A new definition is added in alphabetical order to read as follows:

##### **§ 4211.2 Definitions.**

\* \* \* \* \*

*Nonforfeitable benefit* means a benefit described in § 4001.2 of this chapter plus, for purposes of this part, any adjustable benefit that has been reduced by the plan sponsor pursuant to section 305(e)(8) of ERISA or section 432(e)(8) of the Code that would otherwise have been includable as a nonforfeitable benefit for purposes of determining an employer's allocable share of unfunded vested benefits.

\* \* \* \* \*

5. A new § 4211.4 is added to read as follows:

##### **§ 4211.4 Contributions for purposes of the numerator and denominator of the allocation fractions.**

Each of the allocation fractions used in the presumptive, modified presumptive and rolling-5 methods is based on contributions that certain employers have made to the plan for a five-year period.

(a) The numerator of the allocation fraction, with respect to a withdrawing employer, is based on the "sum of the contributions required to be made" or the "total amount required to be contributed" by the employer for the specified period. For purposes of these methods, this means the amount that is required to be contributed under one or more collective bargaining agreements or other agreements pursuant to which the employer contributes under the plan, other than withdrawal liability payments or amounts that an employer is obligated to pay to the plan pursuant to section 305(e)(7) of ERISA or section 432(e)(7) of the Code (automatic employer surcharge). Employee contributions, if any, shall be excluded from the totals.

(b) The denominator of the allocation fraction is based on contributions that certain employers have made to the plan for a specified period. For purposes of these methods, and except as provided in § 4211.12, "the sum of all contributions made" or "total amount contributed" by employers for a plan year means the amounts considered

contributed to the plan for purposes of section 412(b)(3)(A) of the Code, other than withdrawal liability payments or amounts that an employer is obligated to pay to the plan pursuant to section 305(e)(7) of ERISA or section 432(e)(7) of the Code (automatic employer surcharge). For plan years before section 412 applies to the plan, “the sum of all contributions made” or “total amount contributed” means the amount reported to the IRS or the Department of Labor as total contributions for the plan year; for example, the plan years in which the plan filed the Form 5500, the amount reported as total contributions on that form. Employee contributions, if any, shall be excluded from the totals.

6. In § 4211.12—

a. Paragraph (a) is removed and paragraph (b) is redesignated as paragraph (a).

b. Paragraph (c) is redesignated as paragraph (b).

c. Add new paragraphs (c) and (d) to read as follows:

**§ 4211.12 Modifications to the presumptive, modified presumptive and rolling-5 methods.**

\* \* \* \* \*

(c) “*Fresh start*” rules under presumptive method.

(1) The plan sponsor of a plan using the presumptive method (including a plan that primarily covers employees in the building and construction industry) may amend the plan to provide—

(i) A designated plan year ending after September 26, 1980 will substitute for the plan year ending before September 26, 1980, in applying section 4211(b)(1)(B), section 4211(b)(2)(B)(ii)(I), section 4211(b)(2)(D), section 4211(b)(3), and section 4211(b)(3)(B) of ERISA, and

(ii) Plan years ending after the end of the designated plan year in paragraph (c)(1)(i) will substitute for plan years ending after September 25, 1980, in applying section 4211(b)(1)(A), section 4211(b)(2)(A), and section 4211(b)(2)(B)(ii)(II) of ERISA.

(2) A plan amendment made pursuant to paragraph (c)(1) of this section must provide that the plan’s unfunded vested benefits for plan years ending after the designated plan year are reduced by the value of all outstanding claims for withdrawal liability that can reasonably be expected to be collected from employers that had withdrawn from the plan as of the end of the designated plan year.

(3) In the case of a plan that primarily covers employees in the building and construction industry, the plan year designated by a plan amendment pursuant to paragraph (c)(1) of this

section must be a plan year for which the plan has no unfunded vested benefits.

(d) “*Fresh start*” rules under modified presumptive method.

(1) The plan sponsor of a plan using the modified presumptive method may amend the plan to provide—

(i) A designated plan year ending after September 26, 1980 will substitute for the plan year ending before September 26, 1980, in applying section 4211(c)(2)(B)(i) and section 4211(c)(2)(B)(ii)(I) and (II) of ERISA, and

(ii) Plan years ending after the end of the designated plan year will substitute for plan years ending after September 25, 1980, in applying section 4211(c)(2)(B)(ii)(II) and section 4211(c)(2)(C)(i)(II) of ERISA.

(2) A plan amendment made pursuant to paragraph (d)(1) of this section must provide that the plan’s unfunded vested benefits for plan years ending after the designated plan year are reduced by the value of all outstanding claims for withdrawal liability that can reasonably be expected to be collected from employers that had withdrawn from the plan as of the end of the designated plan year.

**PART 4219—NOTICE, COLLECTION, AND REDETERMINATION OF WITHDRAWAL LIABILITY**

7. The authority citation for part 4219 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3) and 1399(c)(6).

8. In § 4219.1, paragraph (c) is amended by removing the words “after April 28, 1980 (May 2, 1979, for certain employees in the seagoing industry)” and adding in their place the words “on or after September 26, 1980, except employers with respect to whom section 4221(f) or section 4221(g) of ERISA applies (provided that such employers are in compliance with the provisions of those sections, as applicable).”

9. In § 4219.2—

a. Paragraph (a) is amended by removing the words “nonforfeitable benefit.”

b. Paragraph (b) is amended by adding the word “nonforfeitable” between the words “vested” and “benefits” and the words “(as defined for purposes of this section)” between the words “benefits” and “exceeds” in the definition of *Unfunded vested benefits*.

c. Paragraph (b) is amended by adding a new definition in alphabetical order to read as follows:

**§ 4219.2 Definitions.**

\* \* \* \* \*

“*Nonforfeitable benefit* means a benefit described in § 4001.2 of this chapter plus, for purposes of this part, any adjustable benefit that has been reduced by the plan sponsor pursuant to section 305(e)(8) of ERISA and section 432(e)(8) of the Code that would otherwise have been includable as a nonforfeitable benefit.”

\* \* \* \* \*

10. In § 4219.15, revise paragraph (c)(1) and add a new paragraph (c)(4) to read as follows:

**§ 4219.15 Determination of reallocation liability.**

\* \* \* \* \*

(c) \* \* \*

(1) *Initial allocable share*. Except as otherwise provided in rules adopted by the plan pursuant to paragraph (d) of this section, and in accordance with paragraph (c)(3) of this section, an employer’s initial allocable share shall be equal to the product of the plan’s unfunded vested benefits to be reallocated, multiplied by a fraction—

(i) The numerator of which is a yearly average of the employer’s contribution base units during the three plan years preceding the employer’s withdrawal; and

(ii) The denominator of which is a yearly average of the total contribution base units of all employers liable for reallocation liability during the three plan years preceding the employer’s withdrawal.

\* \* \* \* \*

(4) *Contribution base unit*. For purposes of paragraph (c)(1) of this section, a contribution base unit means a unit with respect to which an employer has an obligation to contribute, such as an hour worked or shift worked or a unit of production, under the applicable collective bargaining agreement (or other agreement pursuant to which the employer contributes) or with respect to which the employer would have an obligation to contribute if the contribution requirement with respect to the plan were greater than zero.

\* \* \* \* \*

Issued in Washington, DC, this 11th day of March, 2008.

**Charles E.F. Millard,**  
*Director, Pension Benefit Guaranty Corporation.*

[FR Doc. E8–5541 Filed 3–18–08; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

[FRL-8543-8; EPA-HQ-SFUND-2008-0081, EPA-HQ-SFUND-2008-0082, EPA-HQ-SFUND-2008-0083, EPA-HQ-SFUND-2008-0084, EPA-HQ-SFUND-2008-0085, EPA-HQ-SFUND-2008-0086]

**National Priorities List, Proposed Rule No. 48**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or “the Act”), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”) include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (“NPL”) constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (“EPA” or “the Agency”) in determining

which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add six new sites to the General Superfund section of the NPL.

**DATES:** Comments regarding any of these proposed listings must be submitted (postmarked) on or before May 19, 2008.

**ADDRESSES:** Identify the appropriate FDMS Docket Number from the table below.

**FDMS DOCKET IDENTIFICATION NUMBERS BY SITE**

Site name	City/state	FDMS Docket ID No.
Iron King Mine—Humboldt Smelter .....	Dewey-Humboldt, AZ .....	EPA-HQ-SFUND-2008-0086.
Nelson Tunnel/Commodore Waste Rock .....	Creede, CO .....	EPA-HQ-SFUND-2008-0085.
Flash Cleaners .....	Pompano Beach, FL .....	EPA-HQ-SFUND-2008-0081.
Aberdeen Contaminated Ground Water .....	Aberdeen, NC .....	EPA-HQ-SFUND-2008-0082.
Attebury Grain Storage Facility .....	Happy, TX .....	EPA-HQ-SFUND-2008-0083.
Old Esco Manufacturing .....	Greenville, TX .....	EPA-HQ-SFUND-2008-0084.

Submit your comments, identified by the appropriate FDMS Docket number, by one of the following methods:

- <http://www.regulations.gov>: Follow the online instructions for submitting comments.
- *E-mail: [superfund.docket@epa.gov](mailto:superfund.docket@epa.gov)*
- *Mail:* Mail comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5305T); 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

• *Hand Delivery or Express Mail:* Send comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room 3340, Washington, DC 20004. Such deliveries are only accepted during the Docket’s normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays). Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to the appropriate FDMS Docket number (see table above). 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; that 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 Docket addresses and further details on their contents, see section II, “Public Review/Public Comment,” of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Terry Jeng, phone: (703) 603-8852, e-mail: [jeng.terry@epa.gov](mailto:jeng.terry@epa.gov); State, Tribal and Site Identification Branch; Assessment and Remediation Division; Office of Superfund Remediation and Technology Innovation (Mail Code

5204P); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or the Superfund Hotline, phone: (800) 424-9346 or (703) 412-9810 in the Washington, DC metropolitan area.

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## I. Background

### A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (“CERCLA” or “the Act”), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (“SARA”), Public Law 99–499, 100 Stat. 1613 *et. seq.*

### B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”), 40 CFR part

300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes “criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action.” “Removal” actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

### C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of “releases” and the highest priority “facilities” and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the “General Superfund Section”), and one of sites that are owned or operated by other Federal agencies (the “Federal Facilities Section”). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other

Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (HRS) score and determining whether the facility is placed on the NPL. At Federal Facilities Section sites, EPA’s role is less extensive than at other sites.

### D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (“HRS”), that EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) pursuant to 42 U.S.C. 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2); (3) the third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release;
  - EPA determines that the release poses a significant threat to public health; and
  - EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.
- EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR

40658) and generally has updated it at least annually.

#### *E. What Happens to Sites on the NPL?*

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions. \* \* \*" 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

#### *F. Does the NPL Define the Boundaries of Sites?*

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the "Jones Co. plant site") in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (e.g., it may

extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination and is not meant to constitute any determination of liability at a site. For example, the name "Jones Co. plant site," does not imply that the Jones Company is responsible for the contamination located on the plant site.

EPA regulations provide that the Remedial Investigation ("RI") "is a process undertaken \* \* \* to determine the nature and extent of the problem presented by the release" as more information is developed on site contamination, and which is generally performed in an interactive fashion with the Feasibility Study ("FS") (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the Agency at any time after it receives notice that it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

#### *G. How Are Sites Removed From the NPL?*

EPA may delete sites from the NPL where no further response is

appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

#### *H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?*

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

#### *I. What Is the Construction Completion List (CCL)?*

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) The site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see EPA's Internet site at <http://www.epa.gov/superfund>.

#### *J. What Is the Sitewide Ready for Anticipated Use Measure?*

The Sitewide Ready for Anticipated Use measure (formerly called Sitewide Ready-for-Reuse measure) represents important Superfund accomplishments and the measure reflects the high priority EPA places on considering anticipated future land use as part of our remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0-36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and

all institutional or other controls are in place. EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment, including current and future land users, in a manner that allows contaminated properties to be restored to environmental and economic vitality while ensuring protectiveness for current and future land users. For further information, please go to <http://www.epa.gov/superfund/programs/recycle/tools/sitewide.htm>.

## II. Public Review/Public Comment

### A. May I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the sites in this rule are contained in public Dockets located at EPA Headquarters in Washington, DC, in the Regional offices and by electronic access at <http://www.regulations.gov> (see instructions in the **ADDRESSES** section above).

### B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Regional Dockets after the publication of this proposed rule. The hours of operation for the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional Dockets for hours.

The following is the contact information for the EPA Headquarters Docket: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room 3340, Washington, DC 20004; (202) 566-1744. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional Dockets is as follows:

Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114-2023; (617) 918-1417.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007-1866; (212) 637-4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; (215) 814-5364.

Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW., 9th floor, Atlanta, GA 30303; (404) 562-8862.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SRC-7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; (312) 353-5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF-RA, Dallas, TX 75202-2733; (214) 665-7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; (913) 551-7335.

Gwen Christiansen, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR-B, Denver, CO 80202-1129; (303) 312-6463.

Dawn Richmond, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; (415) 972-3097.

Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mail Stop ECL-115, Seattle, WA 98101; (206) 553-2782.

You may also request copies from EPA Headquarters or the Regional Dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents. Please note that due to the difficulty of reproducing oversized maps, oversized maps may be viewed in-person, however EPA dockets are not equipped to either copy and mail out such maps or scan them and send them out electronically.

You may use the Docket at <http://www.regulations.gov> to access documents in the Headquarters Docket (see instructions included in the **ADDRESSES** section above). Please note that there are differences between the Headquarters Docket and the Regional Dockets and those differences are outlined below.

### C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters Docket for this rule contains the following for the sites proposed in this rule: HRS score sheets; Documentation Records describing the information used to compute the score; information for any sites affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

### D. What Documents Are Available for Public Review at the Regional Dockets?

The Regional Dockets for this rule contain all of the information in the

Headquarters Docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional Dockets.

### E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the mailing addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

### F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments are typically addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

### G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill v. Thomas*, 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

### H. May I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of generally not delaying a final listing decision solely to accommodate consideration of late comments.

### I. May I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters Docket and are available to the public on an "as received" basis. A complete set of comments will be available for viewing in the Regional Dockets approximately one week after the formal comment period closes.

All public comments, whether submitted electronically or in paper, will be made available for public viewing in the electronic public Docket at <http://www.regulations.gov> as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Once in the public Dockets system, select “search,” then key in the appropriate Docket ID number.

*J. May I Submit Comments Regarding Sites Not Currently Proposed to the NPL?*

In certain instances, interested parties have written to EPA concerning sites that were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the

period of formal proposal and comment will not generally be included in the Docket.

**III. Contents of This Proposed Rule**

*A. Proposed Additions to the NPL*

In today’s proposed rule, EPA is proposing to add six new sites to the NPL, all to the General Superfund Section. All of the sites in this proposed rulemaking are being proposed based on HRS scores of 28.50 or above. The sites are presented in the table below.

State	Site name	City/county
AZ	Iron King Mine—Humboldt Smelter	Dewey-Humboldt.
CO	Nelson Tunnel/Commodore Waste Rock	Creede.
FL	Flash Cleaners	Pompano Beach.
NC	Aberdeen Contaminated Ground Water	Aberdeen.
TX	Attebury Grain Storage Facility	Happy.
TX	Old Esco Manufacturing	Greenville.

**IV. Statutory and Executive Order Reviews**

*A. Executive Order 12866: Regulatory Planning and Review*

1. What Is Executive Order 12866?

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether a regulatory action is “significant” and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines “significant regulatory action” as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

2. Is This Proposed Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed.

It has been determined that this action is not a “significant regulatory action” under the terms of Executive Order 12866 and is therefore not subject to OMB review.

*B. Paperwork Reduction Act*

1. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act Apply to This Proposed Rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the

existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

*C. Regulatory Flexibility Act*

1. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

## 2. How Has EPA Complied With the Regulatory Flexibility Act?

This proposed rule listing sites on the NPL, if promulgated, would not impose any obligations on any group, including small entities. This proposed rule, if promulgated, also would establish no standards or requirements that any small entity must meet, and would impose no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this proposed rule, if promulgated, would not impose any requirements on any small entities. For the foregoing reasons, I certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

### D. Unfunded Mandates Reform Act

#### 1. What Is the Unfunded Mandates Reform Act (UMRA)?

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, 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 by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Before EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires 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, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially

affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

#### 2. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any Federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding \$100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

### E. Executive Order 13132: Federalism

#### What Is Executive Order 13132 and Is It Applicable to This Proposed Rule?

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the 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."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute,

unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

#### 1. What Is Executive Order 13175?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 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." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

#### 2. Does Executive Order 13175 Apply to This Proposed Rule?

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

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

1. What Is Executive Order 13045?

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

2. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage*

Is this Rule Subject to Executive Order 13211?

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

*I. National Technology Transfer and Advancement Act*

1. What Is the 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: March 10, 2008.

**Susan Parker Bodine,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. E8-5559 Filed 3-18-08; 8:45 am]

**BILLING CODE 6560-50-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 070817467-7863-01]

**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:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to approve and implement 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 proposes 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 adjustments 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 as proposed by the Council, including a quarterly TAC, 2008 and 2009 general category quota allocations, and individual fishing quota (IFQ) permit cost recovery program requirements. NMFS will disapprove 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 has determined that the Council's recommendation is not consistent with National Standard 2 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Comments must be received by 5 p.m., local time, on April 8, 2008.

**ADDRESSES:** An environmental assessment (EA) was prepared for Framework 19 that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed 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.

You may submit comments, identified by 0648-AV90, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- Fax: (978) 281-9135, Attn: Ryan Silva.
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Scallop Framework 19 Proposed Rule."

Instructions: 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 (for example, name, address, etc.) 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 PDF file formats only.

Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this proposed rule should be submitted to the Regional Administrator at the address above and by e-mail to [David\\_Rostker@omb.eop.gov](mailto: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 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. This rule proposes measures as adopted by the Council and described in detail here. The Council has reviewed the Framework 19 proposed rule regulations as drafted by NOAA Fisheries Service, which included regulations proposed by NOAA Fisheries Service under the authority of section 305(d) of the Magnuson-Stevens Act, and deemed them to be necessary and consistent with section 303(c) of the Magnuson-Stevens Act.

The Council recommended in Framework 19 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 has deemed this measure as inconsistent with National Standard 2 of the Magnuson-Stevens Act. NMFS has

determined that the Council's recommendation to eliminate the ETAA seasonal closure may not be justified given the information and analysis provided in the Framework 19 document and analysis, and therefore is not consistent with National Standard 2 of the Magnuson-Stevens Act. National Standard 2 specifies that conservation and management measures shall be based upon the best scientific information available. Although the Council considered scientific information, the information is not sufficient to justify removal of the seasonal closure adopted under Framework 18.

*Open Area DAS Allocations*

To achieve optimum yield at the target  $F=0.20$  for the scallop resource, limited access open area DAS allocations are required to be adjusted every 2 years. Since 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 would implement the following vessel-specific DAS allocations: Full-time vessels would be allocated 35 DAS in 2008 and 42 DAS in 2009; part-time vessels would be allocated 14 DAS in 2008 and 17 DAS in 2009; and occasional vessels would receive 3 DAS in 2008 and 3 DAS in 2009.

Because Framework 19 will not be implemented by the start of the fishing year on March 1, 2008, and interim regulations that will be in effect at the start of the 2008 fishing year are inconsistent with proposed Framework 19 specifications, it is possible that scallop vessels may exceed their DAS allocations during the interim period between March 1, 2008, and the implementation of Framework 19. Therefore, any limited access open area DAS used in 2008 by a vessel that is above the final 2008 allocation for that vessel would 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 scallop vessels would be allocated one trip in the Nantucket Lightship Access Area (NLCA), and four trips in the ETAA. A part-time scallop vessel would 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 vessel would 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 would 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 scallop vessels would be allocated one trip in the Closed Area II Access Area (CAII), up to three trips in the ETAA, and up to 1 trip in Delmarva. A part-time scallop vessel would 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 vessel would 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 would be 18,000 lb (8,165 kg) for full-time and part-time vessels, and 7,500 lb (3,402 kg) for occasional vessels.

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 vessels in 2009. ETAA and Delmarva trip allocations and possession limits in 2009 are subject to change per the proposed ETAA and Delmarva trip reduction procedures described below.

Because Framework 19 will not be implemented by March 1, 2008, and interim regulations that will be in effect at the start of the 2008 fishing year are inconsistent with proposed Framework 19 specifications, it is possible that scallop vessels may fish in an access area that would otherwise be closed under Framework 19 during the interim period between March 1, 2008, and the implementation of Framework 19. Therefore, if a limited access vessel takes a 2008 Closed Area I Access Area (CAI) trip, one ETAA trip would be deducted from the vessel's 2009 allocation. Although the Council did not specify this measure 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.

*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 proposed 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 would 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 vessels would 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 would 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	0.24	0.12
10,000–19,000	1, 0, 0	982	0.16	0.08
Less than 10,000	0, 0, 0	491	0.08	0.04

\*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 area reduced).

In addition, if an updated estimate of overall F exceeds 0.29 in 2008, then ETAA allocations would 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 were exceeded, the allocation level would 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 would remain closed to scallop fishing for the 2009 fishing year, and no trips or set-aside would 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, would 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 F 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 vessel has unutilized trip(s) in an access area closed by a scallop fishery yellowtail TAC, Framework 19 would allocate additional open area DAS in a manner that maintains the F objectives of the FMP. This trip/DAS conversion would 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) would be converted to open area DAS so that scallop fishing mortality that would have resulted from the access area trip(s) would 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) would be allocated a specific amount of additional open area DAS according to permit category. Full-time vessels would be allocated 7.7 DAS per unutilized trip in the NLCA and 7.9 DAS per unutilized trip in CAII. Part-time vessels would 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) in. If an occasional vessel has no available access area in which to take its trip, it would be allocated converted DAS according to the most recent closure: 3.2 DAS if it was the NLCA, 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 would 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 would 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 allocation is set aside as part of the Scallop RSA Program to fund scallop research and compensates participating vessels through the sale of scallops harvested under the research set-aside quota. The 2008 research set-aside

access area allocations would be: NLCA—110,000 lb (50 mt); ETAA—440,000 lb (200 mt). The 2009 research set-aside access area allocations would be: CAII—116,000 lb (53 mt); ETAA—324,000 lb (147 mt); 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 would be reduced as specified in Table 1.

The 2008 and 2009 research set-aside DAS allocations would be 235 and 282, respectively.

#### Observer Set-Aside Allocations

One percent of each scallop access area quota and 1 percent of the DAS allocation is 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 2008 access area observer set-aside allocations would be: NLCA—55,000 lb (25 mt); ETAA—222,000 lb (111mt). The 2009 access area observer set-aside allocations would be: CAII—58,000 lb (26 mt); ETAA—162,000 lb (73 mt); 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 would be reduced as specified in Table 1.

The 2008 and 2009 DAS observer set-aside allocations would be 118 and 141, respectively.

#### 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 of  $F=0.20$  should be adjusted upward consistent with the F threshold adjustment. The overfishing threshold of  $F=0.29$  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 at  $F=0.20$  in recognition that F is not uniformly distributed in the scallop fishery, and the resource is prone to localized overfishing, particularly in open areas. An F target of 0.20 would help maintain a stable fishery 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 would be as follows: If stock biomass is equal to or greater than  $B_{max}$ , 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  $F_{max}$ , currently estimated as 0.29. If the total stock biomass is below  $B_{max}$ , overfishing occurs when F exceeds the level that has a 50-percent probability to rebuild stock biomass to  $B_{max}$  in 10 years. The scallop stock is in an overfished condition when stock biomass is below  $\frac{1}{2}B_{max}$  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  $\frac{1}{4}B_{max}$ .

The following table details the biomass and F reference points proposed by Framework 19.

TABLE 2. PROPOSED BIOMASS AND F REFERENCE POINTS

	Target	Threshold
Biomass	108,600 mt	54,300 mt
Fishing mortality (F)	0.29	0.20

#### Prohibition on deckloading

To minimize scallop discard mortality, no scallop vessel that is declared into the Area Access Program as specified in § 648.60 could 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 proposed measures to improve the industry-funded observer program.

##### 1. Proposed 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 him/her 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, email 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 distributed to vessels, such as informational pamphlets, payment notification, description of observer duties, etc.

Providers are required to charge vessel owners in a way that is consistent with the compensation received by the observed vessel. NMFS authorizes vessel compensation from the industry-funded observer set-aside using VMS transmission data. For the purpose of compensating scallop vessels carrying an observer, NMFS would calculate the duration of the trip as the period from the first VMS polling position outside of the demarcation line at the beginning of the trip to the first VMS polling position inside of the demarcation line at the end of the trip. For example, if the first VMS polling position outside of the demarcation line of a vessel with an observer on an access area trip was 9:00 pm on the 1st, and the first VMS polling

position inside of the demarcation line at the end of the trip was at 1:00 am on the 3rd, the duration of the trip equals 27 hr or 2 "days" (24 hr + 3 hr) for the purposes of observer set-aside compensation. Therefore, the provider would charge for 2 days of observer coverage. For observed open area DAS trips, "day" would be defined as a 24-hour period and portions of days would be pro-rated at an hourly charge. For example, for the trip described above, the provider would charge 1 day and 3 hr.

Providers would no longer be required to maintain at least eight certified observers.

Providers must provide NMF/NEFOP with observer contract data within 24 hr of landing, and raw data within 72 hr of landing.

## 2. Proposed Measures Pertaining to Scallop Fishermen

NMFS/NEFOP may take up to 72 hr to respond to a pre-sailing notice and, if selected to carry an observer, the observer provider may take up to 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.

Limited access trip notification calls can not 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 weekly calls rather than daily calls. For example, a general category vessel could call in on Tuesday for all the trips it plans to take from the following Sunday through Saturday. The vessel would 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 an observer waiver confirmation number specific to that trip and that was issued for the trip plan that was called in to NMFS.

## 3. Proposed Observer Program Observer Training Adjustments

NMFS/NEFOP observer training sessions would no longer have a minimum class size of eight.

An observer's first three deployments and the resulting data would 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. If the data is not acceptable, the observer will not be certified.

An observer provider would 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.

Providers would be required to provide at least 7 days advance notice to NMFS/NEFOP when requesting an observer training class.

Prior to the end of an observer training course, the observer would be required to complete a cardiopulmonary resuscitation/first aid course.

## 4. DAS and TAC Compensation Rates

The Council has recommended the DAS and TAC compensation rates be adjusted to more accurately reflect the costs associated with observed trips. NMFS will consider information included in Framework 19 and any other relevant fishery information and will notify scallop permit holders through a permit holder letter if an adjustment is made.

### *30-day VMS Power Down Provision for Scallop Vessels*

The proposed action would allow all scallop vessels to power down their VMS unit for a minimum of 30 days provided the vessel does not engage in any fisheries until the unit is turned back on. Such vessels would be required to obtain a letter of exemption from the Regional Administrator. This provision would provide more flexibility and would reduce operating costs for some scallop vessel owners that do not engage in fisheries for extended periods of time.

### *General Category Access Area Harvest Specifications for 2008 and 2009*

In 2008, the general category fishery would be allocated 5 percent of the overall NLCA and ETAA TACs, resulting in up to 667 trips in the NLCA, and up to 2,668 trips in the ETAA, respectively. If 2008 scallop resource surveys indicate a reduced exploitable scallop biomass, or overall 2008 scallop F exceeds 0.29, general category ETAA trip allocations would be subject to trip reduction procedures as specified under

### Table 1—2009 ETAA Trip Reduction Table.

In 2009, the general category scallop fishery would be allocated 5 percent of the overall ETAA and Delmarva TACs, resulting in up to 1,964 trips and 728 trips, respectively. If updated 2008 scallop resource surveys indicate the exploitable biomass in Delmarva is less than 10,000 mt, Delmarva would be closed for the 2009 fishing year, and no general category trips would be allocated. General category vessels would not be allocated any trips in CAII because of concerns that negligible fishing effort by general category vessels would occur there. Because general category vessels would receive overall TAC, the zero allocation in CAII would be offset by a higher percentage of overall catch in open areas.

Because Framework 19 will not be implemented by the start of the 2008 fishing year on March 1, 2008, and current regulations that will roll over into the 2008 fishing year are inconsistent with proposed Framework 19 specifications, it is possible that scallop vessels may exceed their allocation or fish in an area that would otherwise be closed under Framework 19. Therefore, if general category vessels take 2008 CAI trips, a like number of ETAA trips as specified under default regulations would be deducted from the general category fleet in 2009. Although the Council did not address this scenario in their Framework 19 document, and therefore did not recommend this adjustment procedure, NMFS is proposing this measure to remain consistent with the intent of the FMP. Although the Council did not specify this measure 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.

### *General Category Measures Dependent on Amendment 11 to the FMP (Amendment 11)*

Several measures in Framework 19 are dependent on the implementation of Amendment 11 as proposed (72 FR 71315, December 17, 2007). The primary intent of Amendment 11 is to reduce fishing capacity in the general category fishery by establishing a limited entry program that would include three permit categories; IFQ, Northern Gulf of Maine Management Area (NGOM), and incidental. Framework 19 proposed regulations have been drafted under the assumption that Amendment 11 will be implemented as proposed. The following measures in Framework 19

are contingent on the implementation of Amendment 11 as currently proposed: Allocation of 10 percent of the overall scallop TAC in 2008 (and 2009 if the IFQ program is not implemented by March 1, 2009), and 5 percent in 2009 and beyond; a quarterly hard TAC for the directed general category scallop fishery for the 2008 scallop fishing year; a separate 0.5-percent TAC allocation of the overall scallop TAC in 2009 and beyond for full-time, part-time, or occasional vessels that qualify for an IFQ permit; cost recovery payment procedures for IFQ permit holders that land IFQ scallops; 2008 and 2009 NGOM TACs; and incidental catch target TACs for 2008 and 2009. The legal basis and rationale for these measures are described in the proposed rule for Amendment 11 and are not repeated here. The following provides details on the specific allocations and other specifications for the Amendment 11 measures.

### 1. Quarterly TAC

Framework 19 would allocate approximately 10 percent of the overall 2008 scallop TAC to the general category fishery. The quarterly TAC would be effective during the transitional period as the IFQ program is implemented, which is scheduled for the start of the 2009 fishing year. Framework 19 would allocate 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 would be rolled over into Quarter 3; if any portion of the Quarter 2 TAC is not caught, it would be rolled over into Quarter 4. Open area, access area, and NGOM scallop landings by directed general category trips would count against the quarterly TACs. Consequently, if a quarterly TAC is caught, all directed general category scallop fishing would cease for the remainder of the quarter; including access area, and open areas, but excluding the NGOM. If the Quarter 1 TAC (March 1–May 31) is exceeded, those pounds would be removed from Quarters 3 and/or 4.

### 2. IFQ Allocation

Amendment 11 proposes to establish a separate IFQ allocation for full-time, part-time, or occasional scallop vessels that qualify for an IFQ permit. Starting with the first year of the IFQ program in 2009, the pool of IFQ vessels that do not qualify for a full-time, part-time, or

occasional scallop permit would be allocated 5 percent of the overall scallop TAC; and the pool of full-time, part-time, or occasional vessels that qualify for an IFQ permit would be allocated 0.5 percent of the overall scallop TAC.

General category vessels that qualify for an IFQ permit in 2009 would be allocated 5 percent of the overall scallop TAC as follows: 1,182,500 lb (536.37 mt) from open areas, 785,700 lb (356.79 mt) from ETAA, and 291,000 lb (13.20 mt) from Delmarva. Full-time, part-time, and occasional scallop vessels that qualify for an IFQ permit in 2009 would be allocated 225,950 lb (112.96 mt) from open areas.

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 would be allocated 10 percent of the overall scallop TAC and be divided among quarters as described in the preceding section.

### 3. Cost Recovery

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 proposed by 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 would incur a cost recovery fee liability for every landing of scallops. The IFQ permit holder that landed the IFQ scallops would 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 would 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. The Amendment 11 proposed rule proposed to require IFQ permit owners that transferred IFQ scallops (transferor) to another IFQ vessel (transferee) as part of the IFQ scallop transfer program to submit a cost recovery fee for scallops landed by the transferee. However, upon further evaluation, Framework 19 would adjust this requirement; the transferee, and not the transferor, would be required to submit the cost recovery fee. The administrative burden would be the same, if not greater, if the IFQ transferor, and not the transferee, were required to submit the cost recovery fee. This adjustment would also reduce the cost

recovery administrative burden of NMFS.

Payment of the cost recovery fee would be a permit condition that must be met before permits could be renewed. On or about October 30 of each year, NMFS would mail a cost recovery bill for the IFQ fee incurred by each IFQ vessel to each IFQ permit holder. Owners of IFQ vessels would be required to submit payment by January 1 of each year. An IFQ scallop vessel's permit would not be renewed (i.e., not issued) by NMFS until payment for the prior year's fees is received in full. Bills would also be made available electronically via the internet. Fee liabilities due January 1 would 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 would issue a cost recovery bill on or about October 30, 2010, and the IFQ permit holder would 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 would not be renewed.

Disputes regarding fee liabilities would 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 would 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 would notify the IFQ permit holder by letter. NMFS would explain the discrepancy and the IFQ permit holder would 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 would not be renewed until the payment discrepancy is resolved. If the IFQ permit holder submits evidence in support of his/her payment, NMFS would evaluate it and, if there is any remaining disagreement as to the appropriate IFQ fee, prepare a Final Administrative Determination (FAD). The FAD would 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 would be the final agency action. If the FAD determines

that the IFQ permit holder is out of compliance, the IFQ scallop permit in question would 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 would 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 would refer the matter to the appropriate authorities within the U.S. Treasury for purposes of collection, and the vessel's IFQ permit(s) would remain invalid. If NMFS does not receive such payment prior to the end of the fishing year, the IFQ permit would be considered voluntarily abandoned.

Cost recovery payments would be made electronically via the Federal web portal, [www.pay.gov](http://www.pay.gov), or other internet sites as designated by the Regional Administrator. Instructions for electronic payment would be made available on both the payment website and the paper bill. Payment options may include payment via a credit card (the Regional Administrator would 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 would create an annual IFQ report and provide it to the owner of the IFQ permit. The report would 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 would 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.

#### 4. NGOM TACS

Framework 19 proposes a 70,000-lb (31,751-kg) annual NGOM TAC for the 2008 and 2009 fishing years.

#### 5. Scallop Incidental Catch Target TAC

Framework 19 proposes a 50,000-lb (22,680-kg) scallop incidental catch target TAC for the 2008 and 2009 fishing years to account for mortality from this component of the fishery and to ensure that F targets are not exceeded.

#### Status of Framework 19 if Amendment 11 is Not Implemented as Proposed

Several measures in Framework 19 are dependent on the implementation of Amendment 11 as proposed. If Amendment 11 is not implemented, the general category scallop fishery would remain an open access fishery; any individual could obtain a permit for a vessel. Vessels would be limited to the 400-lb (181-kg) possession limit if they have a 1B permit; vessels with a 1A permit would be restricted to a 40 (18-kg) pound possession limit. Limited access vessels would be permitted to fish under general category rules when not on a DAS. General category vessels would be permitted to fish in access areas up to a maximum number of trips assigned through biennial frameworks such as Framework 19. The total level of catch from this component of the fishery would not be restricted.

#### Classification

At this time, NMFS has not determined that this proposed rule is consistent with the national standards of the Magnuson-Stevens Act and other applicable law. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

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

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). Public reporting burden for these collections of information are estimated to average as follows:

1. Service provider observer contact information reports—5 min per response;
2. Service provider observer availability reports—1 min per response;
3. Copies of service provider outreach materials—30 min per response;
4. Copies of service provider contracts—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.

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 the Regional Administrator as specified in **ADDRESSES** above, and by e-mail to [David\\_Rostker@omb.eop.gov](mailto: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 subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA), and consists of the discussion and analyses in the preamble to this action and the analyses of this action and its impacts in Framework 19. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the **SUMMARY**. A complete description of the economic impacts of the Framework 19 measures and alternatives is provided in Section 5.4 of the EA for Framework 19, and the details are not provided in this summary.

#### Description and Estimate of Number of Small Entities to Which the Rule Would 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 \$3.5 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 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.

The proposed regulations would affect all Federal 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 would be affected by the proposed 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 several new collection-of-information, reporting, and recordkeeping requirements. The following describes these requirements.

1. Observer Contact List

Observer service providers would be required to provide and maintain an updated list of contact information for all observers. This would 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 would 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 would 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 would 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 would 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 would request copies of service provider

outreach materials once a year. It is estimated it would take 30 min to submit this information, for a total burden of 1 hour. It is estimated the service providers would incur a total of \$5 in mailing fees to submit these materials.

4. Copies of Observer Service Provider Contracts

Service providers would 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 would 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 would request copies of service provider contracts once a year. It is estimated it would take 30 min to submit this information, for a total burden of 1 hour. It is estimated the service providers would incur a total of \$5 in mailing fees to submit these materials.

*Summary of the Aggregate Economic Impacts*

In the event that Framework 19 is not approved and implemented by the start of the 2008 scallop fishing year (March 1, 2008), measures and allocations that are specified in the present regulations (Part 648 Subpart D) would roll over into the 2008 fishing year and beyond, unless superseded by subsequent specifications.

The long-term overall economic effects of the proposed 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 would be positive, with a 2.1-percent increase in fishing year 2008 and a 6-percent increase in fishing year 2009 (Section 5.4.2.2).

The economic impacts of the proposed alternative for the general category fleet would be positive because the general category TAC would be higher under the preferred 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 preferred alternative compared to no action.

However, the level of general category TAC would 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 proposed in Amendment 11 that would establish a limited entry program for the general category fishery, thereby reducing general category fishing effort and landings. Since Framework 19 does not propose any changes to measures proposed by 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 general category measures proposed by Framework 19 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 would be 5 million lb (2,2668 mt) in 2008 and 2.5 million lb (1,134 mt) in 2009. The preferred option in Framework 19 would 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 would be negative on the general category fleet to the extent that the overall TAC prevents these vessels from landing the amount of scallops they would catch without such a constraint. Again, those distributional impacts were analyzed in Amendment 11 (Sections 5.4.8.5, 5.4.8.6 and 5.4.13). However, a limited access

general category fishery would 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 proposed 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.

Because the intent of framework actions are to make minor adjustments to an FMP, and not major program changes, the council, in some cases where the adjustment measure was deemed minor, only considered one alternative versus a no action alternative.

#### *Economic Impacts of the Proposed Measures and Alternatives*

##### 1. GB Access Area Schedule Revision

Framework 19 would adjust the GB access area schedule so that the NLCA would be open in 2008 and CAII would be open in 2009. The proposed 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 would 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 is the no action option, which would provide access in 2008 to CAI instead of the NLCA. Due to low biomass, CAI would not likely support a fleet-wide trip allocation. Consequently, since both the NLCA and CAII have higher scallop concentrations than CAI, the proposed alternative would result in higher economic benefits than the no action alternative.

##### 2. DAS Conversion and Yellowtail TAC

The proposed action to allocate additional open area DAS if an access area closes due to the attainment of a scallop yellowtail TAC would continue under the no action alternative, but the values would be changed to reflect current fishery and resource conditions. The proposed DAS conversion rates would 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 would result from a yellowtail TAC closure. Although this measure would have positive economic impacts on scallop vessels that lost access area trip(s), they would 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 would 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 proposed higher DAS conversion rates would result in higher economic benefits than no action.

##### 3. HCAA Trip Expiration

The proposed 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. Landings per unit effort (LPUE) could improve in early 2007 and could provide some vessels incentive to take their trips rather than let them expire, minimizing these negative impacts. The proposed alternative to extend the trip expiration deadline to May 31, 2008, could reduce the negative impacts compared to no action. However, extending the duration of Hudson Canyon trips until May 31, 2008, could have negative impacts on future scallop yields resulting in negative long-term economic impacts.

##### 4. ETAA and Delmarva Schedule

The proposed no action alternative to provide access to the ETAA in 2008 and 2009 and Delmarva in 2009 would 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 would 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 the

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 proposed no action alternative would continue to allow a vessel to carry any number of crew on an access area trip. No crew limit would give vessels the most flexibility, potentially reducing total fishing costs, and would therefore have positive economic impacts on scallop vessels. The alternative option would restrict the crew size to eight or nine persons. This would potentially help 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 proposed alternative.

##### 6. In-Shell Possession Limit

The proposed action would 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 would help prevent 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 proposed action alternative.

##### 7. Research and Observer Set-Asides

The proposed no action alternative would 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 would generate higher benefits for scallop vessels.

##### 8. DAS Allocations and Access Areas Trip Allocations

The proposed 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 would implement the following vessel-specific DAS allocations: Full-time

vessels would be allocated 35 DAS in 2008 and 42 DAS in 2009; part-time vessels would be allocated 14 DAS in 2008 and 17 DAS in 2009; and occasional vessels would 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 preferred action during 2008–2009. Alternatives with higher DAS allocations would provide higher short-term revenues, but could be offset by lower DAS allocations in future years as the result of lower exploitable scallop biomass. The proposed action would allocate fewer open area DAS compared to the no action in both the 2008 and 2009 fishing years, but it would allocate more trips to access areas. As a result, the proposed action would generate higher benefits than the no action alternative.

#### 9. General Category Quarterly TAC

Amendment 11 proposes to establish an IFQ limited entry program for the general category scallop fishery starting in 2009. The 2008 fishing year would be a transition year as IFQ shares are established. The proposed action would distribute the 2008 general category quota allocation into quarters to minimize derby-style fishing. This measure would 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 would create some derby-style fishing, the quarterly TACs would reduce derby fishing and lessen the negative economic impacts associated with derby fishing. The proposed alternative (Option A) would 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 1, 15 percent (452,813 lb, (205.39 mt)) to Quarter 1, and 10 percent (301,875 lb, (136.93 mt)) to Quarter 4. Quarters 1 and 2 would be allocated 75 percent of the TAC because general category access area trips primarily occur in those quarters. Unused TAC from Quarter 1 would roll over to Quarter 3, and unused TAC from Quarter 2 would roll over to the fourth quarter, thereby ensuring the full benefit of the scallop TAC is realized. There is no alternative to the proposed action (no action) alternative to allocate 10 percent of the overall 2008 scallop TAC to the general category fishery. However, Option B would distribute 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 proposed action (Option A).

#### 10. General Category Access Area Allocations

The proposed 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 would 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 would be allocated 5 percent of the overall ETAA and Delmarva TACs, resulting in up to 1,967 trips and 726, respectively. General category vessels would not be allocated any trips in CAII.

Because access areas are more productive and have higher LPUE than open areas, it would take less fishing time to catch the 400–lb (181–kg) possession limit. As a result, fishing costs would be lower and profits would 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 would increase open area landings and overall revenues of the general category fishery. The alternative option would allocate 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 would implement a cost recovery program that would 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 preferred alternative estimates total scallop landings would 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 would likely range from \$519,818 to \$571,455 in 2009. The positive economic impacts of the IFQ program for the general category limited access qualifiers are expected to exceed the costs of this cost recovery program. There are no other alternative options to

the proposed cost recovery program and the no action alternative would be inconsistent with the Magnuson-Stevens Act.

#### 12. NGOM TAC

Amendment 11 would establish a NGOM Management Area that would be managed under a hard quota system. Framework 19 would establish the NGOM annual specifications. The proposed 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 would allow them to land scallops in this area during favorable resource conditions. The proposed 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 proposed action to remove incidental scallop catch before making allocations to limited access and directed general category vessels would ensure F targets are not exceeded, and thus would have positive impacts on the resource, scallop yield, and on the revenues and profits of scallop vessels. Framework 19 would establish the incidental catch target TAC for the 2008 and 2009 fishing years. The target TAC would be established at 50,000 lb (22.68 mt) per year in 2008 and 2009. This measure is based on an 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 proposed action to adjust the overfishing definition would 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

F=0.20 would 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 would 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 proposed measures that would 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 proposed action would 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 would not include observer program improvements, and therefore, would not facilitate the effectiveness and efficiency of the industry-funded observer program.

16. HCAA Rotational Management Area

The proposed action would 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 by reducing mortality and increasing yield from this area over the long term. 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 increase overall benefits. Two different boundary alternatives for HCAA were considered but not selected by the Council. These alternative closures would slightly increase the revenues and economic benefits for the scallop vessels compared to the proposed HCAA closure boundaries, but would allocate fewer open-area DAS in the 2008 fishing year.

17. 30-day VMS Power Down Provision

The proposed action to implement a 30-day VMS power down provision would reduce the burden on vessel-owners to maintain a transmitting VMS on their vessel for long periods when it is not fishing. This provision would 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.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 12, 2008.

John Oliver,

Deputy Assistant Administrator For Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be 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. The following revision to § 648.4 is based on the proposed rule for Amendment 11 to the Atlantic Sea Scallop FMP (72 FR 71315, December 17, 2007). In § 648.4 revise paragraph (a)(2)(ii)(H) to read as follows:

§ 648.4 Vessel permits.

- (a) \* \* \*
(2) \* \* \*
(ii) \* \* \*

(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 [date 90 days from the date the Amendment 11 Final Rule is published in the Federal Register]. Applications for LAGC permits that are not postmarked on or before [date 90 days from the date the Final Rule is published in the Federal Register] 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.

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 Wednesday preceding the week (Monday through Sunday) they intend to start a scallop trip. If selected, up to two Sea Scallop Access Area trips that start during the specified week (Monday through Sunday) 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.

(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 72 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 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. If NMFS/NEFOP does not respond within 24 hr, the vessel may depart on the trip without 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, providers must calculate the duration of the trip as the period from the first VMS polling position outside of the demarcation line at the beginning of the trip to the first VMS polling position inside of the demarcation line at the end of the trip. The daily rate of compensation equates to each 24 hour period or part of a 24 hour period of such trip. For example, if the first VMS polling position outside of the demarcation line of a vessel with an observer on an access area trip was 9 p.m. on the first day of the month, and the first VMS polling position inside of the demarcation line at the end of the trip was at 1 a.m. on the third day of the month, the duration of the trip equals 28 hr or 2 "days" (24 hr (first day) + 4 hr (second day), because it is part of the next 24-hr period) for the purposes of access area observer set-aside compensation.

(B) *Open area scallop trips.* For observed open area DAS scallop trips, providers shall prorate portions of days at an hourly charge, such that, for the example in paragraph (g)(5)(i)(A) of this section, the provider would charge 1 day and 4 hr for the observed trip.

(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 sea 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.

\* \* \* \* \*

(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 to request a certified observer training class at least 7 days prior to the beginning of the proposed training class: Date of requested training; 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 National Minimum Eligibility Standards for observers as described in paragraph (i)(1) of this section.

(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 12 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, email 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. The following revisions to § 648.11 are based on the proposed rule for Amendment 11 (72 FR 71315, December 17, 2007). In § 648.14, paragraphs (h)(27) and (i)(2)(iv) are revised, and paragraphs (h)(29), (i)(1)(xx), and (i)(2)(xvii) are added to 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 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 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 of 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. The following revisions to § 648.53 are based on the proposed rule for Amendment 11 to the Atlantic Sea Scallop FMP (72 FR 71315, December 17, 2007). In § 648.53 paragraphs (a), (b)(5)(i), (b)(5)(ii), (b)(6), (g)(1), (g)(2), and (h)(4) are revised, the table in paragraph (b)(4) introductory text is revised, paragraph (b)(4)(ii) is added and reserved, paragraph (b)(5)(iii) is removed and reserved, and paragraph (b)(4)(i) is added to read as follows.

**§ 648.53 Target 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, but shall exclude the TAC established for the Northern Gulf of Maine Scallop Management Area as specified in § 648.62. After deducting 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.

(2) *2009 fishing year target TAC for scallop fishery.* 20,820 mt.

(3) *Access area TAC.* The TAC for each access area specified in § 648.59 shall be determined through the framework adjustment process described in § 648.55 and shall be specified in § 648.59 for each access area. 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 limited access general category permits shall be specified in accordance with § 648.60 through the framework adjustment process specified in § 648.55.

(4) *Open area TAC for limited access vessels—(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 is 6,274 mt, which is equal to 90 percent of the target TAC specified in accordance with this paragraph (a), minus the TAC for all access areas specified in accordance with paragraph (b)(5) of this section.

(ii) *2009 fishing year.* Beginning March 1, 2009, unless the implementation of the IFQ program is delayed beyond March 1, 2009, as specified in paragraph (a)(5) of this section, the target TAC for limited access vessels fishing under the scallop DAS program specified in this section is 7,458 mt, which is equal to 94.5 percent of the target TAC specified in accordance with this paragraph (a), minus the TAC for all access areas specified in accordance with paragraph (b)(5) of this section. The target TAC for limited access vessels fishing under the DAS program shall be used to determine the DAS allocation for full-time, part-time, and occasional scallop vessels will receive after deducting the DAS set-asides for observer coverage and research.

(5) *Open area TAC for IFQ scallop vessels—(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 10 percent of the annual target TAC specified in accordance with paragraph (a) of this section, which is 1,369 mt, minus the TAC for all access areas specified in accordance with paragraph (b)(7) of this section.

(ii) *2009 fishing year and beyond for IFQ scallop vessels without a limited access scallop permit.* For the 2009 fishing year, the TAC for IFQ scallop vessels without a limited access scallop permit shall be equal to 5 percent of the target TAC specified in accordance with this paragraph (a), minus the TAC for all access areas specified in accordance with paragraph (b)(5) of this section. Therefore, the 2009 TAC for IFQ scallop vessels without a limited access scallop permit is 536 mt. If the IFQ program implementation is delayed beyond March 1, 2009, as specified in this paragraph (a)(7), the quarterly fleetwide TAC specified in paragraph (a)(8) of this section would remain in effect.

(iii) *2009 fishing year and beyond for IFQ scallop vessels with a limited access scallop permit.* For the 2009 fishing year, 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), which is 102 mt, minus the TAC for all access areas specified in accordance with paragraph (b)(5) of this section. If the IFQ program implementation is delayed beyond March 1, 2009, as specified in this paragraph (a)(7), the quarterly fleetwide TAC specified in paragraph (a)(8) of this section would remain in effect until March 1, 2010, or beyond if the IFQ program implementation is further delayed.

(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 would remain in effect. Under such a scenario, the overall IFQ fishery allocation of 4,551,700 lb (2,065 mt) would be distributed as follows: Quarter 1—1,593,095 (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 (j) 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	Per-cent	TAC
I. March–May	35	1,523,375 lb (475.25 mt)
II. June–August	40	1,741,000 lb (547.83 mt)
III. Sep-tember–November	15	652,875 lb (205.39 mt)
IV. Decem-ber–Feb-ruary	10	435,250 lb (136.93 mt)

(ii) *Deductions of landings.* All landings by IFQ scallop vessels and limited access vessels fishing under an IFQ scallop permit 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	2009 <sup>1</sup>
Full-time	35	42
Part-time	14	17
Occasional	3	3

<sup>1</sup> If the IFQ program implementation is delayed beyond March 1, 2009, the following 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 would 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 would 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 would 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 would 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 will 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) \* \* \*  
 (4) *IFQ cost recovery.* The Secretary of Commerce is authorized to collect a fee, not to exceed 3 percent of the ex-vessel value of IFQ fish harvested, to recover the costs associated with of 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 required 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 liability 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 liability 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 website 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 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).

(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 by the Regional Administrator to fish under their IFQ scallop permit until the FAD is issued, at which point the permit holder will have 30 days to comply with the terms of the FAD or have his/her IFQ scallop permit suspended 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 will issue a FAD, at which point the permit holder will have 30 days to comply with the terms of the FAD or have his/her IFQ scallop permit suspended 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. Treasury for purposes of collection, and no IFQ permit held by the permit holder will 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 will 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, and paragraphs (e) through (h) are removed:

**§ 648.58 Rotational Closed Areas.**

(a) *Hudson Canyon Closed Area.* Through at least February 28, 2010, 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.

Point	Latitude	Longitude
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.* From January 1, 2007, through at least February 28, 2009, 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 paragraphs (a), (b)(5)(ii)(B), (c)(5)(ii)(B), (d)(5)(ii)(B), and (e)(6)(ii)(B) are revised to read as follows. The revisions to (c)(5)(ii)(B), (d)(5)(ii)(B), and (e)(6)(ii)(B) are based on the proposed rule for Amendment 11 to the Atlantic Sea Scallop FMP (72 FR 71315, December 17, 2007).

**§ 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 2009 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)(ii), 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).

(ii) *General category vessels.* (A) LAGC vessels are allocated 728 Delmarva Access Area trips for the 2009 fishing year, unless otherwise adjusted according to § 648.60(a)(3)(i)(E). Subject to the possession limit specified in §§ 648.52(a) and (b) and 648.60(g), a LAGC vessel may not enter, fish for, possess, or land sea scallops in or from the Delmarva Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that 728 trips in the 2009 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 for the 2009 fishing year.

(b) \* \* \*  
 (5) \* \* \*  
 (ii) \* \* \*  
 (B) Except as provided in paragraph (b)(5)(ii)(C) of this section, subject to the possession limit specified in §§ 648.52(a) and (b) and 648.60(g), and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, an LAGC scallop vessel may not enter, fish for, possess, or land sea scallops in or from the Closed Area I Access Area through the 2009 fishing year unless transiting pursuant to paragraph (f) of this section. If general category vessels take 2008 Closed Area I Access Area trips, the same number of ETAA trips as specified in paragraph (e)(6)(ii)(B) of this section will be deducted from the LAGC fishery in 2009.

(c) \* \* \*  
 (5) \* \* \*  
 (ii) \* \* \*  
 (B) Except as provided in paragraph (c)(5)(ii)(C) of this section, subject to the possession limits specified in §§ 648.52(a) and (b), and 648.60(g), and

subject to the seasonal restrictions specified in paragraph (c)(4) of this section, an LAGC scallop vessel may not enter in, or fish for, possess, or land sea scallops in or from the Closed Area II Access Area through the 2009 fishing year unless transiting pursuant to paragraph (f) of this section.

(d) \* \* \*  
 (5) \* \* \*  
 (ii) \* \* \*  
 (B) LAGC vessels are allocated 667 Nantucket Lightship Access Area trips for the 2008 fishing year. Except as provided in paragraph (d)(5)(ii)(C) of this section, subject to the possession limits specified in §§ 648.52(a) and (b), and 648.60(g), an LAGC scallop vessel may not enter, fish for, possess, or land sea scallops in or from the Nantucket Lightship Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that the 667 trips allocated in the 2008 fishing year are projected to be taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section. 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.

\* \* \* \* \*  
 (e) \* \* \*  
 (6) \* \* \*  
 (ii) \* \* \*  
 (B) LAGC vessels are allocated 2,668 Elephant Trunk Access Area trips for the 2008 fishing year, and 1,964 Elephant Trunk Access Area trips for the 2009 fishing year, unless otherwise adjusted according to § 648.60(a)(3)(i)(E). Subject to the possession limits specified in §§ 648.52(a) and (b), and 648.60(g), an LAGC scallop vessel may not enter in, or fish for, possess, or land sea scallops in or from the Elephant Trunk Sea Scallop Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that the 2,668 trips allocated in the 2008 fishing year, or the 1,964 trips allocated to the 2009 fishing year are projected to be taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section. 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 and 2009 fishing years.

\* \* \* \* \*  
 9. The revision in § 648.60 paragraph (a) introductory text is based on the proposed rule for Amendment 11 (72 FR

71315, December 17, 2007) as follows. The revision in § 648.60 paragraph (a)(3)(i), (d)(1), and (e)(1) is revised based on current regulations as follows:

**§ 648.60 Sea scallop area access program requirements.**

(a) A limited access scallop vessel may only fish in the Sea Scallop Access Areas specified in § 648.59, subject to the seasonal restrictions specified in § 648.59, provided the vessel complies with the requirements specified in paragraphs (a)(1) through (a)(9), and (b) through (f) of this section. An LAGC scallop vessel may fish in the Sea Scallop Access Areas specified in § 648.59, subject to the seasonal restrictions specified in § 648.59, provided the vessel complies with the requirements specified in paragraph (g) of this section.

\* \* \* \* \*

(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 using the table in paragraph (a)(3)(i)(F)(2) of this section and/or Delmarva Access Area trips using the table in paragraph (a)(3)(i)(F)(3) of this section, provided that updated exploitable biomass projections are available with sufficient time to announce such an adjustment through publication of a final rule in the

**Federal Register**, pursuant to 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 will be reduced consistent with reductions as specified 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 will be established using the exploitable biomass adjustment schedule. If information is not available in time for NMFS to publish a final rule 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 and/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 specified 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	Adjusted 2009 observer set-aside TAC
30,000 or greater	No adjustment	No adjustment	No adjustment	No adjustment
20,000–29,999	2, 1*, 1**	1473	0.24	0.12
10,000–19,000	1, 0, 0	982	0.16	0.08

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
Less than 10,000	0, 0, 0	491	0.08	0.04

\* 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 one 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 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 fishing in the Sea Scallop Access Area may possess shoreward of the VMS demarcation line, or land, more than 50 bu (17.6 hl) of in-shell scallops.

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 <sup>1</sup> (8,165 kg)	7,500 lb (3,402 kg)

<sup>1</sup> 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.

\* \* \* \* \*

10. The following revision to § 648.62 is based on the proposed rule for Amendment 11 (72 FR 71315, December 17, 2007). 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. 08–1055 Filed 3–14–08; 4:08 pm]

BILLING CODE 3510–22–S

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

**RIN 0648–AW08**

**A Vessel License Limitation Program for the Pacific Whiting Fishery; Amendment 15 to the Pacific Coast Groundfish Fishery Management Plan**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Availability of an amendment to a fishery management plan; request for comments.

**SUMMARY:** NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 15 to the Pacific Coast Groundfish Fishery Management Plan (FMP) for review by the Secretary of Commerce (Secretary). Amendment 15 would modify the FMP to implement a limited entry program for the non-tribal Pacific whiting fishery. Amendment 15 is intended to limit participation in the Pacific whiting fishery within the U.S. West Coast

Exclusive Economic Zone until the implementing of a trawl rationalization program in the Pacific whiting fishery.

**DATES:** Comments on Amendment 15 must be received on or before May 19, 2008.

**ADDRESSES:** You may submit comments, identified by RIN 0648-AW08 by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- Fax: 206-526-6736, Attn: Becky Renko.

- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, Attn: Becky Renko, 7600 Sand Point Way NE, Seattle, WA 98115-0070.

**Instructions:** 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 (for example, name, address, etc.) 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 PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:**

Becky Renko (Northwest Region, NMFS), phone: 206-526-6129; fax: 206-526-6736; and e-mail: [becky.renko@noaa.gov](mailto:becky.renko@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

Amendment 15 is available on the Pacific Fishery Management Council's (Council's or Pacific Council's) website at: <http://www.pcouncil.org/groundfish/gffmp.html>.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any FMP or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a notice that the FMP or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period described above in determining whether to approve Amendment 15 to the FMP.

Amendment 15 would implement a limited entry program for the Pacific whiting fishery, which occurs within

the U.S. Exclusive Economic Zone off the coasts of Washington, Oregon, and California. The whiting fishery is currently managed with separate allocations for the tribal and non-tribal whiting fisheries, and with sector-specific whiting allocations for the three non-tribal sectors: mothership, catcher/processor, and shore-based. Vessels that participate in the mothership sector include both the motherships themselves and the catcher vessels that deliver to the at-sea mothership processors. Vessels that participate in the catcher/processor sector are self-contained at-sea processors that both catch and process fish. Vessels that participate in the shore-based sector are catcher vessels that deliver their catch to land-based processing plants. This action would limit participation in each of the three non-tribal sectors of the Pacific whiting fishery to those vessels, both catcher vessels and at-sea processing vessels, with historic participation in those particular sectors.

NMFS welcomes comments on the proposed FMP amendment through the end of the comment period. A proposed rule to implement Amendment 15 has been submitted for Secretarial review and approval. NMFS expects to publish and request public review and comment on proposed regulations to implement Amendment 15 in the near future. Public comments on the proposed rule must be received by the end of the comment period on the amendment to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period for the amendment, whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 13, 2008.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E8-5561 Filed 3-18-08; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 680**

**RIN 0648-AW37**

**Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands King and Tanner Crabs**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability of an amendment to a fishery management plan; request for comments.

**SUMMARY:** NMFS proposes Amendment 24 the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP) to: specify a five-tier system for determining the status of the crab stocks managed under the FMP, establish a process for annually assigning each crab stock to a tier and for setting the overfishing and overfished levels, and reduce the number of crab stocks managed under the FMP. Amendment 24 is necessary to establish new overfishing definitions that contain objective and measurable criteria for determining whether each managed stock is overfished or whether overfishing is occurring and to remove several crab stocks managed by the State of Alaska from FMP management. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

**DATES:** Comments on Amendment 24 must be submitted on or before May 19, 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-AW37, 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 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 Amendment 24 and the Environmental Assessment (EA) for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region website at <http://www.fakr.noaa.gov/sustainablefisheries.htm>.

**FOR FURTHER INFORMATION CONTACT:** Gretchen Harrington, 907-586-7228 or [gretchen.harrington@noaa.gov](mailto:gretchen.harrington@noaa.gov).

**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 (FMP) amendment it prepares 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 an FMP amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This action constitutes such notice for Amendment 24 to the FMP for the Bering Sea/Aleutian Islands King and Tanner Crabs. NMFS will consider the public comments received during the comment period in determining whether to approve this FMP amendment.

In December 2007, the North Pacific Fishery Management Council (Council) unanimously recommended Amendment 24 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs. Amendment 24 would satisfy the Magnuson-Stevens Act requirement that FMPs contain objective and measurable criteria for determining whether a stock is overfished, whether overfishing is occurring, and for rebuilding overfished stocks. Section 301(a) of the Magnuson-Stevens Act establishes national standards for fishery conservation and management, and requires that all FMPs create management measures consistent with those standards. National Standard 1 requires that conservation and management measures shall "prevent

overfishing while achieving, on a continuing basis, the optimum yield" from fisheries in Federal waters.

Amendment 24 would (1) specify a five-tier system for determining the status of the crab stocks managed under the FMP, (2) establish a process for annually assigning each crab stock to a tier and for setting the overfishing and overfished levels, and (3) reduce the number of crab stocks managed under the FMP. The stocks status determination criteria in Amendment 24 are necessary to reflect current scientific information and accomplish the following:

- Provide an FMP framework to annually define values using the best available scientific information.
- Provide a new tier system that accommodates varying levels of uncertainty of information and takes advantage of alternative biological reference points.
- Define the status determination criteria and their application to the appropriate component of the population.

#### Removal of Stocks

Amendment 24 would remove twelve state-managed stocks from the FMP for which the State of Alaska (State) has a legitimate interest in the conservation and management. For each of these stocks, the majority of catch in the fisheries occurs in State waters or the State either has closed the directed fishery or manages a limited incidental or exploratory fishery. The State would continue to manage these stocks as they currently do under the deferred management authority of the FMP.

#### Five-Tier System

The stocks status determination criteria for crab stocks would be annually calculated using a five-tier system that accommodates varying levels of uncertainty of information. The five-tier system would incorporate new scientific information and provide a mechanism to continually improve the stock status determination criteria as new information becomes available. The five-tier system would be used to determine the status of the crab stocks and whether (1) overfishing is occurring or the rate or level of fishing mortality for a stock or stock complex is approaching overfishing, and (2) a stock or stock complex is overfished or a stock or stock complex is approaching an overfished condition.

Overfishing would be determined by comparing the overfishing level, as calculated in the five-tier system for the crab fishing year, with the catch estimates for that crab fishing year.

An overfished condition would be determined by comparing annual biomass estimates to the established minimum stock size threshold (MSST), defined as one half the biomass estimated to produce maximum sustainable yield to the fishery. For stocks where MSSTs (or proxies) are defined, if the biomass drops below the MSST (or proxy thereof) then the stock would be considered to be overfished. MSST or proxies would be set for stocks in Tiers 1 through 4. For Tier 5 stocks, it would not be possible to set an MSST because there are no reliable estimates of biomass.

Annually, the overfishing level for each stock would be calculated for the upcoming crab fishing year based on the most recent abundance estimates prior to the State of Alaska setting the total allowable catch or guideline harvest level for that stock's upcoming crab fishing season. First, a stock would be assigned to one of the five tiers based on the availability of information for that stock. Tier assignments would be made through the Council's Crab Plan Team process and recommended by the Council's Scientific and Statistical Committee.

Once a stock is assigned to a tier, the stock status level would be determined based on biomass estimates from recent survey data and simulation models, as available. The tier system would specify three levels of stock status: "a," "b," and "c." At stock status level "a," current stock biomass exceeds the biomass estimated to produce maximum sustainable yield to the fishery. At status level "b," current stock biomass is less than necessary produce maximum sustainable yield to the fishery but greater than a level specified as the critical biomass threshold. At stock status level "c," current stock biomass is below the critical biomass threshold and directed fishing would be prohibited. The stock status level determines the equation for calculating the fishing rate used to determine the overfishing level. For stocks in Tiers 1 through 4, the fishing rate would be reduced as biomass declines by stock status level.

Tier 5 stocks have no reliable estimates of biomass or natural mortality and only historical data of retained catch is available. For stocks in Tier 5, the overfishing level would be specified in terms of an average catch value over an historical time period, unless the Scientific and Statistical Committee recommends an alternative value based on the best available scientific information.

After the crab fishing year, NMFS would determine whether overfishing

occurred by comparing the overfishing level with the catch from the previous crab fishing year. For stocks where non-target fishery removal data are available, catch would include all fishery removals, including retained catch and discard losses. Discard losses would be determined by multiplying the appropriate handling mortality rate by observer estimates of bycatch discards. For stocks where only retained catch information is available, the overfishing level would be set for and compared to the retained catch.

Annually, the Council, Scientific and Statistical Committee, and Crab Plan Team will review (1) the stock assessment documents, (2) the OFLs and total allowable catches or guideline harvest levels for the upcoming crab fishing year, (3) NMFS's determination of whether overfishing occurred in the previous crab fishing year, and (4) NMFS's determination of whether any stocks are overfished.

The Alaska Fisheries Science Center (AFSC) reviewed the proposed

overfishing definitions in Amendment 24 and supporting environmental assessment for compliance with guidelines provided for National Standards 1 and 2 in 50 CFR part 600. During this review, the AFSC recommended modifications to the amendment text to clarify the Council's intent and comply with the Magnuson-Stevens Act. At its February 2008 meeting, the Council adopted the FMP text for Amendment 24 which included the AFSC's recommendations. On February 14, 2008, the AFSC certified that the proposed definitions (1) have sufficient scientific merit, (2) are likely to result in effective Council action to protect a managed stock from closely approaching or reaching an overfished status, (3) provide a basis for objective measurement of the status of a managed stock against the definition, and (4) are operationally feasible.

An EA was prepared for Amendment 24 that describes the management background, the purpose and need for

action, the management alternatives, and the environmental and socio-economic impacts of the alternatives (see **ADDRESSES**).

Public comments are being solicited on proposed Amendment 24 through May 19, 2008. All comments received by the end of the comment period on the amendment will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received—not just postmarked or otherwise transmitted—by the close of business on the last day of the comment period.

Dated: March 13, 2008.

**Emily H. Menashes**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E8-5562 Filed 3-18-08; 8:45 am]

**BILLING CODE 3510-22-S**

# Notices

Federal Register

Vol. 73, No. 54

Wednesday, March 19, 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 COMMERCE

### Bureau of Industry and Security

[Docket No. 080229350-8434-01]

#### Request for Public Comments on Crime Control License Requirements in the Export Administration Regulations

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

**ACTION:** Notice of inquiry.

**SUMMARY:** The Bureau of Industry and Security is seeking public comment on the crime control export and reexport license requirements contained in the Export Administration Regulations. Specifically, BIS is seeking public input on whether the scope of items currently subject to crime control license requirements should be revised to add or remove items. BIS is also seeking public comments on whether the destinations to which crime control license requirements apply should be revised.

**DATES:** Comments must be received no later than June 17, 2008.

**ADDRESSES:** Written comments may be submitted via <http://www.regulations.gov> (at the home page, in the field under the search tab, enter BIS-2008-0005-0001. When the page containing this notice appears, click on the "comment" link). Comments may also be submitted by e-mail directly to BIS at [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov) or on paper to U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, Room H-7205, Washington DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Chantal Lakatos, Office of Non-proliferation and Treaty Compliance, Bureau of Industry and Security, telephone: 202-482-1739; fax: 202-482-4145; e-mail: [clakatos@bis.doc.gov](mailto:clakatos@bis.doc.gov).

**SUPPLEMENTARY INFORMATION:**

### Background

The Export Administration Regulations (15 Code of Federal Regulations (CFR) Parts 730-774) impose license requirements for certain exports from the United States and reexports from other countries. One of the reasons that a license may be required is "crime control." The purpose of the crime control license requirement is the "support of U.S. foreign policy to promote human rights throughout the world" (15 CFR 742.7(a)). The items to which crime control license requirements apply are listed in the Commerce Control List (CCL) (15 CFR Part 774, Supp. No. 1). The specific entries on the CCL that describe items to which crime control license requirements apply are set forth in 15 CFR 742.7(a)(1) through (4). That section also describes, in part through reference to the country chart in 15 CFR Part 738, Supp. No. 1, the destinations to which licenses are required. Items currently subject to crime control license requirements generally are either exclusively or primarily used for law enforcement purposes.

In light of the recent significant technological advances in many industries, a review of the scope of items subject to crime control license requirements is warranted. The existing controls are described below.

#### Existing Crime Control License Requirements Based on 15 CFR 742.7(a)(1) Through (4)

##### *Items Subject to License Requirements*

The following list describes in general terms the items for which a license is required for crime control reasons. Some of these items may also require licenses for other reasons and some of these Export Control Classification Numbers (ECCNs) may include some items to which the crime control license requirement does not apply. This list provides a general outline of the overall scope of items for which a license is required for crime control reasons as set forth in 15 CFR 742.7(a)(1) through (4). For more detailed and exact descriptions, see the individual CCL entries.

ECCN Item.  
0A978 Saps.  
0A979 Police helmets and shields.  
0A982 Restraint devices.  
0A984 Shotguns with a barrel length of 18 inches or more.

0A985 Discharge type arms.  
0A987 Optical sighting devices.  
0E982 Technology exclusively for development or production of commodities covered by 0A982 or 0A985.  
0E984 Technology for development or production of shotguns covered by 0A984.  
1A984 Tear gas, smoke bombs, liquid pepper, et cetera.  
1A985 Fingerprinting powders, dyes and inks.  
3A980 Voice print identification equipment.  
3A981 Polygraphs, fingerprint analyzers.  
3D980 Software specially designed for development, production, or use of commodities covered by 3A980 or 3A981.  
3E980 Technology specially designed for development, production, or use of commodities covered by 3A980 or 3A981.  
4A003 Digital computers (for fingerprint equipment).  
4A980 Computers for fingerprint equipment not elsewhere specified on the CCL.  
4D001 Software specially designed or modified for the development, production or use of computerized fingerprint equipment controlled by ECCN 4A003.  
4D980 Software for development, production or use of ECCN 4A980 fingerprint computers.  
4E001 Technology for development, production or use of digital computers for fingerprint equipment controlled by ECCN 4A003.  
4E980 Technology for development, production or use of ECCN 4A980 fingerprint equipment computers.  
6A002.c Police-model infrared viewers.  
6E001 Technology for police-model infrared viewers development.  
6E002 Technology for police-model infrared viewer production.  
9A980 Mobile crime laboratories.

##### *Destinations Subject to License Requirements*

The destinations to which crime control license requirements apply vary according to the item.

Restraint devices as described in ECCN 0A982, discharge type arms as described in ECCN 0A985, and technology as described in ECCN 0E982

require a license to all destinations other than Canada.

Shotguns described in ECCN 0A984 with a barrel length of 24 inches or greater and technology described in ECCN 0E984 for the development or production of such shotguns require a license for crime control reasons to all end-users in Albania, Armenia, Azerbaijan, Belarus, Cambodia, Fiji, Georgia, Iraq, Kazakhstan, North Korea, Kyrgyzstan, Laos, Moldova, Mongolia, Montenegro, Russia, Rwanda, Serbia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and Vietnam.

Shotguns with a barrel length of 24 inches or greater and technology described in ECCN 0E984 for the development or production of such shotguns require a license if they are to be sold or transferred to the police in a destination other than Australia, Belgium, Bulgaria, Canada, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Japan, Latvia, Lithuania, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey and the United Kingdom.

All other items for which a license is required for crime control reasons pursuant to 15 CFR 742.7(a), including shotguns with a barrel length equal to or greater than 18 inches but less than 24 inches and technology for the development or production of such shotguns, require a license for export or reexport to all destinations except Australia, Belgium, Bulgaria, Canada, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Japan, Latvia, Lithuania, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey and the United Kingdom.

BIS is not seeking comments on license requirements for shotguns with a barrel length of less than 18 inches, rifles or pistols because their export and reexport is subject to the International Traffic in Arms Regulations, which are administered by the Department of State.

#### Requests for Comments

BIS is seeking public comments on whether the scope of items subject to the crime control license requirements of 15 CFR 742.7(a)(1) through (4) should be modified. Such modification might include adding items, removing items or altering the descriptions of items currently subject to such license requirements. BIS is particularly, but not exclusively, interested in comments on whether items such as biometric devices, integrated security systems,

and training software, particularly firearms training software, should be subject to crime control license requirements.

BIS is also seeking public comments on whether the universe of destinations to which a license is required should be changed, either by adding or removing destinations. Comments that address practical considerations such as defining license requirements with sufficient clarity to be understood by the public and sufficient precision to support the U.S. foreign policy to promote human rights without placing excessive costs on transactions that do not impact human rights are likely to be more useful than comments that do not address those considerations. Comments that provide a reasoned explanation in support of the position taken in the comment are likely to be more useful than comments that merely assert a position without such explanation.

Dated: March 14, 2008.

**Matthew S. Borman,**

*Acting Assistant Secretary for Export Administration.*

[FR Doc. E8-5614 Filed 3-18-08; 8:45 am]

**BILLING CODE 3510-33-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-580-837]

#### **Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Notice of Final Results and Partial Rescission of Countervailing Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On November 20, 2007, the Department of Commerce (“the Department”) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty (“CVD”) order on certain cut-to-length carbon-quality steel plate the Republic of Korea (“Korea”) for the period January 1, 2006, through December 31, 2006. *See Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Notice of Preliminary Results and Preliminary Partial Rescission of Countervailing Duty Administrative Review*, 72 FR 65299 (November 20, 2007) (“*Preliminary Results*”). The Department preliminarily rescinded the administrative review with respect to DSEC Co., Ltd. (“DSEC”) and found that the other company subject to review, Dongkuk Steel Mill Co., Ltd. (“DSM”),

had a *de minimis* net subsidy rate during the period of review. We did not receive any comments on our preliminary results and have made no revisions to those results.

**EFFECTIVE DATE:** March 19, 2008.

#### **FOR FURTHER INFORMATION CONTACT:**

Jolanta Lawska, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-8362.

#### **SUPPLEMENTARY INFORMATION:**

#### **Scope of the Order**

The products covered by the CVD order are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief, of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in the scope of the order are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been “worked after rolling”)—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in the scope of the order are high strength, low alloy (“HSLA”) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (“HTSUS”) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is two percent or less, by weight; and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent

of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of this order unless otherwise specifically excluded. The following products are specifically excluded from the order: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to the order is currently classifiable in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise covered by the order is dispositive.

#### Final Results of Review

As noted above, the Department received no comments concerning the *Preliminary Results*. Therefore, consistent with the *Preliminary Results*, we continue to find the net subsidy for DSM to be 0.29 percent *ad valorem*, which is *de minimis*. See 19 CFR 351.106(c)(1). As there have been no changes to or comments on the *Preliminary Results*, we are not attaching a decision memorandum to this **Federal Register** notice. For further details of the programs included in this proceeding, see the *Preliminary Results*.

#### Final Partial Rescission

The Department preliminarily rescinded the administrative review with respect to DSEC. The Department did not receive any comments from interested parties regarding its decision to preliminarily rescind the administrative review of DSEC. Therefore, for purposes of these final results, we are rescinding the administrative review of DSEC.

#### Assessment Rates/Cash Deposits

The Department intends to issue assessment instructions to U.S. Customs and Border Protection ("CBP") 15 days after the date of publication of these final results of review to liquidate shipments of subject merchandise by DSM entered, or withdrawn from warehouse, for consumption on or after January 1, 2006, through December 31, 2006, without regard to countervailing duties. We will also instruct CBP not to collect cash deposits of estimated countervailing duties on shipments of the subject merchandise by DSM entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

For all non-reviewed companies, we will instruct CBP to continue to collect cash deposits at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the CVD order. *Notice of Amended Final Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-to-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea*, 65 FR 6587 (February 10, 2000). These rates shall apply to all non-reviewed companies until reviews of companies assigned these rates are completed.

#### Return or Destruction of Proprietary Information

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/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 these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 12, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8-5554 Filed 3-18-08; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-851]

#### Certain Preserved Mushrooms from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** (March 19, 2008).

**FOR FURTHER INFORMATION CONTACT:** Zev Primor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4114.

**SUPPLEMENTARY INFORMATION:** On September 27, 2007, the Department of Commerce ("Department") published a notice of initiation of a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China, covering the period of review of February 1, 2007, to July 31, 2007, and Dujiangyan Xingda Foodstuff Co., Ltd. ("Xingda"). See *Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Review*, 72 FR 54899 (September 27, 2007).

#### Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("Act"), and 19 CFR 351.214(i)(1), the Department shall issue preliminary results in a new shipper review of an antidumping duty order within 180 days after the date on which the new shipper review was initiated. The Act and regulations further provide, however, that the Department may extend that 180-day period to 300 days if it determines that this review is extraordinarily complicated. See section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

The Department finds that this review is extraordinarily complicated and that it is not practicable to complete this

new shipper review within the foregoing time period. Specifically, the Department must issue supplemental questionnaires to obtain additional information about (1) Xingda's complex methodology for allocating consumption rates of factors of production, and (2) the *bona fides* of its U.S. sale.

Accordingly, the Department finds that additional time is needed in order to complete these preliminary results.

Section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2) allow the Department to extend the deadline for the preliminary results to a maximum of 300 days from the date of initiation of the new shipper review. The current deadline for the preliminary results is March 19, 2008. For the reasons noted above, we are extending the 180-day deadline for the completion of the preliminary results of this new shipper review by an additional 60 days, to 240 days from September 21, 2007, the date of initiation, until no later than May 19, 2008.<sup>1</sup> The deadline for the final results of this new shipper review continues to be 90 days after the date on which the preliminary results were issued.

This notice is issued and published in accordance with sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act, and 19 CFR 351.214(i)(2).

Dated: March 13, 2008.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E8-5553 Filed 3-18-08; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-908]

#### Notice of Antidumping Duty Order: Sodium Hexametaphosphate From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** Based on affirmative final determinations by the Department of Commerce (the "Department") and the International Trade Commission ("ITC"), the Department is issuing an antidumping duty order on sodium hexametaphosphate ("SHMP") from the People's Republic of China ("PRC"). On March 12, 2008, the ITC notified the Department of its affirmative

determination of material injury to a U.S. industry. *See Sodium Hexametaphosphate from China* (Investigation No. 731-TA-1110 (Final), USITC Publication 3984, March 2008).

**EFFECTIVE DATE:** March 19, 2008.

**FOR FURTHER INFORMATION CONTACT:** Erin Begnal or Scot Fullerton, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1442, or (202) 482-1386, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the "Act"), on February 4, 2008, the Department published the *Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China*, 73 FR 6479 (February 4, 2008) ("*Final Determination*").

##### Scope of Order

The merchandise subject to this investigation is sodium hexametaphosphate ("SHMP"). SHMP is a water-soluble polyphosphate glass that consists of a distribution of polyphosphate chain lengths. It is a collection of sodium polyphosphate polymers built on repeating NaPO<sub>3</sub> units. SHMP has a P<sub>2</sub>O<sub>5</sub> content from 60 to 71 percent. Alternate names for SHMP include the following: Calgon; Calgon S; Glassy Sodium Phosphate; Sodium Polyphosphate, Glassy; Metaphosphoric Acid; Sodium Salt; Sodium Acid Metaphosphate; Graham's Salt; Sodium Hex; Polyphosphoric Acid, Sodium Salt; Glass H; Hexaphos; Sodaphos; Vitrafos; and BAC-N-FOS. SHMP is typically sold as a white powder or granule (crushed) and may also be sold in the form of sheets (glass) or as a liquid solution. It is imported under heading 2835.39.5000, HTSUS. It may also be imported as a blend or mixture under heading 3824.90.3900, HTSUS. The American Chemical Society, Chemical Abstract Service ("CAS") has assigned the name "Polyphosphoric Acid, Sodium Salt" to SHMP. The CAS registry number is 68915-31-1. However, SHMP is commonly identified by CAS No. 10124-56-8 in the market. For purposes of the investigation, the narrative description is dispositive, not the tariff heading, CAS registry number or CAS name.

The product covered by this investigation includes SHMP in all grades, whether food grade or technical grade. The product covered by this investigation includes SHMP without regard to chain length i.e., whether regular or long chain. The product covered by this investigation includes SHMP without regard to physical form, whether glass, sheet, crushed, granule, powder, fines, or other form, and whether or not in solution.

However, the product covered by this investigation does not include SHMP when imported in a blend with other materials in which the SHMP accounts for less than 50 percent by volume of the finished product.

##### Antidumping Duty Order

On March 12, 2008, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination, pursuant to section 735(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from the PRC. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection ("CBP") to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of SHMP from the PRC. These antidumping duties will be assessed on all unliquidated entries of SHMP from the PRC entered, or withdrawn from the warehouse, for consumption on or after September 14, 2007, the date on which the Department published its preliminary determination. *See Preliminary Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate from the People's Republic of China*, 72 FR 52544 (September 14, 2007) ("*Preliminary Determination*").

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of SHMP, we extended the four-month period to no more than six months. *See Postponement of Final Determination of Antidumping Duty Investigation: Sodium Hexametaphosphate from the*

<sup>1</sup> Because 240 days from September 21, 2007, falls on May 18, 2008, which is a Sunday, the deadline for completing the preliminary results of this new shipper review shall be the next business day, May 19, 2008.

*People's Republic of China*, 72 FR 55176 (September 28, 2007); *see also Postponement of Final Determination of Antidumping Duty Investigation: Sodium Hexametaphosphate From the People's Republic of China*, 73 FR 5176 (January 29, 2008). In this investigation, the six-month period beginning on the date of the publication of the preliminary determination ends on March 11, 2008. Furthermore, section 737 of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination. Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of SHMP from the PRC entered, or withdrawn from warehouse, for consumption on or after March 11, 2008, and before the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will continue on or after this date.

Effective on the date of publication of the ITC's final affirmative injury determination, CBP, pursuant to section 735(c)(3) of the Act, will require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as listed below. The "PRC-wide" rate applies to all exporters of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

**SODIUM HEXAMETAPHOSPHATE FROM THE PRC**

Manufacturer/Exporter	Weighted-Average Margin (Percent)
Jiangyin Chengxing International Trading Co., Ltd. ....	92.02
Sichuan Mianzhu Norwest Phosphate Chemical Company Limited .....	92.02
PRC-Wide Rate (including Yibin Tianyuan Group Co., Ltd., Mianyang Aostar Phosphorous Chemical Industry Co., Ltd., and Hubei Xingfa Chemicals Group Co., Ltd. ) .....	188.05

This notice constitutes the antidumping duty order with respect to SHMP from the PRC pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the main Commerce building, for copies of an

updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: March 14, 2008.

**David M. Spooner**,  
Assistant Secretary for Import Administration.

[FR Doc. E8-5657 Filed 3-18-08; 8:45 am]

**BILLING CODE 3510-DS-S**

**DEPARTMENT OF COMMERCE**

**National Institute of Standards and Technology**

**Advisory Committee on Earthquake Hazards Reduction Meeting**

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Advisory Committee on Earthquake Hazards Reduction (ACEHR or Committee), will meet Thursday, April 10, 2008 from 9 a.m. to 5:30 p.m. and Friday, April 11, 2008, from 8:30 a.m. to 3 p.m. The primary purpose of this meeting is to review the draft National Earthquake Hazards Reduction Program (NEHRP) Strategic Plan and the Committee's report to the NIST Director. The agenda may change to accommodate Committee business. The final agenda will be posted on the NEHRP Web site at <http://nehrp.gov/>.

**DATES:** The ACEHR will meet on Thursday, April 10, 2008, from 9 a.m. until 5:30 p.m. The meeting will continue on Friday, April 11, 2008, from 8:30 a.m. until 3 p.m. The meeting will be open to the public.

**ADDRESSES:** The meeting will be held in the Employee Lounge, in the Administration Building at NIST, Gaithersburg, Maryland. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jack Hayes, National Earthquake Hazards Reduction Program Director, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8603, Gaithersburg, Maryland 20899-8603. Dr. Hayes' e-mail address is [jack.hayes@nist.gov](mailto:jack.hayes@nist.gov) and his phone number is (301) 975-5640.

**SUPPLEMENTARY INFORMATION:** The Committee was established in accordance with the requirements of Section 103 of the NEHRP Reauthorization Act of 2004 (Pub. L. 108-360). The Committee is composed

of 15 members appointed by the Director of NIST, who were selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues affecting the National Earthquake Hazards Reduction Program. In addition, the Chairperson of the U.S. Geological Survey (USGS) Scientific Earthquake Studies Advisory Committee (SESAC) serves in an ex officio capacity on the Committee. The Committee assesses:

- Trends and developments in the science and engineering of earthquake hazards reduction;
- The effectiveness of NEHRP in performing its statutory activities (improved design and construction methods and practices; land use controls and redevelopment; prediction techniques and early-warning systems; coordinated emergency preparedness plans; and public education and involvement programs);
- Any need to revise NEHRP; and
- The management, coordination, implementation, and activities of NEHRP. Background information on NEHRP and the Advisory Committee is available at <http://nehrp.gov>.

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Advisory Committee on Earthquake Hazards Reduction (ACEHR), will meet Thursday, April 10, 2008, from 9 a.m. until 5:30 p.m. The meeting will continue on Friday, April 11, 2008, from 8:30 a.m. until 3 p.m. The meeting will be held in the Employee Lounge at NIST in Gaithersburg, Maryland. The primary purpose of this meeting is to review the draft National Earthquake Hazards Reduction Program (NEHRP) Strategic Plan and the Committee's annual report to the NIST Director. The agenda may change to accommodate Committee business. The final agenda will be posted on the NEHRP Web site at <http://nehrp.gov/>.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda. On April 10, 2008, approximately one-half hour will be reserved at the end of the meeting for public comments, and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated

on the agenda, and those who were unable to attend in person are invited to submit written statements to the ACEHR, National Institute of Standards and Technology, 100 Bureau Drive, MS 8630, Gaithersburg, Maryland 20899–8630, via fax at (301) 975–5433, or electronically by e-mail to [info@nehrrp.gov](mailto:info@nehrrp.gov).

All visitors to the NIST site are required to pre-register to be admitted. Anyone wishing to attend this meeting must register by close of business Thursday, April 3, 2008, in order to attend. Please submit your name, time of arrival, e-mail address and phone number to Carmen Pardo. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. Ms. Pardo's e-mail address is [carmen.pardo@nist.gov](mailto:carmen.pardo@nist.gov) and her phone number is (301) 975–6132.

Dated: March 13, 2008.

**James M. Turner,**

*Acting Director.*

[FR Doc. E8–5487 Filed 3–18–08; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 080307400–8401–01]

**RIN 0648–ZB88**

#### Comparative Analysis of Marine Ecosystem Organization (CAMEO)

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of funding availability.

**SUMMARY:** This announcement is a solicitation for proposals for the Comparative Analysis of Marine Ecosystem Organization (CAMEO) Program. The purpose of CAMEO is to strengthen the scientific basis for an ecosystem approach to stewardship of ocean and coastal resources and ecosystems. To fulfill this purpose, CAMEO will assist policy makers and resource managers to make ecosystem-science based decisions that fulfill policy goals and management objectives of society. The program will support research to understand complex dynamics controlling productivity, behavior, population connectivity, climate variability and anthropogenic pressures. It envisages the use of a diverse array of ecosystem models, comparative analyses of managed and unmanaged areas, and ecosystem-scale mapping in support of research,

forecasting and decision support. Proposals are requested for 1–2 year projects for initial modeling, retrospective, and pilot studies.

**DATES:** Proposals must be received no later than June 17, 2008.

**ADDRESSES:** Electronic application packages are strongly encouraged and are available at: <http://www.grants.gov/>. Paper application packages are available on the NOAA Grants Management website at: <http://www.ago.noaa.gov/grants/appkit.shtml>. If the applicant has difficulty accessing Grants.gov or downloading the required forms from the NOAA website, they should contact: Roy Williams, CAMEO, 1315 East-West Highway, Room 12436, Silver Spring, MD, 20910 or by phone at (301) 713–2367, ext. 141, or via internet at [Roy.Williams@noaa.gov](mailto:Roy.Williams@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:**

Technical Information: Michael Ford, CAMEO Program Manager, NOAA/NMFS, 301–713–2239, [Michael.Ford@noaa.gov](mailto:Michael.Ford@noaa.gov); Phil Taylor, Program Director, Biological Oceanography, OCE/GEO/NSF, 703–292–8582, [prtaylor@nsf.gov](mailto:prtaylor@nsf.gov); or Cynthia Suchman, Associate Program Director, Biological Oceanography, OCE/GEO/NSF, 703/292–8582, [csuchman@nsf.gov](mailto:csuchman@nsf.gov). Business Management Information: Roy Williams, NMFS/S&T Grants Administrator, 301–713–2367 x 141, [Roy.Williams@noaa.gov](mailto:Roy.Williams@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Objective of Comparative Analysis of Marine Ecosystem Organization (CAMEO) is to strengthen the scientific basis for an ecosystem approach to stewardship of ocean and coastal resources and ecosystems. To fulfill its objective, the product of the CAMEO program must assist policy makers and resource managers to make science based decisions that fulfill policy goals and management objectives of society. This means that for CAMEO to be successful, it must include an explicit and realistic path for translating research results into usable decision-making support tools.

Comparative studies of ecosystems have a long history in marine ecology. Many of these studies have been theoretical, using mathematical models with limited or no data, and narrow in scope in terms of the properties of ecosystems and the drivers of change. Others have compared and contrasted large amounts of observational data to draw general inferences. CAMEO's goal, and challenge, is to carefully design approaches by which similarities and divergences among observed ecosystems (comparative ecosystem analyses) are

effectively interpreted in a manner that can yield management insights. The spatial scale of comparative analyses can range from ocean basins to local oceanic (e.g., seamounts, shelves) and coastal (e.g., bays and estuaries) features. The scale should be appropriate to the ecosystem properties considered in the proposal. In some cases, a hierarchy of nested scales may be appropriate. Obvious components of this comparative approach involve the use of experiments, models, and observational data, ultimately leading to sophisticated integrations of all three. Spatial contrasts offered by comparing ecosystem function and structure within and outside marine protected areas are one form of comparative analysis that may offer insights into how ecosystems respond to human activities. An important and ancillary challenge will be to identify recent and emerging technologies (e.g. molecular techniques and instrumentation) that may be applied toward the significant challenges of CAMEO. In framing issues to be addressed by CAMEO, some important ecosystem concepts, such as resilience, regime shifts and connectivity are used without rigorously defining or thoroughly discussing them. These are evolving concepts, and it is expected that they will be defined in the context of the research that is proposed and refined through CAMEO research.

**ELECTRONIC ACCESS:** The full text of the full funding opportunity announcement for this program can be accessed via the Grants.gov web site at <http://www.grants.gov>. The announcement will also be available by contacting the program officials identified under **FOR FURTHER INFORMATION CONTACT**. Applicants must comply with all requirements contained in the full funding opportunity announcement.

**STATUTORY AUTHORITY:** Authority for CAMEO is provided by the following: 33 U.S.C. 1442 for the National Marine Fisheries Service and 42 U.S.C. 1861–75 for the National Science Foundation.

CFDA: 11.472, Unallied Science Program

**FUNDING AVAILABILITY:** It is anticipated that about \$2,000,000 in FY 2008 will be available to support approximately 5–10 projects in response to this announcement.

**ELIGIBILITY:** Eligible applicants are institutions of higher education, other non-profits, state, local, Indian Tribal Governments, and Federal agencies that possess the statutory authority to receive financial assistance.

**COST SHARING REQUIREMENTS:** None is required.

**EVALUATION AND SELECTION PROCEDURES:** The general evaluation criteria and selection factors that apply to full applications to this funding opportunity are summarized below. The evaluation criteria for full applications will have different weights and details. Further information about the evaluation criteria and selection factors can be found in the full funding opportunity announcement.

**EVALUATION CRITERIA FOR PROJECTS:** The following evaluation criteria and weighting of the criteria are as follows: 1. Importance and/or relevance and applicability of proposed project to the program goals: (20 percent). This ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, federal, regional, state, or local goals and priorities. For this competition, this criterion assesses whether proposals address research that will make substantial contributions or develop products leading to improved management of coastal resources (this criterion fulfills the Broader Impacts requirement for NSF proposals);

2. Technical/Scientific Merit (50 percent): This assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives for this management activity. For this competition, this criterion assesses whether proposals address the intrinsic scientific value of the proposed work and the likelihood that it will lead to fundamental advancements, new discoveries or will have substantial impact on progress in that field. The proposed work should have focused science objectives and a complete and efficient strategy for making measurements and observations in support of the objectives. The approach should be sound and logically planned throughout the cycle of the proposed work;

3. Overall qualifications of applicants (20 percent): This ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project. For this competition, this criterion assesses whether the proposals address the capability of the investigator and collaborators to complete the proposed work as evidenced by past research accomplishments, previous cooperative work, timely communication, and the sharing of findings, data, and other research products;

4. Project costs (10 percent): The Budget is evaluated to determine if it is realistic and commensurate with the

project needs and time-frame. For this competition, this criterion assesses whether proposals address the adequacy of the proposed resources to accomplish the proposed work, and the appropriateness of the requested funding with respect to the total available funds.

5. Outreach and Education (0 percent): Outreach and education NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nations natural resources.

**REVIEW AND SELECTION PROCESS:** Proposals will be evaluated individually in accordance with the assigned weights of the above evaluation criteria by independent peer mail review and/or by independent peer panel review. Both Federal and non-Federal experts in the field may be used in this process. The peer mail reviewers have expertise in the subjects addressed by the proposals. Each mail reviewer will see only certain individual proposals within his or her area of expertise, and will score them individually on the following scale: Excellent (1), Very Good (2), Good (3), Fair (4), Poor (5). The peer panel will comprise 6 to 10 individuals, with each individual having expertise in a separate area, so that the panel, as a whole, covers a range of scientific expertise. The panel will have access to all mail reviews of proposals, and will use the mail reviews in discussion and evaluation of the entire slate of proposals. All proposals will be evaluated and scored individually. The peer panel shall rate the proposals using the evaluation criteria and scores provided above. Scores from each peer panelist shall be averaged for each application and presented to the program officers. No consensus advice will be given by the independent peer mail review or the review panel. The program officers will neither vote or score proposals as part of the independent peer panel nor participate in discussion of the merits of the proposal. Those proposals receiving an average panel score of "Fair" or "Poor" will not be given further consideration, and proposers will be notified of non selection. For the proposals rated by the panel as either "Excellent," "Very Good," or "Good", the program officers will (a) select the proposals to be recommended for funding according to the averaged ratings, and/or by applying the project funding priorities listed below; (b) determine the total duration of funding for each proposal; and (c) determine the amount of funds available for each proposal subject to the availability of fiscal year funds.

Awards may not necessarily be made in rank order. In addition, proposals rated by the panel as either "Excellent," "Very Good," or "Good" that are not funded in the current fiscal period, may be considered for funding in another fiscal period without having to repeat the competitive, review process. Recommendations for funding are then forwarded to the selecting official, the Director of Scientific Programs and Chief Science Advisor for NOAA/NMFS, or the Program Director for NSF Biological Oceanography, for the final funding decision. The Director shall make the final funding decisions based upon reviewer/program officer recommendations, project funding priorities and availability of funds. At the conclusion of the review process, NOAA Ecosystem Goal Team Lead and the NSF Biological Oceanography Program Director or staff will notify lead proposers for those projects recommended for support, and negotiate revisions in the proposed work and budget. Final awards will be issued by the agency responsible for a specific project after receipt and processing of any specific materials required by the agency. Investigators may be asked to modify objectives, work plans or budgets, and provide supplemental information required by the agency prior to the award. When a decision has been made (whether an award or declination), verbatim anonymous copies of reviews and summaries of review panel deliberations, if any, will be made available to the proposer. Declined applications will be held in the NMFS/S&T office for the required 3 years in accordance with the current retention requirements, and then destroyed.

**SELECTION FACTORS FOR PROJECTS:** The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based on one or more of the following factors: 1. Availability of funding 2. Balance and distribution of funds a. By research area b. By project type c. By type of institutions d. By type of partners e. Geographically 3. Duplication of other projects funded or considered for funding by NOAA/Federal agencies. 4. Program priorities and policy factors as set in Sections I.A and B of the FFO. 5. Applicants prior award performance. 6. Partnerships with/Participation of targeted groups. 7. Adequacy of information necessary for NOAA staff to make a National Environmental Policy Act (NEPA) determination and draft necessary documentation before recommendations

for funding are made to the NOAA Grants Officer.

**INTERGOVERNMENTAL REVIEW:** Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

**LIMITATION OF LIABILITY:** In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

**NATIONAL ENVIRONMENTAL POLICY ACT (NEPA):** NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA website: <http://www.nepa.noaa.gov/>, including our NOAA Administrative Order 216-6 for NEPA, [http://www.nepa.noaa.gov/NAO216\\_6\\_TOC.pdf](http://www.nepa.noaa.gov/NAO216_6_TOC.pdf), and the Council on Environmental Quality implementation regulations, [http://ceq.eh.doe.gov/nepa/regs/ceq/toc\\_ceq.htm](http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm). Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information

sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

**THE DEPARTMENT OF COMMERCE PRE-AWARD NOTIFICATION REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS:** The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696), are applicable to this solicitation.

**PAPERWORK REDUCTION ACT:** This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF-LLL and CD-346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348-0043, 0348-0044, 0348-0040, 0348-0046, and 0605-0001. Notwithstanding any other provision of law, no person is required to, nor shall a 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.

**EXECUTIVE ORDER 12866:** This notice has been determined to be not significant for purposes of Executive Order 12866.

**EXECUTIVE ORDER 13132 (FEDERALISM):** It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

**ADMINISTRATIVE PROCEDURE ACT/REGULATORY FLEXIBILITY ACT:** Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements for the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: March 13, 2008.

**Steven A. Murawski,**

*Director of Scientific Programs and Chief Science Advisor, NOAA/National Marine Fisheries Service.*

[FR Doc. E8-5567 Filed 3-18-08; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Availability of Seats for the Monterey Bay National Marine Sanctuary Advisory Council

**AGENCY:** National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

**ACTION:** Notice and request for applications.

**SUMMARY:** The Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) is seeking applicants for the following seats on its Sanctuary Advisory Council: Tourism alternate and Research alternate. Applicants chosen for the Tourism seat should expect to serve until February 2011. Applicants chosen for the Research seat should expect to serve until February 2010. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary.

**DATES:** Applications are due by May 2, 2008.

**ADDRESSES:** Application kits may be obtained from Nicole Capps at the Monterey Bay National Marine Sanctuary, 299 Foam Street, Monterey, California 93940. Completed applications should be sent to the same address.

**FOR FURTHER INFORMATION CONTACT:** Nicole Capps at (831) 647-4206r or [Nicole.Capps@noaa.gov](mailto:Nicole.Capps@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The MBNMS Advisory Council was established in March 1994 to assure continued public participation in the management of the Sanctuary. Since its establishment, the Advisory Council has played a vital role in decisions affecting the Sanctuary along the central California coast.

The Advisory Council's twenty voting members represent a variety of local user groups, as well as the general public, plus six local and state governmental jurisdictions. In addition, the respective managers or superintendents for the four California National Marine sanctuaries (Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones

National Marine Sanctuary and the Monterey Bay National Marine Sanctuary), the Elkhorn Slough National Estuarine Research Reserve and the U.S. Coast Guard sit as non-voting members.

Four working groups support the Advisory Council: The Research Activity Panel ("RAP") chaired by the Research Representative, the Sanctuary Education Panel ("SEP") chaired by the Education Representative, the Conservation Working Group ("CWG") chaired by the Conservation Representative, and the Business and Tourism Activity Panel ("BTAP") co-chaired by the Business/Industry and Tourism Representatives, each dealing with matters concerning research, education, conservation and human use. The working groups are composed of experts from the appropriate fields of interest and meet monthly, or bi-monthly, serving as invaluable advisors to the Advisory Council and the Sanctuary Superintendent.

The Advisory Council represents the coordination link between the Sanctuary and the state and federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the central California coastal and marine ecosystems.

The Advisory Council functions in an advisory capacity to the Sanctuary Superintendent and is instrumental in helping develop policies, program goals, and identify education, outreach, research, long-term monitoring, resource protection, and revenue enhancement priorities.

The Advisory Council works in concert with the Sanctuary Superintendent by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Superintendent in achieving the goals of the Sanctuary program within the context of California's marine programs and policies.

**Authority:** 16 D.S.C. Sections 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: March 11, 2008.

**Daniel J. Basta,**

*Director, National Marine Sanctuary Program, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. E8-5436 Filed 3-18-08; 8:45 am]

**BILLING CODE 3510-NK-M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Public Hearing on the Proposed St. Louis River Site for a Lake Superior National Estuarine Research Reserve in Wisconsin

**AGENCY:** The Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

**ACTION:** Public Hearing Notice.

**SUMMARY:** Notice is hereby given that the University of Wisconsin—Extension, the WI Department of Administration's Coastal Management Program and the WI Department of Natural Resources with the support of the Estuarine Reserves Division of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, will hold a public hearing for the purpose of receiving comments on the preliminary recommendation that the St. Louis River Estuary be proposed for designation as a National Estuarine Research Reserve in Wisconsin.

The state agencies will hold a public hearing at 6 p.m. on April 3rd, 2008 at the Wisconsin Indianhead Technical College—Superior Conference Center, 600 North 21st Street, Superior, WI 78701.

The views of interested persons and organizations on the proposed site recommendation are solicited, and may be expressed orally and/or in written statements. An informational presentation on the St. Louis River Estuary and the National Estuarine Research Reserve System (NERRS) is scheduled for 7 p.m. All comments received at the hearing will be considered in a formal nomination by the state to NOAA.

The NERRS is a federal-state partnership that is administered by the National Oceanic and Atmospheric Administration (NOAA). The system protects more than 1.3 million acres of estuarine habitat for long-term research, monitoring, education and stewardship throughout the coastal United States. Established by the Coastal Zone Management Act of 1972, as amended, each reserve is managed by a lead state agency or university, with input from local partners. NOAA provides funding and national programmatic guidance.

The NERR site selection effort is a culmination of several years of local,

grassroots support for a Wisconsin NERR on Lake Superior. The recommendation of the St. Louis site follows a year-long process to gather information about all of the freshwater estuaries on Lake Superior's south shore. The site selection process involved dozens of meetings with scientists, agency land managers, public officials and citizens.

**FOR FURTHER INFORMATION CONTACT:** Ms. Laurie McGilvray (301) 713-3155 extension 158, Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1305 East West Highway, N/ORM2, Silver Spring, MD 20910.

Dated: March 13, 2008.

**David M. Kennedy,**

*Director, Office of Ocean and Coastal Resource Management.*

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves.

[FR Doc. E8-5457 Filed 3-18-08; 8:45 am]

**BILLING CODE 3510-08-M**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

#### Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT): Closing Date

**AGENCY:** National Telecommunications and Information Administration (NTIA), Commerce.

**ACTION:** Notice of availability of funds.

**SUMMARY:** Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110-161, 121 Stat. 1844 (2007), the U.S. Department of Commerce announces the solicitation of applications for a grant for the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program. Projects funded pursuant to this Notice are intended to support the PEACESAT Program's acquisition of satellite communications to service Pacific Basin communities and to manage the operations of this network. Applications for the PEACESAT Program grant will compete for funds from the Public Broadcasting, Facilities, Planning and Construction Funds account.

**DATES:** Applications must be received on or before 5 p.m. Eastern Standard Time, April 18, 2008. Applications submitted by facsimile are not acceptable. NTIA will not accept applications received after the deadline. However, if an application is received after the Closing Date due to (1) carrier

error, when the carrier accepted the package with a guarantee for delivery by the Closing Date and Time, or (2) significant weather delays or natural disasters, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline.

**ADDRESSES:** To obtain a printed application package, submit completed applications, or send any other correspondence, write to: NTIA/PTFP, Room H-4812, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230. Application materials may be obtained electronically via the Internet at <http://www.grants.gov>.

**FOR FURTHER INFORMATION CONTACT:** William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482-5802; fax: (202) 482-2156.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

The full funding opportunity announcement for the PEACESAT Fiscal Year (FY) 2008 grant cycle is available through <http://www.Grants.gov> or by contacting the PTFP office at the address noted above. Application materials may be obtained electronically via the Internet at <http://www.grants.gov>.

**Funding Availability**

Funding for the PEACESAT Program is provided pursuant to the Consolidated Appropriations Act, 2008, Public Law 110-161, 121 Stat. 1844 (2007), and Public Law 106-113, "The Consolidated Appropriations Act, Fiscal Year 2000." Public Law 106-113 provides "That, hereafter, notwithstanding any other provision of law, the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program is eligible to compete for Public Broadcasting Facilities, Planning and Construction funds."

The Congress has appropriated \$16.8 million for FY 2008 Public Telecommunications Facilities Program (PTFP) and PEACESAT awards. Of this amount, NTIA anticipates making a single award for approximately \$500,000 for the PEACESAT Program in FY 2008. For FY 2007, NTIA issued one award for the PEACESAT project in the amount of \$499,351.

**Statutory and Regulatory Authority**

The PEACESAT Program was authorized under Public Law 100-584 (102 Stat. 2970) and also Public Law 101-555 (104 Stat. 2758) to acquire satellite communications services to

provide educational, medical, and cultural needs of Pacific Basin communities. The PEACESAT Program has been operational since 1971 and has received funding from NTIA for support of the project since 1988.

Applications submitted in response to this solicitation for PEACESAT applications are not subject to the PTFP regulations at 15 CFR Part 2301.

*Catalog of Federal Domestic Assistance:* N/A.

**Eligibility**

Eligible applicants will include any for-profit or non-profit organization, public or private entity, other than an agency or division of the Federal government. Individuals are not eligible to apply for the PEACESAT Program funds.

**Evaluation and Selection Process**

Each eligible application is evaluated by three independent reviewers who have demonstrated expertise in the programmatic and technological aspects of the application. The reviewers will evaluate applications according to the criteria in the following section and provide individual written ratings of each application. No consensus advice will be provided by the reviewers.

State Single Point of Contact (SPOC) offices, per Executive Order 12372, may provide recommendations on applications under consideration.

The Public Broadcasting Division (PBD) administers the PEACESAT Program and places a summary of applications received on the Internet. Listing an application merely acknowledges receipt of an application to compete for funding with other applications. Listing does not preclude subsequent return of the application or disapproval of the application, nor does it assure that the application will be funded. The listing will also include a request for comments on the applications from any interested party.

The reviewer's ratings are provided to the PBD staff and a rank order is prepared according to score. The PBD program staff prepares summary recommendations for the Director of the Public Broadcasting Division. These recommendations incorporate the outside reviewers' ratings and incorporate analysis based on the degree to which a proposed project meets the PEACESAT Program purposes and cost eligibility. Staff recommendations also consider (1) project impact, (2) the cost/benefit of a project, and (3) whether the reviewers consistently applied the evaluation criteria. The analysis by program staff is provided to the Director

of the Public Broadcasting Division in writing.

The Director considers the summary recommendations prepared by program staff in accord with the funding priorities and selection factors referenced in the next section and recommends the funding order of the applications for the PEACESAT Programs in three categories: "Recommended for Funding," "Recommended for Funding If Funds Are Available," and "Not Recommended for Funding." The Director presents recommendations to the Associate Administrator, Office of Telecommunications and Information Applications (OTIA), for review and approval.

Upon review and approval based on the funding priorities and selection factors referenced in the next section by the Associate Administrator of the Office of Telecommunications and Information Applications (OTIA), the Associate Administrator's and the Director's recommendations are presented to the Selecting Official, the Assistant Secretary for Communications and Information, who is the NTIA Administrator. The NTIA Administrator selects the applications to be negotiated for possible grant award, taking into consideration the outside reviewers' ratings, the Director's recommendations, and the degree to which the slate of applications, taken as a whole, satisfies the PEACESAT Program's stated purposes.

The selected applications are negotiated between NTIA staff and the applicant. The negotiations are intended to resolve whatever differences might exist between the applicant's original request and what NTIA is considering funding. Negotiation does not ensure that an award will be made. When the negotiations are completed, the Director recommends final selections to the NTIA Administrator, applying the same selection factors described above. The Administrator then makes the final award selections from the negotiated applications taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the stated purposes for the PEACESAT Program.

**Funding Priorities and Selection Factors**

The PBD Director will consider the summary evaluations prepared by program staff, rank the applications, and present recommendations to the OTIA Associate Administrator for review and approval. The Director's recommendations and the OTIA

Associate Administrator's review and approval will take into account the following selection factors:

- (1) The program staff evaluations, including the outside reviewers.
- (2) Whether the applicant has any current NTIA grants.
- (3) The geographic distribution of the proposed grant awards.
- (4) The availability of funds.

Upon approval by the OTIA Associate Administrator, the Director's recommendations will then be presented to the Selecting Official, the NTIA Administrator.

The Administrator makes final award selections taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes.

No grant will be awarded until confirmation has been received from the Federal Communications Commission that any necessary authorization will be issued.

After final award selections have been made, the Agency will notify the applicant of one of the following actions:

- (1) Selection of the application for funding, in whole or in part;
- (2) Deferral of the application for subsequent consideration; or
- (3) Rejection of the application with an explanation and the reason, if an applicant is not eligible or if the proposed project does not fall within the purposes of the PEACESAT program.

#### Evaluation Criteria

Each eligible application that is timely received, is materially complete, and proposes an eligible project will be considered under the evaluation criteria described here. The first three criteria—1. Meeting the Purposes of the PEACESAT Program, 2. Extent of Need for the Project, and 3. Plan of Operation for the Project—are each worth 25 points. Criterion 4, Budget and Cost Effectiveness, is worth 20 points. Criterion 5, Quality of Key Personnel, is worth 5 points.

*Criterion 1. Meeting the Purposes of the PEACESAT Program*, including (i) how well the proposal meets the objectives of the PEACESAT Program and (ii) how the objectives of the proposal further the purposes of the PEACESAT Program.

*Criterion 2. Extent of Need for the Project*. The extent to which the project meets the needs of the PEACESAT Program, including consideration of: (i) The needs addressed by the project; (ii) how the applicant identifies those needs; (iii) how those needs will be met

by the project; and (iv) the benefits to be gained by meeting those needs.

*Criterion 3. Plan of Operation for the Project*, including (i) the quality of the design of the project; (ii) the extent to which the plan of management is effective and ensures proper and efficient administration of the project; (iii) how well the objectives of the project relate to the purposes of the PEACESAT Program; (iv) the quality of the applicant's plan to use its resources and personnel to achieve each objective; and (v) how the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapped condition.

*Criterion 4. Budget and Cost Effectiveness*. The extent to which (i) the budget is adequate to support the project; and (ii) costs are reasonable in relation to the objectives of the project.

*Criterion 5. Quality of Key Personnel* the applicant plans to use on the project, including (i) the qualifications of the project director if one is to be used; (ii) the qualifications of each of the other key personnel to be used in the project; (iii) the time that each person will commit to the project; and (iv) how the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapped condition. In this section, "qualifications" refers to experience and training in fields related to the objectives of the project, and any other qualifications that pertain to the quality of the project.

#### Cost Sharing Requirements

Grant recipients under this program will not be required to provide matching funds toward the total project cost.

The costs allowable under this Notice are not subject to the limitation on costs contained in the January 10, 2008, Notice regarding the PTFP Program, see 73 FR 1864 (2008).

#### Intergovernmental Review

PEACESAT applications are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," if the state in which the applicant organization is located participates in the process. Usually submission to the State Single Point of Contact (SPOC) needs to be only the first two pages of the Application Form, but applicants should contact their own SPOC offices to find out about and comply with its requirements. The names and addresses of the SPOC offices are listed on the PTFP Web site

and at the Office of Management and Budget's home page at <http://www.whitehouse.gov/omb/grants/spoc.html>.

#### Universal Identifier

All applicants (nonprofit, state, local government, universities, and tribal organizations) will be required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 (67 FR 66177) and April 8, 2003 (68 FR 17000) **Federal Register** notices for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line 1-866-705-5711 or via the Internet at [www.dnb.com/us/](http://www.dnb.com/us/).

#### The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696) is applicable to this solicitation.

#### Limitation of Liability

In no event will the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. Publication of this announcement does not oblige the agency to award any specific project or to obligate any available funds.

#### Paperwork Reduction Act

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 Paperwork Reduction Act (PRA), unless that collection displays a currently valid Office of Management and Budget (OMB) control number. The PEACESAT application package requires the use of the following forms: SF-424, SF-424A, SF-424B, SF-LLL, CD-511. These forms have been approved under OMB Control Nos. 4040-0004, 4040-0006, 4040-007, and 0348-0046.

#### Executive Order 13132

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

#### Administrative Procedure Act/Regulatory Flexibility Act

Prior notice and opportunity for public comment are not required by the

Administrative Procedure Act or any other law for rules concerning grants, benefits, and contracts (5 U.S.C. 553(a)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

**Bernadette McGuire-Rivera,**

*Associate Administrator, Office of Telecommunications and Information Applications.*

[FR Doc. E8-5604 Filed 3-18-08; 8:45 am]

**BILLING CODE 3510-60-P**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[OMB Control No. 9000-0141]

**Federal Acquisition Regulation; Information Collection; Buy American Act—Construction**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for comments regarding an extension to an existing OMB clearance (9000-0141).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the Buy American Act—Construction (Grimberg Decision). The clearance currently expires on September 30, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate

technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before May 19, 2008.

**FOR FURTHER INFORMATION CONTACT** Meredith Murphy, Contract Policy Division, GSA (202) 208-6925.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The clauses at FAR 52.225-9, Buy American Act—Construction Materials, and FAR 52.225-11, Buy American Act—Construction Materials under Trade Agreements, provide that offerors/contractors requesting to use foreign construction material, other than construction material eligible under a trade agreement, shall provide adequate information for Government evaluation of the request.

These regulations implement the Buy American Act for construction (41 U.S.C. 10a-10d).

**B. Annual Reporting Burden**

*Respondents:* 500.

*Responses Per Respondent:* 2.

*Annual Responses:* 1,000.

*Hours Per Response:* 2.5.

*Total Burden Hours:* 2,500.

*Obtaining Copies Of Proposals:*

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VPR), Room 4035, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0141, Buy American Act—Construction (Grimberg Decision), in all correspondence.

Dated: March 11, 2008.

**Al Matera,**

*Director, Office of Acquisition Policy.*

[FR Doc. E8-5478 Filed 3-18-08; 8:45 am]

**BILLING CODE 6820-EP-S**

**DEPARTMENT OF EDUCATION**

**Notice of Proposed Information Collection Requests**

**AGENCY:** Department of Education.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before May 19, 2008.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 13, 2008.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

**Office of Safe and Drug Free Schools**

*Type of Review:* New.

*Title:* Partnerships in Character Education Program Data Collection.

*Frequency:* Annually.

*Affected Public:* Individuals or household; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 450.

Burden Hours: 164.

**Abstract:** The four attached documents were created to collect information on projects funded under the Partnerships in Character Education Program (PCEP). This collection of data will assist in program planning and management of the PCEP. The collection of data will help to identify: (1) Areas in which the grantees are experiencing problems in implementing, administering, or meeting grant requirements; (2) impact of the character education project on school, home and community environments; (3) products and materials in character education developed with federal funds; and provide participation feedback on special and annual meeting activities with grantees sponsored by PCEP.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3536. 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](mailto: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](mailto: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. E8-5488 Filed 3-18-08; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

### National Technical Advisory Council; Notice of Establishment and Call for Nominations

**AGENCY:** Department of Education.

**ACTION:** Notice of Establishment of the National Technical Advisory Council.

**SUMMARY:** The Secretary announces her intention to establish the National Technical Advisory Council. The Federal Advisory Committee Act (Pub. L. 92-463 as amended; 5 U.S.C. Appendix 2) (FACA) will govern the Committee.

**Purpose:** In order to help ensure that the Department is making sound technical decisions related to the

approval of State-designed standards, assessments, and accountability systems under Title I of the Elementary and Secondary Education Act, the National Technical Advisory Council (NTAC) shall advise the Secretary of Education and the Assistant Secretary of Elementary and Secondary Education (Assistant Secretary) on the design and implementation of standards, assessments, and accountability systems consistent with Federal statutes and regulations.

The NTAC shall consist of no more than 15 members. The members shall be experts in assessment and accountability and shall consist of academicians, researchers, and national, state, and local policymakers. At least one-third of the members must have experience working in or with State educational agencies or local educational agencies. Members will be appointed by the Secretary to terms of no more than three (3) years, and initial terms shall be staggered.

The Secretary seeks nominations from the public for members to serve on the NTAC. A submission for a nomination for membership on the NTAC must include the nominee's contact information and information regarding the nominee's qualifications, such as a resume, current or recent positions, or research undertaken related to educational assessment and accountability. To submit a nomination, send an e-mail to [oese@ed.gov](mailto:oese@ed.gov) with the subject "NTAC" or respond in writing to Patrick Rooney, U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW., Washington, DC 20202. The period for nominations will close three weeks from the date of this notice.

The Assistant Secretary shall appoint a Designated Federal Officer for the Council. The DFO, in consultation with the NTAC Chair, will set the agenda for the NTAC and schedule meetings on an as-needed basis but at least twice a year. Meetings will be open to the public except as may be determined otherwise by the Secretary. At the request of the Chair, the DFO may create sub-councils consisting of at least three (3) members of the NTAC to provide guidance on an ad-hoc basis to the Assistant Secretary. The sub-councils' recommendations will be reviewed by the full Council before being submitted to the Assistant Secretary.

In lieu of an annual report, following each meeting of the full NTAC or a sub-council of the NTAC, a summary of the proceedings will be prepared by the Department and then reviewed by the Council, and, upon approval of the Council, submitted to the Assistant

Secretary. The reports will be made available to the public. The report shall, at a minimum, contain the topics discussed, a summary of the discussion, and recommendations for the Department, including research to be undertaken.

**FOR ADDITIONAL INFORMATION CONTACT:** Patrick Rooney, U.S. Department of Education, Washington, DC 20202, Telephone: (202) 401-0113.

Dated: March 13, 2008.

**Margaret Spellings,**

*Secretary of Education.*

[FR Doc. E8-5485 Filed 3-18-08; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services; Overview Information, Training and Information for Parents of Children With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

*Catalog of Federal Domestic Assistance (CFDA) Number: 84.328C and 84.328R.*

**Note:** This notice invites applications for two separate competitions. For key dates, contact person information, and funding information regarding each competition, see the chart in the *Award Information* section of this notice.

**Dates:**

*Applications Available:* See chart.

*Deadline for Transmittal of*

*Applications:* See chart.

*Deadline for Intergovernmental*

*Review:* See chart.

### Full Text of Announcement

#### I. Funding Opportunity Description

**Purpose of Program:** The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

**Priorities:** In accordance with 34 CFR 75.105(b)(2)(iv) and (v), these priorities are from allowable activities specified in the statute, or otherwise authorized in the statute (see sections 672, 673 and 681(d) of the Individuals with Disabilities Education Act (IDEA)). Each of the absolute priorities announced in this notice corresponds to a separate competition as follows:

Absolute priority	Competition CFDA No.
Community Parent Resource Centers.	84.328C
Technical Assistance for the Parent Centers.	84.328R

*Absolute Priorities:* For FY 2008 and any subsequent year in which we make awards based on the list of unfunded applications from these competitions, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), for each competition, we consider only applications that meet the absolute priority for that competition.

These priorities are:

*Absolute Priority 1—Community Parent Resource Centers (84.328C).*

*Background:* This priority supports community parent resource centers (CPRCs) in targeted communities that will provide underserved parents of children with disabilities, including low-income parents, parents of limited English proficient children, and parents with disabilities in that community, with the training and information they need to enable them to participate cooperatively and effectively in helping their children with disabilities to—

- (a) Meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and
- (b) Be prepared to lead productive, independent adult lives, to the maximum extent possible.

*Priority:* To be considered for funding under the Community Parent Resource Centers (CPRC) absolute priority, applicants must meet the application requirements contained in the priority. All projects funded under the absolute priority also must meet the programmatic and administrative requirements specified in the priority.

*Application Requirements.* An applicant must include in its application—

- (a) A plan to implement the activities described in the *Project Activities* section of this priority; and
- (b) A budget for attendance at a three-day National Technical Assistance for Parent Center Conference in Washington, DC during each year of the project period.

*Project Activities.* To meet the requirements of this priority, the CPRC, at a minimum, must:

- (a) Provide training and information that meets the training and information needs of parents of children with disabilities within the proposed targeted community to be served by the CPRC, particularly underserved parents and parents of children who may be inappropriately identified as having disabilities when they do not have them.

**Note:** For purposes of this priority, “community to be served” refers to a geographically defined, local community whose members experience significant isolation from available sources of

information and support as a result of cultural, economic, linguistic, or other circumstances deemed appropriate by the Secretary.

(b) Carry out the following activities required of parent training and information centers:

(1) Serve the parents of infants, toddlers, and children, from ages birth through 26, with the full range of disabilities described in section 602(3) of IDEA.

(2) Ensure that the training and information provided meets the needs of low-income parents and parents of limited English proficient children.

(3) Assist parents to—

- (i) Better understand the nature of their children’s disabilities and their educational, developmental, and transitional needs;
- (ii) Communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention services, transition services, and related services;
- (iii) Participate in decision making processes, including those regarding participation in State and local assessments, and the development of individualized education programs under Part B of IDEA and individualized family service plans under Part C of IDEA;
- (iv) Obtain appropriate information about the range, type, and quality of—

(A) Options, programs, services, technologies, practices, and interventions that are based on scientifically based research, to the extent practicable; and

(B) Resources available to assist children with disabilities and their families in school and at home, including information available through the Office of Special Education Programs’ (OSEP) technical assistance centers and communities of practice (<http://www.tacomunities.org>);

(v) Understand the provisions of IDEA for the education of, and the provision of early intervention services to, children with disabilities;

(vi) Participate in activities at the school level that benefit their children; and

(vii) Participate in school reform activities.

(4) In States where the State elects to contract with the CPRCs, contract with the State educational agencies (SEAs) to provide, consistent with paragraphs (B) and (D) of section 615(e)(2) of IDEA, individuals to meet with parents in order to explain the mediation process.

(5) Assist parents in resolving disputes in the most expeditious and effective way possible, including encouraging the use, and explaining the

benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e) of IDEA.

(6) Assist parents and students with disabilities to understand their rights and responsibilities under IDEA, including those under section 615(m) of IDEA upon the student’s reaching the age of majority (as appropriate under State law).

(7) Assist parents to understand the availability of, and how to effectively use, procedural safeguards under IDEA.

(8) Assist parents in understanding, preparing for, and participating in, the resolution session as described in section 615(f)(1)(B) of IDEA.

(c) Establish cooperative partnerships with any Parent Training and Information Centers (PTIs) and any other CPRCs funded in the State under sections 671 and 672 of IDEA.

(d) Be designed to meet the specific needs of families who experience significant isolation from available sources of information and support.

(e) Be familiar with the provision of special education, related services, and early intervention services in the CPRC’s community to be served to help ensure that children with disabilities are receiving appropriate services.

(f) Annually report to the Department on—

- (1) The number and demographics of parents to whom it provided information and training in the most recently concluded fiscal year, including additional information regarding their unique needs and levels of service provided to them; and
- (2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities, by providing evidence of how those parents were served effectively.

(g) Respond to requests from the OSEP-funded National Technical Assistance Center (NTAC) and Regional Parent Technical Assistance Centers (PTACs), and use the technical assistance services of the NTAC and PTACs in order to serve the families of infants, toddlers, and children with disabilities as efficiently as possible. PTACs are charged with assisting parent centers with administrative and programmatic issues.

(h) If the CPRC maintains a Web site, include relevant information and documents in a format that meets a government or industry-recognized standard for accessibility.

(i) In collaboration with OSEP and the NTAC, participate in an annual collection of program data for the PTIs

and CPRCs funded under sections 671 and 672 of IDEA, respectively.

**Competitive Preference Priorities:** Within Absolute Priority 1, we give competitive preference to applications that address the following two priorities. Under 34 CFR 75.105(c)(2)(i), we will award up to 10 additional points to an application that meets these priorities.

**Note:** The 10 points an applicant can earn under these competitive preference priorities are in addition to those points awarded under the selection criteria for this competition (see *Selection Criteria* in section V in this notice). That is, an applicant meeting the competitive preference priorities could earn a maximum total of 110 points.

These priorities are:

**Competitive Preference Priority 1—Empowerment Zones, Enterprise Communities, or Renewal Communities.**

We will award five points to an application that proposes to provide services to one or more Empowerment Zones, Enterprise Communities, or Renewal Communities that are designated within the areas served by the center. (A list of areas that have been selected as Empowerment Zones, Enterprise Communities, or Renewal Communities can be found at [http://egis.hud.gov/egis/cpd/rcezec/ezec\\_open.htm](http://egis.hud.gov/egis/cpd/rcezec/ezec_open.htm)).

To meet this priority, an applicant must indicate that it will—

(1) Either (i) design a program that includes special activities focused on the unique needs of one or more Empowerment Zones, Enterprise Communities, or Renewal Communities; or (ii) devote a substantial portion of program resources to providing services within, or meeting the needs of residents of, these zones and communities; and

(2) As appropriate, contribute to the strategic plan of the Empowerment Zones, Enterprise Communities, or Renewal Communities and become an integral component of the Empowerment Zone, Enterprise Community, or Renewal Community activities.

**Competitive Preference Priority 2—Novice Applicants.**

We will award an additional five points to an application from a novice applicant. This priority is from 34 CFR 75.225. The term “novice applicant” means any applicant for a grant from the U.S. Department of Education that—

(1) Has never received a grant or subgrant under the program from which it seeks funding;

(2) Has never been a member of a group application, submitted in accordance with 34 CFR 75.127 through 75.129, that received a grant under the

program from which it seeks funding; and

(3) Has not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under this program (Training and Information for Parents of Children with Disabilities—Community Parent Resource Centers). For the purposes of this requirement, a grant is active until the end of the grant’s project or funding period, including any extensions of those periods that extend the grantee’s authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127 through 75.129, all group members must meet the requirements described in this priority to qualify as a novice applicant.

**Absolute Priority 2—Technical Assistance for the Parent Centers (84.328R).**

**Background:** This priority, authorized under section 673 of the Individuals with Disabilities Education Act (IDEA), supports the establishment and operation of seven technical assistance centers—one national in scope and six regional in scope. These centers will provide technical assistance (TA) to support the development and coordination of parent training and information programs carried out by Parent Training and Information Centers (PTIs) funded under section 671 of IDEA and the Community Parent Resource Centers (CPRCs) funded under section 672 of IDEA.

This priority builds on the investments made by the Office of Special Education Programs (OSEP) in the area of TA by supporting a unified and coordinated TA system for the parent programs carried out by PTIs and CPRCs by strengthening connections between the TA system for parent centers and the Department’s Technical Assistance and Dissemination Network (TA&D Network), which is comprised of national and regional projects funded by the Department.

Due to the increase in information available regarding services for children with disabilities and the complexity of that information, TA centers are needed to support PTIs and CPRCs to build their content knowledge and expertise in special and regular education laws, policies, and evidence-based practices. TA centers also are needed to support PTIs and CPRCs as they increase their capacity to help families of children with disabilities, ages birth through 26, understand special and regular education laws, policies, and evidence-based practices and use that knowledge

to best advocate for appropriate services and supports for their children.

The activities of the TA centers funded under this priority will help strengthen partnerships among the PTIs, CPRCs, and their respective State educational agencies (SEAs), local educational agencies (LEAs), and lead agencies. These partnerships facilitate shared decision-making between agencies and parent programs, resulting in improved outcomes for children and families served under IDEA. For further information on OSEP’s support of TA to the PTIs and CPRCs go to <http://www.taalliance.org>.

**Priority:** This priority will fund seven centers, through cooperative agreements, in two focus areas. Under Focus Area 1, the Department intends to fund one National Technical Assistance Center for Parent Centers (National Parent TAC); and under Focus Area 2, the Department intends to support six Regional Technical Assistance Centers for Parent Centers (Regional Parent TACs). The six Regional Parent TACs will be awarded to represent the following six geographic regions:

**Region 1 Parent TAC:** CT, ME, MA, NH, NJ, NY, RI, VT.

**Region 2 Parent TAC:** DE, KY, MD, NC, SC, TN, VA, DC, WV.

**Region 3 Parent TAC:** AL, AR, FL, GA, LA, MS, OK, Puerto Rico, TX, U.S. Virgin Islands.

**Region 4 Parent TAC:** IL, IN, IA, MI, MN, MO, OH, PA, WI.

**Region 5 Parent TAC:** AZ, CO, KS, MT, NE, ND, NM, SD, UT, WY.

**Region 6 Parent TAC:** AK, CA, HI, ID, NV, OR, WA, the outlying areas of the Pacific Basin, and the Freely Associated States.

To be considered for funding under the Technical Assistance for the Parent Centers absolute priority, applicants must meet the application requirements contained in the priority. All projects funded under the absolute priority also must meet the programmatic and administrative requirements specified in the priority.

**Application Requirements for Focus Areas 1 and 2.** An applicant must include in its application—

(a) A logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project;

**Note:** For more information on logic models, the following Web site lists multiple online resources: <http://www.cdc.gov/eval/resources.htm>.

(b) A plan to implement the activities described in the *Project Activities* sections of this priority;

(c) A plan, linked to the proposed project's logic model, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and services;

(d) A budget for attendance at the following:

(1) A one and one half day kick-off meeting to be held in Washington, DC within four weeks after receipt of the award, and an annual planning meeting held in Washington, DC with the OSEP Project Officer during each subsequent year of the project period.

(2) A three-day Project Directors' Conference in Washington, DC during each year of the project period.

(3) A four-day Technical Assistance and Dissemination Conference in Washington, DC during each year of the project period.

(4) A three-day National Technical Assistance for Parent Center Conference in Washington, DC during each year of the project; and

(e) A line item in the proposed budget for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's activities, as those needs are identified in consultation with OSEP.

**Note:** With approval from the OSEP Project Officer, the center must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period.

*Project Activities for Focus Areas 1 and 2.* To meet the requirements of this priority, each center, at a minimum, must conduct the following activities:

(a) Review documents and publications from centers in the OSEP-funded TA&D Network, as requested by OSEP, to ensure that the documents and publications are relevant to and understandable by families.

(b) Maintain communication and collaboration between the National Parent TAC and the Regional Parent TACs, as requested by OSEP, to ensure that products and services are relevant to and accessible to families. This collaboration could include the shared development of products, the coordination of technical assistance services, and the planning and carrying out of technical assistance meetings and events.

(c) Participate in, organize, or facilitate, as appropriate, OSEP communities of practice (<http://www.tacomunities.org/>) that are aligned with the center's objectives as a way to support discussions and collaboration among key stakeholders.

(d) Prior to developing any new product, whether paper or electronic, submit to the OSEP Project Officer and the Proposed Product Advisory Board at OSEP's Technical Assistance Coordination Center (TACC), which OSEP intends to fund in FY 2008, for approval, a proposal describing the content and purpose of the product.

(e) Coordinate with the National Dissemination Center for Individuals with Disabilities, which OSEP intends to fund in FY 2008, to develop an efficient and high-quality dissemination strategy that reaches broad audiences. The Center must report to the OSEP Project Officer the outcomes of these coordination efforts.

(f) Contribute, on an ongoing basis, updated information on the Center's services to OSEP's Technical Assistance and Dissemination Matrix (<http://matrix.rrfcnetwork.org>), which provides current information on Department-funded TA services to a range of stakeholders.

(g) Maintain a Web site that meets government or industry-recognized standards for accessibility and that links to the Web site operated by the TACC.

(h) Maintain ongoing communication with the OSEP Project Officer through monthly phone conversations and e-mail communication.

*Project Activities for Focus Area 1.* To meet the requirements of Focus Area 1 under this priority, the National Parent TAC, at a minimum, must conduct the following activities:

(a) Contribute to improved outcomes for PTIs and CPRCs by supporting collaborative activities among and between the six Regional Parent TACs and the National Parent TAC.

(b) Develop or adapt and disseminate, in collaboration with the Regional Parent TACs, resources and training materials that incorporate evidence-based practices for the PTIs and CPRCs to use in their training and information activities. When developing or adapting and disseminating these materials, the National Parent TAC must solicit feedback from experts in the field. The resource and training materials must address, at a minimum, the following topics identified in section 673 of IDEA:

(1) Promoting effective strategies for the use of technology, including assistive technology devices and assistive technology services.

(2) Developing strategies to reach underserved populations, including parents of low-income and limited English proficient children with disabilities.

(3) Promoting strategies to include children with disabilities in general education programs.

(4) Facilitating effective transitions for children with disabilities from early intervention services to preschool, preschool to elementary school, elementary school to secondary school, and secondary school to postsecondary environments.

(5) Promoting alternative methods of dispute resolution, including mediation.

(6) Disseminating scientifically based research and information, particularly in the areas of assessment, literacy, behavior, instructional strategies, early intervention, and inclusive practices.

(c) Establish and maintain a cadre of experts available to the National Parent TAC during product development to provide content knowledge and information on evidence-based practices to support infants, toddlers, and children with disabilities and their families.

(d) Conduct, in collaboration with the six Regional Parent TACs, an assessment of the PTIs and the CPRCs' training and information needs on such topics as parental involvement, evidence-based practices, and improving outcomes for children with disabilities.

(e) Develop or adapt, in collaboration with the six Regional Parent TACs, training materials for the PTIs and CPRCs on: Best practices in non-profit management; developing parent leadership; developing and sustaining outreach strategies to reach the broad range of families the PTIs and CPRCs serve; participating in systems change; working with SEAs, LEAs, and local agencies; and understanding State information sources such as State Performance Plans (SPPs) and Annual Performance Reports (APRs).

(f) Maximize the technological capacity of the PTIs and CPRCs by identifying and providing access to appropriate training.

(g) Provide direct TA to the OSEP-funded National Parent Centers Serving Native American and Military Families.

(h) Develop an evaluation instrument, in collaboration with the six Regional Parent TACs and the OSEP Project Officer and to be approved by the OSEP Project Officer, that enables the PTIs and CPRCs to measure their program effectiveness and the outcomes for the families of children with disabilities that they serve.

(i) Establish a mechanism for annually collecting and reporting data on parent program outcomes that are gathered by the evaluation instrument developed in paragraph (h) of this priority and from other relevant data sources. The mechanism for collecting and reporting data referenced in this paragraph will be identified collaboratively with the OSEP Project Officer and the six Regional Parent TACs.

(j) Develop, maintain, and make available on its Web site, a database of all OSEP-funded parent program centers, which must include PTIs, including the National Parent Centers Serving Native American and Military Families, CPRCs, and the National and Regional Parent TACs, in order to connect families to parent programs that serve them.

(k) Plan and conduct an annual National Technical Assistance for Parent Center Conference for OSEP-funded parent program centers and other stakeholders in collaboration with the OSEP Project Officer and with input from the six Regional Parent TACs, PTIs and CPRCs, as well as a conference advisory panel approved by the OSEP Project Officer to be convened by the National Parent TAC.

(l) Plan and conduct, as designated by the OSEP Project Officer and with input from the six Regional Parent TACs, a New Directors' Conference in the fall of each year of the project period for all new directors of PTIs and CPRCs as well as other project staff, as appropriate.

(m) Conduct a summative evaluation of the National Parent TAC in collaboration with the Center to Improve Project Performance (CIPP) as described in the following paragraphs. This summative evaluation must examine the outcomes or impact of the National Parent TAC's activities in order to assess the effectiveness of those activities.

**Note:** In FY 2008, OSEP intends to fund CIPP. The major tasks of CIPP would be to guide, coordinate, and oversee the summative evaluations conducted by selected Technical Assistance, Personnel Development, Parent Training and Information Center, and Technology projects that individually receive \$500,000 or more funding from OSEP annually. The efforts of CIPP are expected to enhance individual project evaluations by providing expert and unbiased assistance in designing evaluations, conducting analyses, and interpreting data.

To fulfill the requirements of the summative evaluation to be conducted under the guidance of CIPP, the National Parent TAC must—

(1) Hire or designate, with the approval of the OSEP Project Officer, a project liaison staff person with

sufficient dedicated time and knowledge of the National Parent TAC to work with CIPP on the following tasks: (i) planning the National Parent TAC's summative evaluation (e.g., selecting evaluation questions, developing a timeline for the evaluation, locating sources of relevant data, and refining the logic model used for the evaluation), (ii) developing the summative evaluation design and instrumentation (e.g., determining quantitative or qualitative data collection strategies, selecting respondent samples, and pilot testing instruments), (iii) coordinating the evaluation timeline with the implementation of the National Parent TAC's activities, (iv) collecting summative data, and (v) writing reports of summative evaluation findings;

(2) Cooperate with CIPP staff in order to accomplish the tasks described in paragraph (1) of this section; and

(3) Dedicate \$20,000 of the annual budget request for this project to cover the costs of carrying out the tasks described in paragraphs (1) and (2) of this section as well as implementing the National Parent TAC's proposed formative evaluation.

*Fourth and Fifth Years of the Project:* In deciding whether to continue funding the National Parent TAC for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary. This review will be conducted during a one-day intensive meeting in Washington, DC that will be held during the last half of the second year of the project period. The National Parent TAC must budget for travel expenses associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the National Parent TAC; and

(c) The quality, relevance, and usefulness of the National Parent TAC's activities and products and the degree to which the National Parent TAC's activities and products have contributed to changed practice and improved child and family outcomes.

*Project Activities for Focus Area 2.* To meet the requirements of Focus Area 2 under this priority, each Regional Parent TAC must conduct the following activities:

(a) Conduct, in collaboration with the National Parent TAC, an assessment of the training and information needs of the PTIs and CPRCs located in its region.

(b) Provide direct TA to PTIs and CPRCs in its region on relevant topics including, but not limited to:

(1) Promoting effective strategies for the use of technology, including assistive technology devices and assistive technology services.

(2) Developing strategies to reach underserved populations, including parents of low-income and limited English proficient children with disabilities.

(3) Promoting strategies to include children with disabilities in regular education programs.

(4) Facilitating effective transitions for children with disabilities from early intervention services to preschool; preschool to elementary school; elementary school to secondary school; and secondary school to postsecondary environments.

(5) Promoting alternative methods of dispute resolution, including mediation.

(6) Promoting the use of evidence-based practices.

(c) Make two TA site visits to each PTI and CPRC in its region during the project period and additional site visits as determined jointly by the Regional Parent TAC and the region's PTIs and CPRCs. At these site visits, Regional Parent TACs could provide, for example, trainings on State and local systems change activities, working with SEAs, LEAs, and local agencies, and understanding State information sources such as SPPs and APRs, financial management, measuring program effectiveness and outcomes, strategic planning, capacity building, leadership development, continuous development and assessment of the effectiveness of outreach strategies, effective PTI and CPRC service-delivery models, and effective board management.

(d) Respond to requests from the OSEP Project Officer and the National Parent TAC for feedback on materials developed by the National Parent TAC.

(e) Participate in the National Parent TAC's conference advisory panel for the purpose of planning the annual National Technical Assistance for Parent Center Conference in each year of the project period.

(f) Conduct one regional conference each year for PTI and CPRC directors and staff in the region.

(g) Serve as members of the National Parent TAC cadre of experts to provide content knowledge and information on evidence-based practices that support infants, toddlers, and children with disabilities and their families during product development.

*Competitive Preference Priorities:* Within Absolute Priority 2, we give competitive preference to applications

that address the following priorities. Under 34 CFR 75.105(c)(2)(i), we will award additional points to an application that meets these priorities.

**Note:** The points an applicant can earn under these competitive preference priorities are in addition to those points awarded under the selection criteria for this competition (see *Selection Criteria* in section V in this notice).

Applications under Focus Area 1 can be awarded a total of 10 points in addition to those awarded under the selection criteria for this program for a maximum total of 110 points.

Applications under Focus Area 2 can be awarded 10 points in addition to those awarded under the selection criteria for this program if they meet the requirements of Competitive Preference Priority 1 or Competitive Preference Priority 2 for a maximum total of 110 points, and 20 points if they meet both Competitive Preference Priorities for a maximum total of 120 points.

These priorities are:

*Competitive Preference Priority 1—Parent Organizations, as Defined in Section 671(a)(2) of IDEA.*

We will award 10 points under Focus Areas 1 and 2 of the absolute priority to any applicant that is a parent organization, as defined in section 671(a)(2) of IDEA. This section of IDEA defines the term “parent organization” as a private non-profit organization (other than an institution of higher education) that—

- (1) Has a board of directors—
  - (i) The majority of whom are parents of children with disabilities ages birth through 26;
  - (ii) That includes—
    - (A) Individuals working in the fields of special education, related services, and early intervention; and
    - (B) Individuals with disabilities; and
    - (C) The parent and professional members of which are broadly representative of the population to be served, including low-income parents and parents of limited English proficient children; and
- (2) Has as its mission serving families of children with disabilities who—
  - (i) Are ages birth through 26; and
  - (ii) Have the full range of disabilities described in section 602(3) of IDEA.

*Competitive Preference Priority 2—Applicants under Focus Area 2 that are Located in the Region They Propose to Serve.*

We will award 10 points to an applicant applying under Focus Area 2 of the absolute priority if that applicant is located in the region it proposes to serve.

*Waiver of Proposed Rulemaking:* Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the

APA inapplicable to the priorities in this notice.

*Program Authority:* 20 U.S.C. 1472, 1473 and 1481.

*Applicable Regulations:* The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 85, 97, 98, and 99.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**II. Award Information**

*Type of Award:* Discretionary grants for competition CFDA 84.328C and cooperative agreements for competition CFDA 84.328R.

*Estimated Available Funds:* \$3,400,000. Please refer to the “Estimated Average Size of Awards” column of the chart in this section for the estimated dollar amounts for individual competitions.

Contingent upon the availability of funds and the quality of applications for the competitions announced in this notice, we may make additional awards in FY 2009 from the lists of unfunded applicants from individual competitions.

*Estimated Average Size of Awards:* See chart.

*Maximum Award:* See chart.

*Estimated Number of Awards:* See chart.

*Project Period:* See chart.

**INDIVIDUALS WITH DISABILITIES EDUCATION ACT TRAINING AND INFORMATION FOR PARENTS OF CHILDREN WITH DISABILITIES PROGRAM APPLICATION NOTICE FOR FISCAL YEAR 2008**

CFDA No. and name	Applications available	Deadline for transmittal of applications	Deadline for intergovernmental review	Estimated available funds	Estimated average size of awards	Maximum award (per year)*	Estimated number of awards	Project period	Page limit	Contact person
84.328C Community Parent Resource Centers.	03/19/08	04/18/08	06/17/08	\$1,000,000	\$100,000	\$100,000*	10	Up to 36 mos	50	Carmen Sanchez, (202) 245-6595, Rm 4055.
84.328R Technical Assistance for the Parent Centers:										
Focus Area 1: National Parent TAC.	03/19/08	04/18/08	06/17/08	\$765,000	\$765,000	\$765,000*	1	Up to 60 mos	70	Lisa Groove, (202) 245-7357, Rm 4056.
Focus Area 2: Regional Parent TAC.	03/19/08	04/18/08	06/17/08	\$1,635,000	\$272,500	\$272,500*	6	Up to 60 mos		

\*We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the FEDERAL REGISTER.  
**Note:** The Department is not bound by any estimates in this notice.

**III. Eligibility Information**

*1. Eligible Applicants:*

Absolute priority	Eligible applicants
Community Parent Resource Centers (84.328C).	Local parent organizations.
Technical Assistance for the Parent Centers (84.328R).	Nonprofit private organizations.

**Note:** Under section 672(a)(2) of IDEA, a “local parent organization” is a parent organization (as that term is defined in section 671(a)(2) of IDEA) that—

- (a) Has a board of directors, the majority of whom are parents of children with disabilities ages birth through 26 from the community to be served.
- (b) Has as its mission serving parents of children with disabilities from that community who (1) are ages birth through 26, and (2) have the full ranges of disabilities as defined in section 602(3) of IDEA.

Section 671(a)(2) of IDEA defines a “parent organization” as a private nonprofit organization (other than an institution of higher education) that—

- (a) Has a board of directors—
  - (1) The majority of whom are parents of children with disabilities ages birth through 26;
  - (2) That includes—
    - (i) Individuals working in the fields of special education, related services, and early intervention; and
    - (ii) Individuals with disabilities; and

(iii) The parent and professional members of which are broadly representative of the population to be served including low-income parents and parents of limited English proficient children; and

(b) Has as its mission serving families of children with disabilities who are ages birth through 26, and have the full range of disabilities described in section 602(3) of IDEA.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other: General Requirements—(a)* The projects funded under this program must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this program must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

#### IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794-1398. Telephone, toll free: 1-877-433-7827. FAX: (301) 470-1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1-877-576-7734.

You can contact ED Pubs at its Web site, also: [www.ed.gov/pubs/edpubs.html](http://www.ed.gov/pubs/edpubs.html) or at its e-mail address: [edpubs@inet.ed.gov](mailto:edpubs@inet.ed.gov).

If you request an application package from ED Pubs, be sure to identify the competition to which you want to apply, as follows: CFDA number 84.328C or 84.328R.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Alternative Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for the competitions announced in this notice.

*Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. For each competition, you must limit Part III to the equivalent of no more than the number of pages listed under "Page Limit" for that

competition in the chart under *Award Information*, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.

- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, the page limit does apply to all of the application narrative (Part III).

We will reject your application if you exceed the page limit; or if you use other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times: Applications Available:* See chart. *Deadline for Transmittal of Applications:* See chart.

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice. *Deadline for Intergovernmental Review:* See chart.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for each of

the competitions announced in this notice.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. The Training and Information for Parents of Children with Disabilities competitions, CFDA Numbers 84.328C and 84.328R, announced in this notice are included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at <http://www.Grants.gov>. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Training and Information for Parents of Children with Disabilities program competitions—CFDA Numbers 84.328C and 84.328R at <http://www.Grants.gov>. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.328, not 84.328C).

Please note the following:

- Your participation in Grants.gov is voluntary.

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the

Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for the competition to which you are applying to ensure that you submit your application in a timely manner to the Grants.gov system. You also can find the Education Submission Procedures pertaining to Grants.gov at <http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf>.

- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see [http://www.grants.gov/applicants/get\\_registered.jsp](http://www.grants.gov/applicants/get_registered.jsp)). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see <http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf>). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please

note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

**Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:** If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your

application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

#### b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

*By mail through the U.S. Postal Service:* U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.328C or 84.328R), 400 Maryland Avenue, SW., Washington, DC 20202-4260; or

*By mail through a commercial carrier:* U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.328C or 84.328R), 7100 Old Landover Road, Landover, MD 20785-1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

*c. Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,  
Application Control Center, Attention:  
(CFDA Number 84.328C or 84.328R),  
550 12th Street, SW., Room 7041,  
Potomac Center Plaza, Washington, DC  
20202-4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

**V. Application Review Information**

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package for each competition announced in this notice.

2. *Peer Review:* In the past, the Department has had difficulty finding peer reviewers for certain competitions, because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific group. This procedure will make it easier for the Department to find peer reviewers, by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process while permitting panel members to review applications under discretionary grant competitions for which they also have submitted

applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

**VI. Award Administration Information**

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary also may require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to <http://www.ed.gov/fund/grant/apply/appforms/appforms.html>.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993, the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Training and Information for Parents of Children with Disabilities program. The measures focus on: The extent to which projects provide high-quality materials, the relevance of project products and services to educational and early intervention policy and practice, and the usefulness of products and services to improve educational and early intervention policy and practice.

Grantees will be required to provide information related to these measures.

Grantees also will be required to report information on their projects'

performance in annual reports to the Department (34 CFR 75.590).

**VII. Agency Contact**

*For Further Information Contact:*

See chart in the *Award Information* section in this notice for the name, room number, and telephone number of the contact person for each competition. You can write to the contact person at the following address: U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza (PCP), Washington, DC 20202-2600.

If you use a TDD, call the FRS, toll-free, at 1-800-877-8339.

**VIII. Other Information**

*Alternative Format:* Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202-2550. Telephone: (202) 245-7363. If you use a TDD, call the FRS, toll-free, at 1-800-877-8339.

*Electronic Access to This Document:* You can 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>.

Dated: March 13, 2008.

**Tracy R. Justesen,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. E8-5497 Filed 3-18-08; 8:45 am]

**BILLING CODE 4000-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****Combined Notice of Filings**

March 13, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP99-176-156.

*Applicants:* Natural Gas Pipeline Co of America.

*Description:* Natural Gas Pipeline Company of America LLC submits amendment to the Transportation Rate Schedule FTS Agreement with negotiated rate between Natural and JP Morgan Ventures Energy Corporation.

*Filed Date:* 03/11/2008.

*Accession Number:* 20080312-0148.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 24, 2008.

*Docket Numbers:* RP08-165-001.

*Applicants:* Texas Gas Transmission, LLC.

*Description:* Texas Gas Transmission, LLC submits Substitute Second Revised Sheet 402 et al to FERC Gas Tariff, Second Revised Volume 1, to be effective March 1, 2008.

*Filed Date:* 03/11/2008.

*Accession Number:* 20080312-0073.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 24, 2008.

*Docket Numbers:* RP08-269-000.

*Applicants:* Quest Pipelines (KPC).

*Description:* Quest Pipelines (KPC) submits proposed revisions to First Revised Sheet 173 and 349 to FERC Gas Tariff, Second Revised Volume 1, to be effective April 11, 2008.

*Filed Date:* 03/11/2008.

*Accession Number:* 20080312-0071.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 24, 2008.

*Docket Numbers:* RP08-270-000.

*Applicants:* Garden Banks Gas Pipeline, LLC.

*Description:* Garden Banks Gas Pipeline, LLC submits its FERC Gas Tariff, Original Volume 1 an original of its Second Revised Sheet 226 to be effective June 1, 2007.

*Filed Date:* 03/07/2008.

*Accession Number:* 20080311-0396.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 19, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously

intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E8-5534 Filed 3-18-08; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****Combined Notice of Filings #1**

March 12, 2008.

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC08-36-001.

*Applicants:* Consolidated Edison Development, Inc.; CED/SCS

Newington, LLC; North American Energy Alliance, LLC.

*Description:* Consolidated Edison Development, Inc et al submits response to the 3/3/08 deficiency letter, updated of certain information provided in the 1/9/08 filed application with regard to purchasers.

*Filed Date:* 03/10/2008.

*Accession Number:* 20080312-0128.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 17, 2008.

*Docket Numbers:* EC08-52-000.

*Applicants:* Noble Thumb Windpark, LLC; Noble Thumb Windpark I, LLC; Babcock & Brown Renewable Holdings Inc.

*Description:* Noble Thumb Windpark, LLC and Noble Thumb Windpark I, LLC et al submits the Joint Application for authorization for the sale by Noble Thumb and acquisition by BBRH of 100% membership interests and requests for waivers of filing requirements.

*Filed Date:* 03/06/2008.

*Accession Number:* 20080311-0175.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 27, 2008.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER04-230-033;

ER01-3155-023; ER01-1385-032;

EL01-45-031.

*Applicants:* New York Independent System Operator, Inc.

*Description:* NYISO's 13th quarterly report regarding progress to resolve the issue of penalty exemptions for grouped generating facilities whose output is metered at a single location during start-up and shutdown periods.

*Filed Date:* 02/29/2008.

*Accession Number:* 20080229-5018.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 21, 2008.

*Docket Numbers:* ER07-1071-004;

ER07-1072-004.

*Applicants:* PJM Interconnection L.L.C.

*Description:* Refund Report of PJM Interconnection, L.L.C. and Virginia Electric and Power Company.

*Filed Date:* 03/10/2008.

*Accession Number:* 20080310-5041.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 31, 2008.

*Docket Numbers:* ER08-649-000.

*Applicants:* EFS Parlin Holdings LLC.

*Description:* EFS Parlin Holdings LLC's application for Market-Based Rate Authority Request for Waivers and Pre-Approvals, and Request for Finding of Qualifications as Category 1 Seller.

*Filed Date:* 03/10/2008.

*Accession Number:* 20080311-0399.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 31, 2008.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES08–29–001.

*Applicants:* Entergy Services, Inc.

*Description:* Supplement to Joint Application of Entergy Services, Inc., *et al.*

*Filed Date:* 03/12/2008.

*Accession Number:* 20080312–5023.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 21, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or

call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E8–5535 Filed 3–18–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings # 1

March 13, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG08–32–000.

*Applicants:* Grand Ridger Energy LLC.

*Description:* Grand Ridger Energy LLC submits its Amended and Restated Notice of Self-Certification of Exempt Wholesale Generator Status.

*Filed Date:* 03/07/2008.

*Accession Number:* 20080313–0098.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 28, 2008.

*Docket Numbers:* EG08–42–000.

*Applicants:* Invenergy Nelson, LLC.

*Description:* Invenergy Nelson, LLC submits Amended and Restated Notice of Self-Certification of Exempt Wholesale Generator Status.

*Filed Date:* 03/07/2008.

*Accession Number:* 20080313–0099.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 28, 2008.

*Docket Numbers:* EG08–43–000.

*Applicants:* Turkey Track Energy Wind LLC.

*Description:* Turkey Track Energy Wind, LLC submits its amended and restated Notice of Self-Certification of Exempt Wholesale Generator Status.

*Filed Date:* 03/10/2008.

*Accession Number:* 20080313–0097.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 31, 2008.

*Docket Numbers:* EG08–49–000.

*Applicants:* NRG Southaven LLC.

*Description:* Self Certification of Exempt Wholesale Generator Status of NRG Southaven LLC.

*Filed Date:* 03/12/2008.

*Accession Number:* 20080312–5139.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, April 02, 2008.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER04–432–005; ER04–433–005.

*Applicants:* Bangor Hydro-Electric Company; New England Power Pool

*Description:* ISO New England Inc submits a Report on Intra-zonal

Deliverability. New England Power Pool *et al.*

*Filed Date:* 02/29/2008.

*Accession Number:* 20080306–0021.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 21, 2008.

*Docket Numbers:* ER07–628–002;

ER07–629–002; ER07–630–002.

*Applicants:* Entergy Services, Inc.

*Description:* Entergy Arkansas, Inc. submits report of refunds pursuant to FERC letter order of February 6, 2008.

*Filed Date:* 03/10/2008.

*Accession Number:* 20080312–0146.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 31, 2008.

*Docket Numbers:* ER08–296–002.

*Applicants:* Midwest Independent Transmission System Operator, Inc.; Midwest ISO Transmission Owners.

*Description:* Midwest Independent Transmission System Operator, Inc. and Midwest ISO Transmission Owners submits proposed revisions to the Midwest ISO's Open Access Transmission and Energy Markets Tariff etc.

*Filed Date:* 03/03/2008.

*Accession Number:* 20080306–0024.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 24, 2008.

*Docket Numbers:* ER05–349–004.

*Applicants:* Georgia Energy Cooperative.

*Description:* Georgia Energy Cooperative submits an amendment to the notice of non-material change in status and filing in compliance with Order 697.

*Filed Date:* 03/07/2008.

*Accession Number:* 20080312–0024.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 28, 2008.

*Docket Numbers:* ER08–564–001.

*Applicants:* Vision Power Systems, Inc.

*Description:* Vision Power Systems Inc. submits supplemental documents following the discussion with staff on 3/3/08.

*Filed Date:* 03/05/2008.

*Accession Number:* 20080307–0074.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 26, 2008.

*Docket Numbers:* ER08–596–001.

*Applicants:* PJM Interconnection, LLC.

*Description:* PJM Interconnection LLC submits amendment to Schedule 12 of the Restated and Restarted Operating Agreement to update their member list etc.

*Filed Date:* 03/11/2008.

*Accession Number:* 20080312–0134.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 01, 2008.

*Docket Numbers:* ER08–649–000.

*Applicants:* EFS Parlin Holdings L.L.C.

*Description:* EFS Parlin Holdings LLC's application for Market-Based Rate Authority Request for Waivers and Pre-Approvals, and Request for Finding of Qualifications as Category 1 Seller.

*Filed Date:* 03/10/2008.

*Accession Number:* 20080311-0399.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 31, 2008.

*Docket Numbers:* ER08-650-000.

*Applicants:* Mountain Wind Power, LLC.

*Description:* Petition of Mountain Wind Power LLC for order accepting market-based rate tariff for filing and granting waivers and blanket approvals and request for expedited action re Mountain Wind Power LLC.

*Filed Date:* 03/11/2008.

*Accession Number:* 20080312-0132.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 01, 2008.

*Docket Numbers:* ER08-651-000.

*Applicants:* Ameren Energy Marketing Company.

*Description:* Ameren Energy Marketing Company submits an application to make power sales to its affiliates, the Ameren Illinois Utilities.

*Filed Date:* 03/11/2008.

*Accession Number:* 20080312-0135.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 25, 2008.

*Docket Numbers:* ER08-652-000.

*Applicants:* California Independent System Operator Corporation.

*Description:* California Independent System Operator Corporation submits Notice of Termination of the Participating Generator Agreement with the Northern California Power Agency, to become effective 1/1/00.

*Filed Date:* 03/11/2008.

*Accession Number:* 20080312-0131.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 01, 2008.

*Docket Numbers:* ER08-653-000.

*Applicants:* Union Electric Company.

*Description:* Union Electric Company submits an application to make power sales to its affiliates the Ameren Illinois Utilities.

*Filed Date:* 03/11/2008.

*Accession Number:* 20080312-0130.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 25, 2008.

*Docket Numbers:* ER08-654-000.

*Applicants:* California Independent System Operator Corporation.

*Description:* California Independent System Operator Corp et al submits an unexecuted Large Generator Interconnection Agreement with Nevada Hydro Co., Inc.

*Filed Date:* 03/11/2008.

*Accession Number:* 20080312-0129.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 01, 2008.

*Docket Numbers:* ER08-655-000.

*Applicants:* California Independent System Operator Corporation.

*Description:* California Independent System Operator Corp submits an amendment to the amended and restated Metered Subsystem Aggregator Agreement with Northern California Power Agency.

*Filed Date:* 03/11/2008.

*Accession Number:* 20080313-0065.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 01, 2008.

*Docket Numbers:* ER08-656-000.

*Applicants:* Shell Energy North America (U.S.), LP.

*Description:* Petition of Shell Energy North America (U.S.) LP for order accepting market-based rate tariff for filing, granting waivers and blanket approvals, and request for expedited action.

*Filed Date:* 03/11/2008.

*Accession Number:* 20080313-0067.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 01, 2008.

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Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission,

888 First St., NE., Washington, DC 20426.

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**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E8-5536 Filed 3-18-08; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

March 14, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP96-320-081.

*Applicants:* Gulf South Pipeline Company, LP.

*Description:* Amendment to Negotiated Rate Letter Agreement of Gulf South Pipeline Company, LP under RP96-320.

*Filed Date:* 03/04/2008.

*Accession Number:* 20080305-5009.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 19, 2008.

*Docket Numbers:* RP00-426-032.

*Applicants:* Texas Gas Transmission, LLC.

*Description:* Texas Gas Transmission, LLC submits Fourth Revised Sheet 52 *et al.* to Second Revised Volume 1 and a Negotiated Rate Agreement between Texas Gas and Tennessee Valley Authority.

*Filed Date:* 03/12/2008.

*Accession Number:* 20080313-0064.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 24, 2008.

*Docket Numbers:* RP08-226-001.

*Applicants:* High Island Offshore System, L.L.C.

*Description:* High Island Offshore System, LLC submits their request for waiver of its tariff to the extent necessary in the 2/29/08 filing of Seventh Revised Sheet 11 to FERC Gas Tariff, Third Revised Volume 1 etc.

Filed Date: 03/03/2008.

Accession Number: 20080311-0001.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 19, 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.

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**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

[FR Doc. E8-5537 Filed 3-18-08; 8:45 am]

BILLING CODE 6717-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2005-0293; FRL-8354-9]

### Cypermethrin; Response to Comments and Amendment to Reregistration Eligibility Decision; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's intention to modify certain risk mitigation measures that were imposed as a result of the 2006 Reregistration Eligibility Decision (RED) for the pesticide cypermethrin. EPA conducted this reassessment of the cypermethrin RED in response to public comments directed towards product labeling, risk mitigation, and the upcoming registration review process for pyrethroids, pyrethrins, and synergist chemicals. In response to the commenters and continuing efforts to mitigate risk, the Agency has made several modifications to the cypermethrin RED label requirements for pre-construction termiticide applications, spray drift language for agricultural products, and ventilation for total release foggers.

**FOR FURTHER INFORMATION CONTACT:** Dana Friedman, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 347-8827; fax number: (703) 308-7070; e-mail address: [friedman.dana@epa.gov](mailto:friedman.dana@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. How Can I Access this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket

identification (ID) number EPA-HQ-OPP-2005-0293. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgstr>.

## II. Background

### What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. In 2006, EPA issued a RED for cypermethrin under section 4(g)(2)(A) of FIFRA and the Agency received substantive comments. The Agency's response to these comments is available for viewing in the public docket. The amended cypermethrin RED reflects changes resulting from these comments as well as subsequent efforts by the Agency to mitigate overall risk.

## III. What Does this Amendment Do?

The amended cypermethrin RED reflects revisions resulting from Agency consideration of public comments to the RED and efforts to develop standardized label language for certain applications. The label table incorporated into the cypermethrin RED amendment includes modifications which provide mandatory label language for pre-construction termiticide applications, spray drift language for agricultural products, and ventilation requirements for total release foggers.

### List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 6, 2008.

**Peter Caulkins,**

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E8-5292 Filed 3-18-08; 8:45 am]

BILLING CODE 6560-50-S

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2008-0045; FRL-8354-2]

### Nominations to the FIFRA Scientific Advisory Panel; Request for Comments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice provides the names, addresses, professional affiliations, and selected biographical data of persons nominated to serve on the Scientific Advisory Panel (SAP) established under section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Panel was created on November 28, 1975, and made a statutory Panel by amendment to FIFRA, dated October 25, 1988. The Agency is, at this time, selecting two new members to serve on the panel as a result of membership terms that will expire this year. Public comment on the nominations is invited, as these comments will be used to assist the Agency in selecting the new chartered Panel members.

**DATES:** Comments, identified by docket ID number EPA-OPP-2008-0045, must be received on or before April 18, 2008.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2008-0045, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

*Instructions:* Direct your comments to docket ID number EPA-HQ-OPP-2008-0045. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information

claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The Federal [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Joseph E. Bailey, Designated Federal Official, FIFRA SAP, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-2045; fax number: (202) 564-8382; e-mail addresses: [bailey.joseph@epa.gov](mailto:bailey.joseph@epa.gov).

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

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

Tips for preparing your comments. When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

## II. Background

The FIFRA SAP serves as the primary scientific peer review mechanism of the U.S. Environmental Protection Agency (EPA), Office of Prevention, Pesticides and Toxic Substances and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. The FIFRA SAP is a Federal advisory committee, established in 1975 under FIFRA, that operates in accordance with requirements of the

Federal Advisory Committee Act. The FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health (NIH) and the National Science Foundation (NSF). FIFRA, as amended by the FQPA of 1996, established a Science Review Board consisting of at least 60 scientists who are available to the Scientific Advisory Panel on an ad hoc basis to assist in reviews conducted by the Panel. As a peer review mechanism, the FIFRA SAP provides comments, evaluations and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of the FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

The Agency is, at this time, selecting two new members to serve on the permanent panel as a result of membership terms that will expire this year. The Agency requested nominations of experts to be selected from the fields of toxicology, pathology, endocrine disruption and environmental exposure analysis. Nominees should be well published and current in their fields of expertise. The statute further stipulates that we publish the name, address, and professional affiliations in the **Federal Register**.

### III. Charter

A Charter for the FIFRA Scientific Advisory Panel dated October 25, 2006 was issued in accordance with the requirements of the Federal Advisory Committee Act, Public Law 92-463, 86 Stat. 770 (5 U.S.C. App. I).

#### A. Qualifications of Members

FIFRA SAP members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact of pesticides on health and the environment. No persons are ineligible to serve on the Panel by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). The Deputy Administrator appoints individuals to serve on the Panel for staggered terms of 4 years. Panel members are subject to the provisions of 40 CFR part 3, subpart F, Standards of Conduct for Special Government Employees, which include rules regarding conflicts of interest. Each nominee selected by the Deputy

Administrator, before being formally appointed, is requested to submit a confidential statement of employment and financial interests, which shall fully disclose, among other financial interests, the nominee's sources of research support, if any.

In accordance with section 25(d)(1) of FIFRA, the Deputy Administrator shall require all nominees to the Panel to furnish information concerning their professional qualifications, educational background, employment history, and scientific publications.

#### B. Applicability of Existing Regulations

With respect to the requirements of section 25(d) of FIFRA that the Administrator promulgate regulations regarding conflicts of interest, the Charter provides that EPA's existing regulations applicable to Special Government Employees, which include advisory committee members, will apply to the members of the Scientific Advisory Panel. These regulations appear in 40 CFR part 3, subpart F. In addition, the Charter provides for open meetings with opportunities for public participation.

#### C. Process of Obtaining Nominees

In accordance with the provisions of section 25(d) of FIFRA, EPA, in March 2007, requested that the National Institutes of Health (NIH) and the National Science Foundation (NSF) nominate scientists to fill two vacancies soon to occur on the Panel. The Agency requested nominations of experts in the fields of toxicology, pathology, endocrine disruption and environmental exposure analysis. NIH and NSF responded by letter, providing the Agency with a total of 24 nominees. Thirteen of the 24 nominees are interested and available to actively participate in SAP meetings (see Unit IV. of this document). The following 11 nominees are not available:

1. Barnhouse, Lawrence W., Ph.D., LWB Environmental Service, Inc., Hamilton, OH;
2. Daston, George, Ph.D., The Proctor and Gamble Company, Cincinnati, OH;
3. Dement, John, Ph.D., CIH, Duke University Medical Centers, Durham, NC;
4. Faustman, Elaine, Ph.D., DABT, University of Washington, Seattle, WA;
5. MacGregor, James, Ph.D., Toxicology Consulting Services, Arnold, MD;
6. Oberdorster, Eva, Ph.D., Southern Methodist University, Dallas, TX;
7. Piegorsch, Water, Ph.D., University of South Carolina, Columbia, SC;
8. Popp, James, DVM, Ph.D., Stratoxon, Lancaster, PA;

9. Wilson, Elizabeth, Ph.D., University of North Carolina, Chapel Hill, NC;
10. Yager, James, Ph.D., Johns Hopkins University, Baltimore, MD;
11. Welsch, Frank, DVM, Ph.D., DABT, Orbitox, Santa Fe, NM.

### IV. Nominees

The following are the names, addresses, professional affiliations, and selected biographical data of nominees being considered for membership on the FIFRA Scientific Advisory Panel. The Agency expects to select two of the nominees to fill vacancies occurring this year.

1. *Nominee*: Bruckner, James, Ph.D., Professor of Pharmacology and Toxicology, Department of Pharmaceutical and Biomedical Sciences, College of Pharmacy, University of Georgia, Athens, GA.

i. *Expertise*: Toxicology and Toxicokinetics;

ii. *Education*: B.S., Pharmacy, University of Texas at Austin, College of Pharmacy; M.S., Toxicology, University of Texas at Austin; Ph.D., Toxicology, University of Michigan;

iii. *Professional Experience*: James V. Bruckner has a B.S. in pharmacy and a M.S. in Toxicology from the University of Texas, as well as a Ph.D. in Toxicology from the University of Michigan. He has held faculty positions at the University of Kansas, the University of Texas Medical School at Houston, and the University of Georgia (UGA). Dr. Bruckner served as a member of the University of Texas Health Sciences Center internal review (human subjects) board for some 8 years. He is currently Professor of Pharmacology and Toxicology at the UGA College of Pharmacy. He was director of UGA's Interdisciplinary Graduate Program in Toxicology for some 15 years. He is actively engaged in graduate education and in research. Dr. Bruckner has served on the editorial boards of Toxicology and Applied Pharmacology, Journal of Toxicology and Environmental Health, Toxicology, Chemosphere and the International Journal of Toxicology.

Dr. Bruckner's research focus is on the toxicology and toxicokinetics of solvents, drug-solvent interactions at environmental exposure levels, and toxicokinetic bases for susceptibility of children to insecticides and other chemicals. The relevance of experimental designs to "real life" chemical exposures is of particular interest. One current project involves: characterization of presystemic elimination as a protective mechanism against ingestion of trace levels of trichloroethylene (TCE); and determination of the influence of

metabolic interactions of alcohol and other drugs on cancer risks of trace amounts of TCE. Another project involves development of a physiological model to predict the toxicokinetics of pyrethroid insecticides in children and adults. Dr. Bruckner has published more than 200 journal articles, book chapters and abstracts. He has served on a variety of expert panels and committees for the USEPA, NIH, National Aeronautics and Space Administration, Air Force, Agency for Toxic Substances and Disease Registry/Center for Disease Control (CDC), Food and Drug Administration (FDA) and the National Academy of Sciences (NAS). The NAS appointments have included, among others, the Committees on Safe Drinking Water, Pesticides in the Diets of Infants and Children; Health and Safety Consequences of Child Labor; Use of Third Party Toxicity Research with Human Participants; and Toxicology.

2. *Nominee*: Donnelly, Kirby, Ph.D., Professor and Head, Department of Environmental and Occupational Health, Health Science Center, School of Rural Public Health, Texas A and M University, College Station, TX.

i. *Expertise*: Toxicology and Exposure Assessment;

ii. *Education*: B.S., Microbiology, Texas A and M University; Ph.D., Toxicology, Texas A and M University;

iii. *Professional Experience*: Dr. K.C.

Donnelly received a B.S. in Microbiology from Texas A and M University in 1974. After graduation, he worked as a technician for 10 years supervising a variety of field research projects at the Texas A and M farm in Burlison County. In 1984 he entered a doctoral program and earned a Ph.D. in Toxicology in 1988. Afterwards, he was employed as a Post-Doctoral Research Associate under the direction of Dr. Kirk Brown in the Soil & Crop Sciences Department at Texas A and M. He accepted a faculty position in 1991 and is currently a Professor and Head of the Environmental & Occupational Health Department in the School of Rural Public Health at the Texas A and M University System Health Science Center. Teaching responsibilities include an undergraduate course in Public Health Practices and two graduate courses, the first covering Basic Environmental Toxicology and a second lab course reviewing methods for Chemical Hazard Assessment. Dr. Donnelly also organizes workshops on Environmental Health for public health professionals, most recently in June, 2007 in Baku, Azerbaijan. He also provides continuing education courses for nurses and physicians in "Children's Environmental Health" and "Safe

Drinking Water." Dr. Donnelly currently serves as the Director of the Integrated Health Sciences Facility Core for the National Institute for Environmental Health and Safety (NIEHS) Center for Environmental & Rural Health; and, he is the Associate Director for the NIEHS funded Superfund Basic Research Program at Texas A and M.

Responsibilities for the Environmental Health Center include analytical support and sample collection for human population studies; and, support for Community Outreach and Education activities. For the Superfund Basic Research Program, Dr. Donnelly is the principal investigator for Project 2, Genotoxicity of Complex Mixtures and supervises cell culture, whole animal and human population studies to obtain information regarding population exposures and toxicity of complex chemical mixtures. He is currently involved in exposure studies in Azerbaijan, Czech Republic, Shanxi, China and numerous locations in the United States. Dr. Donnelly has conducted research on childhood exposure to pesticides for more than 10 years. Most recently, this has included a collaborative study with the Centers for Disease Control and EPA to conduct a longitudinal study on pesticide exposure in children from 90 households in four rural communities. He is currently in the second year of a 3 year Health Resources and Service Administration (HRSA) project to investigate the utility of health education as an intervention to reduce childhood exposure to pesticides in Texas colonias. This project employs promotoras (community health workers) to deliver health education to individual families, and monitors behavioral changes through a household inventory of pesticide use and by monitoring urinary elimination of pesticides in children. Dr. Donnelly has more than 30 years experience in basic and applied research. More recent activities have incorporated health promotion activities into research protocols as a means of preventing disease by reducing exposures. Dr. Donnelly is also involved in collaboration with the Texas Department of State Health Services, the Webb County Health Department, and the Poison Control Center in San Antonio to develop a "Physicians Handbook for Pesticide Exposures."

3. *Nominee*: Harwell, Mark, Ph.D., Ecosystems Ecologist and Partner, Harwell Gentile & Associates, LC, Hammock, FL.

i. *Expertise*: Ecological risk assessment and ecosystem management;

ii. *Education*: B.S., Biology, Emory University; M.S., Marine Ecology,

University of Miami, Institute of Marine Science; Ph.D., Systems Ecology, Emory University;

iii. *Professional Experience*: Dr. Harwell is an ecosystems ecologist with expertise in ecological risk assessments and ecosystem management. He (with colleague Dr. Jack Gentile) is currently a Partner in Harwell Gentile & Associates, LC, following a 25-year career in academia at Cornell University, the University of Miami Rosenstiel School, and Florida A and M University. Drs. Harwell and Gentile were leaders in the development of the USEPA ecological risk assessment framework, and have led several large risk assessments, including comparative ecological risk assessments of oil spills in Tampa Bay and the Bay of Fundy; an ecological risk assessment of the effects of climate change and the South Florida ecosystem restoration on the Everglades and Biscayne Bay; an ecotoxicological risk assessment of the Coeur d'Alene River watershed; and an assessment of the current ecological significance of effects from the Exxon Valdez oil spill on Prince William Sound. Dr. Harwell led a series of interdisciplinary studies on human interactions with the South Florida environment, including field, mesocosm, and modeling studies in Biscayne Bay and the Florida Keys National Marine Sanctuary. He coordinated interdisciplinary studies in five National Estuarine Research Reserves, developing conceptual models of coupled human-environment systems, and contributing to ecological assessments using remote sensing and hyperspectral imagery. Dr. Harwell served for more than a decade as a member of the USEPA Science Advisory Board (SAB), including two terms as Chair of the Ecological Processes and Effects Committee. He led the ecological risk component of the USEPA Unfinished Business Project, and was a member of the USEPA SAB Reducing Risk project. He chaired the U.S. Man and the Biosphere Human-Dominated Systems Directorate, and led its project on ecological sustainability, ecosystem management, and an ecosystem integrity report card framework. He led the Scientific Committee on Problems of the Environment (SCOPE) 5-year international study to assess the global environmental consequences of nuclear war (ENUWAR), with emphasis on ecological responses to climate change. He directed the PAN-EARTH Project, a series of national-level case studies on the ecological and agricultural effects of climate variability on Venezuela, India, Japan, China, and Sub-Saharan Africa; he was a member of the U.S. Global

Change Research Program's National Assessment working group on coastal resources effects; and he serves as an expert reviewer for the Intergovernmental Panel on Climate Change. He served on the National Academy of Sciences panel on ecological risks in the United States and Poland, and was a member of the NAS panel on risk communications. Dr. Harwell also served as a member of the National Academy of Sciences Board on Environmental Studies and Toxicology, and was elected a Fellow of the American Association for the Advancement of Science.

4. *Nominee*: Haschek-Hock, Wanda, Ph.D., DVM, DACVP, DABT, Veterinary Pathologist and Professor of Comparative Pathology, Department of Pathobiology, College of Veterinary Medicine, University of Illinois, Urbana, IL.

i. *Expertise*: Veterinary and Toxicologic Pathology;

ii. *Education*: BVSc (DVM equivalent), University of Sydney; Ph.D., Veterinary Pathology, Cornell University;

iii. *Professional Experience*: Dr. Wanda M. Haschek-Hock, a veterinary pathologist and Professor of Comparative Pathology at the University of Illinois College of Veterinary Medicine, has over 30 years of experience in veterinary and toxicologic pathology including teaching, research and service. Dr. Haschek-Hock received her BVSc (DVM equivalent) from the University of Sydney and her Ph.D. from Cornell University. She is a diplomate of the American College of Veterinary Pathologists (ACVP) and the American Board of Toxicology (ABT). Her research has been in the pathophysiology of chemicals and natural toxins found in the environment with the current focus on mycotoxins and food safety. She has over 100 scientific peer reviewed publications in the fields of pathology and toxicology, and is senior editor of the Handbook of Toxicologic Pathology (1991, 2002) and Fundamentals of Toxicologic Pathology (1998) published by Academic Press. She developed and directs the Graduate Training Program in Toxicologic Pathology and the biannual international continuing education course in Industrial Toxicology and Pathology. She served as head of the department for 6 years. In regard to professional service, she has served as President of the Society of Toxicology's Comparative and Veterinary Specialty Section, on the Board of Directors of the American Board of Toxicology; as Associate Editor for Toxicological Sciences and currently for Toxicologic

Pathology; as Editorial Board member for Fundamental and Applied Toxicology, Veterinary Pathology and Toxicologic Pathology. She has also served as Councilor of the American College of Veterinary Pathologists and as Executive Committee member and Secretary Treasurer of the Society of Toxicologic Pathology. She has served on the USFDA Veterinary Medicine Advisory Committee for the Center for Veterinary Medicine and as an ad hoc member for the EPA's FIFRA Scientific Advisory Panel. She was awarded the Society of Toxicologic Pathology's Achievement Award in 2007.

5. *Nominee*: Kelly, Elizabeth J., Ph.D., Statistician, Statistical Sciences Group, Los Alamos National Laboratory, Los Alamos, NM.

i. *Expertise*: Environmental Statistics and Risk Analysis;

ii. *Education*: B.S., M.A., Mathematics, University of Southern California; Ph.D., Biostatistics, University of California at Los Angeles;

iii. *Professional Experience*: Elizabeth J. Kelly has a Ph.D. in Biostatistics from the University of California at Los Angeles and a M.A. and a B.S. in Mathematics from the University of Southern California. Dr. Kelly has worked in the areas of risk assessment, statistics and operations research, using these disciplines to solve problems in the fields of environmental risk, defense and medicine. Dr. Kelly is a staff member in the Statistical Sciences Group at Los Alamos National Laboratory. The mission of the Statistical Sciences Group is to bring statistical reasoning and rigor to multi-disciplinary scientific investigations through development, application, and communication of cutting-edge statistical sciences research. Dr. Kelly's research has focused on environmental risk assessments and environmental statistics. She led the Risk Assessment Team for the Environmental Restoration Program at Los Alamos, developing, documenting, and communicating a cost-effective, defensible technical approach for data collection, data evaluation, and human health and ecological risk assessments in support of environmental decision-making. Dr. Kelly has served on numerous NSF and EPA grant panels. She served on the NSF Advisory Committee for Environmental Research and Education (2000–2004) and was a contributor to the NSF report, Complex Environmental Systems, Synthesis for Earth, Life, and Society in the 21st Century. Dr. Kelly also chaired the Committee of Visitors (COV) for the NSF Biocomplexity Program, co-authoring the "COV Report for Biocomplexity in the Environment."

In addition Dr. Kelly served on the NSF Advisory Committee for Government Performance and Results Act, which evaluates all of the NSF funded programs and reports to congress.

6. *Nominee*: Klaassen, Curtis, Ph.D., DABT, Distinguished Professor and Chairman of the Department of Pharmacology, Toxicology and Therapeutics; University of Kansas, Kansas City, KS.

i. *Expertise*: Toxicology;

ii. *Education*: B.A., Biology, Wartburg College; M.S., Pharmacology, University of Iowa; Ph.D., Pharmacology, University of Iowa;

iii. *Professional Experience*: Dr. Klaassen is University Distinguished Professor and Chairman of the Department of Pharmacology, Toxicology and Therapeutics at the University of Kansas Medical Center in Kansas City, Kansas. He received his B.S. from Wartburg College in Waverly, Iowa in 1964, and a M.S. and Ph.D. in Pharmacology from the University of Iowa in 1966 and 1968, respectively. He has been on the faculty at the University of Kansas Medical Center since 1968. Dr. Klaassen is certified in toxicology by the American Board of Toxicology (1980) and the Academy of Toxicological Sciences (1991).

Dr. Klaassen's research interests have centered on how we adapt to chemicals in the environment. Studies have included the hepatobiliary disposition of xenobiotics, the toxicity of cadmium, the hepatotoxicity of chemicals, and mechanisms of chemical-induced thyroid tumors. He has published over 400 peer-reviewed articles, and more than 75 review articles and chapters for books. He received the Achievement Award from the Society of Toxicology in 1978 for his research accomplishments. He was cited by Eugen Garfield in *Current Contents* (January 18, 1993) as the scientist that had the fourth highest scientific impact in the United States in the study of xenobiotics (drugs and other chemicals), and in 2002 was named a "Highly Cited Researcher" in Pharmacology (top 0.5%) by the Institute for Scientific Information.

Dr. Klaassen has been an associate editor of a number of journals including the *Journal of Pharmacology and Experimental Therapeutics* for 24 years and *Toxicology and Applied Pharmacology* for 10 years. He was the first Editor-in-Chief of *Toxicological Sciences*, the new journal of the Society of Toxicology. He has served on numerous national and international committees including those with the National Institutes of Health, the Food and Drug Administration, the National

Library of Medicine, the Environmental Protection Agency, the National Academy of Science, the National Toxicology Program, the National Institute of Occupational Safety and Health, International Life Science Institute, United States Air Force, World Health Organization, Agency for Toxic Substances and Disease Registry, American Dental Association, and International Agency for Research on Cancer.

Dr. Klaassen has been elected by his peers to many national and international offices in toxicology, including President of the Society of Toxicology (USA) in 1990–1991, as well as President of the International Union of Toxicology (1992–1995). He was also President of the Seventh International Congress of Toxicology (1995) and the Fourth International Metallothionein Meeting (1997).

Dr. Klaassen is a leader in toxicology education. He has trained over 80 Ph.D. and Postdoctoral students. He is Founder (1980) and Course Director of the Mid-America Toxicology Course, an annual postgraduate course in toxicology. He is author of the toxicology section of Goodman and Gilman's *Pharmacological Basis of Therapeutics* and Editor of Casarett and Doull's *Toxicology: The Basic Science of Poisons*. He has presented over 400 lectures on toxicology around the world. He received the "Education Award" from the Society of Toxicology in 1993.

7. *Nominee*: Klaine, Stephen J., Ph.D., Professor, Department of Biological Sciences, Clemson University, Clemson, SC.

i. *Expertise*: Environmental Toxicology;

ii. *Education*: B.S., Biology, University of Cincinnati, M.S., Environmental Science, Rice University; Ph.D., Environmental Science, Rice University;

iii. *Professional Experience*: Stephen J. Klaine is a Professor in the Department of Biological Sciences and the Graduate Program of Environmental Toxicology at Clemson University. His research interest involves quantifying the impact of land use on aquatic ecosystems and developing strategies by which economically viable land-use can coexist with good environmental quality. He received his doctorate from the Department of Environmental Science and Engineering, Rice University in 1982 and has spent the last 25 years conducting environmental research and educating graduate students. He joined the Department of Biology, University of Memphis, in 1982 where he developed an undergraduate concentration in toxicology, an

extramurally-funded research program in environmental toxicology, and a graduate program. In 1991, he moved his laboratory to Clemson University to help found the graduate program in environmental toxicology. Current research in his laboratory focuses on characterizing the bioavailability of metals and pesticides in aquatic systems; the comparative phytotoxicity of pesticides; the response of aquatic organisms to episodic contaminant exposures; the water quality consequences of land use; the effects of pharmaceuticals on fish behavior; the bioavailability of single-walled carbon nanotubes in aquatic systems; and the bioavailability of PCBs in aquatic systems and the movement of PCBs through the aquatic and terrestrial food chain.

Dr. Klaine has published over 100 scientific publications and has served as principal investigator or co-principal investigator on over \$8 million in research funding. He has previously served on the board of directors for the Society of Environmental Toxicology and Chemistry (SETAC) and is currently an aquatic toxicology editor for the journal *Environmental Toxicology and Chemistry*. He also sits on the board of the SETAC foundation and is a member of SETAC World Council finance committee. In the last decade, he has served on several USEPA Scientific Advisory Panels and workshops involving pesticide and metal fate, effects and risk. Most recently, he received the Outstanding Researcher award from the Sigma Xi chapter at Clemson University.

8. *Nominee*: Krieger, Robert I., Ph.D., Cooperative Extension Specialist (Toxicology), Department of Entomology, Personal Chemical Exposure Program, University of California at Riverside, Riverside, CA.

i. *Expertise*: Toxicology and Exposure Assessment;

ii. *Education*: B.S., Chemistry, Pacific Lutheran University; Ph.D., Toxicology, Cornell University;

iii. *Professional Experience*: Dr. Krieger is a Cooperative Extension Toxicologist in the Department of Entomology, University of California at Riverside and a member of the Graduate Program in Environmental Toxicology. He holds a B.S. cum laude in Chemistry from Pacific Lutheran University (1967) and a Ph.D. from Cornell University (1970) where he was a student in the Department of Entomology and NIEHS Trainee in Environmental Toxicology. Graduate study fields included toxicology, physiology and biochemistry. He has held tenured academic appointments at the

University of California at Davis (1971–1980) and in the Washington-Oregon-Idaho Regional Veterinary Medical Education Program (1981–1986) where he was Professor of Veterinary and Comparative Toxicology. In 1986 he became staff toxicologist and later Branch Chief, Worker Health and Safety, California Department of Food and Agriculture (now California EPA). Dr. Krieger worked with two major Washington D.C. consulting firms (1991–1994) in exposure and risk assessment before returning to the University of California as an Extension Toxicologist (1994-present) specializing in pesticide exposure assessment and worker health and safety. He has taught toxicology at both the undergraduate and graduate levels and received several teaching awards including the Society of Toxicology's Education Award in 1986. His research concerns the fate and effects of pesticides in humans, risk assessment, and risk communication. Current studies concern methods and techniques for determining the availability of chemical residues on surfaces, exposure biomonitoring of urban and agricultural populations that are exposed to pesticides and other chemicals. At the University of California at Riverside, Dr. Krieger heads the Personal Chemical Exposure Program that includes research and extension activities in urban and agricultural settings. He also headed the distinguished editorial team that produced the Handbook of Pesticide Toxicology (2001).

9. *Nominee*: La Point, Thomas, Ph.D., Director of the Institute of Applied Sciences and Professor and Senior Scientist in the Department of Biological Sciences, University of North Texas, Denton, TX.

i. *Expertise*: Ecosystem Toxicology;

ii. *Education*: B.S., Zoology and Physiology, University of Wyoming; M.S., Population Biology, University of Houston; Ph.D., Aquatic Biology, Idaho State University;

iii. *Professional Experience*: Dr. La Point directs the Institute of Applied Sciences at the University of North Texas and is a Professor in the Department of Biological Sciences. He received his Ph.D. from the Department of Biological Sciences at Idaho State University in Aquatic Biology. His primary research and teaching interests include contaminant effects on freshwater aquatic communities, specifically in how metals and organic contaminants affect benthic population dynamics and freshwater fisheries. He has published on ecosystem measures, contaminant bioaccumulation, and sub-lethal effects on aquatic populations. Dr.

La Point has served on several USEPA Scientific Advisory Panels concerned with pesticides and ecological risk and has worked as a consultant on Superfund issues at large sites. Dr. La Point also served on a National Academy of Science NRC Committee on Superfund Site Assessment and Remediation in the Coeur d'Alene River Basin. He is serving as Chair of a Water Environment Research Foundation subcommittee on whole-effluent testing as an indicator of aquatic health. He has served on several NSF, USEPA and United States Geological Survey panels to review proposals submitted for funding. He is on the editorial board for Chemosphere and Environmental Toxicology and Pharmacology and has served as Editor of the Society of Environmental Toxicology and Chemistry (SETAC) Special Publication Series. Dr. La Point's current research is funded by the USEPA, U.S. Army Corps of Engineers, and the City of Denton, TX.

10. *Nominee*: Law, Jerry, DVM, Ph.D., ACVP, Associate Professor of Pathology and Aquatic Ecotoxicology, Department of Population Health and Pathobiology, College of Veterinary Medicine, North Carolina State University, Raleigh, NC.

i. *Expertise*: Pathology;

ii. *Education*: D.V.M., Veterinary Medicine, Louisiana State University, Baton Rouge, LA; Ph.D., Veterinary Pathology, Louisiana State University, Baton Rouge, LA;

iii. *Professional Experience*: Dr. Law received his D.V.M in Veterinary Medicine from Louisiana State University in 1985 and his Ph.D. in Veterinary Pathology from Louisiana State University in 1995. He is a certified Diplomate of the American College of Veterinary Pathologists and serves as an Education Committee Member of the American College of Veterinary Pathologists, as an Advisory Board Member of the Genetics and Environmental Mutagenesis Society and as a Council Member of the North Carolina Society of Toxicology. Dr. Law's research focuses on mechanisms of carcinogenesis and comparative pathology of aquatic animals. The approach is twofold:

a. Mechanistic investigations using histopathology, molecular biology, and analytical techniques such as gas chromatography/mass spectrometry and high performance liquid chromatography with electrochemical detection to further establish small fish species as viable alternative animal models in toxicologic testing. Fish models such as the medaka, *Oryzias latipes*, and the zebrafish, *Danio rerio*, are used in these studies.

b. Laboratory, mesocosm, and field investigations designed to establish reliable biological markers in aquatic organisms as sentinels of environmental degradation. These biomarkers incorporate histopathology, clinical pathology, and immunologic techniques to determine the health of aquatic animals and ecosystems. Expected benefits of Dr. Law's research include increased knowledge of basic mechanisms of carcinogenesis, more rapid and economical testing of potential carcinogens, sensitive monitoring of aquatic pollutants, and better assessment of seafood safety.

11. *Nominee*: Pope, Carey, Ph.D., Professor, Head and Sitlington Chair in Toxicology, Department of Physiological Sciences, College of Veterinary Medicine, Oklahoma State University, Stillwater, OK.

i. *Expertise*: Toxicology;

ii. *Education*: B.S., Biology, Austin State University; M.S., Biology, Austin State University; Ph.D., Pharmacology/Toxicology, University of Texas Graduate School of Biomedical Sciences;

iii. *Professional Experience*: Dr. Carey Pope is Professor, Head and Sitlington Chair in Toxicology in the Department of Physiological Sciences at the Oklahoma State University Center for Veterinary Health Sciences, Stillwater, Oklahoma. He received a Ph.D. degree from the University of Texas Graduate School of Biomedical Sciences in Houston, Texas in 1985, and completed postdoctoral training in the Neurology Department at Baylor College of Medicine (1985) and the U.S. Environmental Protection Agency's National Health and Environmental Effects Research Laboratory (1986–1989). He previously served on the faculty of the College of Pharmacy, University of Louisiana at Monroe (1989–1999). Dr. Pope's research primarily involves the evaluation of intrinsic and extrinsic factors that modify neurotoxicity from exposure to acetylcholinesterase inhibitors. He has previously served as a consultant for the U.S. Army's external research programs, was a member of the NAS/National Research Council Subcommittee on Toxicologic Assessment of Low-Level Exposures to Chemical Warfare Agents and is currently a member of the NIEHS Neurotoxicology and Alcohol study section. Dr. Pope has been a member of the Food Quality Protection Act Science Review Board since 1996.

12. *Nominee*: Spitsbergen, Jan, Ph.D., DVM, ACVP, Research Assistant Professor, Center for Fish Disease Research, Oregon State University, Corvallis, OR.

i. *Expertise*: Veterinary Pathology and Toxicology;

ii. *Education*: B.S., Fisheries and Wildlife, Michigan State University; D.V.M., Michigan State University College of Veterinary Medicine; Ph.D., Immunology and Pathology, Cornell University;

iii. *Professional Experience*: Dr. Spitsbergen is one of a few board-certified veterinary pathologists in the world who has strong expertise in fish diseases, fish pathology, and toxicologic pathology. She taught finfish histology, histopathology and tumor biology for 7 years in the Aquavet Program, an educational program based in Woods Hole, MA, to train veterinarians, veterinary students, and fish health scientists about aquatic animal health, husbandry, and diseases. She has conducted field epidemiology and experimental laboratory research studies in fish toxicology and pathology for over 25 years. Her research includes studies in early life stage toxicity of environmental contaminants; effects of toxicants on sex determination, fertility and fecundity; effects of halogenated aromatic hydrocarbons on disease resistance and immune responses; naturally occurring thiamine deficiency as the cause of early life stage mortality in salmonids in natural waters; field and laboratory studies of the complex causes of epizootics of neoplasia in skin and liver of fish. She has focused her research on spontaneous and carcinogen-induced tumors in zebrafish for the past 12 years. She has collaborated with scientists from the University of Oregon, the University of Wisconsin at Madison, Children's Hospital and the Dana Farber Cancer Research Institute at Harvard University, the National University of Singapore, and biotechnology companies in the United States and Hungary. Recently her collaborations involve development of zebrafish models for the study of Fanconi anemia, an inherited disease of humans that results in aplastic anemia or leukemia by young adulthood. Survivors of the current treatment of choice, a bone marrow transplant, are at high risk for developing solid tumors such as squamous cell carcinoma of head and neck. Fanconi anemia results from genomic instability and increased susceptibility to oxidant damage when homozygous mutation occurs in one of 12 genes in the Fanconi anemia signaling network. Dr. Spitsbergen also studies myelodysplastic syndrome and leukemia which occur spontaneously in certain mutant lines of zebrafish. One remarkable finding in Dr. Spitsbergen's recent zebrafish tumor research is the

fact that diet and husbandry systems can profoundly influence tumor incidences in tanks of zebrafish. These findings are important because zebrafish husbandry practices are much less standardized currently than the protocols for most other laboratory animals like mice.

13. *Nominee:* Timchalk, Charles, Ph.D., DABT, Staff Scientist, Pacific Northwest National Laboratories, Center for Biological Monitoring and Modeling, Richland, WA.

i. *Expertise:* Toxicology;

ii. *Education:* B.S., Biology, State University of New York at Oneonta; Ph.D., Toxicology/Pharmacology, The Albany Medical College of Union University;

iii. *Professional Experience:* Charles Timchalk received a B.S. in Biology in 1978 from the State University of New York, and a Ph.D. in 1986 from the Department of Pharmacology and Toxicology, The Albany Medical College. He is currently certified as a Diplomat of the American Board of Toxicology. In 1986 he joined the Dow Chemical Company as a post-doctoral fellow within the Biotransformation and Molecular Toxicology Group of the Toxicology Research Laboratory. At Dow he was a research and technical leader within the Pharmacokinetics and Metabolism group prior to accepting his current position. In 1997 he joined the Center for Biological Monitoring and Modeling within Battelle Pacific Northwest Laboratory as a Staff Scientist. In this position he is continuing to pursue his interest in the application of pharmacokinetics for evaluation of human health risk. His research is currently focused around three themes:

a. The development of new technologies and approaches for non-invasive biological monitoring;

b. Advancing pharmacokinetic and pharmacodynamic modeling to focus on the assessment of risk to potentially sensitive populations, such as children, and to evaluate the health risk implications of exposure to low dose chemical mixtures; and

c. The utilization of advanced imaging and 3-dimensional modeling approaches to develop new dosimetry and biological response models.

Dr. Timchalk is currently the principal investigator or co-investigator on seven Department of Health and Human Services/National Institutes of Health (DHHS/NIH) grants and has four recently completed projects for DHHS and EPA. He has also provided technical leadership in support of several Pacific Northwest National Laboratory (PNNL) initiatives including:

The Environmental Health and Environmental Biomarkers Initiative. He has likewise provided support on technical review and advisory committees including: NIH/NIEHS Superfund Basic Research Grant Review; NIH/National Cancer Institute Special Emphasis Review; Dichloromethane Peer Review Panel; Austrian Science Fund Grant Review; International Life Sciences Institute, Health and Environmental Science Institute, Agricultural Chemical Safety Assessment Steering Committee; CDC/National Institute for Occupational Safety and Health Safety and Occupational Health Study Section and the EPA-STAR Grant Review Panel. He has served as President of the Society of Toxicology, Biological Modeling Specialty Section. Over the course of his career Dr. Timchalk has been acknowledged both for his professional accomplishments and for his ongoing interest in supporting the development of young scientist. His research has been recognized by awards from the Environmental Business Journal (Technical Merit award, 2001), and R & D 100 Nomination (2004). In addition, he received the Department of Energy, Office of Science Outstanding Mentor Award (2002); and the PNNL, Chester I. Cooper Mentor of the Year Award (2003).

#### List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 13, 2008.

**Mary Belefski,**

*Acting Director, Office of Science Coordination and Policy.*

[FR Doc. E8-5556 Filed 3-18-08; 8:45 am]

**BILLING CODE 6560-50-S**

#### ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2008-0202; FRL-8355-9]

#### Lavandulyl Senecioate; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the California Department of Pesticide Regulation to use the pesticide lavandulyl senecioate (CAS No 23960-07-8) to treat up to 80,000 acres of raisin and wine grapes to control the vine mealybug (VMB).

The applicant proposes the use of a new chemical which has not been registered by the EPA.

EPA is soliciting public comment before making the decision whether or not to grant the exemption.

**DATES:** Comments must be received on or before April 3, 2008.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2008-0202, by one of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

• *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

*Instructions:* Direct your comments to docket ID number EPA-HQ-OPP-2008-0202. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your

comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Andrew Ertman, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9367; fax number: (703) 605-0781; e-mail address: [ertman.andrew@epa.gov](mailto:ertman.andrew@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System

(NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. **Submitting CBI.** Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

##### II. What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be

exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The California Department of Pesticide Regulation has requested the Administrator to issue a specific exemption for the use of lavandulyl senecioate on raisin and wine grapes to control the vine mealybug. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that the rapid spread of the vine mealybug in California vineyards and the damage caused by their feeding and excretion of honeydew has resulted in increasing crop losses in raisin, wine, and table grapes. Depending on the type of grape, these losses can reach 5 to 30% of the crop. Conventional control programs and cultural practices are either ineffective or too expensive to be considered practical.

The Applicant proposes to securely fasten the pheromone dispensers by hand in thumb-sized canes in Fresno, Kern, Kings, Madera, and Tulare Counties in California. Two hundred fifty dispensers will be applied per acre (approximately one dispenser per 2 to 4 vines, depending on plant density). This is equivalent to 25 grams of active ingredient per acre. One to two applications will be made on a maximum of 80,000 acres of grapes per season. This translates to a maximum of 40 million dispensers (8,800 pounds of active ingredient). The use season begins on April 1, 2008 and concludes on September 30, 2008.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient) which has not been registered by the EPA. The notice provides an opportunity for public comment on the application.

The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the California Department of Pesticide Regulation.

##### List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 11, 2008.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. E8-5560 Filed 3-18-08; 8:45 am]

**BILLING CODE 6560-50-S**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-8544-4]

**Science Advisory Board Staff Office; Notification of a Meeting of the Integrated Nitrogen Committee****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.**SUMMARY:** The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of its Integrated Nitrogen Committee.**DATES:** The meeting dates are Wednesday, April 9, 2008, from 9 a.m. to 5:30 p.m. through Friday, April 11, 2008, from 9 a.m. to 3 p.m. (Eastern Time).**ADDRESSES:** The meeting will be held at the Latham Hotel Georgetown, 3000 M Street, NW., Washington, DC 20007; telephone (202) 625-1881.**FOR FURTHER INFORMATION CONTACT:** Members of the public who wish to obtain further information about this meeting may contact Ms. Kathleen White, Designated Federal Officer (DFO), by mail at EPA SAB Staff Office, (1400F), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone at: (202) 343-9878; by fax at (202) 233-0643; or by e-mail at: [white.kathleen@epa.gov](mailto:white.kathleen@epa.gov). General information about the SAB, as well as any updates concerning the meeting announced in this notice, may be found on the SAB Web site at: <http://www.epa.gov/sab>.**SUPPLEMENTARY INFORMATION:** The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.*Background:* The SAB Integrated Nitrogen Committee is studying the need for integrated research and strategies to reduce reactive nitrogen in the environment. At the global scale, reactive nitrogen from human activities now exceeds that produced by natural terrestrial ecosystems. Reactive nitrogen both benefits and impacts the health and welfare of people and ecosystems. Scientific information suggests that reactive nitrogen is accumulating in the environment and that nitrogen cyclingthrough biogeochemical pathways has a variety of consequences. Research suggests that the management of reactive nitrogen should be viewed from a systems perspective and integrated across environmental media. Accordingly, linkages between reactive nitrogen induced environmental and human health effects need to be understood to optimize reactive nitrogen research and risk management strategies. Information on the Committee's previous meetings was published on January 17, 2007 (72 FR 1989), March 22, 2007 (72 FR 3492), August 14, 2007 (72 FR 4542) and November 20, 2007 (72 FR 65340) and is also available on the SAB Web site at: <http://www.epa.gov/sab>.

At the upcoming public meeting, the SAB Integrated Nitrogen Committee will: (1) Hear briefings on programs that affect how reactive nitrogen is managed; (2) develop materials needed to create a draft report; (3) plan additional work and writing, and (4) other committee business.

*Availability of Meeting Materials:* As they become available, the agenda and materials for this meeting will be posted on the SAB Web site at: <http://www.epa.gov/sab>.*Procedures for Providing Public Input:* Interested members of the public may submit relevant written or oral information for the SAB to consider on the topics included in this advisory activity and/or the group conducting the activity. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than one hour for all speakers. Interested parties should contact Ms. White, DFO, at the contact information provided above, by April 2, 2008, to be placed on the public speaker list for the April 9-11, 2008 meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by April 2, 2008, so that the information may be made available to the SAB for their consideration prior to this meeting. Written statements should be supplied to the DFO in electronic format via e-mail at the contact information provided above (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format).*Accessibility:* For information on access or services for individuals with disabilities, please contact Ms. Kathleen White at (202) 343-9878, or via e-mail at: [white.kathleen@epa.gov](mailto:white.kathleen@epa.gov). To request accommodation of a disability, please contact Ms. White, preferably at least 10 days prior to the meeting, to give EPA

as much time as possible to process your request.

Dated: March 13, 2008.

**Anthony Maciorowski,**  
*Deputy Director, EPA Science Advisory Board Staff Office.*

[FR Doc. E8-5605 Filed 3-18-08; 8:45 am]

**BILLING CODE 6560-50-P****ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OPP-2004-0162; FRL-8354-3]

**Napropamide; Notice of Receipt of Request to Voluntarily Amend to Terminate Uses of Napropamide Pesticide Registrations****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by two registrants to voluntarily amend their napropamide registrations to terminate certain uses. The request would terminate napropamide use in or on apple, apricot, artichoke, avocado, cherry, fig, grapefruit, lemons, nectarine, olive, orange, peach, pear, pistachio, plum, pomegranate, prunes, tangerine, tangelo and walnut crops. The request would not terminate the last napropamide product registered for use in the United States. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request, or unless the registrant withdraws its request within this period. Upon acceptance of this request, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.**DATES:** Comments must be received on or before April 18, 2008.**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2004-0162, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

*Instructions:* Direct your comments to docket ID number EPA-HQ-OPP-2004-0162. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the docket index available in [www.regulations.gov](http://www.regulations.gov). To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [www.regulations.gov](http://www.regulations.gov) website to view the docket index or access available documents. Although, listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be

publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:**

James Parker, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 306-0469; fax number: (703) 308-7070; e-mail address: [parker.james@epa.gov](mailto:parker.james@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

**II. Background on the Receipt of Requests to Cancel and/or Amend Registrations to Delete Uses**

This notice announces receipt by EPA of a request from registrants Gharda Chemicals Limited and Gharda Polymers USA, Inc. (Gharda) to delete several uses from their napropamide product registrations. Napropamide is an herbicide used to control broad leaf weeds and grasses on various fruit and vegetable crops. In an e-mail dated February 1, 2008, Gharda requested EPA to terminate use on the following commodities: Apple, apricot, artichoke, avocado, cherry (fruit), fig, grapefruit, lemons, nectarine, olive, orange, peach, pear, pistachio, plum, pomegranate, prunes, tangerine, tangelo and walnut crops. The specific products for which Gharda is requesting these use deletions are identified in Table 1 of this notice. These product registration amendments will not terminate the last napropamide product registered for use in the United States.

**III. What Action is the Agency Taking?**

This notice announces receipt by EPA of a request from Gharda to amend its napropamide product registrations to terminate the following uses: Apple, apricot, artichoke, avocado, cherry (fruit), fig, grapefruit, lemons, nectarine, olive, orange, peach, pear, pistachio, plum, pomegranate, prunes, tangerine, tangelo and walnut crops. The affected

products and the registrants making the request are identified in Tables 1 and 2 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In

addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or
2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The napropamide registrants have requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 30-day comment period on the proposed request.

Unless this request is withdrawn by one of the registrant within 30 days of publication of this notice, or unless the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued amending the affected registrations.

TABLE 1.—NAPROPAMIDE PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration Number	Product Name	Company
33658-22	Gharda Napropamide Technical	Gharda Chemicals LTD
83223-1	Napropamide 80 MUP	Gharda Polymers USA Inc.
83223-4	Regatta 75WG Agricultural Herbicide	Gharda Polymers USA, Inc.
83223-5	Regatta 75WG Ornamental Herbicide	Gharda Polymers USA, Inc.
83223-6	Regatta 2G Ornamental Herbicide	Gharda Polymers USA, Inc.
83223-7	Regatta Ornamental Herbicide	Gharda Polymers USA, Inc.
83223-8	Regatta 10G Herbicide	Gharda Polymers USA, Inc.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA Company Number	Company Name and Address
33658	Gharda Chemicals LTD 660 Newtown – Yardley Road, STE 105 Newtown, Pennsylvania 18940
83223	Gharda Polymers USA, Inc. 660 Newtown – Yardley Road, STE 105 Newtown, Pennsylvania 18940

**IV. What is the Agency’s Authority for Taking this Action?**

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

**V. Procedures for Withdrawal of Request and Considerations for Reregistration of Napropamide**

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before April 18, 2008. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

**VI. Provisions for Disposition of Existing Stocks**

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

If the request for voluntary use termination is granted as discussed in this unit, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of cancelled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product.

The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: March 6, 2008.

**Peter Caulkins,**  
*Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. E8-5294 Filed 3-18-08; 8:45 a.m.]

**BILLING CODE 6560-50-S**

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OPP-2008-0172; FRL-8355-2]

**Notice of Filing of a Pesticide Petition for Residues of Pesticide Chemicals in or on Various Commodities****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.**DATES:** Comments must be received on or before April 18, 2008.**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2008-0172, and the pesticide petition number (PP 8F7317), by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

*Instructions:* Direct your comments to docket ID number EPA-HQ-OPP-2008-0172. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly

to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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**FOR FURTHER INFORMATION CONTACT:** Todd Peterson, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-7224; e-mail address: [peterson.todd@epa.gov](mailto:peterson.todd@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this Action Apply to Me?*

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

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

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

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

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2. *Tips for preparing your comments.* When submitting comments, remember to:

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- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

## II. What Action is the Agency Taking?

EPA is printing notice of the filing of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petition described in this notice contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available on-line at <http://www.regulations.gov>.

### New Exemption from Tolerance

PP 8F7317. Stratacor Inc., 1315 South 46th Street, Bldg. 154, Richmond, CA 94804, proposes to establish an exemption from the requirement of a tolerance for residues of the insect repellent, [C8–C10 n-carboxylic acids (octanoic acid, nonanoic acid, and decanoic acid)], in or on food commodity beef and dairy cattle, and horses. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required.

### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 7, 2008.

**Janet L. Andersen,**

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E8–5555 Filed 3–18–08; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

[EPA–R04–OW–2008–0179; FRL–8543–7]

### Proposed Determination To Prohibit, Restrict, or Deny the Specification, of an Area as a Disposal Site; Yazoo River Basin, Issaquena County, MS

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 404(c) of the Clean Water Act (CWA) authorizes the Environmental Protection Agency (EPA) to prohibit, restrict, or deny the discharge of dredged or fill material at defined sites in waters of the United States (including wetlands) whenever it determines, after notice and opportunity for public hearing, that use of such sites for disposal would have an unacceptable adverse impact on various resources, including fisheries, wildlife, municipal water supplies, and recreational areas. Pursuant to section 404(c), EPA Region 4 is today requesting public comments on its proposal to prohibit or restrict the use of certain waters in the Yazoo River Basin in Issaquena County, Mississippi as disposal sites for dredged or fill material in connection with the construction of the proposed Yazoo Backwater Area Project (the project). As the primary component of this project, the U.S. Army Corps of Engineers, Vicksburg District (the Corps) and the Board of Mississippi Levee Commissioners (project sponsor) propose to construct a 14,000 cubic feet per second (cfs) pumping station at Steele Bayou with a pump-on operation elevation of 87.0 feet, National Geodetic Vertical Datum (NGVD). The construction and operation of the proposed pumps would degrade the critical functions and values of approximately 67,000 acres of wetland resources in the Yazoo River Basin. Of this total, approximately 26,300 acres would be hydrologically modified to the extent that they would no longer be defined as wetlands and would lose CWA regulatory protection. The natural timing, frequency, and duration of water reaching the remaining approximately 40,700 acres of wetlands would be impacted by the proposed pumping, altering the wetlands' ecological characteristics and significantly reducing their functions. EPA Region 4 believes that these extensive hydrological modifications of wetlands in the Yazoo River Basin could have an unacceptable adverse effect on fisheries and wildlife resources.

EPA seeks comment on this proposed 404(c) determination to prohibit or restrict the discharge of dredged or fill material in wetlands and other waters in the Yazoo River Basin in connection with the construction of the project or any pumping proposal in the Yazoo Backwater Area that would involve significant adverse impacts on waters of the United States. See Solicitation of Comments, at the end of the public notice, for further details.

**DATES:** Comments must be received on or before May 5, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OW–2008–0179, by one of the following methods:

1. *Federal eRulemaking Portal (recommended method of comment submission):* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
2. *E-mail:* [ow-docket@epamail.epa.gov](mailto:ow-docket@epamail.epa.gov). Include the docket number, EPA–R04–OW–2008–0179 in the subject line of the message.
3. *Mail:* “EPA–R04–OW–2008–0179, Yazoo Pumps,” Wetlands, Coastal and Nonpoint Source Branch; Water Management Division; U.S. Environmental Protection Agency, Region 4; 61 Forsyth Street, SW; Atlanta, Georgia 30303–8960.
4. *Hand Delivery or Courier:* Mr. Ronald J. Mikulak, Wetlands Regulatory Section; Wetlands, Coastal and Nonpoint Source Branch; Water Management Division; U.S. Environmental Protection Agency, Region 4; 61 Forsyth Street, SW; Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation, which are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.
5. *Submit at Public Hearing:* see PUBLIC HEARING section below. *Instructions:* Direct your comments to Docket ID No. EPA–R04–OW–2008–0179.

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 through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an “anonymous access” system, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Wetlands Regulatory Section; Wetlands, Coastal and Nonpoint Source Branch; Water Management Division; U.S. Environmental Protection Agency, Region 4; 61 Forsyth Street, SW; Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

**Public Hearing:** In accordance with EPA regulations at 40 CFR 231.4, the Regional Administrator may decide that a public hearing on a proposed 404(c) determination would be in the public interest. Mr. Lawrence E. Starfield, Deputy Regional Administrator for EPA Region 6, has been appointed by the Administrator as the Regional Decision Officer for purposes of any EPA Regional action on the Yazoo Backwater Area Project pursuant to section 404(c); since Mr. Starfield has been designated to exercise all such authority for the Regional Administrator for the Yazoo Backwater Area Project, any reference to

authority of the Regional Administrator in this notice are the responsibility of Mr. Starfield for the purposes of this action. In that capacity, Mr. Starfield has decided that a public hearing on this proposed 404(c) determination would be in the public interest.

EPA will hold a public hearing on April 17, 2008, at 7 p.m. at the Vicksburg Convention Center and Auditorium (Exhibit Hall A), located at 1600 Mulberry Street, Vicksburg, MS 39180, seeking comments on its Proposed Determination. See Solicitation of Comments, at the end of this public notice for further details.

The Regional Administrator will designate the official who will preside at the public hearing. Any person may appear at the hearing and submit oral and/or written statements or data and may be represented by counsel or other authorized representatives. The Presiding Officer will establish reasonable limits on the nature and length of time for oral presentation. There will be no cross examination of any hearing participant, although the Presiding Officer may make appropriate inquiries of any such participant.

**FOR FURTHER INFORMATION CONTACT:** For information regarding this notice of proposed 404(c) determination contact Mr. Ronald J. Mikulak, Wetlands Regulatory Section; Wetlands, Coastal and Nonpoint Source Branch; Water Management Division; U.S. Environmental Protection Agency, Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is 404-562-9233. Mr. Mikulak can also be reached via electronic mail at [mikulak.ronald@epa.gov](mailto:mikulak.ronald@epa.gov) or Mr. William Ainslie, Wetlands Regulatory Section, at the same address above. The telephone number is (404) 562-9400. Mr. Ainslie can also be reached via electronic mail at [ainslie.william@epa.gov](mailto:ainslie.william@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, references to "EPA," "we," "us," or "our," are intended to mean the Environmental Protection Agency. The supplementary information is arranged as follows:

- I. Section 404(c) Procedure
- II. Project Description and Background
- III. Characteristics and Functions of the Site
- IV. Basis of the Proposed Determination
  - A. Section 404(c) Standards
  - B. Adverse Impacts of the Proposed Project
    1. Significant Degradation and Adverse Effects
    2. Underestimation of Adverse Effects
      - a. Underestimation of the Spatial Extent of Adverse Effects.
      - b. Underestimation of the Degree and Nature of Adverse Effects
    3. Overestimation of Environmental Benefits

- C. Mitigation
- D. Uncertainty of the Proposed Reforestation
- E. Project Alternatives
- F. Recreation
- V. Proposed Determination
- VI. Other Considerations
- VII. Solicitation of Comments

### I. Section 404(c) Procedure

The Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.*, prohibits the discharge of pollutants, including dredged or fill material, into waters of the United States (including wetlands) except in compliance with, among other provisions, section 404 of the CWA, 33 U.S.C. 1344. Section 404 authorizes the Secretary of the Army (Secretary), acting through the Chief of Engineers, to authorize the discharge of dredged or fill material at specified disposal sites. This authorization is conducted, in part, through the application of environmental guidelines developed by EPA, in conjunction with the Secretary, under section 404(b) of the CWA, 33 U.S.C. 1344(b). Section 404(c) of the CWA authorizes EPA to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site and it is authorized to restrict or deny the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever it determines, after notice and opportunity for public hearing, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

The procedures for implementation of section 404(c) are set forth in 40 CFR part 231. Under those procedures, if the Regional Administrator has reason to believe that use of a site for the discharge of dredged or fill material may have an unacceptable adverse effect on one or more of the aforementioned resources, he may initiate the section 404(c) process by notifying the Corps and the applicant (and/or project proponent) that he intends to issue a proposed determination. Each of those parties then has 15 days to demonstrate to the satisfaction of the Regional Administrator that no unacceptable adverse effects will occur, or that corrective action to prevent an unacceptable adverse effect will be taken. If no such information is provided to the Regional Administrator, or if the Regional Administrator is not satisfied that no unacceptable adverse effect will occur, the Regional Administrator will publish a notice in

the **Federal Register** of his proposed determination, soliciting public comment and offering an opportunity for a public hearing. Today's notice represents this step in the process.

Following the public hearing and the close of the comment period, the Regional Administrator will decide whether to withdraw his proposed determination or prepare a recommended determination. A decision to withdraw may be reviewed at the discretion of the Assistant Administrator for Water at EPA Headquarters. If the Regional Administrator prepares a recommended determination, he then forwards it and the complete administrative record compiled in the Regional Office to the Assistant Administrator for Water. The Assistant Administrator makes the final determination affirming, modifying, or rescinding the recommended determination.

## II. Project Description and Background

The Yazoo River Basin's backwater area (Yazoo Backwater Area) is located in west-central Mississippi, just north of Vicksburg, Mississippi. The portion of this area relevant to the Yazoo Backwater Area Project is located between the east bank mainline Mississippi River levee and the west bank levees of the Will M. Whittington Auxiliary Channel, and comprises about 926,000 acres. Of particular focus are the approximately 630,000 acres inundated by the 100-year flood event which lie in parts of Humphreys, Issaquena, Sharkey, Warren, Washington, and Yazoo Counties in Mississippi and part of Madison Parish in Louisiana. The Big Sunflower River, Little Sunflower River, Deer Creek, and Steele Bayou flow through this area. The high ground along Deer Creek forms a natural divide between Steele Bayou and the Sunflower River Basins.

The Yazoo Backwater Area has historically been subject to extensive backwater flooding from the Mississippi and Yazoo Rivers. When the Mississippi River reached a certain stage, water would back up into the Yazoo River Basin, causing flooding, while preventing the Yazoo River Basin from draining. With the implementation of the Mississippi River and Tributaries Project, which began in 1928, the Steele Bayou flood gate was installed to prevent Mississippi River water from flowing into the Yazoo Backwater Area. The gate feature, combined with other levees, has greatly decreased backwater flooding in the Yazoo River Basin. However, when the Steele Bayou flood gate is closed, precipitation in the Yazoo River Basin becomes trapped and backs

up behind the gate causing flooding. The primary purpose of the Yazoo Backwater Area Project is to reduce the flood damages in the Yazoo Backwater Area caused by this internal flooding. As stated in the FSEIS, a principal objective of the project is to reduce flood damages "to urban and rural structures, as well as agricultural properties." To achieve this objective, the Corps and the Board of Mississippi Levee Commissioners (project sponsor) have proposed a flood damage reduction project with "structural" and "nonstructural" components.

The structural component entails the construction of a 14,000 cfs pumping station at Steele Bayou with a pump-on operation elevation of 87.0 feet, NGVD. When floodwaters at the Steele Bayou structure reach (or are anticipated to reach) an elevation of 87.0 feet, NGVD, the pumps will be turned on and will move water from behind the gate into the Mississippi River. The effects of the pumping will be to reduce the amount of land within the Yazoo Backwater Area that floods, as well as to remove water faster from those areas that still experience flooding. The nonstructural component includes reforestation of up to 40,571 acres of agricultural lands through the purchase of perpetual conservation easements from willing sellers and operation of the Steele Bayou control gates to maintain water elevations between 70.0 and 73.0 feet, NGVD, in the Yazoo Backwater Area waterways during low-water periods when practical. Construction of the proposed pumps involves the discharge of dredged or fill material into approximately 52.6 acres of forested wetlands and other waters of the United States in Issaquena County, Mississippi. The estimated Federal cost of the proposed action is \$220.1 million, with an annual operational cost of \$15.1 million.

This project was authorized by the Flood Control Act of 1941, which envisioned a plan to reduce backwater flooding in the Yazoo River Basin through a combination of levees, drainage structures, and pumping plants fully funded by the Federal government. This act also designated Yazoo Backwater Area lands located below 90 feet in elevation to serve as a sump area for floodwater storage.

Over the next 37 years, the Corps planned and executed key flood control projects in the Yazoo Backwater Area, including: construction of the Will Whittington Auxiliary Channel and Levees in 1962; construction of the Steele Bayou and Little Sunflower flood control gates, which were completed in 1969 and 1975, respectively;

construction of the Yazoo Backwater Levee completed in 1978; and construction of the Sunflower River to Steele Bayou Connecting Channel also completed in 1978.

In April 1982, EPA provided comments on the Draft Environmental Impact Statement (DEIS) for the 1982 version of the proposed project. In our comments on the DEIS we highlighted our concerns regarding the proposed project's potentially extensive impacts on wetlands and associated fish and wildlife habitat and our belief that a less environmentally damaging design would meet the project's objectives. We stressed the importance of the flood water storage and water quality enhancement functions provided by area wetlands and expressed our concerns that the proposed project would degrade these critical functions. We also expressed concerns that the project would stimulate agricultural intensification in flood-prone areas, potentially increasing suspended solids, pesticides, and fertilizers in the water column, and exacerbate existing water quality problems. Additionally, we expressed concerns that the proposed mitigation would not adequately minimize and offset the extensive adverse environmental impacts associated with the proposed project.

In our May 1983 comments on the Final Environmental Impact Statement (FEIS), we expressed similar concerns. Our review of the FEIS concluded that the project would likely "decrease water quality in the area through increases in suspended solids, pesticides and fertilizers; reduce natural overbank flooding and decrease nutrients assimilation by wetland vegetation; transfer flood peaks downstream; serve as a precedent to similarly convert other bottomland hardwood remnants in the lower Mississippi River Valley; and greatly diminish a fish and wildlife resource, which, due to previous clearing elsewhere, has become nationally valuable."

The U.S. Fish and Wildlife Service (FWS) also raised similar concerns regarding the proposed project. According to FWS, its first report on the Yazoo Backwater Area Project and related flood control projects in the Yazoo River Basin was issued in 1956. This report concluded that losses of fish and wildlife resources as a result of the construction of the Yazoo Headwater Project and Yazoo Backwater Project would be large, and that the proposed pumps would promote large scale clearing of forests and intensification of agriculture in wetlands. In February 1978, FWS provided a Fish and Wildlife Coordination Act report to the Corps

which concluded that the pumping plant was environmentally unsound, and that the Service was opposed to the project as planned. A subsequent Fish and Wildlife Coordination Act report submitted in June 1982 noted continued concerns with the proposed project and indicated that it may consider the project a candidate for referral to the Council on Environmental Quality (CEQ).

The Water Resources Development Act (WRDA) of 1986 modified the funding for the project by requiring a local-cost share. Under this new provision, the local project sponsor would provide the lands, easements, rights-of-way, relocations, and disposal areas for the project, or 25 percent of the construction cost, whichever was greater. Work on the project effectively halted. The reauthorization of WRDA ten years later in 1996 reversed the cost-sharing provisions established in 1986 and restored the project to full Federal funding and work on the project began once again.

In 1997, EPA initiated an ecosystem restoration prioritization analysis with the U.S. Geological Survey (USGS). This work evolved into ecological and economic model development for nonstructural floodplain management alternatives in the Yazoo Backwater Area. Between 1998 and 2000, EPA participated in a series of interagency and stakeholder meetings with the Corps, USGS, FWS, the Virginia Polytechnic Institute, and representatives of the Board of Mississippi Levee Commissioners to discuss concerns regarding the proposed project and potentially less environmentally damaging alternatives.

In 2000, EPA also participated in multiple meetings with a group composed of the Mississippi Department of Environmental Quality, Mississippi Department of Wildlife, Fisheries and Parks, the Corps, FWS, Board of Mississippi Levee Commissioners and Yazoo Backwater Area landowners in which we discussed our concerns with the proposed project. EPA also voiced its concerns with the proposed project in meetings with the Office of Management and Budget (OMB), CEQ and representatives from Corps Headquarters in February and March of 2000.

In September 2000, the Corps released the project's Draft Supplemental Environmental Impact Statement (DSEIS). One of the purposes of this reformulation of the project's 1982 FEIS was to respond to a 1991 directive from OMB to evaluate a broader suite of alternatives to the proposed project that would provide: (1) Greater levels of

flood protection for urban areas; (2) reduced levels of agricultural intensification; and (3) reduced adverse impacts to the environment. The OMB directive also stated that the revised evaluation should include "full consideration of predominantly nonstructural and nontraditional measures" to address flooding issues.

In a November 3, 2000, letter to the Corps on the DSEIS, EPA raised significant concerns regarding the proposed project's extensive impacts to wetlands and associated fish and wildlife resources, its potential to exacerbate existing water quality problems in the Yazoo Backwater Area, the inadequacy of the proposed compensatory mitigation, and the uncertainty associated with the proposed reforestation. We also identified, for further consideration, a number of potentially less environmentally damaging alternatives that emphasized nonstructural and nontraditional measures to address flooding issues. We concluded that the project was environmentally unsatisfactory and noted that it was a candidate for referral to CEQ under section 309(b) of the Clean Air Act and the CEQ regulations at 40 CFR part 1504 and for further action under CWA section 404(c).

Between 2002 and 2005, EPA worked with the Corps to improve its evaluation of the extent of wetlands in the Yazoo Backwater Area, the extent of wetlands potentially impacted by the project, and the nature and degree of these impacts. This work involved extensive site visits and data collection in the Yazoo Backwater Area, meetings, and conference calls. In December 2005, EPA provided detailed technical comments on the revised draft Wetland and Mitigation appendices for the DSEIS outlining a number of concerns regarding the evaluation approaches used in these appendices. We noted that flaws in these evaluation approaches result in an underestimation of the potential adverse impacts to wetlands and fish and wildlife resources associated with the construction and operation of the proposed pumps and an overestimation of the potential environmental benefits associated with the proposed reforestation.

In November 2007, the Corps released the Yazoo Backwater Area Reformulation Main Report and Final Supplemental Environmental Impact Statement (FSEIS).<sup>1</sup> Although the Corps

responded to many of our November 2000 comments on the DSEIS, no substantive modifications had been made to the structural component of the proposed project since November 2000. In our January 22, 2008, letter to the Corps on the FSEIS, we concluded that the nature and extent of anticipated adverse environmental impacts continue to be significant and that we continue to have significant concerns with the proposed project including: (1) Magnitude of anticipated impacts to wetlands and associated fish and wildlife resources; (2) compliance with the CWA's substantive environmental criteria (*i.e.*, the Section 404(b)(1) Guidelines); (3) uncertainties with the proposed reforestation plan; (4) changes in land use; (5) environmental justice (EJ) considerations; (6) uncertainty with the economic analysis; and (7) the evaluation of potential project alternatives. We again identified the project as a candidate for referral to CEQ and for further action pursuant to our authorities under the CWA.

In its January 18, 2008, comment letter to the Corps regarding the FSEIS, the FWS shared similar concerns, particularly those associated with the proposed project's potentially unacceptable adverse impacts on fish and wildlife resources. The FWS also reiterated its determination that the project is a candidate for referral to CEQ.

On February 1, 2008, EPA's Regional Administrator informed the Corps and the Board of Mississippi Levee Commissioners of his intention to begin a section 404(c) action, based on his belief that the project may have an unacceptable adverse effect on fish and wildlife resources. During the 15-day response period following the 404(c) initiation letter (which was extended to March 3, 2008) EPA met with representatives from the Corps and Board of Mississippi Levee Commissioners. In addition, EPA had a number of conference calls with the Corps during this consultation period to discuss specific technical concerns we had with the Corps' analysis (many of which are discussed in this notice). However, the Regional Administrator was not satisfied that no unacceptable adverse effect would occur, or that adequate corrective action would be taken to prevent an unacceptable adverse effect, and has published this Proposed Determination in order to solicit public comment.

### III. Characteristics and Functions of the Site

The Lower Mississippi River Alluvial Valley (LMRAV) was a 25-million acre

<sup>1</sup> U.S. Army Corps of Engineers' Yazoo Backwater Area Project Reformulation Main Report and FSEIS: [http://www.mvk.usace.army.mil/offices/pp/projects/YBR\\_Report/index.html](http://www.mvk.usace.army.mil/offices/pp/projects/YBR_Report/index.html).

area of forested wetlands that extended along both sides of the Mississippi River from Illinois south to Louisiana and the Gulf of Mexico. The extent and duration of seasonal flooding from the Mississippi River fluctuated annually, recharging the LMRAV systems and creating a diversity of dynamic habitats that once supported a vast array of fish and wildlife resources. Over the past 100 years, the greatest changes to the landscape have been land clearing for both agriculture and flood control projects. These habitat alterations have had an adverse effect on biological diversity and integrity. For example, breeding bird surveys show continuing declines in species richness and population numbers. In addition to the loss of approximately 80 percent of the bottomland forested wetlands within the LMRAV,<sup>2</sup> there have been significant alterations in the region's hydrology due to river channel modification, construction of flood control levees and reservoirs, and deforestation. The cumulative effect of these hydrological alterations has reduced both the extent and duration of the annual seasonal flooding, adversely affecting the forested wetlands and their associated wetland-dependent species.

These significant cumulative aquatic resource losses across the broader LMRAV are mirrored in the Mississippi Delta region of the LMRAV, in which the Yazoo Backwater Area is situated. Mississippi's 2005 Comprehensive Wildlife Conservation Strategy<sup>3</sup> reports that only fifteen percent of the Mississippi Delta remains forested and the largest segment remaining is the complex of bottomland hardwood forests approximately 100,000 acres in size within and surrounding the Delta National Forest. Much of this important complex of remaining forests and forested wetlands is located in the Yazoo Backwater Area.

Extensive studies of the Yazoo Backwater Area demonstrate that it includes some of the richest wetland and aquatic resources in the Nation. These include a highly productive floodplain fishery, a highly productive but increasingly rare bottomland hardwood forest ecosystem that once dominated the LMRAV, hemispherically important migratory bird foraging grounds and one of only four remaining

backwater ecosystems with a hydrologic connection to the Mississippi River. These wetlands provide critical habitat for a variety of wetland-dependent animal and plant species, including the federally protected Louisiana black bear and pondberry. In addition to serving as critical fish and wildlife habitat, project area wetlands also provide a suite of other important ecological functions. These wetlands protect and improve water quality by removing and retaining pollutants, reduce flood damage by storing floodwaters, recharge groundwater and maintain stream flows, and sequester significant amounts of elemental carbon.

Wetlands in the Yazoo Backwater Area have been described by the Corps as belonging to the hydrogeomorphic (HGM) riverine backwater subclass. This classification indicates that these wetlands flood as a result of impeded drainage of small streams, channels, and drainage ditches due to high water in larger downstream reaches. As a result of this impeded drainage, low lying areas associated with these small streams fill with relatively still "backwater." As stated in the Yazoo Basin HGM Guidebook, the characteristics of the riverine backwater wetlands in this area are: A direct connection to a channel during flood stages equivalent to at least the 5-year frequency return period; the primary source of hydrology to the wetland is backwater; and floodwaters largely drain from the site back to the channel as flood stages fall (as opposed to being retained on the site in depressions).<sup>4</sup>

The wetlands of the riverine backwater subclass occur on various substrates which developed as a result of Mississippi River meandering. This subclass typically contains vegetative communities dominated by green ash (*Fraxinus pennsylvanica*), and Nuttall oak (*Quercus nuttallii*) as well as overcup oak (*Q. lyrata*) and water hickory (*Carya aquatica*) in more low lying areas. However, in addition to these dominant canopy species, willow oak (*Q. phellos*), Sugarberry (*Celtis lavigata*), American elm (*Ulmus americana*), cedar elm (*U. crassifolia*), Red maple (*Acer rubrum*), Cypress (*Taxodium distichum*), water elm (*Planera aquatica*), and Black willow (*Salix nigra*) were also found dominating many of the field sampled

plots in the area.<sup>5</sup> The combination of the hydrologic, soil, and vegetative characteristics of this wetland subclass contribute to the wetland processes, or functions, which support the area's diverse and abundant flora and fauna. However, hydrology is considered by most to be the critical determinant of the establishment and maintenance of specific types of wetlands and wetland processes.<sup>6</sup> As thoroughly discussed in the Yazoo Basin HGM Guidebook and outlined below, maintenance of the natural hydrologic regime (*i.e.*, natural timing, frequency, and duration of water reaching area wetlands) is the most important factor in ensuring that riverine backwater wetlands in the Yazoo Backwater Area perform important functions such as floodwater detention, nutrient cycling, organic carbon export, pollutant filtering/removal, and maintenance of biologically diverse plant and animal habitat.

When riverine backwater wetlands are allowed to temporarily detain and moderate floodwater they provide a number of important benefits. Floodwater interaction with wetlands tends to dampen and broaden the flood wave, which reduces peak discharge downstream. Wetlands can reduce the velocity of water currents and, as a result, reduce erosion. Some portion of the floodwater volume detained within riverine backwater wetlands is likely to be evaporated or transpired, thereby reducing the overall volume of water moving downstream. The portion of the detained flow that infiltrates into the alluvial aquifer, or which returns to the channel very slowly via low-gradient surface routes, may be sufficiently delayed that it contributes significantly to the maintenance of baseflow in some streams long after flooding has ceased. Retention of particulates is also an important component of the flood detention function because sediment deposition directly alters the physical characteristics of the wetland (including hydrologic attributes) and positively influences downstream water quality.

In riverine backwater wetlands, nutrients are stored within, and cycled among, four major compartments: (a) The soil; (b) primary producers such as vascular and nonvascular plants; (c) consumers such as animals, fungi, and bacteria; and (d) dead organic matter, such as leaf litter or woody debris, referred to as detritus. The

<sup>2</sup> Department of the Interior, The Impact of Federal Programs on Wetlands, Volume I: The Lower Mississippi Alluvial Plain and the Prairie Pothole Region, A Report to Congress by the Secretary of the Interior, October 1988 at 60.

<sup>3</sup> Mississippi's Comprehensive Wildlife Conservation Strategy (MCWCS) 2005–2015, October 2005: [http://www.wildlifeactionplans.org/pdfs/action\\_plans/ms\\_action\\_plan.pdf](http://www.wildlifeactionplans.org/pdfs/action_plans/ms_action_plan.pdf).

<sup>4</sup> Smith, R. D., and Klimas, C. V. 2002. A regional guidebook for applying the hydrogeomorphic approach to assessing wetland functions of selected regional wetland subclasses, Yazoo Basin, Lower Mississippi River Alluvial Valley. ERDC/EL TR-02-04. U.S. Army Engineer Research and Development Center, Vicksburg, MS. See: <http://el.erd.usace.army.mil/wetlands/pdfs/trel02-4.pdf>.

<sup>5</sup> EPA, 2008. Yazoo Backwater Area Plant Species List. Wetlands Regulatory Section, Water Management Division, EPA Region 4, Atlanta, GA.

<sup>6</sup> Mitsch, W.J., and Gosselink, J.G. 2000. Wetlands (3rd edition). John Wiley and Sons, Inc. New York, NY.

transformation of nutrients within each compartment and the flow of nutrients between compartments are mediated by a complex variety of biogeochemical processes associated with primary production and decomposition. These biogeochemical processes and their ability to support the rich array of flora and fauna found in the Yazoo Backwater Area are directly linked to maintenance of the natural timing, frequency, and duration of flooding in the area's riverine backwater wetlands systems.

The high productivity and close proximity of riverine backwater wetlands to streams make them important sources of dissolved and particulate organic carbon for aquatic food webs and biogeochemical processes in downstream aquatic habitats. Dissolved and particulate organic carbon is a significant source of energy for the microbes that form the base of the detrital food web in aquatic ecosystems. The ability of riverine backwater wetlands to perform this critical function is directly linked to factors associated with their natural hydrologic cycle of backwater flooding, including: (a) The large amount of organic matter in the litter and soil layers that comes into contact with surface water during flooding; (b) relatively long periods of inundation and, consequently, contact between surface water and organic matter, thus allowing for significant leaching; (c) the ability of the labile carbon fraction to be rapidly leached from organic matter when exposed to water; and (d) the ability of floodwater to transport dissolved and particulate organic carbon from the floodplain to the stream channel.

The area's riverine backwater wetlands permanently remove or temporarily immobilize elements and compounds that are imported to the wetland from various sources, but primarily via the natural cycle of flooding. Elements include macronutrients essential to plant growth e.g., nitrogen, phosphorus, and potassium) as well as heavy metals (zinc, chromium, etc.) that can be toxic at high concentrations. Compounds include pesticides and other imported materials. The primary benefit of this function is that the removal and sequestration of elements and compounds by wetlands reduces the load of nutrients, heavy metals, pesticides, and other pollutants in rivers and streams.

This often translates into improved water quality and aquatic habitat in adjacent or down gradient rivers and streams.

Once nutrients and compounds arrive in riverine backwater wetlands, they may be removed and sequestered through a variety of biogeochemical processes including complexation, chemical precipitation, adsorption, denitrification, decomposition to inactive forms, hydrolysis, uptake by plants, and other processes. The effective performance of many of the most critical biogeochemical processes depends on maintenance of the natural hydrologic cycle of flooding in riverine backwater wetlands and the anoxic/reducing environment created by periodic cycles of inundation and saturation. For example, denitrification will not occur unless the soil is anoxic and the redox potential falls below a certain level. Flooding for approximately 14 days causes soils to become anoxic. When this occurs and other soil conditions are favorable (i.e., availability of soil carbon) the nitrogen in nitrate (NO<sub>2</sub>) is removed by denitrification and released as nitrogen gas to the atmosphere. In addition, sulfate is reduced to sulfide, which then reacts with metal cations to form insoluble metal sulfides such as copper sulfide (CuS), iron sulfide (FeS), lead sulfide (PbS), and others which then fall out of the water column and are retained by the wetland sediments.

The ability of riverine backwater wetlands to maintain a characteristic plant community is important because of the intrinsic value of the plant community and the many attributes and processes of wetlands that are influenced by the plant community. For example, primary productivity, nutrient cycling, and the ability to provide a variety of habitats necessary to maintain local and regional diversity of animals are directly influenced by the plant community. Due to the inundation by nutrient rich floodwaters, a diverse assemblage of plants grow in riverine backwater wetlands and contribute to the primary production of these ecosystems. The growth of different plant communities as a result of variable hydrologic regimes and topography contributes to the uptake and release of nutrients and provides many layers of potential habitat (i.e., litter layer to canopy) for the hundreds of wildlife species which utilize these wetlands. In addition, the plant community of river connected wetlands such as riverine backwater wetlands in the Yazoo River Basin influences the quality of the physical habitat, nutrient status, and biological diversity of downstream systems. As noted in the Yazoo Basin HGM Guidebook, maintaining the natural hydrologic regime of these

wetlands is consistently cited as the principal factor controlling plant community attributes.

A broad array of fish and wildlife species utilize the riverine backwater wetlands in the Yazoo Backwater Area during some part of their life cycles. Terrestrial, semi-aquatic, and aquatic animals use these wetlands extensively. These wetlands provide important habitat for a diversity of organisms, are sites of high levels of secondary production, and are essential in the maintenance of complex trophic interactions. Habitat functions span a range of temporal and spatial scales. For example, invertebrate communities utilize the organic matter generated in these wetlands as a food source and the vertical structure of the plant community as refugia from flooding. Amphibian and reptile species use the wetlands for breeding and foraging habitats and fish utilize floodplains for spawning, rearing, and foraging. Birds and mammals utilize the wetlands for food, cover, and nesting. Most wildlife and fish species found in riverine backwater wetlands of the Yazoo River Basin depend on certain aspects of wetland structure and dynamics such as specific vegetation composition and proximity to other habitats, but of particular importance to the life cycles of these species is the periodic flooding or ponding of water associated with the natural hydrologic regime of riverine backwater wetlands.

The topographic and commensurate hydrologic complexity of these riverine backwater wetlands contribute to the biodiversity for which they are well known. The World Wildlife Fund estimates that there are 372 wildlife species occurring in the Mississippi Lowland Forest ecoregion, which encompasses the Yazoo River Basin and Yazoo Backwater Area.<sup>7</sup> Of these species 35 are amphibian, 52 are reptiles, 223 are birds, and 62 are mammals. According to the Mississippi Museum of Natural History, 40 percent of the amphibians, 60 percent of the reptiles, 82 percent of the birds, and 71 percent of the mammals from the World Wildlife Fund's Mississippi Lowland Forest list occur in the Yazoo River Basin.<sup>8</sup> In addition, 2 amphibian, 4 reptile, 74 bird, and 5 mammalian species were catalogued by the State beyond what World Wildlife Fund reported. Further, the FWS has listed

<sup>7</sup> World Wildlife Fund Mississippi Lowland Forest species list: <http://worldwildlife.org/wildfinder/searchByPlace.cfm?ecoregion=NA0409>.

<sup>8</sup> Personal Communication between William Ainslie, EPA Region 4, and Scott Peyton, Mississippi Museum of Natural History, February 5, 2008.

258 species of birds which use its complex of refuges located in the Yazoo Backwater Area<sup>9</sup> and over 90 species of fish have been documented as utilizing the Yazoo River.<sup>10</sup>

According to the State's Comprehensive Wildlife Conservation Strategy, bottomland hardwood wetlands such as those in the Yazoo Backwater Area provide habitat for 33 *species of greatest conservation need*<sup>11</sup> including 20 birds, 12 mammals, and 1 reptile. Also, all of the standing and running water systems of the Mississippi Alluvial Plain, including the Yazoo Backwater Area, have been classified as critically imperiled because of their high conservation priority rank and the widespread degradation of stream habitats in this region. These waterbodies provide important habitat for 23 *species of greatest conservation need*, including 4 fish, 18 mussels, and 1 reptile. Finally, the stream habitat that remains in the Upper Coastal Plain Yazoo Drainage area, which receives significant hydrologic inputs from the Yazoo Backwater Area, is considered to be vulnerable because of extensive alteration caused by channelization, agricultural use of surrounding lands and impoundments. This portion of the Yazoo River Basin provides critical habitat for 17 *species of greatest conservation need* including 1 amphibian, 12 fish, and 1 reptile.<sup>12</sup>

In its comments in the FSEIS, the FWS reports that the Lower Yazoo Delta is part of a major continental migration corridor for birds funneling through the midcontinent from as far north as the Arctic Circle and as far south as South America. The Yazoo Backwater Project Area comprises approximately 926,000 acres located in LMRAV, through which 60 percent of all bird species in the U.S., over 40 percent of the Nation's waterfowl population, and 500,000 to

1,000,000 shorebirds migrate on a biannual basis. FWS also notes that natural springtime flooding in the area's riverine backwater wetlands coincides with two major events in the LMRAV: (1) Native bird and waterfowl migration that requires suitable and productive stopover and foraging habitats to meet migratory energy needs; and (2) breeding bird and waterfowl nesting that requires adequate nesting and foraging habitats to meet reproductive and rearing needs.

#### IV. Basis of the Proposed Determination

##### A. Section 404(c) Standards

The CWA requires that exercise of the final section 404(c) authority be based on a determination of "unacceptable adverse effect" to municipal water supplies, shellfish beds, fisheries, wildlife, or recreational areas. In making this determination EPA takes into account all information available to it, including any written determination of compliance with the Section 404(b)(1) Guidelines. EPA's regulations at 40 CFR 231.2(e) define "unacceptable adverse effect" as:

*Impact on an aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water supplies or significant loss of or damage to fisheries, shellfishing, or wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the Section 404(b)(1) Guidelines (40 CFR part 230).*

Those portions of the Guidelines relating to less environmentally damaging practicable alternatives, significant degradation of waters of the United States, water quality impacts, and impact minimization are particularly important to evaluating the unacceptability of environmental impacts in this case. The Guidelines prohibit any discharge of dredged or fill material where: (1) There is a less environmentally damaging practicable alternative to meet the project purpose; (2) the proposed project would violate other environmental standards, including applicable water quality standards; (3) the proposed project would cause or contribute to significant degradation of the Nation's waters; or (4) the proposed project fails to adequately minimize and compensate for wetland and other aquatic resource losses (see 40 CFR 230.10(a)-(d)).

##### B. Adverse Impacts of the Proposed Project

EPA believes the proposed project will result in significant adverse environmental impacts to extensive areas of ecologically significant and important forested wetlands and their

associated fisheries and wildlife resources. At a minimum, the construction and operation of the proposed pumps would degrade the critical functions and values of approximately 67,000 acres of nationally significant wetland resources in the Yazoo River Basin. Of this total, approximately 26,300 acres would be hydrologically modified (i.e., reduced flood duration) to the extent that they would no longer be defined as wetlands and would lose CWA regulatory protection. The natural timing, frequency, and duration of water reaching the remaining approximately 40,700 acres of wetlands would be impacted by the proposed pumping, altering the wetlands' ecological characteristics and reducing their functions. As a point of reference, the impacts estimated by the Corps for this single project are more extensive than the total impacts (on an annual average basis) associated with the 86,000 projects authorized by the Corps permit program nationwide each year.<sup>13</sup> We do not believe that impacts of this magnitude are consistent with the requirements of the CWA. Our concerns regarding this project are amplified because we believe the potential adverse impacts to wetlands and associated fish and wildlife resources may be much greater than the Corps has estimated.

##### 1. Significant Degradation and Adverse Effects

The annual hydrologic cycle of water moving into and out of the project area defines the ecological attributes of the project area's wetland and aquatic resources and fuels the fundamental processes essential to fish and wildlife productivity. This annual water cycle not only makes the project area's diverse habitats accessible to fish and wildlife but also provides the primary linkages that transfer energy and organisms between the project area wetlands and the rest of the lower Mississippi River ecosystem.

The basic objective of the project is to limit the spatial extent, frequency, and length of time the Yazoo Backwater Area floods. The ecological effect of this project will be to dampen the natural variability in flood regime (the flood pulse) which currently contributes to the biodiversity of the project area's wetlands. Operation of the proposed pumps will dramatically alter the hydrologic cycle of this area, and would therefore eliminate or significantly

<sup>9</sup> FWS list of bird species utilizing wildlife refuges in the Yazoo Backwater Area: <http://www.npwr.usgs.gov/resource/birds/chekbird/r4/yazoo.htm>.

<sup>10</sup> Lee, D.S., C.R. Gilbert, C.H. Hocutt, R.E. Jenkins, D.E. McAllister, and J.R. Stauffer, Jr. 1980. Atlas of North American Freshwater Fishes. North Carolina State Museum of Natural History. Publication #1980-12 of the North Carolina Biological Survey. 877 pgs.

<sup>11</sup> Species of Greatest Conservation Need (SGCN) are those animals, both aquatic and terrestrial, that are at risk or are declining in a State. They include threatened and endangered species, as well as other species of concern. The SGCN for Mississippi was developed through a rigorous analysis of the Mississippi Natural Heritage Program's list of "Animals of Special Concern" (ASC). An Expert Team of scientists evaluated the approximately 1,500 species from the ASC and narrowed this list down to only the species most at risk—resulting in approximately 300 Species of Greatest Conservation Need statewide (MCWCS, 2005).

<sup>12</sup> MCWCS, 2005.

<sup>13</sup> Based on data from Fiscal Years 1999 to 2003. Source: Corps Regulatory Program, Headquarters, 2008. See: <http://www.usace.army.mil/cw/cecwo/reg/2003webcharts.pdf>.

degrade many of the critical ecological functions provided by wetlands in the Yazoo Backwater Area, including floodwater detention, nutrient cycling, organic carbon export, pollutant filtering/removal, and maintenance of biologically diverse plant and animal habitat.

The reduction or elimination of the floodwater detention function of wetlands in the Yazoo Backwater Area as a result of the proposed project could increase peak discharges and water currents in the Mississippi River, and exacerbate flooding problems downstream at a time when communities in the lower Mississippi River Valley are still struggling to recover from the effects of recent catastrophic flooding. By maintaining water levels of regular flood events at approximately 87.0 feet, NGVD, at the Steele Bayou gauge, water would not be allowed to collect for significant periods of time in the backwater wetlands. Instead, water that would otherwise remain in the wetlands would be drawn off by the pump and discharged to the Mississippi River. Reducing or eliminating the floodwater detention function of project area wetlands will also decrease the amount of water delivered to plants and allowed to infiltrate into the alluvial aquifer in the Yazoo Backwater Area. The effect of the project is to increase the overall volume of water moving downstream. Not allowing adequate time for floodwater infiltration in the Yazoo Backwater Area will also reduce the amount of water that returns to area streams as baseflow. This is particularly critical in the Yazoo Backwater Area as dewatering of the alluvial plain has already resulted in extremely low seasonal flows in area streams. For example, the Sunflower River flow rate often drops below the minimum low flow rate established by the USGS (i.e., the 7Q10 low flow rate).<sup>14</sup>

Reducing the spatial extent, frequency, and duration of time project area wetlands flood will significantly reduce the amount of dissolved and particulate organic carbon available for wetland and aquatic food webs as well as biogeochemical processes in downstream aquatic habitats. The microbial and invertebrate communities, which are critical to the breakdown and recycling of organic matter in these wetlands, are adapted to the periodic pulsing of floodwaters which currently occurs. Without these periodic flood pulses, microbial and invertebrate communities will diminish, and this will affect the capacity of the

wetland to maintain the base of the food chain. The cycling and export of dissolved and particulate carbon requires prolonged contact between soil organic matter, flood waters, and the invertebrate community and subsequent floodwater transport downstream—circumstances that would be dramatically altered by the proposed project.

Reducing the spatial extent, frequency, and duration of time project area wetlands flood will reduce the capacity of area wetlands to remove water pollutants, thus exacerbating existing water quality problems in the Yazoo Backwater Area. Many water pollutants are imported to wetlands via flood water. Hydrologic alterations associated with the proposed project (i.e., prevention of floodwater from accessing wetlands) will reduce the level of sediment deposition as well as the levels of permanent removal and temporary immobilization of nutrients, metals, and other elements and compounds in project area wetlands. Loss or reduction of this important water quality enhancement function is of particular concern in light of existing water quality concerns in the Yazoo Backwater Area. The State reports that overall water quality is lower in this area than anywhere else in the State, as evidenced by a region-wide advisory regarding fish consumption, and numerous consumption bans in some area waters because of high pesticide levels.<sup>15</sup>

Although the FSEIS concludes otherwise, we believe there is potential for conversion of those 26,300 acres that, as a result of the project, would no longer be defined as wetlands and would lose CWA regulatory protection. These conversions of wetlands to other uses could result in additional adverse environmental effects. For example, agricultural conversion could change a forested wetland habitat to an agriculture use, destroying or significantly degrading all wetland functions. Agricultural intensification could have water quality implications by promoting faster and increased surface water runoff from agricultural fields. Given that the Yazoo Backwater Area already contains CWA section 303(d)-listed impaired waterbodies, additional runoff impacts would likely exacerbate the elevated concentrations of the pollutants of concern, potentially causing or contributing to violations of applicable state water quality standards (40 CFR 230.10(b)).

Reducing the spatial extent, frequency, and duration of time project

area wetlands flood will dramatically alter the structure and species composition of the plant community in the Yazoo Backwater Area. Wetland plant communities will shift over time to communities composed of species adapted to drier environments. For example, large areas currently dominated by Nuttall oak and green ash or overcup oak and water hickory will eventually become drier and be replaced by less flood tolerant species such as sweetgum, which produces mast that has a lower biological value to wildlife. This shift will result in a commensurate reduction in the habitat for other wetland dependent plant species found in the Yazoo Backwater Area such as pondberry, which is listed as Federally *endangered* under the Endangered Species Act. As discussed below, this large shift in plant communities will also have adverse effects on area fish and wildlife which depend on these wetland plant species, and the hydrologic regimes they represent, to meet specific life history requirements.

Reducing the spatial extent, frequency, and duration of time project area wetlands flood will significantly degrade their capacity to provide habitat for an extensive list of fish and wildlife species. Insect larvae, midges, oligochaetes (worms), scuds (microcrustaceans), crayfish, worms, snails and spiders make up a critical component of the macroinvertebrate communities that thrive in the area's riverine backwater wetlands due to the presence of saturated soils, organic material and periphyton (a layer of microbial organisms which colonize detrital material). These invertebrates not only contribute to the breakdown of organic material (shredders and grazers) but they are also critical sources of prey for fish, waterfowl, rodents, bats, and birds. The draining and drying of area wetlands associated with the proposed project would significantly reduce the species diversity, as well as the richness and productivity of the area's macroinvertebrate community, thus adversely impacting an extensive list of vertebrate species which depend upon the wetlands' rich macroinvertebrate community for nourishment.

Reducing the spatial extent, frequency, and duration of time project area wetlands flood will also adversely impact amphibian and reptile species in the Yazoo River Basin that depend upon wetlands for breeding and foraging habitat. The life cycles of amphibians and reptiles in alluvial floodplain ecosystems are linked to hydrology as

<sup>14</sup> MCWCS, 2005.

<sup>15</sup> MCWCS, 2005.

well as soil conditions and climate.<sup>16</sup> Abiotic factors that influence habitat conditions within floodplains include hydrologic regime, flood pulse intensity and duration, topography, wetland permanence (hydroperiod), water quality, and connectivity to rivers or streams. For many amphibians, the hydrology associated with floodplain wetlands is necessary for breeding and egg laying. The proposed project would desiccate these floodplain habitats making it difficult for portions of the amphibian population to survive. The proposed project would also adversely affect reptile and amphibian species by modifying river-wetland connectivity, reducing flood pulses and wetland water recharge, and increasing habitat fragmentation.

The proposed project will reduce extensive areas of flooded wetlands which provide critical habitat for fish spawning, rearing, foraging, and cover. As the FWS noted in its review of the FSEIS, the backwater floodplain in the project area supports a diverse fishery, and relative fish abundance is highly dependent upon seasonal overbank or backwater flooding. It also noted that reproduction by 55 of the 140 (39 percent) resident fish species in the Mississippi River is dependent on backwater flooded areas. According to the FWS, the proposed action would reduce the areal extent of wetlands subject to flooding in the Yazoo Backwater Area that are critical to fishery reproduction by approximately 46 percent, or 112,600 acres, during the critical spawning and rearing months. Spring flooding is the major factor responsible for fishery productivity within the Yazoo River Basin. It provides access to protective spawning and nursery habitat outside the stream channels where larger predatory fish species live. These shallowly flooded areas remain inundated for a duration that allows water temperatures to rise quickly, providing suitable spawning habitat, and allowing for optimum larval fish growth. Once the larval fish hatch and their yolk sack is absorbed (7 to 10 days), these seasonally flooded bottomland hardwood areas provide protective shallow water areas with an abundance of cover for protection from predators, as well as the organic matter,

nutrients, and invertebrates needed for larval and juvenile fish growth.

Backwater riverine wetlands such as the ones that would be impacted by the proposed project are used by more bird species than most other ecosystems in North America.<sup>17</sup> Project area wetlands provide migratory bird habitat of hemispheric significance, particularly for waterfowl, shorebirds, over-water nesting waterbirds and wading birds, as well as numerous migratory songbirds. The loss of the productive shallowly flooded wetlands, especially in the spring months when the proposed pumps will be in operation, will impact migratory birds such as shorebirds and waterfowl as they stop over and forage in preparation for their seasonal migration. Fewer shallowly flooded wetlands will reduce foraging habitat, which will equate to reduced nutritional uptake and could result in higher mortality or reduced reproductive fitness as the birds travel the great distances between their wintering and breeding areas in the northern U.S., Canada, and the Arctic. Breeding for many species could be adversely affected during the spring-time nesting season because foraging areas would be reduced. As a result of the reduction in flooding, adult birds will have to travel longer distances to find food, which equates to longer times away from the nest and their chicks and may ultimately lead to higher nest mortality and lower recruitment.

The hydrologic regime of backwater riverine wetlands creates seasonal pulses of nutrient flow and food resources. The timing of these seasonal pulses of energy is important to many wetland dependent birds and mammals inhabiting the Yazoo Backwater Area. The consequences of even modest changes in the timing of events can adversely affect these species. For example, delayed or reduced flood hydrology caused by the proposed project in late fall or early winter could delay and decrease detrital invertebrate populations in late winter and spring, which would affect, among other factors and other species, the foraging resources for mallards, egg-laying of night herons and hooded mergansers, embryo development in raccoons and storage of

nutrient reserves needed by hibernating black bears.<sup>18</sup>

The proposed project would significantly degrade critical habitat for many of the 258 species of birds (e.g., little blue herons, yellow-crowned night herons, wood storks and prothonotary warblers), many species of waterfowl (e.g., wood ducks, mallards, blue and green-winged teal)<sup>19</sup> and over 90 species of fish (e.g., catfish, sunfish and crappies)<sup>20</sup> which have been documented as utilizing wetlands and other waterbodies in the Yazoo Backwater Area and Yazoo River. The proposed project would also degrade critical habitat for 33 *species of greatest conservation need* which depend on bottomland hardwood wetlands in the Yazoo Backwater Area, including the Louisiana black bear which is listed as Federally *threatened* under the Endangered Species Act and the American black bear, 23 *species of greatest conservation need* which depend on standing and running waterbodies in the Yazoo Backwater Area, and 17 *species of greatest conservation need* which depend on the Yazoo River and its major tributaries.<sup>21</sup>

The proposed project would degrade critical ecological functions provided by wetlands in the Yazoo Backwater Area including floodwater detention, nutrient cycling, organic carbon export, pollutant filtering/removal, and maintenance of biologically diverse plant and animal habitat. We believe that impacts to these functions at the scale associated with this project will result in significant degradation (40 CFR 230.10(c)) of the Nation's waters, particularly in light of the extensive historic wetland losses in the lower Mississippi Valley and specifically the Yazoo Backwater Area.

## 2. Underestimation of Adverse Effects

*a. Underestimation of the Spatial Extent of Adverse Effects.* EPA believes the spatial extent of wetlands potentially impacted by the proposed project is much greater than that estimated in the FSEIS. EPA's analysis identified 81,000 acres of jurisdictional wetlands located outside of the wetland impact assessment area established in the FSEIS. EPA believes a significant portion of these wetlands are connected to backwater flooding and will be adversely impacted by the project. However, the FSEIS did not evaluate impacts to these wetlands.

<sup>16</sup> Jones, J.C. and J.D. Taylor. 2005. Herptofauna communities in temperate river floodplain ecosystems of the southeastern United States. pages 235–257. in L.H. Frederickson, S.A. King, and R.M. Kaminski, eds. Ecology and Management of Bottomland Hardwood Systems: The State of our Understanding. University of Missouri-Columbia, Gaylord Memorial Laboratory Special Publication No.10, Puxico.

<sup>17</sup> Heitmeyer, M.E., R.J. Cooper, J.G. Dickson, and B.D. Leopold. 2005. Ecological relationships of warmblooded vertebrates in bottomland hardwood ecosystems. Pages 281–306. in L.H. Frederickson, S.A. King, and R.M. Kaminski, eds. Ecology and Management of Bottomland Hardwood Systems: The State of our Understanding. University of Missouri—Columbia, Gaylord Memorial Laboratory Special Publication No.10, Puxico.

<sup>18</sup> Heitmeyer et al., 2005.

<sup>19</sup> FWS list of bird species utilizing wildlife refuges in the Yazoo Backwater Area: <http://www.npwr.usgs.gov/resource/birds/chekbird/r4/yazoo.htm>.

<sup>20</sup> Lee et al., 1980.

<sup>21</sup> MCWCS, 2005.

In our November 2000, comment letter on the DSEIS, we recommended that the Corps expand its scope of wetland impact assessment to include jurisdictional wetlands in the 2-year floodplain (i.e., 91.0 foot, NGVD elevation). While the FSEIS implies that there are more jurisdictional wetlands in the 100-year floodplain than previously estimated in the DSEIS, the FSEIS concludes that only those wetlands flooded for 5 percent of the growing season and which occur at or below the 88.6 foot, NGVD elevation (i.e., the wetland impact assessment area established in the FSEIS using the Flood Event Assessment Tool (FEAT)/Flood Event Simulation Model (FESM)) will be affected by this project. The FSEIS also concludes that any wetlands occurring outside the FEAT/FESM modeled boundary are not connected to the backwater ecosystem and thus would not be impacted by the pumping project. We disagree and, as discussed further below, note that data included in the FSEIS supports our position that a significant amount of jurisdictional wetlands outside the FEAT/FESM modeled boundary is indeed connected to the backwater ecosystem, and thus will likely be adversely impacted by the proposed project.

During the course of this project several attempts have been made to estimate the spatial extent of wetlands based upon remote sources of data (i.e., Geographic Information Systems (GIS), satellite images, hydrologic models). These remote based estimates of jurisdictional wetland extent ranged from approximately 60,000 to over 200,000 acres. Since these landscape level estimates were based on remote data with un-estimated error, EPA determined a field based, statistical survey would provide a more precise and scientifically defensible basis for establishing the extent and spatial distribution of wetlands in the study area. Therefore, in 2003, EPA in cooperation with the Corps, the FWS and the Natural Resources Conservation Service (NRCS) implemented a field sampling survey designed by EPA's Environmental Monitoring and Assessment Program (EMAP). EMAP survey designs and methods have been developed and tested within EPA's Office of Research and Development over the past decade with published results. Discussion of the methods and results of the EMAP survey were incorporated into Appendix 10 of the FSEIS.

The spatial extent and distribution of wetlands in the Yazoo Backwater Area was determined with known confidence using EPA's EMAP survey design and

analysis. Based on this design, the total wetland extent for the 100-year floodplain is approximately 212,000 acres. Most of the wetlands were found in the FEAT/FESM predicted area. However, EMAP also found approximately 81,000 acres of jurisdictional wetlands occurring outside the wetland boundary predicted by the Corps' FEAT/FESM model. It is the potential impacts to these wetlands that EPA believes were not analyzed in the FSEIS.

The stated effect of the Yazoo Backwater Area Project is the reduction of the areal extent and duration of floods greater than the 1-year flood (FSEIS, paragraph 31). Paragraphs 194–195 in the Main Report state that the timing, frequency and duration of flooding will be affected by the project. Therefore, areas typically covered/inundated by 2-, 5-, 10-, 25-, 50-, and 100-year flood events will be reduced with the proposed project (i.e., less area will be flooded). These areas contain a substantial acreage of wetlands.

Data included in the FSEIS indicates that hydrologic connections exist amongst wetlands beyond those depicted by FEAT/FESM. Table 10–7, in the Wetlands Appendix of the FSEIS indicates that the March 10, 1989; March 21, 1987; and the January 9 and 13, 1983 satellite scenes show between 18,000 and 71,000 acres flooded in the area between 91.0 feet and 100 feet, NGVD (i.e., 2–100 year band). Hence, it is likely that the jurisdictional wetlands between the 2-year and 100-year flood elevations currently experience flooding. This conclusion is further supported by the statement that the FESM model overestimates flooding close to the channels utilized by the model, but does “less well” when flooded areas are away from the channels (FSEIS, paragraph 43). EPA interprets this to mean that areas away from the FESM channels could flood, but the model is unable to depict those flooded areas. FSEIS Tables 10–10 (Areal extent of wetlands by composite wetland cell value) and 10–11 (Wetland losses by duration interval and duration zone) in the Wetlands Appendix (Appendix 10) and Plate 10–25 indicate there are wetland areas beyond the FEAT boundary that flood and would be affected by the proposed pump by virtue of having decreased flood durations after the project. These items in Appendix 10 indicate impacts to be approximately 60,000 acres. The Wetland Appendix also indicates that approximately 41,000 acres outside the Corps' assessment area (i.e., “Tier 2” wetlands in Table 10–16) flood during the 2-year return period flood.

Corps' hydrologic data also indicate that flooded wetlands exist in the 2-year floodplain and will be impacted through a change in flood duration as well as a change in flood frequency. In 2004, the Corps provided EPA with a copy of the Period of Record gage data for the years 1943 to 1997. These data contained daily gage records, presumably as outputs from the Period of Record Routing model, for the with- and without project scenarios at Steele Bayou and Little Sunflower gages. A frequency analysis of this data indicates the 2-year flood elevation (stage) is 91.0 feet, NGVD in the Lower Ponding area and 91.6 feet, NGVD in the Upper Ponding area (FSEIS, Appendix 6—Engineering Summary and Appendix 10). A stage duration analysis of these data indicates that, over the entire period of record, flooding sufficient for wetland hydrology occurs in areas between 89.0 feet and 92.0 feet, NGVD at Steele Bayou under base conditions.<sup>22</sup> As a result of the proposed project, durations would be decreased, on an average annual basis, by 4.5 percent or 15 days. Flood frequency would be changed, at this 2-year return interval elevation, approximately 45 percent. This corresponds to the Corps' calculated stage reductions of approximately 4.5 feet (92.9 feet, NGVD reduced to 88.5 feet, NGVD) at Steele Bayou.

Corps' stage-frequency data indicates flooding will become much less frequent in the 2- and 5-year floodplains, increasing from a 2-year return interval to a 10-year return interval and a 5-year return interval to a 50-year return interval (FSEIS, Appendix 6, Table 6–14 and 6–15). This would result in significant impacts to, among other functions, the hydrologic functions of wetlands in the 2-year floodplain. However, by restricting the impact assessment area to only the FEAT/FESM modeled areas, the Corps is ignoring changes in flood duration and frequency that will result in major impacts to wetlands outside the FSEIS's assessment area.

Existing information regarding the extensive hydrologic network in the Yazoo Backwater Area offers further support that wetlands outside the Corp's assessment area would be affected by the proposed project. The National Hydrography Dataset (NHD) is a comprehensive set of digital spatial data that encodes information about naturally occurring and constructed bodies of water and paths through which water flows. The NHD is mapped at a 1:100,000 scale. When the NHD for the Yazoo River Basin is overlain with the wetland points surveyed in EMAP, the density of stream channels at this

scale strongly indicates that backwater has a great many conduits and that many wetlands on the 2-year floodplain represented by EMAP data points are connected or adjacent to channels. This finding is consistent with the detailed characterization of the Yazoo Backwater Area's hydrology found in the Yazoo Basin HGM Guidebook, which states that during periods of backwater flooding the area's extensive drainage networks "function in reverse and deliver water to low areas far from the source stream."

For these reasons, EPA believes that a significant portion of the 81,000 acres of jurisdictional wetlands identified in the EMAP analysis that exist outside of the Corps' wetland assessment area are connected to backwater flooding and will likely be adversely affected by the project. These wetlands were not evaluated in the FSEIS's impact assessment.

*b. Underestimation of the Degree and Nature of Adverse Effects.* In addition to significantly underestimating the spatial extent of wetlands potentially impacted by the proposed project, wetland, fish, and wildlife functional assessments in the FSEIS also understate the degree and nature of adverse impacts to the wetlands that were evaluated. EPA encouraged the use of the HGM assessment method and the Habitat Evaluation Procedure (HEP) as tools to help evaluate wetland functions, and we still support the use of those tools; however, we believe that certain factors used in the application of these assessment tools are flawed, leading to a significant underestimation of the proposed pumping station's adverse impacts on the aquatic ecosystem. Our primary concerns include:

- The summation of assessment units (i.e., Functional Capacity Units and Habitat Units) in the FSEIS obscures significant wetland, fish, and wildlife impacts. For example, the HGM assessment evaluated eight functions performed by affected wetlands and estimated how these functions would decrease at wetlands adversely impacted by the proposed pumping and increase at reforestation/mitigation sites. These functions are: *detain floodwater*, *detain precipitation*, *cycle nutrients*, *export organic carbon*, *physical removal of elements and compounds*, *biological removal of elements and compounds*, *maintain plant communities*, and *provide wildlife habitat*. In drawing its conclusion that the proposed project would result in an overall 19.5 percent increase in wetland functions, not only does the FSEIS factor in unsubstantiated and improbable benefits associated with the proposed restoration as discussed

below, it also adds the losses and gains for each of the eight functions. This kind of comparison is of concern because it allows large predicted gains in functions such as maintaining plant communities to obscure losses in other critical water quality related functions.

- Impacts to key functions are omitted. In the HGM assessment, no effect is shown in the *detain floodwater* function as a result of this project despite the fact that this is one of the functions which the proposed pumping project is designed to most dramatically impact. In its discussion of the *detain floodwater* function, the Yazoo Basin HGM Guidebook clearly states the importance of duration of flooding on the performance of this function. However, despite this recognition, the duration information which was incorporated into several other functions in the FSEIS's HGM assessment (which did indicate project related impacts) was not incorporated into the *detain floodwater* function.

- The flood frequency variable shows no change in HGM assessment. Despite information in the FSEIS Engineering Appendix (Table 10-6) which indicates that the proposed project will result in less frequent flooding in areas above the 1-year floodplain, the frequency of flooding variable in the HGM assessment models reflects no change, for any function. This seems incongruous, since the entire stated objective of the project is to modify the timing, frequency and duration of flooding (FSEIS, paragraph 194).

- Despite the pumping project, the HGM assessment assumes that vegetative species composition remains approximately static over time. Over the course of the 50-year project and beyond, the vegetation structure of the Yazoo Backwater Area would change as significant areas at higher elevations shift to drier species composition. The FSEIS's HGM assessment assumes that vegetative species composition remains static through time or that the species shift would still be within the range of reference standards. However, if the hydrologic regime of the area is significantly changed, as proposed, there would be much larger changes in the plant and animal community than was accounted for in the FSEIS's HGM assessment.

- The HEP and HGM assessments assume that land use will not change over the 50-year life of the project. For example, the assessment assumes that mature wetland forest that is hydrologically modified to the extent that it is no longer defined as a wetland would stay mature forest despite no longer being provided CWA regulatory

protection. We believe this assumption is not supported by a more careful evaluation of land-use trends. For example, given the rise in prices for agricultural products in the Mississippi Delta, and the strong increase in domestic production of corn nationwide, agricultural intensification is a serious possibility.

- The HEP assessment underestimates the amount of aquatic spawning habitat adversely affected. According to the HEP model used, fish spawning habitat requires 8 days of continuous inundation at least 1 foot in depth, from March to May. Based on these requirements and hydrologic data provided by the Corps, 3300 acres of habitat would be lost as a result of the project. However, this amount of lost habitat is inconsistent with values reported in the Wetland Appendix (Table 10-10). The Wetland Appendix indicates that approximately 39,000 acres which currently flood for 14 days or less (but greater than 7 days) would, as a result of the proposed project, only flood for less than 7 days (i.e., shift to the <2.5 percent duration band). EPA's interpretation of Table 10-10 is that there is currently at least 39,000 acres of potentially suitable fish spawning habitat that will become unsuitable after project implementation. These impacts appear far greater than the 3300 acres of lost spawning habitat discussed in the FSEIS's Aquatics Appendix and would require far more compensation than what is proposed in the FSEIS.

- Inappropriate selection of fish species for the HEP assessment results in an underestimation of the proposed project's adverse effects on fisheries. The nine fish species selected for the FSEIS's HEP assessment do not represent fish species whose life cycles would be affected by the proposed project's hydrological modifications within riverine backwater wetlands. All nine of the fish species evaluated in the HEP are commonly found in larger open water systems and do not require floodplain habitats for their spawning or rearing. Thus, the HEP assessment underestimates how the proposed project would impact the large number of fish species which do require floodplain connections and periodic flooding events for key aspects of their life cycles such as spawning and rearing.

- HEP does not evaluate the impacts of the proposed project on amphibians and reptiles. The FSEIS's HEP assessments exclude entirely any assessment of the proposed project's adverse impacts on amphibians and reptiles. Species in both of these classes of animals depend upon wetland habitat

to meet numerous life history requirements and would experience extensive adverse effects from the proposed project.

The FSEIS's exclusion from analysis of wetlands above the 2-year, 5 percent flood duration elevation, and in particular wetlands above the 2-year, 5 percent duration flood elevation and within the 5-year flood elevation, does not acknowledge the influence and importance of shorter duration and less frequent flooding on establishing and maintaining the diversity of wetlands and the functions they provide. Nor does it recognize the impacts of the reduction in flooding resulting from the project on the maintenance of that diversity of wetlands and the biodiversity they support. The importance of wetland functions within and above the 2-year, 5 percent flood elevation is noted in the Yazoo Basin HGM Guidebook which states "one of the primary criteria used to identify wetland subclasses in the Yazoo Basin is flood return interval. A 5-year or less flood return interval is regarded as sufficient to support major functions that involve periodic connection to stream systems." Shorter duration and less frequent flooding will significantly and adversely affect the vegetation and aquatic animal communities within these wetlands, nutrient and sediment cycling, and other functions that establish and maintain the diversity of habitats critical for fish and wildlife dependent upon them, including waterfowl, shorebird, and wading bird foraging habitats, fish spawning and rearing habitats, and amphibian, reptile, and mammal habitats. Reducing the spatial extent, frequency, and duration of time project area wetlands flood will result in the reduction and loss of important wetland functions, according to the criteria outlined in the Yazoo Basin HGM Guidebook. These reductions and losses in wetland functions were not adequately factored into the FSEIS's HGM and HEP assessments.

### 3. Overestimation of Environmental Benefits

Both the HGM and HEP analyses assume extensive yet unsubstantiated and improbable environmental benefits from the project's proposed reforestation. These analyses assume that the entire proposed 55,600 acres of reforestation and mitigation will be obtained and that every acre will be ideally situated in the target area (i.e., areas currently in agricultural production within the two-year floodplain that will flood for a sufficient period to yield equivalent wetland

functions) to produce maximum environmental benefits for all affected resources. However, EPA's EMAP assessment and the Corps' land use assessment (FSEIS, Table 10-9) indicate that there are not enough acres of cleared wetlands with the proper hydrology and soils in the target area to satisfy this goal. Aside from the project's compensatory mitigation (discussed below), there are no commitments to initiate any of the reforestation prior to initiating operation of the pumps. Further, no reforestation (or mitigation) sites have been identified or secured and the FSEIS indicates that these sites may not be located in the target area or even the greater Yazoo—Mississippi Delta (Main Report, paragraph 316). If sites are found, the reliance on willing sellers would likely result in a noncontiguous patchwork of fragmented sites that cannot deliver the kinds of ecological benefits predicted by the HGM and HEP assessments.

Based on our review of available information, EPA believes the proposed project would result in extensive adverse impacts to wetland functions and fish and wildlife resources; impacts which would be inconsistent with the CWA. As discussed below, we do not believe the proposed compensatory mitigation would reduce these adverse impacts to an acceptable level.

### C. Mitigation

To offset the project's extensive adverse environmental impacts, the Corps proposes 10,662 acres of compensatory mitigation. Compensation would consist of reforestation and conservation of areas located in previously cleared wetlands to restore those areas to bottomland hardwood forests. However, compensation sites have not been specifically identified for the proposed mitigation. Rather, the FSEIS states that conservation easements will be purchased only from "willing sellers" to conduct the proposed compensatory mitigation.

EPA has significant concerns regarding the adequacy of the proposed compensatory mitigation. Based on our preliminary review of the HGM and HEP analyses, we believe that compensation requirements for impacts of this type and on this scale would be much greater than that estimated in the FSEIS. In addition, there do not appear to be enough acres of cleared wetlands with the proper hydrology and soils in the target area to satisfy more accurate projections of the mitigation needs of the proposed project. Even if sufficient compensation acreage were available, we do not believe that impacts of this scale and concentration could be

effectively compensated for to avoid causing or contributing to significant degradation (40 CFR 230.10(c)), given that reliance on willing sellers would likely result in a noncontiguous patchwork of fragmented compensation sites that cannot deliver the ecological benefits predicted by the FSEIS. We also believe that the project fails to include all appropriate and practicable steps to minimize and compensate for the project's adverse impacts on the aquatic ecosystem as required by 40 CFR 230.10(d).

The section 404(b)(1) guidelines prohibit discharges that would cause or contribute to significant degradation. As previously discussed, we believe this project would cause or contribute to significant degradation. If the project is going to rely on compensatory mitigation to reduce impacts to an acceptable level, there must be a very robust and detailed mitigation plan which would inform whether in fact the impacts could reliably be reduced to avoid significantly degrading the Nation's waters. These plans should include a number of critical details regarding the mitigation project(s) including: clearly articulated project goals and objectives; project site selection criteria; site protection instruments (e.g., conservation easements); detailed quantitative and qualitative baseline information describing both the impact and compensation sites; a detailed discussion of the mitigation project's credit determination methodology and results; a maintenance plan; ecological performance standards used to evaluate the degree to which the compensation projects are replacing lost functions and area; detailed monitoring requirements; a long-term management plan describing necessary long-term stewardship of the compensation sites and who is responsible for performing this stewardship; an adaptive management plan; and financial assurances to ensure project construction, implementation, and long-term management.

Another critical element of these plans is the site specific mitigation work plans. These plans include detailed written specifications and work descriptions for the compensatory mitigation project, including, but not limited to: geographic boundaries of the project; construction methods, timing, and sequence; source(s) of water, including connections to existing waters and uplands; methods for establishing the desired plant community; plans to control invasive plant species; the proposed grading plan, including elevations and slopes of the substrate;

soil management; and erosion control measures.

Despite the extensive anticipated environmental impacts associated with the proposed project, no specific compensation project sites have been identified or secured. Thus, the mitigation plan included in the FSEIS lacks most of the aforementioned details. In particular, it lacks accurate information regarding baseline conditions at compensation sites, as well as substantiated information regarding potential environmental benefits likely to accrue at these sites if reforestation activities are successfully implemented. Without these details it is not possible to determine that the potential adverse environmental impacts of a project would be successfully minimized and compensated for to avoid significantly degrading the Nation's waters.

What information is included in the FSEIS describing compensatory mitigation raises more concerns. The Corps only promises that 10,662 acres of compensatory mitigation will take place prior to initiating operation of the pumps and notes that this minimum may not be located in the target area or even the greater Yazoo-Mississippi Delta, raising significant concerns that important wetland functions will not be replaced in the watershed. The FSEIS indicates that no requirements will be included to implement hydrological modifications or to otherwise ensure that the compensation projects will result in fully functioning wetland systems. This is of particular concern since the Corps envisions mitigation projects being located in areas whose hydrology will be impacted by the proposed pumping station. The conservation easements used to provide long-term site protection described in the FSEIS (if such sites can be found) will not require landowners to ensure that sites are or will retain wetland characteristics and will allow potentially ecologically disruptive silvicultural practices in these areas. Additionally, the monitoring provisions described in the FSEIS entail only initial visual inspections in the early years of project implementation followed by remote sensing techniques in later years. These are inadequate and are one of many weaknesses in the mitigation plan that make it impossible to conclude that impacts will be reduced permanently below the threshold of significant degradation.

#### *D. Uncertainty of the Proposed Reforestation*

Consistent with our comments regarding the proposed compensatory

mitigation, EPA believes the Corps does not provide effective assurances regarding the project's primary nonstructural component—the proposed reforestation of up to 40,571 acres of cleared wetlands (i.e., up to 55,600 acres less the 10,662 acres the Corps proposes to use as compensation for this project and the 4,367 acres it proposes to use as compensation for impacts associated with already implemented aspects of related projects) through the purchase of conservation easements from willing sellers. Reforestation sites have not been specifically identified in the FSEIS and, as with the compensatory mitigation, there do not appear to be enough acres of cleared wetlands with the appropriate hydrology and soils in the target area to meet this goal. Even if there were enough potential wetland reforestation acres, reliance on willing sellers does not provide effective assurance that the acreage proposed (up to 40,571 acres) will ultimately be made available for the reforestation effort. The reforestation component also suffers from the same technical problems associated with the compensatory mitigation plan in that it would likely result in a fragmented patchwork of reforestation sites with limited benefits. In addition to logistical and technical issues, the management of the reforestation lands (e.g., ensuring the implementation and success of planting efforts, providing long-term stewardship), the restoration of wetland hydrology, the replacement of temporal losses incurred before replanted trees become fully functional bottomland hardwood forested wetlands (hardwoods typically require a minimum of 60–70 years before they are mature), and the continuation of silvicultural practices in the reforestation areas are also major uncertainties. In light of these uncertainties, the environmental benefits suggested by the FSEIS to accrue from the proposed reforestation have not been substantiated.

#### *E. Project Alternatives*

EPA believes, based on the record to date, that the Corps has not sufficiently considered potential alternatives that would avoid and minimize the proposed project's significant adverse impacts to aquatic resources pursuant to 40 CFR 230.10(a). Specifically, we believe that an alternative may be available that would provide a less environmentally damaging and more sustainable approach to floodplain management in the Yazoo Backwater Area. Such an alternative might incorporate, among other actions: reforestation of farmlands in the floodplain, relocation or flood proofing

of flood-prone structures, conservation easements, localized flood protection structures including pumps, and expansion of insurance programs to compensate for economic losses from flooding.

While EPA believes that the nature and extent of the environmental impacts associated with the structural proposal are significant, further evaluation of nonstructural actions could produce a cost-effective solution with significantly fewer adverse environmental impacts than the proposed project, consistent with the Guidelines. We acknowledge that such a solution would likely require participation by multiple federal and state agencies, private industry, and non-governmental organizations, and may necessitate additional Congressional authorization. However, a primarily nonstructural approach could ultimately provide a better balance of Federal objectives for addressing the needs of the Yazoo Backwater Area community for flood reduction and wetlands protection.

#### *F. Recreation*

As previously noted, a 404(c) determination can be based on unacceptable adverse effects on recreational areas. Significant, seasonally-inundated public lands are located in the Yazoo Backwater Area including: (a) The Delta National Forest (61,800 acres); (b) the Yazoo National Wildlife Refuge Complex (including the Yazoo (13,000 acres), Holt Collier (1,400 acres), Theodore Roosevelt (4,000 acres), and part of Panther Swamp (14,000 acres) refuges); (c) Twin Oaks Mitigation Area (5,675 acres); (d) Mahanna Mitigation Area (12,675 acres); and (e) Lake George Wildlife Management Area (8,383 acres). The FSEIS acknowledges these lands as significant resources (FSEIS, page 90) however it does not evaluate how these resources and particularly their recreational values will be affected by the proposed project. In its January 18, 2008, detailed comments on the FSEIS, the FWS indicated that the proposed project will have unacceptable adverse effects on recreational areas in the Yazoo Backwater Area, including four National Wildlife Refuges mentioned above and other publicly-owned land in the project area. EPA is soliciting information about these and other recreational areas in the Yazoo Backwater Area, the use of these areas and how these areas would be impacted if the proposed pumping station is built.

#### **V. Proposed Determination**

The Regional Administrator proposes to recommend that the discharge of

dredged or fill material in wetlands and other waters in Issaquena County, Mississippi be prohibited for the purpose of constructing the Yazoo Backwater Area Project's pumping station or any other pumping proposal in the Yazoo Backwater Area that would involve significant adverse impacts on waters of the United States. Based on current information, the Regional Administrator has reason to believe the Yazoo Backwater Area Project could result in unacceptable adverse impacts. Moreover, these impacts may be partly or entirely avoidable.

This proposed determination is based on unacceptable adverse impacts to wildlife and fisheries pursuant to section 404(c). EPA has reason to believe the project would cause or contribute to significant degradation of waters of the United States and violate the section 404(b)(1) guidelines. At a minimum, the construction and operation of the proposed pumps would degrade the critical functions and values of approximately 67,000 acres of nationally significant wetland resources in the Yazoo River Basin. Of this total, approximately 26,300 acres would be hydrologically modified to the extent that they would no longer be defined as wetlands and would lose CWA regulatory protection. The natural timing, frequency, and duration of water reaching the remaining approximately 40,700 acres of wetlands would be impacted by the proposed pumping, altering the wetlands' ecological characteristics and reducing their functions. EPA does not believe that impacts of this magnitude are consistent with the requirements of the CWA. Our concerns regarding this project are amplified because we believe the potential adverse impacts on wetlands (particularly those wetlands located within the 2-year floodplain) and associated fish and wildlife resources may be much greater than is estimated in the FSEIS. These impacts must also be viewed in the context of the significant cumulative losses across the LMRAV, which has already lost over 80 percent of its bottomland forested wetlands, and specifically in the Mississippi Delta where the proposed project would significantly degrade important remnant bottomland forested wetlands.

EPA does not believe the potential impacts of the project, as currently proposed, can be adequately mitigated to reduce the impacts to an acceptable level. Additionally, we do not believe that the environmental benefits suggested by the FSEIS to accrue from the project's nonstructural component (e.g., the reforestation of up to 40,571

acres) have been substantiated. EPA supports the goal of providing improved flood protection for the residents of the Mississippi Delta; however, we believe that accomplishment of this vital objective can be fully consistent with ensuring effective protection for the area's valuable natural resources. In light of existing information, EPA believes that there are likely to be less environmentally damaging practicable alternatives to building the proposed pumping station.

#### VI. Other Considerations

Like the Corps, EPA has met with local community residents and listened to their hope and belief that the Yazoo Backwater Area Project will protect their homes against major floods, like the one in 1973. The community residents we met expressed a strong belief that by making the area less prone to flooding, the project will bring economic development, jobs, and a return of residents to the area. EPA recognizes the importance of improved flood protection for the people living and working in the project area, which includes low-income and minority populations, and we appreciate that the Corps responded to DSEIS follow-up discussions on environmental justice (EJ) by preparing an EJ analysis pursuant to Executive Order 12898.

The Corps' EJ analysis generally discusses the potential flood protection and economic development that could accrue from the project within communities with potential EJ concerns. However, it has not demonstrated specifically which surrounding communities will be protected and which will remain subject to flooding after the project is completed, and whether they will be protected against 1-year, 2-year, or 100-year floods. The FSEIS does not provide flood risk maps that show the location of residences and habitable structures within the potentially affected communities. Furthermore, EPA does not believe the Corps has fully analyzed the impact of this project on potential economic development in the EJ community.

Under Executive Order 12898, the Corps should have also considered the project's potential effects on subsistence fishers and hunters who could be disproportionately impacted by the operation of the pumps. The FSEIS does not address whether the project would adversely impact populations that depend on subsistence fishing or hunting. We are soliciting information about these and other potential impacts on local communities if the proposed pumping station is built.

Although EPA's proposed section 404(c) determination would prohibit the construction of the pumps as proposed, as mentioned previously, EPA continues to believe there are alternatives that could provide flood protection and other benefits to all communities within the Yazoo Backwater Area. We support working with the residents of the Delta and our federal partners to propose and evaluate alternatives that are responsive to local conditions, needs, and preferences.

#### VII. Solicitation of Comments

EPA is today soliciting comments on all issues discussed in this notice. In particular, we request information on the likely adverse impacts to fish and wildlife values of all of the wetlands, streams, and other waters in all areas which would be affected by the construction and operation of the pumping station proposed in the Yazoo Backwater Area Project. We also seek information pertaining to flora, fauna, and hydrology of the Yazoo Backwater Area. All relevant data, studies, knowledge of studies, or informal observations are appropriate. Information on species or communities of regional or statewide importance would be especially useful.

While the anticipated unacceptable adverse effects on fisheries and wildlife serves as EPA's main basis for this proposed 404(c) determination, EPA has additional concerns with the proposed project, including water quality impacts, alternatives, mitigation, and impacts on recreation. Therefore, EPA also solicits comments on the following aspects of the project and corrective actions that could be taken to reduce the adverse impact of the discharge:

(1) The potential for additional violations of State Water Quality Standards to occur in the Yazoo River Basin if the pumping station is built;

(2) Additional information about low-income and minority populations in the Yazoo Backwater Area and, in the context of Executive Order 12898, the disproportionately high adverse human health or environmental effects, if any, on these populations if EPA makes a final determination to prohibit or restrict the use of certain waters in the Yazoo River Basin as disposal sites for dredged or fill material in connection with the project;

(3) Additional information about fisheries in the Yazoo River Basin and the impacts to fisheries if the pumping station is built and operated;

(4) Additional information on the wildlife species which would be affected by changes in the aquatic

ecosystem if the pumping station is built and operated;

(5) Additional information on municipal and other water supplies in the Yazoo River Basin and how the quantity and quality of those water supplies could be affected by the operation of the proposed pumping station;

(6) The potential for impacts to wetlands and their associated functions in the Yazoo River Basin if the pumping station is built and operated;

(7) Information about recreational uses of the area and how they would be impacted if the pumping station is built and operated;

(8) Additional information on the availability of less environmentally damaging practicable alternatives to satisfy flooding issues, taking into account cost, technology, and logistics and including other nonstructural alternatives;

(9) Information on the potential for mitigation to replace the functions and services provided by the 67,000 acres of wetlands that are, at a minimum, at risk in the Yazoo Backwater Area;

(10) Whether the discharge should be permanently prohibited, allowed as proposed by the Corps, or restricted in time, size or other manner; and

(11) Potential impacts and benefits of alternatives, both structural and nonstructural.

The record will remain open for comments until May 5, 2008. All comments will be fully considered in reaching a decision to either withdraw the proposed determination or forward to EPA Headquarters a recommended determination to prohibit or restrict the discharge of dredged or fill material in wetlands and other waters in the Yazoo Backwater Area in connection with the construction of the Yazoo Backwater Area Project's pumping station or any other pumping proposal in the Yazoo Backwater Area that would involve significant adverse impacts on waters of the United States.

**Lawrence E. Starfield,**

*Regional Decision Officer.*

[FR Doc. E8-5401 Filed 3-18-08; 8:45 am]

BILLING CODE 6560-50-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 Office of Agreements (202-523-5793 or [tradeanalysis@fmc.gov](mailto:tradeanalysis@fmc.gov)).

*Agreement No.:* 010982-042.

*Title:* Florida-Bahamas Shipowners and Operators Association.

*Parties:* Atlantic Caribbean Line, Inc.; Crowley Liner Services, Inc.; Nina (Bermuda) Ltd.; Pioneer Shipping Ltd.; Seaboard Marine, Ltd.; Seafreight Line, Ltd.; and Tropical Shipping and Construction Co., Ltd.

*Filing Party:* Wayne R. Rhode, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment would add Bermuth Lines, Ltd. as a party to the agreement.

*Agreement No.:* 011953-003.

*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; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment would add Bermuth Lines, Ltd. as a party to the agreement.

By Order of the Federal Maritime Commission.

Dated: March 14, 2008.

**Karen V. Gregory,**

*Assistant Secretary.*

[FR Doc. E8-5550 Filed 3-18-08; 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 and Ocean Freight Forwarder Transportation Intermediary Applicants: Overseas Container Forwarding, Inc., 6804 Perry Ave., SE., Auburn, WA

98092. Officers: Ben M. Bain, Vice President (Qualifying Individual), Peter W. Hilton, President. HADDAD, 1 Deavon Court, Monroe Township, NJ 08831, Nabeel A. Elhaddad, Sole Proprietor. Coreana Express (Sea-Tac) Inc., 930 South 336th Street, Federal Way, WA 98003. Officers: Sung-Hyun Yun, Manager (Qualifying Individual). Kang-Ho Lee, President. World International Logistics, Inc., 139 NW 45th Ave., Opa Locka, FL 33054. Officers: Bassam Mourad, President (Qualifying Individual). Maurice Mrad, Vice President. Prisa International, Inc., 516 SW 147 Terrace, Pembroke Pines, FL 33027. Officers: Prinz Echevers, President (Qualifying Individual), Isabel C. Sierra, Vice President. FERM Holdings, Inc., 6510 NW 84 Avenue, Miami, FL 33166. Officers: Norman R. Jackson, President (Qualifying Individual). Fran D. Jackson, Vice President. Topp Cargo & Logistics, LLC, 2209 NW 79th Avenue, Doral, FL 33126. Officers: Carlos F. Aidunate, Vice President (Qualifying Individual), Robert D. Rubin, President. Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants: Taino Express Cargo, Inc., 4406 NW 74th Avenue, Miami, FL 33168. Officers: Jose L. Montero (Qualifying Individual), Ivan Montero, President. J & V International Shipping Corp., 806 Arcadia Ave., Arcadia, CA 91007. Officer: Vivian W. Liu, President (Qualifying Individual).

Dated: March 14, 2008.

**Karen V. Gregory,**

*Assistant Secretary.*

[FR Doc. E8-5547 Filed 3-18-08; 8:45 am]

BILLING CODE 6730-01-P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the

Board, are available for immediate inspection at the Federal Reserve Bank indicated. The 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 Web site at [www.ffiec.gov/nic/](http://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 April 11, 2008.

**A. Federal Reserve Bank of New York** (Anne MacEwen, Bank Applications Officer) 33 Liberty Street, New York, New York 10045-0001:

1. *The Westchester Bank Holding Corporation*; to become a bank holding company by acquiring 100 percent of the voting shares of The Westchester Bank, both of Yonkers, New York.

**B. Federal Reserve Bank of Atlanta** (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. *ATB Holdings, LLC, and ATB Management, LLC*, both of Birmingham, Alabama; to acquire up to 51 percent of the voting shares of Guardian Bancshares, Inc., and thereby indirectly acquire voting shares of Alabama Trust Bank, N.A., both of Sylacauga, Alabama.

**C. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Texas American Acquisition Group, Inc.*, Fort Worth, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Liberty Bank, North Richland Hills, Texas.

Board of Governors of the Federal Reserve System, March 13, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc.E8-5475 Filed 3-18-08; 8:45 am]

BILLING CODE 6210-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration on Aging

#### Agency Information Collection Activities; Proposed Collection; Comment Request; Extension of Certification on Maintenance of Effort for the Title III and Certification of Long-Term Care Ombudsman Program Expenditures

**AGENCY:** Administration on Aging, HHS.  
**ACTION:** Notice.

**SUMMARY:** The Administration on Aging (AoA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the Certification on Maintenance of Effort for the Title III and Certification of Long-Term Care Ombudsman Program Expenditures for all AoA Title III and Title VII Grantees.

**DATES:** Submit written or electronic comments on the collection of information by May 19, 2008.

**ADDRESSES:** Submit electronic comments on the collection of information to:

*Steve.Daniels@aoa.hhs.gov.*

Submit written comments on the collection of information to Administration on Aging, Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** Stephen Daniels, Director, Office of Grants Management, Administration on Aging, Washington, DC 20201.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor.

“Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an

existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA'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.

The Certification on Maintenance of Effort for the Title III and Certification of Long-Term Care Ombudsman Program Expenditures provides statutorily required information regarding state's contribution to programs funded under the Older Americans Act and conformance with legislative requirements, pertinent Federal regulations and other applicable instructions and guidelines issued by Administration on Aging (AoA). This information will be used for Federal oversight of Title III Programs and Title VII Ombudsman Program.

AoA estimates the burden of this collection of information as follows: 56 State Agencies on Aging respond annually which should be an average burden of one half (1/2) hour per State agency per year or a total of twenty-eight hours for all state agencies annually.

Dated: March 14, 2008.

**John Wren,**

*Deputy Assistant Secretary, Center for Policy and Management, Assistant Secretary for Aging.*

[FR Doc. E8-5514 Filed 3-18-08; 8:45 am]

BILLING CODE 4154-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, 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 (CDC) announces the following committee meeting:

*Time and Date:* 9 a.m.–2:45 p.m., April 23, 2008.

*Place:* Marriott Crystal City, 1999 Jefferson Davis Highway, Arlington, VA 22202. Via Teleconference—For toll-free access, please dial 888-791-1856. Participant Pass Code 49328.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

*Purpose:* The Secretary, the Assistant Secretary for Health, and by delegation the Director, Centers for Disease Control and Prevention, are authorized under sections 301 and 308 of the Public Health Service Act to conduct directly or by grants or contracts, research, experiments, and demonstrations relating to occupational safety and health and to mine health. The Board of Scientific Counselors shall provide guidance to the Director, National Institute for Occupational Safety and Health on research and prevention programs. Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings and disseminating results. The Board shall evaluate the degree to which the activities of the National Institute for Occupational Safety and Health: (1) Conform to appropriate scientific standards, (2) address current, relevant needs, and (3) produce intended results.

*Matters to be Discussed:* Agenda items include a report from the Director of NIOSH; NIOSH Implementation of the National Academies of Science Program Recommendations; Occupational Safety and Health Training Recommendations; Update on Enhancing the Utility of NIOSH Information Products; Presentation on NIOSH Work-Related Stress Research and Future Meetings and Closing Remarks. Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Roger Rosa, Executive Secretary, BSC, NIOSH, CDC, 395 E Street, SW., Suite 9200, Patriots Plaza Building, Washington, DC 20201, telephone (202) 245-0655, fax (202) 245-0664.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 13, 2008.

**Elaine Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. E8-5498 Filed 3-18-08; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### National Center for Injury Prevention and Control/ Initial Review Group, (NCIPC/IRG)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned review group:

*Times and Date:* 1 p.m.–1:30 p.m., April 15, 2008 (Open). 1:30 p.m.–5 p.m., April 15, 2008 (closed).

*Place:* Teleconference.

*Status:* Portions of the meetings will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Section 10(d) of Public Law 92-463.

*Purpose:* This group is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focuses on prevention and control.

*Matters to be Discussed:* The meeting will include the review, discussion, and evaluation of cooperative agreement applications submitted in response to Fiscal Year 2008 Requests for Applications related to the following individual research announcement: CE08-006, Feasibility of Acute Concussion Management in the Emergency Department.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* J. Felix Rogers, PhD, M.P.H., NCIPC/Extramural Research Program Office, CDC, 4770 Buford Highway, NE., M/S F62, Atlanta, Georgia 30341-3724, Telephone (770) 488-4334.

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: March 11, 2008.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E8-5491 Filed 3-18-08; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), 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 (CDC), announces the following meeting of the aforementioned committee:

*Board Meeting Times and Dates:* 8:30 a.m.–5 p.m., April 7, 2008. 8:30 a.m.–5 p.m., April 8, 2008. 8:30 a.m.–3 p.m., April 9, 2008.

*Public Comment Times and Dates:* 5 p.m.–6 p.m., April 7, 2008. 7:30 p.m.–8:30 p.m., April 8, 2008.

*Place:* Crowne Plaza Tampa East, 10221 Princess Palm Avenue, Tampa, FL 33610, Telephone (813) 623-6363, Fax (813) 246-7113.

*Status:* Open to the public, limited only by the space available. The meeting space accommodates approximately 75 to 100 people.

*Background:* The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program (EEOICP) 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 which 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 the 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:* This 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.

**Matters to be Discussed:** The topics for the Subcommittee meeting will include a Review of Individual Dose Reconstructions and future Subcommittee Plans and Actions. The agenda for the Advisory Board meeting includes: NIOSH Program Status Report Update; Special Exposure Class (SEC) Petition Evaluation Reports for: Texas City Chemicals, Inc., SAM Laboratories, Kellex/Pierpont, Massachusetts Institute of Technology, Area IV of the Santa Susana Field Laboratory, Horizons, Inc., and NUMEC Parks; Quality assurance and quality control processes by NIOSH; Ethics training for Board members; Procedures Work Group: summary report and full presentation on new matrix format; SEC Petition Status Updates: Sandia National Laboratory-Livermore, Chapman Valve, Hanford, Blockson, Bethlehem Steel; Department of Labor (DOL) Update; Department of Energy (DOE) Update; Work Group reports; Subcommittee on Dose Reconstruction Report; Board Future Plans and Schedules.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted according to the policy provided below. 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.

Policy on Redaction of Board Meeting Transcripts (Public Comment). (1) If a person making a comment gives his or her name, no attempt will be made to redact that name. (2) NIOSH will take reasonable steps to ensure that individuals making public comment are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public Web site. Such reasonable steps include: (a) A statement read at the start of each public comment period stating that transcripts will be posted and names of speakers will not be redacted; (b) A printed copy of the statement mentioned in (a) above will be displayed on the table where individuals sign up to make public comment; (c) A statement such as outlined in (a) above will also appear with the agenda for a Board Meeting when it is posted on the NIOSH Web site; (d) A statement such as in (a) above will appear in the **Federal Register** Notice that announces Board and Subcommittee meetings. (3) If an individual in making a statement reveals personal information (e.g., medical information) about themselves that information will not usually be redacted. The NIOSH FOIA coordinator will, however, review such revelations in accordance with the Freedom of Information Act and the Federal Advisory Committee Act and if deemed appropriate, will redact such information. (4) All disclosures of information concerning third parties will be redacted. (5) If it comes to the attention of the DFO that an individual wishes to share information with the Board but objects to doing so in a public forum, the DFO will work with that individual, in accordance

with the Federal Advisory Committee Act, to find a way that the Board can hear such comments.

**Contact Person for More Information:** Christine Branche, PhD, 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](mailto: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: March 12, 2008.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E8-5496 Filed 3-18-08; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Center for Complementary & Alternative Medicine; 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 for Complementary and Alternative Medicine Special Emphasis Panel; Practice-Based Research Networks.

**Date:** April 21, 2008.

**Time:** 11 a.m. to 2 p.m.

**Agenda:** To review and evaluate grant applications.

**Place:** National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

**Contact Person:** Laurie Friedman Donze, PhD, Scientific Review Administrator, Office of Scientific Review, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301-402-1030, [donzel@mail.nih.gov](mailto:donzel@mail.nih.gov).

Dated: March 12, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-5467 Filed 3-18-08; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Commission on Digestive Diseases.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

**Name of Committee:** National Commission on Digestive Diseases.

**Date:** May 16, 2008.

**Time:** 4 p.m. to 7 p.m.

**Agenda:** Update on burden of disease report; overview of Commission and key elements of final report and general discussion. Pre-registration is required; instructions will be available on the Commission's Web site at <http://www2.niddk.nih.gov/AboutNIDDKCommitteesAndWorkingGroups/NCDD/default.htm>.

**Place:** Westin San Diego, 400 West Broadway, Topaz Room, San Diego, CA 92101.

**Contact Person:** Stephen P. James, MD, Director, Division of Digestive Diseases & Nutrition, National Institute of Diabetes and Digestive and Kidney Diseases, NIH, 6707 Democracy Blvd., Rm. 677, Bethesda, MD 20892-5450, 301-594-7680, [natcommdd@mail.nih.gov](mailto:natcommdd@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 12, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-5463 Filed 3-18-08; 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 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 Dental and Craniofacial Research Special Emphasis Panel; Review of Contract RFP NHLBI-DE-08-16.

*Date:* April 22, 2008.

*Time:* 10 a.m. to 2 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Bethesda Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20817.

*Contact Person:* Jonathan Horsford, PhD, Scientific Review Officer, NIDCR, 45 Center Drive, 4AN-24E, Bethesda, MD 20892, 301-594-4859, [horsforj@mail.nih.gov](mailto:horsforj@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: March 12, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-5464 Filed 3-18-08; 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 R 13.

*Date:* April 25, 2008.

*Time:* 9 p.m. to 11 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Sooyoun (Sonia) Kim, MS, Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NIDCR/NIH, 6701 Democracy Blvd., Rm. 675, Bethesda, MD 20892-4878, (301) 594-4827, [kims@email.nidr.nih.gov](mailto:kims@email.nidr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: March 12, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-5465 Filed 3-18-08; 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 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 Allergy and Infectious Diseases Special Emphasis Panel; A Systems Biology Approach to Infectious Diseases Research.

*Date:* April 9-11, 2008.

*Time:* 8:30 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Crowne Plaza, 8777 Georgia Avenue, Silver Spring, MD 20910.

*Contact Person:* Eleazar Cohen, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health, NIAID, 6700 B Rockledge Drive, Room 3129, Bethesda, MD 20892, 301-435-3564, [ec17w@nih.gov](mailto:ec17w@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: March 12, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-5466 Filed 3-18-08; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Arthritis and Musculoskeletal and Skin 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Orthopaedic Clinical Trial.

*Date:* April 1, 2008.

*Time:* 10 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Michael L. Bloom, PhD, MBA, Scientific Review Administrator, EP Review Branch, NIH/NIAMS, One Democracy Plaza, Room 820, MSC 4872, 6701 Democracy Blvd., Bethesda, MD 20892-4872, 301-594-4953, [Michael.L.Bloom@nih.gov](mailto:Michael.L.Bloom@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.

*Name of Committee:* National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Bone Disease Clinical Trial.

*Date:* April 10, 2008.

*Time:* 10 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Michael L. Bloom, PhD, MBA, Scientific Review Administrator, EP Review Branch, NIH/NIAMS, One Democracy Plaza, Room 820, MSC 4872, 6701 Democracy Blvd., Bethesda, MD 20892-4872, 301-594-4953, [Michael.L.Bloom@nih.gov](mailto:Michael.L.Bloom@nih.gov).

*Name of Committee:* National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Loan Repayment Program.

*Date:* April 30, 2008.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Charles H. Washabaugh, PhD, Scientific Review Administrator, Review Branch, NIAMS/NIH, 6701 Democracy Blvd., Room 816, Bethesda, MD 20892, 301-451-4838, [washabac@mail.nih.gov](mailto:washabac@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 12, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-5468 Filed 3-18-08; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Substance Abuse and Mental Health Services Administration**

**Agency Information Collection Activities: Proposed Collection; Comment Request**

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Proposed Project: National Suicide Prevention Lifeline—Call Log—NEW**

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services funds a National Suicide Prevention Lifeline Network, a system of toll-free telephone numbers that routes calls from anywhere in the United States to a network of more than 125 certified crisis centers that can link callers to local emergency, mental health, and social service resources. The

technology permits calls to be directed immediately to a suicide prevention worker who is geographically closest to the caller.

Through its grantee which is administering the National Suicide Prevention Lifeline Network, SAMHSA developed a Call Log in an effort to monitor basic trends in calls received. The completed Call Logs will inform the Network's planning around enhancing services provided by networked crisis centers and training provided to crisis counselors; increasing Lifeline's accessibility to people at risk for suicidal behavior; and optimizing public health efforts to prevent suicide and suicidal behavior.

All 125 networked crisis centers will be invited to complete the Call Logs. Crisis centers that are already collecting all or most of the information on the Call Log will have the option of extracting compatible data from their own software systems and reporting on a monthly basis.

All other crisis centers will have the option of completing the Call Log in either a Web-based or hardcopy format. Trained crisis counselors will be able to complete the majority of Log items during the course of the call, without asking the caller specific questions. They may also choose to fill out the form at the conclusion of individual calls. Completing the form entails asking callers a few basic questions (e.g., age; race; ethnicity; whether they ever served in the U.S. military; how they heard about the Lifeline service). No identifiable information will be collected.

The estimated annual response burden<sup>1</sup> to collect this information is as follows:

Type of respondent	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden per respondent	Total hour burden, all respondents
IT Worker (extract, reformat, upload; ACCs) .....	<sup>2</sup> 100	12	1,200	.5	6	600
Caller (question response; NCCs) .....	<sup>3</sup> 26,640	1	26,640	.05	.05	1,332
Volunteer Crisis Counselor (form completion; NCCs) .....	<sup>4</sup> 375	<sup>5</sup> 36	13,500	.08	2.9	1,088
Paid Staff Crisis Counselor (form completion; NCCs) .....	375	36	13,500	.08	2.9	1,088
<b>Total .....</b>	<b>27,490</b>	<b>.....</b>	<b>54,840</b>	<b>.....</b>	<b>.....</b>	<b>4,108</b>

<sup>1</sup> Estimates based on 444,000 calls annually.

<sup>2</sup> 100 (80%) of the networked crisis centers currently collect this data electronically (automated crisis centers or ACCs). An IT worker would need to extract, reformat, and upload those records monthly.

<sup>3</sup> 25 (20%) of the networked crisis centers do not currently collect this data (non-automated crisis centers or NCCs) and counselors would therefore need to ask Callers questions from the Call Log. A 30% response rate is anticipated. 444,000 total annual calls × (20% of the centers) = 88,800 annual calls answered by NCCs × (30% response rate) = 26,640 Call Logs completed by NCCs.

<sup>4</sup> Estimate based on crisis centers' average staffing level of 30 counselors, 50% (15) of whom are volunteer. 25 non-automated centers × 15 volunteer counselors = 375 volunteer counselors.

<sup>5</sup> Estimate assumes that incoming calls will be equally divided among volunteer and paid counselors. 26,640 calls ÷ 750 total counselors = 36 calls per counselor.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7-1044, 1 Choke Cherry Road, Rockville, MD 20850. Written comments should be received by May 19, 2008.

Dated: March 12, 2008.

**Elaine Parry,**

*Acting Director, Office of Program Services.*

[FR Doc. E8-5493 Filed 3-18-08; 8:45 am]

**BILLING CODE 4162-20-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[USCG-2008-0188]

### National Offshore Safety Advisory Committee

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Offshore Safety Advisory Committee (NOSAC) will meet to discuss various issues relating to offshore safety and security. The meeting will be open to the public.

**DATES:** NOSAC will meet on Friday, April 18, 2008, from 9 a.m. to 3 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before April 4, 2008. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before April 4, 2008.

**ADDRESSES:** NOSAC will meet in room 2415 of the Coast Guard Headquarters Bldg., 2100 Second Street, SW., Washington, DC. Send written material and requests to make oral presentations to Commander J.M. Cushing, Commandant (CG-5222), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001. This notice is available on our online docket, USCG-2008-0188, at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Commander J.M. Cushing, Executive Director of NOSAC, or Mr. Jim Magill, Assistant Executive Director, telephone 202-372-1414, fax 202-372-1926.

**SUPPLEMENTARY INFORMATION:** Notice of the meeting is given under the Federal

Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92-463).

### Agenda of Meeting

The agenda for the April 18, 2008 committee meeting includes the following:

(1) Report on issues concerning the International Maritime Organization (IMO) and the International Organization for Standardization.

(2) Revision of 46 CFR, Subchapter V, Subpart B—Commercial Diving Operations.

(3) MARPOL Annex II Implementation for Existing Offshore Supply Vessels (OSVs).

(4) Revision of IMO Mobile Offshore Drilling Units (MODU) Code.

(5) Sandblasting standard for OCS facilities.

(6) Evacuation of Injured Workers from remote Drilling and Production Facilities.

(7) Transportation Worker Identification Credential (TWIC) impact on offshore facilities.

(8) Revision of 33 CFR, Subchapter N, Outer Continental Shelf Activities.

### Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than April 4, 2008. Written material for distribution at the meeting should reach the Coast Guard no later than April 4, 2008. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to the Executive Director no later than April 4, 2008.

### Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director as soon as possible.

Dated: March 12, 2008.

**J.G. Lantz,**

*Director of Commercial Regulations and Standards.*

[FR Doc. E8-5563 Filed 3-18-08; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[FEMA-1747-DR]

### Illinois; 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 Illinois (FEMA-1747-DR), dated March 7, 2008, and related determinations.

**DATES:** *Effective Date:* March 7, 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 March 7, 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 Illinois resulting from severe storms and flooding beginning on January 7, 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 Illinois.

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, Lawrence Sommers, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Illinois have been designated as adversely affected by this declared major disaster:

Iroquois and Livingston Counties for Individual Assistance.

All counties within the State of Illinois are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in 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. E8-5510 Filed 3-18-08; 8:45 am]

**BILLING CODE 9110-10-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[FEMA-1746-DR]

#### Kentucky; 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 Commonwealth of Kentucky (FEMA-1746-DR), dated February 21, 2008, and related determinations.

**DATES:** *Effective Date:* March 5, 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 Commonwealth of Kentucky 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 February 21, 2008.

Bath, Harrison, Hopkins, Nicholas, Shelby, and Spencer Counties for Individual 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. E8-5511 Filed 3-18-08; 8:45 am]

**BILLING CODE 9110-10-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[FEMA-1745-DR]

#### Tennessee; 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 Tennessee (FEMA-1745-DR), dated February 7, 2008, and related determinations.

**DATES:** *Effective Date:* March 10, 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 Tennessee 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 February 7, 2008.

McNairy County for Individual Assistance (already designated for Public Assistance.)

Tipton and Wayne Counties for Individual 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. E8-5512 Filed 3-18-08; 8:45 am]

**BILLING CODE 9110-10-P**

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

#### Aviation Security Advisory Committee (ASAC) Re-Establishment and Request for Applicants

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** Notice.

**SUMMARY:** The Transportation Security Administration (TSA) announces the re-establishment of the Aviation Security Advisory Committee (ASAC) and requests applicants for appointment to ASAC. The Secretary of Homeland Security has determined that the re-establishment of ASAC is necessary and in the public interest in connection with the performance of duties of TSA. This determination follows consultation with the Committee Management Secretariat, General Services Administration, who is responsible for monitoring and reporting executive branch compliance with the Federal Advisory Committee Act (FACA). Qualified individuals interested in serving on this committee are invited to apply to TSA for appointment.

**DATES:** Submit comments on the re-establishment of this committee or applications for membership by April 18, 2008.

**ADDRESSES:** Comments on this action or applications for appointment to ASAC should be submitted via mail or e-mail to Cindy Mitchell, at the address listed below under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Cindy Mitchell, ASAC Designated Federal Official, Office of Transportation Sector Network Management, Transportation Sector Network Integration Division (TSA-28), Transportation Security Administration, 601 12th Street, Arlington, VA 22202; telephone 571-227-1609, E-mail: [cindy.mitchell@dhs.gov](mailto:cindy.mitchell@dhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

TSA's Aviation Security Advisory Committee (ASAC) is a "discretionary" advisory committee. A discretionary advisory committee is one that is established under the authority of an agency head or authorized, but not required, by statute. An advisory committee referenced in general (non-specific) authorizing language or Congressional committee report language is discretionary, and its

establishment or termination is within the legal discretion of an agency head.

ASAC is a standing committee composed of Federal and private sector organizations that was chartered in 1989 by the Federal Aviation Administration in the wake of the crash of Pan American World Airways Flight 103 in 1988 over Lockerbie, Scotland.

On November 19, 2001, the Aviation and Transportation Security Act (ATSA) was signed into law, which among other things established the Transportation Security Administration (TSA) and transferred to it the responsibility for civil aviation security. Accordingly, sponsorship of ASAC was also transferred to TSA. Since taking on management of ASAC in August 2002, TSA has taken steps to focus the committee's efforts in directions that are relevant and useful to TSA's post-September 11 mission.

#### The Aviation Security Advisory Committee Re-Establishment

The Aviation Security Advisory Committee is being re-established in accordance with the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. App.). ASAC's mission is to examine areas of civil aviation security as tasked by TSA with the aim of addressing current issues and/or developing recommendations for improvements to civil aviation security methods, equipment, and processes. The committee will provide advice and recommendations for improving aviation security measures to the Assistant Secretary for TSA.

*Name of Committee:* Aviation Security Advisory Committee.

*Balanced Membership Plans:* ASAC is composed of no more than 27 members representing private sector organizations of key constituencies affected by aviation security requirements. These key constituencies shall include: Victims of Terrorist Acts Against Aviation; Law Enforcement and Security Experts; Aviation Consumer Advocates; Airport Tenants and General Aviation; Airport Operators; Airline Management; Airline Labor; Aircraft Manufacturers; and Air Cargo Representatives. Each membership category shall have at least one member, and there shall be a maximum of three members per membership category.

Members are recommended for appointment by the TSA Assistant Secretary and appointed by and serve at the pleasure of the Secretary of the Department of Homeland Security. Terms of office shall normally be two (2) years, and members' terms of office shall be staggered within each membership category to assure adequate

continuity of ASAC membership. Therefore, some members appointed under this announcement shall be appointed to a one-year (1) term of office.

*Duration:* The committee's charter shall terminate two (2) years from the date it is filed with Congress and may be renewed at the end of this 2-year period in accordance with section 14 of FACA.

*Responsible TSA Officials:* Cindy Mitchell, ASAC Designated Federal Official, Aviation Security Advisory Committee, Office of Transportation Sector Network Management, Transportation Sector Network Integration Division (TSA-28), Transportation Security Administration, 601 12th Street, Arlington, VA 22202; telephone: 571-227-1609, E-mail: [cindy.mitchell@dhs.gov](mailto:cindy.mitchell@dhs.gov).

#### Applicants for Appointment to ASAC

Qualified individuals interested in serving on this committee are invited to apply to TSA for appointment. Please submit your resume to the Responsible DHS Official noted above by April 18, 2008. Applicants should have background and experience that supports at least one of the nine constituency groups in the aforementioned Balanced Membership Plans section.

The ASAC will meet approximately twice each year, usually in Washington, D.C., but may meet more often if the need arises. Members serve at their own expense and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government. TSA retains authority to review the participation of any ASAC member and to recommend changes for cause at any time.

In support of the policy of the Department of Homeland Security on gender and ethnic diversity, qualified women and minorities are encouraged to apply for membership.

Issued in Arlington, Virginia, on March 12, 2008.

**John Sammon,**

*Assistant Administrator, Transportation Sector Network Management.*

[FR Doc. E8-5469 Filed 3-18-08; 8:45 am]

**BILLING CODE 9110-05-P**

**DEPARTMENT OF HOMELAND SECURITY****U.S. Citizenship and Immigration Services****Agency Information Collection Activities: Revision of an Existing Information Collection; Comment Request**

**ACTION:** 60-Day Notice of Information Collection Under Review: Form N-644, Application for Posthumous Citizenship; OMB Control No. 1615-0059.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 19, 2008.

Written comments and suggestions regarding the item(s) contained in this notice, and especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Acting Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202-272-8352, or via e-mail at [rfs.regs@dhs.gov](mailto:rfs.regs@dhs.gov). When submitting comments by e-mail please add the OMB Control Number 1615-0059 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Posthumous Citizenship.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N-644, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individual or households. The information collected will be used to determine an applicant's eligibility to request posthumous citizenship status for a decedent and to determine the decedent's eligibility for such status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 1 hour and 50 minutes (1.83 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 92 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: <http://www.regulations.gov>.

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, Telephone number 202-272-8377.

Dated: March 14, 2008.

**Stephen Tarragon,**

*Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. E8-5489 Filed 3-18-08; 8:45 am]

**BILLING CODE 4410-10-P**

**DEPARTMENT OF HOMELAND SECURITY****U.S. Citizenship and Immigration Services****Agency Information Collection Activities: Revision of a Currently Approved Information Collection; Comment Request**

**ACTION:** 60-Day Notice of Information Collection Under Review: Form N-426, Request for Certification of Military or Naval Service; OMB Control No. 1615-0053.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 19, 2008.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., 3rd Floor, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202-272-8352, or via e-mail at [rfs.regs@dhs.gov](mailto:rfs.regs@dhs.gov). When submitting comments by e-mail please add the OMB Control Number 1615-0053 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

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

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

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

**Overview of This Information Collection**

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Request for Certification of Military or Naval Service.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security*

sponsoring the collection: Form N-426. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This form will be used by USCIS to request a verification of the military or naval service claim by an applicant filing for naturalization on the basis of honorable service in the U.S. armed forces.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 45,000 responses at 45 minutes (.75) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 33,750 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: <http://www.regulations.gov/>.

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, Telephone number 202-272-8377.

Dated: March 14, 2008.

**Stephen Tarragon,**

*Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. E8-5490 Filed 3-18-08; 8:45 am]

BILLING CODE 4410-10-P

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5187-N-14]

**Housing Counseling Program—Application for Approval as a Housing Counseling Agency**

**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.

National, regional, Multi-State intermediaries and Local public and private nonprofit agencies that provide housing counseling services directly or through their affiliates or branches regarding home buying, homeownership and rental housing programs submit an application for designation as a HUD-approved housing counseling agency. HUD uses the information to evaluate the agency and populate Agency profile data in the Housing Counseling System (HCS) database. This data populates the HUD's Web site and automated 1-800 Hotline.

**DATES:** *Comments Due Date:* April 18, 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 (2502-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\\_L\\_Deitzer@HUD.gov](mailto: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:* Housing Counseling Program—Application for Approval as a Housing Counseling Agency.

*OMB Approval Number:* 2502-NEW.

*Form Numbers:* HUD-9900.

*Description of the Need for the Information and Its Proposed Use:*

National, regional, Multi-State intermediaries and Local public and private nonprofit agencies that provide housing counseling services directly or through their affiliates or branches regarding home buying, homeownership and rental housing programs submit an application for designation as a HUD-approved housing counseling agency. HUD uses the information to evaluate the agency and populate Agency profile data in the Housing Counseling System (HCS) database. This data populates the HUD's Web site and automated 1-800 Hotline.

*Frequency of Submission:* On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden .....	200	1		8		1,600

Total Estimated Burden Hours: 1,600.  
Status: New Collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 13, 2008.

**Lillian L. Deitzer,**

Departmental Paperwork Reduction Act  
Officer, Office of the Chief Information  
Officer.

[FR Doc. E8-5458 Filed 3-18-08; 8:45 am]

**BILLING CODE 4210-67-P**

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

[Docket No. FR-5100-FA-02]

**Announcement of Funding Awards for  
the Rural Housing and Economic  
Development Program; Fiscal Year  
2007**

**AGENCY:** Office of the Assistant  
Secretary for Community Planning and  
Development, HUD.

**ACTION:** Notice of funding awards.

**SUMMARY:** In accordance with section  
102(a)(4)(C) of the Department of  
Housing and Urban Development  
Reform Act of 1989, this announcement  
notifies the public of funding decisions  
made by the Department in a  
competition for funding under the

Notice of Funding Availability (NOFA)  
for the Rural Housing and Economic  
Development Program. This  
announcement contains the names of  
the awardees and the amounts of the  
awards made available by HUD.

**FOR FURTHER INFORMATION CONTACT:**  
Jackie L. Williams, PhD, Director, Office  
of Rural Housing and Economic  
Development, Office of Community  
Planning and Development, 451  
Seventh Street, SW., Room 7137,  
Washington, DC 20410-7000; telephone  
(202) 708-2290 (this is not a toll-free  
number). Hearing- and speech-impaired  
persons may access this number via  
TTY by calling the Federal Relay  
Service toll-free at 1-800-877-8339. For  
general information on this and other  
HUD programs, call Community  
Connections at 1-800-998-9999 or visit  
the HUD Web site at <http://www.hud.gov>.

**SUPPLEMENTARY INFORMATION:** The Rural  
Housing and Economic Development  
program was authorized by the  
Department of Veterans Affairs, Housing  
and Urban Development and  
Independent Agencies Appropriations  
Act of 1999. The competition was  
announced in the NOFA published  
March 13, 2007 (72 RF 11600).  
Applications were rated and selected for  
funding on the basis of selection criteria  
contained in that notice.

The Catalog of Federal Domestic  
Assistance number for this program is  
14.250.

The Rural Housing and Economic  
Development Program is designed to  
build capacity at the state and local  
level for rural housing and economic  
development and to support innovative  
housing and economic development  
activities in rural areas. Eligible  
applicants are local rural non-profit  
organizations, community development  
corporations, federally recognized  
Indian tribes, state housing finance  
agencies, and state community and/or  
economic development agencies. The  
funds made available under this  
program were awarded competitively,  
through a selection process conducted  
by HUD.

For the Fiscal Year 2007 competition,  
a total of \$16,800,000 was awarded to 58  
projects nationwide.

In accordance with section  
102(a)(4)(C) of the Department of  
Housing and Urban Development  
Reform Act of 1989 (103 Stat. 1987. 42  
U.S.C. 3545), the Department is  
publishing the grantees and amounts of  
the awards in Appendix A to this  
document.

Dated: February 29, 2008.

**Nelson R. Bregón,**

General Deputy Assistant Secretary for  
Community Planning and Development.

Aleutian Housing Authority .....	AK	\$300,000.00
AVCP Regional Housing Authority .....	AK	300,000.00
Chilkoot Indian Association .....	AK	185,851.00
Collaborative Solutions, Inc. ....	AL	300,000.00
Hale Empowerment and Revitalization Organization .....	AL	300,000.00
Community Resource Group, Inc. ....	AR	300,000.00
Universal Housing Development Corporation .....	AR	300,000.00
Chicanos Por La Causa, Inc. ....	AZ	300,000.00
Big Pine Paiute Tribe .....	CA	300,000.00
Community Assistance Network .....	CA	300,000.00
Northern Circle Indian Housing Authority .....	CA	300,000.00
Robinson Rancheria of Pomo Indians .....	CA	300,000.00
Walking Shield, Inc. ....	CA	300,000.00
National Council on Agricultural Life & Labor Research Fund .....	DE	300,000.00
Central Florida Community Development Corporation .....	FL	300,000.00
JCVision and Associates, Inc. ....	GA	300,000.00
Homeward, Inc. ....	IA	300,000.00
Community Ventures Corporation .....	KY	300,000.00
Kentucky Highlands Investment Corporation .....	KY	300,000.00
Purchase Area Housing Corporation .....	KY	300,000.00
Young Adult Development in Action, Inc. ....	KY	300,000.00
La. Tech. College Foundation Tallulah .....	LA	300,000.00
Macon Ridge Community Development Corporation .....	LA	243,800.00
Four Directions Development Corporation .....	ME	299,992.00
Penobscot Indian Nation .....	ME	300,000.00
Penquis CAP, Inc. ....	ME	300,000.00
Huron Potawatomi, Inc. ....	MI	299,825.00
Keweenaw Bay Indian Community .....	MI	300,000.00
Little River Band of Ottawa Indians .....	MI	300,000.00
Sault Ste. Marie Tribe of Chippewa Indians .....	MI	300,000.00
Midwest Minnesota Community Development Corporation .....	MN	180,000.00
Tunica County Community Development Coalition, Inc. ....	MS	235,520.00
Browning Community Development Corporation .....	MT	300,000.00
Crow Tribal Housing Authority .....	MT	300,000.00
Haliwa-Saponi Indian Tribe .....	NC	289,793.00

The Affordable Housing Group of North Carolina, Inc. ....	NC	300,000.00
Ho-Chunk Community Development Corporation .....	NE	300,000.00
Community Area Resource Enterprise (CARE 66) .....	NM	299,125.00
Dona Ana County Colonias Development Council .....	NM	203,590.00
New Mexico Mortgage Finance Authority .....	NM	300,000.00
Pueblo of Pojoaque .....	NM	300,000.00
San Juan Pueblo Tribal Council .....	NM	300,000.00
JobStart Chautauqua .....	NY	300,000.00
WSOS Community Action Commission .....	OH	300,000.00
Citizen Potawatomi Community Development Corporation .....	OK	300,000.00
Corporation De Desarrollo Economico de Ceiba, Cd .....	PR	300,000.00
Community Development Corporation of Marlboro County .....	SC	285,000.00
Spartanburg Leased Housing Corporation .....	SC	300,000.00
Four Bands Community Fund, Inc. ....	SD	300,000.00
Mazaska Owecaso Otipi Financial, Inc. ....	SD	266,000.00
Community Development Corporation of Brownsville .....	TX	300,000.00
El Paso Collaborative for Community and Economic Development .....	TX	300,000.00
La Gloria Development Corporation .....	TX	300,000.00
Motivation Education & Training, Inc. ....	TX	300,000.00
Community Action Center .....	WA	294,242.00
Diocese of Yakima Housing Services .....	WA	300,000.00
Skokomish Tribal Nation .....	WA	300,000.00
Wind River Development Fund .....	WY	219,983.00
		<b>\$16,802,721.00</b>

[FR Doc. E8-5456 Filed 3-18-08; 8:45 am]  
 BILLING CODE 4210-67-P

**DEPARTMENT OF THE INTERIOR**

**U.S. Geological Survey**

**Agency Information Collection  
 Activities: Comment Request**

**AGENCY:** U.S. Geological Survey (USGS), Interior.

**ACTION:** Notice of an extension of an information collection (1028-0079).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we will submit to OMB an information collection request (ICR) to renew approval of the paperwork requirements for "North American Breeding Bird Survey, (1 USGS form)." This notice provides the public an opportunity to comment on the paperwork burden of this form.

**DATES:** Submit written comments by May 19, 2008.

**ADDRESSES:** You may submit comments on this information collection to the Department of the Interior, USGS, via:

- E-mail: [atravnic@usgs.gov](mailto:atravnic@usgs.gov). Use Information Collection Number 1028-0079 in the subject line.
- FAX: (703) 648-7069. Use Information Collection Number 1028-0079 in the subject line.
- Mail or hand-carry comments to the Department of the Interior; USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192. Please reference Information

Collection 1028-8-0079 in your comments.

**FOR FURTHER INFORMATION CONTACT:**  
 Keith L. Pardieck at (301) 497-5843.

**SUPPLEMENTARY INFORMATION:**

*Title:* North American Breeding Bird Survey.

*OMB Control Number:* 1028-0079.

*Form Number:* 840.

*Abstract:* Respondents supply the U.S. Geological Survey with avian population data for more than 600 North American bird species. The raw survey data, resulting population trend estimates, and relative abundance estimates will be made available via the Internet and through special publications, for use by Government agencies, industry, education programs, and the general public.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR Part 2), and under regulations at 30 CFR 250.197, "Data and information to be made available to the public or for limited inspection." Responses are voluntary. No questions of a "sensitive" nature are asked.

*Frequency:* Annually.

*Estimated Number and Description of Respondents:* Approximately 1,500 individuals skilled in avian identification will participate.

*Estimated Number of Responses:* 2500.

*Annual burden hours:* 27,500.

*Estimated Annual Reporting and Recordkeeping "Hour" Burden:* The currently approved "hour" burden for this form is 12,500 hours. We estimate the public reporting burden averages 11

hours per response. This includes the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information.

*Estimated Reporting and Recordkeeping "Non-Hour Cost"*  
*Burden:* Mileage costs are on average \$44.85 per response. This includes an approximate 100-mile round trip for data collection.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) (44 U.S.C. 3501, *et seq.*) requires each agency " \* \* \* to provide notice \* \* \* and otherwise consult with members of the public and affected agencies concerning each proposed collection of information \* \* \*" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we publish this

**Federal Register** notice announcing that we will submit this ICR to OMB for approval. The notice provided the required 60-day public comment period.

*USGS Information Collection Clearance Officer:* Alfred Travnicek, 703-648-7231.

Dated: March 12, 2008.

**Susan D. Haseltine,**

*Associate Director of Biology.*

[FR Doc. E8-5447 Filed 3-18-08; 8:45 am]

BILLING CODE 4311-AM-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Final Determination Against Federal Acknowledgment of the Steilacoom Tribe of Indians

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Final Determination.

**SUMMARY:** Pursuant to 25 CFR 83.10(l)(2), notice is hereby given that the Department of the Interior (Department) declines to acknowledge the group known as the Steilacoom Tribe of Indians (STI) of 1515 Lafayette Street, P.O. Box 88419, Steilacoom, Washington 98388, c/o Mr. Danny Marshall, as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the petitioner does not satisfy four of the seven mandatory criteria for acknowledgment, specifically §§ 83.7(a), 83.7(b), 83.7(c), and 83.7(e), as defined in 25 CFR part 83. Consequently, the STI does not meet the requirements for a government-to-government relationship with the United States.

**DATES:** This determination is final and will become effective on June 17, 2008, pursuant to § 83.10(l)(4), unless a request for reconsideration is filed pursuant to § 83.11.

**ADDRESSES:** Requests for a copy of the Summary Evaluation under the Criteria should be addressed to the Office of the Assistant Secretary—Indian Affairs, Attention: Office of Federal Acknowledgment, 1951 Constitution Avenue, NW., MS: 34B-SIB, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** R. Lee Fleming, Director, Office of Federal Acknowledgment, (202) 513-7650.

**SUPPLEMENTARY INFORMATION:** On January 14, 2000, the Department issued a proposed finding (PF) that the STI was not an Indian tribe within the meaning of Federal law because the STI did not meet four of the seven mandatory criteria for Federal acknowledgment as

an Indian tribe. The Department published a notice of the PF in the **Federal Register** on February 7, 2000 (65 FR 5880). The **Federal Register** notice initiated a 180-day comment period during which any individual or organization wishing to comment on the proposed finding could submit factual or legal arguments or evidence to support or rebut the PF.

The Department extended the comment period on several occasions. On March 27, 2007, the Department sent a letter to the STI outlining a plan to bring the regulatory comment and response periods to a close. The Department reopened and extended the comment period for 90 days to allow the STI and other parties to file comments. The Department also noted that this comment period could be extended further if the petitioner filed a detailed description of a work plan, a description of the work it had already completed, and established good cause for any further extension. To receive consideration for another extension of the comment period, the STI had to mail its request by June 14, 2007; otherwise, the comment period would close on July 6, 2007.

On June 25, 2007, the Department received a letter from the STI requesting an extension of the comment period by an additional 180 to 300 days. The letter's June 20, 2007, postmark was six days later than the June 14, 2007, deadline, and the petitioner's letter contained neither a work plan nor a description of work completed. The Department declined to extend the comment period again. The final comment period closed without the Department having received any additional comments. After the comment period closed, the regulatory 60-day response period began. The STI submitted no response materials during this period, which ended on September 4, 2007.

On November 2, 2007, the Department sent a consultation letter to the STI and several interested and third parties informing them that in mid-November the Department planned to begin evaluating the evidence for the FD on the STI petition. None of the parties raised an objection or responded in any other way to the Department's intention to begin preparation of the FD. However, due to workload considerations, the Department was not able to begin work in November. On January 7, 2008, the Department sent a letter to the STI and interested parties stating that it would begin the evaluation for the FD on January 15, 2008, and complete it by March 15, 2008.

During the comment period and the extended comment periods the STI commented only on the PF's analysis for 83.7(b) for the period from after the 1950s. Overall, given the petition's significant deficiencies in meeting criteria 83.7(a), (b), (c), and (e), the STI's comments were limited and did not substantively address the PF. Two neighboring federally recognized Indian tribes—the Puyallup Tribe of the Puyallup Reservation and the Nisqually Indian Tribe of the Nisqually Reservation—submitted third-party comments opposing acknowledgment of the STI. None of the material submitted changed the conclusions of the PF.

The STI claims to descend as a group from the historical Steilacoom Indian tribe that occupied the territory north of the Nisqually River up to Point Defiance in the western part of the state of Washington. The Hudson's Bay Company founded Fort Nisqually in the 1830s, and the STI claims that its Steilacoom ancestors worked at the fort for over two decades. The STI claims its ancestors signed the Medicine Creek Treaty (10 Stat. 1132) in 1854 and that its ancestors resided briefly on the reservations created by the treaty. The STI further contends that some of these Indians left the reservations and settled in "community pockets" in their traditional homelands. These Indians, the STI claims, are the "ancestors of the modern-day Steilacoom tribe" who have formed "an unbroken line of leadership and a continuous existence of community pockets within their traditional territory."

The PF found that over 90 percent of the 612 STI members documented that they are Indian descendants, but only three of them documented descent from persons described in 19th and early 20th century documents as Steilacoom Indians. The PF found that STI members have Indian ancestry from other sources. One source of Indian ancestry is marriages between Indian women from various Indian tribes in the Pacific Northwest and employees of the Hudson's Bay Company. Just under two-thirds of the members descend from Indian women who were not Steilacoom and who, between 1839 and 1870, married employees of the Hudson's Bay Company who had come to the Pacific Northwest. The descendants of these marriages could not be classified as a métis, or mixed-blood, group descended from the historical Steilacoom band because the Indian wives came from a wide variety of tribal origins, including the Nisqually, Puyallup, Cowlitz, S'Klallam, Chimacum, Quinault, Duwamish, Skokomish, Yakima, and Snohomish Indian tribes. Furthermore,

most of these women, after marrying, resided with their non-Indian husbands in non-Indian neighborhoods. A second source of Indian ancestry is descent from Canadian Indian tribes through Red River métis families from Manitoba, Canada, who settled in Washington and Oregon between 1844 and 1855. The petitioner claimed that these immigrants were adopted, sometimes by intermarriage, into a continuously existing Steilacoom community during the second half of the 19th century. However, the evidence in the record shows that the Red River immigrants married into families of the non-Steilacoom Indians or married the Hudson's Bay Company people described above, and the evidence does not show social relationships connecting the STI's ancestral family lines with one another.

The evidence in the record did not demonstrate that the STI maintained a community from historical times to the present, or that there was a group that maintained political influence or authority over its members. Even after the STI formally organized in 1974, there was not significant social interaction extending beyond individual family lines to members of the broader group, and STI political activities did not show a bilateral relationship between the leadership and the members.

Criterion 83.7(a) requires that external observers identify the petitioner as an American Indian entity on a substantially continuous basis since 1900. The PF found that for the period from 1900 to 1973, no external observers identified either the STI petitioner or a group of the petitioner's ancestors as an American Indian entity on a substantially continuous basis. The PF found sufficient evidence that external observers identified the STI as an American Indian entity only since 1974. Therefore, the PF concluded that the STI did not meet criterion 83.7(a).

The Department received no comments from the STI on the PF's conclusions that pertain to criterion 83.7(a). The Nisqually and Puyallup Indian tribes submitted comments regarding criterion 83.7(a). Their assertion that "[n]o other entity was proven to have existed" was not a conclusion that the PF reached under criterion 83.7(a). Criterion 83.7(a) only evaluates whether external observers had identified the petitioner as an American Indian entity on a substantially continuous basis since 1900, not whether any other entity was proven to have existed. None of the comments submitted during the comment period supplied new evidence

that an external observer identified the petitioner or an antecedent group before 1974 as an American Indian entity.

The FD concludes, as the PF did, that external observers identified the petitioner as an Indian entity only after 1974. Because available evidence is not sufficient to demonstrate substantially continuous identification of the petitioner as an American Indian entity from 1900 to the present, the petitioner does not satisfy criterion 83.7(a).

Criterion 83.7(b) requires that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present. The PF concluded that petitioner did not satisfy criterion 83.7(b) at any point in time, remarking that the "current STI membership did not, historically, constitute either a single tribe or group whose history could be traced through time and place or an amalgamated tribe or group whose history could be traced through time and place."

The STI commented on the PF's conclusions directed to criterion 83.7(b) with regard to only one issue—the claimed persistence of a named, collective Indian identity over a 50-year period as described in 83.7(b)(1)(viii). The STI requested that the Department revisit its evaluation of the STI under 83.7(b)(1)(viii) from 1951 to the present. The Department revisited this issue, and noted that the STI based this request on a misunderstanding of criterion 83.7(b). The Department clarified this point of misunderstanding to the STI on several occasions prior to beginning its analysis for the FD, but the STI did not respond to this clarification and did not submit any additional evidence or explanation that would have helped satisfy criterion 83.7(b) from 1951 to the present—or during any other point in time.

The comments from the Puyallup and Nisqually Indian tribes support the PF's conclusion that the petitioner did not satisfy criterion 83.7(b).

Following additional review of the evidence under 83.7(b)(1)(viii), this FD confirms the conclusion of the PF that the existence of a formal organization is not itself sufficient to show collective group identity under 83.7(b)(1)(viii). The record provides substantial evidence that the STI does not meet criterion 83.7(b) and does not provide sufficient evidence that it does. Therefore, the FD concludes that STI does not meet criterion 83.7(b).

Criterion 83.7(c) requires that the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present. The PF concluded that evidence that could

satisfy this criterion was either altogether absent or too limited in nature. Furthermore, some of the limited evidence of political leadership demonstrated that individuals exercised leadership only over a small number of members, not over significant portions of the group, as required by the regulations. Even after the STI incorporated in 1974, its functions and activities were not of a type to show a bilateral political relationship between the leadership and the members. The PF concluded that at no time from first sustained contact to the present did the evidence in the record show that the petitioner had maintained political influence or authority over its members as an autonomous entity. Therefore, it did not satisfy criterion 83.7(c).

The Department received no comments from the STI on the PF's conclusions that pertain to criterion 83.7(c). The comments from the Nisqually and Puyallup Indian tribes supported the PF's conclusions regarding criterion 83.7(c), stating that "the lack of a 19th century organization, and the limited claims purposes of the 20th century group fail to meet this standard."

The record provides substantial evidence that the STI does not meet criterion 83.7(c) and does not provide sufficient evidence that it does. Therefore, the FD concludes that the STI does not meet criterion 83.7(c).

Criterion 83.7(d) requires that the petitioning group submit a copy of the group's present governing document that includes its membership criteria. The PF found that the STI satisfied criterion 83.7(d). The Department received no comments on the PF's conclusions under criterion 83.7(d). Therefore, based on the available evidence, the FD concludes, as the PF did, that the petitioner meets criterion 83.7(d).

Criterion 83.7(e) requires that the petitioner's membership consist of individuals who descend from a historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity. The PF concluded that the STI did not document that its membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity. Over 90 percent of the 612 STI members documented that they are Indian descendants, but only three of them document descent from persons described in 19th and early 20th century documents as Steilacoom Indians. Most of the STI members descend from other

Indians in the Pacific Northwest or from métis people from the Red River Valley in Manitoba, Canada.

The Department received no comments from the STI on the PF's conclusions directed to criterion 83.7(e). The Nisqually and Puyallup Indian tribes stated that the "petitioner has completely failed to establish that its members descend from the historical Steilacoom tribe," which supports the PF's conclusion. The Nisqually and Puyallup Indian tribes further stated that the "only legitimate successors to the historical Steilacoom Tribe are the present-day Puyallup and Nisqually Tribes." This FD does not present any conclusions concerning successorship in interest to a particular treaty or other rights, nor any conclusions regarding any treaty rights belonging to the federally recognized Puyallup and Nisqually Indian tribes.

Based on the available record, the FD affirms the PF's conclusions that only 3 of the petitioner's 612 members (0.5 percent) on its 1995 membership list have been documented as descendants of persons who were described in 19th and early 20th century documents as Steilacoom Indians. The record provides substantial evidence that the STI does not meet criterion 83.7(e) and does not provide sufficient evidence that it does. Therefore, the FD concludes that the STI does not meet criterion 83.7(e).

Criterion 83.7(f) requires that the membership of the petitioning group be composed principally of persons who are not members of any acknowledged North American Indian tribe. The PF concluded that the STI met criterion 83.7(f). The Department received no comments, from the petitioner or any other party, on the PF's conclusions under criterion 83.7(f). During its preparation of the FD, the Department compared the STI membership list with rolls of federally recognized Indian tribes under the jurisdiction of the Bureau of Indian Affairs (BIA) Northwest Region. They are, based on geographical proximity and the PF's genealogical findings, the Indian tribes most likely to include STI members. The review showed that the STI is composed principally of persons who are not members of any acknowledged North American Indian tribe. Therefore, the FD affirms the PF and concludes that the STI meets the requirements of criterion 83.7(f).

Criterion 83.7(g) requires that neither the petitioner nor its members be the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. The Department received no comments on the PF's conclusions under criterion

83.7(g). The available documentation for the PF and the FD provided no evidence that the STI was the subject of congressional legislation to terminate or prohibit a Federal relationship as an Indian tribe. Therefore, the petitioner meets the requirements of criterion 83.7(g).

A report summarizing the evidence, reasoning, and analyses that are the bases for the FD will be provided to the STI and interested parties, and is available to other parties upon written request.

After the publication of notice of the FD, the petitioner or any interested party may file a request for reconsideration with the Interior Board of Indian Appeals (IBIA) under the procedures set forth in section 83.11 of the regulations. The IBIA must receive this request no later than the date listed in the **DATES** section of this notice. The FD will become effective as provided in the regulations 90 days from the **Federal Register** publication, as listed in the **DATES** section of this notice, unless a request for reconsideration is received within that time.

Dated: March 12, 2008.

**Carl J. Artman,**

*Assistant Secretary, Indian Affairs.*

[FR Doc. E8-5551 Filed 3-18-08; 8:45 am]

**BILLING CODE 4310-G1-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Publication of the New U.S. World Heritage Tentative List: 15-Day Notice of Opportunity for Public Comment on Proposed Initial U.S. Nominations to the World Heritage List

**AGENCY:** Department of the Interior, National Park Service.

**ACTION:** Notice and request for comments.

**SUMMARY:** This notice constitutes the official publication of the new U.S. World Heritage Tentative List and provides a First Notice for the public to comment on proposed initial U.S. nominations from the new Tentative List to the UNESCO World Heritage List. This notice complies with Sec. 73.7(c) of the World Heritage Program regulations (36 CFR part 73).

The new Tentative List (formerly referred to as the Indicative Inventory) appears at the end of this notice. The Tentative List consists of properties that appear to qualify for World Heritage status and which may be considered for nomination by the United States to the World Heritage List. The new U.S.

Tentative List was transmitted to the UNESCO World Heritage Centre on January 24, 2008.

The preparation of the Tentative List provided multiple opportunities for the public to comment on which sites to include, as part of a process that also included recommendations by the U.S. National Commission for UNESCO, a Federal Advisory Commission to the U.S. Department of State.

The United States is now considering whether to nominate any of the properties on the Tentative List to the World Heritage List. The U.S. is considering proposing two properties, the Papahānaumokuākea Marine National Monument, Hawaii, and Mount Vernon, Virginia, as the initial U.S. sites to be drawn from the new Tentative List for nomination to the World Heritage List. The Department will consider both public comments received during this comment period and the advice of the Federal Interagency Panel for World Heritage in making a final decision on the initial U.S. World Heritage nominations, if any.

**DATES:** Comments upon whether to nominate any of the properties on the new Tentative List, including Papahānaumokuākea Marine National Monument and Mount Vernon, will be accepted on or before fifteen days from the date of publication of this notice in the **Federal Register**.

If selected, the owners of sites proposed for nomination will be responsible, in cooperation with the National Park Service, for preparing the draft nomination in the nomination *Format* required by the World Heritage Committee and for gathering documentation in support of it. Any such nominations must be received from the preparers by the National Park Service in substantially complete draft form by July 1, 2008. Such draft nominations will be reviewed, amended if necessary, and provided to the World Heritage Centre for initial review no later than September 30, 2008. The Centre is to provide comments by November 14, 2008, with final submittal to the World Heritage Centre by the Department of the Interior through the Department of State required by January 30, 2009. Protective measures must be in place before a property may be nominated. If a nomination cannot be completed in accordance with this timeline, work may continue into the following year for subsequent submission to UNESCO.

**ADDRESSES:** Please provide all comments directly to Jonathan Putnam, Office of International Affairs, National

Park Service, 1201 Eye Street, NW., (0050) Washington, DC 20005 or by E-mail to: [jonathan\\_putnam@nps.gov](mailto:jonathan_putnam@nps.gov). Phone: 202-354-1809. Fax 202-371-1446. All comments will be a matter of public record. 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.

NPS specifically requests comments on whether to nominate any of the properties on the new Tentative List, and specifically whether to nominate Papahānaumokuākea Marine National Monument and/or Mount Vernon. Comments should address the qualifications of the properties proposed for nomination by the United States to the World Heritage List. In formulating your comments, you may wish to take account of the evaluations in the final U.S. Tentative List report referenced below. The World Heritage nomination criteria can be found on the National Park Service Office of International Affairs Web site <http://www.nps.gov/oia>.

All public comments are welcomed and will be summarized and provided to the Department of the Interior officials who will select the initial U.S. World Heritage nominations.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Putnam, 202-354-1809 or April Brooks, 202-354-1808. General information about U.S. participation in the World Heritage Program and the process used to develop the Tentative List is posted on the Office of International Affairs Web site at: <http://www.nps.gov/oia/topics/worldheritage/tentativelist.htm>.

Only the 14 properties included in U.S. Tentative List are eligible to be considered for nomination by the United States to the World Heritage List. Brief descriptions of them appear in a copy of the press release announcing the Tentative List, which is linked to the site just noted. The U.S. Tentative List report on the 14 sites in the form submitted to the UNESCO World Heritage Centre on January 24, 2008, appears in its entirety on the Internet at <http://www.nps.gov/oia/topics/worldheritage/tentativelist/WHTentList.doc>. (For additional information, the earlier National Park Service staff report, including

summaries of information on all 35 sites for which Applications were filed, is posted on the Internet at <http://www.nps.gov/oia/TLEssayFinal.pdf>. If you would like to review the full Applications submitted to the National Park Service for any candidate sites, please go to <http://www.nps.gov/oia/NewWebpages/ApplicantsTentativeList.html>.)

To request a paper copy of the new U.S. Tentative List report submitted to the UNESCO World Heritage Centre, please contact April Brooks, Office of International Affairs, National Park Service, 1201 Eye Street, NW., (0050) Washington, DC 20005. E-mail: [april\\_brooks@nps.gov](mailto:april_brooks@nps.gov).

For the World Heritage nomination *Format*, see the World Heritage Centre Web site at <http://whc.unesco.org/en/nominationform>.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The World Heritage List is an international list of cultural and natural properties nominated by the signatories to the World Heritage Convention (1972). The United States was the prime architect of the Convention, an international treaty for the preservation of natural and cultural heritage sites of global significance proposed by President Richard M. Nixon in 1972, and the U.S. was the first nation to ratify it. In 2005, the United States was elected to a fourth term on the World Heritage Committee and will serve until 2009. There are 851 sites in 140 of the 184 signatory countries. Currently there are 20 World Heritage Sites in the United States already listed.

U.S. participation and the roles of the Department of the Interior and the National Park Service are authorized by Title IV of the Historic Preservation Act Amendments of 1980 and conducted in accordance with 36 CFR 73—World Heritage Convention.

The National Park Service serves as the principal technical agency for the U.S. Government to the Convention and manages all or parts of 17 of the 20 U.S. World Heritage Sites currently listed, including Yellowstone National Park, the Everglades, and the Statue of Liberty.

A Tentative List is a national list of natural and cultural properties appearing to meet the World Heritage Committee eligibility criteria for nomination to the World Heritage List. It is a list of candidate sites which a country intends to consider for nomination within a given time period. A country cannot nominate a property unless it has been on its Tentative List

for a minimum of a year. Countries also are limited to nominating no more than two sites in any given year.

Neither inclusion in the Tentative List nor inscription as a World Heritage Site imposes legal restrictions on owners or neighbors of sites, nor does it give the United Nations any management authority or ownership rights in U.S. World Heritage Sites, which continue to be fully subject to U.S. law. Inclusion in the Tentative List merely indicates that the property may be further examined for possible World Heritage nomination in the future.

The World Heritage Committee's *Operational Guidelines* ask participating nations to provide Tentative Lists, which aid in evaluating properties for the World Heritage List on a comparative international basis and help the Committee to schedule its work over the long term. The *Guidelines* recommend that a nation review its Tentative List at least once every decade. The new Tentative List replaces the original U.S. Tentative List (formerly Indicative Inventory) that was published by NPS in the **Federal Register** on May 6, 1982 (FR 47, 88: 19648-19655) and amended with one additional site in 1983 and one other in 1990.

In order to guide the U.S. World Heritage Program effectively and in a timely manner, NPS prepared and submitted (through the Secretary of the Interior and the Secretary of State) to the World Heritage Centre of UNESCO on January 24, 2008, the previously referenced Tentative List of properties that appear to meet the criteria for nomination and are eligible for nomination during the next decade (2009-2019), starting on or after January 30, 2009. Submittal of nominations must be made no later than that date for the World Heritage Committee's consideration in 2010.

In order to be included, a proposed site had to meet several U.S. prerequisites in addition to appearing to meet the stringent World Heritage criteria of international importance.

The U.S. prerequisites included the written agreement of all property owners to the nomination of their property, general support from stakeholders, including elected officials, and a prior official determination that the property was nationally important (such as by designation as a National Historic or National Natural Landmark).

##### **Process for Developing the U.S. World Heritage Tentative List**

The Tentative List was developed using an Application approved by the Office of Management and Budget (OMB) on August 29, 2006 (OMB

Control No. 1024–0250), pursuant to a 30-Day Notice of Request for Clearance of Collection of Information to the Office of Management and Budget published by NPS in the **Federal Register** on July 27, 2006 (FR 71, 144:42664–42665).

The National Park Service Office of International Affairs provided the Application form in August 2006 for voluntary applications to a new U.S. World Heritage Tentative List by governmental and private property owners. It was intended that preparers use the Application to demonstrate that the property meets the criteria established by the World Heritage Committee for inclusion in the World Heritage List and other requirements, including those of U.S. domestic law (16 U.S.C. 470 a–1, a–2, d) and the program regulations (36 CFR 73–World Heritage Convention).

Thirty-seven (37) Applications were received by the April 1, 2007 deadline. Two were subsequently withdrawn. The National Park Service made recommendations based on staff review of the Applications by the Office of International Affairs, in consultation with National Park Service subject matter experts and external reviewers for cultural and natural resources who are knowledgeable about the World Heritage Committee's policies, practices and precedents. Additional correspondence and/or Addenda containing revised or expanded material was received from most applicants in response to written reviews that were provided to them; all of this material was carefully considered.

#### Results of Review

NPS staff recommendations were provided to the World Heritage Tentative List Subcommittee of the U.S. National Commission for UNESCO for review.

The Office of International Affairs recommended 19 sites for a new Tentative List. These included three natural properties, fifteen cultural properties (two of which are extensions to currently inscribed World Heritage Sites), and one mixed natural and cultural property. The staff review recommended four additional sites for future consideration.

#### Review by U.S. National Commission for UNESCO

The staff recommendations for the draft Tentative List were reviewed by a subcommittee of the U.S. National Commission for UNESCO—which included Federal agency representatives drawn from the Federal Interagency Panel on World Heritage—on September

27, 2007. The subcommittee presented its recommendations to the full Commission in a conference call on October 4, 2007, in which the public participated. The recommendations by the National Commission, including those which differ from the NPS staff recommendations were published for comment in the **Federal Register** on October 31, 2007 (FR 72, 210: 61664–61666) and also posted on the National Commission's Web site where they may be consulted at: <http://www.state.gov/p/io/unesco>.

Nearly all the comments received from Federal, State, and local government executive and legislative officials, and other stakeholders supported the inclusion of sites in their States and communities.

#### Final Approval and Transmittal to the World Heritage Centre

With the benefit of the National Commission's advice and the additional public comments, the final Tentative List was approved by the Secretary of the Interior, and transmitted to the World Heritage Centre by the Department of State on January 24, 2008. This submittal complied with the required timeline for Tentative List submittal at least one year prior to the final submittal of any nominations of sites from the Tentative List by January 30, 2009.

#### Conclusion

Because UNESCO asks countries to wait a year before submitting nominations from their tentative lists, the first time that any U.S. World Heritage nominations drawn from the new List can go forward will be at the beginning of 2009 with consideration by the World Heritage Committee no earlier than the summer of 2010. The Committee, composed of representatives of 21 nations elected as the governing body of the World Heritage Convention, makes the final decisions on which nominations to accept on the World Heritage List at its annual meeting each summer.

#### U.S. World Heritage Tentative List 2008 Cultural Sites (9)

Civil Rights Movement Sites, Alabama  
Dexter Avenue King Memorial Baptist Church, Montgomery.  
Bethel Baptist Church, Birmingham.  
16th Street Baptist Church, Birmingham.

Dayton Aviation Sites, Ohio

Dayton Aviation Heritage National Historical Park, including:

—Huffman Prairie.

—Wright-Patterson Air Force Base.

—Wright Cycle Company and Wright & Wright Printing, Dayton.

—Wright Hall (including Wright Flyer III), Dayton.

Hawthorn Hill, Dayton.

Hopewell Ceremonial Earthworks, Ohio

Fort Ancient State Memorial, Warren County.

Hopewell Culture National Historical Park, near Chillicothe.

Newark Earthworks State Historic Site, Newark and Heath, including:

—Wright Earthworks.

—The Octagon Earthworks.

—Great Circle Earthworks.

Jefferson (Thomas) Buildings, Virginia

Poplar Forest, Bedford County.

Virginia State Capitol, Richmond.

(Proposed jointly as an extension to the World Heritage listing of Monticello and the University of Virginia Historic District.)

Mount Vernon, Virginia

Poverty Point National Monument and State Historic Site, Louisiana

San Antonio Franciscan Missions, Texas

Mission San Antonio de Valero (The Alamo).

San Antonio Missions National Historical Park, including:

—Mission Concepcion.

—Mission San Jose.

—Mission San Juan.

—Mission Espada (including Rancho de las Cabras).

Serpent Mound, Ohio

Wright (Frank Lloyd) Buildings

Taliesin West, Scottsdale, Arizona.

Hollyhock House, Los Angeles, California.

Marin County Civic Center, San Rafael, California.

Frederick C. Robie House, Chicago, Illinois.

Unity Temple, Oak Park, Illinois.

Solomon R. Guggenheim Museum, New York, New York.

Price Tower, Bartlesville, Oklahoma.

Fallingwater, Mill Run, Pennsylvania.

S. C. Johnson and Son, Inc., Administration Building and Research.

Tower, Racine, Wisconsin.

Taliesin, Spring Green, Wisconsin.

*Mixed Natural and Cultural Site (1)*

Papahānaumokuākea Marine National Monument, Hawaii

*Natural Sites (4)*

Fagatele Bay National Marine Sanctuary, American Samoa

Okefenokee National Wildlife Refuge, Georgia

Petrified Forest National Park, Arizona

White Sands National Monument, New Mexico

(Authority: 16 U.S.C. 470 a-1, a-2, d; 36 CFR 73)

Dated: March 6, 2008.

**Lyle Laverty,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E8-5499 Filed 3-18-08; 8:45 am]

**BILLING CODE 4312-52-P**

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**Notice of Proposed Information Collection for 1029-0054**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed authority for the collection of information relating to 30 CFR 872, Abandoned mine reclamation funds.

**DATES:** Comments on the proposed information collection must be received by May 19, 2008, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Room 202-SIB, Washington, DC 20240. Comments may also be submitted electronically to [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov).

**FOR FURTHER INFORMATION CONTACT:** To receive a copy of the information collection request contact John A. Trelease at (202) 208-2783. You may also review the collection request at <http://www.reginfo.gov/public/do/PRAMain>.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13),

require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies the information collection that OSM will be submitting to OMB for approval. This collection is contained in 30 CFR 872, Abandoned mine reclamation funds. OSM will request a 3-year term of approval for each information collection activity.

*Comments are invited on:* (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

*The following information is provided for the information collection:* (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

*Title:* Abandoned mine reclamation funds, 30 CFR 872.

*OMB Control Number:* 1029-0054.

*Summary:* 30 CFR 872 establishes a procedure whereby States and Indian tribes submit written statements announcing the State/Tribe's decision not to submit reclamation plans, and therefore, will not be granted AML funds.

*Bureau Form Number:* None.

*Frequency of Collection:* Once.

*Description of Respondents:* State and Tribal abandoned mine land reclamation agencies.

*Total Annual Responses:* 1.

*Total Annual Burden Hours:* 1.

Dated: March 10, 2008.

**John R. Craynon,**

*Chief, Division of Regulatory Support.*

[FR Doc. E8-5389 Filed 3-18-08; 8:45 am]

**BILLING CODE 4310-05-M**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Importer of Controlled Substances; Notice of Application**

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice

that on February 15, 2008, Lipomed, Inc., One Broadway, Cambridge, Massachusetts 02142, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Cathinone (1235) .....	I
Methcathinone (1237) .....	I
N-Ethylamphetamine (1475) .....	I
Methaqualone (2565) .....	I
Gamma Hydroxybutyric Acid (2010).	I
Lysergic acid diethylamide (7315)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (7348).	I
Marihuana (7360) .....	I
Tetrahydrocannabinols (7370) .....	I
Mescaline (7381) .....	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411) .....	I
Dimethyltryptamine (7435) .....	I
Psilocybin (7437) .....	I
Psilocyn (7438) .....	I
Acetyldihydrocodeine (9051) .....	I
Dihydromorphine (9145) .....	I
Heroin (9200) .....	I
Normorphine (9313) .....	I
Pholcodine (9314) .....	I
Tilidine (9750) .....	I
Amphetamine (1100) .....	II
Methamphetamine (1105) .....	II
Amobarbital (2125) .....	II
Pentobarbital (2270) .....	II
Secobarbital (2315) .....	II
Phencyclidine (7471) .....	II
Cocaine (9041) .....	II
Codeine (9050) .....	II
Dihydrocodeine (9120) .....	II
Oxycodone (9143) .....	II
Hydromorphone (9150) .....	II
Benzoylcegonine (9180) .....	II
Ethylmorphine (9190) .....	II
Hydrocodone (9193) .....	II
Levorphanol (9220) .....	II
Meperidine (9230) .....	II
Methadone (9250) .....	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300) .....	II
Thebaine (9333) .....	II

Drug	Schedule
Oxymorphone (9652) .....	II
Alfentanil (9737) .....	II
Fentanyl (9801) .....	II
Sufentanil (9740) .....	II

The company plans to import analytical reference standards for distribution to its customers for research purposes.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedule I or II, which fall under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)) may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrisette Drive, Springfield, VA 22152; and must be filed no later than April 18, 2008.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745), all applicants for registration to import a basic class of any controlled substances in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: March 10, 2008.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E8-5523 Filed 3-18-08; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Importer of Controlled Substances; Notice of Application**

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on February 14, 2008, Roche Diagnostics Operations, Inc., Attn: Regulatory Compliance, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Alphamethadol (9605) .....	I
Tetrahydrocannabinols (7370) .....	I
Cocaine (9041) .....	II
Ecgonine (9180) .....	II
Methadone (9250) .....	II
Morphine (9300) .....	II

The company plans to import the listed controlled substances for the manufacture of diagnostic products for distribution to its customers.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrisette Drive, Springfield, VA 22152; and must be filed no later than April 18, 2008.

This procedure is to be conducted simultaneously with and independent

of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745), all applicants for registration to import a basic class of any controlled substances in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: March 10, 2008.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E8-5524 Filed 3-18-08; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Importer of Controlled Substances; Notice of Application**

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on February 29, 2008, AllTech Associates Inc., 2051 Waukegan Road, Deerfield, Illinois 60015, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Cocaine (9041) .....	II
Codeine (9050) .....	II
Hydrocodone (9193) .....	II
Meperidine (9230) .....	II
Methadone (9250) .....	II
Morphine (9300) .....	II

The company plans to import these controlled substances for the manufacture of reference standards.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled

substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrisette Drive, Springfield, VA 22152; and must be filed no later than April 18, 2008.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745), all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: March 11, 2008.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E8-5525 Filed 3-18-08; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Importer of Controlled Substances; Notice of Application**

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a registration under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on December 3, 2007, Kenco VPI, Division

of Kenco Group, Inc., 350 Corporate Place, Chattanooga, Tennessee 37419, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Nabilone (7379), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance for distribution to its customers.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrisette Drive, Springfield, VA 22152; and must be filed no later than April 18, 2008.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745-46), all applicants for registration to import a basic class of any controlled substances in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: March 11, 2008.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E8-5529 Filed 3-18-08; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Application**

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 30, 2007, Mallinckrodt Inc., 3600 North Second Street, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Tetrahydrocannabinols (7370) .....	I
Codeine-N-oxide (9053) .....	I
Dihydromorphine (9145) .....	I
Difenoxin (9168) .....	I
Morphine-N-oxide (9307) .....	I
Normorphine (9313) .....	I
Norlevorphanol (9634) .....	I
Amphetamine (1100) .....	II
Methamphetamine (1105) .....	II
Methylphenidate (1724) .....	II
Nabilone (7379) .....	II
Codeine (9050) .....	II
Diprenorphine (9058) .....	II
Etorphine HCL (9059) .....	II
Dihydrocodeine (9120) .....	II
Oxycodone (9143) .....	II
Hydromorphone (9150) .....	II
Diphenoxylate (9170) .....	II
Ecgonine (9180) .....	II
Hydrocodone (9193) .....	II
Levorphanol (9220) .....	II
Meperidine (9230) .....	II
Methadone (9250) .....	II
Methadone intermediate (9254) ..	II
Metopon (9260) .....	II
Dextropropoxyphene, bulk (9273)	II
Morphine (9300) .....	II
Thebaine (9333) .....	II
Opium extracts (9610) .....	II
Opium fluid extract (9620) .....	II
Opium tincture (9630) .....	II
Opium, powdered (9639) .....	II
Opium, granulated (9640) .....	II
Levo-alphaacetyl-methadol (9648) ..	II
Oxymorphone (9652) .....	II
Noroxymorphone (9668) .....	II
Phenazocine (9715) .....	II
Alfentanil (9737) .....	II
Remifentanil (9739) .....	II
Sufentanil (9740) .....	II
Fentanyl (9801) .....	II

The firm plans to manufacture the listed controlled substances for internal use and for sale to other companies.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail

should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrisette Drive, Springfield, VA. 22152; and must be filed no later than May 19, 2008.

Dated: March 10, 2008.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E8-5528 Filed 3-18-08; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Application**

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 26, 2007, Chemica Inc., 316 West 130th Street, Los Angeles, California 90061, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methamphetamine (1105), a basic class of controlled substance listed in schedule II.

The above listed controlled substance is an intermediate in the manufacture of Benzphetamine, a schedule III non-narcotic controlled substance. The methamphetamine will not be sold as a commercial product in the domestic market.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a). Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537; or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrisette Drive, Springfield, Virginia 22152; and must be filed no later than May 19, 2008.

Dated: March 10, 2008.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E8-5530 Filed 3-18-08; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Application**

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 29, 2008, Varian, Inc., Lake Forest, 25200 Commercentre Drive, Lake Forest, California 92630-8810, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Phencyclidine (7471) .....	II
1-Piperidinocyclohexane-carbonitrile (8603).	II
Benzoylcegonine (9180) .....	II

The company plans to manufacture small quantities of the listed controlled substances for use in diagnostic products.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrisette Drive, Springfield, Virginia 22152; and must be filed no later than May 19, 2008.

Dated: March 11, 2008.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E8-5532 Filed 3-18-08; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Importer of Controlled Substances; Notice of Registration**

By Notice dated December 17, 2007 and published in the **Federal Register** on December 27, 2007 (72 FR 73358), GE Healthcare, 3350 North Ridge Avenue, Arlington Heights, Illinois 60004-1412, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of Cocaine (9041), a basic class of controlled substance listed in schedule II.

The company plans to import small quantities of ioflupane, in the form of three separate analogues of Cocaine, to validate production and QC systems; for a reference standard; and for producing material for future investigational new drug (IND) submission.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of GE Healthcare to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated GE Healthcare to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: March 10, 2008.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E8-5501 Filed 3-18-08; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Importer of Controlled Substances; Notice of Registration**

By Notice dated December 17, 2007 and published in the **Federal Register** on December 27, 2007,(72 FR 73360), Noramco Inc., 500 Swedes Landing

Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Raw Opium (9600) .....	II
Concentrate of Poppy Straw (9670).	II

The company plans to import the listed controlled substances to manufacture other controlled substances.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Noramco Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Noramco Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: March 10, 2008

**Joseph T. Rannazzisi,**  
*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E8-5502 Filed 3-18-08; 8:45 am]

BILLING CODE 4410-09-P

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances Notice of Registration**

By Notice dated November 6, 2007 and published in the **Federal Register** on November 16, 2007 (72 FR 64682), National Center for Natural Products Research—NIDA MProject, University of Mississippi, 135 Coy Waller Lab Complex, University, Mississippi 38677, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of

controlled substances listed in schedule I:

Drug	Schedule
Marihuana (7360) .....	II
Tetrahydrocannabinols (7370) .....	II

The company plans to cultivate marihuana for the National Institute on Drug Abuse for research approved by the Department of Health and Human Services.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of National Center for Natural Products Research—NIDA MProject, University of Mississippi to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated National Center for Natural Products Research—NIDA MProject, University of Mississippi to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: March 10, 2008.

**Joseph T. Rannazzisi,**  
*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E8-5503 Filed 3-18-08; 8:45 am]

BILLING CODE 4410-09-P

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Registration**

By Notice dated October 31, 2007 and published in the **Federal Register** on November 7, 2007 (72 FR 62871), Cayman Chemical Company, 1180 East Ellsworth Road, Ann Arbor, Michigan 48108, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule I:

Drug	Schedule
Marihuana (7360) .....	I
Tetrahydrocannabinols (7370) .....	I

The company plans to manufacture small quantities of marihuana derivatives for research purposes. In reference to drug code 7360 (Marihuana), the company plans to bulk manufacture cannabidiol. In reference to drug code 7370 (Tetrahydrocannabinols), the company will manufacture a synthetic THC. No other activity for this drug code is authorized for registration.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cayman Chemical Company to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cayman Chemical Company to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: March 10, 2008.

**Joseph T. Rannazzisi,**  
*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E8-5505 Filed 3-18-08; 8:45 am]

BILLING CODE 4410-09-P

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Registration**

By Notice dated November 6, 2007 and published in the **Federal Register** on November 16, 2007 (72 FR 64677-64678), Cody Laboratories, 601 Yellowstone Avenue, Cody, Wyoming 82414, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Codeine (9050) .....	II

Drug	Schedule
Ecgonine (9180) .....	II
Hydrocodone (9193) .....	II
Morphine (9300) .....	II

The company plans on manufacturing the listed controlled substances in bulk for sale to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cody Laboratories to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cody Laboratories to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: March 10, 2008.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E8-5506 Filed 3-18-08; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Registration**

By Notice dated November 6, 2007 and published in the **Federal Register** on November 16, 2007 (72 FR 64677), Cambridge Isotope Lab, 50 Frontage Road, Andover, Massachusetts 01810, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Morphine (9300), a basic class of controlled substance listed in schedule II.

The company plans to utilize small quantities of the listed controlled substance in the preparation of analytical standards.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cambridge Isotope Lab to manufacture the listed basic classes of controlled

substances is consistent with the public interest at this time. DEA has investigated Cambridge Isotope Lab to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: March 10, 2008.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E8-5507 Filed 3-18-08; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Registration**

By Notice dated November 6, 2007 and published in the **Federal Register** on November 16, 2007 (72 FR 64674), Archimica, Inc., 2460 W. Bennett Street, Springfield, Missouri 65807-1229, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Methylphenidate (1724) .....	II
Phenylacetone (8501) .....	II
Methadone Intermediate (9254) ...	II

The company plans to manufacture the listed controlled substances in bulk for research purposes, and sale to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Archimica, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Archimica, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the

company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: March 10, 2008.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E8-5508 Filed 3-18-08; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Registration**

By Notice dated November 20, 2007, and published in the **Federal Register** on November 30, 2007, (72 FR 67759-67760), Norac Inc., 405 S. Motor Avenue, P.O. Box 577, Azusa, California 91702-3232, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in schedule I.

The company plans to manufacture the listed controlled substance in bulk for formulation into the pharmaceutical controlled substance Marinol®.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Norac Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Norac Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: March 10, 2008.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E8-5509 Filed 3-18-08; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE****Office of Justice Programs**

[OJP (OJJDP) Docket No. 1480]

**Meeting of the Federal Advisory Committee on Juvenile Justice**

**AGENCY:** Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

**ACTION:** Notice of meeting.

**SUMMARY:** The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is announcing the Spring meeting of the Federal Advisory Committee on Juvenile Justice (FACJJ), which will be held in Washington, DC, April 6 to 8, 2008.

*Dates and Locations:* The meeting times and locations are as follows: 1. Sunday, April 6, 2008, 5 p.m. to 6:30 p.m., Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

2. Monday, April 7, 2008, 8:30 a.m. to 5:30 p.m., Office of Justice Programs, 810 Seventh Street, NW., Washington, DC 20531.

3. Tuesday, April 8, 2008, 8:30 a.m. to 1 p.m., Office of Justice Programs, 810 Seventh Street, NW., Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:**

Robin Delany-Shabazz, Designated Federal Official, OJJDP, *Robin.Delany-Shabazz@usdoj.gov*, or 202-307-9963. [Note: This is not a toll-free number.]

**SUPPLEMENTARY INFORMATION:**

The Federal Advisory Committee on Juvenile Justice (FACJJ), established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App.2), will meet to carry out its advisory functions under Section 223(f)(2)(C-E) of the Juvenile Justice and Delinquency Prevention Act of 2002. The FACJJ is composed of one representative from each state and territory. FACJJ duties include: Reviewing Federal policies regarding juvenile justice and delinquency prevention; advising the OJJDP Administrator with respect to particular functions and aspects of OJJDP; and advising the President and Congress with regard to State perspectives on the operation of OJJDP and Federal legislation pertaining to juvenile justice and delinquency prevention. More information, including a member list, may be found at <http://www.facjj.org>.

**Meeting Agenda**

1. Sunday, April 6, 2008

- 5 p.m.–6:30 p.m. Welcome, Call to Order, Preview of the Agenda;

Discussion of State Best Practices; and Summary. (Open Session)

2. Monday, April 7, 2008

- 8:30 a.m.–12:15 p.m. Call to Order; Discussion on Compliance Monitoring; Remarks by the OJJDP Administrator; and Overview of 2008 Annual Report Final Drafts (Open Session)

- 12:15 p.m.–1:45 p.m. Working Lunch/Sub Committee Meetings (Closed Session)

- 1:45 p.m.–5:30 p.m. Sub Committee Report Outs; Review and Discussion of 2008 Annual Report Final Drafts. (Open Session)

3. Tuesday, April 8, 2008

- 8:30 a.m.–1 p.m. Call to Order; Completion of Discussion of Reports; Adoption of Final Drafts; Summary and Adjournment. (Open Session)

For security purposes, members of the FACJJ and of the public who wish to attend, must pre-register online at <http://www.facjj.org>. Should problems arise with web registration, call Daryel Dunston at 240-221-4343. Members of the public must register by Monday, March 31, 2008. [Note: these are not toll-free telephone numbers.]

Additional identification documents may be required. Space is limited.

**Please note:** Photo identification will be required for admission to the meeting.

**Written Comments**

Interested parties may submit written comments by Monday, March 31, 2008, to Robin Delany-Shabazz, Designated Federal Official for the Federal Advisory Committee on Juvenile Justice, OJJDP, at *Robin.Delany-Shabazz@usdoj.gov*. If e-mail is not available, please fax your comments to 202-354-4063 and call Patricia Philogene at 202-305-2704 to ensure that the fax was received. [Note: These are not toll-free numbers.] No oral presentations will be permitted at the meeting. However, written questions and comments from members of the public attending the meeting may be invited.

**J. Robert Flores,**

*Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. E8-5531 Filed 3-18-08; 8:45 am]

**BILLING CODE 4410-18-P**

**DEPARTMENT OF LABOR****Office of the Secretary****Submission for OMB Review: Comment Request**

March 12, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (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 this 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 toll-free number) / e-mail: [king.darrin@dol.gov](mailto:king.darrin@dol.gov).

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Departmental Management (DM), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202-395-7316 / Fax: 202-395-6974 (these are not a toll-free numbers), E-mail:

[OIRA\\_submission@omb.eop.gov](mailto: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:* Office of the Assistant Secretary for Administration and Management/Civil Right Center.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Compliance Information Report—29 CFR Part 37 Nondiscrimination-Workforce Investment Act of 1998.

*OMB Number:* 1225-0077.

*Affected Public:* State, Tribal, or Local Governments and Individuals or households.

*Estimated Number of Respondents:* 1,779.

*Estimated Total Annual Burden*

*Hours:* 137,725.

*Estimated Total Annual Costs Burden:* \$0.

*Description:* The Department's Civil Rights Center within the Office of the Assistant Secretary for Administration and Management is soliciting comments concerning the proposed extension of the collection of the Compliance Information Report—29 CFR part 31 (Title VI of the Civil Rights Act), Nondiscrimination—Disability—29 CFR part 32 (section 504 of the Rehabilitation Act), and Nondiscrimination—Workforce Investment Act—29 CFR part 37 (section 188 of the Workforce Investment Act). These information collection requirements are designed to ensure that programs or activities funded in whole or in part by the Department of Labor operate in a nondiscriminatory manner.

**Darrin A. King,**

*Acting Departmental Clearance Officer.*

[FR Doc. E8-5445 Filed 3-18-08; 8:45 am]

**BILLING CODE 4510-22-P**

## DEPARTMENT OF LABOR

### Office of the Secretary; Submission for OMB Review: Comment Request

March 12, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (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 this 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](mailto:king.darrin@dol.gov).

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), 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](mailto: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:* Bureau of Labor Statistics.

*Type of Review:* Revision of a previously approved collection.

*Title:* Current Population Survey (CPS) Basic Labor Force.

*OMB Control Number:* 1220-0100.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 55,000.

*Total Estimated Annual Burden*

*Hours:* 81,583.

*Total Estimated Annual Costs Burden:* \$0.

*Description:* The labor force information gathered through the survey is of paramount importance in keeping track of the economic health of the Nation. The survey is the official source of monthly data on total employment and unemployment, with the monthly Employment Situation report designated a Primary Federal Economic Indicator. The CPS data are used monthly, in conjunction with data from other sources, to analyze the extent to, and with what success, the various

components of the American population are participating in the economic life of the Nation.

**Darrin A. King,**

*Acting Departmental Clearance Officer.*

[FR Doc. E8-5446 Filed 3-18-08; 8:45 am]

**BILLING CODE 4510-24-P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Sunshine Act; Notice of Agency Meeting

*Time and Date:* 10 a.m., Thursday, March 20, 2008.

*Place:* Board Room, 7th Floor, Room 7047 1775 Duke Street Alexandria, VA 22314-3428.

*Status:* Open.

*Matters to be Considered:* 1. Proposed Rule: Interpretive Ruling and Policy Statement (IRPS) 08-1, Guidance Regarding Prohibitions Imposed by Section 205(d) of the Federal Credit Union Act.

*Recess:* 10:30 a.m.

*Time and Date:* 10:45 a.m., Thursday, March 20, 2008.

*Place:* Board Room, 7th Floor, Room 7047 1775 Duke Street Alexandria, VA 22314-3428.

*Status:* Closed.

*Matters to be Considered:* 1. Administrative Action under Section 208 of the Federal Credit Union Act. Closed pursuant to Exemptions (8), (9)(A)(ii), and (B).

### FOR FURTHER INFORMATION CONTACT:

Mary Rupp, Secretary of the Board, Telephone: 703-518-6304.

**Mary Rupp,**

*Secretary of the Board.*

[FR Doc. E8-5448 Filed 3-18-08; 8:45 am]

**BILLING CODE 7535-01-M**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Determination of the Chairperson of the National Endowment for the Arts as to Certain Advisory Committees: Public Disclosure of Information and Activities

The National Endowment for the Arts utilizes advice and recommendations of advisory committees in carrying out many of its functions and activities.

The Federal Advisory Committee Act, as amended (Pub. L. 92-463), governs the formation, use, conduct, management, and accessibility to the public of committees formed to advise and assist the Federal Government.

Section 10 of the Act specifies that department and agency heads shall make adequate provisions for participation by the public in the activities of advisory committees, except to the extent a determination is made in writing by the department or agency head that a portion of an advisory committee meeting may be closed to the public in accordance with subsection (c) of section 552b of Title 5, United States Code (the Government in the Sunshine Act).

It is the policy of the National Endowment for the Arts to make the fullest possible disclosure of records to the public, limited only by obligations of confidentiality and administrative necessity. Consistent with this policy, meetings of the following Endowment advisory committees will be open to the public except for portions dealing with the review, discussion, evaluation, and/or ranking of grant applications: Arts Advisory Panel and the Federal Advisory Committee on International Exhibitions.

The portions of the meetings involving the review, discussion, evaluation and ranking of grant applications may be closed to the public for the following reasons:

The Endowment advisory committees listed above review and discuss applications for financial assistance. While the majority of applications received by the agency are submitted by organizations, all of the applications contain the names of and personal information relating to individuals who will be working on the proposed project. In reviewing the applications, committee members discuss the abilities of the listed individuals in their fields, the reputations of the listed individuals among their colleagues, the ability of the listed individuals to carry through on projects they start, and their background and performance. Consideration of these matters is essential to the review of the artistic excellence and artistic merit of an application.

Consequently, in the interest of meeting our obligation to consider artistic excellence and artistic merit when reviewing applications for financial assistance:

It is hereby determined in accordance with the provisions of section 10(d) of the Act that the disclosure of information regarding the review, discussion, evaluation, and ranking of applications for financial assistance as outlined herein is likely to disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Therefore, in light of the above, I have determined that the above referenced meetings or portions thereof, devoted to review, discussion, evaluation, and/or ranking of applications for financial assistance may be closed to the public in accordance with subsection (c)(6) of section 552b of Title 5, United States Code.

The staff of each committee shall prepare a summary of any meeting or portion not open to the public within three (3) business days following the conclusion of the meeting of the National Council on the Arts considering applications recommended by such committees. The summaries shall be consistent with the considerations that justified the closing of the meetings.

All other portions of the meetings of these advisory committees shall be open to the public unless the Chairperson of the National Endowment for the Arts or a designee determines otherwise in accordance with section 10(d) of the Act.

The Panel Coordinator shall be responsible for publication in the **Federal Register** or, as appropriate, in local media, of a notice of all advisory committee meetings. Such notice shall be published in advance of the meetings and contain:

1. Name of the committee and its purposes;
2. Date and time of the meeting, and, if the meeting is open to the public, its location and agenda; and
3. A statement that the meeting is open to the public, or, if the meeting or any portion thereof is not to be open to the public, a statement to that effect.

The Panel Coordinator is designated as the person from whom lists of committee members may be obtained and from whom minutes of open meetings or open portions thereof may be requested.

#### **Guidelines**

Any interested person may attend meetings of advisory committees that are open to the public.

Members of the public attending a meeting will be permitted to participate in the committee's discussion at the discretion of the chairperson of the committee, if the chairperson is a full-time Federal employee; if the chairperson is not a full-time Federal employee then public participation will be permitted at the chairperson's discretion with the approval of the full-time Federal employee in attendance at the meeting in compliance with the order.

Dated: February 28, 2008.

**Dana Gioia,**

*Chairman, National Endowment for the Arts.*

Dated: March 14, 2008.

**Kathy Plowitz-Worden,**

*Committee Management Officer.*

[FR Doc. E8-5526 Filed 3-18-08; 8:45 am]

BILLING CODE 7537-01-P

## **NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**

### **National Endowment for the Arts; Determination of the Chairperson of the National Endowment for the Arts Regarding Potential Closure of Portions of Meetings of the National Council on the Arts**

Section 6(f) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et. seq.*) authorizes the National Council on the Arts to review applications for financial assistance to the National Endowment for the Arts and make recommendations to the Chairperson.

The Federal Advisory Committee Act (FACA), as amended (Pub. L. 92-463) governs the formation, use, conduct, management, and accessibility to the public of committees formed to advise the Federal Government. Section 10 of that Act directs meetings of advisory committees to be open to the public, except where the head of the agency to which the advisory committee reports determines in writing that a portion of a meeting may be closed to the public consistent with subsection (c) of section 552b of Title 5, United States Code (the Government in the Sunshine Act.)

It is the policy of the National Endowment for the Arts that meetings of the National Council on the Arts be conducted in open session including those parts during which applications are reviewed. However, in recognition that the Endowment is required to consider the artistic excellence and artistic merit of applications for financial assistance and that consideration of individual applications may require a discussion of matters such as an individual artist's abilities, reputation among colleagues, or professional background and performance, I have determined to reserve the right to close limited portions of Council meetings if such information is to be discussed. The purpose of the closure is to protect information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. Closure for this purpose is authorized by subsection (c)(6) of

section 552b of Title 5, United States Code.

Additionally, the Council will consider prospective nominees for the National Medal of Arts award in order to advise the President of the United States in his final selection of National Medal of Arts recipients. During these sessions, similar information of a personal nature will be discussed. As with applications for financial assistance, disclosure of this information about individuals who are under consideration for the award would constitute a clearly unwarranted invasion of personal privacy.

Therefore, in light of the above, I have determined that those portions of Council meetings devoted to consideration of prospective nominees for the National Medal of Arts award may be closed to the public. Closure for these purposes is authorized by subsections (c)(6) of section 552b of Title 5, United States Code. A record shall be maintained of any closed portion of the Council meeting. Further, in accordance with the FACA, a notice of any intent to close any portion of the Council meeting will be published in the **Federal Register**.

Dated: February 28, 2008.

**Dana Gioia,**

*Chairman, National Endowment for the Arts.*

Dated: March 14, 2008.

**Kathy Plowitz-Worden,**

*Committee Management Officer.*

[FR Doc. E8-5527 Filed 3-18-08; 8:45 am]

**BILLING CODE 7537-01-P**

## NATIONAL SCIENCE FOUNDATION

### Notice of the Availability of a Draft Programmatic Environmental Assessment

**AGENCY:** National Science Foundation.

**ACTION:** Notice of request for public comment on a Draft Programmatic Environmental Assessment (PEA) for the Ocean Observatories Initiative (OOI).

**SUMMARY:** The National Science Foundation (NSF) gives notice of the request for public comment on a Draft PEA for the OOI.

The Division of Ocean Sciences in the Directorate for Geosciences (GEO/OCE) has prepared a Draft PEA for the OOI, a multi-million dollar Major Research Equipment and Facilities Construction effort intended to put moored and cable infrastructure in discrete locations in the coastal and global ocean. The Draft PEA is available for public comment for a 30-day period.

**DATES:** Comments must be submitted on or before April 18, 2008.

**ADDRESSES:** Copies of the Draft PEA are available upon request from: Dr. Shelby Walker, National Science Foundation, Division of Ocean Sciences, 4201 Wilson Blvd., Suite 725, Arlington, VA 22230; Telephone: (703) 292-8580. The Draft PEA is also available under Additional OCE Resources at the following website: <http://www.nsf.gov/div/index.jsp?div=OCE>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Shelby Walker, National Science Foundation, Division of Ocean Sciences, 4201 Wilson Blvd., Suite 725, Arlington, VA 22230. Telephone: (703) 292-8580.

**SUPPLEMENTARY INFORMATION:**

Oceanographic research has long relied on research vessel cruises (expeditions) as the predominate means to make direct measurements of the ocean. Remote sensing (use of satellites) has greatly advanced abilities to measure ocean surface characteristics over extended periods of time. A major advancement for oceanographic research methods is the ability to make sustained, long-term, and adaptive measurements from the surface to the ocean bottom. "Ocean Observatories" are now being developed to further this goal. Building upon recent technology advances and lessons learned from prototype ocean observatories, NSF's Ocean Sciences Division (OCE) is proposing to fund the OOI, an interactive, globally distributed and integrated infrastructure that will be the backbone for the next generation of ocean sensors and resulting complex ocean studies presently unachievable. The OOI reflects a community-wide, national and international scientific planning effort and is a key NSF contribution to the broader effort to establish focused national ocean observatory capabilities through the Integrated Ocean Observing System (IOOS).

The OOI infrastructure would include cables, buoys, deployment platforms, moorings, junction boxes, electric power generation (solar, wind, fuel cell, and/or diesel), and two-way communications systems. This large-scale infrastructure would support sensors located at the sea surface, in the water column, and at or beneath the seafloor. The OOI would also support related elements, such as unified project management, data dissemination and archiving, modeling of oceanographic processes, and education and outreach activities essential to the long-term success of ocean science. It would include the first U.S. multi-node cabled observatory; fixed and relocatable coastal arrays

coupled with mobile assets; and advanced buoys for interdisciplinary measurements, especially for data-limited areas of the Southern Ocean and other high-latitude locations.

The OOI design is based upon three main technical elements across global, regional, and coastal scales. At the global and coastal scales, moorings would provide locally generated power to seafloor and platform instruments and sensors and use a satellite link to shore and the Internet. Up to four Global-Scale Nodes (GSN) or buoy sites are proposed for ocean sensing in the Eastern Pacific and Atlantic oceans. The Regional-Scale Nodes (RSN) off the coast of Washington and Oregon would consist of seafloor observatories with various chemical, biological, and geological sensors linked with submarine cables to shore that provide power and Internet connectivity. Coastal-Scale Nodes (CSN) would be represented by the fixed Endurance Array, consisting of a combination of cabled nodes and stand-alone moorings, off the coast of Washington and Oregon, and the relocatable Pioneer Array off the coast of Massachusetts, consisting of a suite of stand-alone moorings. In addition, there would be an integration of mobile assets such as autonomous underwater vehicles (AUVs) and/or gliders with the GSN, RSN, and CSN observatories.

The NSF invites interested members of the public to provide written comments on this Draft PEA. Comments can be submitted to: Dr. Shelby Walker, National Science Foundation, Division of Ocean Sciences, 4201 Wilson Blvd., Suite 725, Arlington, VA 22230; Telephone: (703) 292-8580; or electronically at [PEA-comments@nsf.gov](mailto:PEA-comments@nsf.gov).

**Shelby Walker,**

*Associate Program Director, Ocean Technology and Interdisciplinary Coordination, Division of Ocean Sciences National Science Foundation.*

[FR Doc. E8-5474 Filed 3-18-08; 8:45 am]

**BILLING CODE 7555-01-M**

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC previously published a **Federal Register** Notice with a 60-day comment period on this information collection on December 18, 2007.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* DOE/NRC Form 740M, "Concise Note" and NUREG/BR-0006, Revision 6, "Instructions for Completing Nuclear Material Transaction Reports, (DOE/NRC Forms 741 and 740M)."

3. *Current OMB approval number:* 3150-0057.

4. *The form number if applicable:* DOE/NRC Form 740M.

5. *How often the collection is required:* DOE/NRC Form 740M is requested as necessary to inform the U.S. or the International Atomic Energy Agency (IAEA) of any qualifying statement or exception to any of the data contained in other reporting forms required under the US/IAEA Safeguards Agreement. On average, 15 licensees submit about 10 forms each per year, for a total of 150 forms annually.

6. *Who will be required or asked to report:* Persons licensed to possess specified quantities of special nuclear material or source material, and licensees of facilities on the U.S. eligible list who have been notified in writing by the NRC that they are subject to Part 75.

7. *An estimate of the number of annual responses:* 150.

8. *The estimated number of annual respondents:* 15.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 113 hours (an average of .75 hours per response).

10. *Abstract:* Licensees affected by Part 75 and related sections of Parts 40, 50, 70, and 150 are required to submit DOE/NRC Form 740M to inform the U.S. or the IAEA of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the US/IAEA Safeguards Agreement. The use of Form 740M enables the NRC to collect, retrieve, and analyze, and submit the data to IAEA to fulfill its reporting responsibilities.

A copy of the final supporting statement may be viewed free of charge

at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by April 18, 2008. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Nathan J. Frey, Office of Information and Regulatory Affairs (3150-0057), NEOB-10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to [Nathan\\_J.\\_Frey@omb.eop.gov](mailto:Nathan_J._Frey@omb.eop.gov) or submitted by telephone at (202) 395-7345.

The NRC Clearance Officer is Margaret A. Janney, (301) 415-7245.

Dated at Rockville, Maryland, this 13th day of March, 2008.

For the Nuclear Regulatory Commission.

**Gregory Trussell,**

*Acting NRC Clearance Officer, Office of Information Services.*

[FR Doc. E8-5500 Filed 3-18-08; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

**SUMMARY:** The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 241, "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters."

2. *Current OMB approval number:* 3150-0013.

3. *How often the collection is required:* NRC Form 241 must be submitted each time an Agreement State licensee wants to engage in or revise its activities involving the use of radioactive byproduct material in a non-Agreement State, areas of exclusive Federal jurisdiction, or offshore waters. The NRC may waive the requirements for filing additional copies of NRC Form 241 during the remainder of the calendar year following receipt of the initial form.

4. *Who is required or asked to report:* Any licensee who holds a specific license from an Agreement State and wants to conduct the same activity in non-Agreement States, areas of exclusive Federal jurisdiction, or offshore waters under the general license in 10 CFR 150.20.

5. *The number of annual respondents:* 140 respondents.

6. *The number of hours needed annually to complete the requirement or request:* 582 hours.

7. *Abstract:* Any Agreement State licensee who engages in the use of radioactive material in non-Agreement States, areas of exclusive Federal jurisdiction, or offshore waters, under the general license in Section 150.20, is required to file, with the NRC regional administrator for the region in which the Agreement State that issues the license is located, a copy of NRC Form 241 ("Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters"), a copy of its Agreement State specific license, and the appropriate fee as prescribed in Section 170.31 at least 3 days before engaging in such activity. This mandatory notification permits NRC to schedule inspections of the activities to determine whether the activities are being conducted in accordance with requirements for protection of the public health and safety.

Submit, by May 19, 2008, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville

Pike, Room O-1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Margaret A. Janney (T-5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by telephone at 301-415-7245, or by e-mail to [INFOCOLLECTS@NRC.GOV](mailto:INFOCOLLECTS@NRC.GOV).

Dated at Rockville, Maryland, this 12th day of March 2008.

For the Nuclear Regulatory Commission.  
**Gregory Trussell,**

*Acting NRC Clearance Officer, Office of Information Services.*

[FR Doc. E8-5517 Filed 3-18-08; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on January 2, 2008.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 73—"Physical Protection of Plants and Materials."

3. *Current OMB approval number:* 3150-0002.

4. *The form number if applicable:* Not applicable.

5. *How often the collection is required:* On occasion, with the exception of the initial submittal of revised Security Plans, Safeguards Contingency Plans, and Security Training and Qualification Plans.

Required reports are submitted and evaluated as events occur.

6. *Who will be required or asked to report:* Nuclear power reactor licensees, licensed under 10 CFR Part 50 or 52 who possess, use, import, export, transport, or deliver to a carrier for transport, special nuclear material; Category I fuel facilities; Category II and III facilities; research and test reactors; and 262 other nuclear materials licensees.

7. *An estimate of the number of annual responses:* 86,264 (85,880 plus 384 recordkeepers).

8. *The estimated number of annual respondents:* 384.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 578,863 hours (85,441 reporting [approximately 1 hour per response] and 493,422 recordkeeping [1,285 hours per recordkeeper]).

10. *Abstract:* NRC regulations in 10 CFR Part 73 prescribe requirements to establish and maintain a physical protection system and security organization with capabilities for protection of: (1) Special nuclear material (SNM) at fixed sites, (2) SNM in transit, and (3) plants in which SNM is used. The objective is to ensure that activities involving special nuclear material are consistent with interests of common defense and security and that these activities do not constitute an unreasonable risk to public health and safety. The information in the reports and records submitted by licensees is used by the NRC staff to ensure that the health and safety of the public and the environment are protected, and licensee possession and use of special nuclear material is in compliance with license and regulatory requirements.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by April 18, 2008. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Nathan J. Frey, Office of Information and Regulatory Affairs (3150-0002), NEOB-10202, Office of Management

and Budget, Washington, DC 20503. Comments can also be e-mailed to [Nathan\\_J\\_Frey@omb.eop.gov](mailto:Nathan_J_Frey@omb.eop.gov) or submitted by telephone at (202) 395-7345.

The NRC Clearance Officer is Margaret A. Janney, (301) 415-7245.

Dated at Rockville, Maryland, this 12th day of March, 2008.

For the Nuclear Regulatory Commission.

**Gregory Trussell,**

*Acting NRC Clearance Officer, Office of Information Services.*

[FR Doc. E8-5518 Filed 3-18-08; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Entergy Operations, Inc.; Notice of Receipt and Availability of Application for a Combined License

On February 27, 2008, Entergy Operations, Inc. (EOI), on behalf of itself and Entergy Mississippi, Inc., Entergy Louisiana, LLC, Entergy Gulf States Louisiana, LLC, and System Energy Resources, Inc., filed with the U. S. Nuclear Regulatory Commission (NRC, the Commission) pursuant to Section 103 of the Atomic Energy Act and Title 10 of the *Code of Federal Regulations* (10 CFR) Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," an application for a combined license (COL) for an economic simplified boiling water reactor (ESBWR) nuclear power plant at the Grand Gulf Nuclear Station (GGNS) site located in Claiborne County, Mississippi. The reactor is to be identified as GGNS Unit 3.

An applicant may seek a COL in accordance with Subpart C of 10 CFR Part 52. The information submitted by the applicant includes certain administrative information such as financial qualifications submitted pursuant to 10 CFR 52.77, as well as technical information submitted pursuant to 10 CFR 52.79.

Subsequent **Federal Register** notices will address the acceptability of the tendered COL application for docketing and provisions for participation of the public in the COL review process.

A copy of the application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and via the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/>

*reading-rm/adams.html*. The accession number for the application is ML080640433. Future publicly available documents related to the application will also be posted in ADAMS. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov). The application is also available at <http://www.nrc.gov/reactors/new-licensing/col.html>.

Dated at Rockville, Maryland, this 10th day of March, 2008.

For the Nuclear Regulatory Commission.

**Eric R. Oesterle,**

*Senior Project Manager, ESBRW/ABWR Projects Branch 1, Division of New Reactor Licensing, Office of New Reactors.*

[FR Doc. E8-5522 Filed 3-18-08; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-443]

### Seabrook Station, Unit No. 1; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards; Consideration Determination and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an amendment to Facility Operating License No. NPF-86 issued to FPL Energy Seabrook, LLC (the licensee) for operation of Seabrook Station, Unit No. 1, located in Rockingham County, New Hampshire.

The proposed amendment would revise Technical Specification (TS) Table 4.3-1, "Reactor Trip System Instrumentation Surveillance Requirements" to require the initial plateau curves to be measured within 24 hours after attaining 100 percent steady-state power. Currently, initial plateau curves are required to be taken within 24 hours of entry into Mode 2.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that

operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The probability or consequences of accidents previously evaluated in the [Updated Final Safety Analysis Report] are unaffected by this proposed change. The duration for obtaining neutron detector plateau curves is not an initiator of any accident previously analyzed. There is no change to any equipment response or accident scenario, and this change results in no additional challenges to fission product barrier integrity. The proposed change does not alter the design, configuration, operation, or function of any plant system, structure, or component.

The requested amendment modifies the frequency of the channel calibrations for the intermediate and power range detectors by permitting 24 hours to perform the SR [surveillance requirement] (measure and obtain neutron detector plateau curves) after achieving steady-state operation at rated thermal power. This change has no impact on the consequences or probability of any accident previously evaluated. The proposed change does not impact the ability of the nuclear instrumentation, reactor protection system, or any other system, structure, or component to perform its intended function to mitigate the consequences of an accident within acceptable limits. The proposed change does not affect the source term, containment isolation, or radiological assumptions used in analyzing the consequences of accidents previously evaluated. Further, the proposed change neither increases the type or amount of radioactivity released offsite nor increases public or occupational radiation exposures. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The proposed change does not challenge the performance or integrity of any safety-related system. The proposed change neither installs nor removes any plant equipment, and it does not alter the design, physical configuration, or operation of any plant structure, system, or component. No

physical changes are being made to the plant, so no new accident causal mechanisms are being introduced. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The margin of safety associated with the acceptance criteria of any accident is unchanged. The proposed change will have no effect on the operability or performance of the safety-related systems and components. The proposed change does not alter the design, configuration, operation, or function of any plant system, structure, or component. The ability of any operable structure, system, or component to perform its designated safety function is unaffected by this change. With this change, the TS will continue to require operable nuclear instrumentation. The proposed change does not create an initiating event, increase the likelihood of an initiating event, affect the ability to mitigate an event, affect containment performance, or affect operator actions in response to an event. Therefore, the margin of safety as defined in the TS is not reduced and the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that

the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person(s) whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of

the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted, with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing

held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov), or by calling (301) 415-1677, to request: (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at

<http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737. Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or

the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at <http://www.nrc.gov/about-nrc/regulatory/adjudicatory.html>, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment dated February 16, 2007, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 12th day of March, 2008.

For the Nuclear Regulatory Commission.

**G. Edward Miller,**

*Project Manager, Plant Licensing Branch  
1-2, Division of Operating Reactor Licensing,  
Office of Nuclear Reactor Regulation.*

[FR Doc. E8-5521 Filed 3-18-08; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS); Meeting of the Subcommittee on Economic Simplified Boiling Water Reactor (ESBWR); Notice of Meeting

The ACRS Subcommittee on ESBWR will hold a meeting on April 9, 2008, in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss General Electric—Hitachi Nuclear Energy Americas, LLC. (GEH) proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

*Wednesday, April 9, 2008—8:30 a.m. until 5 p.m.*

The Subcommittee will discuss the staff's approach to resolve the thermal-hydraulic issues previously identified by the Subcommittee during its review of Chapters 4, 6, 15, and 21 of the Safety Evaluation Report (SER) with open items associated with the ESBWR design certification application. In addition, the Subcommittee will review SER Chapter 18, "Human Factors Engineering." The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. David Bessette (telephone 301/415-8065) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:45 a.m. and 4:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: March 12, 2008.

**Cayetano Santos,**

*Branch Chief, ACRS.*

[FR Doc. E8-5515 Filed 3-18-08; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS); Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on April 9, 2008, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b (c) (2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, April 9, 2008, 12 p.m. until 1 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Mr. Sam Duraiswamy (*telephone: 301-415-7364*) between 7:30 a.m. and 4 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 7:30 a.m. and 4 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: March 12, 2008.

**Cayetano Santos,**

*Chief, Reactor Safety Branch.*

[FR Doc. E8-5516 Filed 3-18-08; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-395]

### South Carolina Electric & Gas Company; Virgil C. Summer Nuclear Station, Unit No. 1; Exemption

#### 1.0 Background

The South Carolina Electric & Gas Company (SCE&G, the licensee) is the holder of the Renewed Facility Operating License No. NPF-12 which authorizes operation of the Virgil C. Summer Nuclear Station, Unit No. 1 (VCSNS). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Fairfield County in South Carolina.

#### 2.0 Request/Action

Pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.12, "Specific Exemptions," SCE&G has, by letters dated May 31 and October 11, 2007, requested an exemption from 10 CFR 50.46, "Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Reactors," and Appendix K to 10 CFR 50, "ECCS Evaluation Models," (Appendix K). The regulation in 10 CFR 50.46 contains acceptance criteria for emergency core cooling system (ECCS) for reactors fueled with zircaloy or ZIRLO™ cladding. In addition, Appendix K requires that the Baker-Just equation be used to predict the rates of energy release, hydrogen concentration, and cladding oxidation from the metal-water reaction. The exemption request relates solely to the specific types of cladding material specified in these regulations. As written, the regulations presume the use of zircaloy or ZIRLO™ fuel rod cladding. Thus, an exemption from the requirements of 10 CFR 50.46, and Appendix K is needed to irradiate a lead test assembly (LTA) comprised of different cladding alloys at VCSNS.

The exemptions requested by the licensee would allow the use of one LTA containing either all Optimized ZIRLO™ fuel rod cladding or a combination of Optimized ZIRLO™ and

AXIOM™ fuel rod cladding to continue to be irradiated up to a burnup of 75 gigawatt days per metric ton uranium (GWd/MTU).

Previously, by letter dated January 14, 2005, the NRC staff approved the irradiation of four LTAs containing fuel rods with Optimized ZIRLO™ and several different developmental clad (AXIOM™) alloys. That exemption was contingent on the fuel rod burnup remaining within the applicable licensed limits, which for burnup, was a value of 62 GWd/MTU. The licensee inserted those LTAs into VCSNS for irradiation in fuel cycles 16 and 17. In the licensee's letters of May 31 and October 11, 2007, the licensee requested an exemption to continue the irradiation of one of the four LTAs for a third operating cycle. This LTA would be irradiated in fuel cycle 18 in order to gain high burnup experience. The licensee requested to irradiate the LTA to a peak rod average of up to 75 GWd/MTU.

The licensee also requested an exemption from 10 CFR 50.44, "Combustible gas control for nuclear power reactors." The requested exemption from 10 CFR 50.44 is not being considered further by the NRC staff because revisions were made to 10 CFR 50.44 (68 FR 54123; September 16, 2003), such that it does not refer to specific types of zirconium cladding, thus removing the need for such an exemption.

#### 3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under Section 50.12(a)(2) of 10 CFR, special circumstances include, among other things, when application of the specific regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule.

#### *Authorized by Law*

This exemption would allow the licensee to re-insert one LTA containing either all Optimized ZIRLO™ fuel rod cladding or a combination of Optimized ZIRLO™ and AXIOM™ fuel rod cladding that does not meet the definition of Zircaloy or ZIRLO™ as specified by 10 CFR 50.46, and Appendix K, into the core of VCSNS

during fuel cycle 18. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

*No Undue Risk to Public Health and Safety*

In regard to the fuel mechanical design, the SCE&G exemption request relates solely to the specific types of cladding material specified in the regulations. No new or altered design limits for purposes of 10 CFR 50, Appendix A, General Design Criterion 10, "Reactor Design", need to be applied or are required for this program. Following VCSNS Cycle 17, post-irradiation examinations (PIE) will be completed on the LTAs to verify acceptable performance and to validate fuel performance model predictions. These models, tuned to the latest PIE data, will be used to ensure that all design criteria are satisfied up to the projected end of cycle 18 (EOC18) burnup. The licensee states that if either the PIE shows anomalous behavior or predicted performance is outside acceptable bounds, the LTA will not be inserted into Cycle 18. Based upon the limited number of advanced alloy fuel rods, the PIE (which would detect anomalous behavior), and the use of approved models (tuned to the latest PIE data) to ensure that all design criteria remain satisfied, the NRC staff finds the LTA mechanical design acceptable for VCSNS. In regard to the core reload and accident analysis, the NRC staff finds that, based on current LTA performance and testing to date, it is not anticipated that any of the advanced cladding fuel rods would fail during normal operation and anticipated operational events. In the event of unforeseen failures in this limited population, plant instrumentation is capable of detecting increased reactor coolant activity, and reasonable operator action would ensure TS limits would not be violated. Further, due to their limited number, failure of the advanced alloy fuel rods during an accident would neither challenge docketed dose consequences nor coolable geometry. The licensee will continue to use approved core physics and reload methodologies to model the LTA up to the projected EOC18 burnup. The NRC staff finds the use of these methods acceptable.

The licensee stated in its May 31, 2007 letter that the assessment contained in Westinghouse Commercial

Atomic Power-12610-P-A, "VANTAGE + Fuel Assembly Reference Core Report," dated April 1995, concluded that the fuel handling accident (FHA) thyroid doses are not adversely affected by extended burnup. However, the amount of fission gas release (from the fuel pellet) is sensitive to burnup and power history. As such, the fission product gap inventory may be affected by the higher burnup and power history of the LTA. The NRC staff requested additional information (RAI) regarding the limited empirical database of fission gas measurements at 75 GWd/MTU burnups, to be able to verify that the FHA dose analysis is not impacted. The licensee's October 11, 2007 response identified a number of conservatisms within the existing dose calculations which, if credited, could result in a significant reduction in the limiting FHA dose for the extended burnup LTA and thus compensate for the uncertainty in fission product gap inventory within the high burnup LTA rods. These included the pool decontamination factor, the relative power factor for this particular LTA in fuel cycle 18, the thyroid dose conversion factors, offloading time, reactor building purge isolation, and mechanical fuel damage due to impact. Consistent with Regulatory Guide (RG) 1.25, "Assumptions Used for Evaluating the Potential Radiological Consequences of a Fuel Handling Accident in the Fuel Handling and Storage Facility for Boiling and Pressurized Water Reactors (Safety Guide 25)," an overall effective decontamination factor of 100 is used in the current analysis to determine the percentage of iodine activity within the fuel rod gap that is released to the reactor building atmosphere. As described in the UFSAR Section 15.4.5.1.2.2, this value is a factor of five or more below the expected value. The licensee stated that although not fully credited, this conservatism is recognized in Appendix B to RG 1.195, "Methods and Assumptions for Evaluating Radiological Consequences of Design Basis Accidents (DBA) at Light-Water Nuclear Power Reactors", which outlines an acceptable methodology for evaluating the radiological consequences of a FHA. Provided the depth of the water above the damaged fuel is 23 feet or greater, the accepted decontamination factors for the elemental and organic species of iodine are 400 and 1, respectively, giving an overall effective decontamination factor of 200 (i.e., 99.5 percent of the total iodine release from the damaged rods is retained by the water). The NRC staff confirms that

VCSNS Technical Specifications (TSs) 3.7.10 and 3.9.7 require the water level to be a minimum of 23 feet for the spent fuel pool and the reactor vessel during refueling, respectively. Because of these controls, the NRC staff is confident that the overall effective decontamination factor will not increase above 200. If the RG 1.195 overall effective decontamination factor is credited within the VCSNS FHA analysis, the calculated thyroid dose would decrease by 50 percent. The NRC staff finds that the licensee has appropriately applied RG 1.195, Appendix B, and that this conservatism exists in the current licensing basis FHA analysis.

The licensee presented information showing that the relative assembly power factor for both the LTA and the assembly impacted by the LTA during an FHA will not approach the 1.7 peaking limit assumed in the VCSNS FSAR analysis. The assumptions in RG 1.195 are conservative to account for the fact that in a general analysis, it is unknown which assembly out of any assembly in the core may be dropped. Therefore, the highest peaking factor out of all the assemblies in the core and the highest burnup out of all the assemblies in the core are assumed to be applied in the same postulated dropped assembly. One assembly would be unlikely to have both the highest burnup and the highest peaking factor. Therefore, in this specific case, with more realistic and appropriate relative assembly powers credited for both the LTA and other potentially impacted assemblies, the licensee states the limiting dose would decrease by approximately 37 percent. Although relative assembly powers are not generally credited in DBA radiological consequences analyses, the NRC staff finds that the specific situation described above does show that conservatism exists in the current licensing basis FHA analysis when compared to the expected impact of dropping the extended burnup LTA.

As regards the thyroid dose conversion factors, the current VCSNS dose analysis for the FHA is conservatively based on thyroid dose conversion factors from "Calculation of Distance Factors for Power and Test Reactor Sites," TID-14844, March 1962. If conversion factors from International Commission on Radiation Protection, ICRP-30, "Limits for Intakes of Radionuclides by Workers," 1980, were used instead, the licensee states that this would result in approximately a 29 percent reduction in the limiting dose. Use of ICRP-30 thyroid dose conversion factors is acceptable to the staff as documented in RG 1.195. The NRC staff accepts that this conservatism exists in

the current licensing basis FHA analysis.

For LTA offloading time, the licensee discussed the additional decay time that would be expected for the movement of the extended burnup LTA as compared to the DBA dose analysis assumption. The VCSNS TSs allow a core offload to begin no sooner than 72 hours after shutdown. The licensee presented a basis for concluding that, in actual practice, core offload would begin no sooner than 144 hours, which would further reduce the radiological doses from a DBA. However, because the licensee did not provide how it would control the expected 144 hours to start core offload (*i.e.* TS, procedural change, etc.), the NRC staff finds that this conservatism can not be credited. Following a postulated accident inside the reactor building, the radioactivity is assumed to be released to the environment through the reactor building purge system, and if the system isolates before release to the environment, it likely would significantly reduce the FHA dose. However, since the system is not fully safety grade, the staff finds that this conservatism can not be credited in this analysis.

As regards the mechanical fuel damage due to an FHA, the VCSNS FSAR analysis assumes all rods of the dropped assembly and 50 rods on an impacted assembly fail. The licensee states that this is a very conservative assumption given the broad spectrum of loads (*e.g.*, shipping, thermal, deadweight, loss-of-coolant accident, and seismic loads) considered and the resulting high structural strength of the fuel assembly and other core components. In its October 11, 2007, RAI response, the licensee stated that the irradiated fuel assembly drop events have also yielded no increase in local area dose rates. The NRC staff agrees with the licensee that the amount of assumed cladding failure per RG 1.195 guidance is intended to be generally conservative, based on industry experience, but it is not expected to be any more or less conservative for the extended burnup LTA than for any other type of fuel.

Contingent on these conservatisms being applicable only to the one LTA, the NRC staff finds that the acceptable conservatisms identified do compensate for the uncertainties in the gap fractions. Therefore, the fission product gap inventory assumed in the current licensing basis FHA radiological assessment remains bounding for the extended burnup LTA.

For accidents other than FHA, even though extended burnup to 75 GWd/

MTU for the one LTA would cause a variation in the core inventory compared to the current fuel, there are no significant increases to isotopes that are major contributors to accident doses. Thus, the NRC staff finds that current licensing basis DBA results remain bounding for estimated offsite and control room operator doses and the radiation dose limitations of Part 100 and GDC-19 will not be exceeded. The NRC staff finds that the licensee used assumptions, inputs, and methods that are consistent with the conservative regulatory requirements and guidance identified above. Based on the VCSNS current licensing bases, and the acceptable conservatisms discussed above, the NRC staff finds with reasonable assurance, that the licensee's estimates of the exclusion area boundary, low-population zone, and control room doses will continue to comply with the applicable regulatory criteria. Therefore, the proposed extension of the fuel rod average burnup limit for one LTA is acceptable with regard to the radiological consequences of postulated design basis accidents.

The underlying purpose of 10 CFR 50.46 is to establish acceptance criteria for ECCS performance. The applicability of these ECCS acceptance criteria has been demonstrated by Westinghouse. Ring compression tests performed by Westinghouse on Optimized ZIRLO™ (documented in Appendix B of Addendum 1 to WCAP-12610-P-A) demonstrate an acceptable retention of Post-LOCA ductility up to 10 CFR 50.46 limits of 2200 degrees Fahrenheit and 17 percent equivalent cladding reacted (ECR). Based on an ongoing LOCA research program at Argonne National Laboratory, cladding corrosion has a more significant impact on post-quench ductility than fuel rod burnup. The oxidation measurements provided by the licensee illustrate that the oxide thickness (and associated hydrogen pickup) for an LTA up to 75 GWd/MTU would be below the measured oxide for both Zircaloy-4 and ZIRLO™ at current burnup limits. Hence, the effect of corrosion on the LTA fuel rods up to the higher burnup would not invalidate the applicability of the ECCS acceptance criteria for Optimized ZIRLO™. Due to their limited number, any change in the Post-LOCA ductility characteristics of the advanced alloy fuel rods (relative to the 2200 degrees Fahrenheit peak cladding temperature and 17 percent ECR) would not challenge core coolable geometry. Utilizing currently approved LOCA models and methods, Westinghouse will perform cycle-specific reload evaluations to ensure

that the LTA satisfies 10 CFR 50.46 acceptance criteria. Therefore, the exemption to expand the application of 10 CFR 50.46 to include Optimized ZIRLO™ is acceptable.

Paragraph I.A.5 of Appendix K states that the rates of energy, hydrogen concentration, and cladding oxidation from the metal-water reaction shall be calculated using the Baker-Just equation. Since the Baker-Just equation presumes the use of zircaloy clad fuel, strict application of the rule would not permit use of the equation for the LTA cladding for determining acceptable fuel performance. Metal-water reaction tests performed by Westinghouse on Optimized ZIRLO™ (documented in Appendix B of Addendum 1 to WCAP-12610-P-A) demonstrate conservative reaction rates relative to the Baker-Just equation. As for the limited advanced alloy fuel rods, their similar material composition is expected to yield similar high temperature metal-water reaction rates. The reaction rate should not be impacted by the higher burnup. Thus, application of Appendix K, Paragraph I.A.5, is not necessary to achieve its underlying purpose in these circumstances.

Based upon results of metal-water reaction tests and ring-compression tests which ensure the applicability of ECCS models and acceptance criteria, the limited number and anticipated performance of the advanced cladding fuel rods, and the use of approved LOCA models to ensure that the LTAs satisfy 10 CFR 50.46 acceptance criteria, the staff finds it acceptable to grant an exemption from the requirements of 10 CFR 50.46, and Appendix K to 10 CFR Part 50 for the use of an LTA up to 75 GWd/MTU in the VCSNS.

#### *Consistent With Common Defense and Security*

The proposed exemption would allow the use of one LTA with advanced cladding materials. This change to the plant core configuration has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

#### *Special Circumstances*

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.44 is to ensure that means are provided for the control of hydrogen gas that may be generated following a LOCA. The underlying purpose of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 is to establish

acceptance criteria for ECCS performance. The wording of the regulations in 10 CFR 50.46 and Appendix K is not directly applicable to these advanced cladding alloys, even though the evaluations discussed above show that the intent of the regulations are met. Therefore, since the underlying purposes of 10 CFR 50.46 and Appendix K are achieved with the use of these advanced cladding alloys, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for granting of an exemption from 10 CFR 50.46 and Appendix K exist.

#### 4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants SCE&G exemptions from the requirements of 10 CFR 50.46, and 10 CFR Part 50, Appendix K, to allow one LTA containing either all Optimized ZIRLO™ fuel rods or a combination of Optimized ZIRLO™ and AXIOM™ fuel rods to continue to be irradiated up to a burnup of 75 GWd/MTU.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (73 FR 10069; February 25, 2008).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 13th day of March 2008.

For the Nuclear Regulatory Commission.

**Catherine Haney,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E8-5513 Filed 3-18-08; 8:45 am]

BILLING CODE 7590-01-P

## OFFICE OF MANAGEMENT AND BUDGET

### Performance of Commercial Activities

**AGENCY:** Office of Management and Budget (OMB), Executive Office of the President.

**ACTION:** Update to civilian position full fringe benefit cost factor, federal pay raise assumptions, and inflation factors used in OMB Circular No. A-76, "Performance of Commercial Activities."

**SUMMARY:** OMB is updating the civilian position full fringe benefit cost factor used to compute the estimated cost of government performance in public-private competitions conducted pursuant to Office of Management and Budget (OMB) Circular A-76. The civilian position full fringe benefit cost factor is comprised of four separate elements: (1) Insurance and health benefits, (2) standard civilian retirement benefits, (3) Medicare benefits, and (4) miscellaneous fringe benefits. OMB is updating the insurance and health benefits and standard civilian retirement benefits cost elements based on actuarial analyses provided by the Office of Personnel Management.

OMB is also updating the annual Federal pay raise assumptions and inflation cost factors used for computing the government's personnel and non-pay costs in Circular A-76 public-private competitions. These annual pay raise assumptions and inflation factors are based on the President's Budget for Fiscal Year 2009.

**DATES:** *Effective date:* These changes are effective immediately and shall apply to all public-private competitions performed in accordance with OMB Circular A-76, as revised in May 2003, where the performance decision has not been certified by the government before this date.

**FOR FURTHER INFORMATION CONTACT:** Jim Daumit, Office of Federal Procurement Policy (OFPP), NEOB, Room 9013, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Tel. No. 202-395-1052.

*Availability:* Copies of OMB Circular A-76, as revised by this notice, may be obtained at <http://www.whitehouse.gov/omb/circulars/index.html>. Paper copies of the Circular may be obtained by calling OFPP (tel: (202) 395-7579).

**Jim Nussle,**  
*Director.*

Attachment

### Memorandum for the Heads of Executive Departments and Agencies

*From:* Jim Nussle, Director.

*Subject:* Update to Civilian Position Full Fringe Benefit Cost Factor, Federal Pay Raise Assumptions, and Inflation Factors used in OMB Circular No. A-76, "Performance of Commercial Activities."

Office of Management and Budget (OMB) Circular A-76 requires agencies to use standard cost factors to estimate certain costs of government performance. These cost factors ensure that specific government costs are calculated in a standard and consistent manner to reasonably reflect the cost of performing commercial activities with government personnel. This memorandum updates the civilian position full fringe benefit cost factor, the annual federal pay raise assumptions, and inflation cost factors. The update to the civilian position full fringe benefit cost factor is based on actuarial analyses provided by the Office of Personnel Management (OPM). The revised pay raise assumptions and inflation cost factors are based on the President's Budget for Fiscal Year 2009.

### Civilian Position Full Fringe Benefit Cost Factor

The Circular requires agencies to add the civilian position full fringe benefit cost factor to the basic pay for each full-time and part-time permanent civilian position in the agency cost estimate. This factor is comprised of four separate elements: (1) Insurance and health benefits, (2) standard civilian retirement benefits, (3) Medicare benefits, and (4) miscellaneous fringe benefits. OMB has determined, based on information provided by OPM, that the civilian position full fringe benefit cost factor needs to be adjusted downward, from 36.45 percent to 36.25 percent. This adjustment reflects a decrease in civilian retirement benefits that is slightly greater than an increase in insurance and health benefits. The Medicare benefits and miscellaneous fringe benefits elements remain unchanged at this time. The revised cost elements of the civilian position full fringe benefit cost factor are summarized in the table below.

TABLE.—ELEMENTS OF THE CIVILIAN POSITION FULL FRINGE BENEFIT COST FACTOR

Element	Previous cost factor percent	Updated cost factor percent
Insurance and Health Benefit <sup>a</sup> .....	6.7	7.0
Standard Civilian Retirement Benefit <sup>b</sup> .....	26.6	26.1
Medicare Benefit .....	1.45	1.45
Miscellaneous Fringe Benefit .....	1.7	1.7
Total Civilian Position Full Fringe Benefits .....	36.45	36.25

<sup>a</sup> This factor is based on actuarial estimates for the costs of the government-paid portion of health insurance under the Federal Employees Health Benefits (FEHB) Program and the Federal Employees Government Life Insurance (FGLI) Program and excludes the employee-paid portion of health insurance. This figure is multiplied by the average participation rates in these programs and divided by the average civilian employee's salary (as identified in the President's budget) to derive a factor as a percentage of basic pay. This factor is based only on costs borne by the government (not enrollee premiums) and only on behalf of active federal employees (not retirees). Increases in government costs for retirees are reflected in the standard civilian retirement benefit cost factor.

<sup>b</sup> The standard civilian retirement benefit cost factor includes the government's accruing cost for pension benefits (Social Security, Thrift Savings Plan, Federal Employees or Civil Service Retirement Systems) and the accruing cost for post-retirement health benefits. It excludes the employee-paid portion of retirement.

The master tables for COMPARE (the costing software that incorporates the costing procedures of the circular) have been updated to reflect these changes. The updates are available at [www.compareA76.com](http://www.compareA76.com). Agencies shall use the updated COMPARE master tables to calculate and document public and private sector costs in competitions where a performance decision has not been certified by the government by the effective date identified in the **Federal Register** notice accompanying the publication of this memorandum.

Accordingly, the following changes are made to OMB Circular A-76.

1. Subparagraphs B.2.f.(1)(a) and (b) of Attachment C are revised to read as follows:

(1) *Full-time and Part-time Permanent Civilian Positions*. Full-time and part-time permanent civilian positions receive the civilian position full fringe benefit cost factor of 36.25 percent of

the position's basic pay. The 36.25 percent civilian position full fringe benefit cost factor is the sum of the standard civilian position retirement benefit cost factor (26.1 percent), insurance and health benefit cost factor (7.0 percent), Medicare benefit cost factor (1.45 percent), and miscellaneous fringe benefit cost factor (1.7 percent).

(a) *Retirement Benefit Cost Factors*. The standard civilian retirement benefit cost factor represents the cost of the weighted Civil Service Retirement System/Federal Employees Retirement System to the government, based upon the full dynamic normal cost of the retirement systems, the normal cost of accruing retiree health benefits based on average participation rates, social security, and Thrift Savings Plan contributions. The standard civilian retirement benefit cost factor for civilian positions is 26.1 percent of the position's basic pay (21.0 percent

retirement pension plus 5.1 percent for retiree health). The retirement cost factors for special class civilian positions are: 38.5 percent of basic pay for air traffic controllers (33.4 percent retirement pension plus 5.1 percent for retiree health) and 40.4 percent of basic pay for law enforcement and fire protection (35.3 percent retirement pension plus 5.1 percent for retiree health).

(b) *Insurance and Health Benefit Cost Factor*. The insurance and health benefit cost factor for civilian positions, based on actual cost, is 7.0 percent of the position's basic pay (0.2 percent for life insurance benefits and 6.8 percent for health benefits).

2. The following standard cost factors and footnote no. 1 in Figure C.1 of Attachment C, "Table of Standard A-76 Costing Factors," are revised as set forth below:

TABLE OF STANDARD A-76 COSTING FACTORS

Title	Originating source	Category of cost	Factor <sup>1</sup> (percent)
Civilian Position Full Fringe Benefit Cost Factor ...	OMB Transmittal Memoranda .....	Pay .....	36.25
Insurance and Health Benefit Cost Factor .....	OMB Transmittal Memoranda .....	Pay .....	7.0
Special Class Retirement Cost Factor(Law Enforcement & Fire Protection).	OMB Transmittal Memoranda .....	Pay .....	40.4
Special Class Retirement Cost Factor (Air Traffic Control).	OMB Transmittal Memoranda .....	Pay .....	38.5
Standard Civilian Retirement Benefit Cost Factor	OMB Transmittal Memoranda .....	Pay .....	26.1

<sup>1</sup> The factors listed in this column are factors in effect on February 2008. Agencies should refer to the COMPARE Web site at [www.compareA76.com](http://www.compareA76.com). for the updated COMPARE master tables and other updated information.

**Federal Pay Raise Assumptions**

The following federal pay raise assumptions (including geographic pay differentials) that are in effect for 2008 shall be used for the development of government personnel costs. The pay raise factors provided for 2009 and beyond shall be applied to all government personnel with no

assumption being made as to how they will be distributed between possible locality and base pay increases.

**FEDERAL PAY RAISE ASSUMPTIONS\***

Effective date	Civilian (percent)	Military (percent)
January 2008 .....	3.5	3.5

FEDERAL PAY RAISE ASSUMPTIONS\*—  
Continued

Effective date	Civilian (percent)	Military (percent)
January 2009 .....	2.9	3.4

\* Pay raise assumptions have not been established for pay raises subsequent to January 2009. For January 2010, the projected percentage change in the Employment Cost Index (ECI), adjusted, 3.2 percent, should be used to estimate in-house personnel costs for A-76 competitions. For January 2011 through January 2018, the projected change in the ECI of 3.4 percent should be used. In future updates to A-76 guidance, as pay policy for years subsequent to 2009 is established, these pay raise assumptions will be revised.

**Inflation Factors**

The following non-pay inflation cost factors are provided for purposes of public-private competitions conducted pursuant to Circular A-76 only. They reflect the generic non-pay inflation assumptions used to develop the fiscal year 2009 budget baseline estimates required by law. The law requires that a specific inflation factor (GDP FY/FY chained price index) be used for this purpose. These inflation factors should not be viewed as estimates of expected inflation rates for major long-term procurement items or as an estimate of inflation for any particular agency's non-pay purchases mix.

NON-PAY CATEGORIES  
[Supplies, Equipment, etc.]

	Percent
FY 2009 .....	2.0
FY 2010 .....	2.0
FY 2012 .....	2.0
FY 2013 .....	2.0
FY 2014 .....	2.0
FY 2015 .....	2.0
FY 2016 .....	2.0
FY 2017 .....	2.0
FY 2018 .....	* 2.0

\* Any subsequent years included in the period of performance shall use a 2.0% figure, until otherwise revised by OMB.

[FR Doc. E8-5549 Filed 3-18-08; 8:45 am]  
BILLING CODE 3110-01-P

**OVERSEAS PRIVATE INVESTMENT CORPORATION**

**March 20, 2008 Public Hearing**

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 73, Number 43, Page 11682) on March 4, 2008. No requests were received to provide testimony or submit written statements for the record; therefore,

OPIC's public hearing scheduled for 2 p.m., March 20, 2008 in conjunction with OPIC's March 21, 2008 Board of Directors meeting has been cancelled.

*Contact Person for Information:*  
Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336-8438, via facsimile at (202) 2180136, or via e-mail at [Connie.Downs@opic.gov](mailto:Connie.Downs@opic.gov).

Dated: March 14, 2008.  
**Connie M. Downs,**  
*OPIC Corporate Secretary.*  
[FR Doc. E8-5486 Filed 3-18-08; 8:45 am]  
BILLING CODE 3210-01-M

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57485; File No. SR-Amex-2008-04]

**Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval of Proposed Rule Change Relating to the Dissemination of the Index Value for Index-Linked Securities**

March 12, 2008.

**I. Introduction**

On January 30, 2008, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to the dissemination of the index value for Index-Linked Securities.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on February 20, 2008 for a 15-day comment period.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

**II. Description of the Proposal**

The Exchange proposed to amend sections 107D(i) and section 107(d)(h)(3)(ii) of the *Amex Company Guide* ("Company Guide") to conform the index dissemination requirements relating to Index-Linked Securities to that of Index Fund Shares and Portfolio

<sup>1</sup> 15 U.S.C. 78s(b)(1).  
<sup>2</sup> 17 CFR 240.19b-4.  
<sup>3</sup> Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes. See *Amex Company Guide* Sections 107D.  
<sup>4</sup> See Securities Exchange Act Release No. 57325 (February 13, 2008), 73 FR 9375.

Depository Receipts (collectively, exchange-traded funds or "ETFs").<sup>5</sup> Section 107(D)(i)(iii) of the *Company Guide* provides that the current value of an index will be widely disseminated at least every 15 seconds. The proposed amendment provides that the current value of an index or composite value of more than one index will be widely disseminated at least: (i) Every 15 seconds with respect to indexes containing only securities listed on a national securities exchange; or (ii) every 60-seconds with respect to indexes containing foreign country securities. If the official index value does not change during some or all of the period when trading is occurring on the Exchange, then the last calculated official index value must remain available throughout Exchange trading hours. In addition, the Exchange proposes to amend the delisting requirements set forth in section 107D(h)(3)(ii) to distinguish between indexes consisting solely of securities listed on a national securities exchange and those including components that are foreign country securities.

**III. Discussion and Commission's Findings**

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>7</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Commission notes that opportunities to invest in derivative securities products based not only on U.S. securities, but also on an international or global index of equity securities, provide additional choices to accommodate particular investment needs and objectives, to the benefit of investors. With respect to the dissemination of the value of an index that is comprised, at least in part, of

<sup>5</sup> See Commentary .02(b)(ii) to Rule 1000A—AEMI (Index Fund Shares) and Commentary .03(b)(ii) to Rule 1000—AEMI (Portfolio Depository Receipts).  
<sup>6</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).  
<sup>7</sup> 15 U.S.C. 78f(b)(5).

non-U.S. components, the proposed 60-second standard reflects limitations, in some instances, on the frequency of intra-day trading information with respect to foreign country securities and the fact that in many cases, trading hours for overseas markets overly only in part, or not at all, with the Exchange's trading hours. In addition, if an index or portfolio value does not change during some or all of the period when the derivative securities product trades on the Exchange, the last official calculated index value will remain available throughout Exchange trading hours. The Commission believes that such 60-second standard relating to the dissemination of the value of an index composed, at least in part, of foreign securities should apply to Index-Linked Securities as well as ETFs and finds that the Exchange's proposal is consistent with the Act on the same basis that it approved the other exchange's generic listing standards for ETFs based on international or global indexes.<sup>8</sup> In addition, the Commission notes that it has approved substantively identical dissemination requirements for Index-Linked Securities listed on another national securities exchange.<sup>9</sup>

The Commission finds good cause for approving the proposed rule change before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the proposal is substantively identical to a proposed rule change that the Commission approved for another national securities exchange.<sup>10</sup> In addition, the Commission believes that accelerated approval of the proposed rule change, which clarifies the dissemination of the value of the index underlying an issue of Index-Linked Securities, should promote the continued listing and trading of Index-Linked Securities to the benefit of investors. Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Act, to approve the proposed rule change on an accelerated basis.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-Amex-2008-04) is approved on an accelerated basis.

<sup>8</sup> See, e.g., Securities Exchange Act Release Nos. 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR-NASDAQ-2006-050); 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR-NYSE-2006-101); and 54739 (November 9, 2006), 71 FR 66993 (November 17, 2006) (SR-Amex-2006-78).

<sup>9</sup> See Securities Exchange Act Release No. 57389 (February 27, 2008), 73 FR 11973 (March 5, 2008) (SR-NYSEArca-2008-06).

<sup>10</sup> *Id.*

<sup>11</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-5429 Filed 3-18-08; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57494; File No. SR-CBOE-2008-21]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Cut-Off Time for the Submission of Strategy Orders During the Modified HOSS Opening Procedure

March 13, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 11, 2008, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by CBOE. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to modify the cut-off time for the submission of index option orders for participation in the modified Hybrid Opening System ("HOSS") opening related to a position in, or a trading strategy involving, volatility index options or futures. The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and <http://www.cboe.org/legal>.

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The settlement date for volatility index options and futures contracts is on the Wednesday that is thirty days prior to the third Friday of the calendar month immediately following the month in which the applicable volatility index options or futures contract expires.<sup>5</sup> On these settlement days, CBOE Rule 6.2B.01 provides for a modified HOSS opening procedure only in those index option series (i) that are Hybrid 3.0 classes, and (ii) whose prices are used to calculate a volatility index on which an option or future is traded.<sup>6</sup> Currently, the only index options used to calculate a volatility index that trade on the Hybrid 3.0 platform are S&P 500 Index ("SPX") options, which began trading on that platform on September 25, 2007. Specifically, SPX options are used to calculate the CBOE Volatility Index ("VIX").

Under current Rule 6.2B.01, all index option orders for participation in the modified HOSS opening procedure that are related to positions in, or a trading strategy involving, volatility index options or futures ("Strategy Orders") and any change to or cancellation of any such Strategy Order must be received prior to 8 a.m. (CT) (subject to a limited exception for errors). The cut-off time for the entry of non-Strategy Orders on volatility index settlement days is established on a class-by-class basis, provided the cut-off time is no earlier than 8:25 a.m. (CT) and no later than the

<sup>5</sup> If the third Friday of the month subsequent to expiration of the applicable volatility index options or futures contract is a CBOE holiday, the final settlement date for the respective contract shall be thirty days prior to the CBOE business day immediately preceding that Friday.

<sup>6</sup> The normal HOSS opening procedure is used on all other days in those index options and on the volatility index options and futures settlement date in all contract months whose prices are not used to calculate the applicable volatility index.

opening of trading in the option series.<sup>7</sup> Any imbalance of contracts to buy over contracts to sell in the applicable index option series, or vice versa, as indicated on the electronic book, as well as expected opening prices and sizes are published in a snapshot form on the CBOE and CBOE Futures Exchange (“CFE”) Web sites as soon as practicable up through the opening bell on settlement days when the modified HOSS opening procedure is utilized. They are also currently continually disseminated on the Hybrid trading system.

An example of a Strategy Order includes a market participant who places SPX option orders on the book prior to the opening of trading on the settlement date for VIX futures to unwind hedge strategies involving SPX options. In particular, a commonly used hedge for VIX futures involves holding a portfolio of SPX options that will be used to calculate the settlement value of the VIX futures contract on the settlement date. The Exchange has observed that traders holding hedged VIX futures positions to settlement tend to trade out of their SPX options on VIX settlement days.<sup>8</sup>

Recently, the Exchange has received requests from market participants to extend the cut-off time for the entry of Strategy Orders on volatility index settlement days. Market participants have explained that because Strategy Orders cannot be modified or cancelled after 8 a.m. (CT) (except for errors), they are exposed to risk associated with market movements between 8 a.m. (CT) and the opening bell, which is after 8:30 a.m. (CT), and in the case of such market movements, may be unable to obtain convergence with the VIX futures final settlement value.

Specifically, the final value to which VIX futures settle is calculated using the opening prices of constituent SPX options: Out-of-the-money puts and calls that have non-zero bid prices. The Exchange determines whether a particular option series is “out-of-the-

money” by reference to an “at-the-money” index strike price ( $K_0$ ); put series with strike prices below  $K_0$  and call series with strike prices above  $K_0$  are considered constituent SPX options, provided that these series have non-zero bid prices. Both the put and call series with strike price  $K_0$  are also considered constituent options. As the market moves, and the  $K_0$  strike price changes, the constituent SPX options will also change. For example, at 8 a.m. (CT), suppose  $K_0$  is deemed to be 1350. Market participants would be expected to enter Strategy Orders for SPX put series with strike prices of 1350 and lower, and SPX call series with strike prices of 1350 and higher. Now suppose that the market moved after 8 a.m. (CT) and the  $K_0$  strike price changed to 1325. In order to obtain convergence with the SPX option hedge and the VIX futures final settlement value, market participants would need to change certain of their resting Strategy Orders to reflect the new set of constituent SPX options. Specifically, resting Strategy Orders for put series with strike prices between 1325 and 1350 would need to be cancelled and replaced by Strategy Orders for call series with strike prices between 1325 and 1350.

In response, the Exchange believes that it is appropriate to eliminate a specific cut-off time for Strategy Orders and instead provide that the cut-off time may be established by the Exchange on a class-by-class basis, provided that the established cut-off time cannot be set earlier than 8 a.m. (CT) or later than the opening of trading in the option series for which the modified HOSS opening procedure is utilized. The amended rule text also provides that pronouncements regarding changes to the established Strategy Order cut-off time would be announced to the membership via a Regulatory Circular that is issued at least one day prior to implementation. As proposed, the instant rule change builds flexibility into the rule to allow for future modifications to the applicable Strategy Order cut-off time, which may be appropriate in the future as technology improves and processes become more automated. In addition, the proposed rule provisions regarding the cut-off time for Strategy Orders are consistent with current rule provisions regarding the cut-off time for non-Strategy Orders in that both sets of provisions are structured to permit the Exchange to designate a cut-off time within a particular time range to permit the Exchange to adjust the cut-off time as circumstances evolve.<sup>9</sup>

In support of this change, the Exchange notes that since the 8 a.m. (CT) cut-off time for Strategy Orders was first established in 2005, the trading system for receiving, processing, and matching orders during the opening process has become much more automated.<sup>10</sup> Also, order imbalances are now published on the Hybrid trading system and are thus more widely disseminated. For example, before SPX options traded on the Hybrid 3.0 platform, order imbalances were only visible to market participants in the trading crowd and in snapshots on the CBOE and CFE Web sites. Now imbalances are also continually disseminated prior to the opening of trading through the Hybrid trading system. As a result of the enhanced trading system, it no longer takes as much time for information regarding order imbalances to reach market participants, and market participants can react to those order imbalances sooner by placing offsetting orders. Accordingly, there does not appear to be a need to have Strategy Orders submitted as early as is the case currently, and the Exchange expects to move the Strategy Order cut-off time to a later time. However, if the Exchange learns from experience that the cut-off time needs to be adjusted further to be earlier or later within the time range between 8 a.m. (CT) and the opening of trading to provide for an optimal opening process, the proposed rule will provide the Exchange with the flexibility to do that.

## 2. Statutory Basis

Because the proposed modification to the cut-off time for Strategy Orders on volatility index settlement days will permit the Exchange to provide market participants with additional time to enter Strategy Orders, is designed to better enable market participants to meet their trading objectives (*e.g.*, obtain convergence with the VIX futures final settlement value), and provides the Exchange with the ability to continue to provide market participants with time to respond to order imbalances, the Exchange believes the rule proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.<sup>11</sup> Specifically, the Exchange believes that the proposed rule change is consistent with section

<sup>7</sup> See CBOE Rule 6.2B.01(c)(iv).

<sup>8</sup> The Exchange originally proposed a cut-off time for the entry of Strategy Orders to provide market participants with time to review order imbalances and to place off-setting orders in the book, thereby encouraging additional market participation in the applicable index option opening which improves the settlement value calculation. See Securities Exchange Act Release No. 52367 (August 31, 2005), 70 FR 53401 (September 8, 2005) (SR-CBOE-2004-86). In order to strike the appropriate balance between maintaining a time period for market participants to respond to order imbalances and providing traders seeking convergence with additional time to enter Strategy Orders, the Exchange is currently proposing to modify the cut-off time for the entry of Strategy Orders as described more fully herein.

<sup>9</sup> See Rule 6.2B.01(c)(iv); see also Securities Exchange Act Release No. 54275 (August 4, 2006),

<sup>10</sup> See *supra* note 8.

<sup>11</sup> 15 U.S.C. 78f(b).

6(b)(5) of the Act,<sup>12</sup> which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. In addition, the Exchange notes that the proposal which established the current rule provision governing the cut-off time for non-Strategy Orders (which permits the Exchange to designate a cut-off time within a particular time range) was designated by the Commission to be effective and operative upon filing.<sup>13</sup>

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments on the proposed rule change were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>16</sup> However, Rule 19b-4(f)(6)(iii)<sup>17</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative

delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow market participants to receive the benefits of the proposed rule change prior to the next settlement date when the modified HOSS opening procedure will be utilized, which will be on Wednesday, March 19, 2008. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.<sup>18</sup>

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2008-21 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F. Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2008-21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2008-21 and should be submitted on or before April 9, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-5520 Filed 3-18-08; 8:45 am]

**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57484; File No. SR-ISE-2008-11]

#### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Cross Orders**

March 12, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 26, 2008, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the ISE. The ISE has designated the proposed rule change as "non-controversial" under Section 19(b)(3)(A)(iii)<sup>3</sup> of the Act and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to

<sup>19</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> See *supra* note 9.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing notice requirement.

<sup>17</sup> *Id.*

<sup>18</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its rules governing equities to adopt new order types, allowing for several different types of cross transactions. The text of the proposed rule change is available at the ISE, the Commission's Public Reference Room, and [www.ise.com](http://www.ise.com).

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of this filing is to amend ISE Rules to adopt the following new order types, which are described in more detail below: (1) Cross order; (2) cross with size order; (3) midpoint cross order; and (4) ISO cross order.

A *Cross Order* is an order to buy and sell the same security at a specific price better than the Exchange's displayed best bid and offer ("BBO") and equal to or better than the National Best Bid and Offer ("NBBO").

A *Cross with Size Order* is a cross order to buy and sell at least 5,000 shares of the same security with a market value of at least \$100,000.00: (1) At a price equal to or better than the Exchange's displayed BBO and the NBBO; and (2) where the size of the order is larger than the largest order displayed on the Exchange at that price.

A *Midpoint Cross Order* is a cross order with an instruction to execute it at the midpoint of the NBBO. If the NBBO is locked at the time the midpoint cross is received, it will execute at the locked NBBO. If the NBBO is crossed at the time the midpoint cross is received, the midpoint cross will be automatically canceled. Midpoint cross orders may be executed and reported in increments as small as

one-half of the Minimum Price Variation.

An *ISO Cross Order* is any type of cross order, other than a Midpoint Cross,<sup>5</sup> marked as required by Rule 600(b)(30) of Regulation NMS to be executed without taking any of the actions described in Rule 2107(d). These orders shall be executed because the Equity EAM routing the order to the Exchange has represented that the Equity EAM has satisfied the quotations of other markets as required by Rule 600(b)(30).

Cross, cross with size, midpoint cross and ISO cross will be automatically executed if they meet the requirements for such order types, and will be immediately and automatically canceled if they do not meet these requirements.

##### 2. Statutory Basis

The basis under the Act for this proposed rule change is found in Section 6(b)(5).<sup>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, ISE believes that the proposed rule change will provide investors with more flexibility in entering orders and receiving executions of such orders.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested persons.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public

interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>8</sup> As required under Rule 19b-4(f)(6)(iii),<sup>9</sup> the ISE provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>10</sup> However, Rule 19b-4(f)(6)(iii)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The ISE requested that the Commission waive the 30-day operative delay period for "non-controversial" proposals under Rule 19b-4(f)(6)<sup>12</sup> and make the proposed rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposed rule language is based on comparable language contained in the rules of the Boston Stock Exchange, Inc.<sup>13</sup> Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See Boston Stock Exchange Rules, Chapter XXXVII—Boston Equities Exchange Trading System, Section 2—Eligible Orders (c)(ii) Subsections (A), (B), (F) and (N).

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>5</sup> An ISO Cross order would never be used in conjunction with a Midpoint Cross order because by definition a Midpoint Cross order would never be trading through the NBBO.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2008-11 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2008-11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2008-11 and should be submitted on or before April 9, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-5428 Filed 3-18-08; 8:45 am]

BILLING CODE 8011-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57488; File No. SR-ISE-2008-26]

#### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fee Changes

March 13, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 10, 2008, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange designated this proposal as one establishing or changing a due, fee, or other charge imposed by ISE under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE proposes to amend its Schedule of Fees by adding to and subtracting from its list of Premium Products.<sup>5</sup> The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.ise.com>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, and discussed

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISE has substantially prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the UltraShort Oil & Gas ProShares ("DUG"),<sup>6</sup> UltraShort Dow30 ProShares ("DXD"),<sup>7</sup> and PowerShares DB Agriculture Fund ("DBA").<sup>8</sup> The

<sup>6</sup> "Dow Jones" and "Dow Jones U.S. Oil & Gas<sup>SM</sup>" are service marks of Dow Jones & Company, Inc. ("Dow Jones") and has been licensed for use for certain purposes by ProFunds Trust. All other trademarks and service marks are the property of their respective owners. DUG is not sponsored, endorsed, issued, sold or promoted by Dow Jones. Dow Jones has not licensed or authorized ISE to: (i) Engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on DUG; or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on DUG or with making disclosures concerning options on DUG under any applicable federal or State laws, rules or regulations. Dow Jones does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

<sup>7</sup> "The Dow 30<sup>SM</sup>," "Dow Jones Industrial Average," and "DJIA," are service marks of Dow Jones, and have been licensed for use for certain purposes by ProFunds Trust. All other trademarks and service marks are the property of their respective owners. DXD is not sponsored, endorsed, issued, sold or promoted by Dow Jones. Dow Jones has not licensed or authorized ISE to: (i) Engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on DUG; or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on DUG or with making disclosures concerning options on DUG under any applicable federal or State laws, rules or regulations. Dow Jones does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

<sup>8</sup> DBA is based on the Deutsche Bank Liquid Commodity Index—Optimum Yield Agriculture Excess Return<sup>TM</sup> and managed by DB Commodity Services LLC. DBLCI<sup>TM</sup> and Deutsche Bank Liquid Commodity Index<sup>TM</sup> are trademarks of Deutsche Bank AG, London ("DB AG"). PowerShares<sup>®</sup> is a registered service mark of PowerShares Capital Management LLC ("PowerShares"). DBA is not sponsored, endorsed, sold or promoted by DB AG, and DB AG makes no representation regarding the advisability of investing in DBA. Neither DB AG nor PowerShares has licensed or authorized ISE to: (i) Engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on DBA; or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on DBA or with making

Continued

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> "Premium Products" is defined in the Schedule of Fees as the products enumerated therein.

Exchange represents that DUG, DXD and DBA are eligible for options trading because they constitute "Exchange-Traded Fund Shares," as defined by ISE Rule 502(h).

All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on DUG, DXD and DBA.<sup>9</sup> The amount of the execution fee and comparison fee for products covered by this filing shall be \$0.15 and \$0.03 per contract, respectively, for all Public Customer Orders<sup>10</sup> and Firm Proprietary orders. The amount of the execution fee and comparison fee for all ISE Market Maker transactions shall be equal to the execution fee and comparison fee currently charged by the Exchange for ISE Market Maker transactions in equity options.<sup>11</sup> Finally, the amount of the execution fee and comparison fee for all non-ISE Market Maker transactions shall be \$0.37 and \$0.03 per contract, respectively.<sup>12</sup> Further, since options on DUG, DXD and DBA are multiply-listed, the Exchange's Payment for Order Flow fee shall apply to all these products. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

Further, as a matter of housekeeping, the Exchange proposes to remove from its Schedule of Fees options on Regional Bank HOLDRS (RKH) and Enterra Energy Trust (ENT).<sup>13</sup>

disclosures concerning options on DBA under any applicable federal or state laws, rules or regulations. DB AG and PowerShares do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

<sup>9</sup> These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2008, these fees will also be charged to Linkage Principal Orders ("Linkage P Orders") and Linkage Principal Acting as Agent Orders ("Linkage P/A Orders"). The amount of the execution fee charged by the Exchange for Linkage P Orders and Linkage P/A Orders is \$0.24 per contract side and \$0.15 per contract side, respectively. See Securities Exchange Act Release No. 56128 (July 24, 2007), 72 FR 42161 (August 1, 2007) (SR-ISE-2007-55).

<sup>10</sup> Public Customer Order is defined in ISE Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in ISE Rule 100(a)(38) as a person that is not a broker or dealer in securities.

<sup>11</sup> The execution fee is currently between \$.21 and \$.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently \$.03 per contract side.

<sup>12</sup> The amount of the execution and comparison fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is \$0.16 and \$0.03 per contract, respectively.

<sup>13</sup> These Premium Products were recently delisted and no longer trade on the Exchange. The Exchange

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>14</sup> in general, and Section 6(b)(4) of the Act<sup>15</sup> in particular, because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>16</sup> and Rule 19b-4(f)(2)<sup>17</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal took effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## 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

therefore proposes to remove them from its Schedule of Fees.

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(4).

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>17</sup> 17 CFR 240.19b-4(f)(2).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2008-26 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2008-26. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2008-26 and should be submitted on or before April 9, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-5519 Filed 3-18-08; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>18</sup> 17 CFR 200.30-3(a)(12).

**DEPARTMENT OF STATE**

[Public Notice 6138]

**Culturally Significant Objects Imported for Exhibition Determinations: "Romancing the Acropolis: Athenian Views From the Benaki Museum"**

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Romancing the Acropolis: Athenian Views From the Benaki Museum," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Parthenon Museum, Nashville, TN, from on or about April 29, 2008, until on or about July 26, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202-453-8050). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: March 12, 2008.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E8-5552 Filed 3-18-08; 8:45 am]

BILLING CODE 4710-05-P

**DEPARTMENT OF TRANSPORTATION****Office of the Secretary****Aviation Proceedings, Agreements Filed the Week Ending November 30, 2007**

The following Agreements were filed with the Department of Transportation

under Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1383 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* DOT-OST-2007-0083.

*Date Filed:* November 28, 2007.

*Parties:* Members of the International Air Transport Association.

*Subject* TC31 Between USA and Korea (Rep. of), Malaysia; Expedited Resolution 002aj (Memo PTC31 N&C 0420). Intended effective date: 15 December 2007.

*Docket Number:* DOT-OST-2007-0085.

*Date Filed:* November 28, 2007.

*Parties:* Members of the International Air Transport Association.

*Subject* TC31 North and Central Pacific TC3; (Except Japan)—North America, Carribean; (Except between Korea (Rep. of), Malaysia and USA; Expedited Resolution 002ah (Memo PTC31 N&C 0422). Intended effective date: 15 December 2007.

*Docket Number:* DOT-OST-2007-0087.

*Date Filed:* November 28, 2007.

*Parties:* Members of the International Air Transport Association.

*Subject* Mail Vote 555—Resolution 010bb; TC3, TC23, TC31 Malaysia—TC1, TC2, TC3; Special Cargo Amending Resolution from Malaysia to TC1, TC2, TC3. Intended effective date: 1 February 2008.

*Docket Number:* DOT-OST-2007-0089.

*Date Filed:* November 28, 2007.

*Parties:* Members of the International Air Transport Association.

*Subject* Mail Vote 549 TC23 Europe-South East Asia Expedited Composite Resolutions. Intended effective date: 1 December 2007.

*Docket Number:* DOT-OST-2007-0091.

*Date Filed:* November 28, 2007.

*Parties:* Members of the International Air Transport Association.

*Subject* Mail Vote 549—Flex Fares Package; TC23 Europe-South East Asia; Expedited Resolution 250n (PTC23 0268). Intended effective date: 1 December 2007.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. E8-5540 Filed 3-18-08; 8:45 am]

BILLING CODE 4910-9X-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 November 30, 2007**

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-2007-0086.

*Date Filed:* November 27, 2007.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:*

December 18, 2007.

*Description:* Application of Continental Airlines, Inc. requesting a certificate of public convenience and necessity authorizing it to provide scheduled foreign air transportation of persons, property and mail between a point or points in the United States and a point or points in the Dominican Republic.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. E8-5542 Filed 3-18-08; 8:45 am]

BILLING CODE 4910-9X-P

**DEPARTMENT OF TRANSPORTATION**

[Docket No. OST-2007-27407]

**National Surface Transportation Infrastructure Financing Commission**

**AGENCY:** Department of Transportation (DOT).

**ACTION:** Notice of meeting location and time.

**SUMMARY:** This notice lists the location and time of the tenth and eleventh meetings of the National Surface Transportation Infrastructure Financing Commission.

**FOR FURTHER INFORMATION CONTACT:** John V. Wells, Chief Economist, U.S.

Department of Transportation, (202) 366-9224, [jack.wells@dot.gov](mailto:jack.wells@dot.gov).

**SUPPLEMENTARY INFORMATION:** By **Federal Register** Notice dated March 12, 2007, and in accordance with the requirements of the Federal Advisory Committee Act ("FACA") (5 U.S.C. App. 2) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU") (Pub. L. 109-59, 119 Stat. 1144), the U.S. Department of Transportation (the "Department") issued a notice of intent to form the National Surface Transportation Infrastructure Financing Commission (the "Financing Commission"). Section 11142(a) of SAFETEA-LU established the National Surface Transportation Infrastructure Financing Commission and charged it with analyzing future highway and transit needs and the finances of the Highway Trust Fund and with making recommendations regarding alternative approaches to financing surface transportation infrastructure.

#### Notice of Meeting Location and Time

The Commissioners have agreed to hold their tenth meeting from 8:30 a.m. to 4 p.m. on Thursday, April 17, 2008, and their eleventh meeting from 8:30 a.m. to 4 p.m. on Tuesday, May 13, 2008. Each of the meetings will be open to the public and is scheduled to take place at the Department's headquarters building, located at 1200 New Jersey Avenue, SE., Washington, DC 20590, in Conference Room W82-302.

If you need accommodations because of a disability or require additional information to attend this meeting, please contact John V. Wells, Chief Economist, U.S. Department of Transportation, (202) 366-9224, [jack.wells@dot.gov](mailto:jack.wells@dot.gov).

Issued on this 13th day of March, 2008.

**John V. Wells,**

*Chief Economist, U.S. Department of Transportation, Designated Federal Official.*

[FR Doc. E8-5476 Filed 3-18-08; 8:45 am]

**BILLING CODE 4910-9X-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-2008-11]

#### Petition for Exemption; Summary of Petition Received

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief

from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATE:** Comments on this petition must identify the petition docket number involved and must be received on or before April 8, 2008.

**ADDRESSES:** You may send comments identified by Docket Number FAA-2007-0370 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, D.C. 20590.

- *Fax:* Fax comments to the Docket Management Facility at 202-493-2251.

- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

*Docket:* To read background documents or comments received, go to <http://www.regulations.gov> at any time or to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jan Thor (425-227-2127), Transport Airplane Directorate, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057-3356, or Frances Shaver (202-267-9681), Office of Rulemaking, Federal Aviation

Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 13, 2008.

**Pamela Hamilton-Powell,**  
*Director, Office of Rulemaking.*

#### Petition for Exemption

*Docket No.:* FAA-2007-0370.

*Petitioner:* FedEx Express Corporation.

*Section of 14 CFR Affected:*  
§ 121.312(e)(1).

*Description of Relief Sought:*

Operation of nine Boeing Model MD-11F airplanes, registration numbers N577FE, N574FE, N576FE, N575FE, N526FE, N527FE, N524FE, N523FE, and N521FE with two cockpit air supply ducts (BWT 10502-1 Silencer Duct and ABM 7668-1 Duct) that do not meet the flammability requirements of § 25.856(a).

[FR Doc. E8-5482 Filed 3-18-08; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-2008-10]

#### Petition for Exemption; Summary of Petition Received

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number involved and must be received on or before April 8, 2008.

**ADDRESSES:** You may send comments identified by Docket Number FAA-2007-28324 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey

Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590.

- *Fax:* Fax comments to the Docket Management Facility at 202-493-2251.

- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

*Docket:* To read background documents or comments received, go to <http://www.regulations.gov> at any time or to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jan Thor (425-227-2127), Transport Airplane Directorate, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057-3356, or Frances Shaver (202-267-9681), Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 13, 2008.

**Pamela Hamilton-Powell,**  
*Director, Office of Rulemaking.*

### Petition for Exemption

*Docket No.:* FAA-2007-28324.

*Petitioner:* United Parcel Service Company.

*Section of 14 CFR Affected:*  
§ 121.312(e)(1).

*Description of Relief Sought:* Operation of four Boeing Model MD-11F airplanes, registration numbers N256UP, N281UP, N282UP and N283UP, with two cockpit air supply ducts (BWT 10502-1 Silencer Duct) and ABM 7668-1 Duct that do not meet the

flammability requirements of § 25.856(a).

[FR Doc. E8-5483 Filed 3-18-08; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2008-0035]

#### Agency Information Collection Activities; Revision of an Approved Information Collection: Hours of Service (HOS) of Drivers Regulations, Supporting Documents

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. On November 26, 2007, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on the ICR. Thirty-eight comments were received, but none spoke to the paperwork burden or other aspects of the ICR.

**DATES:** Please send your comments by April 18, 2008. OMB must receive your comments by this date in order to act quickly on the ICR.

**ADDRESSES:** You may submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, *Attention: DOT/FMCSA Desk Officer.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division. Telephone: 202-366-4325. E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov).

#### SUPPLEMENTARY INFORMATION:

*Title:* Hours of Service (HOS) of Drivers Regulations, Supporting Documents (formerly Hours of Service of Drivers Regulations).

*OMB Control Number:* 2126-0001.

*Type of Request:* Revision of a currently-approved information collection.

*Respondents:* Motor Carriers, Drivers of commercial motor vehicles (CMVs).

*Estimated Number of Respondents:*

*Drivers:* approximately 4.6 million;

*Active Motor Carriers:* approximately 700,000.

*Estimated Time per Response:* The driver will take an average of 6.5

minutes to fill out a record of duty status (RODS), and 5 minutes to forward the completed RODS to the employing motor carrier. The motor carrier takes an average of 2 minutes to review a RODS, 1 minute per day to maintain a RODS, and 1 minute per day to maintain the supporting documents of one RODS.

*Expiration Date:* 11/30/2008.

*Frequency of Response:*

*Drivers:* 240 days per year, on average.

*Motor Carriers:* 240 days per year, on average.

*Total Number of Annual Responses Expected*

A. Driver

(1) Filling Out the RODS:

1,104,000,000 (4.6 million drivers × 240 days);

(2) Forwarding the RODS to the Motor Carrier: 115 million (4.6 million drivers × 25 times per year) and

(3) Forwarding the Supporting Documents to the Motor Carrier: 0 (the activity is usual and customary).

B. Motor Carrier

(1) Reviewing the RODS: 552 million (2.3 million RODS reviewed daily × 240 days);

(2) Maintaining the RODS:

1,104,000,000 (4.6 million drivers × 240 days); and

(3) Maintaining the Supporting Documents: 1,104,000,000 (4.6 million drivers × 240 days).

*Estimated Total Annual Burden:*

184,380,000 hours [driver burden of 129,180,000 and motor carrier burden of 55,200,000 hours].

*Background:*

The FMCSA regulates the amount of time a driver may drive and be on duty. A CMV driver must keep a record of duty status (RODS), commonly referred to as a logbook, that indicates his or her duty status (driving, on duty not driving, off duty, sleeper berth) for all periods of the duty day. The RODS must be maintained on the CMV for 7 days, and subsequently submitted to the motor carrier along with any "supporting documents," such as fuel receipts and toll tickets, that could assist in verifying the accuracy of entries on the RODS. The motor carrier must retain the RODS and supporting documents for a minimum of 6 months from date of receipt.

Statutory authority for regulating the hours of service (HOS) of drivers operating CMVs in interstate commerce is derived from 49 U.S.C. 31136 and 31502. The penalty provisions are located at 49 U.S.C. 521, 522 and 526, as amended. On November 28, 1982, the Federal Highway Administration, the agency previously responsible for administration of the Federal Motor Carrier Safety Regulations (49 CFR 350

*et seq.*), promulgated a final rule that required a motor carrier to verify the accuracy of the HOS of each driver and to ensure that drivers record their duty status in a specified format (47 FR 53383).

The HOS rules provide two methods of creating a RODS: A paper RODS that provides a grid for the driver to record his or her time and location throughout the duty day, and an Automatic On-Board Recording Device as defined by section 395.15. The HOS regulations exempt employers of certain "short haul" CMV drivers from the RODS requirement if they maintain the employee's U.S. Department of Labor "time card" at the place of business for a period of six months (Section 395.1(e)).

The RODS is an important tool because it provides the information the carrier and enforcement personnel require to determine the compliance of a driver with the HOS rules. The adherence of drivers and motor carriers to the HOS requirements helps FMCSA protect the public by reducing the number of tired CMV drivers on the highways.

Most States receive grants from FMCSA under the Motor Carrier Safety Assistance Program. As a condition of receiving these grants, States agree to adopt and enforce the FMCSRs, including the HOS rules, as State law. As a result, State enforcement inspectors use the RODS and supporting documents to determine whether CMV drivers, in interstate or intrastate commerce, are complying with the HOS rules.

In addition, FMCSA uses the RODS during on-site compliance reviews (CRs) of motor carriers. The CR determines the overall safety rating of a motor carrier, and a negative review can be damaging to a motor carrier's CMV operations because the results of CRs are public information. Many shippers of property use the results of these CRs, as well as other records of a motor carrier's crash and violation history, in selecting a motor carrier to transport their freight. Finally, the RODS have traditionally been the principal document accepted by the judicial system as evidence of a violation of the HOS regulations. This information collection supports the DOT's Strategic Goal of Safety because the information helps the Agency ensure the safe operation of CMVs in interstate commerce on our Nation's highways.

In this ICR, FMCSA proposes an increase in the estimated number of CMV drivers affected by the HOS regulations. This reflects an increase in the total number of CMV operators on

the highways today, as compared to 2005 when OMB last approved the Agency's calculation of the IC burden. The total number of interstate and intrastate CMV drivers is currently estimated to be 7.0 million. Of these, 4.6 million are required to complete RODS and furnish supporting documents. The remainder consists of the "short haul" drivers exempt from the RODS requirement.

In this submission, the FMCSA also provides greater specificity in its calculation of the HOS paperwork burden. To do so, the Agency has reorganized its breakdown of the various paperwork tasks performed by drivers and motor carriers. The revised organization allows the reader to distinguish the paperwork burden of the RODS from the paperwork burden of the supporting documents, and the burden of the driver from the burden of the employer (motor carrier).

On November 26, 2007, the FMCSA published a **Federal Register** notice on this same topic and provided 60 days for public comment (72 FR 66019). The Agency received 38 comments to the docket, including four that appear to have been sent to this docket inadvertently. None of the comments addressed the paperwork burden of the HOS rules. There was no discussion in the comments of the necessity of the paperwork burden, or the accuracy of the information collected. The comments offered no suggestions for minimizing the burden of the IC, or for improving the quality, usefulness, or clarity of the information collected.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued on: March 12, 2008.

**Terry Shelton,**

*Associate Administrator for Research and Information Technology.*

[FR Doc. E8-5477 Filed 3-18-08; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration, DOT.

**ACTION:** Notice and Request for Comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on January 11, 2008 (See 73 FR 2074).

**DATES:** Comments must be submitted on or before April 18, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493-6292), or Ms. Gina Christodoulou, Office of Support Systems Staff, RAD-43, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493-6139). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104-13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On January 11, 2008, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 73 FR 2074. FRA received no comments in response to this notice.

Before OMB decides whether to approve this proposed collection of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is

published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); see also 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

*Title:* Reflectorization of Freight Rolling Stock.

*OMB Control Number:* 2130–0566.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Railroads.

*Form(s):* FRA F 6180.113.

*Abstract:* The Federal Railroad Administration (FRA) issued this regulation to mandate the reflectorization of freight rolling stock (freight cars and locomotives) to enhance the visibility of trains in order to reduce the number and severity of accidents at highway-rail grade crossings in which train visibility acted as a contributing factor. The information collected is used by FRA to ensure that railroads/car owners follow the schedule established by the regulation for placing retro-reflective material on the sides of freight rolling stock (freight cars and locomotives) in order to improve the visibility of trains. The information is also used by FRA to confirm that railroads/car owners meet the prescribed standards for the application, inspection, and maintenance of the required retro-reflective material.

*Annual Estimated Burden:* 56,787 hours.

*Addressee:* Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503; Attention: FRA Desk Officer. Comments may also be sent via e-mail to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget at the following address: [oira\\_submissions@omb.eop.gov](mailto:oira_submissions@omb.eop.gov).

*Comments are invited on the following:* Whether the proposed collections of information are necessary for the proper performance of the functions of FRA, including whether the

information will have practical utility; the accuracy of FRA's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC, on March 13, 2008.

**D.J. Stadler,**

*Director, Office of Financial Management, Federal Railroad Administration.*

[FR Doc. E8–5481 Filed 3–18–08; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD–2008–0025]

#### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LADY AND THE TRAMP.

**SUMMARY:** As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2008–0025 at <http://www.regulations.gov>.

Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state

the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

**DATES:** Submit comments on or before April 18, 2008.

**ADDRESSES:** Comments should refer to docket number MARAD–2008–0025. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel LADY AND THE TRAMP is:

*Intended Use:* “This vessel will operate for short periods of time with less than 12 passengers on harbor cruises/sightseeing tours within Dana Point Harbor, Newport Harbor, and the Pacific Ocean between Newport Beach and San Diego and out to Catalina.”

*Geographic Region:* “Pacific Ocean between Pt. Conception and San Diego and out to Catalina Island.”

#### 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).

Dated: March 7, 2008.

By order of the Maritime Administrator.

**Christine Gurland,**

*Acting Secretary, Maritime Administration.*

[FR Doc. E8–5565 Filed 3–18–08; 8:45 am]

**BILLING CODE 4910–81–P**

**DEPARTMENT OF TRANSPORTATION**

**Maritime Administration**

[Docket No: MARAD-2006-26228]

**Comment Period Extension for Kahului Harbor Draft Environmental Impact Statement (EIS), Maui, HI**

**AGENCY:** Department of Transportation, Maritime Administration.

**SUMMARY:** The U.S. Department of Transportation Maritime Administration announces an extension to the public comment period for the Kahului Harbor Master Plan Draft Environmental Impact Statement. The Draft EIS addresses the community's needs for commercial harbor facilities through 2030.

**DATES:** Comments on this Draft EIS must be received by March 28, 2008.

*To Comment on the Draft EIS:* You can send written comments either to the preparers or to the Federal sponsor—

*By Mail:* to John Kirkpatrick, Belt Collins Hawaii, 2153 N. King Street, Suite 200, Honolulu, HI 96819.

*By Mail:* to Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.

*By the Internet:* Follow instructions at the Web site, <http://www.regulations.gov>.

Please identify all comments by the docket number: MARAD-2006-26228. All submissions must include the Agency name and docket number.

**FOR FURTHER INFORMATION CONTACT:**

Address requests for more information related to the EIS or requests to be added to the mailing list for this project to John Kirkpatrick, Belt Collins Hawaii, 2153 N. King Street, Suite 200, Honolulu, HI 96819, e-mail:

[jkirkpatrick@beltcollins.com](mailto:jkirkpatrick@beltcollins.com). For agency information, please contact Daniel E. Yuska Jr., Environmental Protection Specialist, U.S. Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, e-mail: [daniel.yuska@dot.gov](mailto:daniel.yuska@dot.gov) or Dean Watase, Planning Branch, Harbors Division, Hawaii State Department of Transportation, 79 S. Nimitz Highway, Honolulu, HI 96813, e-mail: [dean.watase@hawaii.gov](mailto:dean.watase@hawaii.gov).

**SUPPLEMENTARY INFORMATION:** The Hawaii State Department of Transportation (HI DOT) has previously conducted planning for Kahului Harbor, leading to a 2025 Master Plan and Environmental Assessment. However, demand for harbor facilities has been much greater than anticipated, and space for current operations is very tight. The 2025 Master Plan called for development of new pier and harbor space at the west breakwater of the harbor. HI DOT has conducted a new master planning process, which has led to new alternatives to meet current and future harbor needs. The west breakwater expansion and other steps to help assure that the harbor supports the continuing prosperity and quality of life of Maui County are under consideration.

The Draft EIS addresses the following issues: (1) Demand for additional space and facilities at Kahului; (2) organization of harbor space and facilities to promote and preserve orderly cargo operations, passenger operations, and recreational activity; and (3) environmental impacts of proposed alternatives. The Preferred Alternative involves development of passenger facilities in the west breakwater area, along with expansion of Piers 1 and 2 and development of new cargo handling areas near those piers. Significant impacts could affect corals and surf sites.

**Authority:** 49 CFR 1.66.

By order of the Maritime Administrator.

Dated: March 13, 2008.

**Murray A. Bloom,**

*Acting Secretary, Maritime Administration.*

[FR Doc. E8-5566 Filed 3-18-08; 8:45 am]

**BILLING CODE 4910-81-P**

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit.**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of Applications for Modification of Special Permit.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of special permits (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request.

Their applications have been separated from the new application for special permits to facilitate processing.

**DATES:** Comments must be received on or before April 3, 2008.

*Address Comments To:* Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:**

Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue, SE., Washington, DC or at <http://dms.dot.gov>.

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 11, 2008.

**Delmer F. Billings,**

*Director, Office of Hazardous Materials, Special Permits and Approvals.*

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
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**MODIFICATION SPECIAL PERMITS**

5493-M .....		Marsulex, Inc. North York, ON.	49 CFR 173.314(c) .....	To modify the special permit to authorize a lower minimum loading temperature.
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Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
11602-M .....	RSPA-16599	East Tennessee Iron & Metal, Inc. Rogersville, TN.	49 CFR 172.101; 172.301(c); 173.22a; 173.241; 173.242; Part 107, Subpart B, Appendix B.	To modify the special permit to authorize the addition of class 9 hazardous material.
13325-M .....		Air Products & Chemicals, Inc. Allentown, PA.	49 CFR 173.301(f)(3); 180.205(c)(4).	To modify the special permit to authorize an increase in service life of certain DOT specification cylinders.
14318-M .....		Lockheed Martin Corporation (Former Grantee: Lockheed-Martin Technical Operations) Vandenberg AFB, CA.	49 CFR 173.315 .....	To modify the special permit to authorize multiple tanks of the same commodity to be transported in dedicated enclosed metal sided box vans or trucks.
14418-M .....		Department of Defense Ft. Eustis, VA.	49 CFR 172.301; 172.400; 172.504(a).	To modify the special permit to authorize the transportation in commerce of an additional Division 4.3 hazardous material.
14638-M .....		Teledyne Energy Systems, Inc. Hunt Valley, MD.	49 CFR 173.213 .....	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of up to two pressure vessels containing Magnesium or Magnesium alloys under an Argon blanket further packaged in a non-DOT specification wooden box capable of meeting the performance requirements for PG II and to remove the one time restriction.

[FR Doc. E8-5472 Filed 3-18-08; 8:45 am]

BILLING CODE 4909-60-M

## DEPARTMENT OF TRANSPORTATION

### Research and Innovative Technology Administration

[DOCKET: RITA 2007-27185]

#### Bureau of Transportation Statistics; Agency Information Collection; Activity Under OMB Review; Report of Financial and Operating Statistics for Small Aircraft Operators; Paperwork Reduction Notice

**AGENCY:** Research and Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, Public Law 104-13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS collecting financial, traffic and operating statistics from small certificated and commuter air carriers. Small certificated air carriers (operate aircraft with 60 seats or less or with 18,000 pounds of payload capacity or less) currently must file the two quarterly schedules listed below:

*F-1 Report of Financial Data,*  
*F-2 Report of Aircraft Operating Expenses and Related Statistics,* and

Commuter air carriers must file the Schedule F-1 *Report of Financial Data.*

Commenters should address whether BTS accurately estimated the reporting burden and if there are other ways to enhance the quality, utility, and clarity of the information collected.

**DATES:** Written comments should be submitted by May 19, 2008.

**ADDRESSES:** You may submit comments identified by DOT Docket ID Number RITA 2007-27185 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

*Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

*Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

*Fax:* 202-493-2251.

*Instructions:* Identify docket number, RITA 2007-27185, at the beginning of your comments, and send two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Internet users may access all comments received by DOT at <http://www.regulations.gov>. All comments are posted electronically without charge or edits, including any personal information provided.

*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 (65 FR 19477-78) or you may visit <http://DocketInfo.dot.gov>.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets.

#### Electronic Access

An electronic copy of this Notice and copies of the comments may be downloaded at: <http://www.regulations.gov>, by searching docket RITA 2007-27185.

#### FOR FURTHER INFORMATION CONTACT:

Bernie Stankus, Office of Airline Information, RTS-42, Bureau of Transportation Statistics, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, (202) 366-4387.

**SUPPLEMENTARY INFORMATION: OMB Approval No.** 2138-0009.

*Title:* Report of Financial and Operating Statistics for Small Aircraft Operators.

*Form No.:* BTS Form 298-C.

*Type of Review:* Extension of a currently approved collection for the financial data.

*Respondents:* Small certificated and commuter air carriers.

*Number of Respondents:* 80.  
*Estimated Time per Response:* 4 hours  
 × 40 commuter carriers per quarter. 12  
 hours × 40 small certificated carriers per  
 quarter.

*Total Annual Burden:* 2,560 hours.

*Needs and Uses:* Program uses for  
 Form 298-C financial data are as  
 follows:

#### Mail Rates

The U.S. Department of Transportation (DOT) sets and updates the Intra-Alaska Bush mail rates based on carrier aircraft operating expense, traffic, and operational data. Form 298-C cost data, especially fuel costs, terminal expenses, and line haul expenses are used in arriving at rate levels. DOT revises the established rates based on the percentage of unit cost changes in the carriers' operations. These updating procedures have resulted in the carriers receiving rates of compensation that more closely parallel their costs of providing mail service and contribute to the carriers' economic well-being.

#### Essential Air Service

DOT often has to select a carrier to provide a community's essential air service. The selection criteria includes historic presence in the community, reliability of service, financial stability and cost structure of the air carrier.

#### Carrier Fitness

Fitness determinations are made for both new entrants and established U.S. domestic carriers proposing a substantial change in operations. A portion of these applications consists of an operating plan for the first year (14 CFR Part 204) and an associated projection of revenues and expenses. The carrier's operating costs, included in these projections, are compared against the cost data in Form 298-C for a carrier or carriers with the same aircraft type and similar operating characteristics. Such a review validates the reasonableness of the carrier's operating plan.

The quarterly financial submissions by commuter and small certificated air carriers are used in determining each carrier's continuing fitness to operate. Section 41738 of Title 49 of the United States Code requires DOT to find all commuter and small certificated air carriers fit, willing, and able to conduct passenger service as a prerequisite to providing such service to an eligible essential air service point. In making a fitness determination, DOT reviews three areas of a carrier's operation: (1) The qualifications of its management team, (2) its disposition to comply with

laws and regulations, and (3) its financial posture. DOT must determine whether or not a carrier has sufficient financial resources to conduct its operations without imposing undue risk on the traveling public. Moreover, once a carrier begins conducting flight operations, DOT is required to monitor its continuing fitness.

Senior DOT officials must be kept fully informed and advised of all current and developing economic issues affecting the airline industry. In preparing financial condition reports or status reports on a particular airline, financial and traffic data are analyzed. Briefing papers prepared for senior DOT officials may use the same information.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

**M. Clay Moritz, Jr.,**

*Assistant Director, Airline Information,  
 Bureau of Transportation Statistics.*

[FR Doc. E8-5539 Filed 3-18-08; 8:45 am]

**BILLING CODE 4910-HY-P**

## DEPARTMENT OF TRANSPORTATION

### Research and Innovative Technology Administration

[DOCKET: RITA 2007-27185]

#### Bureau of Transportation Statistics; Agency Information Collection; Activity Under OMB Review; Report of Financial and Operating Statistics for Large Certificated Air Carriers; Paperwork Reduction Notice

**AGENCY:** Research and Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, Public Law 104-13, the Bureau of Transportation Statistics (BTS) invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS collecting financial data from large

certificated air carriers. Large certificated air carriers are carriers that operate aircraft with over 60 seats, aircraft with over 18,000 pounds of payload capacity, or operate international air services.

**DATES:** Written comments should be submitted by May 19, 2008.

**ADDRESSES:** You may submit comments identified by DOT Docket ID Number RITA 2007-27185 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

*Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

*Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

*Fax:* 202-493-2251.

*Instructions:* Identify docket number, RITA 2007-27185, at the beginning of your comments, and send two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Internet users may access all comments received by DOT at <http://www.regulations.gov>. All comments are posted electronically without charge or edits, including any personal information provided.

*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 (65 FR 19477-78) or you may visit <http://DocketInfo.dot.gov>.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>, or the street address listed above. Follow the online instructions for accessing the dockets.

#### Electronic Access

An electronic copy of this Notice and copies of the comments may be downloaded at: <http://www.regulations.gov>, by searching docket RITA 2007-27185.

**FOR FURTHER INFORMATION CONTACT:** Bernie Stankus, Office of Airline

Information, RTS-42, Bureau of Transportation Statistics, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, (202) 366-4387.

**SUPPLEMENTARY INFORMATION:** OMB Approval No. 2138-0013.

*Title:* Report of Financial and Operating Statistics for Large Certificated Air Carriers.

*Form No.:* BTS Form 41.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Large certificated air carriers.

*Number of Respondents:* 88.

*Estimated Time per Response:* 4 hours per schedule, an average carrier may submit 90 schedules in one year.

*Total Annual Burden:* 31,680 hours.

*Needs and Uses:* Program uses for Form 41 data are as follows:

#### Mail Rates

The U.S. Department of Transportation (DOT) sets and updates the international and mainline Alaska mail rates based on carrier aircraft operating expense, traffic and operational data. Form 41 cost data, especially fuel costs, terminal expenses, and line haul expenses are used in arriving at rate levels. DOT revises the established rates based on the percentage of unit cost changes in the carriers' operations. These updating procedures have resulted in the carriers receiving rates of compensation that more closely parallel their costs of providing mail service and contribute to the carriers' economic well-being.

#### Submission of U.S. Carrier Data to ICAO

As a party to the Convention on International Civil Aviation, the United States is obligated to provide the International Civil Aviation Organization with financial and statistical data on operations of U.S. air carriers. Over 99 percent of the data filed with ICAO is extracted from the carriers' Form 41 reports.

#### Standard Foreign Fare and Rate Levels

DOT uses Form 41 cost data to calculate the Standard Foreign Fare Level (SFFL) for passengers and the Standard Foreign Rate Level (SFRL) for freight. Any international fare or rate set below this fare level are automatically approved. Separate passenger fare and rate levels are established for Canadian, Atlantic, Latin America, and Pacific areas. In markets where liberal bilateral or multilateral pricing agreements provide for more competitive open market pricing, such agreements may take precedence over the SFFL and SFRL.

#### Carrier Fitness

Fitness determinations are made for both new entrants and established U.S. domestic carriers proposing a substantial change in operations. A portion of these applications consists of an operating plan for the first year (14 CFR Part 204) and an associated projection of revenues and expenses. The carrier's operating costs, included in these projections, are compared against the cost data in Form 41 for a carrier or carriers with the same aircraft type and similar operating characteristics. Such a review validates the reasonableness of the carrier's operating plan.

Form 41 reports, particularly balance sheet reports and cash flow statements play a major role in the identification of vulnerable carriers. Data comparisons are made between current and past periods in order to assess the current financial position of the carrier. Financial trend lines are extended into the future to analyze the continued viability of the carrier. DOT reviews three areas of a carrier's operation: (1) The qualifications of its management team, (2) its disposition to comply with laws and regulations, and (3) its financial posture. DOT must determine whether or not a carrier has sufficient financial resources to conduct its operations without imposing undue risk on the traveling public. Moreover, once a carrier is operating, DOT is required to monitor its continuing fitness.

Senior DOT officials must be kept fully informed as to all current and developing economic issues affecting the airline industry. In preparing financial conditions reports or status reports on a particular airline, financial and traffic data are analyzed. Briefing papers may use the same information.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

#### M. Clay Moritz, Jr.,

*Assistant Director, Airline Information, Bureau of Transportation Statistics.*

[FR Doc. E8-5545 Filed 3-18-08; 8:45 am]

**BILLING CODE 4910-HY-P**

#### DEPARTMENT OF TRANSPORTATION

##### Surface Transportation Board

[STB Finance Docket No. 35123]

#### Fortress Investment Group LLC, et al.—Exemption for Transaction Within a Corporate Family

Fortress Investment Group LLC, on behalf of certain private equity firms managed by it and its affiliates (Fortress); FECCR Rail LLC (FECCR Rail), a Delaware limited liability company and affiliate of Fortress; FECCR Rail Corp (FECCR Railcorp), a Delaware corporation and wholly owned subsidiary of FECCR Rail; Florida East Coast Railway, LLC (FECCR), a Florida limited liability company and wholly owned subsidiary of FECCR Railcorp; RR Acquisition Holding LLC (RR Acquisition), a Delaware limited liability company and affiliate of Fortress; RailAmerica, Inc. (RailAmerica), a Delaware corporation and wholly owned subsidiary of RR Acquisition; Palm Beach Holding, Inc. (PB Holding), a Delaware corporation and wholly owned subsidiary of RailAmerica; and RailAmerica Transportation Corp. (RTC), a Delaware corporation and wholly owned subsidiary of PB Holding, have jointly filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for a transaction within a corporate family. Fortress controls RailAmerica, and it indirectly controls that entity's rail carrier subsidiaries (collectively, RailAmerica Railroads).<sup>1</sup> Fortress also indirectly controls FECCR.<sup>2</sup> The instant transaction involves the merger of FECCR Railcorp with and into PB Holding and the subsequent contribution of all of the limited liability company interests of FECCR from PB Holding to RTC.<sup>3</sup> As a result of the transaction, FECCR will become a wholly owned rail subsidiary of RTC, and a sister company to the RailAmerica Railroads.

The transaction is scheduled to be consummated as soon as possible after April 2, 2008, the effective date of the exemption.

<sup>1</sup> See *Fortress Investment Group LLC, et al.—Control Exemption—Rail America, Inc., et al.*, STB Finance Docket No. 34972 (STB served Dec. 22, 2006) (*Rail America Control*).

<sup>2</sup> See *Fortress Investment Group LLC, et al.—Control—Florida East Coast Railway, LLC*, STB Finance Docket No. 35031 (STB served Sept. 28, 2007).

<sup>3</sup> Immediately following the merger of FECCR Railcorp with and into PB Holding, FECCR Rail will merge with and into RR Acquisition, the Delaware limited liability company through which Fortress currently controls RailAmerica and the RailAmerica Railroads. RR Acquisition obtained authority to control the RailAmerica Railroads in *Rail America Control*.

The purpose of the transaction is to align the transportation-related activities of all of the rail carriers controlled by Fortress within RailAmerica, and to facilitate more efficient management of those carriers. The parties anticipate that the transaction will present opportunities to enhance the efficiency of both FECR and the RailAmerica Railroads through the sharing of locomotive and car fleets, consolidation of certain administrative functions, sharing of management expertise, and common purchasing of insurance, rolling stock, equipment and vehicles, track materials and other materials and supplies.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). According to the parties, the transaction will not result in adverse changes in service levels, significant operational changes, or changes in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. As a condition to the use of this exemption, any employees adversely affected by this transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than March 26, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35123, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Terence M. Hynes, Sidley Austin LLP, 1501 K Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: March 11, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Anne K. Quinlan,**  
*Acting Secretary.*

[FR Doc. E8-5546 Filed 3-18-08; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-398 (Sub-No. 8X)]

#### San Joaquin Valley Railroad Company—Abandonment Exemption—in Tulare County, CA

On February 28, 2008, San Joaquin Valley Railroad Company (SJVR) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 9.20-mile portion of its South Exeter Branch extending between milepost 259.40, near Exeter, and milepost 268.60, near Strathmore, in Tulare County, CA. The line traverses United States Postal Service Zip Codes 93221, 93247, and 93267, and includes the stations of Strathmore and Lindsay.

The line sought to be abandoned does not contain federally granted rights-of-way. Any documentation in SJVR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

Petitioner indicates that the proposed abandonment may generate comments, and it requests that the Board adopt a procedural schedule to allow it to file rebuttal to any comments received. Instead of addressing the request at this time, the Board will allow petitioner to raise the matter again if comments and replies in response to the petition are actually filed. Comments and replies to the petition for exemption are due on or before April 8, 2008. Once comments and replies are filed, SJVR may request leave to file rebuttal.

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 17, 2008.

Any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a \$1,300 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than April 8, 2008. Each trail use request must be accompanied by a \$200 filing fee. See 49 CFR 1002.2(f)(27)(i).

All filings in response to this notice must refer to STB Docket No. AB-398 (Sub-No. 8X) and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001; and (2) Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

Persons seeking further information concerning the abandonment procedures may contact the Board's Office of Governmental and Public Affairs at (202) 245-0230 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152.

Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245-0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service at 1-800-877-8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: March 13, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Anne K. Quinlan,**  
*Acting Secretary.*

[FR Doc. E8-5548 Filed 3-18-08; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

March 13, 2008.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the

Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

*Dates:* Written comments should be received on or before April 18, 2008 to be assured of consideration.

#### Internal Revenue Service (IRS)

*OMB Number:* 1545-XXXX.

*Type of Review:* New Collection.

*Title:* Form 13930, Central Withholding Agreement.

*Form:* 13930.

*Description:* The collection is necessary if the individual wishes to have a CWA. This form instructs him regarding how to make his application for consideration. IRS Section 1441(a) requires withholding on certain payments of Non Resident Aliens (NRAs). Section 1.1441-4(b)(3) of the Income Tax Regulations provides that the withholding can be considered for adjustment if a CWA is applied for and granted.

*Respondents:* Individuals or Households.

*Estimated Total Burden Hours:* 2,000 hours.

*Clearance Officer:* Glenn P. Kirkland, (202) 622-3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt, (202) 395-7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Robert Dahl,**

*Treasury PRA Clearance Officer.*

[FR Doc. E8-5533 Filed 3-18-08; 8:45 am]

**BILLING CODE 4830-01-P**

#### DEPARTMENT OF THE TREASURY

##### Solicitation of Public Comments to the President's Advisory Council on Financial Literacy

**AGENCY:** Office of Financial Education, Treasury.

**ACTION:** Notice of request for public comments.

**SUMMARY:** The President's Advisory Council on Financial Literacy, which convened its first meeting on Wednesday, February 13, 2008, hereby solicits public comments on the state of financial literacy in the United States and proposed solutions to improve it, as detailed in the **SUPPLEMENTARY INFORMATION** section of this notice.

**DATES:** Comments are requested to be submitted by May 23, 2008.

**ADDRESSES:** The public is invited to submit written statements to the

President's Advisory Council on Financial Literacy as follows:

Statements may be e-mailed to [financialliteracycouncil@do.treas.gov](mailto:financialliteracycouncil@do.treas.gov), or sent in triplicate form to the President's Advisory Council on Financial Literacy, Office of Financial Education, Room 1332, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The Department will make such statements available for public inspection and copying in the Department's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622-0204. All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

#### FOR FURTHER INFORMATION CONTACT:

Edwin Bodensiek, Director of Outreach, Department of the Treasury, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at [ed.bodensiek@do.treas.gov](mailto:ed.bodensiek@do.treas.gov).

**SUPPLEMENTARY INFORMATION:** The Council was established to promote and enhance financial literacy among the American people. One of the functions of the Council is to obtain information and advice concerning financial literacy. Upon consideration of such information and advice, the Council will advise the President and Secretary of the Treasury on means to improve financial education efforts, promote effective access to financial services, establish effective measures of financial literacy, conduct research on financial knowledge, and strengthen and coordinate financial education programs.

*Request for comments:* Comments are specifically requested concerning the following questions.

(1) *Youth financial literacy:* How can financial literacy among young people be improved?

(2) *Financial education in the workplace:* How can financial education be provided in the workplace? What financial education issues should be addressed in the workplace?

(3) *Financial access for underserved markets:* How can access to financial services be increased in underserved markets? What markets are underserved for financial services?

(4) *Financial literacy research:* What questions should be answered to provide a thorough understanding of the current state of financial literacy in the country? What are the gaps in existing research on financial literacy?

(5) *Outreach and awareness:* What are the best ways to communicate to those who lack awareness of financial education resources?

Commenters are urged to keep comments succinct. Commenters are asked to number their answers so that they correspond to the specific question being addressed if their response addresses one of those topics.

Dated: March 12, 2008.

**Taiya Smith,**

*Executive Secretary.*

[FR Doc. E8-5480 Filed 3-18-08; 8:45 am]

**BILLING CODE 4811-42-P**

#### DEPARTMENT OF THE TREASURY

##### Fiscal Service

##### Change in the Legacy Treasury Direct Annual Maintenance Fee Schedule

**AGENCY:** Bureau of the Public Debt, Fiscal Service, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury is announcing a change in the fee schedule for the Legacy Treasury Direct investor account maintenance fee. Legacy Treasury Direct investor account maintenance fees are assessed annually for each investor account with security holdings in excess of \$100,000 in par value, pursuant to the Regulations Governing Book-Entry Treasury Bonds, Notes and Bills Held in Legacy Treasury Direct.

**DATES:** *Effective Date:* This notice is effective upon publication in the **Federal Register**.

**ADDRESSES:** You can download this notice at the following Internet address: <http://www.publicdebt.treas.gov> or <http://www.gpoaccess.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Elisha Whipkey, Director, Division of Program Administration, Office of Securities Operations, Bureau of the Public Debt, at (304) 480-6319 or [elisha.whipkey@bpd.treas.gov](mailto:elisha.whipkey@bpd.treas.gov).

Susah Sharp, Attorney-Adviser, Edward Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480-8692 or [susan.sharp@bpd.treas.gov](mailto:susan.sharp@bpd.treas.gov).

**SUPPLEMENTARY INFORMATION:** The Treasury, Postal Service and General Government Appropriations Act of 1995 (Pub. L. 103-329) authorized the

Secretary to collect an annual fee of not less than \$25 for each Legacy Treasury Direct investor account, referred to in the regulations as a "securities account," with security holdings in excess of \$100,000 in par value, to recover the costs of providing account services to Legacy Treasury Direct investors. The fee was set at that time at \$25, and has not been increased since. This Notice increases the amount of the fee to \$100. The \$100 fee will more nearly offset the Bureau of the Public Debt's cost for maintaining Legacy Treasury Direct accounts.

#### **Schedule of Fees for Legacy Treasury Direct Accounts**

The fee schedule for Legacy Treasury Direct securities accounts is as follows: beginning in 2008 and until further notice, the investor account maintenance fee for each Legacy Treasury Direct investor account holding Treasury securities that exceed \$100,000 in par amount is \$100.

Dated: March 14, 2008.

**Gary Grippo,**

*Acting Fiscal Assistant Secretary.*

[FR Doc. 08-1052 Filed 3-14-08; 1:24 pm]

**BILLING CODE 4810-39-M**

## **DEPARTMENT OF THE TREASURY**

### **Office of Foreign Assets Control**

#### **Additional Designation of an Entity Pursuant to Executive Order 13382**

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the name of one newly-designated entity whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters."

**DATES:** The designation by the Director of OFAC of the entity identified in this notice pursuant to Executive Order 13382 is effective on March 12, 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 28, 2005, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701-1706) ("IEEPA"), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the "Order"), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On March 12, 2008, the Director of OFAC, in consultation with the Departments of State, Justice, and other

relevant agencies, designated one entity whose property and interests in property are blocked pursuant to Executive Order 13382.

The designee is as follows:

Entity:

1. FUTURE BANK B.S.C., P.O. Box 785, City Centre Building, Government Avenue, Manama, Bahrain; Block 304, City Centre Building 199, Government Avenue, Road 383, Manama, Bahrain; Business Registration Document # 54514-1 (Bahrain) expires 9 Jun 2009; Trade License No. 13388 (Bahrain); All branches worldwide [NPWMD].

Dated: March 12, 2008.

**Barbara Hammerle,**

*Acting Director, Office of Foreign Assets Control.*

[FR Doc. E8-5479 Filed 3-18-08; 8:45 am]

**BILLING CODE 4811-45-P**

## **DEPARTMENT OF VETERANS AFFAIRS**

### **Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting**

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on April 7-8, 2008. The meeting will be held in Room 462 at the Crosstown Center, Boston University School of Public Health, 801 Massachusetts Avenue, Boston, MA. On April 7, the session will convene at 8 a.m. and adjourn at 5:30 p.m. On April 8, the session will convene at 8 a.m. and adjourn at 1 p.m. The sessions will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Gulf War.

The Committee will review VA program activities related to Gulf War veterans' illnesses and updates on relevant scientific research published since the last Committee meeting. The April 7 session will be devoted to presentations of ongoing research related to the prevalence of chronic multisymptom illness among Gulf War veterans, potential mechanisms underlying these illnesses, and the identification of objective markers to distinguish ill from well veterans and possible treatments. The April 8 session

will be devoted to updates of recent VA and other relevant research, a discussion of the VA-funded Gulf War illnesses research program at the University of Texas Southwestern Medical Center, and a discussion of the Research Advisory Committee's upcoming 2008 report. Additionally, there will be discussion of Committee business and activities.

The meeting will include time reserved for public comments. A sign-

up sheet for five-minute comments will be available at the meeting. Individuals who speak are invited to submit a 1–2 page summary of their comments at the time of the meeting for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Dr. Roberta White at [rwhite@bu.edu](mailto:rwhite@bu.edu).

Any member of the public seeking additional information should contact Dr. William Goldberg, Designated

Federal Officer, at (202) 254–0294, or Dr. Roberta White, Scientific Director, at (617) 278–4517.

Dated: March 12, 2008.

By Direction of the Secretary.

**E. Philip Riggin,**

*Committee Management Officer.*

[FR Doc. E8–5454 Filed 3–18–08; 8:45 am]

**BILLING CODE 8320–01–M**

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

March 3, 2008, make the following correction:

On page 11500, the table is corrected to appear as follows:

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**DEPARTMENT OF EDUCATION**

**Institute of Education Sciences;  
Overview Information; Education  
Research and Special Education  
Research Grant Programs; Notice  
Inviting Applications for New Awards  
for Fiscal Year (FY) 2009**

*Correction*

In notice document 08-911 beginning on page 11796 in the issue of Monday,

## INSTITUTE OF EDUCATION SCIENCES

## FY 2009 Grant Competitions to Support Education Research and Special Education Research

CFDA NUMBER AND NAME	APPLICATION AVAILABLE	DEADLINE FOR TRANSMITTAL OF APPLICATIONS	ESTIMATED RANGE OF AWARDS*	PROJECT PERIOD	FOR FURTHER INFORMATION CONTACT
<b>National Center for Education Research (NCER)</b>					
<b>84.305A-1 Education Research</b> <ul style="list-style-type: none"> <li>▪ Reading and Writing</li> <li>▪ Mathematics and Science Education</li> <li>▪ Cognition and Student Learning</li> <li>▪ Teacher Quality - Reading and Writing</li> <li>▪ Teacher Quality - Mathematics and Science Education</li> <li>▪ Social and Behavioral Context for Academic Learning</li> <li>▪ Education Leadership</li> <li>▪ Education Policy, Finance, and Systems</li> <li>▪ Early Childhood Programs and Policies</li> <li>▪ Middle and High School Reform</li> <li>▪ Interventions for Struggling Adolescent and Adult Readers and Writers</li> <li>▪ Postsecondary Education</li> <li>▪ Education Technology</li> </ul>	March 3, 2008	June 26, 2008	\$100,000 to \$1,200,000	Up to 5 years	Katina Stapleton Katina.Stapleton@ed.gov
<b>84.305D Research on Statistical and Research Methodology in Education</b>	March 3, 2008	June 26, 2008	\$75,000 to \$400,000	Up to 3 years	Allen Ruby Allen.Ruby@ed.gov
<b>84.305A-2 Education Research</b> <ul style="list-style-type: none"> <li>▪ Reading and Writing</li> <li>▪ Mathematics and Science Education</li> <li>▪ Cognition and Student Learning</li> <li>▪ Teacher Quality - Reading and Writing</li> <li>▪ Teacher Quality - Mathematics and Science Education</li> <li>▪ Social and Behavioral Context for Academic Learning</li> <li>▪ Education Leadership</li> <li>▪ Education Policy, Finance, and Systems</li> <li>▪ Early Childhood Programs and Policies</li> <li>▪ Middle and High School Reform</li> <li>▪ Interventions for Struggling Adolescent and Adult Readers and Writers</li> <li>▪ Postsecondary Education</li> <li>▪ Education Technology</li> </ul>	March 3, 2008	October 2, 2008	\$100,000 to \$1,200,000	Up to 5 years	Katina Stapleton Katina.Stapleton @ed.gov
<b>84.305B Education Research Training</b> <ul style="list-style-type: none"> <li>▪ Postdoctoral Research Training</li> <li>▪ Predoctoral Research Training</li> </ul>	March 20, 2008	October 2, 2008	\$160,000 to \$1,000,000	Up to 5 years	Robin. Harwood Robin.Harwood@ed.gov

[FR Doc. C8-911 Filed 3-18-08; 8:45 am]  
BILLING CODE 1505-01-D

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**SECURITIES AND EXCHANGE  
COMMISSION****Proposed Collection; Comment  
Request***Correction*

In notice document E8-3665 appearing on page 10501 in the issue of Wednesday, February 27, 2008, make the following correction:

In the seventh line, "1-2 Rule 17a-2;" should read "Rule 17a-2;"

[FR Doc. Z8-3665 Filed 3-18-08; 8:45 am]  
BILLING CODE 1505-01-D

**SECURITIES AND EXCHANGE  
COMMISSION**

[Release No. 34-57153; File No. SR-ISE-2008-04]

**Self-Regulatory Organizations;  
International Securities Exchange,  
LLC; Notice of Filing and Immediate  
Effectiveness of Proposed Rule  
Change, as Modified by Amendment  
No. 1 Thereto, Relating to Fee Waiver***Correction*

In notice document E8-1011 beginning on page 4035 in the issue of Wednesday, January, 23, 2008, make the following correction:

On page 4036 in the second column, under the heading Paper Comments, in the first paragraph, in the 42nd line "February 12, 2008" should read "February 13, 2008".

[FR Doc. Z8-1011 Filed 3-18-08; 8:45 am]  
BILLING CODE 1505-01-D

**SECURITIES AND EXCHANGE  
COMMISSION**

[Release No. 34-57336; File No. SR-Amex-2007-36]

**Self-Regulatory Organizations;  
American Stock Exchange LLC; Order  
Approving a Proposed Rule Change,  
as modified by Amendment No. 1, to  
Eliminate a Volume Add-on to Amex  
Options Specialist Financial  
Requirements**

February 14, 2008.

*Correction*

In notice document E8-3254 appearing on page 9842 in the issue of Friday, February 22, 2008 the heading is corrected to include the date.

[FR Doc. Z8-3254 Filed 3-18-08; 8:45 am]  
BILLING CODE 1505-01-D



# Federal Register

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**Wednesday,  
March 19, 2008**

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**Part II**

## **Department of Housing and Urban Development**

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**Notice of HUD's Fiscal Year (FY) 2008  
Notice of Funding Availability (NOFA);  
Policy Requirements and General Section  
to HUD's FY2008 NOFAs for Discretionary  
Programs; Notice**

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

[Docket No. FR-5200-N-01]

**Notice of HUD's Fiscal Year (FY) 2008  
Notice of Funding Availability (NOFA);  
Policy Requirements and General  
Section to HUD's FY2008 NOFAs for  
Discretionary Programs**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of HUD's FY2008 NOFA Policy Requirements and General Section to HUD's FY2008 NOFAs for Discretionary Programs (notice).

**SUMMARY:** This notice provides prospective applicants for HUD competitive funding with the opportunity to become familiar with the General Section of HUD's FY2008 NOFAs, in advance of publication of any FY2008 NOFAs. HUD plans to publish its annual SuperNOFA in spring 2008. Early publication of the General Section is one of several steps instituted to improve the funding process for the grantee community. Early publication of the General Section gives prospective applicants additional time to become familiar with and address provisions in the General Section, which constitute part of almost every individual program application. HUD will publish as a technical correction any changes to this General Section made after today's publication.

HUD will continue to require that applicants submit their applications electronically via Grants.gov. In FY2008, HUD will be using Adobe Forms applications packages, available on Grants.gov. The Adobe Forms packages are compatible with the Windows Vista operating system, Apple Macintosh computers, and Microsoft Office 2007. Please carefully read the instructions in this notice regarding use of Adobe forms.

To submit an application via Grants.gov, new users will be required to complete a five-step registration process, which can take 2 to 4 weeks to complete. The process includes ensuring that information provided by your organization to Dun and Bradstreet (D&B) matches information previously provided by your organization and contained in Internal Revenue Service (IRS) records. If there is a discrepancy in the information, the registration cannot be completed until discrepancy issues are resolved. Applicants that have previously completed the registration process merely have to renew their registration in the Central Contractor Registration (CCR). The renewal process confirms that the registration information is still accurate

and allows organizations to make any appropriate changes. During the update process, the CCR will check the D&B information against the IRS records for your organization. If there are discrepancies, the update cannot be completed until the discrepancies are resolved. Please allow adequate time to resolve any registration issues. Failure to update the registration in the CCR before the CCR registration expires will result in an applicant having to complete the five steps of the renewal process. If an applicant changes the eBusiness Point of Contact in the CCR registration, it should make sure the new eBusiness Point of Contact has also granted permission to the person submitting the application to be the Authorized Organization Representative (AOR). To submit an application to HUD, the AOR must be able to make a legally binding agreement for the organizational entity. Please see detailed registration instructions in section IV.B. of this notice. HUD recommends that all prospective applicants take the time to carefully read the Notice entitled "Notice of Opportunity to Register Early and other Important Information for Electronic Application Submission via Grants.gov," published on March 10, 2008 (73 FR 12751). This notice is also available on HUD's Web site at: <http://www.hud.gov/offices/adm/grants/fundsavail.cfm> and on Grants.gov/Find. HUD's Early Registration Notice provides step-by-step instructions for applicants who must register with Grants.gov and also provides renewal instructions for those who have previously registered. Prospective applicants should register prior to the **Federal Register** publication of the Program Sections of the FY2008 SuperNOFA.

Please note that HUD is transitioning the Continuum of Care application from a paper process to an electronic process in FY2008. Because the electronic application is not yet available, details of the registration process, application, application submission date, and timely receipt requirements will be articulated in two publications to be issued separate from the SuperNOFA. The first notice is expected to be issued in spring 2008. The expected publication date of the Notice of Funding Availability will be no earlier than July 1, 2008. Notification of the availability of registration instructions, the application, and other information will be released via the Grants.gov website. To be placed on the Grants.gov notification service for notices about the Continuum of Care electronic application process, go to: [\[www.grants.gov/search/subscribeAdvanced.do\]\(http://www.grants.gov/search/subscribeAdvanced.do\). To join the HUD homeless assistance program listserv go to: <http://www.hud.gov/subscribe/signup.cfm?listname=Homeless%20Assistance%20Program&list=HOMELESS-ASST-L>.](http://</a></p>
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**FOR FURTHER INFORMATION CONTACT:** For further information on HUD's FY2008 Policy Requirements and General Section contact the Office of Departmental Grants Management and Oversight, Office of Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 3156, Washington, DC 20410-5000; telephone number (202) 708-0667. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:** Each year, HUD strives to improve its competitive funding process. In FY2007, over 99.5 percent of applicants successfully submitted applications electronically for HUD's grant programs. To help applicants with electronic application registration and submission, HUD has developed a Desktop User Guide for Submitting Electronic Grant Applications. The user guide provides step-by-step details and screen shots of the entire registration and application submission process, including troubleshooting application submission errors. HUD updates the guide regularly and it is available at <http://www.hud.gov/offices/adm/grants>.

HUD believes that early publication of the General Section is beneficial to prospective applicants by providing advance notice of the Department's threshold requirements, strategic goals, policy priorities, and other requirements applicable to almost every individual NOFA that comprises the SuperNOFA.

The General Section, as in the past, is structured to refer the reader to the individual program NOFAs. Although the program NOFAs are not being published at this time, the references are retained. When the Program Sections of the FY2008 NOFAs are published, they are fully reconciled with the General Section, as has been the case since 1998 when the SuperNOFA was first published. Applicants interested in receiving e-mail notification of the availability of the program sections should go to: [http://www.grants.gov/applicants/email\\_subscription.jsp](http://www.grants.gov/applicants/email_subscription.jsp) and sign up for e-mail notification of funding opportunities. By doing so, you will receive an e-mail as soon as the NOFAs and applications are available on Grants.gov.

HUD is always interested in improving its application processes. You can help HUD improve its outreach and program NOFAs by providing feedback on ways it can improve the NOFA process. Please note that each application contains a "You Are Our Client" survey questionnaire. HUD requests that you respond to this survey to let the Department know what improvements have been beneficial and to share your ideas on where improvements can continue to be made. HUD carefully considers the comments received from its clients and strives to use the comments to improve each year's NOFAs and its funding process. This publication includes a list of programs anticipated to be in the FY2008 SuperNOFA, subject to the availability of funds. The Introduction to the SuperNOFA will include any changes made to this listing and provide projected funding availability and application deadline dates.

HUD hopes that the steps that it has taken to provide information early in the FY2008 funding process about NOFA requirements will be of benefit to you, our applicants.

Dated: March 14, 2008.

**Roy A. Bernardi,**

*Deputy Secretary.*

### Overview Information

**A. Federal Agency Name:** Department of Housing and Urban Development (HUD), Office of the Secretary.

**B. Funding Opportunity Title:** Policy requirements applicable to all HUD NOFAs published during FY2008.

**C. Announcement Type:** Initial announcement of the general policy requirements that apply to all HUD federal financial assistance NOFAs for FY2008 issued simultaneous with, or after the publication of this notice.

**D. Funding Opportunity Number:** FR-5200-N-01.

**E. Catalog of Federal Domestic Assistance (CFDA) Number:** A CFDA number is provided for each HUD federal financial assistance program. When using "Apply Step 1" on the Grants.gov Web site to download an application, you will be asked for the CFDA number. Please refer to the listing in this notice or the CFDA number in the Grants.gov synopsis of the programs for which you wish to apply when using the application search feature of Grants.gov. Use *only* the CFDA number, the Funding Competition Identification Number, or the Funding Opportunity Number. Using more than one of these items will result in an error message indicating that the opportunity cannot be found.

**F. Dates:** The deadline dates that apply to the federal financial assistance made available through HUD's FY2008 NOFAs will be found in the published NOFAs. Appendix A to this General Section lists the programs expected to be included in the FY2008 SuperNOFA. When published, the SuperNOFA will contain a revised Appendix A to the General Section providing the final list of programs included in the SuperNOFA, funds available under each funding opportunity, and key deadline dates.

**G. Additional Overview Content Information:** Unless otherwise stated, HUD's general policy requirements set forth in this notice apply to all HUD federal financial assistance made available through HUD's FY2008 NOFAs. These policies cover all NOFAs issued for FY2008 funding.

### Full Text of Announcement

#### I. Funding Opportunity Description

This notice describes HUD's FY2008 policy requirements applicable to all of HUD's NOFAs published in FY2008. Each such NOFA will contain a description of the specific requirements for the program for which funding is made available and each will refer to applicable policies described in this General Section. Each program NOFA will also describe additional procedures and requirements that apply to the individual program NOFA, including a description of the eligible applicants, eligible activities, threshold requirements, factors for award, and any additional program requirements or limitations. To adequately address all of the application requirements for any program for which you intend to apply, please carefully read and respond to both this General Section and the individual program NOFAs.

**Authority.** HUD's authority for making funding available under its FY2008 programs is identified in each program NOFA.

#### II. Award Information

**Funding Available.** Each program NOFA will identify the estimated amount of funds available in FY2008 based on available appropriations, plus funds from previous years available for award in FY2008. Appendix A to this General Section lists the programs HUD expects to be included in the FY2008 SuperNOFA. When published, the SuperNOFA will contain a revised Appendix A to the General Section providing the final list of programs included in the SuperNOFA, funds available under each funding opportunity, and key deadline dates.

Additional program NOFAs may be published separately from the FY2008 SuperNOFA.

### III. Eligibility Information

**A. Eligible Applicants.** The individual program NOFAs describe the eligible applicants and eligible activities for each program.

**B. Cost Sharing or Matching.** The individual program NOFAs describe the applicable cost sharing, matching requirements, or leveraging requirements related to each program, if any. Although matching or cost sharing may not be required, HUD programs often encourage applicants to leverage grant funds with other funding to receive higher rating points.

It is important to note that the following Office of Management and Budget (OMB) circulars are applicable, and particular attention should be given to the provisions concerning the use of federal funds for matching requirements.

**OMB Circular A-102** (Grants and Cooperative Agreements with State and Local Governments) establishes consistency and uniformity among federal agencies in the management of grants and cooperative agreements with state, local, and federally recognized Indian tribal governments. The circular provides that state and local administration of federal funds must include fiscal and administrative requirements that are sufficiently specific to ensure that: funds are used in compliance with all applicable federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not to be used for general expenses required to carry out other responsibilities of a state or its subrecipients. HUD's implementation of OMB Circular A-102 is found at 24 CFR part 85.

**OMB Circular A-110** (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) sets forth standards for obtaining consistency and uniformity among federal agencies in the administration of grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations. This circular specifies the conditions for which funds may be used for cost sharing or matching and provides that federal funds shall not be accepted as cost sharing or matching, except where authorized by federal statute to be used for cost sharing or matching. HUD's implementation of OMB Circular A-110 is found at 24 CFR part 84.

*OMB Circular A-87 (2 CFR Part 225)* (Cost Principles for State, Local, and Indian Tribal Governments) establishes principles and standards for determining costs for federal awards carried out through grants, cost reimbursement contracts, and other agreements with state and local governments and federally recognized Indian tribal governments (governmental units). This circular provides that an allowable cost under a federal award does not include a cost sharing or matching requirement of any other federal award in the applicable funding period, except as specifically provided by federal law or regulation.

*OMB Circular A-122* (Cost Principles for Non-Profit Organizations) establishes principles for determining costs of grants, contracts, and other agreements with nonprofit organizations. This circular provides, similar to OMB Circular A-87, that an allowable cost under a federal award does not include a cost sharing or matching requirement of any other federally financed program in the applicable funding period.

Applicants for funding under HUD's FY2008 SuperNOFA are reminded of the importance of confirming that any federal grant funds that they intend to use as a matching share are available to be used as matching funds under applicable statutes and regulations.

**C. Other Requirements and Procedures Applicable to All Programs.** Except as may be modified in the individual program NOFAs, the requirements, procedures, and principles listed below apply to all HUD programs in FY2008 for which funding is announced by NOFA and published in the **Federal Register**. Please read the individual program NOFAs for additional requirements and information.

1. **Statutory and Regulatory Requirements.** To be eligible for funding under HUD NOFAs issued during FY2008, applicants must meet all statutory and regulatory requirements applicable to the program or programs for which they seek funding. Applicants requiring program regulations may obtain them from the NOFA Information Center or through HUD's Grants Web site at <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>. See the individual program NOFAs for instructions on how HUD will respond to proposed activities that are ineligible.

2. **Threshold Requirements**

a. **Ineligible Applicants.** HUD will not consider an application from an ineligible applicant.

b. **Dun and Bradstreet Data Universal Numbering System (DUNS) Number Requirement.** All applicants seeking

funding directly from HUD must obtain a DUNS number and include the number in their Application for Federal Assistance submission. Failure to provide a DUNS number will prevent you from obtaining an award, regardless of whether it is a new award or renewal of an existing one. This policy is pursuant to the OMB policy issued in the **Federal Register** on June 27, 2003 (68 FR 38402). HUD published its regulation implementing the DUNS number requirement on November 9, 2004 (69 FR 65024). A copy of the OMB **Federal Register** notice and HUD's regulation implementing the DUNS number can be found on HUD's Web site at: <http://www.hud.gov/offices/adm/grants/duns.cfm>. When registering with Dun and Bradstreet, please be sure to use the organization's legal name that is used when filing a return with or making payments to the Internal Revenue Service. Organizations should also provide the zip code using the zip code plus the four additional digits.

c. **Compliance with Fair Housing and Civil Rights Laws.** (1) With the exception of federally recognized Indian tribes and their instrumentalities, applicants must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105(a). If you are a federally recognized Indian tribe, you must comply with the nondiscrimination provisions enumerated at 24 CFR 1000.12, as applicable. In addition to these requirements, there may be program-specific threshold requirements identified in the individual program NOFAs.

(2) If you, the applicant:

(a) Have been charged with an ongoing systemic violation of the Fair Housing Act; or

(b) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or

(c) Have received a letter of findings identifying ongoing systemic noncompliance under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974, and the charge, lawsuit, or letter of findings referenced in subparagraphs (a), (b), or (c) above has not been resolved to HUD's satisfaction before the application deadline, then you are ineligible and HUD will not rate and rank your application. HUD will determine if actions to resolve the charge, lawsuit, or letter of findings taken before the application deadline are sufficient to resolve the matter.

Examples of actions that would normally be considered sufficient to

resolve the matter include, but are not limited to:

(i) A voluntary compliance agreement signed by all parties in response to a letter of findings;

(ii) A HUD-approved conciliation agreement signed by all parties;

(iii) A consent order or consent decree; or

(iv) An issuance of a judicial ruling or a HUD Administrative Law Judge's decision.

d. **Conducting Business in Accordance with Core Values and Ethical Standards/Code of Conduct.** Applicants subject to 24 CFR parts 84 or 85 (most nonprofit organizations and state, local, and tribal governments or government agencies or instrumentalities that receive federal awards of financial assistance) are required to develop and maintain a written code of conduct (see 24 CFR 84.42 and 85.36(b)(3)). Consistent with regulations governing specific programs, your code of conduct must prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees, or agents for their personal benefit in excess of minimal value; and outline administrative and disciplinary actions available to remedy violations of such standards. Before entering into an agreement with HUD, an applicant awarded assistance under a HUD program NOFA announced in FY2008 will be required to submit a copy of its code of conduct and describe the methods it will use to ensure that all officers, employees, and agents of its organization are aware of its code of conduct. An applicant is prohibited from receiving an award of funds from HUD if it fails to meet this requirement for a code of conduct. An applicant who previously submitted an application and included a copy of its code of conduct *will not* be required to submit another copy if the applicant is listed on HUD's Web site: <http://www.hud.gov/offices/adm/grants/codeofconduct/cconduct.cfm>, and if the information has not been revised. An applicant not listed on the website must submit a copy of its code of conduct with its FY2008 application for assistance. An applicant must also include a copy of its code of conduct if the information listed on the above website has changed (e.g., the person who submitted the previous application is no longer your authorized organization representative, the organization has changed its legal name or merged with another organization, or the address of the organization has changed, etc.). Any applicant that needs to may submit its code of conduct to

HUD via facsimile using the form HUD-96011, "Facsimile Transmittal" ("Third Party Documentation Facsimile Transmittal" on Grants.gov) at the time of application submission. When using the facsimile transmittal form, please type the requested information. Use the form HUD-96011 as the cover page for the submission and include the following header in the top line of the form under *Name of Document Being Requested*: "Code of Conduct for (insert your organization's name, city, and state)." Fax the information to HUD's toll-free number at (800) 894-4047. If you cannot access the 800 number or have problems, you may use (215) 825-8796 (this is not a toll-free number). These are new numbers for FY2008 applications only. HUD is transitioning to a new system for intake of grants from Grants.gov and it needs to separate faxes received for FY2008 grants from those received in FY2007 and prior years while it makes this transition. If you use the wrong fax number, your fax will be entered as part of HUD's FY2007 database. HUD cannot search its FY2007 database to match FY2008 faxes to FY2008 applications. As a result, your application will be reviewed without faxed information if you fail to use the FY2008 fax numbers.

*e. Delinquent Federal Debts.* It is HUD policy that applicants with an outstanding federal debt will not be eligible to receive an award of funds from the Department unless: (1) A negotiated repayment schedule is established and the repayment schedule is not delinquent, or (2) other arrangements satisfactory to HUD are made prior to the award of funds by HUD.

If arrangements satisfactory to HUD cannot be completed within 90 days of notification of selection, HUD will not make an award of funds to the applicant, but offer the award to the next eligible applicant. Applicants selected for funding, or awarded funds, have an obligation to report to HUD changes in status of current agreements covering federal debt. HUD may withhold funding, terminate an award, or seek other remedies from a grantee if a previously agreed-upon payment schedule has not been adhered to or a new agreement with the federal agency to which the debt is owed has not been signed.

*f. Pre-Award Accounting System Surveys.* HUD may arrange for a pre-award survey of the applicant's financial management system if the recommended applicant has no prior federal support, if HUD's program officials have reason to question whether the applicant's financial

management system meets federal financial management standards, or if the applicant is considered a high risk based upon past performance or financial management findings. HUD will not disburse funds to any applicant that does not have a financial management system that meets federal standards. (Please see 24 CFR 84.21 if you are an institution of higher education, hospital, or other nonprofit organization. See 24 CFR 85.20 if you are a state, local government, or federally recognized Indian tribe).

*g. Name Check Review.* Applicants are subject to a name check review process. Name checks are intended to reveal matters that significantly reflect on the applicant's management and financial integrity, including if any key individual has been convicted or is presently facing criminal charges. If the name check reveals significant adverse findings that reflect on the business integrity or responsibility of the applicant or any key individual, HUD reserves the right to: (1) Deny funding or consider suspension or termination of an award immediately for cause, (2) require the removal of any key individual from association with management or implementation of the award, and (3) make appropriate provisions or revisions with respect to the method of payment or financial reporting requirements.

*h. False Statements.* A false statement in an application is grounds for denial or termination of an award and possible punishment, as provided in 18 U.S.C. 1001.

*i. Prohibition Against Lobbying Activities.* Applicants are subject to the provisions of section 319 of Public Law 101-121 (approved October 23, 1989) (31 U.S.C. 1352) (the Byrd Amendment), which prohibits recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the federal government in connection with a specific contract, grant, or loan. In addition, applicants must disclose, using Standard Form LLL (SF-LLL), "Disclosure of Lobbying Activities," any funds, other than federally appropriated funds, that will be or have been used to influence federal employees, members of Congress, or congressional staff regarding specific grants or contracts. Federally recognized Indian tribes and tribally designated housing entities (TDHEs) established by federally recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but state-recognized Indian tribes and TDHEs established only under state law must comply with

this requirement. Applicants must submit the SF-LLL if they have used or intend to use federal funds for lobbying activities.

*j. Debarment and Suspension.* In accordance with 24 CFR part 24, no award of federal funds may be made to applicants that are presently debarred or suspended, or proposed to be debarred or suspended, from doing business with the federal government.

*3. Other Threshold Requirements.* The individual program NOFAs for which you are applying may specify other threshold requirements. Additional threshold requirements may be identified in the discussion of "eligibility" requirements in the individual program NOFAs. If a program NOFA requires a certification of consistency with the Consolidated Plan and the applicant fails to provide a certification, and such failure is not cured as a technical deficiency, HUD will not fund the application. If HUD is provided a signed certification indicating consistency with the area's approved Consolidated Plan and HUD finds that the activities are not consistent with the Consolidated Plan, HUD will not fund the inconsistent activities or will deny funding the application if a majority of the activities are not consistent with the approved Consolidated Plan. The determination not to fund an activity or to deny funding may be determined by a number of factors, including the number of activities being proposed, the impact of the elimination of the activities on the proposal, or the percent of the budget allocated to the proposed activities.

*4. Additional Nondiscrimination and Other Requirements.* Applicants and their subrecipients must comply with:

*a. Civil Rights Laws,* including the Americans with Disabilities Act of 1990 (42 U.S.C. 1201 et seq.), the Age Discrimination Act of 1974 (42 U.S.C. 6101 et seq.), and Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681 et seq.).

*b. Affirmatively Furthering Fair Housing.* Under section 808(e)(5) of the Fair Housing Act, HUD has a statutory duty to affirmatively further fair housing. HUD requires the same of its funding recipients. If you are a successful applicant, you will have a duty to affirmatively further fair housing opportunities for classes protected under the Fair Housing Act. Protected classes include race, color, national origin, religion, sex, disability, and familial status. Unless otherwise instructed in the individual program NOFA, your application must include specific steps to:

(1) Overcome the effects of impediments to fair housing choice that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice (See Certification requirements under 24 CFR 91.225);

(2) Remedy discrimination in housing; and

(3) Promote fair housing rights and fair housing choice.

Further, you, the applicant, have a duty to carry out the specific activities provided in your responses to the individual program NOFA rating factors that address affirmatively furthering fair housing. These requirements apply to all HUD programs announced via a NOFA, unless specifically excluded in the individual program NOFA.

c. *Economic Opportunities for Low- and Very Low-Income Persons (Section 3)*. Certain programs to be issued during FY2008 require recipients of assistance to comply with Section 3 of the Housing and Urban Development Act of 1968 (Section 3), 12 U.S.C. 1701u (Economic Opportunities for Low- and Very Low-Income Persons in Connection with Assisted Projects), and the HUD regulations at 24 CFR part 135. Review the individual program NOFAs to determine if section 3 applies to the program for which you are seeking funding. Section 3 requires recipients to ensure, to the greatest extent feasible, that training, employment, and other economic opportunities will be directed to low- and very-low income persons, particularly those who are recipients of government assistance for housing, and to business concerns that provide economic opportunities to low- and very low-income persons in the area in which the project is located. The section 3 regulations at 24 CFR part 135, subpart E, impose certain reporting requirements on recipients, including the submission of an annual report, using form HUD-60002 or HUD's online system at: <http://www.hud.gov/offices/fheo/section3/section3.cfm>.

The annual report is highly important to the Department in determining compliance with section 3. Applicants are notified that the Department is currently reviewing the section 3 reporting requirements to assess whether, in FY2009, penalties should be imposed, including ineligibility to have funds awarded, if the annual report has not been submitted in accordance with the regulations. If the department decides to allow this type of penalty for failure to submit the section 3 annual report, the public will be provided advance notification and have the opportunity to comment.

d. *Ensuring the Participation of Small Businesses, Small Disadvantaged*

*Businesses, and Women-Owned Businesses*. HUD is committed to ensuring that small businesses, small disadvantaged businesses, and women-owned businesses participate fully in HUD's direct contracting and in contracting opportunities generated by HUD financial assistance. Too often, these businesses still experience difficulty accessing information and successfully bidding on federal contracts. State, local, and tribal governments are required by 24 CFR 85.36(e) and nonprofit recipients of assistance (grantees and subgrantees) by 24 CFR 84.44(b) to take all necessary affirmative steps in contracting for the purchase of goods or services to assure that minority firms, women-owned business enterprises, and labor surplus area firms are used whenever possible or as specified in the individual program NOFAs.

e. *Real Property Acquisition and Relocation*. Unless otherwise specified by legislation or regulation, HUD-assisted programs or projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (42 U.S.C. 4601), and the governmentwide implementing regulations issued by the U.S. Department of Transportation at 49 CFR part 24. The Uniform Act's protections and assistance apply to acquisitions of real property and displacements resulting from the acquisition, rehabilitation, or demolition of real property for federal or federally assisted programs or projects. With certain limited exceptions, real property acquisitions for a HUD-assisted program or project must comply with 49 CFR part 24, subpart B. To be exempt from the URA's acquisition policies, real property acquisitions conducted without the threat or use of eminent domain, commonly referred to as "voluntary acquisitions," must satisfy the applicable requirements of 49 CFR 24.101(b)(1) through (5). Evidence of compliance with these requirements must be maintained by the recipient. The URA's relocation requirements remain applicable to any tenant(s) who are displaced by an acquisition and who meet the requirements of 49 CFR 24.101(b)(1) through (5).

The relocation requirements of the Uniform Act, and its implementing regulations at 49 CFR part 24, cover any person who moves permanently from real property or moves personal property from real property as a direct result of acquisition, rehabilitation, or demolition for a program or project receiving HUD assistance. While there are no statutory provisions for

"temporary relocation" under the URA, the URA regulations recognize that there are circumstances where a person will not be permanently displaced but may need to be moved from a project for a short period of time. Appendix A of the URA regulation (49 CFR 24.2(a)(9)(ii)(D)) explains that any tenant who has been temporarily relocated for a period beyond one year must be contacted by the displacing agency and offered URA relocation assistance. Some HUD program regulations provide additional protections for temporarily relocated tenants. For example, 24 CFR 583.310(f)(1) provides guidance on temporary relocation for the Supportive Housing program for the homeless. Before planning their project, applicants should review the regulations for the programs for which they are applying. Generally, the URA does not apply to displacements resulting from the demolition or disposition of public housing covered by section 18 of the United States Housing Act of 1937.

Additional information and resources pertaining to real property acquisition and relocation for HUD-funded programs and projects are available on HUD's Real Estate Acquisition and Relocation Web site at: <http://www.hud.gov/relocation>. You will find applicable laws and regulations, policy and guidance, publications, training resources, and a listing of HUD contacts if you have questions or need assistance.

f. *Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency (LEP)"*. Executive Order 13166 seeks to improve access to federally assisted services, programs, and benefits for individuals with limited English proficiency. Applicants obtaining an award from HUD must seek to provide access to program benefits and information to LEP individuals through language assistance services, in accordance with Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons published in the **Federal Register** on January 22, 2007 (72 FR 2732). For assistance and information regarding LEP obligations, go to <http://www.hud.gov/offices/fheo/promotingfh/lep.cfm>. A link to the final guidance issued in the **Federal Register** can be found on that page.

g. *Executive Order 13279, "Equal Protection of the Laws for Faith-Based and Community Organizations"*. HUD is committed to full implementation of Executive Order 13279. The Executive Order established fundamental principles and policymaking criteria to

guide federal agencies in formulating and developing policies that have implications for faith-based and community organizations to ensure the equal protection for these organizations in social service programs receiving federal financial assistance. Consistent with this order, HUD has undertaken a review of all policies and regulations that have implications for faith-based and community organizations and has established a policy priority to provide full and equal access to grassroots faith-based and other community organizations in HUD program implementation. HUD revised its program regulations in 2003 and 2004 to remove the barriers to participation by faith-based organizations in HUD funding programs (68 FR 56396, September 30, 2003; 69 FR 41712, July 9, 2004; and 69 FR 62164, October 22, 2004). Copies of the regulatory changes can be found at: <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>.

h. *Accessible Technology*. Section 508 of the Rehabilitation Act (Section 508) requires HUD and other federal departments and agencies to ensure, when developing, procuring, maintaining, or using electronic and information technology (EIT), that the EIT allow, regardless of the type of medium, persons with disabilities to access and use information and data on a comparable basis as is made available to and used by persons without disabilities. Section 508's coverage includes, but is not limited to, computers (hardware, software, word processing, email, and Internet sites), facsimile machines, copiers, and telephones. Among other things, section 508 requires that, unless an undue burden would result to the federal department or agency, EIT must allow individuals with disabilities who are federal employees or members of the public seeking information or services to have access to and use information and data on a comparable basis as that made available to employees and members of the public who are not disabled. Where an undue burden exists to the federal department or agency, alternative means may be used to allow a disabled individual use of the information and data. Section 508 does not require that information services be provided at any location other than a location at which the information services are generally provided. HUD encourages its funding recipients to adopt the goals and objectives of section 508 by ensuring, whenever EIT is used, procured, or developed, that persons with disabilities have access to and use of the information and data made

available through the EIT on a comparable basis as is made available to and used by persons without disabilities. This does not affect recipients' required compliance with section 504 of the Rehabilitation Act and, where applicable, the Americans with Disabilities Act.

i. *Procurement of Recovered Materials*. State agencies and agencies of a political subdivision of a state that are using assistance under a HUD program NOFA for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

In accordance with section 6002, these agencies and persons must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

j. *Participation in HUD-Sponsored Program Evaluation*. As a condition of the receipt of financial assistance under a HUD program NOFA, all successful applicants will be required to cooperate with all HUD staff or contractors who perform HUD-funded research or evaluation studies.

k. *Executive Order 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects."*

Compliance with HUD regulations at 24 CFR 5.108 that implement Executive Order 13202 is a condition of receipt of assistance under a HUD program NOFA.

l. *Salary Limitation for Consultants*. FY2008 funds may not be used to pay or to provide reimbursement for payment of the salary of a consultant, whether retained by the federal government or the grantee, at a rate more than the equivalent of General Schedule 15, Step 10 base pay rate for which the annual rate for FY2008 is \$124,010. The hourly rate is \$57.90.

m. *OMB Circulars and Governmentwide Regulations*

*Applicable to Financial Assistance Programs*. Certain OMB Circulars (24 CFR 225) also apply to HUD programs in the SuperNOFA. The policies, guidance, and requirements of OMB Circulars A-87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments), A-21 (Cost Principles for Education Institutions), A-122 (Cost Principles for Non-profit Organizations), A-133 (Audits of States, Local Governments, and Non-Profit Organizations), and the regulations at 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations), and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments) may apply to the award, acceptance, and use of assistance under the individual program NOFAs of the SuperNOFA, and to the remedies for noncompliance, except when inconsistent with the provisions of HUD's appropriations act for FY2008, other federal statutes or regulations, or the provisions of this notice. Compliance with additional OMB circulars or governmentwide regulations may be specified for a particular program in the Program Section of the SuperNOFA. Copies of the OMB circulars may be obtained from <http://www.whitehouse.gov/omb/circulars/index.html>, or the Executive Office of the President Publications, New Executive Office Building, Room 2200, Washington, DC 20503; telephone (202) 395-3080 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number by dialing (800) 877-8339 (toll-free TTY Federal Information Relay Service).

n. *Environmental Requirements*. If you become a recipient under a HUD program that assists in physical development activities or property acquisition, you are generally prohibited from acquiring, rehabilitating, converting, demolishing, leasing, repairing, or constructing property, or committing or expending HUD or non-HUD funds for these types of program activities, until one of the following has occurred:

(1) HUD has completed an environmental review in accordance with 24 CFR part 50; or

(2) For programs subject to 24 CFR part 58, HUD has approved a recipient's Request for Release of Funds (form HUD-7015.15) following a Responsible Entity's completion of an environmental review.

You, the applicant, should consult the individual program NOFA for any program for which you are interested in applying to determine the procedures for, timing of, and any modifications or exclusions from environmental review under a particular program.

*o. Conflicts of Interest.* If you are a consultant or expert who is assisting HUD in rating and ranking applicants for funding under the SuperNOFA or future NOFAs published in FY2008, you are subject to 18 U.S.C. 208, the federal criminal conflict-of-interest statute, and the Standards of Ethical Conduct for Employees of the Executive Branch regulation published at 5 CFR part 2635. As a result, if you have assisted or plan to assist applicants with preparing applications for programs in the SuperNOFA or NOFAs published in FY2008, you may not serve on a selection panel and you may not serve as a technical advisor to HUD. Persons involved in rating and ranking HUD FY2008 NOFAs, including experts and consultants, must avoid conflicts of interest or the appearance of such conflicts. Persons involved in rating and ranking applications must disclose to HUD's General Counsel or HUD's Ethics Law Division the following information, if applicable: How the selection or nonselection of any applicant under FY2008 NOFAs will affect the individual's financial interests, as provided in 18 U.S.C. 208, or how the application process involves a party with whom the individual has a covered relationship under 5 CFR 2635.502. The person must disclose this information before participating in any matter regarding a FY2008 NOFA. If you have questions regarding these provisions or concerning a conflict of interest, you may call the Office of General Counsel, Ethics Law Division, at (202) 708-3815 (this is not a toll-free number).

*p. Drug-Free Workplace.* Applicants awarded funds from HUD are required to provide a drug-free workplace. Compliance with this requirement means that the applicant will:

(1) Publish a statement notifying employees that it is unlawful to manufacture, distribute, dispense, possess, or use a controlled substance in the applicant's workplace and that such activities are prohibited. The statement must specify the actions that will be taken against employees for violation of this prohibition. The statement must also notify employees that, as a condition of employment under the federal award, they are required to abide by the terms of the statement and that each employee must agree to notify the employer in writing of any violation of a criminal drug statute occurring in the

workplace no later than 5 calendar days after such violation;

(2) Establish an ongoing drug-free awareness program to inform employees about:

(a) The dangers of drug abuse in the workplace;

(b) The applicant's policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, or employee maintenance programs; and

(d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Notify the federal agency in writing within 10 calendar days after receiving notice from an employee of a drug abuse conviction or otherwise receiving actual notice of a drug abuse conviction. The notification must be provided in writing to HUD's Office of Departmental Grants Management and Oversight, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 3156, Washington DC 20410-3000, along with the following information:

(a) The program title and award number for each HUD award covered;

(b) The HUD staff contact name, telephone, and fax numbers; and

(c) A grantee contact name, telephone, and fax numbers; and

(4) Require that each employee engaged in the performance of the federally funded award be given a copy of the drug-free workplace statement required in item (1) above and notify the employee that one of the following actions will be taken against the employee within 30 calendar days of receiving notice of any drug abuse conviction:

(a) Institution of a personnel action against the employee, up to and including termination consistent with requirements of the Rehabilitation Act of 1973, as amended; or

(b) Imposition of a requirement that the employee participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

*q. Safeguarding Resident/Client Files.* In maintaining resident and client files, HUD funding recipients shall observe state and local laws concerning the disclosure of records that pertain to individuals. Further, recipients are required to adopt and take reasonable measures to ensure that resident and client files are safeguarded. This includes when reviewing, printing, or copying client files.

*r. Compliance with the Federal Funding Accountability and*

*Transparency Act of 2006 (Pub. L. 109-282) (Transparency Act).* Applicants receiving an award from HUD should be aware of the requirements of the Transparency Act. The Transparency Act requires the establishment of a central website that makes information available to the public regarding entities receiving federal financial assistance, by not later than January 1, 2008. In fulfillment of the requirements of the Act, OMB launched <http://www.USAspending.gov> in December 2007. The website makes information available to the public on the direct awards made by the federal government. The Transparency Act also requires, beginning not later than January 2009, that data on subawards be made available on the same website. In anticipation of the implementation of this requirement, HUD is placing awardees of its FY2008 competitive funding on notice of these requirements and note that once implemented, grantees will be required to report their subaward data to HUD or a central federal database. The only exceptions to this requirement under the Act are: (i) Federal transactions below \$25,000, (ii) credit card transactions prior to October 1, 2008, (iii) awards to entities that demonstrate to the Director of OMB that the gross income of such entity from all sources did not exceed \$300,000 in the previous tax year of such entity, and (iv) awards to individuals. Guidance for receiving an exception under item (iii) above has not been finalized by OMB.

HUD is responsible for placing award information for direct grantees on the government website. The reporting of subaward data is the responsibility of the grantee. Grantees should be aware that the law requires the information provided on the federal website to include the following elements related to all subaward transactions, except as noted above:

(1) The name of the entity receiving the award;

(2) The amount of the award;

(3) Information on the award including the transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance (CFDA) number (where applicable), program source, and an award title descriptive of the purpose of each funding action;

(4) The location of the entity receiving the award and primary location of performance under the award, including the city, state, congressional district, and country;

(5) A unique identifier of the entity receiving the award and of the parent entity of the recipient (the DUNS

number), should the entity be owned by another entity; and

(6) Any other relevant information specified by OMB.

HUD expects OMB to issue further guidance on subaward reporting during FY2008. Based on preliminary input from the various federal agencies, applicants should be aware that consideration is being given to requiring the disclosure of additional data elements to help track the flow of funding from the original federal award. Such data elements under consideration include the tier at which the subaward was made, the federal award number issued to the direct awardee, the dollar amount of the federal award emanating from the direct award going to the subawardee, as well as the total subaward amount, which could include funds from other sources. Additional information regarding these requirements will be issued by OMB and will be provided when available.

#### IV. Application and Submission Information

##### A. Addresses To Request Application Package

This section describes how applicants may obtain application forms and request technical assistance.

##### 1. Technical Assistance and Resources for Electronic Grant Applications

a. *Grants.gov Customer Support.* Grants.gov provides customer support information on its Web site at: <http://www.grants.gov/contactus/contactus.jsp>. Applicants having difficulty accessing the application and instructions or having technical problems can receive customer support from Grants.gov by calling (800) 518-GRANTS (this is a toll-free number) or by sending an e-mail to [support@grants.gov](mailto:support@grants.gov). The customer support center is open from 7 a.m. to 9 p.m. eastern time, Monday through Friday, except federal holidays. The customer service representatives will assist applicants in accessing the information and addressing technology issues.

b. *HUD Website.* The following documents and information can be found at HUD's Web site at: <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>.

(1) *Desktop Users Guide for Submitting Electronic Grant Applications.* HUD has published on its Web site a detailed Desktop Users Guide that walks applicants through the electronic process, beginning with finding a funding opportunity, completing the registration process, and

downloading and submitting the electronic application. The guide includes helpful step-by-step instructions, screen shots, and tips to assist applicants in becoming familiar with submitting applications electronically.

(2) *Connecting with Communities: A User's Guide to HUD Programs and the FY2008 NOFA Process Guidebook.* This guidebook to HUD programs will be available from the HUD NOFA Information Center and at the HUD's Funds Available Web site at: <http://www.hud.gov/offices/adm/grants/fundsavail.cfm> after the publication of the SuperNOFA. The guidebook provides a brief description of all HUD programs that have funding available in FY2008, identifies eligible applicants for the programs, and the program office responsible for the administration of the program.

(3) *NOFA Webcasts.* HUD provides technical assistance and training on its programs announced through its NOFAs. The NOFA broadcasts are interactive and allow potential applicants to obtain a better understanding of the threshold, program, and application submission requirements for funding. Participation in this training opportunity is free of charge and can be accessed via HUD's website. The NOFA webcast schedule can be found via HUD's Web site at: <http://www.hud.gov/webcasts/index.cfm>.

c. *HUD's NOFA Information Center.* Applicants that do not have Internet access and need to obtain a copy of a NOFA can contact HUD's NOFA Information Center, toll free, at (800) HUD-8929. Persons with hearing or speech impairments may access this number, toll free, via TTY by calling the Federal Information Relay Service at (800) 877-8339. The NOFA Information Center is open between the hours of 10 a.m. and 6:30 p.m. eastern time, Monday through Friday, except federal holidays.

d. *HUD Staff.* HUD staff will be available to provide you with general guidance and technical assistance about this notice or about individual program NOFAs. However, HUD staff is not permitted to help prepare your application. Following selection of applicants, but before announcement of awards, HUD staff is available to assist in clarifying or confirming information that is a prerequisite to the offer of an award or annual contributions contract (ACC) by HUD. If you have program-related questions, follow the instructions in section VII of the Program Section entitled "Agency

Contact(s)" in the program NOFA under which you are applying.

##### B. Content and Form of Application Submission

1. *Use of Adobe Forms Application Packages.* In FY2008, HUD is using Adobe Forms in the application packages available from Grants.gov. The Adobe Forms packages are compatible with the Microsoft Windows Vista operating system, Apple Macintosh computers, and Microsoft Office 2007. For more information, see the Grants.gov Web site at: [http://www.grants.gov/assets/Vista\\_and\\_office\\_07\\_Compatibility.pdf](http://www.grants.gov/assets/Vista_and_office_07_Compatibility.pdf).

2. *Instructions on How to Register for Electronic Application Submission.* Applicants must submit their applications electronically through Grants.gov. Before you can do so, you must complete several important steps to register as a submitter. The registration process can take approximately 2 to 4 weeks to complete. Therefore, registration should be done in sufficient time before you submit your application. To register, applicants must complete five sequential steps as follows:

a. *Step One: Obtain a Dun and Bradstreet Data Universal Numbering System (DUNS).* Step One of the registration process requires an applicant to obtain a DUNS number for the organizational entity for which it will be submitting the application. All organizations seeking funding directly from HUD must have a DUNS number and include the number on the form SF-424, Application for Federal Financial Assistance, which is part of the application package. The DUNS number is also required as part of the registration process. If your organizational entity already has a DUNS number, it may use that number, provided it is registered with Dun and Bradstreet (D&B) as required by this notice. *Failure to provide a DUNS number will prevent you from obtaining an award, regardless of whether it is a new award or renewal of an existing one.* This policy is pursuant to OMB policy issued in the **Federal Register** on June 27, 2003 (68 FR 38402). HUD codified the DUNS number requirement on November 9, 2004 (69 FR 65024). A copy of the OMB **Federal Register** notice and HUD's regulation codifying the DUNS number requirement can be found at: <http://www.hud.gov/offices/adm/grants/duns.cfm>. Applicants cannot submit an application without a DUNS number.

Applicants must note that applicant information entered and used to obtain the DUNS number will be used to pre-

populate the Central Contractor Registration (CCR), which is *Step Two* of the registration process. Applicants should, therefore, carefully review information entered when obtaining a DUNS number. When registering with D&B, please be sure to use the organizational entity's legal name used when filing a return or making a payment to the Internal Revenue Service (IRS). Organizations should also provide the zip code using the Zip Code plus four (Zip+4) code.

Applicants can obtain a DUNS number by calling (866) 705-5711 (this is a toll-free number). The approximate time to get a DUNS number is 10 to 15 minutes, and there is *no charge*. After obtaining your DUNS number, applicants should wait 24 to 48 hours to register with the CCR so that its DUNS number has time to become activated in the D&B records database.

b. *Step Two: Register with the CCR.* The second step of the registration process is registering with the CCR. The CCR is the primary vendor database for the federal government. An organization planning to submit a grant application must register, or annually update or renew its registration, with CCR to establish roles and IDs for representatives that will use Grants.gov to submit electronic grant applications. If you need assistance with the CCR registration process, you can contact the CCR Assistance Center, 24 hours a day, 7 days a week at (888) 227-2423 or (269) 961-5757. Applicants can also obtain assistance online at: <http://www.ccr.gov>. A CCR Handbook that guides applicants through the registration process is available on the CCR website by clicking on "Help." If you fail to update/renew your CCR registration, your Grants.gov registration will lapse and you will not be able to submit an application for funding. Registration, including update/renewal, can take several weeks, because CCR compares its records to those maintained by D&B and the IRS. If discrepancies arise, Step Two cannot be completed until the discrepancies are resolved. For this reason, HUD urges applicants to complete the CCR registration, or update/renew its existing registration, immediately. Otherwise, the CCR's check with D&B and IRS records may delay your completing the registration process and adversely affect your ability to submit your grant application.

The CCR registration process consists of completing a *Trading Partner Profile (TPP)*, which contains general, corporate, and financial information about your organization. When completing the TPP, you will be required to identify an *eBusiness Point*

*of Contact (eBusiness POC)* responsible for maintaining the information in the TPP and granting authorization to individuals to serve as *Authorized Organization Representatives (AORs)*. An AOR is the individual who will submit the application through Grants.gov for the applicant organization. Applicants can check the CCR registration and eBusiness POC by going to <http://www.ccr.gov> and searching by clicking on "Search CCR."

(1) *CCR Use of D&B Information.* In July 2006, CCR implemented a policy change. Under this policy change, instead of obtaining name and address information directly from the registrant, CCR obtains the following data fields from D&B: Legal Business Name; Doing Business as Name (DBA); Physical Address; and Postal Code (Zip+4). Registrants will not be able to enter or modify these fields in CCR because they will be pre-populated using previously registered D&B Data Universal Numbering System (DUNS) records data. During a new registration, or when updating a record, the registrant has a choice to accept or reject the information provided from the D&B records. If the registrant agrees with the D&B-supplied information, the D&B data will be accepted into the CCR registrant record. If the registrant disagrees with the D&B-supplied data, the registrant must go to the D&B Web site at: <http://fedgov.dnb.com/webform> to modify the information contained in D&B's records before proceeding with its CCR registration. Once D&B confirms the updated information, the registrant must revisit the CCR website and "accept" D&B's changes. Only at this point will the D&B data be accepted into the CCR record. This process can take up to 2 business days for D&B to send modified data to CCR, and that time frame may be longer if data is sent from abroad.

(2) *CCR EIN/TIN Validation.* To complete your CCR registration and qualify as a vendor eligible to bid for federal government contracts or apply for federal grants, the EIN/TIN and Employer/Taxpayer Name combination you provide in the IRS Consent Form must match exactly to the EIN/TIN and Employer/Taxpayer Name used in federal tax matters. It will take *1 to 2 business days to validate* new and updated records prior to becoming active in CCR. Please be sure that the data items provided to D&B match information provided to the IRS. If the registration in D&B and the CCR do not match the IRS information, an error message will result. Until the discrepancies have been resolved, your registration will not be completed. HUD

recommends that applicants carefully review their D&B and CCR registration information for accuracy immediately upon publication of this notice. If you have questions about your EIN/TIN, call (800) 829-4933 (toll-free number).

(3) *Detailed Steps to Register with CCR.* The following is a step-by-step guide to help you register with CCR. As noted, additional assistance is available online at <http://www.ccr.gov>.

(a) Go to <http://www.ccr.gov>. Once on the site, on the left side of the screen, click "Start New Registration." At the "Start a New Registration" screen, of the three choices, please select "I am not a U.S. Federal Government entity." Click "Continue."

**Note:** CCR registration is NOT required for individuals. Applicants should be aware that HUD does not directly fund individuals through its NOFA process.

(b) The next screen provides review items that must be completed before continuing in CCR. After you review the information and all items have been completed, click "Continue with Registration."

(c) To begin your registration with CCR, enter your DUNS number and click "Next."

(d) At the next screen, "New Registration," you will be prompted to enter your DUNS number. Then click "Next." The next "New Registration" screen displays your DUNS number. You will be prompted to enter your organization information, e.g., name, address, etc. If the information you inputted does not match that contained in the D&B record for the DUNS number provided, the system will state: "Try again by correcting your input below" or "Contact D&B to make a change to your D&B DUNS record."

(e) The next page of "New Registration" is "Verify Your Results with D&B." Here you will be asked, "Is this information correct?" After ensuring the accuracy of the information, click on "Accept/Continue or Cancel."

(f) If you "Accept/Continue," your confirmation number will be displayed. This is a temporary number that allows you to save your registration as a work in progress. Print this page. Your temporary number along with your DUNS number will let you access CCR to complete your registration at a later date.

(g) Continuing your registration from the Confirmation page, click "Continue."

(h) "How To Complete Your Registration" is the next page. Once you have reviewed the information and it is correct, click "continue."

(i) The “General Information” page is the next screen. On this page you will need to complete all the required information.

(j) Creating a *Marketing Partner ID Number (MPIN)*. The final step in creating your Trading Partner Profile (TPP) requires that you create a *Marketing Partner ID Number (MPIN)*. The MPIN is a self-defined nine character password that the eBusiness POC will need to access Grants.gov to authorize an AOR to be able to submit a grant application.

(k) *Registration Notification*. If your registration was submitted successfully, you will receive two letters via regular mail or e-mail. The first welcomes you to CCR and includes a copy of your registration. The second contains your confidential Trading Partner Identification Number (TPIN). Receipt of your TPIN confirms that you are successfully registered in CCR and serves as your confidential password to change CCR information.

(4) *Current Registrants Without an MPIN*. If you currently have an active registration in CCR and you do not have an MPIN, you will need to do the following:

(a) Access the CCR Web site at: <http://www.ccr.gov>. At the left margin, click on “Update or Renew Registration.”

(b) Select “I am not a U.S. Federal Government entity.” Click “Continue.”

(c) Enter you DUNS number and TPIN.

(d) On the next page, click on the link “Points of Contact.” Complete all fields for the eBusiness POC and the alternate eBusiness POC. Scroll down to the bottom of the Points of Contact page, and create your own MPIN. Once completed, click on the “Validate/Save” button.

c. *Step Three: Register with the Credential Provider*. To safeguard the security of your electronic information, Grants.gov utilizes a Credential Provider to determine with a degree of assurance that someone is really who he or she claims to be. An assigned AOR must register with the Credential Provider to create his/her user name and password, which are needed to submit an application with an electronic signature via Grants.gov. To register with a Credential Provider, the AOR must have the applicant organization’s DUNS number. Your organization will need to have your organization’s DUNS number available and be registered with the CCR to complete this process.

Since August 30, 2007, organizations have three federally approved Credential Providers available from which to choose their authentication

services—the Agriculture Department; the Office of Personnel Management’s Employee Express; and Operational Research Consultants, Inc. (ORC), which also provided authentication services prior to August 30, 2007. Users who already hold a Grants.gov user name and password through ORC will not experience much change. New users will be able to choose from any of the three Credential Providers available.

- To register with a credential Provider go to: <http://apply07.grants.gov/apply/OrcRegister>.

Once you have accessed the Web site, scroll down the page and enter the DUNS number, and click on “Register.”

- At the next screen, scroll down and select “Get Your Credentials.”

- On the “eAuthentication User Information” screen, complete and submit all information.

- On the next screen you need to confirm your information and create your own User ID and Password, then click “Submit.” If all the information has been entered correctly, you will receive a notice of “Registration Success.”

**Note:** Your registration is not complete until Steps Four and Five below are completed.

d. *Step Four: Register with Grants.gov*. After completing Step 3, registering with the Credential Provider, the person(s) named by the applicant organization to submit an application for funding on behalf of the organization must register with Grants.gov. After the AOR registers his or her User ID and Password with Grants.gov, the organization’s eBusiness POC will be sent an email indicating that someone has requested authority to submit an application for the organization and has registered as an AOR. Applicants can register with Grants.gov at: <https://apply07.grants.gov/apply/GrantsgovRegister>.

e. *Step Five: Granting Approval of an AOR to Submit an Application on Behalf of the Organization*. The eBusiness POC must log into the Grants.gov Web site and give the registered AOR approval to submit an application to Grants.gov. By authorizing the AOR to submit on behalf of the organization, the organization is stating that the person has the legal authority to submit the electronic application and can make a legally binding commitment for the organization.

(1) The eBusiness POC must approve the designated AOR(s). *If the eBusiness POC does not grant authorization, Grants.gov will not accept the application.* The eBusiness POC can

designate the AOR to submit applications on behalf of the organization, at: <https://apply07.grants.gov/apply/AorMgrGetID>. The registration is complete when an AOR has been approved to submit an application on behalf of the applicant organization by the eBusiness POC.

HUD urges applicants to check with their eBusiness POC to make sure that they have been authorized to make a legally binding commitment for the applicant organization when submitting the application to Grants.gov. This is particularly important, if during the CCR registration renewal process, the eBusiness POC for the applicant organization has been changed. The new eBusiness POC will have to grant authorization to all AORs. You can search the CCR registration for the eBusiness POC by going to <https://www.bpn.gov/CCRSearch/Search.aspx>. AORs can track their AOR status at any time on Grants.gov by going to the Applicant home page at Grants.gov. In “Quick Links,” log in as an applicant and enter your User Name and Password. If you have not been granted AOR status by the eBusiness POC, you should contact the eBusiness POC directly.

3. Instructions on How To Download an Application Package and Application Instructions

**Please note:** A complete explanation on how to find and apply for Continuum of Care grants in 2008 will be provided in a separate Continuum of Care NOFA that will be published in two issuances in the **Federal Register** subsequent to the 2008 SuperNOFA. The first notice is expected to be published in spring 2008 and will provide registration and information on the new Continuum of Care electronic application process. The second notice, not expected to be available earlier than July 2008, will contain the Notice of Funding Availability (NOFA) for the Continuum of Care homeless assistance programs. Notification of the availability of the registration instructions, applications, or other information will be released through the Grants.gov Web site. To be placed on the Grants.gov notification service, go to <http://www.grants.gov/search/subscribeAdvanced.do>.

a. *The Application Package and Application Instructions*. The general process for downloading, completing, submitting, and tracking grant application packages is described at [http://www.grants.gov/applicants/apply\\_for\\_grants.jsp](http://www.grants.gov/applicants/apply_for_grants.jsp). To download the application and instructions, go to [https://apply.grants.gov/forms\\_apps\\_idx.html](https://apply.grants.gov/forms_apps_idx.html) and enter the CFDA Number, Funding Opportunity Number, or Funding Opportunity Competition ID for the application that

you are interested in. If you enter more than one criterion, you will not find the instructions. You will then come to a page where you will find the funding opportunity *Download Application & Instructions* link. Before you can view and complete an application package, you *MUST* have a compatible Adobe Reader installed. Grants.gov is currently using Adobe Reader 8.1.2. To check which version of Acrobat you are using, go to the Help menu in Acrobat then select "About Acrobat," a text box will appear containing an Adobe logo with a number. Under that information, you will see another number; this is the version number of your software (e.g., 8.1.2). If you do not have version 8.1.2, a link to Adobe Reader 8.1.2 can be found on Grants.gov at: [http://grants.gov/help/download\\_software.jsp#adobe811](http://grants.gov/help/download_software.jsp#adobe811). Adobe Reader 8.1.2 is compatible with any version of Adobe Professional 6.0 or higher. However, applicants who have Adobe Professional or another version of Adobe Reader must set their default settings to Adobe Reader 8.1.2. Grants.gov has posted instructions for resetting the default setting at [http://grants.gov/help/general\\_faqs.jsp#19](http://grants.gov/help/general_faqs.jsp#19). To test if you have the correct Reader, go to <http://www.grants.gov/applicants/AdobeVersioningTestOnly.jsp>. Applicants that need assistance can contact the Grants.gov Contact Center by phone at 1-800-518-GRANTS or via e-mail at: [support@grants.gov](mailto:support@grants.gov).

**Critical Notice:** Applicants must be aware that all persons working on the Adobe forms in the application package must work using Adobe Reader 8.1.2 or the latest compatible version of Adobe Reader available from Grants.gov. Please alert your staff and those working on your application that failure to download and use the correct Adobe Reader will result in your not being able to create or submit your application package to Grants.gov or in your application being rejected by Grants.gov.

Next, download the application instructions by clicking on the *Download Instructions* link. The Instructions contain the General and Program Sections for the funding opportunity, as well as forms that are not part of the application download but are included as elements of a complete package, as specified in the published NOFA. After you have installed Adobe Reader 8.1.2 or the latest compatible version of Adobe Reader available from Grants.gov, you can now download the application by clicking on the *Download Application* link. Both the instructions and application should be saved on your computer. You *do not* need to be

registered to download the instructions or complete the application; however, once you have downloaded the application and intend to submit an application, you must save it on your computer or local network drive.

Each program NOFA also includes a checklist. Please review the checklist in the Program Section to ensure that your application contains all the required materials.

b. *Electronic Grant Application Forms.*

(1) Forms contained in the Instructions download are available in Microsoft Office Word 2003 (.doc), Microsoft Office Excel 2003 (.xls), or Adobe (.pdf) formats. The .pdf files are *only* fillable forms and cannot be saved locally, unless you have Adobe Professional software version 6.0 or higher.

(2) To open the Application download, you must first install Adobe Reader 8.1.2. During the download process, the application automatically opens, unless you do not have the correct version of the Adobe software installed, in which case the application will not open and you will get an error message telling you to first install the correct version of the software. If you get an error message, follow the instructions in paragraph IV.B.3. Instructions on How to Download an Application Package and Application Instructions. The Application download will contain a cover page entitled "Grant Application Package." The cover page provides information regarding the application package you have chosen to download, i.e., Opportunity Title, Agency Name, CFDA Number, etc. Review this information to ensure that you have selected the correct application. The Grant Application cover page separates the required forms into two categories: "Mandatory Documents" and "Optional Documents." *To complete a form from either the "Mandatory Documents" or Optional Documents," you must first highlight and move the form over to the "Submission" box and then open the form. This is a change in procedure from previous years.*

(3) Please note that regardless of the box in which the forms are listed, the published **Federal Register** document is the official document HUD uses to solicit applications. Therefore, applicants should follow the instructions provided in the General Section and Program Sections of the Instructions download. The individual NOFA sections will also identify the forms that may be applicable and that need to be submitted with the application.

(4) Because you will be adding additional attachment files to the downloaded application, applicants should save the application to their local computer or network drive. Do not download the application or attempt to upload the application using a USB flash drive (also called a "key drive," "thumb," or "jump drive"), as Grants.gov has found that applicants have problems uploading applications and attachments from a USB flash drive. Be sure to read and follow the application submission requirements published in each individual NOFA for which you are submitting an application. Each program NOFA will identify all the required forms and other required information for submission.

(5) HUD's standard forms are identified below:

(a) Application for Federal Financial Assistance (SF-424);

(b) Faith-Based EEO Survey (SF-424 Supplement, Survey on Ensuring Equal Opportunities for Applicants), if applicable;

(c) HUD Detailed Budget (HUD-424-CB, Grant Application Detailed Budget);

(d) Grant Application Detailed Budget Worksheet (HUD-424-CBW);

(e) Disclosure of Lobbying Activities (SF-LLL), if applicable;

(f) HUD Applicant Recipient Disclosure Report (HUD-2880, Applicant/Recipient Disclosure/Update Report);

(g) Certification of Consistency with RC/EZ/EC-II Strategic Plan (HUD-2990), if applicable;

(h) Certification of Consistency with the Consolidated Plan (HUD-2991), if applicable;

(i) Acknowledgment of Application Receipt (HUD-2993);

(j) You Are Our Client Grant Applicant Survey (HUD 2994-A) (Optional);

(k) Program Outcome Logic Model (HUD-96010);

(l) HUD Race Ethnic Form (HUD-27061), if applicable;

(m) HUD Communities Initiative (HUD-27300, Questionnaire for HUD's Removal of Regulatory Barriers), if applicable; and

(n) HUD Facsimile Transmittal (HUD-96011, Third Party Documentation Facsimile Transmittal).

All HUD "program-specific" forms not available at the Application download will be available in the Instructions download in Microsoft Word Office 2003 (.doc), Microsoft Excel Office 2003 (.xls), or Adobe (.pdf) format, compatible with Adobe Reader 8.1.2. The PDF forms are fillable but not savable, unless you have Adobe Professional 6.0 or higher. Applicants

may use the HUD-96011, "Third Party Documentation Facsimile Transmittal" ("HUD Facsimile Transmittal" on Grants.gov) form and fax to HUD any forms they have completed but cannot save.

#### 4. Instructions on How to Complete the Selected Grant Application Package

a. *Mandatory Fields on Application Download Forms.* Forms in the Application download contain fields with a yellow background. These data fields are mandatory and must be completed. Failure to complete the fields will result in an error message when checking the package for errors.

b. *Completion of SF-424 Fields First.* The forms in the application package are designed to automatically populate common data such as the applicant name and address, DUNS number, etc. In order to trigger this function, the SF-424 must be completed first. Once applicants complete the SF-424, the entered information will transfer to the other forms.

c. *Submission of Narrative Statements, Third-Party Letters, Certifications, and Program-Specific Forms.* In addition to program-specific forms, many of the NOFAs require the submission of other documentation, such as third-party letters, certifications, or program narrative statements. This section discusses how you should submit this additional information electronically as part of your application:

(1) *Narrative Statements to the Factors for Award.* If you are required to submit narrative statements, you must submit them as an electronic file in Microsoft Word Office 2007 (or earlier) (.doc), Microsoft Excel 2007 (or earlier) (.xls) or in Adobe (.pdf) format that is compatible with Adobe Reader 8.1.2. *If HUD receives a file in a format or software other than those specified or that is not compatible with HUD software, HUD will not be able to read the file, and it will not be reviewed.* Each response to a Factor for Award should be clearly identified and can be incorporated into a single attachment or all attachments can be zipped together into a single attached ZIP file. However, HUD advises applicants that files zipped within zipped files cause problems. Applicants should develop files, then zip the files together, and then place them as an attachment to the application. If you have any questions, you can contact the NOFA Information Center or the HUD program contact listed in the program NOFA. Documents that applicants possess in electronic format, e.g., narratives they have written, must be submitted as Microsoft

documents; graphic images (such as computer aided design (CAD) files from an architect) must be saved in PDF format. The documents must be compatible with Adobe Reader 8.1.2 or an earlier version and attached using the "Attachments" form included in the application package downloaded from Grants.gov. In addition, some NOFAs may request photographs. If this is the case, then the photographs should be saved in .jpg or .jpeg format and attached using the attachments form. When creating attachments to your application, please follow these rules:

(a) *DO NOT* attach a copy of the electronic application with your attachments as an attachment file. HUD cannot open such files when the application is attached as an attachment file.

(b) Check the attachment file and make sure it has a file extension of .doc, .pdf, .xls, .jpg, or .jpeg. If you save files in Microsoft Office 2007, the file extensions should be as follows:

- Word 2007 File Type Extension*
- docx—Word 2007 XML Document
  - Excel 2007 File Type Extension*
  - xls—Excel 2007 XML Workbook
  - PowerPoint 2007 File Extension Type*
  - pptx—PowerPoint 2007.

(c) Make sure that file extensions are not in upper case. File extensions must be lower case for the file to be opened. The software will automatically insert the correct file extension when saved.

(d) *DO NOT* adjust file extensions to try to make them conform to HUD standards. If you have problems, please contact the HUD contact listed in the NOFA.

(e) *DO NOT* use special characters (i.e., #, %, /, etc.) in a file name.

(f) *DO NOT* include spaces in the file name.

(g) Limit file names to not more than 50 characters.

(2) *ZIP Files.* In order to reduce the size of attachments, applicants can compress several files using a ZIP utility. Applicants can then attach the zipped file as described above. HUD's standard zip utility is WinZip. Files compressed with the WinZip utility must use either the "Normal" option or "Maximum (portable)" option available to ensure that HUD is able to open the file. Files received using compression methods other than "Normal" or "Maximum (portable)" cannot be opened and will not be reviewed. Applicants should be aware that if HUD receives files compressed using another utility, or not in accord with these directions, it cannot open the files and, therefore, such files will not be reviewed.

(3) *Third-Party Letters, Certifications Requiring Signatures, and Other Documentation.* Applicants required to submit third-party documentation (e.g., establishing matching or leveraged funds, documentation of 501(c)(3) status or incorporation papers, documents that support the need for the program, memorandums of understanding (MOUs), or program-required documentation that supports your organization's claims regarding work that has been done to remove regulatory barriers to affordable housing) can choose from the following two options as a way to provide HUD with the documentation:

(a) *Scanning Documents to Create Electronic Files.* Scanning documents increases the size of files. If your computer has the capacity to upload scanned documents, submit your documents with the application by using the Attachments form in the Mandatory or Optional Forms section of the application. If your computer does not have the memory to upload scanned documents, you should submit them via fax, as described below. Electronic files must be labeled so that the recipient at HUD will know what the file contains. Program NOFAs will indicate any naming conventions that applicants must use when submitting files using the Attachments form.

(b) *Faxing Required Documentation.* Applicants may fax the required documentation as program-specific forms to HUD. Applicants should use this method only when documents cannot be attached to the electronic application package as a .pdf, .doc, .xls, .jpeg, or .jpg, or when the size of the submission is too large to upload from the applicant's computer. HUD will not accept entire applications by fax and will disqualify applications submitted entirely in that manner.

(i) *Fax Form HUD-96011, "Third Party Documentation Facsimile Transmittal"* (HUD Facsimile Transmittal on Grants.gov). Facsimiles submitted in response to a NOFA must use the form HUD-96011. The facsimile transmittal form, found in the downloaded application, contains a unique identifier that allows HUD to match an applicant's submitted application via Grants.gov with faxes coming from a variety of sources. Each time the application package is downloaded, the forms in the package are given a unique ID number. To ensure that all the forms in your package contain the same unique ID number, after downloading your application, complete the SF-424, save the forms to your hard drive, and use the saved forms to create your

*application.* When you have downloaded your application package from Grants.gov, be sure to first complete the SF-424, and then provide copies of the form HUD-96011 to third parties that will submit information in support of your application. *Do not* download the same application package from Grants.gov more than once, because if your application submission does not match the unique identifier on the facsimile transmittal form, HUD will not be able to match the faxes received to your application submission. Faxes that cannot be matched to an application will not be considered in the review process.

If you have to provide a copy of the form HUD-96011 to another party that will be responsible for faxing an item as part of your application, make a copy of the facsimile transmittal cover page from your downloaded application and provide that copy to the third party for use with the fax transmission. Please instruct third parties to use the form HUD-96011 that you have provided as a *cover page* when they submit information supporting your application using the facsimile method, because it *contains the embedded ID number that is unique to your application submission.*

(ii) Use form HUD-96011 as the Fax Cover Page. For HUD to correctly match a fax to a particular application, the applicant must use, and require third parties that fax documentation on its behalf to use, the form HUD-96011 as the cover page of the facsimile. Using the form HUD-96011 will ensure that HUD can electronically read faxes submitted by and on behalf of an applicant and can match them to the applicant's application package received via Grants.gov.

Failure to use the form HUD-96011 as the cover page will create a problem in electronically matching your faxes to the application. If HUD is unable to match the faxes electronically due to an applicant's failure to follow these directions, HUD will not hand-match faxes to applications and will not consider the faxed information in rating the application. If your facsimile machine automatically creates a cover page, turn this feature off before faxing information to HUD.

(iii) HUD Fax Number. Applicants and third parties submitting information on their behalf must use the form HUD-96011 facsimile transmittal cover page and must send the information to the following fax number: (800) 894-4047. If you cannot access the toll-free 800 number or experience problems, you may use (215) 825-8796 (this is not a toll-free number). These are new

numbers for FY2008 applications only. HUD is transitioning to a new system for intake of grants from Grants.gov and it needs to separate faxes received for FY2008 grants from those received in FY2007 and prior years while it makes this transition. If you use the wrong fax number, your fax will be entered as part of HUD's FY2007 database. HUD cannot search its FY2007 database to match FY2008 faxes to FY2008 applications. As a result, your application will be reviewed without faxed information if you fail to use the FY2008 fax numbers.

(iv) Fax Individual Documents as Separate Transmissions. It is highly recommended that applicants fax individual documents as separate submissions to avoid fax transmission problems. When faxing two or more documents to HUD, applicants must use the form HUD-96011 as the cover page for each document (e.g., Letter of Matching or Leveraging Funds, Memorandum of Understanding, Certification of Consistency with the Consolidated Plan, etc.). Please be aware that faxing large documents at one time may result in transmission failures.

(v) Check Accuracy of Fax Transmission. Be sure to check the record of your transmission issued by the fax machine to ensure that your fax submission was completed "OK." For large or long documents, HUD suggests that you divide them into smaller sections for faxing purposes. Each time you fax a document that you have divided into smaller sections, you should indicate on the cover sheet what part of the overall section you are submitting (e.g., "part 1 of 4 parts" or "pages 1 to 10 of 20 pages").

Your facsimile machine should provide you with a record of whether HUD received your transmission. If you get a negative response or a transmission error, you should resubmit the document until you confirm that HUD has received your transmission. HUD *will not* acknowledge that it received a fax successfully. When receiving a fax electronically, HUD will electronically read it with an optical character reader and attach it to the application submitted through Grants.gov. Applicants and third parties submitting information on their behalf may submit information by facsimile at any time before the application deadline date. Applicants must ensure that the form HUD-96011 used to fax information is part of the application package downloaded from Grants.gov. As stated previously, if your facsimile machine automatically generates a cover page, you must ensure that you turn that feature off and use the form HUD-96011 as the cover page. Also ensure that the

fax is transmitted to fit 8½" x 11" letter size paper.

(vi) Preview your Fax Transmission. HUD recommends that you "preview" how your fax will be transmitted by using the copy feature on your facsimile machine to make a copy of the first two or three pages. You will see what HUD will receive as a fax. If the fax is not clear or cuts off at the bottom of the page, applicants should use a different facsimile machine or have the machine adjusted. All faxed materials must be received no later than 11:59:59 p.m. eastern time on the application deadline date. HUD will store the information and match it to the electronic application when HUD receives it from Grants.gov. If you are not faxing any documents: Even though you are not faxing any documents, you must still complete the facsimile transmittal form. In the section of the form titled "Name of Document Transmitting," enter the words "Nothing Faxed with this Application." Complete the remaining highlighted fields and enter the number "0" in the section of the form titled "How many pages (including cover) are being faxed?"

(vii) If You Resubmit an Application. If you resubmit an application you must resubmit all faxed materials. To ensure that the resubmitted faxes are associated to your most recent application submission, you must wait until after your application has been validated by Grants.gov and you receive the validation notification. If your application is not received by HUD prior to the receipt of your resubmitted faxes, the faxes will be electronically associated to the application in HUD's back-end system, not to the application that you resubmitted to Grants.gov that is still being processed for agency receipt. Please be aware that the resubmitted application must be received and validated by Grants.gov prior to the deadline date and time and that all faxed materials must be received by HUD by the deadline date and time.

6. *Steps to Take Before You Submit Your Application.* You should review the application package and all the attachments to make sure it contains all the documents you want to submit. If it does, save it to your computer and remove previously saved versions. Check your AOR status on Grants.gov to make sure your eBusiness POC has authorized you to submit an application on behalf of the applicant organization. Run the Check Package for Errors feature on the application package and correct any problems identified. Contact any persons or entities that were to submit third-party faxes to make sure that the faxes have been submitted using

the facsimile cover page that you provided in accordance with instructions in this General Section.

### C. Submission Dates and Times

Applications submitted through Grants.gov must be *received and validated* by Grants.gov no later than 11:59:59 p.m. eastern time on the application deadline date. Validation can take up to 48 hours from the time of submission, depending on file size and what is in the queue at Grants.gov awaiting validation. There are several steps in the upload, receipt, and validation process, so applicants are advised to submit their applications at least 48 to 72 hours in advance of the deadline date and when the Grants.gov help desk is open so that any problems can be addressed prior to the deadline date and time. Submitting at least 72 hours in advance of the deadline will allow an applicant that receives a Grants.gov rejection notice to correct any issues, timely resubmit the application with the errors corrected, and then have adequate time for the validation to occur prior to the deadline date. HUD also recommends uploading your application using Internet Explorer or Netscape.

1. *Confirmation of Submission to Grants.gov.* When you successfully upload an application to Grants.gov, you will receive a confirmation message on your computer screen that your application has been submitted to Grants.gov and is being processed. This confirmation will include a tracking number. Print this confirmation out and save it for your records. If you submitted multiple applications, check your confirmation to each application submitted. The grant number, CFDA, and Funding Opportunity number, as well as the date and time of submission, will appear on the confirmation. If you do not receive this confirmation, it means that your application has not been successfully uploaded. If your screen goes blank or you have problems uploading, you need to immediately call Grants.gov support at (800) 518-GRANTS for assistance (this is a toll-free number).

2. *Application Submission Validation Check.* The application will then go through a validation process. The validation check ensures that:

a. The application is virus free;  
b. The application meets the deadline requirements established for the funding opportunity;

c. The DUNS number submitted on the application matches the DUNS number in the registration, and that the AOR has been authorized to submit the application for funding by the

organization identified by its DUNS number;

d. All the mandatory (highlighted) fields and forms were completed on the application; and

e. The correct version of Adobe Reader was used in completing the application package forms.

3. *Application Validation and Rejection Notification.* If the application fails any of the above items during the validation check, the application package will be rejected and Grants.gov will send an e-mail to the person denoted by the applicant in the registration process to receive e-mail notifications from Grants.gov. The e-mail will indicate that the application has been rejected. The e-mail will include the reasons why the application was rejected. The validation check can occur 24 to 48 hours after the application submission. Therefore, HUD recommends that all applicants submit their application no later than 72 hours before the deadline. That way, if the application fails the validation process, applicants should have time to cure deficiencies in their application before the deadline. In developing the application submission dates, HUD has considered the validation process and established deadline dates for all NOFAs that take into account the 72 hours needed to complete the validation process. For example, where HUD previously provided a 60-day application period, HUD now provides a 63-day application period. In this scenario, however, in order to meet the validation requirement, your application must be submitted 72 hours prior to the deadline date or on the 60th day.

#### 4. Timely Receipt Requirements and Proof of Timely Submission

a. *Proof of Application Submission.* Proof of timely submission and validation is automatically recorded by Grants.gov. An electronic time stamp is generated within the system when the application has been successfully received and validated.

b. *Confirmation Receipt.* Upon submitting an application at Grants.gov, you will receive a confirmation, which advises that your application is being processed. This confirmation will also include the Grants.gov tracking number. Print the confirmation and save it with your records.

c. *Validation Receipt via E-mail.* Within 24 to 48 hours after receipt of the confirmation, the applicant will receive a validation receipt via e-mail. The receipt indicates that the application has passed the validation review at Grants.gov and that the

application is ready to be retrieved by the grantor agency for agency processing. Please be aware that the Grants.gov validation does not indicate that the grantor agency has reviewed the content of your application; rather, the validation merely indicates that the application has been successfully received and is ready for pickup by the grantor agency.

d. *Rejection Notice.* If an application fails the validation process, the applicant will receive a rejection notice within 24 to 48 hours after the confirmation notice. The applicant should review the rejection notice because it will include the reason for rejection. The applicant should try to cure the deficiencies and resubmit the application as soon as possible prior to the deadline. By submitting the application 72 hours prior to the deadline, applicants who have completed their registration should have sufficient time to cure the reasons for rejection and successfully resubmit their application in time to meet the deadline.

e. *Save and File Receipts.* Applicants should save all receipts from Grants.gov, as well as facsimile receipts, for proof of timely submission. Applicants will be considered as meeting the deadline date requirements when Grants.gov has received and validated your application no later than the deadline date and time, and when all fax transmissions have been received by the deadline date and time.

f. *Grants.gov Support Ticket Numbers.* If you call the Grants.gov Support Help Desk the operator will provide you with a call reference ticket number. Applicants should retain a record of the call ticket number(s) along with the application receipts received from Grants.gov.

#### 5. Submission Tips

a. *Delayed Transmission Time.* Applicants using dial-up connections should be aware that transmitting your application takes extra time before Grants.gov receives it. Grants.gov will provide either an error or a successfully received transmission message. The Grants.gov Help Desk reports that some applicants abort the transmission because they think that nothing is occurring during the transmission process. Please be patient and give the system time to process the application. Uploading and transmitting a large file, particularly electronic forms with associated eXtensible mark-up language (XML) schema, will take considerable time to process and be received by Grants.gov. However, the upload even for large files should not take longer

than one hour. If you are still waiting after one hour for the submission to be uploaded to Grants.gov, stop the transmission and check the available disk space and memory on your computer. HUD has found that difficulty in uploading an application from the applicant's desktop is most frequently due to: (1) The application package being too large to be handled by the applicant's computer; (2) the local entity's network limiting the size of files going in or out; or (3) the Internet service provider having a file size limit. Therefore, in such instances, the application should be reduced in size by removing attachment files and submitting the attachments via the facsimile method, using the form HUD-96011 as the cover page. The application without attachments should be uploaded to Grants.gov. HUD will match applications submitted to Grants.gov with facsimiles that have been transmitted following the directions in this notice.

b. *Ensure You Have Installed the Free Grants.gov Software.* Check to ensure that the latest version of the Adobe Reader software available from Grants.gov, which is free for system users, has been properly installed on your computer. Applicants will find a link to the free software for download at the *Download Application* page for the funding opportunity available on Grants.gov. HUD has found that an improper installation or not using the required version of the Adobe Reader 8.1.2 software will result in an application not being able to upload properly. If you are not sure how to determine if the software is properly installed go to <http://www.grants.gov/applicants/AdobeVersioningTestOnly.jsp> or call the Grants.gov Support Desk. If you are operating your computer through a network, contact your system administrator to download the latest software. Please allow sufficient time for your network system administrator to respond to your request.

6. *Late applications.* Applications validated by Grants.gov after the established deadline for the program will be considered late and will not receive funding consideration. Applicants should pay close attention to these submission and timely receipt instructions, as they can make a difference in whether HUD will accept your application for funding consideration. Similarly, HUD will not consider information submitted by facsimile as part of the application if received by HUD after the established deadline. Please take into account the transmission time required for

submitting your application via the Internet and the time required to fax any related documents. HUD suggests that applicants submit their applications during the operating hours of the Grants.gov Help Desk so that, if there are questions concerning transmission, operators will be available to assist you through the process. Submitting your application early and during the Help Desk hours will also ensure that you have sufficient time for the application to complete its transmission before the application deadline. If you try to submit your application after the Grants.gov Support Help Desk closes, please refer to HUD's Desktop Users Guide for Submitting Electronic Grant Applications found at: <http://www.hud.gov/offices/adm/grants>.

7. *Continuum of Care Application Submission.* Applicants under the Continuum of Care program should follow the directions for application submission and timely receipt that are contained in the Continuum of Care NOFA, to be issued at a later date.

#### D. Intergovernmental Review/State Points of Contact (SPOC)

Executive Order 12372, "Intergovernmental Review of Federal Programs," was issued to foster intergovernmental partnership and strengthen federalism by relying on state and local processes for the coordination and review of federal financial assistance and direct development. HUD implementing regulations are published at 24 CFR part 52. The executive order allows each state to designate an entity to perform a state review function. Applicants can find the official listing of SPOCs for this review process at <http://www.whitehouse.gov/omb/grants/spoc.html>. States not listed on the Web site have chosen not to participate in the intergovernmental review process and, therefore, do not have a SPOC. If your state has a SPOC, you should contact the SPOC to see if it is interested in reviewing your application before you submit it to HUD.

Please make sure that you allow ample time for this review when developing and submitting your application. If your state does not have a SPOC, you can submit your application directly to HUD using Grants.gov.

#### E. Funding Restrictions

The individual program NOFAs will describe any funding restrictions that apply to each program.

#### F. Other Submission Requirements

##### 1. Discrepancies Between the Federal Register and Other Documents

The published **Federal Register** document is the official document that HUD uses to solicit applications. Therefore, if there is a discrepancy between any materials published by HUD in its **Federal Register** publications and other information provided in paper copy, electronic copy, at <http://www.grants.gov>, or at HUD's Web site, the **Federal Register** publication prevails. Please be sure to review your application submission against the requirements in the **Federal Register** for the program NOFA or NOFAs to which you are applying. If you note discrepancies, please notify HUD immediately by calling the program contact listed in the NOFA, or the Office of Departmental Grants Management at (202) 708-0667 (this is not a toll-free number).

##### 2. Application Certifications and Assurances

Applicants are placed on notice that by signing (either through electronic submission or in paper copy submission, for those applicants granted a waiver to submit in paper) the SF-424 cover page:

a. The governing body of the applicant's organization has duly authorized the application for federal assistance. In addition, by signing or electronically submitting the application, the AOR certifies that the applicant:

(1) Has the legal authority to apply for federal assistance and has the institutional, managerial, and financial capacity (including funds to pay for any non-federal share of program costs) to plan, manage, and complete the program as described in the application;

(2) Will provide HUD with any additional information it may require; and

(3) Will administer the award in compliance with requirements identified and contained in the NOFA (General and Program sections), as applicable to the program for which funds are awarded and in accordance with requirements applicable to the program.

b. No appropriated federal funds have been paid or will be paid, by or on behalf of the applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress, in connection with this application for federal assistance or any award of funds resulting from the submission of this

application for federal assistance or its extension, renewal, amendment, or modification. If funds other than federal appropriated funds have been or will be paid for influencing or attempting to influence the persons listed above, the applicant agrees to complete and submit SF–LLL, Disclosure of Lobbying Activities, as part of its application submission package. The applicant further agrees to and certifies that it will require similar certification and disclosure of all subawards at all tiers, including subgrants and contracts.

c. Federally recognized Indian tribes and tribally designated housing entities (TDHEs) established by a federally recognized Indian tribe, as a result of the exercise of the tribe's sovereign power, are excluded from coverage by item b. (also known as the Byrd Amendment). However, state-recognized Indian tribes and TDHEs established under state law are not excluded from the statute's coverage and, therefore, must comply with item b. above.

By submitting an application, the applicant affirms its awareness of these certifications and assurances. The AOR submitting the application is affirming that these certifications and assurances are material representations of the facts upon which HUD will rely when making an award to the applicant. If it is later determined that the signatory to the application submission knowingly made a false certification or assurance or did not have the authority to make a legally binding commitment for the applicant, the applicant may be subject to criminal prosecution, and HUD may terminate the award to the applicant organization or pursue other available remedies.

### 3. Waiver of Electronic Submission Requirements

The regulatory framework for HUD's electronic submission requirement is the final rule established in 24 CFR 5.1005. Applicants seeking a waiver of the electronic submission requirement must request a waiver in accordance with 24 CFR 5.1005. HUD's regulations allow for a waiver of the electronic submission requirement for good cause. If the waiver is granted, the applicable program office's response will include instructions on how many copies of the paper application must be submitted, as well as how and where to submit them. Applicants that are granted a waiver of the electronic submission requirement will not be afforded additional time to submit their applications. The deadlines for applications will remain as provided in the program section of the NOFA and the final Appendix A published for the

SuperNOFA program sections. As a result, applicants seeking a waiver of the electronic application submission requirement should submit their waiver request with sufficient time to allow HUD to process and respond to the request. Applicants should also allow themselves sufficient time to submit their application so that HUD receives the application by the established deadline date. For this reason, HUD strongly recommends that if an applicant finds it cannot submit its application electronically and must seek a waiver of the electronic grant submission requirement, it should submit the waiver request to the HUD program office designated in the applicable program NOFA no later than 15 days before the application deadline. To expedite the receipt and review of such requests, applicants may e-mail their requests to the program contact listed in the program NOFA. If HUD does not have sufficient time to process the waiver request, a waiver will not be granted. Paper applications received without a prior approved waiver and/or after the established deadline date will not be considered.

## V. Application Review Information

### A. Criteria

#### 1. Factors Used To Evaluate and Rate Applications

For each program NOFA, the points awarded for the rating factors total 100, with a possibility of up to 2 bonus points, as specified below:

a. *RC/EZ/EC-II*. HUD will award two bonus points to each application that includes a valid form HUD–2990 certifying that the proposed activities/projects in the application are consistent with the strategic plan for an empowerment zone (EZ) designated by HUD or the U.S. Department of Agriculture (USDA), the tax incentive utilization plan for an urban or rural renewal community designated by HUD (RC), or the strategic plan for an enterprise community designated in round II by USDA (EC–II); and that the proposed activities/projects will be located within the RC/EZ/EC–II identified above and are intended to serve the residents. For ease of reference in this notice, all of the federally designated areas are collectively referred to as “RC/EZ/EC–IIs” and residents of any of these federally designated areas as “RC/EZ/EC–II residents.” The individual funding announcements will indicate if the bonus points are available under the program. This notice contains a certification that must be completed for the applicant to be considered for RC/

EZ/EC–II bonus points. Applicants can obtain a list of RC/EZ/EC–IIs from HUD's grants Web page at: <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>. Applicants can determine if their program or project activities are located in one of these designated areas by using the locator on HUD's website at <http://egis.hud.gov/egis/>.

b. *The Five Standard Rating Factors for FY2008*. HUD has established the following five standard factors for awarding funds under the majority of its FY2008 program NOFAs. When providing information to HUD in response to Rating Factor 1, Capacity, applicants should not include Social Security numbers on any resumes submitted to HUD.

Factor 1: Capacity of the Applicant and Relevant Organizational Staff.

Factor 2: Need/Extent of the Problem.

Factor 3: Soundness of Approach.

Factor 4: Leveraging Resources.

Factor 5: Achieving Results and Program Evaluation.

In FY2008, HUD is establishing standardized points for evaluating Logic Models submitted under Rating Factor 5, Achieving Results and Program Evaluation. The decision to standardize this rating factor resulted from review of submitted Logic Models and rating factor narrative statements, and training sessions held with HUD staff and the applicant community.

By standardizing the rating for the Logic Model submission, HUD believes that a greater understanding will be gained on the use and relationship of the Logic Model to information submitted as part of the Rating Factors for award. The standardization of the Logic Model submission in Rating Factor 5 highlights the relationship between the narratives produced in response to the factors for award, stated outputs and outcomes, and discrepancies or gaps that have been found to exist in submitted Logic Models. HUD also believes that the standardization will strengthen the use of the Logic Model as a management and evaluation tool.

The Logic Model is a tool that integrates program operations and program accountability. It links program operations (mission, need, intervention, projected results, actual results), and program accountability (measurement tool, data source, and frequency of data collection and reporting, including personnel assigned to function). Applicants/grantees should use it to support program planning, monitoring, evaluation, and other management functions.

HUD uses the Logic Model and its electronic version, the eLogic Model™, to capture an executive summary of the application submission in data format, which HUD uses to evaluate the attainment of stated applicant goals and anticipated results. HUD also uses the data for policy formulation.

HUD encourages applicants and those selected for award to use the Logic Model data to monitor and evaluate their own progress and effectiveness in meeting stated goals and achieving results consistent with the program purpose. To further this objective, and in response to grantee requests, for FY2008 HUD has added an additional column to the eLogic Model that allows the grantee to input results achieved for the reporting period, as well as Year-To-Date (YTD) for each year of the award. This will allow the grantee to review performance each reporting period and for each year of the award "at a glance," and without having to construct a report. For further information, see the Instructions in the FY2008 eLogic Model, form HUD-96010. HUD's goal is to measure the effectiveness of programs and ensure that housing, economic development programs, and services provided by HUD funds provide maximum benefit to low- and moderate-income persons in communities nationwide.

Factor 5, Achieving Results and Program Evaluation, will consist of 10 points for the Logic Model submission. Program areas can add up to an additional 5 points for responses to particular programmatic questions to be addressed as part of this factor. The matrix provided in Attachment 1 of this General Section identifies how the Logic Model will be rated in a standardized way across program areas. Training on the rating factor will be provided via satellite broadcast and archived on HUD's website for repeat viewing.

Additional details about the five rating factors and the maximum points for each factor are provided in the program NOFAs. For a specific funding opportunity, HUD may modify these factors to take into account explicit program needs or statutory or regulatory limitations. Applicants should carefully read the factors for award as described in the program NOFA to which they are responding.

The Continuum of Care Homeless Assistance programs have only two factors that receive points: (1) Need and (2) Continuum of Care. Additional information will be available in the Continuum of Care NOFA to be published in the **Federal Register** after publication of the FY2008 SuperNOFA.

c. *Additional Criteria: Past Performance.* In evaluating applications for funding, HUD will take into account an applicant's past performance in managing funds, including, but not limited to, the ability to account for funds appropriately; timely use of funds received either from HUD or other federal, state, or local programs; timely submission and quality of reports to HUD; meeting performance targets as established in Logic Models approved as part of the grant agreement; timelines for completion of activities and receipt of promised matching or leveraged funds; and the number of persons to be served or targeted for assistance. HUD may consider information available from HUD's records; the name check review; public sources such as newspapers, Inspector General or Government Accountability Office reports or findings; or hotline or other complaints that have been proven to have merit.

In evaluating past performance, HUD may elect to deduct points from the rating score or establish threshold levels as specified under the Factors for Award in the individual program NOFAs. Each program NOFA will specify how past performance will be rated.

#### B. Reviews and Selection Process

##### 1. HUD's Strategic Goals to Implement HUD's Strategic Framework and Demonstrate Results

HUD is committed to ensuring that programs result in the achievement of HUD's strategic mission. To support this effort, grant applications submitted for HUD programs will be rated on how well they tie proposed outcomes to HUD's policy priorities and annual goals and objectives, as well as the quality of the applicant's proposed evaluation and monitoring plans. HUD's strategic framework establishes the following goals and objectives for the Department:

##### a. *Increase Homeownership Opportunities*

- (1) Expand national homeownership opportunities.
- (2) Increase minority homeownership.
- (3) Make the homebuying process less complicated and less expensive.
- (4) Reduce predatory lending practices through reform, education, and enforcement.
- (5) Help HUD-assisted renters become homeowners.
- (6) Keep existing homeowners from losing their homes.

##### b. *Promote Decent Affordable Housing*

- (1) Expand access to and the availability of decent, affordable rental housing.

- (2) Improve the management accountability and physical quality of public and assisted housing.

- (3) Improve housing opportunities for the elderly and persons with disabilities.

- (4) Promote housing self-sufficiency.

- (5) Facilitate more effective delivery of affordable housing by reforming public housing and the Housing Choice Voucher program.

##### c. *Strengthen Communities*

- (1) Assist disaster recovery in the Gulf Coast region.

- (2) Enhance sustainability of communities by expanding economic opportunities.

- (3) Foster a suitable living environment in communities by improving physical conditions and quality of life.

- (4) End chronic homelessness and move homeless families and individuals to permanent housing.

- (5) Mitigate housing conditions that threaten health.

##### d. *Ensure Equal Opportunity in Housing*

- (1) Ensure access to a fair and effective administrative process to investigate and resolve complaints of discrimination.

- (2) Improve public awareness of rights and responsibilities under fair housing laws.

- (3) Improve housing accessibility for persons with disabilities.

- (4) Ensure that HUD-funded entities comply with fair housing and other civil rights laws.

##### e. *Embrace High Standards of Ethics, Management, and Accountability*

- (1) Strategically manage human capital to increase employee satisfaction and improve HUD performance.

- (2) Improve HUD's management and internal controls to ensure program compliance and resolve audit issues.

- (3) Improve accountability, service delivery, and customer service of HUD and its partners.

- (4) Capitalize on modernized technology to improve the delivery of HUD's core business functions.

##### f. *Promote Participation of Faith-Based and Other Community Organizations*

- (1) Reduce barriers to faith-based and other community organizations.

- (2) Conduct outreach and provide technical assistance to strengthen the capacity of faith-based and community organizations to attract partners and secure resources.

- (3) Encourage partnerships between faith-based and other community organizations and HUD's grantees and subgrantees.

Additional information about HUD's Strategic Plan FY2006-FY2011, and

2002–2008 Annual Performance Plans is available at: <http://www.hud.gov/offices/cfo/reports/cforept.cfm>.

## 2. Policy Priorities

HUD encourages applicants to undertake specific activities that will assist the Department in implementing its policy priorities and achieving its goals for FY2008 and beyond. Applicants that include work activities that specifically address one or more of these policy priorities will receive higher rating scores than applicants that do not address these HUD priorities. Each NOFA issued in FY2008 will specify which priorities relate to a particular program and how many points will be awarded for addressing those priorities.

*a. Providing Increased Homeownership and Rental Opportunities for Low- and Moderate-Income Persons, Persons with Disabilities, the Elderly, Minorities, and Persons with Limited English Proficiency.* Too often, these individuals and families are shut out of the housing market through no fault of their own. Often, developers of housing, housing counseling agencies, and other organizations engaged in the housing industry must work aggressively to open up the realm of homeownership and rental opportunities to low- and moderate-income persons, persons with disabilities, the elderly, minorities, and persons with limited English proficiency. Many of these individuals or families are anxious to have homes of their own, but are not aware of the programs and assistance that are available. Applicants are encouraged to address the housing, housing counseling, and other related supportive service needs of these individuals and coordinate their proposed activities with funding available through HUD's affordable housing programs and home loan programs.

Proposed activities support strategic goals a, b, and d.

*b. Improving our Nation's Communities.* HUD wants to improve the quality of life for those living in distressed communities. Applicants are encouraged to include activities that:

- (1) Bring private capital into distressed communities;
- (2) Finance business investments to grow new businesses;
- (3) Maintain and expand existing businesses;
- (4) Create a pool of funds for new small and minority-owned businesses;
- (5) Create decent jobs for low-income persons;
- (6) Improve the environmental health and safety of families living in public

and privately owned housing by including activities that:

- (i) Coordinate lead hazard reduction programs with weatherization activities funded by state and local governments and the federal government; and
- (ii) Reduce or eliminate health-related hazards in the home caused by toxic agents, such as molds and other allergens, carbon monoxide, and other hazardous agents and conditions; and
- (7) Make communities more livable by:

- (i) Providing public and social services; and
- (ii) Improving infrastructure and community facilities.

Activities support strategic goals b, c, and d.

*c. Encouraging Accessible Design Features.* As described in section III.C.2.c., applicants must comply with applicable civil rights laws, including the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. These laws and the regulations implementing them provide for nondiscrimination based on disability and require housing and other facilities to incorporate certain features intended to provide for their use and enjoyment by persons with disabilities. HUD is encouraging applicants to add accessible design features beyond those required under civil rights laws and regulations. Such features would eliminate many other barriers limiting the access of persons with disabilities to housing and other facilities. Copies of the Uniform Federal Accessibility Standards (UFAS) are available online at: <http://www.access-board.gov/ufas/ufas-html/ufas.htm>; from the NOFA Information Center at (800) HUD-8929 (toll free); and from the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5240, Washington, DC 20410-200; telephone (202) 708-2333 (this is not a toll free number). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877-8339. (This is a toll-free number.)

Accessible design features are intended to promote visitability and incorporate features of universal design, as described below.

- (1) *Visitability in New Construction and Substantial Rehabilitation.* Applicants are encouraged to incorporate visitability standards, where feasible, in new construction and substantial rehabilitation projects. Visitability standards allow a person with mobility impairments access into the home, but do not require that all

features be made accessible. Visitability means that there is at least one entrance at grade (no steps), approached by an accessible route such as a sidewalk, and that the entrance door and all interior passage doors are at least 2 feet, 10 inches wide, allowing 32 inches of clear passage space. A visitable home also serves persons without disabilities, such as a mother pushing a stroller or a person delivering a large appliance. More information about visitability is available at: <http://www.concretechange.org/>.

Activities support strategic goals b, c, and d.

(2) *Universal Design.* Applicants are encouraged to incorporate universal design in the construction or rehabilitation of housing, retail establishments, and community facilities funded with HUD assistance. Universal design is the design of products and environments to be usable by all people to the greatest extent possible, without the need for adaptation or specialized design. The intent of universal design is to simplify life for everyone by making products, communications, and the built environment more usable by as many people as possible at little or no extra cost to the user. In addition to any applicable required accessibility feature under section 504 of the Rehabilitation Act of 1973 or the design and construction requirements of the Fair Housing Act, the Department encourages applicants to incorporate the principles of universal design when developing housing, community facilities, and electronic communication mechanisms, or when communicating with community residents at public meetings or events.

HUD believes that to address affordable housing needs effectively, it is necessary to provide affordable housing that is accessible to all regardless of ability or age. Likewise, creating places where people work, train, and interact that are usable and open to all residents increases opportunities for economic and personal self-sufficiency. More information on universal design is available from the Center for Universal Design at: <http://www.design.ncsu.edu/cud/> or the Resource Center on Accessible Housing and Universal Design at: <http://www.abledata.com/abledata.cfm?pageid=113573&top=16029&sectionid=19326>.

Activities support strategic goals a through d.

*d. Providing Full and Equal Access to Grassroots Faith-Based and Other Community Organizations in HUD Program Implementation.*

(1) HUD encourages nonprofit organizations, including grassroots faith-based and other community organizations, to participate in the vast array of programs for which funding is available through HUD's programs. HUD also encourages states, units of local government, universities, colleges, and other organizations to partner with grassroots organizations (e.g., civic organizations, faith communities, and grassroots faith-based and other community organizations) that have not been effectively utilized. These grassroots organizations have a strong history of providing vital community services. Additionally, HUD encourages applicants to include grassroots faith-based and other community organizations in their work plans. Applicants, their partners, and participants must review the individual FY2008 HUD program announcements to determine whether they are eligible to apply for funding directly or whether they must establish a working relationship with an eligible applicant in order to participate in a HUD funding opportunity. Grassroots faith-based and other community organizations, and applicants that currently or propose to partner, fund, subgrant, or subcontract with grassroots organizations (including grassroots faith-based or other community nonprofit organizations eligible under applicable program regulations) in conducting their work programs will receive higher rating points, as specified in the individual FY2008 HUD program announcements.

(2) Definitions of Grassroots Organizations.

(a) HUD will consider an organization a "grassroots organization" if the organization is headquartered in the local community in which it provides services; and

(i) Has a social services budget of \$300,000 or less, or

(ii) Has six or fewer full-time equivalent employees.

(b) Local affiliates of national organizations are not considered "grassroots." Local affiliates of national organizations are encouraged, however, to partner with grassroots organizations, but must demonstrate that they are currently working with a grassroots organization (e.g., having a grassroots faith-based or other community organization provide volunteers).

(c) The cap provided in paragraph (2)(a)(i) above includes only that portion of an organization's budget allocated to providing social services. It does not include other portions of the budget, such as salaries and expenses, not directly expended in the provision of social services.

Activities support strategic goal f.

e. *Participation of Minority-Serving Institutions (MSIs) in HUD Programs.* Pursuant to Executive Orders 13256, "President's Board of Advisors on Historically Black Colleges and Universities;" 13230, "President's Advisory Commission on Educational Excellence for Hispanic Americans;" 13216, "Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs;" and 13270, "Tribal Colleges and Universities," HUD is strongly committed to broadening the participation of MSIs in its programs. HUD is interested in increasing the participation of MSIs in order to advance the development of human potential, strengthen the nation's capacity to provide high quality education, and increase opportunities for MSIs to participate in and benefit from federal financial assistance programs. HUD encourages all applicants and recipients to include meaningful participation of MSIs in their work programs. A listing of MSIs can be found on the Department of Education Web site at: <http://www.ed.gov/about/offices/list/ocr/edlite-minorityinst.html> or HUD's Web site at: <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>.

Activities support strategic goals c and d.

f. *Ending Chronic Homelessness.*

President Bush has set a national goal to end chronic homelessness. HUD Secretary Alphonso Jackson has embraced this goal and has pledged that HUD's grant programs will be used to support the President's goal and better meet the needs of chronically homeless individuals. A person experiencing chronic homelessness is defined as an unaccompanied individual with a disabling condition who has been continuously homeless for a year or more or has experienced four or more episodes of homelessness over the last 3 years. A disabling condition is defined as a diagnosable substance abuse disorder, serious mental illness, developmental disability, or chronic physical illness or disability, including the co-occurrence of two or more of these conditions. Applicants are encouraged to target assistance to chronically homeless persons by undertaking activities that will result in:

(1) Creation of affordable housing units, supportive housing, and group homes;

(2) Establishment of a set-aside of units of affordable housing for the chronically homeless;

(3) Establishment of substance abuse treatment programs targeted to the homeless population;

(4) Establishment of job training programs that will provide opportunities for economic self-sufficiency;

(5) Establishment of counseling programs that assist homeless persons in finding housing, managing finances, managing anger, and building interpersonal relationships;

(6) Provision of supportive services, such as health care assistance, that will permit homeless individuals to become productive members of society; and

(7) Provision of service coordinators or one-stop assistance centers that will ensure that chronically homeless persons have access to a variety of social services.

Applicants that are developing programs to meet the goals set in this policy priority should keep in mind the requirements of the regulations implementing section 504 of the Rehabilitation Act, in particular, 24 CFR 8.4(b)(1)(iv), 8.4(c)(1), and 8.4(d).

Activities support strategic goals b and c.

g. *Removal of Regulatory Barriers to Affordable Housing.* In FY2008, HUD continues to make removal of regulatory barriers a policy priority. Through the Department's America's Affordable Communities Initiative, HUD is seeking input into how it can work more effectively with the public and private sectors to remove regulatory barriers to affordable housing. Increasing the affordability of rental and homeownership housing continues to be a high priority of the Department. Addressing these barriers to housing affordability is a necessary component of any overall national housing policy.

Under this policy priority, higher rating points are available to: (1) Governmental applicants that are able to demonstrate successful efforts in removing regulatory barriers to affordable housing, and (2) nongovernmental applicants that are associated with jurisdictions that have undertaken successful efforts in removing barriers. To obtain the policy priority points for efforts to successfully remove regulatory barriers, applicants must complete form HUD-27300, "Questionnaire for HUD's Removal of Regulatory Barriers" ("HUD Communities Initiative" on Grants.gov). Copies of HUD's notices published on this issue can be found on HUD's Web site at: <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>.

Local jurisdictions and counties with land use and building regulatory authority applying for funding, as well as public housing agencies (PHAs), nonprofit organizations, and other qualified applicants applying for funds

for projects located in these jurisdictions, are invited to answer the 20 questions under Part A. An applicant that scores at least five in column 2 will receive one point in the NOFA evaluation. An applicant that scores ten or more in column 2 will receive two points in the NOFA evaluation.

State agencies or departments applying for funding, as well as PHAs, nonprofit organizations, and other qualified applicants applying for funds for projects located in unincorporated areas or areas not otherwise covered in Part A, are invited to answer the 15 questions under Part B. Under Part B, an applicant that scores at least four in column 2 will receive one point in the NOFA evaluation. Under Part B, an applicant that scores eight or more will receive a total of two points in the respective evaluation.

Applicants that will be providing services in multiple jurisdictions may choose to address the questions in either Part A or Part B for that jurisdiction in which the preponderance of services will be performed, should an award be made. In no case will an applicant receive more than two points for barrier removal activities under this policy priority. An applicant that is an Indian tribe or TDHE may choose to complete either Part A or Part B after determining whether the tribe's or TDHE's association with the local jurisdiction or the state would be the more advantageous for its application.

The form HUD-27300, "Questionnaire for HUD's Removal of Regulatory Barriers" ("HUD Communities Initiative" on Grants.gov), is available as part of the application package retrieved from Grants.gov, and at: <http://www.hud.gov/offices/adm/hudclips/forms/hud2.cfm>. A limited number of questions on the form expressly request the applicant to provide brief documentation with its response. Other questions require that, for each affirmative statement made, the applicant supply a reference, Internet address, or brief statement indicating where the back-up information may be found and a point of contact, including a telephone number or email address. To obtain an understanding of this policy priority and how it can affect their score, applicants are encouraged to read HUD's three notices, which are available at: <http://www.hud.gov/initiatives/affordablecom.cfm>. Applicants that do not provide the Internet addresses, references, or documentation will not get the policy priority points.

Activities support strategic goals a and b.

h. *Promoting Energy Efficiency and Energy Star*. HUD is encouraging grantees to take specific energy-saving actions in furtherance of HUD's Energy Action Plan described in the August 2006 Report to Congress entitled: "Promoting Energy Efficiency at HUD in a Time of Change," submitted under section 154 of the Energy Policy Act of 2005 (Pub. L. 109-58). (A copy of the report can be obtained at: (<http://www.huduser.org/publications/destech/energyefficiency.html>.) As a result, grantees that design, build, rehabilitate, or operate housing or community facilities with funds awarded through HUD's NOFAs will receive policy priority points if they incorporate energy-efficiency measures in the design, construction, rehabilitation, and operation of these properties (<http://www.energystar.gov/index.cfm?c=home.index>) and use Energy Star-labeled products. To find Energy Star products go to <http://www.energystar.gov/> and click on "Products".

Grantees that receive funds for HUD's Housing Counseling and Community Development Technical Assistance programs will receive policy priority points if, when providing counseling or training services, they include information on Energy Star appliances and products and information on the potential cost savings associated with buildings constructed using Energy Star standards.

Examples of specific actions that may be taken when designing and implementing construction, rehabilitation, or maintenance activities include:

**Note:** Grantees undertaking design, construction, rehabilitation, or maintenance projects must demonstrate in their statement of work, construction and design plan, and specifications how they meet this requirement. Specific requirements are identified in the program NOFA and the award agreement.

(1) Replace older obsolete products and appliances (such as lighting, domestic hot water heaters, furnaces, boilers, and air conditioning units, as well as household appliances including, but not limited to, refrigerators, clothes washers and dishwashers) with Energy Star-labeled products, when replacing existing products is more cost-effective than repair and/or the appliance is no longer in operating condition;

(2) Build new or rehabilitate existing single-family homes to Energy Star standards for new homes (15 percent more efficient than the 2004 International Residential Code); or include combined heat and power in multifamily properties;

(3) Meet the requirements for Energy Star Qualified New Homes ([http://www.energystar.gov/index.cfm?c=new\\_homes.nh\\_features](http://www.energystar.gov/index.cfm?c=new_homes.nh_features)) for gut rehabilitation or new construction of low-rise multifamily housing (three stories or fewer);

(4) Meet ASHRAE 90.1-2004, Appendix G plus 20 percent (which is the Energy Star standard for multifamily buildings piloted by the Environmental Protection Agency and the Department of Energy for gut rehabilitation or new construction of mid-or high-rise multifamily housing (see ASHRAE 90.1-2004 standards at: <http://www.realread.com/prst/pageview/browse.cgi?book=1931862664>);

**Note:** Grantee reporting requirements to demonstrate compliance and cost savings will be specified in the program NOFA and the award agreement. Examples of specific actions that may be taken by grantees receiving funding for housing counseling or technical assistance services that do not directly design, construct, rehabilitate, and/or maintain buildings include the following:

(1) Provide counseling services, directly or in conjunction with HUD housing counseling agencies, to educate low- and moderate-income renters and homebuyers on energy conservation practices, the benefits and savings related to the use of Energy Star-labeled products and appliances, and the availability of Energy Efficient Mortgages, rebate programs, and Energy-Star qualified new homes;

(2) Provide information at economic development and housing-related technical assistance sessions to educate local community officials and staff on Energy Star products and appliances and on energy savings when constructing or rehabilitating buildings to Energy Star standards;

(3) Report on the number of persons counseled or trained on Energy Star utilization and on cost savings associated with using Energy Star products and appliances.

Applicants are placed on notice that the Department is currently reviewing whether to require grantees in FY2009 to incorporate energy-efficiency measures in the design, construction, rehabilitation, and operation of properties designed, built, rehabilitated, or operated with funds awarded through HUD's NOFAs and to require Housing Counseling and Community Development Technical Assistance grantees to include information on Energy Star appliances and products, as well as potential cost savings associated with buildings constructed using Energy Star standards, when providing counseling or training services. If the Department decides to make these requirements mandatory, the public will be provided advance notification and have the opportunity to comment.

i. *Utilization and Promotion of FHA Mortgages and Fair Lending Practices.*

Applicants constructing, rehabilitating, or maintaining single- or multifamily housing or community facilities are urged to utilize FHA mortgages and purchase discounted FHA Real Estate Owned (REO) property. Many homebuyers may be unaware than an FHA-insured mortgage may be a less expensive and safer mortgage option compared to conventional and "subprime" mortgages. By providing homebuyers with information about FHA-insured mortgages, homebuyers may be able to avoid becoming victims of predatory lending practices or foreclosure.

HUD has also found that low- and moderate-income households are often unnecessarily paying high interest rates and are vulnerable to predatory lending practices or aggressive marketing by subprime lenders. Many of the foreclosures in FY2007 were the result of interest rate resets and increases on loans due to 2- or 3-year adjustable-rate mortgages. These consumers are also in need of information on Fair Lending and discriminatory lending practices. Applicants for funding will receive a policy-priority point if they demonstrate that: (1) They are providing low- and moderate-income households with information on FHA products as reliable, safe alternatives for consumers facing foreclosure or as a refinancing mechanism to reduce costs and reliance on subprime lenders; and (2) as households are provided information on FHA products, they are also provided information on Fair Lending and discriminatory lending practices so they become informed consumers. The information provided to consumers must be provided in languages appropriate to the clients being served.

Activities support strategic goals a and b.

3. *Threshold Compliance.* Only applications that meet all of the threshold requirements will be eligible to receive an award of funds from HUD.

4. *Corrections to Deficient Applications.* After the application deadline, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information that an applicant may want to provide. HUD may contact an applicant to clarify an item in its application or to correct curable (correctable) technical deficiencies. HUD may not seek clarification of items or responses that improve the substantive quality of an applicant's response to any rating factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact

applicants to ensure proper completion of the application, and will do so on a uniform basis for all applicants.

Examples of curable (correctable) technical deficiencies include inconsistencies in the funding request, failure to submit the proper certifications, and failure to submit an application that contains a signature by an official able to make a legally binding commitment on behalf of the applicant. In the case of an applicant that received a waiver of the regulatory requirement to submit an electronic application, the technical deficiency may include failure to submit an application that contains an original signature. If HUD finds a curable deficiency in the application, HUD will notify the applicant in writing by describing the clarification or technical deficiency. HUD will notify applicants by e-mail, facsimile, or via the U.S. Postal Service, return receipt requested. Clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within 14 calendar days of the date of receipt of the HUD notification. (If the deadline date falls on a Saturday, Sunday, or federal holiday, the applicant's correction must be received by HUD on the next day that is not a Saturday, Sunday, or federal holiday.) If the deficiency is not corrected within this time, HUD will reject the application as incomplete, and it will not be considered for funding. In order to meet statutory deadlines for the obligation of funds or for timely completion of the review process, program NOFAs may reduce the number of days for submitting a response to a HUD request for clarification or correction to a technical deficiency. Please be sure to carefully read each program NOFA for any additional information and instructions. An applicant's response to a HUD notification of a curable deficiency should be submitted directly to HUD in accordance with the instructions provided in the notification.

5. *Rating Panels.* To review and rate applications, HUD may establish panels that may include persons not currently employed by HUD. HUD may include these non-HUD employees to obtain particular expertise and outside points of view, including views from other federal agencies. Persons brought into HUD to review applications are subject to conflict-of-interest provisions. In addition, reviewers using HUD information technology (IT) systems may be subject to an IT security check.

6. *Rating.* HUD will evaluate and rate all applications for funding that meet the threshold requirements.

7. *Ranking.* HUD will rank applicants within each program or, for Continuum of Care applicants, across the three programs identified in the Continuum of Care NOFA. HUD will rank applicants against only those applying for the same program funding.

Where there are set-asides within a program competition, the applicant will compete against only those applicants in the same set-aside competition.

C. *Anticipated Announcement and Award Dates.* The individual program NOFAs will provide the applicable information regarding this subject.

## VI. Award Administration Information

### A. Award Notices

1. *Negotiation.* After it has rated and ranked all applications and made selections, HUD may require, depending upon the program, that a selected applicant participate in negotiations to determine the specific terms of the funding agreement and budget. In cases where HUD cannot successfully conclude negotiations with a selected applicant or a selected applicant fails to provide HUD with requested information, an award will not be made to that applicant. In such an instance, HUD may offer an award to, and proceed with negotiations with, the next highest-ranking applicant.

### 2. Adjustments to Funding.

a. To ensure the fair distribution of funds and enable the purposes or requirements of a specific program to be met, HUD reserves the right to fund less than the full amount requested in your application.

b. HUD will not fund any portion of an application that: (1) Is not eligible for funding under specific HUD program statutory or regulatory requirements; (2) does not meet the requirements of this notice; or (3) is duplicative of other funded programs or activities from prior year awards or other selected applicants. Only the eligible portions of an application (excluding duplicative portions) may be funded.

c. If funds remain after funding the highest-ranking applications, HUD may fund all or part of the next highest-ranking application in a given program. If an applicant turns down an award offer, HUD will make an offer of funding to the next highest-ranking application.

d. If funds remain after all selections have been made, remaining funds may be made available within the current fiscal year for other competitions within the program area or be held over for future competitions.

e. If, subsequent to announcement of awards made under the FY2008 NOFAs, additional funds become available

either through a supplemental appropriation or recapture of funds during FY2008, HUD reserves the right to use the additional funding to provide full funding to an FY2008 applicant that was denied the requested amount of funds due to insufficient funds to make the full award, and/or to fund additional applicants that were eligible to receive an award but for which there were no funds available.

f. Individual program NOFAs may have other requirements, so please review the program NOFAs carefully.

3. *Funding Errors.* In the event HUD commits an error that, if corrected, would result in selection of an applicant during the funding round of a program NOFA, HUD may select that applicant for funding, subject to the availability of funds.

4. *Performance and Compliance Actions of Funding Recipients.* HUD will measure and address the performance and compliance actions of funding recipients in accordance with the applicable standards and sanctions of their respective programs.

5. *Debriefing.* For a period of at least 120 days, beginning 30 days after the awards for assistance are publicly announced, HUD will provide to a requesting applicant a debriefing related to its application. A request for debriefing must be made in writing or by email by the authorized official whose signature appears on the SF-424 or by his or her successor in office, and be submitted to the person or organization identified as the contact under the section entitled "Agency Contact(s)" in the individual program NOFA under which the applicant applied for assistance. Information provided during a debriefing will include, at a minimum, the final score the applicant received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

#### *B. Administrative and National Policy Requirements*

See Section III.C. of this notice regarding related requirements.

#### *C. Reporting*

##### 1. Use of a Logic Model To Report Performance

In FY2004, HUD began using as a planning tool the Logic Model submitted as part of NOFA applications. In FY2005, HUD required grant agreements to incorporate performance reporting against the approved Logic Model. In FY2006, HUD moved to

standardized "master" Logic Models from which applicants can select needs, activities/outputs, and outcomes appropriate to their programs. In addition, program offices have identified Program Management Evaluation Questions that grantees will be required to report on, as specified in the approved program eLogic Model™. The time frame established for the Logic Model reporting will be in accordance with the program's established reporting periods and as stated in the program NOFA.

##### 2. Placement of Approved Logic Models and Reports on HUD's Website

It is HUD's intent to publish approved Logic Models and grantee progress reports submitted to HUD on its Grants website. Starting with awards made in FY2007, HUD established a Grants Performance page that features program performance ratings issued by OMB under its Program Assessment Rating Tool (PART) or its successor tool, for HUD programs that have been evaluated by OMB. HUD will also post all approved Logic Models that show each awardee's projected outputs and outcomes during the period of performance. As required performance reports are received by HUD, they will be added to the Web site. HUD is creating this website page to highlight and make available to the public performance and results from HUD-funded programs, in keeping with Executive Order 13392, issued December 14, 2005, and published in the **Federal Register** on December 19, 2005 (70 FR 75373). HUD believes that informing the public on progress is in keeping with presidential and congressional intent for transparency in federally funded programs, as demonstrated by the passage of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), and creation of the federal Web sites <http://www.ExpectMore.gov> and <http://www.Results.gov>.

##### 3. Return on Investment Statements

HUD also intends to propose Return on Investment (ROI) Statements for each of its competitive grant programs. Before finalizing ROI Statements for implementation, HUD will either offer incentive funding for applicants wishing to participate in developing an ROI as part of their grant program or HUD will publish the proposed ROI Statements for public comment. HUD believes the applicant/grantee community can greatly assist HUD in its attempt to place a value on the work done under the Department's grant programs. While HUD expects grantees

to respond to the Management Evaluation Questions in their final reports, reporting on the ROI Statements is not mandatory at this time. As HUD finalizes ROI Statements for each program, they will be included in awards in the future. In FY2008, HUD is offering ROI incentive funding in the Housing for Persons with AIDS (HOPWA) NOFA.

##### 4. Logic Model Instructions

The Logic Model form (HUD-96010), a Microsoft Excel workbook, contains instructions in Tab 1 on how to use the form. The form or eLogic Model™ incorporates a program-specific master list of statements of need, service, or activity/output(s) and their associated unit(s) of measure; and outcome(s) and their associated unit(s) of measure. Applicants will be required to click on a cell within a column. When you click on the cell, the drop-down button appears to the right of the cell. Applicants can then select the appropriate statement(s) to reflect their proposed program. Applicants can select multiple need(s) and services, or activities/outputs and outcomes, but each selection is entered in separate cells using the drop-down menu. The unit measure, whether for outputs or outcomes, may be a number or date. Applicants insert the expected number of units to be completed or achieved or date of achievement during the period of performance. In this manner, the applicant will build a custom Logic Model reflecting their program of activities. The custom Logic Model will link the need(s) to the activity/output(s), which in turn are linked to the result or expected outcome(s) tailored to each of HUD's programs.

##### 5. Logic Model Format

The following briefly describes the format for the HUD Logic Model. Full instructions are contained in the Logic Model found in the Instructions Download for the program, on Grants.gov.

a. Each Logic Model has drop-down menus for HUD Strategic Goals and Policy Priorities, to eliminate applicant confusion over what letters and numbers to use for the goals and priorities and to improve data quality;

b. Tabs for Year 1, Year 2, and Year 3 activities, as well as a tab for Total, are provided in each Logic Model. HUD found that applicants within a program had varying opinions or interpretations on time frames for short, intermediate, and long term and that the use of clearly defined time frames eliminated the varying interpretations and provided for better quality data. In response to

grantee requests, in FY2008, HUD has added a column labeled YTD (Year-To-Date), which represents cumulative totals per year to each reporting period for results achieved. By adding the column, grantees can see immediately what they have achieved during the reporting period, what they have achieved as they progress throughout the year, what they have achieved on a cumulative basis each reporting year, and what they have achieved during the period of award. The total tab allows for cumulative projected and final results to be shown covering all years of the period of performance. Applicants with a one-year period of performance only have to complete the Year 1 tab, since the total results will all occur in the one-year award period. When reporting, be sure to show non-cumulative data in the past column and cumulative data in the Year-To-Date (YTD) column.

c. For the grantees' convenience and to call attention to the requirements, the Logic Model form contains reporting instructions. The instructions ask applicants to identify in their reports to HUD where actual results deviated from projected results—either positively or negatively. The Reporting Instruction tab includes a text field in which grantees can report any deviations, as well as their responses to the management questions. While the reporting tab does not add additional burden hours to the information collection, HUD believes that having the reporting tab in the form assists the applicant in completing their Logic Model and provides for better quality Logic Models and reporting to HUD. HUD will continue to review data received via eLogic Model™ in 2007 and would like to thank the applicant/grantee community for their recommendations and insights.

In FY2008, to provide for greater consistency in reporting, applicants must include all activities and outcomes expected per year of the period of performance. Applicants should carefully review the program NOFA for required outputs and outcome selections, as some of the program NOFAs define what must, at a minimum, be included in the Logic Model.

6. In FY2008, Grantees Must Adhere to the Following Reporting Principles

- a. An evaluation process will be part of the ongoing management of the HUD-funded award;
- b. Comparisons will be made between projected and actual numbers for outputs and outcomes;
- c. Deviations from projected outputs and outcomes will be documented and

explained as part of required reporting; and

d. Data will be analyzed to determine the relationship of outputs to outcomes, to determine which outputs produce which outcomes and which are most effective.

As stated above, in FY2007, HUD required each program to establish a set of Program Management Evaluation Questions for grantee reporting. Grantees must use these questions to self-evaluate the management and performance of their program. HUD is continuing this practice in FY2008. In developing the Program Management Evaluation Questions for the Master Logic Model, HUD trained its program managers on the Carter-Richmond Methodology, a critical thinking process that identifies key management and evaluation questions for HUD's programs. The following table identifies the Carter-Richmond generic questions and where the source data is found in the Logic Model.

**CARTER-RICHMOND METHODOLOGY:<sup>1</sup>  
BUILDING BLOCKS FOR EFFECTIVE  
MANAGEMENT**

Management questions	Logic model columns for source data
1. How many clients are you serving?	Service/Activity/Output.
2. How many units were provided?	Service/Activity/Output.
3. Who are you serving?	Service/Activity/Output.
4. What services do you provide?	Service/Activity/Output.
5. What does it cost?	Service/Activity/Output.
6. What does it cost per service delivered?	Service/Activity/Output/Evaluation.
7. What happens to the "subjects" as a result of the service? <sup>2</sup>	Outcome.
8. What does it cost per outcome?	Outcome and Evaluation.
9. What is the value of the outcome?	Outcome and Evaluation.
10. What is the return on investment?	Evaluation.

<sup>1</sup>"The Accountable Agency—How to Evaluate the Effectiveness of Public and Private Programs," Reginald Carter, ISBN Number 9780978724924.

<sup>2</sup>The subject can be a client or a unit, such as a building, and is defined in its associated unit of service.

As a result of this training, each program has developed specific Program Management Evaluation Questions tailored to the statutory purpose of each of their programs. Each program NOFA will require applicants to address these questions based upon the Carter-

Richmond Methodology in their reports to HUD. The program NOFA Logic Models will identify the particular questions to be addressed that relate to the statutory purpose and intent of each program. In FY2008, the Management Questions have been developed as an excel table which formats the question as a data element and the response to the question as a data element. By creating this table, grantees when reporting can enter the response to the management questions in the data field provided, allowing the management question responses to be placed in the Logic Model database for further analysis.

Training on HUD's Logic Model and on the reporting requirements for addressing the Program Management Evaluation Questions will be provided via satellite broadcast. The training will also provide examples of how to construct the Logic Model using the drop-down lists in the eLogic Model™. Training materials and the dates for the training will be on HUD's Web site at: <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>, shortly after publication of the SuperNOFA. In addition, each program NOFA broadcast will address the specific questions and reporting requirements for the specific program.

Applicants should submit the completed Logic Model as an attachment to their application, in accordance with the directions in the program NOFA for addressing the factors for award. Each program NOFA will identify if it requires the factors for award, including the Logic Model that is required as part of the application submission, to be submitted as a single attached file or as separate files. Please follow the program NOFA directions. When opening the eLogic Model™ enable the Macros. DO NOT convert the file to PDF format. Save the file in the format you opened it. Grants.gov can now accept Microsoft Office 2007 files and HUD can read both Microsoft Office 2003 and Microsoft Office 2007 files.

After being selected for funding and awarded funds, grantees will be required to submit a completed form HUD-96010, Logic Model, indicating results achieved against the proposed output(s) and proposed outcome(s) stated in the grantee's approved application and agreed to by HUD. The Logic Model and required management questions must be submitted to HUD in accordance with the reporting periods identified in each program NOFA for providing reports to HUD.

7. Use of Form HUD-27061, Race and Ethnic Data Reporting Form, to Report Race and Ethnicity Data for Beneficiaries of HUD Programs

HUD requires grantees that provide HUD program benefits to individuals or families to report data on the race and ethnicity of those receiving such benefits. Grantees that provide benefits to individuals during the period of performance, whether directly, through subrecipients, or through contractual arrangements, must report the data using form HUD-27061, Race and Ethnic Data Reporting Form, on Grants.gov. The form is a data collection based on the standards published by OMB on August 13, 2002. The individual program NOFAs will identify applicable reporting requirements related to each program. Applicants reporting to HUD using an online system can use that system to meet this requirement, provided the data elements and reports derived from the system are equivalent to the data collection in the form HUD-27061. For programs where race and ethnicity reporting is required, copies of form HUD-27061 will be included in the Instructions Download portion of the application posted to Grants.gov.

8. Frequency of Reports and Data Consistency

a. *Logic Model Reporting.* When submitting eLogic Model™ reports on a quarterly or semiannual basis, each report should show the results that occurred during that reporting period. All final reports should provide a final eLogic Model™ performance for the entire period of the award. See instructions in the eLogic Model™ on how to label files when reporting. When reporting, be sure to show non-cumulative data in the past column and cumulative data in the Year-To-Date (YTD) column.

b. *Race and Ethnic Data Report.* When submitting the Race and Ethnic Data Reporting Form (HUD-27061) on a quarterly or semiannual basis, each reporting period should show the results that occurred during the performance period for all active clients. If a multiyear program is funded, then each annual report should show results that occurred during that performance year for all active clients. A final form HUD-27061 should show results for all active clients for the entire period of performance.

**VII. Agency Contact(s)**

The individual program NOFAs will identify the applicable agency contacts related to each program. Questions

regarding this notice should be directed to the NOFA Information Center between the hours of 10 a.m. and 6:30 p.m. eastern time at (800) HUD-8929. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339. (These are toll-free numbers.) Questions regarding specific program requirements should be directed to the agency contacts identified in each program NOFA.

**VIII. Other Information**

*A. Public Law 106-107 Streamlining Activities and Grants.gov*

The Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106-107) directed each federal agency to develop and implement a plan that, among other things, streamlines and simplifies the application, administrative, and reporting procedures for federal financial assistance programs administered by the agency. This law also required the Director of OMB to direct, coordinate, and assist federal agencies in establishing: (1) A common application and reporting system and (2) an interagency process for addressing ways to streamline and simplify federal financial assistance application and administrative procedures, as well as reporting requirements for program applicants. Over the last several years, the intergovernmental work groups tasked with the implementation of Public Law 106-107 have been engaged in various streamlining activities that are now being shared with the grantee community for their input prior to being implemented across the federal government. Public Law 106-107 sunsets in 2008. Despite the sunset of the law, federal agencies are still working to simplify and streamline their application and submission requirements. Applicants and grantees are urged to participate in the broadcasts sponsored by the Grants Policy Committee and the federal government work groups to become familiar with the proposed changes to simplify requirements, at [http://www.grants.gov/aboutgrants/streamlining\\_initiatives.jsp](http://www.grants.gov/aboutgrants/streamlining_initiatives.jsp).

*B. Grants.gov*

The Grants.gov initiative focuses on allowing the public to easily FIND competitive funding opportunities and then APPLY for grant funding electronically via Grants.gov. In FY2004, HUD posted all of its funding opportunities, with the exception of Continuum of Care, on [http://www.grants.gov/applicants/find\\_grant\\_opportunities.jsp](http://www.grants.gov/applicants/find_grant_opportunities.jsp) and has continued to do so through FY2008. In addition, Grants.gov is working with federal agencies to begin the process of accepting mandatory and formula grant program plans and application submissions online via Grants.gov. Applicants for HUD's formula and competitive programs are urged to become familiar with the Grants.gov website, registration procedures, and electronic submissions so that, as the website is expanded, you will be registered and familiar with the find-and-apply functionality. The Grants.gov Internet address for Finding Grant Opportunities is [http://www.grants.gov/applicants/find\\_grant\\_opportunities.jsp](http://www.grants.gov/applicants/find_grant_opportunities.jsp). The Grants.gov Internet address for Applying for Grant Opportunities is [http://www.grants.gov/applicants/apply\\_for\\_grants.jsp](http://www.grants.gov/applicants/apply_for_grants.jsp).

*C. HUD-IRS Memorandum of Agreement*

HUD and the IRS have entered into a memorandum of agreement to provide information to HUD grantees serving low-income, disabled, and elderly persons, as well as persons with limited English proficiency, on the availability of low-income housing tax credits, the earned income tax credit, individual development accounts, child tax credits, and the IRS Voluntary Income Tax Assistance program. HUD is making available on its Web site information on these IRS asset-building resources. HUD encourages you to visit the Web site and disseminate this information to low-income residents in your community and other organizations that serve low-income residents, so that eligible individuals can take advantage of these resources.

*D. Paperwork Reduction Act Statement*

The information collection requirements in this notice have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a valid OMB control number. Each program NOFA will identify its applicable OMB control number.

*E. Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made for this notice, in accordance with HUD regulations at 24 CFR part 50 that implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is

available for public inspection between 8 a.m. and 5 p.m. eastern time, Monday through Friday, except federal holidays, in the Office of General Counsel, Regulations Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500.

#### *F. Executive Orders and Congressional Intent*

##### 1. Executive Order 13132, Federalism

Executive Order 13132 prohibits, to the extent practicable and permitted by law, an agency from promulgating policies that have federalism implications and either impose substantial direct compliance costs on state and local governments and are not required by statute, or preempt state law, unless the relevant requirements of Section 6 of the executive order are met. This notice does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the executive order.

##### 2. American-Made Products

Sections 708 and 709 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, and Independent Agencies Appropriations Act, 2006 (Public Law 109-115; approved Nov. 30, 2005), states that, to the greatest extent practicable, all equipment and products purchased with funds made available should be made in the United States.

##### 3. Eminent Domain

In accordance with Division K, Title IV (General Provisions), section 411 of the Consolidated Appropriations Act, 2008 (Pub. L. 110-161, approved December 26, 2007), no funds made available in FY2008 may be used to support any federal, state, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use. This limitation also applied to FY2007 appropriated funds.

For purposes of this provision, public use shall not be construed to include economic development that primarily benefits private entities.

Further, any use of funds for mass transit, railroad, airport, seaport, or highway projects, as well as utility projects which benefit or serve the general public (including energy-related, communication-related, water-

related, and wastewater-related infrastructure), other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfields, as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107-118), shall be considered a public use for purposes of eminent domain.

#### *G. Public Access, Documentation, and Disclosure*

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) (42 U.S.C. 3545) and the regulations codified at 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published a notice that also provides information on the implementation of section 102 (57 FR 1942). The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under individual NOFAs published as part of HUD's SuperNOFA or thereafter, as described below.

##### 1. Documentation, Public Access, and Disclosure Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to its FY2008 NOFAs, whether published in the 2008 SuperNOFA or in NOFAs published thereafter, are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 15).

##### 2. Form HUD-2880, "Applicant/Recipient Disclosure/Update Report" ("HUD Applicant Recipient Disclosure Report" on Grants.gov)

HUD will also make available to the public, for 5 years, all applicant

disclosure reports (form HUD-2880) submitted in connection with an FY2008 NOFA. Update reports (also reported on form HUD-2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than 3 years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 5).

##### 3. Publication of Recipients of HUD Funding

HUD's regulations at 24 CFR part 4 provide that HUD will publish a notice in the **Federal Register** to notify the public of all funding decisions made by the Department to provide:

- a. Assistance subject to section 102(a) of the HUD Reform Act; and
- b. Assistance provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) non-competitive basis.

#### *H. Section 103 of the HUD Reform Act*

HUD's regulations implementing section 103 of the HUD Reform Act, codified at 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are prohibited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics-related questions should contact the HUD Ethics Law Division at (202) 708-3815 (this is not a toll-free number). The toll-free TTY number for persons with speech or hearing impairments is (800) 877-8339. HUD employees who have specific program questions should contact the appropriate field office counsel or Headquarters counsel for the program to which the question pertains.

**BILLING CODE 4210-67-P**

## **Appendix A: Programs Expected to Be Included in the FY2008 SuperNOFA**

### **Community Development Technical Assistance (CD-TA)**

#### **HOME TA**

**CFDA No.: 14.239**

**OMB Approval No.: 2506-0166**

#### **CHDO (HOME) TA**

**CFDA No.: 14.239**

**OMB Approval No.: 2506-0166**

#### **McKinney-Vento Homeless Assistance Programs TA**

**CFDA No.: 14.235**

**OMB Approval No.: 2506-0166**

#### **HOPWA TA**

**CFDA No.: 14.241**

**OMB Approval No.: 2506-0133**

#### **CDBG TA**

**CFDA No.: 14.218, .219, .225, and .248**

**OMB Approval No.: 2506-0133**

#### **Capacity Building**

**CFDA No.: 14.252**

**OMB Approval No.: NA (fewer than 10 eligible applicants)**

#### **Indian Community Development Block Grant Program (ICDBG)**

**CFDA No.: 14.862**

**OMB Approval No.: 2577-0191**

#### **Historically Black Colleges and Universities Program (HBCU)**

**CFDA No.: 14.520**

**OMB Approval No.: 2528-0235**

#### **Hispanic-Serving Institutions Assisting Communities Program (HSIAC)**

**CFDA No.: 14.514**

**OMB Approval No.: 2528-0198**

## Appendix A: Programs Expected to Be Included in the FY2008 SuperNOFA

### Alaska Native/Native Hawaiian Institutions Assisting Communities Program

CFDA No.: 14.515

OMB Approval No.: 2528-0206

### Tribal Colleges and Universities Program (TCUP)

CFDA No.: 14.519

OMB Approval No.: 2528-0215

### Early Doctoral Student Research Grant Program (EDSRG)

CFDA No.: 14.517

OMB Approval No.: 2528-0216

### Doctoral Dissertation Research Grant Program (DDRG)

CFDA No.: 14.516

OMB Approval No.: 2528-0213

### Fair Housing Initiatives Program (FHIP)

#### Fair Housing - Private Enforcement Initiative (PEI)

CFDA No.: 14.408

OMB Approval No.: 2529-0033

#### Fair Housing Education and Outreach Initiative (EOI)

CFDA No.: 14.408

OMB Approval No.: 2529-0033

#### Fair Housing - Fair Housing Organizations Initiative (FHOI)

CFDA No.: 14.408

OMB Approval No: 2529-0033

### Housing Counseling

Local Housing Counseling Agencies (LHCA)

National and Regional Intermediaries

State Housing Finance Agencies (SHFA)

Multi-State Organizations (MSOs)

CFDA No: 14.169

OMB Approval No.: 2502-0261

## **Appendix A: Programs Expected to Be Included in the FY2008 SuperNOFA**

**Housing Counseling Training**  
CFDA No.: 14.169  
OMB Approval No.: 2502-0261

### **Lead Hazard (Combined)**

**Lead-Based Paint Hazard Control Grant Program**  
CFDA No.: 14.900  
OMB Approval No.: 2539-0015

**Lead Hazard Reduction Demonstration Grant Program**  
CFDA No.: 14.905  
OMB Approval No.: 2539-0015

**Operation Lead Elimination Action Program (LEAP)**  
CFDA No.: 14.903  
OMB Approval No.: 2539-0015

### **Technical Studies (Combined)**

**Lead-Technical Studies**  
CFDA No.: 14.902  
OMB Approval No.: 2539-0015

**Healthy Homes Technical Studies**  
CFDA No.: 14.906  
OMB Approval No.: 2539-0015

**Lead Outreach Grant Program**  
CFDA No.: 14.904  
OMB Approval No.: 2539-0015

**Healthy Homes Demonstration Program**  
CFDA No.: 14.901  
OMB Approval No.: 2539-0015

**Housing Choice Voucher Family Self-Sufficiency (FSS) Coordinators**  
CFDA No.: 14.871  
OMB Approval No.: 2577-0178

## **Appendix A: Programs Expected to Be Included in the FY2008 SuperNOFA**

### **Rural Housing & Economic Development (RHED)**

**CFDA No: 14.250**

**OMB Approval No: 2506-0169**

### **ROSS Service Coordinators**

**CFDA No.: 14.870**

**OMB Approval No.: 2577-0229**

### **Public and Indian Housing Family Self-Sufficiency**

**CFDA No.: 14.877**

**OMB Approval No.: 2577-0229**

### **Self-Help Homeownership Opportunity Program (SHOP)**

**CFDA No: 14.247**

**OMB Approval No.: 2506-0157**

### **Housing Opportunities for Person with AIDS (HOPWA)**

**CFDA No.: 14.241**

**OMB Approval No.: 2506-0133**

### **Assisted-Living Conversion Program for Eligible Multifamily Projects**

**CFDA No.: 14.314**

**OMB Approval No.: 2502-0542**

### **Section 202 Supportive Housing for the Elderly**

**CFDA No.: 14.157**

**OMB Approval No.: 2502-0267**

### **Section 811 Supportive Housing for Persons with Disabilities**

**CFDA No.: 14.181**

**OMB Approval No.: 2502-0462**

**Attachment 1 Logic Model Assessment Matrix**

Logic Model Assessment Matrix – Selection of Services/Activities and Outcomes and Projections			
	Excellent	Good	Marginally Satisfactory
Services	Applicant <u>selected</u> services/activities from the drop down list that are consistent with both the NOFA and the Narrative.	Applicant's Narrative identified services/activities consistent with the NOFA, but the drop down list does not contain that service/activity.	Applicant <u>selected</u> services/activities from the drop down list that are inconsistent with the Narrative, or did not select available services/activities from the drop down list that are consistent with the Narrative, or provided Narrative that is inconsistent with the NOFA.
	3 points	2 points	1 point
Outcomes	Applicant selected an outcome from the drop down list that is consistent with both the NOFA and the Narrative.	Applicant's Narrative identified an outcome consistent with the NOFA, but the drop down list does not contain that outcome.	Applicant <u>selected</u> an outcome from the drop down list that is inconsistent with the Narrative, or did not select an available outcome from the drop down list that is consistent with the Narrative.
	3 points	2 points	1 point
Projections	Applicant <u>provided realistic</u> projected numbers that are consistent with the Narrative for <u>all</u> services, activities, and outcomes.	Applicant <u>provided</u> projected numbers for <u>most</u> services, activities, and outcomes, and 50% or more of the projections are both realistic and consistent with the Narrative.	Applicant <u>provided</u> projected numbers for some services, activities, and outcomes, and More than 50% of the projections are not consistent with the Narrative or are not realistic.
	3 points	2 points	1 point
			Unacceptable
			Applicant <u>did not</u> select available services/activities from the drop down list that are consistent with the Narrative, and either the Logic Model is inconsistent with the Narrative or the Narrative is inconsistent with the NOFA.
			0 points
			Applicant <u>did not</u> select an available outcome from the drop down list and either the Logic Model is inconsistent with the Narrative or the Narrative is inconsistent with the NOFA.
			0 points
			Applicant <u>did not</u> provide any projected numbers, or All of the projections are not consistent with the Narrative and they are not realistic.
			0 points

**Logic Model Assessment Matrix**

Logic Model Assessment Matrix – Evaluation Tools			
	Satisfactory	Marginally Satisfactory	Unacceptable
Evaluation Tools	Applicant selected Evaluation Tools that are mostly <u>consistent</u> with the project described in the Logic Model and Narrative.	Applicant selected Evaluation Tools that are mostly <u>inconsistent</u> with either the Logic Model or the Narrative.	Applicant selected Evaluation Tools that are mostly <u>inconsistent</u> with <u>both</u> the Logic Model and Narrative, or <u>both</u> the Logic Model and Narrative are <u>inconsistent</u> with the NOFA.
	1 point	0 point	Deduct 1 point
Logic Model Assessment Matrix – Rating Factor Five Narrative			
Align the criteria in Rating Factor Five to the distribution of points in your evaluation plan that you give to reviewers.			

**Instructions**

A maximum of 10 points are assigned for evaluating and scoring the logic model.

The Logic Model Assessment Matrix identifies the four components that are to be evaluated when scoring the logic model:

- Row – 1 – Services
- Row – 2 – Outcomes
- Row – 3 – Projections
- Row – 4 – Evaluation Tools

There are four possible conditions that describe each component represented by the labels (three conditions for the Evaluation component):

- Excellent
- Good
- Marginally Satisfactory
- Unacceptable

When reviewing and scoring the logic model, HUD reviewers will choose the one statement in each of the four rows (services, outcomes, projections, evaluation tools) that best describes your evaluation of the logic model and add the assigned points to obtain a total score.



# Federal Register

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**Wednesday,  
March 19, 2008**

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**Part III**

## **The President**

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**Proclamation 8226—National Poison  
Prevention Week, 2008**



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**Presidential Documents**

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**Title 3—****Proclamation 8226 of March 14, 2008****The President****National Poison Prevention Week, 2008****By the President of the United States of America****A Proclamation**

Since 1962, National Poison Prevention Week has helped to raise awareness about the dangers of potentially poisonous medicines and household chemicals. During this week, we underscore our commitment to protect our fellow citizens from accidental poisonings and to educate families about the preventive steps that can be taken to ensure the safety of our young people.

More than 2 million poisonings are reported each year across the country. In order to help prevent these poisonings, parents should place household chemicals out of the reach of children, keep items in their original containers, and read the labels and dosages on all products thoroughly before use. Installing carbon monoxide alarms in homes to help monitor air quality can also save lives.

To learn more about the ways to keep children safe and help prevent poisonings, I encourage all Americans to visit the Poison Prevention Week Council website at [poisonprevention.org](http://poisonprevention.org). In case of an emergency, individuals can contact the nearest Poison Control Center 24 hours a day, 7 days a week at 1-800-222-1222. By taking precautions, properly supervising children, and knowing what to do in an emergency, we can protect the health and well-being of more Americans.

To encourage Americans to learn more about the dangers of accidental poisonings and to take appropriate preventive measures, the Congress, by joint resolution approved September 26, 1961, as amended (75 Stat. 681), has authorized and requested the President to issue a proclamation designating the third week of March each year as “National Poison Prevention Week.”

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim March 16 through March 22, 2008, as National Poison Prevention Week. I call upon all Americans to observe this week by participating in appropriate activities and by learning how to prevent poisonings.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of March, 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. 08-1057

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#### TRANSPORTATION DEPARTMENT

##### Federal Motor Carrier Safety Administration

Motor carrier safety standards:

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#### TREASURY DEPARTMENT Internal Revenue Service

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Hybrid retirement plans;  
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Superintendent of Documents,  
U.S. Government Printing  
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(phone, 202-512-1808). The  
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index.html](http://www.gpoaccess.gov/plaws/index.html). Some laws may  
not yet be available.

#### S. 2745/P.L. 110-196

To extend agricultural  
programs beyond March 15,  
2008, to suspend permanent  
price support authorities  
beyond that date, and for  
other purposes. (Mar. 14,  
2008; 122 Stat. 653)

#### S.J. Res. 25/P.L. 110-197

Providing for the appointment  
of John W. McCarter as a  
citizen regent of the Board of  
Regents of the Smithsonian  
Institution. (Mar. 14, 2008; 122  
Stat. 655)

#### Last List March 13, 2008

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