



# Federal Register

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- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

**WHEN:** Tuesday, September 11, 2007  
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 AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 701

RIN 0560-AH71

### Emergency Conservation Program

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule provides the change mandated by the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (the 2007 Emergency Supplemental). The 2007 Emergency Supplemental provided \$16 million for the Emergency Conservation Program (ECP) and required that the Adjusted Gross Income Limitation (AGI) apply to the distribution of the funds.

**EFFECTIVE DATE:** August 16, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Clayton Furukawa, ECP Program Manager, Conservation and Environmental Programs Division, USDA/FSA/CEPD STOP 0513, 1400 Independence Avenue, SW., Washington, DC 20250-0513, telephone 202-690-0571, e-mail: Clayton.Furukawa@wdc.usda.gov.

**SUPPLEMENTARY INFORMATION:**

#### Background

The ECP provides cost-share assistance to farmers and ranchers to rehabilitate farmland damaged by wind erosion, floods, hurricanes, or other natural disasters, and for carrying out emergency water conservation measures during periods of severe drought.

The 2007 Emergency Supplemental (Pub. L. 110-28) appropriated \$16 million for the ECP. The 2007 Emergency Supplemental also required that the Adjusted Gross Income (AGI), 7 U.S.C. 1308-3a, apply to this \$16 million.

This regulation incorporates the AGI provisions into the ECP. This will be the first time the AGI will be applied to the ECP; however, it has been used with other programs administered by FSA.

The use of the AGI limitation is addressed in the regulations in 7 CFR part 1400, subpart G, Average Adjusted Gross Income Limitation (sections 1400.600—1400.603). Section 1400.600 specifies applicability of the AGI limitation. In general, an individual or entity is not eligible for certain program benefits during a crop, program, or fiscal year, if (1) the preceding three-year average of the AGI for the individual or entity exceeds \$2.5 million and (2) less than 75 percent of the average AGI is derived from farming, ranching, or forestry operations. Section 1400.601 specifies the determination of average adjusted gross income. Section 1400.602 specifies the information applicants must provide to comply with the regulations. Section 1400.603 specifies the amount payment will be reduced commensurate with the AGI limitation.

All other aspects of the ECP will continue to operate in the current manner; this change incorporating the AGI limitation will only apply to payment eligibility for the newly-funded \$16 million. Other ECP program funds may be available for which the AGI provision does not apply. Other than the addition of the AGI limitation for the newly funded \$16 million, current ECP regulations remain unchanged.

#### Notice and Comment

Due to the non-discretionary nature of this regulatory change, notice and public comment are impracticable, unnecessary, or contrary to the public interest. The 2007 Emergency Supplemental required that FSA apply the AGI to the ECP for payments under the newly-funded \$16 million. FSA will apply the AGI as it does for other programs it administers; the current AGI regulations will remain unchanged. Further, allowing the rule to be effective upon publication will allow FSA to fully implement the change and more quickly distribute the \$16 million to provide cost-share assistance to farmers and ranchers to rehabilitate farmland damaged by wind erosion, floods, hurricanes, or other natural disasters, and for carrying out emergency water conservation measures during periods of

severe drought. Therefore, a proposed rule is not required and this regulatory change is being issued as a final rule.

#### Executive Order 12866

This rule has been determined to be not significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget.

#### Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act since the FSA is not required to publish a notice of proposed rulemaking for this rule.

#### Environmental Review

FSA has determined that the application of the AGI limitation to distribute certain funds for the Emergency Conservation Program (ECP) does not constitute a *major* Federal action that would significantly affect the human or natural environment. Consistent with the National Environmental Policy Act (NEPA), 40 CFR part 1502.4, major Federal actions requiring the preparation of Environmental Impact Statements, and 7 CFR Part 799: Environmental Quality and Related Environmental Concerns—Compliance with NEPA implementing the regulations of the Council on Environmental Quality, 40 CFR parts 1500-1508, no environmental assessment or environmental impact statement will be prepared for this final rule.

#### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

#### Executive Order 12612

This rule does not have Federalism implications that warrant the preparation of a Federalism Assessment. This rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

#### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This final rule is not retroactive and it does not preempt State law. Before any

judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

#### Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, and tribal government or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### Paperwork Reduction Act

The Office of Management and Budget (OMB) previously approved the information collection requirements of the ECP under OMB control number 0560-0082. This rule will not change those information collection requirements. A separate notice requesting comments was published in the **Federal Register** on July 26, 2007 (72 FR 41051) for the information collection requirements for the collection of AGI information.

#### E-Government Act Compliance

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

#### Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Emergency Conservation Program (ECP)—10.054.

#### List of Subjects in 7 CFR Part 701

Agriculture, Disaster assistance, Environmental protection, Forests and forest products, Grant programs—agriculture, Grant programs—natural resources, Reporting and recordkeeping, Rural areas, Soil conservation, Water resources, Wildlife.

■ Accordingly, amend 7 CFR part 701 as follows:

#### PART 701—EMERGENCY CONSERVATION PROGRAM AND CERTAIN RELATED PROGRAMS PREVIOUSLY ADMINISTERED UNDER THIS PART

■ 1. Revise the authority citation to read as follows:

**Authority:** Pub. L. 95-334, 92 Stat. 420, 16 U.S.C. 2201-2205; Pub. L. 109-148, Division B, sec. 101; and Pub. L. 110-28, secs. 9003-9004.

■ 2. Add new § 701.17 to read as follows:

#### § 701.17 Average Adjusted Gross Income Limitation

To be eligible for payments issued from the \$16 million provided under the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110-28, section 9003), each applicant must meet the provisions of the Adjusted Gross Income Limitations at 7 CFR part 1400 subpart G.

Signed at Washington, DC, on August 9, 2007.

**Glen L. Keppy,**

*Acting Administrator, Farm Service Agency.*

[FR Doc. E7-16175 Filed 8-15-07; 8:45 am]

**BILLING CODE 3410-05-P**

#### NUCLEAR REGULATORY COMMISSION

#### 10 CFR Part 72

RIN 3150-AI21

#### List of Approved Spent Fuel Storage Casks: TN-68 Revision 1

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its spent fuel storage cask regulations by revising the Transnuclear, Inc. TN-68 dry storage cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to Certificate of Compliance (CoC) Number 1027. Amendment No. 1 will modify the CoC by revising several fuel parameters that include increasing fuel burnup to 60 gigawatts-day/metric ton of uranium, increasing total cask decay heat to 30 kilowatts, increasing maximum average fuel enrichment to 4.7 weight percent uranium-235, and decreasing minimum fuel assembly cooling time to 7 years. Amendment No. 1 will also add up to eight damaged fuel assemblies as authorized contents of the cask and reduce the cask spacing on the storage pad.

**DATES:** The final rule is effective October 30, 2007, unless significant adverse comments are received by September 17, 2007. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a

change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number (RIN 3150-AI21) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking web site. Personal information, such as name, address, phone, e-mail address, etc., will not be removed from your submission.

*Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

*E-mail comments to:* [SECY@nrc.gov](mailto:SECY@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking Web site at <http://rulemaking.llnl.gov>. Address questions about our rulemaking Web site to Carol Gallagher (301) 415-5905; e-mail [cag@nrc.gov](mailto:cag@nrc.gov). Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

*Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays [telephone (301) 415-1966].

*Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers at the NRC's Public Document Room (PDR), O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/NRC/ADAMS/index.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov). An electronic copy of the

CoC No. 1027, the revised Technical Specifications (TS), and the preliminary safety evaluation report (SER) for Amendment No. 1 can be found in a package under ADAMS Accession No. ML071170621.

CoC No. 1027, the revised TS, the preliminary SER for Amendment No. 1, and the environmental assessment are available for inspection at the NRC PDR, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail [jmm2@nrc.gov](mailto:jmm2@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail [jmm2@nrc.gov](mailto:jmm2@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWSA), requires that “[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.” Section 133 of the NWSA states, in part, that “[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.”

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72, which added a new Subpart K within 10 CFR part 72, entitled “General License for Storage of Spent Fuel at Power Reactor Sites” (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR part 72, entitled “Approval of Spent Fuel Storage Casks,” which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on

April 28, 2000 (65 FR 24855), that approved the TN-68 cask design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1027.

**Discussion**

On January 14, 2005, and as supplemented on July 15 and November 15, 2005; September 22 and December 8, 2006; and February 22, March 16, and March 23, 2007; the certificate holder, Transnuclear, Inc. (TN), submitted an application to the NRC that requested an amendment to CoC No. 1027. Specifically, TN requested revisions to several fuel parameters of the TN-68 cask design that included increasing fuel burnup to 60 gigawatts-day/metric ton of uranium (GWd/MTU), increasing total cask decay heat to 30 kilowatts (kW), increasing maximum average fuel enrichment to 4.7 weight percent uranium-235, and decreasing minimum fuel assembly cooling time to 7 years. The application also requested adding up to eight damaged fuel assemblies as authorized contents of the cask and reducing the cask spacing on the storage pad. No other changes to the TN-68 dry storage cask system were requested in this application. As documented in the SER, the NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there continues to be reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the TN-68 dry storage cask system listing in 10 CFR 72.214 by adding Amendment No. 1 to CoC No. 1027. The amendment consists of the changes described above as set forth in the revised CoC and TS. The particular TS which are changed are identified in the SER.

The amended TN-68 cask design, when used under the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured. Once this direct final rule becomes effective, persons who hold a general license under 10 CFR 72.210 may load spent nuclear fuel into TN-68 casks that meet the criteria of Amendment No. 1 to CoC No. 1027, in accordance with 10 CFR 72.212.

**Discussion of Amendments by Section**

*Section 72.214 List of Approved Spent Fuel Storage Casks*

Certificate No. 1027 is revised by adding the initial certificate effective

date of May 30, 2000, and the effective date of Amendment No. 1.

**Procedural Background**

This rule is limited to the changes contained in Amendment No. 1 to CoC No. 1027 and does not include other aspects of the TN-68 dry storage cask system. The NRC is using the “direct final rule procedure” to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on October 30, 2007. However, if the NRC receives significant adverse comments on this direct final rule by September 17, 2007, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule’s underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TS.

**Voluntary Consensus Standards**

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113) requires that Federal agencies use technical standards that are developed or adopted by voluntary

consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the TN-68 cask design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that contains generally applicable requirements.

#### Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

#### Plain Language

The Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES**, above.

#### Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has prepared an environmental assessment and, on the basis of this environmental assessment, has made a finding of no significant impact. This rule will amend the CoC for the TN-68 cask design within the

list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The amendment will revise several fuel parameters that include increasing fuel burnup to 60 GWd/MTU, increasing total cask decay heat to 30 kW, increasing maximum average fuel enrichment to 4.7 weight percent uranium-235, and decreasing minimum fuel assembly cooling time to 7 years. The amendment will also add up to eight damaged fuel assemblies as authorized contents of the cask and reduce the cask spacing on the storage pad. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail [jmm2@nrc.gov](mailto:jmm2@nrc.gov).

#### Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150-0132, 10 CFR Part 72.

#### Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

#### Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. On April 28, 2000 (65 FR 24855), the NRC issued an amendment to Part 72 that approved the TN-68 cask design by adding it to the

list of NRC-approved cask designs in 10 CFR 72.214. On January 14, 2005, and as supplemented on July 15 and November 15, 2005; September 22 and December 8, 2006; and February 22, March 16, and March 23, 2007; the certificate holder, TN, submitted an application to the NRC to amend CoC No. 1027 to revise several fuel parameters that included increasing fuel burnup to 60 GWd/MTU, increasing total cask decay heat to 30 kW, increasing maximum average fuel enrichment to 4.7 weight percent uranium-235, and decreasing minimum fuel assembly cooling time to 7 years. The application also requested adding up to eight damaged fuel assemblies as authorized contents of the cask and reducing the cask spacing on the storage pad.

The alternative to this action is to withhold approval of Amendment No. 1 and to require any part 72 general licensee, seeking to load spent fuel into TN-68 casks under Amendment No. 1, to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested Part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of the direct final rule is consistent with previous NRC actions. Further, as documented in the SER and the environmental assessment, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

#### Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and TN. These entities do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

## Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required.

## Congressional Review Act

Under the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

## List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

## PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1027 is revised to read as follows:

### § 72.214 List of approved spent fuel storage casks.

\* \* \* \* \*

Certificate Number: 1027.  
Initial Certificate Effective Date: May 30, 2000.  
Amendment Number 1 Effective Date: October 30, 2007.  
SAR Submitted by: Transnuclear, Inc.  
SAR Title: Final Safety Analysis Report for the TN–68 Dry Storage Cask.  
Docket Number: 72–1027.  
Certificate Expiration Date: May 28, 2020.  
Model Number: TN–68.

\* \* \* \* \*

Dated at Rockville, Maryland, this 31st day of July, 2007.

For the Nuclear Regulatory Commission.

**Martin J. Virgilio,**

*Acting Executive Director for Operations.*

[FR Doc. E7–16134 Filed 8–15–07; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Parts 606, 607, 610, and 640

[Docket No. 2007N–0264]

### Revisions to the Requirements Applicable to Blood, Blood Components and Source Plasma

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

**ACTION:** Direct final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the biologics regulations by removing, revising, or updating specific regulations applicable to blood, blood components and Source Plasma to be more consistent with current practices in the blood industry and to remove

unnecessary or outdated requirements. We are taking this action as part of our continuing effort to reduce the burden of unnecessary regulations on industry and to revise outdated regulations without diminishing public health protection.

Elsewhere in this issue of the **Federal Register**, we are publishing a companion proposed rule under our usual procedures for notice and comment in the event that we receive any significant adverse comments on the direct final rule. If we receive any significant adverse comments that warrant terminating the direct final rule, we will consider such comments on the proposed rule in developing the final rule.

**DATES:** This direct final rule is effective February 19, 2008. Submit written or electronic comments by October 30, 2007. If we receive no significant adverse comments during the specified comment period, we intend to publish a confirmation document on or before the effective date of this direct final rule confirming that the direct final rule will go into effect on February 19, 2008. If we receive any significant adverse comments during the comment period, we intend to withdraw this direct final rule before its effective date by a notice published in the **Federal Register**.

**ADDRESSES:** You may submit comments, identified by Docket No. 2007N–0264, by any of the following methods:  
*Electronic Submissions*  
Submit electronic comments in the following ways:

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

• Agency Web site: <http://www.fda.gov/dockets/comments>. Follow the instructions for submitting comments on the agency Web site.  
*Written Submissions*

Submit written submissions in the following ways:

• FAX: 301–827–6870.  
• Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

*Instructions:* All submissions received must include the agency name and

Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to <http://www.fda.gov/ohrms/dockets/default.htm>, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.fda.gov/ohrms/dockets/default.htm> and insert the docket number(s), found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Stephen M. Ripley, Center for Biologics Evaluation and Research (HF-17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-827-6210.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Direct Final Rulemaking**

In the **Federal Register** of November 21, 1997 (62 FR 62466), FDA described its procedures on when and how the agency will employ direct final rulemaking. We have determined that this rule is appropriate for direct final rulemaking because we believe that it is noncontroversial and we anticipate no significant adverse comments. Consistent with our procedures on direct final rulemaking, FDA is publishing elsewhere in this issue of the **Federal Register** a companion proposed rule on the same subject matter. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event that the direct final rule is withdrawn because of any significant adverse comment. The comment period for the direct final rule runs concurrently with the companion proposed rule. Any comments received in response to the companion proposed rule will be considered as comments regarding the direct final rule.

We are providing a comment period on the direct final rule of 75 days after the date of publication in the **Federal Register**. If we receive any significant adverse comments, we intend to withdraw this direct final rule before its effective date by publication of a notice in the **Federal Register**. A significant adverse comment is defined as a comment that explains why the rule

would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants terminating a direct final rulemaking, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending a regulation change in addition to those in the rule would not be considered a significant adverse comment unless the comment states why the rule would be ineffective without additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of a significant adverse comment.

If any significant adverse comments are received during the comment period, FDA will publish, before the effective date of this direct final rule, a document withdrawing the direct final rule. If we withdraw the direct final rule, any comments received will be applied to the proposed rule and will be considered in developing a final rule using the usual notice-and-comment procedures.

If FDA receives no significant adverse comments during the specified comment period, FDA intends to publish a document, before the effective date of the direct final rule, confirming the effective date.

##### **II. Legal Authority**

FDA is issuing this new rule under the biological products and communicable diseases provisions of the Public Health Service Act (PHS Act)(42 U.S.C. 262-264), and the drugs, devices, and general administrative provisions of the Federal Food, Drug, and Cosmetic Act (the act)(21 U.S.C. 321, 331, 351-353, 355, 360, 360j, 371, and 374). Under these provisions of the PHS Act and the act, we have the authority to issue and enforce regulations designed to ensure that biological products are safe, pure, potent, and properly labeled, and to prevent the introduction, transmission, and spread of communicable disease.

##### **III. Highlights of the Direct Final Rule**

FDA is amending the biologics regulations by removing, revising, or updating specific regulations applicable to blood, blood components, and Source Plasma to be more consistent with current practices in the blood industry and to remove unnecessary or outdated requirements. We are issuing these amendments as a direct final rule because we have concluded that they are noncontroversial and that there is little likelihood that there will be comments opposing the rule. Any comment recommending additional changes to these regulations will not be considered to be a "significant adverse comment" unless the comment demonstrates that the change being made in the direct final rule represents a major departure from current regulations or accepted industry standards, or cannot be implemented without additional amendments to the regulation. Below we identify each of the changes included in this direct final rule.

We are amending 21 CFR 606.3(i) by revising the definition of "processing" to mean any procedure employed after collection and before "or after" compatibility testing of blood. The current regulation states that processing means any procedure employed after collection and before compatibility testing of blood. Because blood components occasionally are further processed after compatibility testing has been performed, we are revising this definition.

We are amending 21 CFR 607.65(f) by removing the words "approved for Medicare reimbursement and" and replacing with the words "that is certified under the Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. 263a) and 42 CFR part 493 or has met equivalent requirements as determined by the Centers for Medicare and Medicaid Services and which are". As a result of the Clinical Laboratory Improvement Amendments of 1988 (CLIA) and the implementing regulations adopted by the Centers for Medicare and Medicaid Services (CMS), the inspection regime relied on in a 1983 Memorandum of Understanding (MOU) between FDA and the Health Care Financing Administration (HCFA), now CMS, will be modified. Under the CLIA program, clinical laboratories must be surveyed by CMS (either directly or through a State survey agency), unless they are located in a CLIA-approved State, or are accredited by a CMS-approved accreditation organization. CLIA regulations apply to clinical laboratories regardless of

whether or not the laboratories seek Medicare participation. FDA is amending this regulation to make it consistent with updates in the CMS regulations.

We are amending 21 CFR 610.53(c) by revising the dating period in the table for Platelets, Red Blood Cells Deglycerolized, and Red Blood Cells Frozen. Although the current recommended dating period will remain unchanged for Platelets and Red Blood Cells Deglycerolized, we are adding that a different dating period could apply for these products if so specified in the directions for use for the blood collecting, processing, and storage system approved for such use by the Director, Center for Biologics Evaluation and Research (CBER). This change will allow for flexible dating periods depending on the type of collecting, processing, and storage system used. In addition, under Red Blood Cells Frozen, we are revising the dating period from 3 years to 10 years, or as specified in the directions for use for the blood collecting, processing, and storage system approved for such use by the Director, CBER. This change will allow for flexible dating periods depending on the type of collecting, processing, and storage system used.

Under § 640.4(h) (21 CFR 640.4(h)), we are revising the temporary storage temperature for blood that is transported from the donor center to the processing laboratory. We are revising the range to between 1 and 10 °C until the blood arrives at the processing laboratory. We are making this revision to be consistent with 21 CFR 600.15 which allows for shipping temperatures of Whole Blood to be from 1 to 10 °C, and for consistency with current industry practice. In addition, we are revising the applicability of this requirement to Whole Blood unless it is to be further processed into another component, such as Platelets or Red Blood Cells Leukocytes Reduced. The current regulation applies only to Whole Blood unless the blood is to be used as a source for Platelets. This change will clarify that processing Whole Blood into other components, in addition to Platelets, is acceptable. For Whole Blood that is to be processed into another component, we are revising this regulation to state that the blood must be stored in an environment maintained at a temperature range that is specified for that component in the directions for use for the blood collecting, processing, and storage system approved for such use by the Director, CBER. We are also amending the term donor "clinic" to donor "center" for consistency with § 640.4(b) and current terminology.

We are removing and reserving § 640.21(b) (21 CFR 640.21(b)) because this provision is obsolete, as well as removing the reference to plasmapheresis in 21 CFR 640.20(b). Improvements in technology now allow establishments to collect Platelets by automated methods eliminating the need for the collection of platelets by manual plasmapheresis. Currently, establishments may collect Platelets by automated platelet-specific apheresis collection procedures. We are amending § 640.21(c) by adding that plateletpheresis donors must meet the criteria for suitability as prescribed in 21 CFR 640.3 and 640.63(c)(6), or as described in an approved biologics license application (BLA) or an approved supplement to a BLA, and that informed consent must be obtained as prescribed in 21 CFR 640.61. This revision will clarify that registered facilities must follow the suitability requirements for plateletpheresis donors.

We are removing and reserving § 640.22(b) (21 CFR 640.22(b)) because this regulation is obsolete. As previously mentioned, improvements in technology now allow establishments to collect Platelets by automated methods, eliminating the need for the collection of platelets by manual plasmapheresis. Currently, establishments may collect Platelets by automated platelet-specific apheresis collection procedures. We are amending § 640.22(c) by adding that if plateletpheresis is used, the procedure for collection must be as prescribed in 21 CFR 640.62 - *Medical supervision*; 21 CFR 640.64 - *Collection of blood for Source Plasma*; and 21 CFR 640.65 - *Plasmapheresis*, or as described in an approved BLA or an approved supplement to a BLA. This revision will clarify that registered facilities must follow the collection of source material requirements for plateletpheresis donors.

We are amending 21 CFR 640.24(a) to allow Platelets to be pooled under certain circumstances. That is, Platelets may be pooled if such processing is specified in the directions for use for the blood collecting, processing, and storage system approved for such use by the Director, CBER. We are amending the regulation to provide flexibility depending on the type of collecting, processing, and storage system used.

We are amending 21 CFR 640.25(b)(2) by revising the pH level from "6.0" to "6.2" for consistency with current industry practice. Studies have shown that a lower pH may adversely affect platelet function (Refs. 1 and 2).

We are amending 21 CFR 640.30(a) by revising the term "product," to

"component," for consistency with current terminology of the proper name. We are also adding an alternative definition of Plasma, namely, "The fluid portion of human blood intended for intravenous use which is prepared by apheresis methods as specified in the directions for use for the blood collecting, processing, and storage system including closed and open systems." We are making this change because Plasma is now collected by other methods, such as apheresis collection, in addition to being collected as a byproduct of Whole Blood collection.

We are amending 21 CFR 640.32(a) to add that a different storage temperature may be used for Whole Blood intended for further manufacturing into Plasma, Fresh Frozen Plasma, or Liquid Plasma. Any different storage temperature would be specified in the directions for use for the blood collecting, processing, and storage system. This change will allow for flexible storage temperatures depending on the particular type of system used.

We are amending 21 CFR 640.34(b) by adding the phrase "or collected by an apheresis procedure" in the second sentence to clarify that this section also applies to plasma collected by apheresis procedures. We require that fresh frozen plasma using the apheresis procedure also be prepared from blood collected by a single uninterrupted venipuncture with minimal damage to, and minimal manipulation of, the donor's tissue.

We are amending § 640.64(b) (21 CFR 640.64(b)) by removing the second sentence that states, "The amount of anticoagulant required for the quantity of blood to be collected shall be in the blood container when it is sterilized." This sentence is being removed because of technological advances. Now, the anticoagulant does not always have to be in the collection set. The anticoagulant can be connected by a "sterile docking" procedure or attached separately, as is the case with automated apheresis collection. We are also amending § 640.64(c) by removing the specific anticoagulant solution formulas and indicating that the anticoagulant solutions must be compounded and used according to a formula approved by the Director, CBER. We have determined that it is unnecessary to provide specific formulae for anticoagulant solutions in the regulations, and that manufacturers should be able to use any anticoagulant approved by FDA for such use by the manufacturer.

We have also revised the previous regulations, where applicable, by using "must" or "is" instead of "shall",

depending on the circumstances. We have made these revisions for plain language purposes. These editorial changes are for clarity only and do not change the substance of the requirements. We will continue to make these changes in other applicable regulations as they are revised in future rulemakings. In addition, we will continue to make the change from "product" to "component" in other applicable regulations as they are revised in future rulemakings.

**IV. Analysis of Impacts**

*A. Review Under Executive Order 12866, the Regulatory Flexibility Act, and the Unfunded Mandates Act of 1995*

FDA has examined the impacts of the direct final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this direct final rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the direct final rule amendments have no compliance costs and do not result in any new requirements, the agency certifies that the direct final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is \$122 million, using the most current (2005) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this direct final rule to result in any 1–year expenditure that would meet or exceed this amount.

*B. Environmental Impact*

The agency has determined, under 21 CFR 25.31(h), that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

*C. Federalism*

FDA has analyzed this direct final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the direct final rule does not contain policies 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. Accordingly, the agency has concluded that the direct final rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

**V. Paperwork Reduction Act of 1995**

This direct final rule contains no collections of information. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

**VI. Request for Comments**

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

**VII. References**

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Scott Murphy, "Platelet Storage for Transfusion," *Seminars in Hematology*, 22(3): 165–177, July 1985.
2. L. Dumont and T. VandenBroeke, "Seven-Day Storage of Apheresis Platelets Report of an In Vitro Study," 43: 143–150, *Transfusion*, February 2003.

**List of Subjects**

*21 CFR Part 606*

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

*21 CFR Part 607*

Blood.

*21 CFR Part 610*

Biologics, Labeling, Reporting and recordkeeping requirements.

*21 CFR Part 640*

Blood, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated by the Commissioner of Food and Drugs, 21 CFR parts 606, 607, 610, and 640 are amended as follows:

**PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS**

■ 1. The authority citation for 21 CFR part 606 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

■ 2. Section 606.3 is amended by revising paragraph (i) to read as follows:

**§ 606.3 Definitions.**

\* \* \* \* \*

(i) *Processing* means any procedure employed after collection, and before or after compatibility testing of blood, and includes the identification of a unit of donor blood, the preparation of components from such unit of donor blood, serological testing, labeling and associated recordkeeping.

\* \* \* \* \*

**PART 607—ESTABLISHMENT REGISTRATION AND PRODUCT LISTING FOR MANUFACTURERS OF HUMAN BLOOD AND BLOOD PRODUCTS**

■ 3. The authority citation for 21 CFR part 607 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 355, 360, 371, 374, 381, 393; 42 U.S.C. 262, 264, 271.

■ 4. Section 607.65 is amended by revising the first sentence in paragraph (f) to read as follows:

**§ 607.65 Exemptions for blood product establishments.**

\* \* \* \* \*

(f) Transfusion services which are a part of a facility that is certified under the Clinical Laboratory Improvement

Amendments of 1988 (42 U.S.C. 263a) and 42 CFR part 493 or has met equivalent requirements as determined by the Centers for Medicare and Medicaid Services and which are engaged in the compatibility testing and transfusion of blood and blood components, but which neither routinely collect nor process blood and blood components.\* \* \*

**PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS**

■ 5. The authority citation for 21 CFR part 610 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372, 374, 381; 42 U.S.C. 216, 262, 263, 263a, 264.

■ 6. Section 610.53 is amended in paragraph (c) in the table by revising the entries for Platelets, Red Blood Cells Deglycerolized, and Red Blood Cells Frozen to read as follows:

**§ 610.53 Dating periods for licensed biological products.**

\* \* \* \* \*

(c) \* \* \*

A	B	C	D
Product	Manufacturer's storage period 1 to 5 °C (unless otherwise stated).	Manufacturer's storage period 0 °C or colder (unless otherwise stated).	Dating period after leaving manufacturer's storage when stored at 2 to 8 °C (unless otherwise stated)
*	*	*	*
Platelets	Not applicable .....	do .....	72 hours from time of collection of source blood, provided labeling recommends storage at 20 to 24°C or between 1 and 6°C, or as specified in the directions for use for the blood collecting, processing, and storage system approved for such use by the Director, Center for Biologics Evaluation and Research (CBER).
*	*	*	*
Red Blood Cells Deglycerolized	do .....	do .....	24 hours after removal from storage at 65°C or colder, provided labeling recommends storage between 1 and 6°C, or as specified in the directions for use for the blood collecting, processing, and storage system approved for such use by the Director, CBER.
Red Blood Cells Frozen	do .....	do .....	10 years from date of collection of source blood, provided labeling recommends storage at 65°C or colder, or as specified in the directions for use for the blood collecting, processing, and storage system approved for such use by the Director, CBER.

\* \* \* \* \*

**PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS**

■ 7. The authority citation for 21 CFR part 640 continues to read as follows:

**Authority:** 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

■ 8. Section 640.4 is amended by revising paragraph (h) to read as follows:

**§ 640.4 Collection of the blood.**

\* \* \* \* \*

(h) *Storage.* Whole Blood must be placed in storage at a temperature between 1 and 6°C immediately after collection unless the blood is to be further processed into another component or the blood must be transported from the donor center to the processing laboratory. If transported, the blood must be placed in temporary storage having sufficient refrigeration capacity to cool the blood continuously at a temperature range between 1 and 10°C until arrival at the processing laboratory. At the processing laboratory,

the blood must be stored at a temperature between 1 and 6°C. Blood from which a component is to be prepared must be held in an environment maintained at a temperature range specified for that component in the directions for use for the blood collecting, processing, and storage system approved for such use by the Director, CBER.

■ 9. Section 640.20 is amended by revising paragraph (b) to read as follows:

**§ 640.20 Platelets.**

\* \* \* \* \*

(b) *Source.* The source material for Platelets is plasma which may be obtained by whole blood collection or by plateletpheresis.

■ 10. Section 640.21 is amended by removing and reserving paragraph (b) and revising paragraph (c) to read as follows:

**§ 640.21 Suitability of donors.**

\* \* \* \* \*

(b) [Reserved]

(c) Plateletpheresis donors must meet the criteria for suitability as prescribed in §§ 640.3 and 640.63(c)(6) or as described in an approved biologics

license application (BLA) or an approved supplement to a BLA. Informed consent must be obtained as prescribed in § 640.61.

■ 11. Section 640.22 is amended by removing and reserving paragraph (b) and revising paragraph (c) to read as follows:

**§ 640.22 Collection of source material.**

\* \* \* \* \*

(b) [Reserved]

(c) If plateletpheresis is used, the procedure for collection must be as prescribed in §§ 640.62, 640.64 (except paragraph (c)), and 640.65, or as described in an approved biologics license application (BLA) or an approved supplement to a BLA.

\* \* \* \* \*

■ 12. Section 640.24 is amended by revising paragraph (a) to read as follows:

**§ 640.24 Processing.**

(a) Separation of plasma and platelets and resuspension of the platelets must be in a closed system. Platelets must not be pooled during processing unless the platelets are pooled as specified in the directions for use for the blood collecting, processing, and storage

system approved for such use by the Director, Center for Biologics Evaluation and Research.

\* \* \* \* \*

§ 640.25 [Amended]

■ 13. Section 640.25 is amended in paragraph (b)(2) by removing "6.0" and adding in its place "6.2".

■ 14. Section 640.30 is amended by revising paragraph (a) to read as follows:

§ 640.30 Plasma.

(a) Proper name and definition. The proper name of this component is Plasma. The component is defined as:

(1) The fluid portion of one unit of human blood intended for intravenous use which is collected in a closed system, stabilized against clotting, and separated from the red cells; or

(2) The fluid portion of human blood intended for intravenous use which is prepared by apheresis methods as specified in the directions for use for the blood collecting, processing, and storage system including closed and open systems.

\* \* \* \* \*

■ 15. Section 640.32 is amended by revising paragraph (a) to read as follows:

§ 640.32 Collection of source material.

(a) Whole Blood must be collected, transported, and stored as prescribed in § 640.4. When whole blood is intended for Plasma, Fresh Frozen Plasma, and Liquid Plasma, until the plasma is removed, the whole blood must be maintained at a temperature between 1 and 6 °C or as specified in the directions for use for the blood collecting, processing, and storage system approved for such use by the Director, Center for Biologics Evaluations and Research. Whole blood intended for Platelet Rich Plasma must be maintained as prescribed in § 640.24 until the plasma is removed. The red blood cells must be placed in storage at a temperature between 1 and 6 °C immediately after the plasma is separated.

\* \* \* \* \*

■ 16. Section 640.34 is amended by revising the second sentence in paragraph (b) to read as follows:

§ 640.34 Processing.

\* \* \* \* \*

(b) Fresh Frozen Plasma. \* \* \* The plasma must be separated from the red blood cells or collected by an apheresis procedure, and placed in a freezer within 8 hours or within the timeframe specified in the directions for use for the

blood collecting, processing, and storage system, and stored at -18 °C or colder.

\* \* \* \* \*

■ 17. Section 640.64 is amended by revising paragraphs (b) and (c) to read as follows:

§ 640.64 Collection of blood for source plasma.

\* \* \* \* \*

(b) Blood containers. Blood containers and donor sets must be pyrogen-free, sterile, and identified by lot number.

(c) The anticoagulant solution. The anticoagulant solution must be sterile and pyrogen-free. Anticoagulant solutions must be compounded and used according to a formula that has been approved for the applicant by the Director, Center for Biologics Evaluation and Research.

\* \* \* \* \*

Dated: July 23, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7-15943 Filed 8-15-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF STATE

22 CFR Parts 22 and 51

[Public Notice: 5888]

RIN 1400-AC39

Passport Procedures—Amendment to Expedited Passport Processing Regulation

AGENCY: Department of State.

ACTION: Interim final rule.

SUMMARY: This interim final rule changes the definition of "expedited passport processing" from the 3-business day period to a number of business days as may be published from time to time on the Department's Web site, http://www.travel.state.gov. This change is meant to ensure that the Department can continue to offer this service consistent with its regulations, despite increases in demand for it. It is also meant to ensure that the public can easily determine the current standards for expedited passport processing. Further, this interim final rule makes a conforming amendment to the Schedule of Fees for Consular Services.

DATES: Effective date: This interim final rule becomes effective August 16, 2007.

Comment date: The Department of State will accept written comments from interested persons up to October 15, 2007.

ADDRESSES: Interested parties may submit comments at any time by any of the following methods:

• Mail (paper, disk, or CD-ROM submissions): Comments by mail are to be addressed to the Office of Legal Affairs and Law Enforcement, U.S. Department of State, 2100 Pennsylvania Ave., NW., Suite 300, Washington, DC 20037.

• Internet: Comments by Internet are to be sent to http://www.regulations.gov. This notice can also be viewed from this Internet address.

• Electronically: You may submit electronic comments to ExpediteRuleComments@state.gov. You must include the RIN in the subject line of your message. Attachments must be in Microsoft Word.

Instructions: All submissions must include the agency name and docket number. All comments will be posted without change to http://www.regulations.gov, including any personal information sent with each comment.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information regarding this regulatory amendment should be directed to Susan M. Bozinko, Bureau of Consular Affairs, Passport Services, Division of Legal Affairs, U.S. Department of State, Washington, DC 20037, who may be reached at 202-663-2491 or e-mailed at BozinkoSM@state.gov.

SUPPLEMENTARY INFORMATION: Section 7209 of the Intelligence Reform and Terrorism Prevention Act (IRTPA), enacted on December 17, 2004, requires the Secretary of Homeland Security, in consultation with the Secretary of State, to develop expeditiously a plan to require most U.S. citizens and certain other categories of individuals to present a passport or other documentation of identity and citizenship deemed sufficient by the Secretary of Homeland Security when entering the United States.

The Department of State's Office of Passport Services (Passport Services) began planning for increased passport demand even before Congress passed IRTPA. It planned for a sharp increase in passport applications and anticipated the need for increased staff to handle the demand. Recognizing the uncertainty of passport demand and the need for reliable information to guide its planning efforts, Passport Services contracted for a passport demand study in 2005, and used the data from this study to initiate a program of resource upgrades for meeting demand.

Beginning in February 2007, it became apparent that passport demand

was growing faster than the study projected. While the demand study anticipated a sharp increase in applications, it did not fully anticipate the degree and speed with which the American people would comply with Western Hemisphere Travel Initiative (WHTI) guidelines. Therefore, Passport Services has implemented additional short-term and more long-term measures to attempt to address the increase in passport demand and provide Americans with passports in a timely and secure manner.

Despite these efforts, the surge in passport applications has led to increases in processing times, and concurrent increases in requests from the public for expedited passport processing. 22 CFR 51.66(b) currently sets a 3-business-day standard for processing expedited passport applications, commencing when the application reaches a Passport Agency or, if the application is already with a Passport Agency commencing when the request for expedited processing is approved. This standard was set by the Department in 1994, (59 FR 48998 (Sep. 26, 1994)), to allow Passport Services to provide expedited services to applicants with urgent departures, and to recover the costs of providing such service. In order to allow Passport Services the flexibility to meet the surge in demand for expedited processing, and to continue to offer this service to the public consistent with its regulations, Passport Services is revising this standard.

Under the new standard, the public will be notified on the Department's Web site, <http://www.travel.state.gov>, of the number of business days in which the Department is completing expedited processing. This will allow the Department flexibility to alert the public without delay of the current processing time for expedited requests. The public benefits from this change by having accurate notice of the service that will be provided to them and from having the service available from the Department. We believe this will allow the public to continue to consider using expedited processing to self-select urgent cases.

We are also amending the Schedule of Fees for Consular Services to reflect this change in the expedited passport processing rule.

### Regulatory Findings

#### *Administrative Procedure Act*

The Department is publishing this rule as an interim final rule, with a 60-

day provision for post-promulgation public comments, based on the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Publishing the rule this way will allow the Department to make the rule effective at the earliest opportunity, ensuring that Passport Services may continue to offer this service to the public without interruption and consistent with its regulations. The public benefits from having the service available because it allows persons wishing to obtain a passport for urgent travel or other reasons to have their passport applications processed on an expedited basis. Therefore, allowing a comment period followed by a publication of the final rule with a further 30 days before its effective date is not practicable or in the public interest. Comments received before the end of the comment period will be addressed in a final rule.

#### *Regulatory Flexibility Act*

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and, by approving it, certifies that this rule is not expected to have a significant economic impact on a substantial number of small entities because only individuals can apply for passports.

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

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### *Small Business Regulatory Enforcement Fairness Act of 1996*

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

#### *Executive Order 12866*

OMB considers this rule to be a "significant regulatory action" under

Executive Order 12866, section 3(f). Accordingly, this rule has been submitted to OMB for review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations, in conjunction with a domestic agency, that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory and philosophy and principles set forth in Executive Order 12866.

#### *Executive Order 13132*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

#### *Paperwork Reduction Act*

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

### List of Subjects in 22 CFR Parts 22 and 51

Passports and Visas.

■ Accordingly, for the reasons set forth above, Title 22, parts 22 and 51 are amended as follows:

### PART 22—SCHEDULE OF FEES FOR CONSULAR SERVICES—DEPARTMENT OF STATE AND FOREIGN SERVICES

■ 1. The authority citation for part 22 continues to read as follows:

**Authority:** 8 U.S.C. 1153 note, 1351, 1351 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 2504(a), 4201, 4206, 4215, 4219; 31 U.S.C. 9701; Pub. L. 105–277, 112 Stat. 2681 *et seq.*; Pub. L. 108–447, 118 Stat. 2809 *et seq.*; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

■ 2. Section 22.1 is amended by revising entry 3 of the table to read as follows:

#### § 22.1 Schedule of Fees.

\* \* \* \* \*

SCHEDULE OF FEES FOR CONSULAR SERVICES

Item No.	Fee
<b>Passport and Citizenship Services</b>	
3. Expedited Service: Passport processing within expedited processing period published on the Department's Web site (22 CFR 51.66(b)) or in-person service at a U.S. Passport Agency (not applicable abroad) .....	\$60

**PART 51—PASSPORTS**

■ 4. The authority citation for part 51 continues to read as follows:

**Authority:** 22 U.S.C. 211a, 213, 2651a, 2671(d)(3), 2714, and 3926; 31 U.S.C. 9701; E.O. 11295, 3 CFR, 1966–1970 Comp. p. 570; Sec. 236 Pub. L. 106–113, 113 stat. 1501A–430; 18 U.S.C. 1621(a)(2); 42 U.S.C. 652, as amended by Sec. 370 Pub. L. 104–193 and Sec. 7303 Pub. L. 109–171.

■ 5. Section 51.66(b) is revised to read as follows:

**§ 51.66 Expedited passport processing.**

(b) Expedited passport processing shall mean completing processing within the number of business days published on the Department's Web site, <http://www.travel.state.gov>, commencing when the application reaches a Passport Agency or, if the application is already with a Passport Agency commencing when the request for expedited processing is approved. The processing will be considered completed when the passport is ready to be picked up by the applicant or is mailed to the applicant.

Dated: August 13, 2007.

**Maura Harty,**

*Assistant Secretary, Consular Affairs, Department of State.*

[FR Doc. E7–16173 Filed 8–15–07; 8:45 am]

**BILLING CODE 4710–06–P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[TD 9335]

**RIN 1545–BG19**

**Disclosure Requirements With Respect to Prohibited Tax Shelter Transactions; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains correction to temporary regulations (TD 9335) that were published in the **Federal Register** on Friday, July 6, 2007 (72 FR 36869) under section 6033(a)(2) of the Internal Revenue Code that provide rules regarding the form, manner and timing of disclosure obligations with respect to prohibited tax shelter transactions to which tax-exempt entities are parties.

**DATES:** The correction is effective August 16, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Galina Kolomietz, (202) 622–6070, or Michael Blumenfeld, (202) 622–1124 (not toll-free numbers). For questions specifically relating to qualified pension plans, individual retirement accounts, and similar tax-favored savings arrangements, contact Dana Barry, (202) 622–6060 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The temporary regulations that are the subject of this correction are under section 6033 of the Internal Revenue Code.

**Need for Correction**

As published, temporary regulations (TD 9335) contain an error that may prove to be misleading and is in need of clarification.

**List of Subject in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Correction of Publication**

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

**PART 1—INCOME TAXES**

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** Section 1.6033–5T is amended by revising paragraph (e)(1)(i) to read as follows:

**§ 1.6033–5T Disclosure by tax-exempt entities that are parties to certain reportable transactions (temporary).**

(e) \* \* \*  
(1) \* \* \*

(i) *In general.* The disclosure required by this section shall be filed on or before May 15 of the calendar year following the close of the calendar year during which the tax-exempt entity entered into the prohibited tax shelter transaction.

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. E7–16073 Filed 8–15–07; 8:45 am]

**BILLING CODE 4830–01–P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[TD 9335]

**RIN 1545–BG19**

**Disclosure Requirements With Respect to Prohibited Tax Shelter Transactions; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to temporary regulations.

**SUMMARY:** This document contains correction to temporary regulations (TD 9335) that were published in the **Federal Register** on Friday, July 6, 2007 (72 FR 36869) under section 6033(a)(2) of the Internal Revenue Code that provide rules regarding the form, manner and timing of disclosure obligations with respect to prohibited tax shelter transactions to which tax-exempt entities are parties.

**DATES:** The correction is effective August 16, 2007.

**FOR FURTHER INFORMATION CONTACT:** Galina Kolomietz, (202) 622–6070, or

Michael Blumenfeld, (202) 622-1124 (not toll-free numbers). For questions specifically relating to qualified pension plans, individual retirement accounts, and similar tax-favored savings arrangements, contact Dana Barry, (202) 622-6060 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The temporary regulations that are the subject of this correction are under section 6033 of the Internal Revenue Code.

**Need for Correction**

As published, temporary regulations (TD 9335) contain an error that may prove to be misleading and is in need of clarification.

**Correction of Publication**

Accordingly, the publication of the temporary regulations (TD 9335), which was the subject of FR Doc. E7-12903, is corrected as follows:

On page 36870, column 1, first paragraph of the column, in the preamble, under the paragraph heading "Background", last line of the paragraph, the language "4965 tax. See § 601.601(d)(2)(ii)(b)." is corrected to read "4965 tax. See § 601.601(d)(2)(ii)(b) of this chapter."

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 301**

[TD 9356]

**RIN 1545-BE43**

**Disregarded Entities; Employment and Excise Taxes**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations under which qualified subchapter S subsidiaries and single-owner eligible entities that currently are disregarded as entities separate from their owners for Federal tax purposes will be treated as separate entities for employment tax and related reporting requirement purposes. This document also contains final regulations that treat such disregarded entities as separate

entities for purposes of certain excise taxes reported on Forms 720, "Quarterly Federal Excise Tax Return;" 730, "Monthly Tax Return for Wagers;" 2290, "Heavy Highway Vehicle Use Tax Return;" and 11-C, "Occupation Tax and Registration Return for Wagering;" excise tax refunds or payments claimed on Form 8849, "Claim for Refund of Excise Taxes;" and excise tax registrations on Form 637, "Application for Registration (For Certain Excise Tax Activities)." These regulations affect disregarded entities and the owners and employees of disregarded entities with respect to the payment and reporting of Federal employment taxes and the reporting of wage payments. These regulations also affect disregarded entities and their owners in the payment and reporting of certain Federal excise taxes and in registration and claims related to certain Federal excise taxes.

**DATES: Effective Date:** These regulations are effective on August 16, 2007.

**Applicability Dates:** With respect to employment taxes, these regulations apply to wages paid on or after January 1, 2009. With respect to excise taxes, these regulations apply to liabilities imposed and actions first required or permitted in periods beginning on or after January 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** John Richards at (202) 622-6040 (on the employment tax provisions) or Susan Athy at (202) 622-3130 (on the excise tax provisions) (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains amendments to 26 CFR parts 1 and 301. On October 18, 2005, a notice of proposed rulemaking (REG-114371-05) was published in the **Federal Register** (70 FR 60475) proposing to treat qualified subchapter S subsidiaries (QSubs) (under section 1361(b)(3)(B) of the Internal Revenue Code (Code)) and certain other single-owner eligible entities (under §§ 301.7701-1 through 301.7701-3 of the Procedure and Administrative Regulations) that currently are disregarded as entities separate from their owners (disregarded entities) as separate entities for purposes of employment tax and related reporting requirements and for purposes of certain excise taxes reported on Forms 720, 730, 2290, and 11-C; excise tax refunds or payments claimed on Form 8849; and excise tax registrations on Form 637. Comments addressing employment taxes were received from the public in response to the notice of proposed rulemaking. No comments were received regarding the excise tax

provisions of the proposed regulations. No public hearing was requested or held. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision.

**Summary of Comments and Changes Made**

As provided in the proposed regulations, the final regulations provide that a disregarded entity is treated as a separate entity for purposes of employment taxes and related reporting requirements. The final regulations clarify that the separate entity is treated as a corporation for purposes of employment taxes and related reporting requirements. As provided in the proposed regulations, a disregarded entity continues to be disregarded for other Federal tax purposes. The final regulations clarify that an owner of a disregarded entity treated as a sole proprietorship is subject to taxes under the Self-Employment Contributions Act (SECA) (section 1401 et seq.). Additionally, the final regulations retain the example illustrating that an individual owner of a disregarded entity continues to be treated as self-employed for purposes of SECA taxes, and not as an employee of a disregarded entity for employment tax purposes.

Commentators suggested that the proposed regulations not be finalized, and that Notice 99-6 (1999-1 CB 321) be retained. Notice 99-6 provides that employment taxes and other employment tax obligations with respect to employees of a disregarded entity may be satisfied in one of two ways: (1) Calculation, reporting, and payment of all employment tax obligations with respect to employees of the disregarded entity by its owner (as though the employees of the disregarded entity are employed directly by the owner) and under the owner's name and taxpayer identification number; or (2) separate calculation, reporting, and payment of all employment tax obligations by each state law entity with respect to its employees under its own name and taxpayer identification number.

Commentators stated that the regulations would increase administrative burden for taxpayers that currently choose to pay and report employment taxes at the owner level as permitted by Notice 99-6. Commentators also suggested that if the regulations were finalized, complications could arise for states where state employment tax filings are required at the owner level. No written comments were received from any state.

The IRS and the Treasury Department continue to believe that recognizing disregarded entities as employers for Federal employment taxes will improve administration of the Federal tax laws and simplify Federal tax compliance with respect to reporting, payment, and collection of employment taxes. In addition, because most states recognize disregarded entities as employers for reporting, payment, and collection of state employment taxes, these regulations will more closely align Federal and state reporting, payment and collection of employment taxes. Accordingly, this comment is not adopted.

One commentator requested clarification of the applicability of section 3306(c)(8) to services performed for a disregarded entity that is owned by an organization described in section 501(c)(3). Section 3306(c)(8) provides that services performed for an organization described in section 501(c)(3) are excepted from the definition of employment for Federal Unemployment Tax Act (FUTA) purposes. Even though a disregarded entity owned by a section 501(c)(3) organization will be regarded for employment tax purposes, the disregarded entity will continue to be considered an unincorporated branch or division of the section 501(c)(3) organization for other Federal tax purposes. For example, the disregarded entity will be considered an unincorporated branch or division of the section 501(c)(3) organization for purposes of the organization's annual information reporting requirements under section 6033. See Announcement 99-102 (1999-2 CB 545). Because section 3306(c)(8) looks to the employer's status for income tax purposes to establish the basis for exemption from FUTA, a disregarded entity owned solely by a section 501(c)(3) organization is considered exempt from tax under section 501(c)(3) for purposes of section 3306(c)(8). Thus, a disregarded entity owned solely by a section 501(c)(3) organization will not be subject to FUTA tax on wages it pays its employees.

One commentator requested clarification of the applicability of the backup withholding provisions under section 3406 to disregarded entities. Section 3406 requires the payor of certain "reportable payments" to withhold from such payments a tax at the rate of 28 percent. For instance, if the payee where required to do so does not provide a valid taxpayer identification number (TIN) to the payor, the payor must backup withhold on reportable payments to the payee.

Reportable payments are payments that must be reported to a payee on Form 1099, "U.S. Information Return for Calendar Year 1971," such as certain payments for services made in the course of a trade or business. Wage payments are not reportable payments however, and are not subject to backup withholding under section 3406. These regulations do not apply to reportable payments under section 3406. Because the owner of a disregarded entity other than a QSub is required to file and furnish information returns with respect to non-wage reportable payments and that requirement is not affected by these regulations, the disregarded entity is not subject to the backup withholding requirements. Rather, the owner of the disregarded entity is responsible for any backup withholding that is required with respect to reportable payments considered made by the owner. Under section 1361(b)(3)(E) disregarded entities that are QSubs are subject to information reporting requirements on non-wage payments, unless the Secretary provides otherwise. These regulations do not address the information reporting for QSubs.

#### Availability of IRS Documents

The IRS notice and announcement cited in this preamble are published in the Internal Revenue Bulletin or Cumulative Bulletin and are available at <http://www.irs.gov>.

#### Effective Date

The employment tax provisions of these regulations apply to wages paid on or after January 1, 2009. The notice of proposed rulemaking provided that these regulations would become effective with respect to wages paid on January 1 following the year of publication of these final regulations in the **Federal Register**, which would have been January 1, 2008. However, in order to ensure that taxpayers have sufficient time to make any necessary changes to their systems in response to these regulations, the IRS and the Treasury Department have determined that it is appropriate to delay the effective date of these regulations until January 1, 2009.

The IRS and the Treasury Department believe that the considerations that support a January 1, 2009, effective date for the employment tax provisions do not apply to the excise tax provisions. Thus, the excise tax provisions of these regulations apply to liabilities imposed and actions required or permitted in periods beginning on or after January 1, 2008. For periods beginning before that date, the IRS will treat payments made by a disregarded entity, or other actions taken by a disregarded entity, with

respect to the excise taxes affected by these regulations as having been made or taken by the sole owner of that entity. Thus, for such periods, the owner of a disregarded entity will be treated as satisfying the owner's obligations with respect to the excise taxes affected by these regulations, provided that those obligations are satisfied either (1) By the owner itself or (2) by the disregarded entity on behalf of the owner.

#### Effect on Other Documents

Disregarded entities, and the owners of such entities may continue to use the procedures permitted by Notice 99-6 for wages paid prior to January 1, 2009. Notice 99-6 provides that if the owner calculates and pays all employment taxes and satisfies all other employment tax obligations with respect to employees of the disregarded entity under the owner's name and taxpayer identification number (as permitted under method (1) of Notice 99-6) for a return period that begins on or after April 20, 1999, then the owner must continue to use this method unless and until otherwise permitted by the Commissioner. However, Notice 99-6 is modified such that a taxpayer may switch to method (2) of Notice 99-6 with respect to wages paid on or after August 16, 2007 and before January 1, 2009, without seeking permission of the Commissioner. Taxpayers who switch from method (1) to method (2) with respect to wages paid prior to January 1, 2009, may consider wages paid by the owner to employees of the disregarded entity during the calendar year of the switch as having been paid by the disregarded entity for purposes of determining whether wages paid to the disregarded entity's employees have reached the contribution and benefit base as determined under section 230 of the Social Security Act and for purposes of the wage base under section 3306. However, as provided in Notice 99-6, regardless of whether the owner uses method (1) or method (2), the owner is ultimately responsible for employment tax liabilities and other employment tax responsibilities with respect to all wages paid prior to January 1, 2009, to employees of the disregarded entity.

Notice 99-6 is obsolete as of January 1, 2009.

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply

to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### Drafting Information

The principal authors of these regulations are Susan Athy, Office of Associate Chief Counsel (Passthroughs and Special Industries), and John Richards, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

#### List of Subjects

##### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

##### 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 301 are amended as follows:

#### PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** Section 1.34-1 is revised to read as follows:

##### § 1.34-1 Special rule for owners of certain business entities.

Amounts payable under sections 6420, 6421, and 6427 to a business entity that is treated as separate from its owner under § 1.1361-4(a)(8) (relating to certain qualified subchapter S subsidiaries) or § 301.7701-2(c)(2)(v) of this chapter (relating to certain wholly-owned entities) are, for purposes of section 34, treated as payable to the owner of that entity.

##### §§ 1.34-2, 1.34-3, 1.34-4, 1.34-5, and 1.34-6 [Removed]

■ **Par. 3.** Sections 1.34-2, 1.34-3, 1.34-4, 1.34-5, and 1.34-6 are removed.

■ **Par. 4.** Section 1.1361-4 is amended as follows:

■ 1. In paragraph (a)(1) introductory text, the language “Except as otherwise provided in paragraphs (a)(3) and (a)(6)” is removed, and the language “Except as otherwise provided in paragraphs (a)(3), (a)(6), (a)(7), and (a)(8)” is added in its place.

■ 2. Paragraphs (a)(7) and (a)(8) are added.

The additions read as follows:

##### § 1.1361-4 Effect of QSub election.

(a) \* \* \*

(7) *Treatment of QSubs for purposes of employment taxes—(i) In general.* A QSub is treated as a separate corporation for purposes of Subtitle C—Employment Taxes and Collection of Income Tax (Chapters 21, 22, 23, 23A, 24, and 25 of the Internal Revenue Code).

(ii) *Effective/applicability date.* This paragraph (a)(7) applies with respect to wages paid on or after January 1, 2009.

(8) *Treatment of QSubs for purposes of certain excise taxes—(i) In general.* A QSub is treated as a separate corporation for purposes of—

(A) Federal tax liabilities imposed by Chapters 31, 32 (other than section 4181), 33, 34, 35, 36 (other than section 4461), and 38 of the Internal Revenue Code, or any floor stocks tax imposed on articles subject to any of these taxes;

(B) Collection of tax imposed by Chapter 33 of the Internal Revenue Code;

(C) Registration under sections 4101, 4222, and 4412; and

(D) Claims of a credit (other than a credit under section 34), refund, or payment related to a tax described in paragraph (a)(8)(i)(A) of this section or under section 6426 or 6427.

(ii) *Effective/applicability date.* This paragraph (a)(8) applies to liabilities imposed and actions first required or permitted in periods beginning on or after January 1, 2008.

##### § 1.1361-6 [Amended]

■ **Par 5.** Section 1.1361-6 is amended by removing the language “Except as provided in §§ 1.1361-4(a)(3)(iii), 1.1361-4(a)(5)(i), and 1.1361-5(c)(2)” and by adding the language “Except as provided in §§ 1.1361-4(a)(3)(iii), 1.1361-4(a)(5)(i), 1.1361-4(a)(6)(iii), 1.1361-4(a)(7)(ii), 1.1361-4(a)(8)(ii), and 1.1361-5(c)(2)” in its place.

#### PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 6.** The authority citation for part 301 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 7.** Section 301.7701-2 is amended as follows:

■ 1. A sentence is added at the end of paragraph (a).

■ 2. Paragraph (c)(2)(i) is revised.

■ 3. Paragraphs (c)(2)(iv), (c)(2)(v), (e)(5), and (e)(6) are added.

The additions read as follows:

##### § 301.7701-2 Business entities; definitions.

(a) \* \* \* But see paragraphs (c)(2)(iv) and (v) of this section for special employment and excise tax rules that apply to an eligible entity that is otherwise disregarded as an entity separate from its owner.

\* \* \* \* \*

(c) \* \* \*

(2) *Wholly owned entities—(i) In general.* Except as otherwise provided in this paragraph (c), a business entity that has a single owner and is not a corporation under paragraph (b) of this section is disregarded as an entity separate from its owner.

\* \* \* \* \*

(iv) *Special rule for employment tax purposes—(A) In general.* Paragraph (c)(2)(i) of this section (relating to certain wholly owned entities) does not apply to taxes imposed under Subtitle C—Employment Taxes and Collection of Income Tax (Chapters 21, 22, 23, 23A, 24, and 25 of the Internal Revenue Code). Paragraph (c)(2)(i) of this section does apply to taxes imposed under Subtitle A, including Chapter 2—Tax on Self-Employment Income. The owner of an entity that is treated in the same manner as a sole proprietorship under paragraph (a) of this section will be subject to the tax on self-employment income.

(B) *Treatment of entity.* An entity that is otherwise disregarded as an entity separate from its owner but for paragraph (c)(2)(iv)(A) of this section is treated as a corporation with respect to taxes imposed under Subtitle C—Employment Taxes and Collection of Income Tax (Chapters 21, 22, 23, 23A, 24, and 25 of the Internal Revenue Code).

(C) *Example.* The following example illustrates the application of paragraph (c)(2)(iv) of this section:

*Example.* (i) LLC A is an eligible entity owned by individual A and is generally disregarded as an entity separate from its owner for Federal tax purposes. However, LLC A is treated as an entity separate from its owner for purposes of subtitle C of the Internal Revenue Code. LLC A has employees and pays wages as defined in sections 3121(a), 3306(b), and 3401(a).

(ii) LLC A is subject to the provisions of subtitle C of the Internal Revenue Code and related provisions under 26 CFR subchapter C, Employment Taxes and Collection of Income Tax at Source, parts 31 through 39. Accordingly, LLC A is required to perform

such acts as are required of an employer under those provisions of the Internal Revenue Code and regulations thereunder that apply. All provisions of law (including penalties) and the regulations prescribed in pursuance of law applicable to employers in respect of such acts are applicable to LLCAs. Thus, for example, LLCAs are liable for income tax withholding, Federal Insurance Contributions Act (FICA) taxes, and Federal Unemployment Tax Act (FUTA) taxes. See sections 3402 and 3403 (relating to income tax withholding); 3102(b) and 3111 (relating to FICA taxes), and 3301 (relating to FUTA taxes). In addition, LLCAs must file under its name and EIN the applicable Forms in the 94X series, for example, Form 941, "Employer's Quarterly Employment Tax Return," Form 940, "Employer's Annual Federal Unemployment Tax Return;" file with the Social Security Administration and furnish to LLCAs's employees statements on Forms W-2, "Wage and Tax Statement;" and make timely employment tax deposits. See §§ 31.6011(a)-1, 31.6011(a)-3, 31.6051-1, 31.6051-2, and 31.6302-1 of this chapter.

(iii) A is self-employed for purposes of subtitle A, chapter 2, Tax on Self-Employment Income, of the Internal Revenue Code. Thus, A is subject to tax under section 1401 on A's net earnings from self-employment with respect to LLCAs's activities. A is not an employee of LLCAs for purposes of subtitle C of the Internal Revenue Code. Because LLCAs is treated as a sole proprietorship of A for income tax purposes, A is entitled to deduct trade or business expenses paid or incurred with respect to activities carried on through LLCAs, including the employer's share of employment taxes imposed under sections 3111 and 3301, on A's Form 1040, Schedule C, "Profit or Loss for Business (Sole Proprietorship)."

(v) *Special rule for certain excise tax purposes—(A) In general.* Paragraph (c)(2)(i) of this section (relating to certain wholly owned entities) does not apply for purposes of—

(1) Federal tax liabilities imposed by Chapters 31, 32 (other than section 4181), 33, 34, 35, 36 (other than section 4461), and 38 of the Internal Revenue Code, or any floor stocks tax imposed on articles subject to any of these taxes;

(2) Collection of tax imposed by Chapter 33 of the Internal Revenue Code;

(3) Registration under sections 4101, 4222, and 4412; and

(4) Claims of a credit (other than a credit under section 34), refund, or payment related to a tax described in paragraph (c)(2)(v)(A)(1) of this section or under section 6426 or 6427.

(B) *Example.* The following example illustrates the provisions of this paragraph (c)(2)(v):

*Example.* (i) LLCB is an eligible entity that has a single owner, B. LLCB is generally disregarded as an entity separate from its owner. However, under paragraph (c)(2)(v) of this section, LLCB is treated as an entity separate from its owner for certain purposes relating to excise taxes.

(ii) LLCB mines coal from a coal mine located in the United States. Section 4121 of chapter 32 of the Internal Revenue Code imposes a tax on the producer's sale of such coal. Section 48.4121-1(a) of this chapter defines a "producer" generally as the person in whom is vested ownership of the coal under state law immediately after the coal is severed from the ground. LLCB is the person that owns the coal under state law immediately after it is severed from the ground. Under paragraph (c)(2)(v)(A)(1) of this section, LLCB is the producer of the coal and is liable for tax on its sale of such coal under chapter 32 of the Internal Revenue Code. LLCB must report and pay tax on Form 720, "Quarterly Federal Excise Tax Return," under its own name and taxpayer identification number.

(iii) LLCB uses undyed diesel fuel in an earthmover that is not registered or required to be registered for highway use. Such use is an off-highway business use of the fuel. Under section 6427(l), the ultimate purchaser is allowed to claim an income tax credit or payment related to the tax imposed on diesel fuel used in an off-highway business use. Under paragraph (c)(2)(v) of this section, for purposes of the credit or payment allowed under section 6427(l), LLCB is the person that could claim the amount on its Form 720 or on a Form 8849, "Claim for Refund of Excise Taxes." Alternatively, if LLCB did not claim a payment during the time prescribed in section 6427(i)(2) for making a claim under section 6427, § 1.34-1 of this chapter provides that B, the owner of LLCB, could claim the income tax credit allowed under section 34 for the nontaxable use of diesel fuel by LLCB.

\* \* \* \* \*

(e) \* \* \*

(5) Paragraph (c)(2)(iv) of this section applies with respect to wages paid on or after January 1, 2009.

(6) Paragraph (c)(2)(v) of this section applies to liabilities imposed and actions first required or permitted in periods beginning on or after January 1, 2008.

**Kevin M. Brown,**

*Deputy Commissioner for Services and Enforcement.*

Approved: July 25, 2007.

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. E7-16078 Filed 8-15-07; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 53 and 54

[TD 9334]

RIN 1545-BG20

#### Requirement of Return and Time for Filing; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains corrections to final and temporary regulations (TD 9334) that were published in the **Federal Register** on Friday, July 6, 2007 (72 FR 36871) providing guidance relating to the requirement of a return to accompany payment of excise taxes under section 4965 of the Internal Revenue Code and the time for filing that return.

**DATES:** The corrections are effective August 16, 2007.

**FOR FURTHER INFORMATION CONTACT:** Galina Kolomietz, (202) 622-6070, Michael Blumenfeld, (202) 622-1124, or Dana Barry, (202) 622-6060 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

The final and temporary regulations that are the subject of this correction are under section 4965 of the Internal Revenue Code.

##### Need for Correction

As published, final and temporary regulations (TD 9334) contain errors that may prove to be misleading and are in need of clarification.

##### List of Subjects

###### 26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

###### 26 CFR Part 54

Excise Taxes, Pensions, Reporting and recordkeeping requirements.

##### Correction of Publication

■ Accordingly, 26 CFR parts 53 and 54 are corrected by making the following correcting amendments:

#### PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 53 continues to read, in part, as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** Section 53.6071–1T is amended by revising paragraph (h)(2) to read as follows:

**§ 53.6071–1T Time for filing returns (temporary).**

\* \* \* \* \*

(h) \* \* \*

(2) *Expiration date.* Paragraph (g) of this section will expire on July 6, 2010.

**PART 54—PENSION EXCISE TAXES**

■ **Par. 3.** The authority citation for part 54 continues to read, in part, as follows:

*Authority:* 26 U.S.C. 7805 \* \* \*

■ **Par. 4.** Section 54.6011–1T is amended by revising paragraph (d)(2) to read as follows:

**§ 54.6011–1T General requirement of return, statement or list (temporary).**

\* \* \* \* \*

(d) \* \* \*

(2) *Expiration date.* Paragraph (c) of this section will expire on July 6, 2010.

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

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**OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE**

**32 CFR Chapter XVII**

**Freedom of Information Act Regulation**

**AGENCY:** Office of the Director of National Intelligence.

**ACTION:** Final rule.

**SUMMARY:** This final regulation provides the Office of the Director of National Intelligence's rules implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552. The regulation addresses all aspects of FOIA processing, including how and where to submit FOIA requests, fees for record services, procedures for handling business information, requests for expedited processing, and the right to appeal denials of information.

**EFFECTIVE DATE:** August 16, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mr. John F. Hackett, (703) 482–1707.

**SUPPLEMENTARY INFORMATION:** The Office of the Director of National Intelligence (ODNI) was created by the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108–458, 118 Stat. 3638. The ODNI began operations on April 22, 2005, the day after the first Director of National Intelligence took office.

Because the majority of documents held by the ODNI at its inception were previously maintained by the Central Intelligence Agency (CIA) and the ODNI did not have a FOIA staff upon stand-up, the CIA agreed to handle the administrative aspects of the ODNI's FOIA processing. Through this arrangement, the ODNI makes all legal decisions regarding the handling of FOIA requests for ODNI records and the CIA assists with the administrative tasks associated with processing FOIA requests, including the intake and tracking of requests, as well as drafting correspondence to requesters. We are currently working toward having our own FOIA office handle all aspects of ODNI's FOIA processing.

On June 4, 2007, the ODNI submitted a proposed regulation implementing the FOIA for public comment. The ODNI received two submissions with comments on the proposed regulation. The ODNI has reviewed and carefully considered all of the comments that were submitted and has made the following changes to the regulation:

(1) The definitions of educational institution and noncommercial scientific institution have been changed and are in accordance with the definition in the Office of Management and Budget's guidelines, 52 Fed. Reg. 10,012 (Mar. 27, 1987).

(2) We have changed the fee portion of the regulation so that a FOIA request will be considered a commitment to pay up to \$25.00 unless the requester asks for a waiver of fees.

(3) The term "reasonably described record" has been removed from the definitional section of the regulation. A more detailed explanation of the type of information the ODNI needs in order to locate records responsive to a particular request has been added in a separate section.

(4) We have decided to accept FOIA requests electronically and have added the email address to the regulation. Although the FOIA does not require this, it is a growing trend within the federal government and we believe it will provide better customer service to our FOIA requesters.

(5) The expedited processing section and other sections have been clarified.

(6) Certain superfluous words in the definitional section and a paragraph regarding allocation of resources have been removed.

**List of Subjects in 32 CFR Part 1700**

Freedom of information.

■ Therefore, as discussed in the preamble, and under the authority of the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108–

458, 118 Stat. 3638, the Office of the Director of National Intelligence establishes 32 CFR Chapter XVII and adds part 1700 to read as follows:

**Chapter XVII—Office of the Director of National Intelligence**

**PART 1700—PROCEDURES FOR DISCLOSURE OF RECORDS PURSUANT TO THE FREEDOM OF INFORMATION ACT**

Sec.

1700.1 Authority and purpose.

1700.2 Definitions.

1700.3 Contact for general information and requests.

1700.4 Preliminary information.

1700.5 Requirements as to form and content.

1700.6 Fees for records services.

1700.7 Processing of requests for records.

1700.8 Action on the request.

1700.9 Payment of fees, notification of decision, and right of appeal.

1700.10 Procedures for business information.

1700.11 Procedures for information concerning other persons.

1700.12 Requests for expedited processing.

1700.13 Right to appeal and appeal procedures.

1700.14 Action by appeals authority.

*Authority:* 5 U.S.C. 552, 50 U.S.C. 401–442; Pub. L. 108–458, 118 Stat. 3638.

**§ 1700.1 Authority and purpose.**

(a) *Authority.* This Part is issued under the authority of and in order to implement the Freedom of Information Act, as amended, 5 U.S.C. 552; the National Security Act of 1947, as amended, 50 U.S.C. 401–442; and the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108–458, 118 Stat. 3638.

(b) *Purpose in general.* This Part prescribes procedures for:

(1) ODNI administration of the FOIA;

(2) Requesting records pursuant to the FOIA; and

(3) Filing an administrative appeal of an initial adverse decision under the FOIA.

**§ 1700.2 Definitions.**

For purposes of this Part, the following terms have the meanings indicated:

(a) *Days* means calendar days when ODNI is operating and specifically excludes Saturdays, Sundays, and legal public holidays;

(b) *Direct costs* means those expenditures which ODNI actually incurs in the processing of a FOIA request; it does not include overhead factors such as space;

(c) *Pages* means paper copies of standard office size or the dollar value equivalent in other media;

(d) *Reproduction* means generation of a copy of a requested record in a form appropriate for release;

(e) *Review* means all time expended in examining a record to determine whether any portion must be withheld pursuant to law and in effecting any required deletions but excludes personnel hours expended in resolving general legal or policy issues; it also means personnel hours of professional time;

(f) *Search* means all time expended in looking for and retrieving material that may be responsive to a request utilizing available paper and electronic indices and finding aids; it also means personnel hours of professional time or the dollar value equivalent in computer searches;

(g) *Expression of interest* means a written or electronic communication submitted by any person requesting information on or concerning the FOIA program, the availability of documents from ODNI, or both;

(h) *Fees* means those direct costs which may be assessed a requester considering the categories established by the FOIA; requesters should submit information to assist the ODNI in determining the proper fee category and the ODNI may draw reasonable inferences from the identity and activities of the requester in making such determinations; the fee categories include:

(1) *Commercial use request*: A request in which the disclosure sought is primarily in the commercial interest of the requester and which furthers such commercial, trade, income or profit interests;

(2) *Educational institution*: A preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(3) *Noncommercial scientific institution*: An institution that is not operated on a commercial basis, as that term is defined in paragraph (h)(1) of this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made

under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

(4) *Representative of the news media*: An individual actively gathering news for an entity that is organized and operated to publish and broadcast news to the public and pursuant to the entity's news dissemination function and not its commercial interests; the term "news" means information which concerns current events, would be of current interest to the general public, would enhance the public understanding of the operations or activities of the U.S. Government, and is in fact disseminated to a significant element of the public at minimal cost; freelance journalists are included in this definition if they provide sufficient evidence to justify an expectation of publication through such an organization, even though not actually employed by it; a publication contract or prior publication record is relevant to such status;

(5) *All other*: A request from an individual not within paragraphs (h)(1), (2), (3), or (4) of this section;

(i) *Freedom of Information Act*, "FOIA," or "the Act" means the statute as codified at 5 U.S.C. 552;

(j) *ODNI* means the Office of the Director of National Intelligence and its component organizations. It does not include other members of the Intelligence Community as defined in 50 U.S.C. 401a, or other federal entities subsequently designated in accordance with this authority, unless specifically designated as included in this Part or in the notice of a system of records;

(k) *Potential requester* means a person, organization, or other entity who submits an expression of interest.

#### **§ 1700.3 Contact for general information and requests.**

For general information on this Part, to inquire about the FOIA program at ODNI, or to file a FOIA request (or expression of interest), please direct communication in writing to the Office of the Director of National Intelligence, Chief FOIA Officer c/o Director, Information Management Office, Washington, DC 20511 by mail or by facsimile at (703) 482-2144. FOIA requests can also be submitted by electronic mail to [FOIA@dni.gov](mailto:FOIA@dni.gov). For general information or status information on pending cases only, call the ODNI FOIA Customer Service Center at (571) 204-4774.

#### **§ 1700.4 Preliminary information.**

Members of the public shall address all communications to the point of

contact specified in § 1700.3 and clearly delineate the communication as a request under the FOIA. ODNI staff who receive a FOIA request shall expeditiously forward the request to the Director, Information Management Office (IMO). Requests and appeals (as well as referrals and consultations) received from FOIA requesters who owe outstanding fees for information services at this or other federal agencies will not be accepted and action on all pending requests shall be terminated in such circumstances.

#### **§ 1700.5 Requirements as to form and content.**

(a) *Required information*. No particular form is required. A request must reasonably describe the record or records being sought and be submitted in accordance with this regulation. Documents must be described sufficiently to enable a staff member familiar with the subject to locate the documents with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and the subject matter of the record. As a general rule, the more specific you are about the records or type of records that you want, the more likely it will be that the IMO will be able to locate records responsive to your request. The IMO will provide you an opportunity to discuss your request with it so that you may modify your request to meet the requirements of this section. If after having been asked to do so you do not provide the IMO with information sufficient to enable it to locate responsive records your request will be closed.

(b) *Additional information for fee determination*. A requester must provide sufficient personally identifying information to allow staff to determine the appropriate fee category and to contact the requester easily.

#### **§ 1700.6 Fees for records services.**

(a) *In general*. Search, review, and reproduction fees will be charged in accordance with the provisions below relating to schedule, limitations, and category of requester. Applicable fees will be due even if a subsequent search locates no responsive records or some or all of the responsive records must be denied under one or more of the exemptions of the FOIA.

(b) *Fee waiver requests*. Records will be furnished without charge or at a reduced rate when ODNI determines:

(1) As a matter of administrative discretion, the interest of the United States Government would be served, or

(2) It is in the public interest to provide responsive records because the disclosure is likely to contribute significantly to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester.

(c) *Fee waiver appeals.* Denials of requests for fee waivers or reductions may be appealed to the Director of the Intelligence Staff, or his functional equivalent, through the ODNI Chief FOIA Officer. A requester is encouraged to provide any explanation or argument as to how his or her request satisfies the requirements of this regulation and the Act. See § 1700.14 for further details on appeals.

(d) *Time for fee waiver requests and appeals.* Appeals should be resolved prior to the initiation of processing and the incurring of costs. However, fee waiver requests will be accepted at any time prior to an agency decision regarding the request, except when processing has been initiated, in which case the requester must agree to be responsible for costs in the event of an adverse administrative or judicial decision.

(e) *Agreement to pay fees.* If you make a FOIA request, it shall be considered a firm commitment by you to pay all applicable fees chargeable under this regulation, up to and including the amount of \$25.00, unless you ask for a waiver of fees. When making a request,

you may specify a willingness to pay a greater or lesser amount.

(f) *Advance payment.* The ODNI may require an advance payment of up to 100 percent of the estimated fees when projected fees exceed \$250.00, not including charges associated with the first 100 pages of production and two hours of search (when applicable), or when the requester previously failed to pay fees in a timely fashion, for fees of any amount. ODNI will hold in abeyance for 45 days those requests where advance payment has been requested.

(g) *Schedule of fees.—(1) In general.* The schedule of fees for services performed in responding to requests for records is as follows:

**Personnel Search and Review**

Clerical/Technical .....	Quarter hour .....	\$5.00
Professional/Supervisory .....	Quarter hour .....	10.00
Manager/Senior Professional .....	Quarter hour .....	18.00

**Computer Search and Production**

Search (on-line) .....	Flat rate .....	10.00
Search (off-line) .....	Flat rate .....	30.00
Other activity .....	Per minute .....	10.00
Tapes (mainframe cassette) .....	Each .....	9.00
Tapes (mainframe cartridge) .....	Each .....	9.00
Tapes (mainframe reel) .....	Each .....	20.00
Tapes (PC 9mm) .....	Each .....	25.00
Diskette (3.5") .....	Each .....	4.00
CD (bulk recorded) .....	Each .....	10.00
CD (recordable) .....	Each .....	20.00
Telecommunications .....	Per minute .....	.50
Paper (mainframe printer) .....	Per page .....	.10
Paper (PC b&w laser printer) .....	Per page .....	.10
Paper (PC color printer) .....	Per page .....	1.00

**Paper Production**

Photocopy (standard or legal) .....	Per page .....	.10
Microfiche .....	Per frame .....	.20
Pre-printed (if available) .....	Per 100 pages .....	5.00
Published (if available) .....	Per item .....	NTIS

(2) *Application of schedule.* Personnel search time includes time expended in manual paper records searches, indices searches, review of computer search results for relevance, and personal computer system searches. In any event where the actual cost to ODNI of a particular item is less than the above schedule (e.g., a large production run of a document resulting in a cost less than \$5.00 per hundred pages), then the actual lesser cost will be charged.

(3) *Other services.* For all other types of output, production, or reproduction (e.g., photographs, maps, or published reports), ODNI will charge actual cost or amounts authorized by statute. Determinations of actual cost shall include the commercial cost of the media, the personnel time expended in

making the item to be released, and an allocated cost of the equipment used in making the item, or, if the production is effected by a commercial service, then that charge shall be deemed the actual cost for purposes of this regulation.

(h) *Limitations on collection of fees—*  
 (1) *In general.* No fees will be charged if the cost of collecting the fee is equal to or greater than the fee itself. That cost includes the administrative costs to ODNI of billing, receiving, recording, and processing the fee for deposit to the Treasury Department and, as of the date of these regulations, is deemed to be \$10.00.

(i) *Fee categories.* There are four categories of FOIA requesters for fee purposes: Commercial use requesters, educational and non-commercial

scientific institution requesters, representatives of the news media requesters, and all other requesters. The categories are defined in § 1700.2 and applicable fees will be assessed as follows:

(1) Commercial use requesters: Charges which recover the full direct costs of searching for, reviewing, and duplicating responsive records (if any);

(2) Educational and non-commercial scientific institution requesters, and representatives of the news media requesters: Only charges for reproduction beyond the first 100 pages;

(3) All other requesters: Charges which recover the full direct cost of searching for and reproducing responsive records (if any) beyond the first 100 pages of reproduction and the

first two hours of search time which will be furnished without charge.

(j) *Associated requests.* If it appears a requester or a group of requesters acting in concert have requested portions of an apparently unitary request for the purpose of avoiding the assessment of fees, ODNI may aggregate any such requests and charge accordingly. Requests from multiple requesters will not be aggregated without clear evidence. ODNI will not aggregate multiple unrelated requests.

#### § 1700.7 Processing of requests for records.

(a) *In general.* Requests meeting the requirements of § 1700.3 through § 1700.6 shall be accepted as formal requests and processed under the FOIA and this Part. A request will not be considered received until it reaches the IMO. Ordinarily upon its receipt a request will be date-stamped as received. It is this date that establishes when your request is received for administrative purposes, not any earlier date such as the date of the letter or its postmark date. For the quickest possible handling, both the request letter and the envelope should be marked "Freedom of Information Act Request."

(b) *Electronic Reading Room.* ODNI maintains an online FOIA Reading Room on the ODNI Web site which contains the information that the FOIA requires be routinely made available for public inspection and copying as well as other information determined to be of general public interest.

(c) *Confirming the existence of certain documents.* In processing a request, ODNI shall decline to confirm or deny the existence of responsive records whenever the fact of their existence or nonexistence is itself classified under Executive Order 12,958 and its amending orders, reveals intelligence sources and methods protected pursuant to 50 U.S.C. 403-1(i)(1), or would be an invasion of the personal privacy of third parties. In such circumstances, ODNI, in its final written response, shall so inform the requester and advise of his or her right to file an administrative appeal.

(d) *Time for response.* Whenever the statutory time limits for processing a request cannot be met because of "unusual circumstances," as defined in the FOIA, and the component determines to extend the time limits on that basis, ODNI will inform the requester in writing and advise the requester of the right to narrow the scope of his or her request or agree to an alternative timeframe for processing.

(e) *Multitrack processing.* ODNI may use two or more processing tracks by

distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, including through limits based on the number of pages involved. ODNI may provide requesters in its slower track with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of its faster track.

#### § 1700.8 Action on the request.

(a) *Initial action for access.* ODNI staff identified to search for records pursuant to a FOIA request shall search all relevant record systems within their cognizance as of the date the search is commenced. A staff member tasked to conduct a search shall:

(1) Determine whether records exist;

(2) Determine whether and to what extent any FOIA exemptions apply;

(3) Make recommendations for withholding records or portions of records that originated in the staff member's organization and for which there is a legal basis for denial or make a recommendation in accordance with § 1700.7(c). In making recommendations, ODNI staff shall be guided by the procedures specified in § 1700.10 regarding confidential commercial information and § 1700.11 regarding third party information; and

(4) Forward to the Director, IMO, all records responsive to the request.

(b) *Referrals and consultations.* ODNI records containing information originated by other ODNI components shall be forwarded to those entities for action in accordance with paragraph (a) of this section and returned. Records originated by other federal agencies or ODNI records containing other federal agency information shall be forwarded to such agencies for processing and direct response to the requester or for consultation and return to the ODNI. ODNI will notify the requester if it makes a referral for direct response.

(c) *Release of information.* When the Director, IMO (or Appeals Authority) makes a final determination to release records, the records will be forwarded to the requester in an appropriate format promptly upon compliance with any preliminary procedural requirements, including payment of fees. If any portion of a record is withheld initially or upon appeal, the Director, IMO (or Appeals Authority) will provide a written response that shall include, at a minimum:

(1) The basis for the withholding, citing the specific statutory exemption or exemptions invoked under the FOIA with respect to each portion withheld,

unless documents are withheld in accordance with § 1700.7(c);

(2) When the withholding is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order;

(3) When the denial is based on 5 U.S.C. 552(b)(3), the statute relied upon; and

(4) Notice to the requester of the right to judicial review.

#### § 1700.9 Payment of fees, notification of decision, and right of appeal.

(a) *Fees in general.* Fees collected under this part do not accrue to ODNI and shall be deposited immediately to the general account of the United States Treasury.

(b) *Notification of decision.* Upon completion of all required review and the receipt of accrued fees (or promise to pay such fees), ODNI will promptly inform the requester in writing of those records or portions of records that will be released and those that will be denied.

(1) For documents to be released, ODNI will provide paper copies or documents on electronic media, if requested and available;

(2) For documents not released or partially released, ODNI shall explain the reasons for any denial and give notice of a right of administrative appeal. For partial releases, redactions will be made to ensure requesters can see the placement and general length of redactions with the applicable exemption or exemptions clearly with respect to each redaction.

#### § 1700.10 Procedures for business information.

(a) *In general.* Business information obtained by ODNI from a submitter shall not be disclosed pursuant to a FOIA request except in accordance with this section. For purposes of this section, the following definitions apply:

(1) *Business information* means commercial or financial information in which a legal entity has a recognized property interest;

(2) *Confidential commercial information* means such business information provided to the United States Government by a submitter which is reasonably believed to contain information exempt from release under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm; and

(3) *Submitter* means any person or entity who provides confidential commercial information to the United

States Government; it includes, but is not limited to, corporations, businesses (however organized), State governments, and foreign governments.

(b) *Designation of confidential commercial information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be confidential commercial information and hence protected from required disclosure pursuant to Exemption 4 of the FOIA. Such designations shall expire 10 years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(c) *Process in event of FOIA request—*  
(1) *Notice to submitters.* ODNI shall provide a submitter with prompt written notice of receipt of a FOIA request encompassing business information whenever:

(i) The submitter has in good faith designated the information as confidential commercial information, or

(ii) ODNI staff believe that disclosure of the information could reasonably be expected to cause substantial competitive harm, and

(iii) The information was submitted within the last 10 years unless the submitter requested and provided acceptable justification for a specific notice period of greater duration.

(2) *Form of notice.* Communication to a submitter of commercial information shall either describe the exact nature of the confidential commercial information at issue or provide copies of the responsive records containing such information.

(3) *Response by submitter.* (i) Within seven days of the notice described in paragraph (c)(1), all claims of confidentiality by a submitter must be supported by a detailed statement of any objection to disclosure. Such statement shall:

(A) Affirm that the information has not been disclosed to the public;

(B) Explain why the information is a trade secret or confidential commercial information;

(C) Explain in detail how disclosure of the information will result in substantial competitive harm;

(D) Affirm that the submitter will provide ODNI and the Department of Justice with such litigation support as requested; and

(E) Be certified by an officer authorized to legally bind the submitter.

(ii) It should be noted that information provided by a submitter

pursuant to this provision may itself be subject to disclosure under the FOIA.

(4) *Decision and notice of intent to disclose.* (i) ODNI shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to its final determination. If the Director, IMO, decides to disclose a document over the objection of a submitter, ODNI shall provide the submitter a written notice that shall include:

(A) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(B) A description of the information to be disclosed; and

(C) A specified disclosure date that is seven days after the date of the instant notice.

(ii) When notice is given to a submitter under this section, the ODNI shall also notify the requester and, if the ODNI notifies a submitter that it intends to disclose information, then the requester shall be notified also and given the proposed date for disclosure.

(5) *Notice of FOIA lawsuit.* If a requester initiates legal action seeking to compel disclosure of information asserted to be within the scope of this section, ODNI shall promptly notify the submitter. The submitter, as specified above, shall provide such litigation assistance as required by ODNI and the Department of Justice.

(6) *Exceptions to notice requirement.* The notice requirements of this section shall not apply if ODNI determines that:

(i) The information should not be disclosed, pursuant to Exemption 4 and/or any other exemption of the FOIA;

(ii) The information has been published lawfully or has been officially made available to the public;

(iii) The disclosure of the information is otherwise required by law or federal regulation; or

(iv) The designation made by the submitter under this section appears frivolous, except that, in such a case, the ODNI will, within a reasonable time prior to the specified disclosure date, give the submitter written notice of any final decision to disclose the information.

#### **§ 1700.11 Procedures for information concerning other persons.**

(a) *In general.* Personal information concerning individuals other than the requester shall not be disclosed under the FOIA if the proposed release would constitute a clearly unwarranted invasion of personal privacy, or, if the information was compiled for law enforcement purposes, it could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. 552 (b)(6) and

(b)(7)(C). For purposes of this section, the following definitions apply:

(1) Personal information means any information about an individual that is not a matter of public record, or easily discernible to the public, or protected from disclosure because of the implications that arise from Government possession of such information.

(2) Public interest means the public interest in understanding the operations and activities of the United States Government and not simply any matter that might be of general interest to the requester or members of the public.

(b) *Determination to be made.* In making the required determination under this section and pursuant to Exemptions 6 and 7(C) of the FOIA, ODNI will balance the privacy interests that would be compromised by disclosure against the public interest in release of the requested information.

(c) *Otherwise.* A requester seeking information on a third party is encouraged to provide a signed affidavit or declaration from the third party consenting to disclosure of the information. However, any such statements shall be narrowly construed and the Director, IMO, in the exercise of that officer's discretion and administrative authority, may seek clarification from the third party prior to any or all releases.

#### **§ 1700.12 Requests for expedited processing.**

(a) *In general.* All requests will be handled in the order received on a strictly "first-in, first-out" basis. Exceptions to this rule will only be made in accordance with the following procedures.

(b) *Procedure.* A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for requesting expedited processing. Within ten calendar days of its receipt of a request for expedited processing, the IMO shall decide whether to grant it and shall notify the requester of the decision. If a request for expedited processing is granted, the request shall be given priority and shall be processed as soon as practicable.

(c) *Determination to be made:* Requests and appeals will be taken out of order and given expedited processing treatment whenever it is determined that they involve:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) An urgency to inform the public concerning an actual or alleged Federal

Government activity, if made by a person primarily engaged in disseminating information.

**§ 1700.13 Right to appeal and appeal procedures.**

(a) *Right to appeal.* Individuals who disagree with a decision not to produce a document or parts of a document, to deny a fee category request, to deny a request for a fee waiver or fee reduction, to deny expedited processing, or a decision regarding a fee estimate or a determination that no records exist, should submit a written request for review to the Chief FOIA Officer c/o Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511. The words "FOIA APPEAL" should be written on the letter and the envelope. The appeal must be signed by the individual or his legal counsel.

(b) *Requirements as to time and form.* Appeals of adverse decisions must be received within 45 days of the date of the ODNI's initial decision. Requesters should include a statement of the reasons supporting the request for reversal of the initial decision.

(c) *Exceptions.* No appeal shall be accepted if the requester has outstanding fees for information services at this or another federal agency. In addition, no appeal shall be accepted if the information in question has been the subject of an administrative review within the previous two years or is the subject of pending litigation in the Federal courts.

**§ 1700.14 Action by appeals authority.**

(a) The Director of the Intelligence Staff, after consultation with any ODNI component organization involved in the initial decision as well as with the Office of General Counsel, will make a final determination on the appeal. Appeals of denials of requests for expedited processing shall be acted on expeditiously.

(b) The Director, IMO, will ordinarily be the initial deciding official on FOIA requests to the ODNI. However, in the event the Director of the Intelligence Staff makes an initial decision that is later appealed, the Principal Deputy Director for National Intelligence will decide the appeal in accordance with the procedures in this section.

Dated: August 9, 2007.

**Ronald L. Burgess, Jr.,**

*Director of the Intelligence Staff.*

[FR Doc. E7-15996 Filed 8-15-07; 8:45 am]

BILLING CODE 3910-A7-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Parts 1, 2, 64, 100, 109, 110, 117, 147, 150, 151, and 161**

[USCG-2007-27887]

RIN 1625-ZA13

**Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule makes non-substantive changes throughout Title 33 of the Code of Federal Regulations. The purpose of this rule is to make conforming amendments and technical corrections to Coast Guard navigation and navigable water regulations. This rule will have no substantive effect on the regulated public.

**DATES:** This final rule is effective August 16, 2007.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2007-27887 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Mr. Ray Davis, Coast Guard, telephone 202-372-1461. If you have questions on viewing the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202-493-0402.

**SUPPLEMENTARY INFORMATION:**

**Regulatory History**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under both 5 U.S.C. 553(b)(A) and (b)(B), the Coast Guard finds this rule is exempt from notice and comment rulemaking requirements because these changes involve agency organization and practices, and good cause exists for not publishing an NPRM for all revisions in the rule because they are all non-substantive changes. This rule consists only of corrections and editorial, organizational, and conforming amendments. These changes will have no substantive effect on the

public; therefore, it is unnecessary to publish an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

**Background and Purpose**

Each year Title 33 of the Code of Federal Regulations is updated on July 1. This rule, which becomes effective August 16, 2007, makes technical and editorial corrections throughout Title 33. This rule does not create any substantive requirements.

**Discussion of Rule**

This rule corrects the authority citations in parts 1, 64, 109, 117, 147, and 151. The explanations in §§ 109.05(a) and 109.10 concerning the authority to regulate anchorage grounds and special anchorage areas are also updated.

Five sections in part 100 pertaining to regattas and other marine events, and one paragraph, a table, and a figure in part 110 pertaining to the placement of mooring buoys are removed because they are obsolete or redundant. A note in part 151 that references a definition has been updated.

Additional amendments to parts 2, 64, 150, and 161 are:

33 CFR 2.32(c). The Coast Guard previously revised definitions of jurisdictional terms in part 2, conforming them to statutory changes and Presidential proclamations affecting Coast Guard jurisdiction (68 FR 42595, July 18, 2003). Those amendments inadvertently omitted wreck and structure marking authority but were intended to incorporate the traditional interpretation of "high seas" that existed before the advent of the concept of an exclusive economic zone (EEZ). Prior to those amendments, the meaning of "high seas" within the context of Coast Guard wreck and structure marking authority, as applied to persons subject to U.S. jurisdiction, was intended to be similar to how the term "high seas" was understood in traditional maritime law enforcement authority, 14 U.S.C. 89(a), and as defined by Congress in the Intervention on the High Seas Act, 33 U.S.C. 1471, *et seq.* It was not our intent, in promulgating the 2003 updates to jurisdictional regulations, to change that application. Rather, our intent was to maintain, insofar as possible, the existing jurisdictional authorities of the Coast Guard to execute its missions, particularly with respect to the definition of "high seas" (see 68 FR 42595-6).

*33 CFR 64.06.* A definition of “high seas” is added to the section’s list of definitions to make clear that the application of this part remains unchanged by our amendments to 33 CFR Part 2 in 2003 (68 FR 42595, July 18, 2003).

*33 CFR Part 150.* The geographic coordinates in § 150.940 have been revised to enable plotting using the North American Datum of 1983, and the description of the datum in § 150.930 has been amended accordingly.

*33 CFR 161.35.* The names, numbers, and locations of certain navigation aids in the Houston/Galveston Vessel Traffic Service Area have been updated in Tables 161.35(B) and (C).

### Regulatory Evaluation

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Homeland Security. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. As this rule involves internal agency practices and procedures and non-substantive changes, it will not impose any costs on the public.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not require a general NPRM and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities.

### Collection of Information

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

### Federalism

A rule has implications for federalism under Executive Order 13132,

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

### Unfunded Mandates Reform Act

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

### Taking of Private Property

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

### Civil Justice Reform

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

### Protection of Children

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

### Indian Tribal Governments

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

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant

energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraphs (34)(a) and (b), of the Instruction from further environmental documentation because this rule involves editorial, procedural, and internal agency functions. A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” are available in the docket where indicated under **ADDRESSES**.

### List of Subjects

#### *33 CFR Part 1*

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Penalties.

#### *33 CFR Part 2*

Administrative practice and procedure, Law enforcement.

33 CFR Part 64

Navigation (water), Reporting and recordkeeping requirements.

33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 109

Anchorage grounds.

33 CFR Part 110

Anchorage grounds.

33 CFR Part 117

Bridges, Reporting and recordkeeping requirements.

33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

33 CFR Part 150

Harbors, Marine safety, Navigation (water), Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 161

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 1, 2, 64, 100, 109, 110, 117, 147, 150, 151, and 161.

Title 33—Navigation and Navigable Waters

PART 1—GENERAL PROVISIONS

■ 1. In subpart 1.05, revise the authority citation to read as follows:

Authority: 5 U.S.C. 552, 553, App. 2; 14 U.S.C. 2, 631, 632, and 633; 33 U.S.C. 471, 499; 49 U.S.C. 101, 322; Department of Homeland Security Delegation No. 0170.1.

PART 2—JURISDICTION

■ 2. The authority citation for part 2 continues to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 1222; Pub. L. 89-670, 80 Stat. 931, 49 U.S.C. 108; Pub. L. 107-296, 116 Stat. 2135, 2249, 6 U.S.C. 101 not and 468; Department of homeland Security Delegation No. 0170.1.

■ 3. In § 2.32, revise paragraph (c) to read as follows:

§ 2.32 High seas.

\* \* \* \* \*

(c) For the purposes of 14 U.S.C. 89(a), 14 U.S.C. 86, 33 U.S.C. 409, and 33 U.S.C. 1471 et seq., high seas includes the exclusive economic zones of the United States and other nations, as well as those waters that are seaward of territorial seas of the United States and other nations.

\* \* \* \* \*

PART 64—MARKING OF STRUCTURES, SUNKEN VESSELS AND OTHER OBSTRUCTIONS

■ 4. Revise the authority citation for part 64 to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 409, 1231; 42 U.S.C. 9118; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

■ 5. In § 64.06, add a new definition for “high seas” between “Hazard to navigation” and “Markings” to read as follows:

§ 64.06 Definition of terms.

\* \* \* \* \*

High seas means those waters described in § 2.32(c) of this chapter.

\* \* \* \* \*

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 6. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

§ 100.103 [Removed]

■ 7. Remove § 100.103.

§ 100.104 [Removed]

■ 8. Remove § 100.104.

§ 100.120 [Removed]

■ 9. Remove § 100.120.

§ 100.121 [Removed]

■ 10. Remove § 100.121.

§ 100.122 [Removed]

■ 11. Remove § 100.122.

PART 109—GENERAL

■ 12. Revise the authority citation for part 109 to read as follows:

Authority: R.S. 4233, as amended, 28 Stat. 647 as amended, 30 Stat. 98, as amended, sec. 7, 38 Stat. 1053, as amended, sec. 6(g)(1), 80 Stat. 940; 33 U.S.C. 180, 258, 322, 471; 49 U.S.C. 1655(g)(1); Pub. L. 107-296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1.

§ 109.01 [Amended]

■ 13. Remove the parenthetical at the end of § 109.01.

■ 14. In § 109.05—

- a. Revise paragraph (a) to read as set out below; and,
■ b. Remove the parenthetical at the end of the section.

§ 109.05 Anchorage grounds.

(a) Section 7 of the Rivers and Harbors Act of March 4, 1915 (33 U.S.C. 471), authorizes the establishment of anchorage grounds for vessels in navigable waters of the United States whenever it is apparent that these are required by the maritime or commercial interests of the United States for safe navigation. The statute also authorizes the adoption of suitable rules and regulations regarding the establishment of anchorage grounds, which are enforced by the Coast Guard. The authority conferred by this statute was transferred to and vested in the Secretary of Homeland Security by section 902(j) of the Coast Guard and Maritime Transportation Act of 2006 (Pub. L. 109-241, 120 Stat. 516), and delegated to the Commandant of the U.S. Coast Guard in Department of Homeland Security Delegation No. 0170.1. The Commandant redelegated the authority to establish anchorage grounds to each Coast Guard District Commander as provided in 33 CFR 1.05-1(e)(1)(i).

\* \* \* \* \*

§ 109.07 [Amended]

- 15. Remove the parenthetical at the end of § 109.07.
■ 16. Revise § 109.10 to read as follows:

§ 109.10 Special anchorage areas.

An Act of Congress of April 22, 1940, provides for the designation of special anchorage areas wherein vessels not more than sixty-five feet in length, when at anchor, will not be required to carry or exhibit anchorage lights. Such designation is to be made after investigation, by rule, regulation, or order, the procedure for which will be similar to that followed for anchorage grounds under section 7 of the Rivers and Harbors Act of March 4, 1915, as referred to in § 109.05. The areas so designated should be well removed from the fairways and located where general navigation will not endanger or be endangered by unlighted vessels. The authority to designate special anchorage areas was transferred to and vested in the Secretary of Homeland Security by section 902(j) of the Coast Guard and Maritime Transportation Act of 2006 (Pub. L. 109-241, 120 Stat 516), and delegated to the Commandant of the U.S. Coast Guard in Department of Homeland Security Delegation No. 0170.1. The Commandant redelegated the authority to establish anchorage

grounds to each Coast Guard District Commander as provided in 33 CFR 1.05–1(e)(1)(i).

**§ 109.15 [Amended]**

■ 17. In § 109.15, remove “guard”, and add, in its place, “Guard”.

**PART 110—ANCHORAGE REGULATIONS**

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

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

**§ 110.60 [Amended]**

■ 19. In § 110.60, remove paragraph(x)(4), Table 110.60(x)(4), and Figure 110.60(x)(4).

**§ 110.155 [Amended]**

■ 20. In § 110.155(l)(8), remove “Coast Guard Activities New York, Waterways

Oversight Branch”, and add, in its place, “Coast Guard Sector New York, Waterways Management Division”.

**PART 117—DRAWBRIDGE OPERATION REGULATIONS**

■ 21. Revise the authority citation for part 117 to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

**PART 147—SAFETY ZONES**

■ 22. Revise the authority citation for part 147 to read as follows:

**Authority:** 14 U.S.C. 85; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

**PART 150—DEEPWATER PORTS: OPERATION**

■ 23. The authority citation for part 150 continues to read as follows:

**Authority:** 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6), (m)(2); 33 U.S.C. 1509(a); E.O. 12777, sec. 2; E.O. 13286, sec. 34, 68 FR 10619; Department of Homeland Security Delegation No. 0170.1 (70), (73), (75), (80).

■ 24. Revise § 150.930 to read as follows:

**§ 150.930 What datum is used for the geographic coordinates in this subpart?**

The geographic coordinates used in this subpart have been revised to enable plotting using the North American Datum of 1983 (NAD 83) and no longer require the use of any further conversion factors for correction.

■ 25. Revise § 150.940 to read as follows:

**§ 150.940 Safety zones for specific deepwater ports.**

(a) *Louisiana Offshore Oil Port (LOOP)*. (1) The location of the safety zone for LOOP is as described in Table 150.940(A):

TABLE 150.940(A).—SAFETY ZONE FOR LOOP, GULF OF MEXICO

Plotting guidance	Latitude N	Longitude W
(i) Starting at	28°55'24"	90°00'37"
(ii) A rhumb line to:	28°53'51"	90°04'07"
(iii) Then an arc with a 4,465 meter (4,883 yard) radius centered at the port's pumping platform complex	28°53'07"	90°01'30"
(iv) To a point	28°51'08"	90°03'06"
(v) Then a rhumb line to	28°50'10"	90°02'24"
(vi) Then a rhumb line to	28°49'06"	89°55'54"
(vii) Then a rhumb line to	28°48'37"	89°55'00"
(viii) Then a rhumb line to	28°52'05"	89°52'42"
(ix) Then a rhumb line to	28°53'11"	89°53'42"
(x) Then a rhumb line to	28°54'53"	89°57'00"
(xi) Then a rhumb line to	28°54'53"	89°59'36"
(xii) Then an arc with a 4,465 meter (4,883 yard) radius centered again at the port's pumping platform complex	.....	.....
(xiii) To the point of starting	28°55'24"	90°00'37"

(2) The areas to be avoided within the safety zone are:

(i) The area encompassed within a circle having a 600 meter radius around the port's pumping platform complex and centered at 28°53'07" N, 90°01'30" W.

(ii) The six areas encompassed within a circle having a 500 meter radius around each single point mooring (SPM) at the port and centered at:

Latitude N	Longitude W
28°54'13"	90°00'37"
28°53'17"	89°59'59"
28°52'16"	90°00'19"
28°51'46"	90°01'25"
28°52'09"	90°02'33"
28°53'08"	90°03'02"

(3) The anchorage area within the safety zone is an area enclosed by the rhumb lines joining points at:

Latitude N	Longitude W
28°52'22"	89°57'47"
28°54'06"	89°56'38"
28°52'05"	89°52'42"
28°50'21"	89°53'51"
28°52'22"	89°57'47"

(b) *The Gulf Gateway Deepwater Port (GGDWP)*—(1) *Description*. The GGDWP safety zone is centered at the following coordinates: 28°05'17" N, 93°03'07" W. This safety zone, encompassed within a circle having a 500 meter radius around the primary component of the Gulf Gateway Deepwater Port, the submerged loading turret (buoy) and the pipeline end manifold (STL/PLEM), is located approximately 116 miles off the Louisiana coast at West Cameron Area, South Addition Block 603 “A”.

(i) A mandatory no anchoring area contained within a circle of radius 1,500

meters centered on the following geographical position is designated as a mandatory no anchoring area: 28°05'17" N, 93°03'07" W.

(ii) An area to be avoided within a circle of radius 2,000 meters centered on the following geographical position is designated as an area to be avoided: 28°05'17" N, 93°03'07" W.

(2) *Regulations*. Deepwater port support vessels desiring to enter the safety zone must contact and obtain permission from the LNG Regasification Vessel (LNGRV) stationed at the deepwater port. The LNGRV can be contacted on VHF–FM Channel 13.

**PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER**

■ 26. Revise the authority citation for part 151 to read as follows:

**Authority:** 33 U.S.C. 1321, 1903, 1908; 46 U.S.C. 6101; Pub. L. 104–227 (110 Stat. 3034); E.O. 12,777, 3 CFR, 1991 Comp. p. 351; Department of Homeland Security Delegation No. 0170.1.

**§ 151.09 [Amended]**

- 27. In § 151.09—
- A. Remove the note following paragraph (d); and
- B. Add a note between paragraphs (b)(3) and (b)(4) to read “Note to § 151.09(b)(3): The term *internal waters* is defined in § 2.24 of this chapter.”

**PART 161—VESSEL TRAFFIC MANAGEMENT**

■ 28. The authority citation for part 161 continues to read as follows:

**Authority:** 33 U.S.C. 1223, 1231; 46 U.S.C. 70114, 70117; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 29. Amend § 161.35 by revising the entry for Sims Bayou in Table 161.35(B) and revising Table 161.35(C) to read as follows:

**§ 161.35 Vessel Traffic Service Houston/Galveston.**

\* \* \* \* \*  
(b) *Precautionary Areas.*

TABLE 161.35(B).—VTS HOUSTON/GALVESTON PRECAUTIONARY AREAS

Precautionary area name	Radius (yds.)	Center point	
		Latitude	Longitude
* * * * *			
Sims Bayou .....	1000	29° 43.2' N	95° 14.4' W
* * * * *			

(c) *Reporting Points.*

TABLE 161.35(C).—VTS HOUSTON/GALVESTON REPORTING POINTS

Designator	Geographic name	Geographic description	Latitude/ longitude	Notes
1 .....	Galveston Bay Entrance Channel ...	Galveston Bay Entrance CH Lighted Buoy (LB) “1C”.	29° 18.2' N; 94° 37.6' W	
2 .....	Galveston Bay Entrance Channel ...	Galveston Bay Entrance Channel LB 11 and 12.	29° 20.6' N; 94° 44.6' W	
E .....	Bolivar Land Cut .....	Mile 349 Intracoastal Waterway (ICW).	29° 22.5' N; 94° 46.9' W	Tows entering HSC also report at HSC LB 25 & 26.
W .....	Pelican Cut .....	Mile 351 ICW .....	29° 21.4' N; 94° 48.5' W	Tows entering HSC also report at HSC LB 25 & 26.
G .....	Galveston Harbor .....	Galveston Channel Lt. 2 .....	29° 20.2' N; 94° 46.6' W	Coast Guard Base.
T .....	Texas City Channel .....	Texas City Channel Lt. 12 .....	29° 22.4' N; 94° 50.9' W	
X .....	Houston Ship Channel ICW Intersection.	Houston Ship Channel (HSC) LB 25 and 26.	29° 22.2' N; 94° 48.1' W	Tow entering HSC from ICW or Texas Cut Only.
3 .....	Lower Galveston Bay .....	HSC Lt. 31 and LB 32 .....	29° 23.8' N; 94° 48.9' W	
4 .....	Red Fish Bar .....	HSC Lt. 53 & 54 .....	29° 30.3' N; 94° 52.4' W	
P .....	Bayport Ship Channel .....	Bayport Ship Channel Lt. 8 and 9 ...	29° 36.8' N; 94° 59.5' W	Bayport Land Cut.
4A .....	Upper Galveston Bay .....	HSC Lt. 69 and 70 .....	29° 34.7' N; 94° 55.8' W	Tows only.
5 .....	Morgan’s Point .....	HSC Lt. 91 .....	29° 41.0' N; 94° 59.0' W	
6 .....	Exxon .....	HSC Lt. 109A .....	29° 43.5' N; 95° 01.4' W	
7 .....	Lynchburg .....	Ferry crossing .....	29° 45.8' N; 95° 04.8' W	
8 .....	Shell Oil .....	Boggy Bayou .....	29° 44.1' N; 95° 08.0' W	
9 .....	Greens Bayou .....	HSC Lt. 152 .....	29° 44.8' N; 95° 10.1' W	
10 .....	Hunting Bayou .....	Hunting Bayou Turning Basin. ....	29° 44.4' N; 95° 12.1' W	
11 .....	Lyondell .....	Sims Bayou Turning Basin. ....	29° 43.2' N; 95° 14.4' W	
12 .....	I–610 Bridge .....	I–610 Bridge .....	29° 43.5' N; 95° 16.0' W	

TABLE 161.35(C).—VTS HOUSTON/GALVESTON REPORTING POINTS—Continued

Designator	Geographic name	Geographic description	Latitude/ longitude	Notes
13 .....	Buffalo Bayou .....	Houston Turning Basin .....	29° 45.0' N; 95° 17.4' W	

Dated: August 9, 2007.

**Stefan G. Venckus,**

Chief, Office of Regulations and  
Administrative Law, United States Coast  
Guard.

[FR Doc. E7-15957 Filed 8-15-07; 8:45 am]

BILLING CODE 4910-15-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL-84559]

### Louisiana: Final Authorization of State Hazardous Waste Management Program Revision

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

**ACTION:** Immediate final rule.

**SUMMARY:** Louisiana has applied to the EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through this immediate final action. The EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Louisiana's changes to its hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

**DATES:** This final authorization will become effective on October 15, 2007, unless the EPA receives adverse written comment by September 17, 2007. If the EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

**ADDRESSES:** Submit your comments by one of the following methods:

1. **Federal eRulemaking Portal:**  
<http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. **E-mail:** [patterson.alima@epa.gov](mailto:patterson.alima@epa.gov).

3. **Mail:** Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

4. **Hand Delivery or Courier.** Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

**Instructions:** 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) Web site is an "anonymous access" system, which means the 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 the 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 public docket and made available on the Internet. If you submit an electronic comment, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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. You can view and copy Louisiana's application and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following locations: Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, Louisiana 70884-2178, phone number (225) 219-3559 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, phone

number (214) 665-8533. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

#### FOR FURTHER INFORMATION CONTACT:

Alima Patterson, Region 6, Regional Authorization Coordinator, State-Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 665-8533) and e-mail address [patterson.alima@epa.gov](mailto:patterson.alima@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask the EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

##### B. What Decisions Have We Made in This Rule?

We conclude that Louisiana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Louisiana final authorization to operate its hazardous waste program with the changes described in the authorization application. Louisiana has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates under the authority of HSWA take effect

in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Louisiana including issuing permits, until the State is granted authorization to do so.

### C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Louisiana subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Louisiana has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements and suspend or revoke permits and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Louisiana is being authorized by today's action are already effective under State law, and are not changed by today's action.

### D. Why Wasn't There a Proposed Rule Before Today's Rule?

The EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

### E. What Happens if the EPA Receives Comments That Oppose This Action?

If the EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time. If we receive comments that oppose only the

authorization of a particular change to the State hazardous waste program, we will withdraw only that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

### F. For What Has Louisiana Previously Been Authorized?

The State of Louisiana initially received final authorization on February 7, 1985 (50 FR 3348), to implement its base Hazardous Waste Management Program. We granted authorization for changes to their program on November 28, 1989 (54 FR 48889) effective January 29, 1990; August 26, 1991 (56 FR 41958) effective August 26, 1991; November 7, 1994 (59 FR 55368) effective January 23, 1995; December 23, 1994 (59 FR 66200) effective March 8, 1995; there were technical corrections made on January 23, 1995 (60 FR 4380), effective January 23, 1995; and another technical correction was made on April 11, 1995 (60 FR 18360) effective April 11, 1995; October 17, 1995 (60 FR 53704) effective January 2, 1996; March 28, 1996 (61 FR 13777) effective June 11, 1996; December 29, 1997 (62 FR 67572) effective March 16, 1998; October 23, 1998 (63 FR 56830) effective December 22, 1998; August 25, 1999 (64 FR 46302) effective October 25, 1999; September 2, 1999 (64 FR 48099) effective November 1, 1999; February 28, 2000 (65 FR 10411) effective April 28, 2000; January 2, 2001 (66 FR 23) effective March 5, 2001; December 9, 2003 (68 FR 68526) effective February 9, 2004, June 10, 2005 (70 FR 33852) effective August 9, 2005 and November 13, 2006 (71 FR 66116) effective January 13, 2007. On September 18, 2006, Louisiana applied for approval of its program revisions for RCRA Cluster XV. In this application, Louisiana is seeking approval of RCRA Cluster XV in accordance with 40 CFR 271.21(b)(3).

Since 1979, through the Environmental Affairs Act, Act 449 enabling the Office of Environmental Affairs within the Louisiana Department of Natural Resources, as well as, the Environmental Control Commission conducted an effective program designed to regulate those who generate, transport, treat, store, dispose or recycle hazardous waste. During the 1983 Regular Session of the Louisiana Legislature, Act 97 was adopted, which amended and reenacted La. R.S. 30:1051 et seq. as the Environmental Quality Act, renaming the Environmental

Affairs Act (Act 1938 of 1979). This Act created Louisiana Department of Environmental Quality LDEQ), including provisions for new offices within this new Department of Environmental Quality. Act 97 also transferred the duties and responsibilities previously delegated to the Department of Natural Resources, Office of Environmental Affairs, to the new Department. The LDEQ has lead agency jurisdictional authority for administering the Resource Recovery and Conservation Act (RCRA) Subtitle C program in Louisiana. Also, the LDEQ is designated to facilitate communication between the EPA and the State. During the 1999 Regular Session of Louisiana Legislature, Act 303 revised the La. R.S. 30:2011 et seq. allowing LDEQ to reengineer the Department to perform more efficiently and to meet its strategic goals.

It is the intention of the State, through this application, to demonstrate its equivalence and consistency with the federal statutory tests, which are outlined in the United States Environmental Protection Agency regulatory requirements under 40 CFR 271, Subpart A, for final authorization. The submittal of this application is in keeping with the spirit and intent of RCRA, which provides equivalent States the opportunity to apply for final authorization to operate all aspects of their hazardous waste management programs in lieu of the Federal government. The Louisiana Environmental Quality Act authorizes the State's program, Subtitle II of Title 30 of the Louisiana Revised Statutes. With this application Louisiana is applying for authorization for specific areas of the State regulations identified as requiring authorization and the listed Checklists 206 and 207 will allow the State to implement the equivalent RCRA Subtitle C portion of the program.

### G. What Changes Are We Authorizing With Today's Action?

On February 3, 2006, Louisiana submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Louisiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant the State of Louisiana Final authorization for the following changes: The State of Louisiana's program revisions consist of regulations which specifically govern RCRA Cluster XV as documented below:

Description of federal requirement (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
1. Nonwastewaters From Dyes and Pigments. (Checklist 206)	70 FR 9138–9180 February 24, 2005.	Louisiana Revised Statutes (LRS) 30: Section 2001 <i>et seq.</i> , with specific cites of 2174, 2175, and 2180 effective December 31, 2004; Supplement effective June 2006; Louisiana Hazardous Waste Regulations (LHWR) Sections 105.D.2.p, 105.D.2.p.i–v, 4901.C.Table 2, 4901.C.1.a, 490.C.2, –3, 4901.C.3.a–b, 4901.C.3.b.i–iv, 4901.C.3.b.iv.(a)–(c), 4901.C.3.c, 4901.C.3.c.i–iii, 4901.C.3.c.iii.(a)–(d), 4901.3.c.iv, 4901.C.3.c.iv.(a)–(b), 4901.C.3.3.c.v–x, 4901.C.3.c.(a)–(d), 4901.C.3.c.xi, 4901.C.3.xi.(a)–(d), 4901.C.3.e, Chapter.49.Table 6, Chapter.31.Table 1, 2208.B.5, 2208.C, Chapter.22.Table, 2299.Table 7, as effective May 20, 2006.
2. Uniform Hazardous Waste Manifest Rule. (Checklist 207)	70 FR 10776–10825 March 4, 2005.	Louisiana Revised Statutes (LRS) 30: Section 2001 <i>et seq.</i> , with specific cites of 2174, 2175, and 2180 effective December 31, 2004; Supplement effective June 2006; Louisiana Hazardous Waste Regulations (LHWR) Sections 109, 1108 incorporate the federal rules by reference, 1109.F, 1109.F.I.–2, 1109.C–E, 1109.E.13, 1109.E.13.a–b, 1113, 1113.E.3, 1113.E.5, 1123.C, 1123.C.1–2, 1307, 1307.A .2, 1301, 1307.G, 1307.G.1–G4, 1309, 1309.B, 1309.B.1, 1309.B.1.a, 1309.B.1.b, 1516, 1516.A.1, 1516.A.2, 1516.B.1, 1516.B., 1516.B.1.a–e, 1516.B.5, 1516.B.5.a–b, 1516.C.1, 1516.c.1.a–c, 1516.C.3, 1516.C.4.a–b, 1516.C.5, 1516.C.5.a–g, 1516.C.6.a, 1516.C.6.a.i–iii, and 1516.D, as effective May 20, 2006.

#### H. Where Are the Revised State Rules Different From the Federal Rules?

The State's hazardous regulations for Checklists 206 and 207 are consistent, equivalent and no less stringent than the Federal regulations. There are no provisions that are more stringent or broader in scope. Broader in scope requirements are not part of the authorized program and EPA can not enforce them.

#### I. Who Handles Permits After the Authorization Takes Effect?

Louisiana will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. We will not issue any more new permits or new portions of permits for the provisions listed in the Table in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Louisiana is not yet authorized.

#### J. How Does Today's Action Affect Indian Country in Louisiana?

Louisiana is not authorized to carry out its Hazardous Waste Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country.

#### K. What Is Codification and Is the EPA Codifying Louisiana's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart T for this authorization of Louisiana's program changes until a later date. In this authorization application the EPA is not codifying the rules documented in this **Federal Register** notice.

#### L. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action 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 action authorizes preexisting requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason,

this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action 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 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the

National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. 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. 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. The EPA will submit a report containing this document 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 in the **Federal Register**. A major rule cannot

take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective October 15, 2007.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 25, 2007.

**Lawrence E. Starfield,**  
Acting Regional Administrator, Region 6.  
[FR Doc. 07-4001 Filed 8-15-07; 8:45 am]  
**BILLING CODE 6560-50-M**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 1**

[MD Docket No. 07-81; FCC 07-140]

**Assessment and Collection of Regulatory Fees for Fiscal Year 2007**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, we amend our Schedule of Regulatory Fees to collect \$290,295,160 in regulatory fees for Fiscal Year (FY) 2007, pursuant to section 9 of the Communications Act of 1934, as amended (the Act). These fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.

**DATES:** Effective September 17, 2007, except that changes to the Schedule of Regulatory Fees made pursuant to section 9(b)(3) of the Communications Act, and incorporating regulatory fee payment obligations for interconnected VoIP service providers, shall become effective November 15, 2007, which is 90 days from date of notification to Congress.

**FOR FURTHER INFORMATION CONTACT:** Roland Helvajian, Office of Managing Director at (202) 418-0444 or Rob Fream, Office of Managing Director at (202) 418-0408.

**SUPPLEMENTARY INFORMATION:**

*Adopted:* August 2, 2007.

*Released:* August 6, 2007.

By the Commission: Commissioner Copps approving in part, concurring in part and issuing a statement; Commissioner Adelstein concurring and issuing a statement.

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## I. Introduction

1. In this Report and Order and Further Notice of Proposed Rulemaking, we conclude a proceeding to collect \$290,295,160 in regulatory fees for Fiscal Year (“FY”) 2007, pursuant to section 9 of the Communications Act of 1934, as amended (the “Act”). Section 9 regulatory fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission’s enforcement, policy and rulemaking, user information, and international activities.<sup>1</sup> The Further Notice of Proposed Rulemaking (“FNPRM”) seeks comment on the appropriate fee structure for Broadband Radio Service (“BRS”).

2. We retain the established methods, policies, and procedures for collecting section 9 regulatory fees adopted by the Commission in prior years. We have found that the assessment methodology adopted in prior regulatory fee cycles has provided a satisfactory means for collecting the Commission’s annual appropriations. In addition to the assessment methodology, we retain and enhance our administrative measures used for notification and assessment of regulatory fees as in previous years, such as generating bills and pre-completed assessment notifications for certain regulatees. Beginning this year, we expand our billing efforts to include licensees of earth stations and cable television relay service (“CARS”) stations. We will also apply regulatory fee obligations to interconnected Voice over Internet Protocol (“VoIP”) providers. Finally, we wish to take this opportunity to strongly encourage regulatees to electronically file their FY 2007 regulatory fee payments via Fee Filer.

3. The Commission is obligated to collect \$290,295,160 in regulatory fees during FY 2007 to fund the Commission’s operations. Consistent with our established practice, we intend to collect these regulatory fees during a filing window in September 2007 in order to collect the required amount by the end of our fiscal year.

## II. Report and Order

### A. FY 2007 Regulatory Fee Assessment Methodology

4. On April 18, 2007, we released a Notice of Proposed Rulemaking seeking

comment on regulatory fee issues.<sup>2</sup> As noted in the *FY 2007 NPRM*, the section 9 regulatory fee proceeding is an annual rulemaking process intended to ensure the Commission collects the fee amount required by Congress each year. In the *FY 2007 NPRM*, we proposed to largely retain the section 9 regulatory fee methodology used in the prior fiscal year. We received ten comments and six reply comments.<sup>3</sup> We address the issues raised in our *FY 2007 NPRM* below.

#### 1. Development of FY 2007 Regulatory Fees

##### a. Calculation of Revenue and Fee Requirements

5. In our FY 2007 regulatory fee assessment, we use essentially the same section 9 regulatory fee assessment methodology adopted for FY 2006. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via section 9 regulatory fees. The results of our FY 2007 regulatory fee assessment methodology (including a comparison to the prior year’s results) are contained in Attachment C. For FY 2007, we will use the FY 2006 congressionally mandated amount as the basis for calculating the unit fees for each fee category. To collect the \$290,295,160 required by law, we adjust the FY 2006 amount downward by approximately 2.84 percent.<sup>4</sup> Consistent with past practice, we then divide the FY 2007 amount by the number of payment units in each fee

<sup>2</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Notice of Proposed Rulemaking, 22 FCC Rcd 7975 (2007) (“*FY 2007 NPRM*”).

<sup>3</sup> See Attachment G for the list of commenters and abbreviated names.

<sup>4</sup> The percentage decrease of approximately 2.84 percent is based on the total amount of regulatory fees that was mandated by Congress to be collected in FY 2006, which included an amount of \$288,771,000 in regulatory fees pursuant to section 9 of the Act and an additional \$10,000,000 as required by section 3013 of the Deficit Reduction Act (Pub. L. 109–171). Together, the total amount of regulatory fees mandated by Congress to be collected in FY 2006 was \$298,771,000. Also, the decrease in regulatory fee payments of approximately 2.84 percent in FY 2007 is reflected in the revenue that is expected to be collected from each service category. Because this expected revenue is adjusted for each individual service category each year by the number of estimated payment units in a service category, and then adjusted for rounding, the actual fee will likely differ by an amount more or less than 2.84 percent. For example, in industries where the number of payment units is declining, the per-unit regulatory fee amount for FY 2007 may actually be more than the amount for FY 2006.

category to determine the unit fee.<sup>5</sup> As in prior years, for cases involving small fees (e.g., licenses that are renewed over a multiyear term), we divide the resulting unit fee by the term of the license, and then round these unit fees consistent with the requirements of section 9(b)(2).

#### b. Additional Adjustments to Payment Units

6. In calculating the FY 2007 regulatory fees listed in Attachment D, we further adjusted the FY 2006 list of payment units (Attachment B) based upon licensee databases and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. In some instances, Commission licensee databases were used, while in other instances, actual prior year payment records and/or industry and trade association projections were used in determining the payment unit counts.<sup>6</sup> Where appropriate, we adjusted and rounded our final estimates to take into consideration events that may impact the number of units for which regulatees submit payment, such as waivers and exemptions that may be filed in FY 2007, and fluctuations in the number of licensees or station operators due to economic, technical, or other reasons. Therefore, when we state that our estimated FY 2007 payment units are based on FY 2006 actual payment units, the number may have been rounded or

<sup>5</sup> In many instances, the regulatory fee amount is a flat fee per licensee or regulatee. However, in some instances the fee amount represents a per-unit fee (such as for International Bearer Circuits), a per-unit subscriber fee (such as for Cable, Commercial Mobile Radio Service (“CMRS”) Cellular/Mobile and CMRS Messaging), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider fee). The payment unit is the measure upon which the fee is based, such as a licensee, regulatee, subscriber fee, etc.

<sup>6</sup> The databases we consulted include, but are not limited to, the Commission’s Universal Licensing System (ULS), International Bureau Filing System (“IBFS”), Consolidated Database System (“CDBS”) and Cable Operations and Licensing System (“COALS”). We also consulted industry sources including, but not limited to, *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc., as well as reports generated within the Commission such as the Wireline Competition Bureau’s *Trends in Telephone Service* and the Wireless Telecommunications Bureau’s *Numbering Resource Utilization Forecast and Annual CMRS Competition Report*. For additional information on source material, see Attachment B.

<sup>1</sup> 47 U.S.C. 159(a).

adjusted slightly to account for these variables.

7. We consider additional factors in determining regulatory fees for AM and FM radio stations. These factors are facility attributes and the population served by the radio station. The calculation of the population served is determined by coupling current U.S. Census Bureau data with technical and engineering data, as detailed in Attachment E. Consequently, the population served, as well as the class and type of service (AM or FM), determines the regulatory fee amount to be paid.<sup>7</sup>

### 2. Commercial Mobile Radio Service Messaging Service

8. In the *FY 2007 NPRM*, we proposed to continue our policy of maintaining the CMRS Messaging Service regulatory fee at the rate that was established in *FY 2002* (i.e., \$0.08 per subscriber), noting that the subscriber base in this industry has declined 79 percent from 40.8 million to 8.3 million from *FY 1997* to *FY 2006*.<sup>8</sup> The only commenters addressing this issue, AAPC and USA Mobility, state that maintaining the fee amount at \$0.08 per subscriber is the minimum action to take and that the Commission should consider reducing the fee amount.<sup>9</sup>

9. We continue to believe that maintaining the CMRS Messaging regulatory fee at the rate established in *FY 2002*, rather than allowing it to increase, is the appropriate level of relief to be afforded to the messaging industry. We are cognizant of the financial hardship that could be caused by increasing the fee (shrinking profit margins, additional loss of subscribers, reduced revenue, etc.) for this service category. Therefore, we adopt our proposal to maintain the CMRS Messaging Service regulatory fee for *FY 2007* at \$0.08 per subscriber.

### 3. International Bearer Circuits

10. In our *FY 2006 NPRM*,<sup>10</sup> we noted that VSNL Telecommunications (US)

<sup>7</sup> In addition, beginning in *FY 2005*, we established a procedure by which we set regulatory fees for AM and FM radio and VHF and UHF television Construction Permits each year at an amount no higher than the lowest regulatory fee in that respective service category. For example, the regulatory fee for a Construction Permit for an AM radio station will never be more than the regulatory fee for an AM Class C radio station serving a population of less than 25,000.

<sup>8</sup> See *FY 2007 NPRM*, 22 FCC Rcd at 7978, para 7.

<sup>9</sup> AAPC Comments at 1; USA Mobility Comments at 3. No commenters opposed our proposal.

<sup>10</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, MD Docket No. 06-68, Notice of Proposed Rulemaking, 21 FCC Rcd 3708, 3718, n.20 (2006) (“*FY 2006 NPRM*”).

Inc. (“VSNL”) had filed a Petition for Rulemaking urging the Commission to revise its regulatory fee methodology for bearer circuits;<sup>11</sup> and that we issued a Public Notice designating the proceeding as RM-11312 and requesting comment on the Petition.<sup>12</sup> We stated in our *FY 2006 Report and Order* that the issues presented in the Petition warrant consideration separately from the Commission’s annual regulatory fee proceeding.<sup>13</sup> In our *FY 2007 NPRM*, we received a set of joint comments filed by seven submarine cable landing licensees urging the Commission to take similar action.<sup>14</sup> We reiterate that the issues presented in the Petition warrant consideration separately from the Commission’s annual regulatory fee proceeding.<sup>15</sup>

### 4. Interconnected Voice Over Internet Protocol Service Providers

11. In the *FY 2007 NPRM*, we observed that providers of interconnected VoIP<sup>16</sup> services are now required to contribute to the Universal Service Fund (“USF”)<sup>17</sup> and we tentatively concluded that the interconnected VoIP providers should also pay regulatory fees.<sup>18</sup> Our tentative conclusion was based on the mandate in section 9 of the Act that the Commission “assess and collect regulatory fees to recover the costs” of regulatory activities<sup>19</sup> as well as our analysis in the *2006 Interim Contribution Methodology Order*. In this Report and Order we adopt our tentative conclusion in the *FY 2007 NPRM* and require interconnected VoIP providers to pay *FY 2007*

<sup>11</sup> See Petition for Rulemaking of VSNL Telecommunications (US) Inc., RM-11312 (filed Feb. 6, 2006) (“VSNL Petition”).

<sup>12</sup> See Consumer and Governmental Affairs Bureau, Reference Information Center, *Public Notice*, Report No. 2759 (rel. Feb. 15, 2006).

<sup>13</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, MD Docket No. 06-68, Report and Order, 21 FCC Rcd 8092, 8098-99, para 18 (2006) (“*FY 2006 Report and Order*”).

<sup>14</sup> See Joint Comments at 1.

<sup>15</sup> We incorporate the instant comments of the seven cable landing licensees into the VSNL Petition proceeding, RM-11312.

<sup>16</sup> See 47 CFR 9.3 for the definition of interconnected VoIP service.

<sup>17</sup> See *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, WC Docket No. 06-122, 21 FCC Rcd 7518, 7536-543, paras. 34-49 (2006) (“*2006 Interim Contribution Methodology Order*”) (finding that interconnected VoIP service providers are “providers of interstate telecommunications” under section 254(d) and asserting the Commission’s permissive authority to require interconnected VoIP service providers to contribute to the preservation and advancement of universal service), *aff’d in relevant part*, *Vonage Holdings Corp., v. FCC*, No. 06-1276 (D.C. Cir. 2007) (“*Vonage*”).

<sup>18</sup> *FY 2007 NPRM*, 22 FCC Rcd at 7979, para. 10.

<sup>19</sup> 47 U.S.C. 159(a)(1).

regulatory fees based on revenues reported on the FCC Form 499-A at the same rate as interstate telecommunications service providers (“ITSPs”).<sup>20</sup>

### a. Jurisdiction

12. By way of recent background, in the *2006 Interim Contribution Methodology Order*, the Commission, among other things, established universal service contribution obligations for providers of interconnected VoIP service based on its permissive authority under section 254(d) of the Act and its ancillary jurisdiction under Title I of the Act.<sup>21</sup> The Commission noted that significant growth in the number of VoIP subscribers in recent years is expected to continue.<sup>22</sup> In addition, the Commission observed that the USF revenue base had been diminishing and the contribution factor used to determine contributor payments into the fund has risen considerably as a result.<sup>23</sup> Interconnected VoIP service is increasingly used to replace traditional telephone service and, as the interconnected VoIP service industry continues to grow and to attract customers who previously relied on traditional voice service, it was inappropriate to exclude interconnected VoIP service from universal service contribution requirements.<sup>24</sup> In its *Vonage* decision, the DC Circuit upheld the Commission’s decision to impose USF fees on interconnected VoIP providers.<sup>25</sup> Prior to the *2006 Interim Contribution Methodology Order*, the Commission asserted its ancillary jurisdiction under Title I of the Act to require providers of interconnected VoIP services to supply 911 emergency calling capabilities to their customers.<sup>26</sup>

<sup>20</sup> Interconnected VoIP providers will pay *FY 2007* regulatory fees during a separate filing window (to be determined later), most likely in 2008. For *FY 2008*, interconnected VoIP providers will be required to pay regulatory fees in the same filing window as other entities.

<sup>21</sup> *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7538-543, paras. 38-49.

<sup>22</sup> *Id.*, 21 FCC Rcd at 7528-29, para. 19.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*, 21 FCC Rcd at 7541, para. 44.

<sup>25</sup> *Vonage* at 15. Because it found that the Commission has authority under section 254(d) of the Act to impose USF contribution obligations on interconnected VoIP providers, the court did not decide whether the Commission also could have imposed this obligation pursuant to its Title I ancillary jurisdiction. *Id.* at 15-16.

<sup>26</sup> See *E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005) (“*VoIP 911 Order*”); 47 CFR Part 9. The Commission also concluded that providers of interconnected VoIP services are subject to the Communications Assistance for Law Enforcement Act (“CALEA”). See *Communications Assistance*

More recently, the Commission also extended the section 222 customer proprietary network information (“CPNI”) obligations, disability access obligations, and telecommunications relay services (“TRS”) requirements to providers of interconnected VoIP services using its Title I authority.<sup>27</sup>

13. Consistent with our previous orders, we conclude that Title I of the Act gives us direct authority to impose regulatory fees on providers of interconnected VoIP services. In particular, we have previously found, based on sections 1 and 2(a) of the Act, coupled with the definitions set forth in section 3(33) (“radio communication”) and section 3(52) (“wire communication”), that interconnected VoIP services are covered by the Commission’s general jurisdictional grant.<sup>28</sup> Section 1 of the Act states that the Commission is created “[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States \* \* \* a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges,” and that the agency “shall execute and enforce the provisions of th[e] Act.”<sup>29</sup> Section 2(a), in turn, confers on the Commission regulatory authority over all interstate communication by wire or radio.<sup>30</sup> As we have previously observed, interconnected VoIP services are covered by the statutory definitions of

“wire communication” and/or “radio communication” because they involve “transmission of [voice] by aid of wire, cable, or other like connection \* \* \*” and/or “transmission by radio \* \* \*” of voice.<sup>31</sup> Therefore, these services come within the scope of the Commission’s subject matter jurisdiction under section 2(a) of the Act. Accordingly, section 9 of the Act gives the Commission direct authority to impose regulatory fees on interconnected VoIP providers. Specifically, section 9 states that the Commission “shall assess and collect regulatory fees to recover the costs of the following regulatory activities of the Commission: Enforcement activities, policy and rulemaking activities, user information services, and international activities.”<sup>32</sup> In light of the many and increasing resources the Commission now dedicates to VoIP, the Commission should recover costs from interconnected VoIP providers.<sup>33</sup>

14. We disagree with the VON Coalition’s argument that we do not have jurisdiction to extend regulatory fees to interconnected VoIP providers because regulatory fees can only be assessed on entities subject to licensing or certification requirements.<sup>34</sup> On the contrary, section 9 gives the Commission broad authority to impose regulatory fees. Section 9 does not limit the regulatory fee requirement to licensees. Moreover, the Commission has not, in the annual regulatory fee orders or otherwise, specifically limited the implementation of section 9 to “licensees.” To construe section 9 as narrowly as the VON Coalition proposes would prohibit the Commission from recovering costs from providers that impose costs on the Commission, simply because they were not licensees and would unreasonably lighten regulatory costs on certain industry segments at the cost of others.

#### b. Basis and Rate

15. Having concluded that the Commission has authority to assess regulatory fees on interconnected VoIP providers, we must determine how to assess those fees. Specifically, we must

determine whether to base fees on revenues or subscribers, or some other basis, and at what rate. We conclude that interconnected VoIP providers should pay regulatory fees based on their interstate and international revenue at the same rate as ITSPs.

16. In the *FY 2007 NPRM*, we sought comment on whether interconnected VoIP providers should be assessed regulatory fees based on revenues, which would be consistent with the regulatory fee methodology used for interstate telecommunications service providers, or if we should use a numbers-based approach, which would be consistent with the methodology used for CMRS.<sup>35</sup> Most commenters addressing this issue favor a numbers-based or subscriber-based approach, as opposed to a revenue-based approach.<sup>36</sup> We instead adopt a revenue-based approach as adopted in the *2006 Interim Contribution Methodology Order* for USF contributions. The Commission’s conclusion that interconnected VoIP service is more closely analogous to wireline toll service than to CMRS guides us here.<sup>37</sup> As a result, we will use revenue as the basis for imposing regulatory fees on interconnected VoIP providers instead of a subscriber-based approach, which is the basis for wireless providers.<sup>38</sup>

17. Commenters contend that broadband providers often offer a bundle of services to consumers and it may be difficult to separate the telecommunications service revenues from the other revenues.<sup>39</sup> Consistent with our decision in the *2006 Interim Contribution Methodology Order*, however, interconnected VoIP providers may avoid separating revenue types by using a safe-harbor level of 64.9 percent interstate or international revenues for purposes of calculating regulatory fee

for Law Enforcement Act and Broadband Access and Services, ET Docket No. 04–295, RM–10865, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989, 14991–92, para. 8 (2002) (“CALEA First Report and Order”), *aff’d*, *American Council on Education v. FCC*, 451 F.3d 226 (D.C. Cir. 2006).

<sup>27</sup> *Implementation of the Telecommunications Act of 1996, Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, IP-Enabled Services*, CC Docket No. 96–115, WC Docket No. 04–36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007) (“*EPIC CPNI Order*”); *IP-Enabled Services, Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WC Docket No. 04–36, WT Docket No. 96–198, Report and Order, FCC 07–110 (rel. June 15, 2007) (“*VoIP TRS Order*”).

<sup>28</sup> *See, e.g., VoIP 911 Order*, 20 FCC Rcd at 10261–62, para. 28.

<sup>29</sup> 47 U.S.C. 151.

<sup>30</sup> *See* 47 U.S.C. 152(a) (stating that the provisions of the Act “shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio \* \* \*”).

<sup>31</sup> *VoIP 911 Order*, 20 FCC Rcd at 10261–62, para. 28.

<sup>32</sup> 47 U.S.C. 159(a)(1).

<sup>33</sup> *See, e.g., nn.26–27 supra*. Although we find that section 9 by its terms allows us to impose regulatory fees on providers of interconnected VoIP services, we also find, consistent with our prior orders, that we have ancillary authority under Title I to impose these fees. *See, e.g., VoIP 911 Order*, 20 FCC Rcd at 10261–63, paras. 26–29. Interconnected VoIP providers fall within our Title I jurisdictional grant and the assessment of regulatory fees to fund Commission operations is critical to the effective performance of the Commission’s responsibilities.

<sup>34</sup> VON Coalition Comments at 6–7; WCA Comments at 3–5 & Reply Comments at 2–3.

<sup>35</sup> *FY 2007 NPRM*, 22 FCC Rcd at 7979, para. 10.

<sup>36</sup> *See, e.g.,* Nuvio Comments at 4; IUB Comments at 2–4; Comcast Comments at 1–2; WCA Comments at 3; NCTA Reply Comments at 2; VON Coalition Reply Comments at 6. Nuvio and VON Coalition suggest that if the Commission adopts a numbers-based assessment, the assessment should be on active numbers and not the inventory of numbers. Nuvio Comments at 4; VON Coalition Reply Comments at n. 16.

<sup>37</sup> The D.C. Circuit rejected Vonage’s challenge to that conclusion because Vonage was unable to show why usage patterns for VoIP are more like those for wireless than for wireline toll. *Vonage* at 18.

<sup>38</sup> *See* NTCA Comments at 2.

<sup>39</sup> Nuvio Comments at 4; Iowa Utilities Board Comments at 2–4; Comcast Comments at 1–2; WCA Comments at 3; NCTA Reply Comments at 2. Nuvio suggests that if the Commission adopts a numbers-based assessment, the assessment should be on active numbers and not the inventory of numbers. Nuvio Comments at 4.

obligations.<sup>40</sup> Interconnected VoIP providers may contribute based on a lesser percentage if they provide supporting traffic studies.<sup>41</sup>

18. We also conclude that interconnected VoIP providers will pay regulatory fees on their interstate and international revenues at the same rate as ITSPs. As we stated in the *2006 Interim Contribution Methodology Order*, interconnected VoIP providers offer a service that is almost indistinguishable, from the consumers' point of view, from the service offered by interstate telecommunications service providers.<sup>42</sup> Further, the explosive growth of the VoIP industry in recent years has resulted in recent Commission actions addressing the service.<sup>43</sup> The growth of the VoIP industry and the extent to which VoIP service is used as a substitute for analog voice service have necessitated a number of Commission rulemaking proceedings pertaining to interconnected VoIP services.

19. We recognize that the costs and benefits associated with our regulation of interconnected VoIP providers are not identical as those associated with regulating interstate telecommunications service and CMRS.<sup>44</sup> For example, at this time interconnected VoIP providers are not subject to the Commission's enforcement authority in most instances and only recently have the Commission's rulemaking activities involved interconnected VoIP providers.<sup>45</sup> The Commission does not maintain a database system pertaining to interconnected VoIP providers similar to the registration and filing systems for CMRS and wireline carriers.<sup>46</sup> In addition, interconnected VoIP providers do not receive certain benefits, such as universal service support payments and interconnection

rights, as Title II carriers do.<sup>47</sup> Section 9 is clear, however, that regulatory fee assessments are based on the burden imposed on the Commission, not benefits realized by regulatees.<sup>48</sup> Interconnected VoIP providers create costs at the Commission by participating in rulemaking proceedings, waiver petitions, and other matters in the wake of our assertion of ancillary jurisdiction under Title I of the Act to require providers of interconnected VoIP services to contribute to the universal service fund, supply 911 emergency calling capabilities to their customers, comply with section 222 CPNI obligations, and comply with our disability access and TRS requirements.<sup>49</sup> The provision of interconnected VoIP service is a growing industry<sup>50</sup> and we can reasonably assume that this regulatory burden on the Commission will continue to increase.<sup>51</sup> Thus, this category of service providers should share in the costs of the Commission's regulatory activities in the same manner as ITSPs. Section 9 does not require the Commission to engage in a company-by-company assessment of relative regulatory costs. In any given year, companies grouped in the ITSP category, or other regulatory fee categories, might be the subject of more regulation than others, e.g., merger proceedings. As a result, our responsibility here is to identify the category of regulatory fee payees with which interconnected VoIP providers most closely relate. On this note, we also observe that interconnected VoIP

<sup>47</sup> VON Coalition Comments at 17; WCA Comments at 6. We note that interconnected VoIP service is currently an eligible service for purposes of the schools and libraries program. In addition, the Commission recently clarified that wholesale telecommunications carriers have interconnection rights under sections 251(a) and (b) of the Act, including when providing wholesale services to interconnected VoIP providers. See *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, DA 07-709 (WCB rel. Mar. 1, 2007).

<sup>48</sup> Commenters have not attempted to quantify the relative burden imposed on the Commission by interconnected VoIP providers.

<sup>49</sup> *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7541-43, paras. 46-49; *VoIP 911 Order*, 20 FCC Rcd at 10261-266, paras. 26-35; *EPIC CPNI Order* at para. 55; *VoIP TRS Order* at para. 16.

<sup>50</sup> *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7528-29, para. 19.

<sup>51</sup> We recognize that including interconnected VoIP providers in our regulatory fee schedule at this time will have a minimal impact on the fees assessed other carriers, but this may change as the industry grows and their share of regulatory fees increases.

providers are able to offer their services because they interconnect with the PSTN, and they thereby benefit from our substantial regulation of telecommunications service providers.<sup>52</sup>

20. Because we are adding interconnected VoIP services to our regulatory fee assessments, we conclude that this is a permitted amendment under section 9(b)(3) of the Act. Section 9(b)(4)(B) of the Act in turn requires us to notify Congress 90 days before the change may take effect. We will provide Congress notification upon publication of this order, and will release a public notice once the amendment takes effect, if there is no Congressional objection.

#### 5. Private Land Mobile Radio Service

21. EWA argues that the fee for Private Land Mobile Radio Service ("PLMRS") exclusive use licenses has increased from \$5 per year in 2001 to \$20 per year in 2006, and for PLMRS shared use licenses, the fee has increased from \$5 to \$10 during the same time period.<sup>53</sup> EWA further contends that this increase in fee rates is not associated with a corresponding increase in the cost of regulating the PLMRS industry, and as a result, the Commission's FY 2007 proposed Part 90 PLMRS regulatory fee of \$35 (PLMRS Exclusive Use) and \$15 (PLMRS Shared Use) is unjustified.

22. We disagree. In our *FY 2004 Report and Order*, the Commission stated that regulatory fees need not be precisely calibrated on a service-by-service basis to the actual costs of the Commission's regulatory activities for that service.<sup>54</sup> The Commission stated that, "the initial Schedule of Regulatory Fees that Congress enacted in section 9(g) reflects a 'costs adjusted for benefits' approach permitted under section 9."<sup>55</sup> Procedurally, the Commission calculates regulatory fees by proportionally allocating the total amount that must be collected in section 9 regulatory fees (known as "Expected Revenue"), and dividing this allocated amount by the estimated number of units in its respective fee category. In the case of PLMRS (Shared Use and Exclusive Use), the resulting figure is also divided by 10, the length of the

<sup>52</sup> In addition, those companies that currently offer their customers both Title II services and interconnected VoIP services may choose to shift customers from the traditional landline service to the interconnected VoIP service in order to reduce the regulatory fee burden.

<sup>53</sup> EWA Comments at 2-3.

<sup>54</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, MD Docket No. 04-73, Report and Order, 19 FCC Rcd 11662, 11665-67, paras. 6-12 (2004) ("*FY 2004 Report and Order*").

<sup>55</sup> See *FY 2004 Report and Order*, 19 FCC Rcd at 11666, para. 8.

<sup>40</sup> See *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7544-45, para. 53; *Vonage*, slip op. at 7, 17-19.

<sup>41</sup> Consistent with the *Vonage* decision, interconnected VoIP providers need not at this time obtain pre-approval of their traffic studies. Rather, they must submit any studies upon which they rely no later than the deadline for submitting the FCC Form 499-Q for the same time period. *Vonage*, slip op. at 19-20; *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7535, para. 32.

<sup>42</sup> The Commission has determined that interconnected VoIP service is increasingly used to replace analog voice service. See *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7542, para. 48.

<sup>43</sup> See, e.g., *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7541-43, paras. 46-49; *VoIP 911 Order*, 20 FCC Rcd at 10261-266, paras. 26-35; *EPIC CPNI Order* at para. 55.

<sup>44</sup> See WCA Comments at 6; VON Coalition Comments at 15-17 & n.42.

<sup>45</sup> VON Coalition Comments at 16.

<sup>46</sup> *Id.*

term of a PLMRS license. Because PLMRS licenses have a ten-year term, and regulatory fees are not collected again from these licenses until after 10 years have passed, it is possible that in any given year, there may be fewer units that are either renewing their PLMRS licenses or applying for new ones. For example, between FY 2001 and FY 2006, the unit estimates for PLMRS Exclusive Use decreased from 5,500 units (FY 2001) to 2,200 units (FY 2006), a 60 percent reduction, while PLMRS Shared Use unit estimates decreased from 58,000 units (FY 2001) to 25,000 units (FY 2006), a 57 percent reduction.<sup>56</sup> At the same time that PLMRS (Shared Use and Exclusive Use) unit estimates were decreasing by nearly 60 percent, our congressionally mandated regulatory fees collections amount increased from \$200.1 million (FY 2001) to \$298.8 million (FY 2006), an increase of 49 percent. The combination of an increasing collections amount mandated by Congress combined with a decrease in the number of units resulted in a higher unit fee between FY 2001 and FY 2006 for PLMRS Shared Use and PLMRS Exclusive Use fee categories.

23. We also note that the unit fee increase has been gradual over time. For example, between FY 2001 and FY 2006, the PLMRS Shared Use unit fee remained steady at \$5 per year between FY 2001 and FY 2005, and increased only to \$10 per year beginning in FY 2006. During the same time period, the PLMRS Exclusive Use unit fee remained at \$5 per year in FY 2001 and FY 2002, increased to the level of \$10 per year in FY 2003, FY 2004, and FY 2005, and then increased to \$20 per year in FY 2006. Because these fee increases are based primarily on a declining unit base and an increasing congressional mandate to collect more annual regulatory fees, common factors that contribute to unit fee changes each year, we decline to modify or reduce the PLMRS (Shared Use and Exclusive Use) unit fee as EWA suggests.

#### *B. Administrative and Operational Issues*

24. In our *FY 2007 NPRM*, we sought comment on the administrative and operational processes used to collect the annual section 9 regulatory fees. Although these issues do not affect the amount of regulatory fees parties are obligated to submit, the administrative and operational issues affect the process of submitting payment.

<sup>56</sup> Data derived from regulatory fee Report and Orders for fiscal years 2001–2006.

#### 1. Use of Fee Filer

25. We did not seek specific comment on the use of our online Fee Filer application in the *FY 2007 NPRM*. We take this opportunity, however, to *strongly encourage regulatees to electronically file their FY 2007 regulatory fee payments via Fee Filer*,<sup>57</sup> rather than submitting payment with a completed hardcopy Form 159, Form 159–B, and/or Form 159–W. The benefits of electronically filing via Fee Filer are expeditious payment submissions that are less expensive (no U.S. postage if paying online) and less prone to error. It also results in improved record keeping and payment reconciliation efforts, and reduces paperwork burdens on payers and Commission staff alike.

26. Traditionally, we have received hardcopy Form 159–Cs (Continuation Sheets) from our regulatees needing to make voluminous payment transactions. Our “voluminous payers” will benefit even more so by using Fee Filer. Having expanded our pre-billing initiatives in FY 2007, some regulatees will receive more than one Form 159–B; and some will be obligated to pay for fees that were pre-billed and other fees that were not pre-billed. Fee Filer relieves regulatees of the need to mail several different pre-bills or to follow different filing instructions for different fees; and enables all fee obligations to be paid simply either online or by following pre-printed instructions on a Fee Filer-produced voucher.

27. We note that Fee Filer accepts electronic credit card transactions of up to \$99,999.99 and ACH payment transactions from a bank account of an unlimited dollar amount. Fee Filer also facilitates payment by check or wire transfer by producing a one-page Remittance Voucher Form 159–E which can be mailed to our lockbox bank.

#### 2. Proposals for Notification and Collection of Regulatory Fees

28. In our *FY 2007 NPRM*, we sought comment on the administrative processes that the Commission uses to notify regulatees and collect regulatory fees. We received no comment on these general processes. Each year, we generate public notices and fact sheets that notify regulatees of the fee payment due date and provide additional information regarding regulatory fee payment procedures. Consistent with our established practice, we will provide public notices, fact sheets and all other relevant material on our Web site at <http://www.fcc.gov/fees/>

<sup>57</sup> Fee Filer can be accessed at <http://www.fcc.gov/fees/feefiler.html>.

[regfees.html](#) for the FY 2007 regulatory fee cycle. As a general practice, we will not send regulatory fee material to regulatees via surface mail. However, in the event that regulatees do not have access to the Internet, we will mail public notices and other relevant material upon request. Regulatees and the general public may request such information by contacting the FCC Financial Operations HelpDesk at (877) 480–3201, Option 4.

29. As discussed above, we do not send public notices and fact sheets to regulatees en masse. However, we will continue to send specific regulatory fee pre-bills or assessment notifications via surface mail to the select fee categories discussed below.<sup>58</sup> Pre-bills are hardcopy billing statements that the Commission mails to certain regulatees. In prior years, the Commission only sent pre-bills to ITSPs and satellite space station licensees. The remaining regulatees did not receive pre-bills.

30. In our *FY 2007 NPRM*, we sought comment on expanding our section 9 regulatory fee pre-billing initiatives to include our service categories for earth stations and CARS stations, beginning in FY 2007. We stated that we could accomplish pre-billing for these categories because they are comprised of relatively few payment units (relative to many other categories in our Schedule of Regulatory Fees), and because we maintain licensing databases for both categories.<sup>59</sup> The ACA supports our proposal to pre-bill earth stations and CARS stations, noting that it can promote timely filings and payments, and further reduce administrative burdens and costs for small cable operators.<sup>60</sup> We received no comments regarding our proposal. Effective this fiscal year, we will pre-bill our earth station and CARS station service categories.

#### a. Interstate Telecommunications Service Providers

31. In FY 2001, we began mailing pre-completed FCC Form 159–W assessments to carriers in an effort to

<sup>58</sup> An assessment is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity's regulatory fee) but it is not entered into the Commission's accounting system as a current debt. A pre-bill is considered an account receivable in the Commission's accounting system. Pre-bills reflect the amount owed and have a payment due date of the last day of the regulatory fee payment window. Consequently, if a pre-bill is not paid by the due date, it becomes delinquent and is subject to our debt collection procedures. *See also* 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

<sup>59</sup> *See FY 2007 NPRM*, 22 FCC Rcd at 7981, para. 19.

<sup>60</sup> ACA Comments at 4.

assist them in paying their ITSP regulatory fee. The fee amount on FCC Form 159-W was calculated from the FCC Form 499-A worksheet. Beginning in FY 2004, we converted our usage of the FCC Form 159-W from an "assessment of amount due" to a pre-bill. We have successfully used the Form 159-W as a pre-billing instrument in the fiscal years following, and we proposed to continue our ITSP pre-billing initiative in FY 2007 in our *FY 2007 NPRM*. We received no comment on this proposal, and will continue to mail pre-bills ITSPs in FY 2007.

32. This fiscal year, we will round lines 14 (total subject revenues) and 16 (total regulatory fee owed) on FCC Form 159-W to the nearest dollar. Line 14 must be rounded to a whole dollar amount because this data field is linked to the FCC Form 159 Remittance Advice Block 25A (quantity), which can only accept whole numbers. It logically follows that if line 14 must be rounded, then the form's final line that calculates the total fee owed (line 16) should be rounded to the nearest dollar as well. Also, rounding lines 14 and 16 will nominally ease the filing and payment burdens of our Form 159-W filers. We received no comment on this administrative change as proposed in our *FY 2007 NPRM*, and will therefore implement the change for FY 2007.

#### b. Satellite Space Station Licensees

33. Beginning in FY 2004, we mailed regulatory fee pre-bills via surface mail to licensees in our two satellite space station service categories. Specifically, geostationary orbit space station ("GSO") licensees received bills requesting regulatory fee payment for satellites that (1) were licensed by the Commission and operational on or before October 1 of the respective fiscal year; and (2) were not co-located with and technically identical to another operational satellite on that date (*i.e.*, were not functioning as a spare satellite). Non-geostationary orbit space station ("NGSO") licensees received pre-bills requesting regulatory fee payment for systems that were licensed by the Commission and operational on or before October 1 of the respective fiscal year.

34. For FY 2007, we proposed to continue mailing pre-bills for our GSO and NGSO satellite space station categories.<sup>61</sup> We received no comment on this matter, and will continue to mail pre-bills to our GSO and NGSO satellite space station categories.

<sup>61</sup> See *FY 2007 NPRM*, 22 FCC Rcd at 7980-81, para. 17.

#### c. Media Services Licensees

35. Beginning in FY 2003, we sent fee assessment notifications via surface mail to media services entities on a per-facility basis. The notifications provided the assessed fee amount for the facility in question, as well as the data attributes that determined the fee amount. We have since refined this initiative with improved results.<sup>62</sup> In our *FY 2007 NPRM*, we proposed to continue our assessment initiative for media services licensees this year.<sup>63</sup> We received no comment on the proposal.

36. Consistent with procedures used last year, we will mail assessment notifications to licensees to their primary record of contact populated in CDBS (Consolidated Database System) and to their secondary record of contact, if available. We will continue to make the Commission-authorized web site available to licensees to update or correct any information concerning their facilities and to amend their fee-exempt status, if need be.<sup>64</sup> Licensees opting not to file their fee payment electronically through Fee Filer must submit a completed hardcopy FCC Form 159 with their fee payment; *i.e.*, the assessment notifications cannot be used as a substitute for a completed Form 159.

#### d. Commercial Mobile Radio Service Cellular and Mobile Services Assessments

37. As we have done in prior years, we will send assessment letters to CMRS providers using Numbering Resource Utilization Forecast ("NRUF") data that is based on "assigned" number counts that have been adjusted for porting to net Type 0 ports ("in" and

<sup>62</sup> Some of those refinements have been to provide licensees with a Commission-authorized Web site to update or correct any information concerning their facilities, and to amend their fee-exempt status, if need be. Also, our notifications now provide licensees with a telephone number to call in the event that they need customer assistance. The notifications themselves have been refined so that licensees of fewer than four facilities receive individual fee assessment postcards for their facilities; whereas licensees of four or more facilities now receive a single assessment letter that lists all of their facilities and the associated regulatory fee obligation for each facility.

<sup>63</sup> Fee assessments were proposed again to be issued for AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/Boosters, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Low Power Television ("LPTV") Stations, Class A Television Stations, and LPTV Translators/Boosters, to the extent that applicants, permittees and licensees of such facilities do not qualify as government entities or non-profit entities. Fee assessments have not been issued for broadcast auxiliary stations in prior years, nor will they be issued in FY 2007.

<sup>64</sup> The Commission-authorized Web site for media services licensees is <http://www.fccfees.com>.

"out").<sup>65</sup> The letters will not include Operating Company Numbers ("OCNs") with their respective assigned number counts, but rather, OCNs with an aggregate total of assigned numbers for each carrier. As in prior years, carriers will be given an opportunity to amend their subscriber counts listed on the assessment letter.

38. If the number of subscribers on the assessment letter differs from the subscriber count the service provider provided on its NRUF form, the provider may correct its subscriber count by returning the assessment letter or by contacting the Commission and stating a reason for the change, such as the purchase or the sale of a subsidiary, including the date of the transaction, and any other information that will help to justify a reason for the change.

39. If we receive no response or correction to our initial assessment letter, we will expect the provider's section 9 fee payment to be based on the number of subscribers listed on that letter. We will review all amendments to assessment letters and determine whether a change in the number of subscribers is warranted. We will then generate and mail a final assessment letter. The final assessment letter will inform carriers as to whether or not we accept the amended subscriber count.

40. Although an initial and a final assessment letter will be mailed to CMRS providers that have filed an NRUF form, some providers may not be sent assessment letters if they did not file the NRUF form. These providers shall compute their section 9 fee payment using the standard methodology<sup>66</sup> that is currently in place for CMRS Wireless services (e.g., compute their subscriber counts as of December 31, 2006), and submit their payment accordingly, either via Fee Filer, or attached to a completed hardcopy FCC Form 159. However, regardless of whether a provider receives an assessment letter or calculates its subscriber count independently, the Commission may audit the number of subscribers for which section 9 fees are paid. In the event that the Commission determines that the number of subscribers is inaccurate or that an insufficient reason is given for making a correction on the

<sup>65</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2005 and Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, MD Docket Nos. 05-59 and 04-73, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12264, paras. 38-44 (2005).

<sup>66</sup> Federal Communications Commission, *Regulatory Fees Fact Sheet: What You Owe—Commercial Wireless Services for FY 2005* at 1 (rel. Jul. 2005).

initial assessment letter, the Commission will assess the carrier for the difference between what was paid and what should have been paid.

41. *Aggregate Subscriber Levels.* Also in our *FY 2007 NPRM*, we noted that last year we eliminated the requirement for CMRS providers to identify their individual call signs when making their section 9 fee payment. This simplified the payment process for all CMRS providers by enabling them to pay their section 9 fees at the aggregate level.<sup>67</sup> In our *FY 2007 NPRM*, we proposed to continue this practice and we received no comment. We shall therefore continue to allow CMRS providers to pay their section 9 fees at the aggregate subscriber level.

42. *Consolidated CMRS Section 9 Fee Categories.* Finally, in our *FY 2007 NPRM*, we proposed to consolidate the CMRS cellular and CMRS mobile fee categories into one CMRS fee category. This action would eliminate the need for CMRS providers to separate their subscriber counts into CMRS cellular and CMRS mobile fee categories during the fee payment process. At one time, the Commission perceived a need to monitor the CMRS cellular and CMRS mobile fee categories separately.<sup>68</sup> However, we deem this no longer necessary and therefore proposed to reduce administrative burdens on CMRS providers by consolidating the two categories into one. We received no specific comment on this proposal. We will therefore consolidate our CMRS mobile category (which would have been payment type code 0712 in FY 2007) into the CMRS cellular category (payment type code 0711 in FY 2007). On a going forward basis, all CMRS cellular and mobile providers shall make their section 9 fee payments using the Commission's payment type code \_\_11. This procedural change does not affect CMRS Messaging (Paging) providers, who will continue to make their section 9 fee payment using fee code 0713 in FY 2007 and \_\_13 in the outyears.

<sup>67</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, MD Docket No. 06-68, Report and Order, 21 FCC Rcd 8092, 8105, para. 48 (2006).

<sup>68</sup> In our *FY 1998 Report and Order*, the Commission classified Wireless Communications Service ("WCS"), which included Personal Communications Services (Part 24), as a CMRS Mobile Service, stating that CMRS is "an 'umbrella' descriptive term attributed to various existing broadband services authorized to provide interconnected mobile radio services"<sup>68</sup> However, beginning in FY 1998, a separate fee code was provided for Personal Communications Service ("PCS") to monitor the number of units in this service category.

e. Cable Television Subscribers

43. In our *FY 2007 NRPM*, we proposed to continue to permit cable television operators to base their regulatory fee payment on their company's aggregate year-end subscriber count, rather than requiring them to sub-report subscriber counts on a per community unit identifier (CUID) basis.<sup>69</sup> This practice has worked well for the Commission the past three fiscal years and has eased administrative burdens for the cable television industry. One commenter supports this proposal.<sup>70</sup> We received no opposing comments, and will thereby continue to employ this payment procedure this fiscal year.

44. We also proposed to send an e-mail reminder to addresses populated in the Media Bureau's Cable Operations and Licensing System ("COALS"), as we did last year, to notify recipients of the FY 2007 regulatory fee payment due date and the fee amount for basic cable television subscribers. Cable television operators are required to file their cable-related forms at the Commission via the COALS Web site. To date, more than 98 percent of all cable operators have their email addresses recorded in the database. One commenter supports this proposal.<sup>71</sup> We received no opposing comments, and will therefore send an e-mail reminder to cable operators again this fiscal year.

45. Sending reminders via e-mail has proven to be an effective practice and we therefore proposed to discontinue our other practice of sending fee assessment letters via surface mail to cable television operators who are on file as having paid regulatory fees the previous fiscal year. One commenter asks the Commission to continue sending fee assessment letters via surface mail to cable operators that serve fewer than 5,000 subscribers, stating that these operators rely exclusively on the U.S. postal service for their day-to-day operations.<sup>72</sup> We decline the commenter's request. After conducting this assessment initiative for three years, we have concluded that it is inadequate for accurate assessment purposes and we will instead direct the Commission's resources towards more useful fee collection activities. In addition, we note that we make available all relevant regulatory fee material on our Web site. If regulatees cannot access the Internet to obtain the necessary information for paying their

regulatory fees, they may request such information to be sent via surface mail by contacting the FCC Financial Operations HelpDesk at (877) 480-3201, Option 4.

### III. Procedural Matters

#### A. Payment of Regulatory Fees

##### 1. De Minimis Fee Payment Liability

46. Consistent with past practice, regulatees whose total FY 2007 regulatory fee liability, including all categories of fees for which payment is due, amounts to less than \$10 will be exempted from payment of FY 2007 regulatory fees.

##### 2. Standard Fee Calculations and Payment Dates

47. The Commission will, for the convenience of payers, accept fee payments made in advance of the window for the payment of regulatory fees. Licensees are reminded that, under our current rules, the responsibility for payment of fees by service category is as follows:

(a) *Media Services:* Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2006 for AM/FM radio stations, VHF/UHF television stations and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2006. In instances where a permit or license is transferred or assigned after October 1, 2006, responsibility for payment rests with the holder of the permit or license as of the fee due date.

(b) *Wireline (Common Carrier) Services:* Regulatory fees must be paid for authorizations that were granted on or before October 1, 2006. In instances where a permit or license is transferred or assigned after October 1, 2006, responsibility for payment rests with the holder of the permit or license as of the fee due date.

(c) *Wireless Services:* CMRS cellular, mobile, and messaging services (fees based upon a subscriber, unit or circuit count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2006. The number of subscribers, units or circuits on December 31, 2006 will be used as the basis from which to calculate the fee payment.

The first eleven regulatory fee categories in our Schedule of Regulatory Fees (see Attachment D) pay what we refer to as "small multi-year wireless regulatory fees." Entities pay these regulatory fees in advance for the entire amount of their 5-year or 10-year term of initial license, and only pay

<sup>69</sup> See *FY 2007 NPRM*, 22 FCC Rcd at 7983, para. 28.

<sup>70</sup> ACA Comments at 2.

<sup>71</sup> ACA Comments at 2.

<sup>72</sup> ACA Comments at 3.

regulatory fees again for the license at the time its next renewal. So while we include these eleven categories in our Schedule of Regulatory Fees to publicize the fee amounts, we do not actually collect these fees on an annual basis.

(d) *Multichannel Video Programming Distributor Services (cable television operators and CARS licensees)*: Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2006.<sup>73</sup> Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2006. In instances where a CARS license is transferred or assigned after October 1, 2006, responsibility for payment rests with the holder of the license as of the fee due date.

(e) *International Services*: Regulatory fees must be paid for earth stations, geostationary orbit space stations and non-geostationary orbit satellite systems that were licensed and operational on or before October 1, 2006. In instances where a license is transferred or assigned after October 1, 2006, responsibility for payment rests with the holder of the license as of the fee due date. Regulatory fees must be paid for international bearer circuits, the payments of which are determined by the number of active circuits as of December 31, 2006.<sup>74</sup>

<sup>73</sup> Cable television system operators should compute their basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. *Note*: Bulk-Rate Customers = Total annual bulk-rate change divided by basic annual subscription rate for individual households. Operators may base their count on "a typical day in the last full week" of December 2006, rather than on a count as of December 31, 2006.

<sup>74</sup> Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active international bearer circuits in any transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. Non-common carrier submarine cable operators are also to pay fees for any and all international bearer circuits sold on an indefeasible right of use ("IRU") basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. See *Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, MD Docket No. 01-76, Report and Order, 16 FCC Rcd 13525, 13593 (2001); *Regulatory Fees Fact Sheet: What You Owe—International and Satellite Services Licensees for FY 2004* at 3 (rel. July 2004) (the fact sheet is available on the FCC Web site at: [#### B. Enforcement](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-</a></p>
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48. As a reminder to all licensees, section 159(c) of the Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee. As in years past, a late payment penalty of 25 percent of the amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Regulatory fee payment must be received and stamped at the lockbox bank by the last day of the regulatory fee filing window, and not merely postmarked by the last day of the window. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the Commission's Red Light Rule (see 47 CFR 1.1910) and the provisions set forth in the Debt Collection Improvement Act of 1996 ("DCIA"). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and 47 CFR 1.1940(d) of the Commission's rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.

49. Furthermore, our regulatory fee rules provide that we will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement

249904A4.pdf). On February 6, 2006, VSNL Telecommunications (US) Inc. filed a Petition for Rulemaking urging the Commission to reform the current International Bearer Circuit Fee rules and policies as applied to non-common carrier submarine cable operators. See Petition for Rulemaking of VSNL Telecommunications (US) Inc., RM-11312 (filed Feb. 6, 2006). This Petition remains pending before the Commission, which has issued a Public Notice requesting comment on the petition. See Consumer and Governmental Affairs Bureau, Reference Information Center, *Public Notice*, Report No. 2759 (rel. Feb. 15, 2006). The Commission intends to resolve the complex issues presented by this Petition separately, and any comments on these issues filed in the instant proceeding will be incorporated into, and addressed, with those filed on the Petition for Rulemaking.

for payment is not made. See 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910. Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the entity responsible for paying the delinquent fee(s).

#### C. Final Paperwork Reduction Act of 1995 Analysis

50. This Report and Order contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

#### D. Congressional Review Act Analysis

51. The Commission will send a copy of this Report and Order and Further Notice of Proposed Rulemaking in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

#### IV. Ordering Clauses

52. Accordingly, *it is ordered* pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r) that the FY 2007 section 9 regulatory fee assessment requirements *are adopted* as specified herein.

53. *It is further ordered* that Part 1 of the Commission's Rules *are amended* as set forth in Attachment H, and the these Rules shall become effective 30 days after publication in the **Federal Register**, except that changes to the Schedule of Regulatory Fees made pursuant to section 9(b)(3) of the Communications Act, and incorporating regulatory fee payment obligations for interconnected VoIP service providers, shall become effective 90 days after notification to Congress.

54. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order and Further Notice of Proposed Rulemaking,

including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

### Attachment A—Final Regulatory Flexibility Analysis

55. As required by the Regulatory Flexibility Act (“RFA”),<sup>75</sup> the Commission prepared an Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact on small entities by the policies and rules proposed in its *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2007*.<sup>76</sup> Written public comments were sought on the FY 2007 fees proposal, including comments on the IRFA. This present Final Regulatory Flexibility Analysis (“FRFA”) conforms to the RFA.<sup>77</sup>

#### I. Need for, and Objectives of, the Proposed Rules

56. This rulemaking proceeding is initiated to amend the Schedule of Regulatory Fees in the amount of \$290,295,160, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

#### II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

57. None.

#### III. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

58. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.<sup>78</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>79</sup> In

addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>80</sup> A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>81</sup>

59. Small Businesses. Nationwide, there are a total of 22.4 million small businesses, according to SBA data.<sup>82</sup>

60. Small Organizations. Nationwide, there are approximately 1.6 million small organizations.<sup>83</sup>

61. Small Governmental Jurisdictions. The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>84</sup> Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.<sup>85</sup> We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”<sup>86</sup> Thus, we estimate that most governmental jurisdictions are small.

62. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a “small business” under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”<sup>87</sup> The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such

dominance is not “national” in scope.<sup>88</sup> We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

63. Incumbent Local Exchange Carriers (“ILECs”). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>89</sup> According to Commission data,<sup>90</sup> 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by these rules.

64. Competitive Local Exchange Carriers (“CLECs”), Competitive Access Providers (“CAPs”), “Shared-Tenant Service Providers,” and “Other Local Service Providers.” Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>91</sup> According to Commission data,<sup>92</sup> 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 94 have more than 1,500

<sup>80</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.”

<sup>81</sup> 15 U.S.C. 632.

<sup>82</sup> See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

<sup>83</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>84</sup> 5 U.S.C. 601(5).

<sup>85</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

<sup>86</sup> We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

<sup>87</sup> 15 U.S.C. 632.

<sup>88</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small-business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. See 13 CFR 121.102(b).

<sup>89</sup> 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110.

<sup>90</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, “*Trends in Telephone Service*” at Table 5.3, Page 5–5 (June 2005) (hereinafter “*Trends in Telephone Service*”). This source uses data that are current as of October 1, 2004.

<sup>91</sup> 13 CFR 121.201, NAICS code 517110.

<sup>92</sup> “*Trends in Telephone Service*” at Table 5.3.

<sup>75</sup> 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (“CWAAA”). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”).

<sup>76</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Notice of Proposed Rulemaking, 22 FCC Rcd 7975 (2007) (“FY 2007 NPRM”).

<sup>77</sup> 5 U.S.C. 604.

<sup>78</sup> 5 U.S.C. 603(b)(3).

<sup>79</sup> 5 U.S.C. 601(6).

employees. In addition, 12 carriers have reported that they are "Shared-Tenant Service Providers," and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are "Other Local Service Providers." Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by these rules.

65. Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>93</sup> According to Commission data,<sup>94</sup> 143 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 141 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by these rules.

66. Toll Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>95</sup> According to Commission data,<sup>96</sup> 770 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 747 have 1,500 or fewer employees and 23 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by these rules.

67. Payphone Service Providers ("PSPs"). Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>97</sup> According to Commission data,<sup>98</sup> 654 carriers have reported that they are engaged in the provision of payphone services. Of

these, an estimated 652 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by these rules.

68. Interexchange Carriers ("IXCs"). Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>99</sup> According to Commission data,<sup>100</sup> 316 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by these rules.

69. Operator Service Providers ("OSPs"). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>101</sup> According to Commission data,<sup>102</sup> 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 20 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by these rules.

70. Prepaid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>103</sup> According to Commission data,<sup>104</sup> 89 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 88 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority

of prepaid calling card providers are small entities that may be affected by these rules.

71. 800 and 800-Like Service Subscribers.<sup>105</sup> Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>106</sup> The most reliable source of information regarding the number of these service subscribers appears to be data the Commission receives from Database Service Management on the 800, 866, 877, and 888 numbers in use.<sup>107</sup> According to our data, at the end of December 2004, the number of 800 numbers assigned was 7,540,453; the number of 888 numbers assigned was 5,947,789; the number of 877 numbers assigned was 4,805,568; and the number of 866 numbers assigned was 5,011,291. We do not have data specifying the number of these subscribers that are independently owned and operated or have 1,500 or fewer employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,540,453 or fewer small entity 800 subscribers; 5,947,789 or fewer small entity 888 subscribers; 4,805,568 or fewer small entity 877 subscribers, and 5,011,291 or fewer entity 866 subscribers.

72. International Service Providers. There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of "Satellite Telecommunications" and "Other Telecommunications." Under both categories, such a business is small if it has \$13.5 million or less in average annual receipts.<sup>108</sup>

73. The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite

<sup>93</sup> 13 CFR 121.201, NAICS code 517310.

<sup>94</sup> "Trends in Telephone Service" at Table 5.3.

<sup>95</sup> 13 CFR 121.201, NAICS code 517310.

<sup>96</sup> "Trends in Telephone Service" at Table 5.3.

<sup>97</sup> 3 CFR 121.201, NAICS code 517110.

<sup>98</sup> "Trends in Telephone Service" at Table 5.3.

<sup>99</sup> 13 CFR 121.201, NAICS code 517110.

<sup>100</sup> "Trends in Telephone Service" at Table 5.3.

<sup>101</sup> 13 CFR 121.201, NAICS code 517110.

<sup>102</sup> "Trends in Telephone Service" at Table 5.3.

<sup>103</sup> 13 CFR 121.201, NAICS code 517310.

<sup>104</sup> "Trends in Telephone Service" at Table 5.3.

<sup>105</sup> We include all toll-free number subscribers in this category, including those for 888 numbers.

<sup>106</sup> 13 CFR 121.201, NAICS code 517310.

<sup>107</sup> "Trends in Telephone Service" at Tables 18.4, 18.5, 18.6, and 18.7.

<sup>108</sup> 13 CFR 121.201, NAICS codes 517410 and 517910.

telecommunications.”<sup>109</sup> For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.<sup>110</sup> Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.<sup>111</sup> Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

74. The second category of Other Telecommunications “comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.”<sup>112</sup> For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.<sup>113</sup> Of this total, 259 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.<sup>114</sup> Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

75. Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of “Paging”<sup>115</sup> and “Cellular and Other Wireless Telecommunications.”<sup>116</sup> Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the

entire year.<sup>117</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>118</sup> Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.<sup>119</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>120</sup> Thus, under this second category and size standard, the majority of firms can, again, be considered small.

76. Internet Service Providers. The SBA has developed a small business size standard for Internet Service Providers. This category comprises establishments “primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others.”<sup>121</sup> Under the SBA size standard, such a business is small if it has average annual receipts of \$21 million or less.<sup>122</sup> According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year.<sup>123</sup> Of these, 2,659 firms had annual receipts of under \$10 million, and an additional 67 firms had receipts of between \$10 million and \$24,999,999.<sup>124</sup> Thus, under this size standard, the great majority of firms can be considered small entities.

77. Cellular Licensees. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories

of “Paging”<sup>125</sup> and “Cellular and Other Wireless Telecommunications.”<sup>126</sup> Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.<sup>127</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>128</sup> Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.<sup>129</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>130</sup> Thus, under this second category and size standard, the majority of firms can, again, be considered small.

78. Common Carrier Paging. As noted, the SBA has developed a small business size standard for wireless firms within the broad economic census categories of “Cellular and Other Wireless Telecommunications.”<sup>131</sup> Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, U.S. Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.<sup>132</sup> Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.<sup>133</sup> Thus, under this category and

<sup>109</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517410 Satellite Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>110</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517410 (issued Nov. 2005).

<sup>111</sup> *Id.* An additional 38 firms had annual receipts of \$25 million or more.

<sup>112</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517910 Other Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>113</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517910 (issued Nov. 2005).

<sup>114</sup> *Id.* An additional 14 firms had annual receipts of \$25 million or more.

<sup>115</sup> 13 CFR 121.201, NAICS code 517211.

<sup>116</sup> 13 CFR 121.201, NAICS code 517212.

<sup>117</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517211 (issued Nov. 2005).

<sup>118</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>119</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517212 (issued Nov. 2005).

<sup>120</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>121</sup> Office of Management and Budget, North American Industry Classification System, page 515 (1997). NAICS code 518111, “On-Line Information Services.”

<sup>122</sup> 13 CFR 121.201, NAICS code 518111.

<sup>123</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191 (issued Oct. 2000).

<sup>124</sup> *Id.*

<sup>125</sup> 13 CFR 121.201, NAICS code 517211.

<sup>126</sup> 13 CFR 121.201, NAICS code 517212.

<sup>127</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517211 (issued Nov. 2005).

<sup>128</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>129</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517212 (issued Nov. 2005).

<sup>130</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>131</sup> 13 CFR 121.201, NAICS code 517212.

<sup>132</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued Oct. 2000).

<sup>133</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment

associated small business size standard, the great majority of firms can be considered small.

79. In addition, in the Paging Second Report and Order, the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>134</sup> A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.<sup>135</sup> The SBA has approved this definition.<sup>136</sup> An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold.<sup>137</sup> Fifty-seven companies claiming small business status won 440 licenses.<sup>138</sup> An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.<sup>139</sup> One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.<sup>140</sup> Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in*

Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued Oct. 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

<sup>134</sup> *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, Second Report and Order, 12 FCC Rcd 2732, 2811–2812, paras. 178–181 ("Paging Second Report and Order"); see also *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085–10088, paras. 98–107 (1999).

<sup>135</sup> *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

<sup>136</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, Small Business Administration, dated Dec. 2, 1998.

<sup>137</sup> See "929 and 931 MHz Paging Auction Closes," Public Notice, 15 FCC Rcd 4858 (WTB 2000).

<sup>138</sup> *Id.*

<sup>139</sup> See "Lower and Upper Paging Band Auction Closes," Public Notice, 16 FCC Rcd 21821 (WTB 2002).

<sup>140</sup> See "Lower and Upper Paging Bands Auction Closes," Public Notice, 18 FCC Rcd 11154 (WTB 2003).

*Telephone Service*, 408 private and common carriers reported that they were engaged in the provision of either paging or "other mobile" services.<sup>141</sup> Of these, we estimate that 589 are small, under the SBA-approved small business size standard.<sup>142</sup> We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

80. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services ("WCS") auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years.<sup>143</sup> The SBA has approved these definitions.<sup>144</sup> The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

81. Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services.<sup>145</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>146</sup> According to *Trends in Telephone Service* data, 437 carriers reported that they were engaged in wireless telephony.<sup>147</sup> We have estimated that 260 of these are small under the SBA small business size standard.

82. Broadband Personal Communications Service. The broadband personal communications

<sup>141</sup> "Trends in Telephone Service" at Table 5.3.

<sup>142</sup> 13 CFR 121.201, NAICS code 517211.

<sup>143</sup> *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

<sup>144</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

<sup>145</sup> 13 CFR 121.201, NAICS code 517212.

<sup>146</sup> *Id.*

<sup>147</sup> "Trends in Telephone Service" at Table 5.3.

services ("PCS") spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>148</sup> For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>149</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>150</sup> No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.<sup>151</sup> On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.<sup>152</sup>

83. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses.<sup>153</sup> Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction No. 58. There were

<sup>148</sup> See *Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, 11 FCC Rcd 7824, 7850–7852, paras. 57–60 (1996); see also 47 CFR 24.720(b).

<sup>149</sup> See *Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, 11 FCC Rcd 7824, 7852, para. 60.

<sup>150</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

<sup>151</sup> FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (rel. Jan. 14, 1997).

<sup>152</sup> See "C, D, E, and F Block Broadband PCS Auction Closes," Public Notice, 14 FCC Rcd 6688 (WTB 1999).

<sup>153</sup> See "C and F Block Broadband PCS Auction Closes; Winning Bidders Announced," Public Notice, 16 FCC Rcd 2339 (2001).

24 winning bidders for 217 licenses.<sup>154</sup> Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 38 Broadband PCS licenses in Auction No. 71, of which 26 were C block licenses and 6 were F block licenses. There were 12 winning bidders for the 33 C and F block licenses. Of the 12 winning bidders, four claimed small business status and won 16 licenses.

84. Narrowband Personal Communications Services. The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less.<sup>155</sup> Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.<sup>156</sup> To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.<sup>157</sup> A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.<sup>158</sup> A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.<sup>159</sup> The SBA has approved these small business size standards.<sup>160</sup> A third auction

commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.<sup>161</sup> Three of these claimed status as a small or very small entity and won 311 licenses.

85. Lower 700 MHz Band Licenses. We adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.<sup>162</sup> We have defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>163</sup> A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>164</sup> Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is "entrepreneur," which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.<sup>165</sup> The SBA has approved these small size standards.<sup>166</sup> An auction of 740 licenses (one license in each of the 734 MSAs/RsAs and one license in each of the six Economic Area Groupings ("EAGs")) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.<sup>167</sup> A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area

licenses.<sup>168</sup> Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.<sup>169</sup> On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

86. Upper 700 MHz Band Licenses. The Commission released a Report and Order, authorizing service in the upper 700 MHz band.<sup>170</sup> This auction, previously scheduled for January 13, 2003, has been postponed.<sup>171</sup>

87. 700 MHz Guard Band Licenses. In the 700 MHz Guard Band Order, we adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>172</sup> A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>173</sup> Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>174</sup> SBA approval of these definitions is not required.<sup>175</sup> An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.<sup>176</sup> Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses

<sup>154</sup> See "Broadband PCS Spectrum Auction Closes: Winning Bidders Announced for Auction No. 58," *Public Notice*, 20 FCC Rcd 3703 (2005).

<sup>155</sup> *Implementation of Section 309(j) of the Communications Act—Competitive Bidding Narrowband PCS*, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

<sup>156</sup> See "Announcing the High Bidders in the Auction of Ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674," *Public Notice*, PNWL 94-004 (rel. Aug. 2, 1994); "Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787," *Public Notice*, PNWL 94-27 (rel. Nov. 9, 1994).

<sup>157</sup> *Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS*, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000).

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal

Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated Dec. 2, 1998.

<sup>161</sup> See "Narrowband PCS Auction Closes," *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

<sup>162</sup> See *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd 1022 (2002).

<sup>163</sup> See *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd 1022, 1087-88, para. 172 (2002).

<sup>164</sup> *Id.*

<sup>165</sup> See *id.* at 1088, para. 173.

<sup>166</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated Aug. 10, 1999.

<sup>167</sup> See "Lower 700 MHz Band Auction Closes," *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

<sup>168</sup> See "Lower 700 MHz Band Auction Closes," *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

<sup>169</sup> See *id.*

<sup>170</sup> See *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, Second Memorandum Opinion and Order, 16 FCC Rcd 1239 (2001).

<sup>171</sup> See "Auction of Licenses for 747-762 and 777-792 MHz Bands (Auction No. 31) Is Rescheduled," *Public Notice*, 16 FCC Rcd 13079 (WTB 2003).

<sup>172</sup> See *Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, Second Report and Order, 15 FCC Rcd 5299 (2000).

<sup>173</sup> See *Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, Second Report and Order, 15 FCC Rcd 5299, 5343, para. 108 (2000).

<sup>174</sup> See *id.*

<sup>175</sup> See *id.* at 5343, n.246 (for the 746-764 MHz and 776-794 MHz bands, the Commission is exempt from 15 U.S.C. 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

<sup>176</sup> See "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice*, 15 FCC Rcd 18026 (2000).

commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.<sup>177</sup>

88. Specialized Mobile Radio. The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio ("SMR") geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years.<sup>178</sup> The Commission awards "very small entity" bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.<sup>179</sup> The SBA has approved these small business size standards for the 900 MHz Service.<sup>180</sup> The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.<sup>181</sup> A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.<sup>182</sup>

89. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800

MHz SMR band qualified as small businesses under the \$15 million size standard.<sup>183</sup> In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold.<sup>184</sup> Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

90. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

91. 220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.<sup>185</sup> The Commission estimates that most such licensees are small businesses under the SBA's small business standard.

92. 220 MHz Radio Service—Phase II Licensees. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new

service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted a small business size standard for defining "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>186</sup> This small business standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.<sup>187</sup> A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years.<sup>188</sup> The SBA has approved these small size standards.<sup>189</sup> Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.<sup>190</sup> In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group ("EAG") Licenses, and 875 Economic Area ("EA") Licenses. Of the 908 licenses auctioned, 693 were sold.<sup>191</sup> Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.<sup>192</sup> A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz service. No small or very small business won any of these licenses.<sup>193</sup>

93. Private Land Mobile Radio ("PLMR"). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of

<sup>177</sup> See "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

<sup>178</sup> 47 CFR 90.814(b)(1).

<sup>179</sup> 47 CFR 90.814(b)(1).

<sup>180</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated Aug. 10, 1999. We note that, although a request was also sent to the SBA requesting approval for the small business size standard for 800 MHz, approval is still pending.

<sup>181</sup> See "Correction to Public Notice DA 96-586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,'" *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

<sup>182</sup> See "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

<sup>183</sup> See "800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes: Winning Bidders Announced," *Public Notice*, 15 FCC Rcd 17162 (2000).

<sup>184</sup> See "800 MHz SMR Service Lower 80 Channels Auction Closes: Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 1736 (2000).

<sup>185</sup> 13 CFR 121.201, NAICS code 517212.

<sup>186</sup> *Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, Third Report and Order, 12 FCC Rcd 10943, 11068-70, paras. 291-295 (1997).

<sup>187</sup> *Id.* at 11068, para. 291.

<sup>188</sup> *Id.*

<sup>189</sup> See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA, (Jan. 6, 1998).

<sup>190</sup> See generally "220 MHz Service Auction Closes," *Public Notice*, 14 FCC Rcd 605 (1998).

<sup>191</sup> See "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," *Public Notice*, 14 FCC Rcd 1085 (1999).

<sup>192</sup> See "Phase II 220 MHz Service Spectrum Auction Closes," *Public Notice*, 14 FCC Rcd 11218 (1999).

<sup>193</sup> See "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (2002).

determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, "Cellular and Other Wireless Telecommunications." This definition provides that a small entity is any such entity employing no more than 1,500 persons.<sup>194</sup> The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.<sup>195</sup>

94. The Commission's 1994 Annual Report on PLMRs<sup>196</sup> indicates that at the end of fiscal year 1994, there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that the revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

95. Fixed Microwave Services. Fixed microwave services include common carrier,<sup>197</sup> private operational-fixed,<sup>198</sup> and broadcast auxiliary radio services.<sup>199</sup> At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size

standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.<sup>200</sup> The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

96. 39 GHz Service. The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years.<sup>201</sup> An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>202</sup> The SBA has approved these small business size standards.<sup>203</sup> The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

97. Local Multipoint Distribution Service. Local Multipoint Distribution Service ("LMDS") is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.<sup>204</sup> The auction of

the 986 LMDS licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>205</sup> An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>206</sup> The SBA has approved these small business size standards in the context of LMDS auctions.<sup>207</sup> There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

98. 218–219 MHz Service. The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas ("MSAs").<sup>208</sup> Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.<sup>209</sup> In the 218–219 MHz Report and Order and Memorandum Opinion and Order, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding \$15 million for the preceding three years.<sup>210</sup> A very small business is defined as an entity that, together with its affiliates and persons or entities that

<sup>194</sup> See 13 CFR 121.201, NAICS code 517212.

<sup>195</sup> See generally 13 CFR 121.201.

<sup>196</sup> Federal Communications Commission, 60th Annual Report, Fiscal Year 1994, at para. 116.

<sup>197</sup> See 47 CFR 101 et seq. (formerly, Part 21 of the Commission's Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

<sup>198</sup> Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

<sup>199</sup> Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. See 47 CFR Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

<sup>200</sup> 13 CFR 121.201, NAICS code 517212.

<sup>201</sup> See *Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands*, ET Docket No. 95–183, Report and Order, 12 FCC Rcd 18600 (1997).

<sup>202</sup> *Id.*

<sup>203</sup> See Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998); See Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Hector Barreto, Administrator, SBA, (Jan. 18, 2002).

<sup>204</sup> See *Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, Second Report and Order, Order

on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689–90, para. 348 (1997).

<sup>205</sup> See *id.*

<sup>206</sup> See *id.*

<sup>207</sup> See Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

<sup>208</sup> See "Interactive Video and Data Service (IVDS) Applications Accepted for Filing," *Public Notice*, 9 FCC Rcd 6227 (1994).

<sup>209</sup> *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

<sup>210</sup> *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service*, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding \$3 million for the preceding three years.<sup>211</sup> The SBA has approved of these definitions.<sup>212</sup> A subsequent auction is not yet scheduled. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this analysis that in future auctions, many, and perhaps most, of the licenses may be awarded to small businesses.

99. Location and Monitoring Service (“LMS”). Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million.<sup>213</sup> A “very small business” is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$3 million.<sup>214</sup> These definitions have been approved by the SBA.<sup>215</sup> An auction for LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

100. Rural Radiotelephone Service. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.<sup>216</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (“BETRS”).<sup>217</sup> In the present context, we will use the SBA’s small business size standard applicable to “Cellular and Other Wireless Telecommunications,” *i.e.*, an entity employing no more than 1,500

persons.<sup>218</sup> There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules adopted herein.

101. Air-Ground Radiotelephone Service.<sup>219</sup> We have previously used the SBA’s small business definition applicable to “Cellular and Other Wireless Telecommunications,” *i.e.*, an entity employing no more than 1,500 persons.<sup>220</sup> There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$40 million.<sup>221</sup> A “very small business” is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million.<sup>222</sup> These definitions were approved by the SBA.<sup>223</sup> In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

102. Aviation and Marine Radio Services. Small businesses in the aviation and marine radio services use a very high frequency (“VHF”) marine or aircraft radio and, as appropriate, an

emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, we will use the SBA small business size standard for the category “Cellular and Other Telecommunications,” which is 1,500 or fewer employees.<sup>224</sup> Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.<sup>225</sup> There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small” businesses under the above special small business size standards.

103. Offshore Radiotelephone Service. This service operates on several ultra high frequencies (“UHF”) television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.<sup>226</sup> There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA’s small business size standard for “Cellular and Other Wireless Telecommunications” services.<sup>227</sup>

<sup>211</sup> *Id.*

<sup>212</sup> See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA, (Jan. 6, 1998).

<sup>213</sup> *Amendment of Part 90 of the Commission’s Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Second Report and Order, 13 FCC Rcd 15182, 15192, para. 20 (1998); see also 47 CFR 90.1103.

<sup>214</sup> *Id.*

<sup>215</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated Feb. 22, 1999.

<sup>216</sup> The service is defined in section 22.99 of the Commission’s rules, 47 CFR 22.99.

<sup>217</sup> BETRS is defined in section 22.757 and 22.759 of the Commission’s rules, 47 CFR 22.757 and 22.759.

<sup>218</sup> 13 CFR 121.201, NAICS code 517212.

<sup>219</sup> The service is defined in section 22.99 of the Commission’s rules, 47 CFR 22.99.

<sup>220</sup> 13 CFR 121.201, NAICS codes 517212.

<sup>221</sup> *Amendment of Part 22 of the Commission’s Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the Commission’s Rules, Amendment of Parts 1 and 22 of the Commission’s Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service*, WT Docket Nos. 03–103 and 05–42, Order on Reconsideration and Report and Order, 20 FCC Rcd 19663, paras. 28–42 (2005).

<sup>222</sup> *Id.*

<sup>223</sup> See Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated Sept. 19, 2005.

<sup>224</sup> 13 CFR 121.201, NAICS code 517212.

<sup>225</sup> *Amendment of the Commission’s Rules Concerning Maritime Communications*, PR Docket No. 92–257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

<sup>226</sup> This service is governed by Subpart I of Part 22 of the Commission’s rules. See 47 CFR 22.1001–22.1037.

<sup>227</sup> 13 CFR 121.201, NAICS code 517212.

Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>228</sup>

104. Multiple Address Systems (“MAS”). Entities using MAS spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines “small entity” for MAS licenses as an entity that has average gross revenues of less than \$15 million in the three previous calendar years.<sup>229</sup> “Very small business” is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$3 million for the preceding three calendar years.<sup>230</sup> The SBA has approved of these definitions.<sup>231</sup> The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission’s licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001.<sup>232</sup> Seven winning bidders claimed status as small or very small businesses and won 611 licenses. On May 18, 2005, the Commission completed an auction (Auction No. 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

105. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in

virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the small business size standard developed by the SBA would be more appropriate. The applicable size standard in this instance appears to be that of “Cellular and Other Wireless Telecommunications.” This definition provides that a small entity is any such entity employing no more than 1,500 persons.<sup>233</sup> The Commission’s licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

106. Incumbent 24 GHz Licensees. This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of “Cellular and Other Wireless Telecommunications” companies. This category provides that such a company is small if it employs no more than 1,500 persons.<sup>234</sup> For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.<sup>235</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>236</sup> Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.<sup>237</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>238</sup> Thus, under this second category and size standard, the majority

of firms can, again, be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent<sup>239</sup> and TRW, Inc. It is our understanding that Teligent and its related companies have fewer than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

107. New 24 GHz Licensees. With respect to new applicants in the 24 GHz band, we have defined an “entrepreneur” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding \$40 million. “Small business” in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding \$15 million.<sup>240</sup> “Very small business” in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.<sup>241</sup> The SBA has approved these definitions.<sup>242</sup> On July 28, 2004, the Commission completed an auction of 880 licenses. There were three winning bidders that won seven licenses. Of the three winning bidders, two claimed small business status and won five licenses.

108. Broadband Radio Service (“BRS”) and Educational Broadband Service (“EBS”). Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (“MDS”) and Multichannel Multipoint Distribution Service (“MMDS”) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service and Educational Broadband Service (previously referred to as the Instructional Television Fixed Service

<sup>228</sup> See 13 CFR 121.201, NAICS code 517212.

<sup>229</sup> 13 CFR 121.201, NAICS code 517212.

<sup>230</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517211 (issued Nov. 2005).

<sup>231</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>232</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517212 (issued Nov. 2005).

<sup>233</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>239</sup> Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

<sup>240</sup> *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules To License Fixed Services at 24 GHz*, Report and Order, 15 FCC Rcd 16934, 16967, para. 77 (2000) (“24 GHz Report and Order”); see also 47 CFR 101.538(a)(2).

<sup>241</sup> 24 GHz Report and Order, 15 FCC Rcd at 16967, para. 77; see also 47 CFR 101.538(a)(1).

<sup>242</sup> See Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA, (Jul. 28, 2000).

<sup>228</sup> *Id.*

<sup>229</sup> See *Amendment of the Commission’s Rules Regarding Multiple Address Systems*, Report and Order, 15 FCC Rcd 11956, 12008, para. 123 (2000).

<sup>230</sup> *Id.*

<sup>231</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA, (Jun. 4, 1999).

<sup>232</sup> See “Multiple Address Systems Spectrum Auction Closes,” *Public Notice*, 16 FCC Rcd 21011 (2001).

(“ITFS”).<sup>243</sup> In connection with the 1996 BRS auction, the Commission defined “small business” as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years.<sup>244</sup> The SBA has approved of this standard.<sup>245</sup> The BRS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (“BTAs”).<sup>246</sup> Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. BRS also includes licensees of stations authorized prior to the auction. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.<sup>247</sup> After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission’s rules.

109. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution,<sup>248</sup> which includes all such companies generating \$13.5 million or less in annual receipts.<sup>249</sup> According to the Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.<sup>250</sup> Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million

or more, but less than \$25 million.<sup>251</sup> Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licensees are held by educational institutions. Educational institutions are included in this analysis as small entities.<sup>252</sup> Thus, we estimate that at least 1,932 licensees are small entities. EBS is a non-profit non-broadcast service. We do not collect, nor are we aware of other collections of, annual revenue data for EBS licensees.

110. Television Broadcasting. The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.”<sup>253</sup> The SBA has created a small business size standard for Television Broadcasting entities, which is: such firms having \$13 million or less in annual receipts.<sup>254</sup> According to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of \$12 (twelve) million or less. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>255</sup> must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

111. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to

define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

112. There are also 2,117 low power television stations (LPTV).<sup>256</sup> Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

113. Radio Broadcasting. The SBA defines a radio broadcast entity that has \$6 million or less in annual receipts as a small business.<sup>257</sup> Business concerns included in this industry are those “primarily engaged in broadcasting aural programs by radio to the public.”<sup>258</sup> According to Commission staff review of the BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States have revenue of \$6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations<sup>259</sup> are included.<sup>260</sup> Our estimate, therefore likely overstates the number of small businesses that might be affected by the rules adopted herein.

114. Auxiliary, Special Broadcast and Other Program Distribution Services. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain

<sup>243</sup> Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995) (“MDS Auction R&O”).

<sup>244</sup> 47 CFR 21.961(b)(1).

<sup>245</sup> See Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary Jackson, Assistant Administrator for Size Standards, SBA, (Mar. 20, 2003) (noting approval of \$40 million size standard for MDS auction).

<sup>246</sup> BTAs were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. See MDS Auction R&O, 10 FCC Rcd at 9608, para. 34.

<sup>247</sup> For the incumbent BRS licensees who are granted licenses prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j), the applicable standard is SBA’s small business size standard.

<sup>248</sup> 13 CFR 121.201, NAICS code 517510.

<sup>249</sup> *Id.*

<sup>250</sup> U.S. Census Bureau 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued Nov. 2005).

<sup>251</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

<sup>252</sup> The term “small entity” within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). We do not collect annual revenue data on EBS licensees.

<sup>253</sup> U.S. Census Bureau, 2002 NAICS Definitions, “515120 Television Broadcasting” (partial definition); <http://www.census.gov/epcd/naics02/def/NDEF515.HTM>.

<sup>254</sup> 13 CFR 121.201, NAICS code 515120.

<sup>255</sup> “Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.” 13 CFR 21.103(a)(1).

<sup>256</sup> FCC News Release, “Broadcast Station Totals as of September 30, 2005.”

<sup>257</sup> See OMB, North American Industry Classification System: United States, 1997, at 509 (1997) (Radio Stations) NAICS code 515112.

<sup>258</sup> *Id.*

<sup>259</sup> “Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.” 13 CFR 121.103(a)(1).

<sup>260</sup> “SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size.” 13 CFR 121(a)(4).

(from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.<sup>261</sup>

115. The Commission estimates that there are approximately 3,868 FM translators and boosters.<sup>262</sup> The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (\$6.5 million for a radio station or \$13.0 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.<sup>263</sup>

116. Cable and Other Program Distribution. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material."<sup>264</sup> The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having \$13.5 million or less in annual receipts.<sup>265</sup> According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire

year.<sup>266</sup> Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.<sup>267</sup> Thus, under this size standard, the majority of firms can be considered small.

117. Cable Companies and Systems. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.<sup>268</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.<sup>269</sup> In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>270</sup> Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have less than 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers.<sup>271</sup> Thus, under this second size standard, most cable systems are small.

118. Cable System Operators. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>272</sup> The Commission has determined that an operator serving fewer than 645,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not

exceed \$250 million in the aggregate.<sup>273</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.<sup>274</sup> We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,<sup>275</sup> and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

119. Open Video Services. Open Video Service ("OVS") systems provide subscription services.<sup>276</sup> The SBA has created a small business size standard for Cable and Other Program Distribution.<sup>277</sup> This standard provides that a small entity is one with \$13.5 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service.<sup>278</sup> Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

120. Cable Television Relay Service. This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has developed a small business size standard for Cable and Other Program

<sup>273</sup> 47 CFR 76.901(f); see Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, DA 01-158 (Cable Services Bureau, Jan. 24, 2001).

<sup>274</sup> These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

<sup>275</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. See 47 CFR 76.909(b).

<sup>276</sup> See 47 U.S.C. 573.

<sup>277</sup> 13 CFR 121.201, NAICS code 517510.

<sup>278</sup> See <http://www.fcc.gov/csb/ovs/csovscer.html> (current as of March 2002).

<sup>261</sup> 13 CFR 121.201, NAICS codes 513111 and 513112.

<sup>262</sup> *FCC News Release*, "Broadcast Station Totals as of September 30, 2004."

<sup>263</sup> 15 U.S.C. 632.

<sup>264</sup> U.S. Census Bureau, 2002 NAICS Definitions, "517510 Cable and Other Program Distribution;" <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>265</sup> 13 CFR 121.201, NAICS code 517510.

<sup>266</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued Nov. 2005).

<sup>267</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

<sup>268</sup> 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

<sup>269</sup> These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

<sup>270</sup> 47 CFR 76.901(c).

<sup>271</sup> Warren Communications News, *Television & Cable Factbook 2006*, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

<sup>272</sup> 47 U.S.C. 543(m)(2); see 47 CFR 76.901(f) & nn. 1-3.

Distribution, which is: all such firms having \$13.5 million or less in annual receipts.<sup>279</sup> According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.<sup>280</sup> Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.<sup>281</sup> Thus, under this size standard, the majority of firms can be considered small.

121. Multichannel Video Distribution and Data Service. MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding \$3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding \$15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding \$40 million for the preceding three years.<sup>282</sup> These definitions were approved by the SBA.<sup>283</sup> On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.<sup>284</sup> Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two

winning bidders, winning 21 of the licenses, claimed small business status.<sup>285</sup>

122. Amateur Radio Service. These licensees are held by individuals in a noncommercial capacity; these licensees are not small entities.

123. Aviation and Marine Services. Small businesses in the aviation and marine radio services use a very high frequency (“VHF”) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category “Cellular and Other Telecommunications,” which is 1,500 or fewer employees.<sup>286</sup> Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.<sup>287</sup> There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small” businesses under the above special small business size standards.

124. Personal Radio Services. Personal radio services provide short-range, low power radio for personal

communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules.<sup>288</sup> These services include Citizen Band Radio Service (“CB”), General Mobile Radio Service (“GMRS”), Radio Control Radio Service (“R/C”), Family Radio Service (“FRS”), Wireless Medical Telemetry Service (“WMTS”), Medical Implant Communications Service (“MICS”), Low Power Radio Service (“LPRS”), and Multi-Use Radio Service (“MURS”).<sup>289</sup> There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being adopted. Since all such entities are wireless, we apply the definition of cellular and other wireless telecommunications, pursuant to which a small entity is defined as employing 1,500 or fewer persons.<sup>290</sup> Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the rules adopted herein.

125. Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.<sup>291</sup>

<sup>288</sup> 47 CFR part 90.

<sup>289</sup> The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by Subpart D, Subpart A, Subpart C, Subpart B, Subpart H, Subpart I, Subpart G, and Subpart J, respectively, of Part 95 of the Commission's rules. See generally 47 CFR part 95.

<sup>290</sup> 13 CFR 121.201, NAICS Code 517212.

<sup>291</sup> With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's rules, 47 CFR 90.15–90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of

<sup>279</sup> 13 CFR 121.201, NAICS code 517510.

<sup>280</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued Nov. 2005).

<sup>281</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

<sup>282</sup> *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licenses and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to provide A Fixed Service in the 12.2–12.7 GHz Band, ET Docket No. 98–206, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, 9711, para. 252 (2002).*

<sup>283</sup> See Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated Feb. 13, 2002.

<sup>284</sup> See “Multichannel Video Distribution and Data Service Auction Closes,” *Public Notice*, 19 FCC Rcd 1834 (2004).

<sup>285</sup> See “Auction of Multichannel Video Distribution and Data Service Licenses Closes; Winning Bidders Announced for Auction No. 63,” *Public Notice*, 20 FCC Rcd 19807 (2005).

<sup>286</sup> 13 CFR 121.201, NAICS code 517212.

<sup>287</sup> *Amendment of the Commission's Rules Concerning Maritime Communications*, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

There are a total of approximately 127,540 licensees in these services. Governmental entities<sup>292</sup> as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.<sup>293</sup>

#### IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

126. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 Remittance Advice, and pay a regulatory fee based on the number of licenses or call signs.<sup>294</sup> Interstate telephone service providers must compute their

licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service ("EMRS") use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15–90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

<sup>292</sup> 47 CFR 1.1162.

<sup>293</sup> 5 U.S.C. 601(5).

<sup>294</sup> The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (e.g., Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than \$10.

annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (e.g., cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

127. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. Licensees may also file electronically to minimize the burden of submitting multiple copies of the FCC Form 159. Applicants who pay small fees in advance and provide fee information as part of their application must use FCC Form 159.

128. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.<sup>295</sup> If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.<sup>296</sup> Further, in accordance with the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.<sup>297</sup> Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.*, and the DCIA. Appropriate enforcement measures as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.<sup>298</sup>

129. The Commission's rules currently provide for relief in

<sup>295</sup> 47 CFR 1.1164.

<sup>296</sup> 47 CFR 1.1164(c).

<sup>297</sup> Public Law 104–134, 110 Stat. 1321 (1996).

<sup>298</sup> 31 U.S.C. 7701(c)(2)(B).

exceptional circumstances. Persons or entities may request a waiver, reduction or deferral of payment of the regulatory fee.<sup>299</sup> However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

#### V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

130. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>300</sup> In the *NPRM*, we sought comment on alternatives that might simplify our fee procedures or otherwise benefit filers, including small entities, while remaining consistent with our statutory responsibilities in this proceeding.

131. The Omnibus Appropriations Act for FY 2007, Public Law 109–383, requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required the Commission to collect for FY 2007.<sup>301</sup> As noted, we sought comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

132. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.*, footnote 294, *supra*. Also, waiver procedures provide regulatees, including small

<sup>299</sup> 47 CFR 1.1166.

<sup>300</sup> 5 U.S.C. 603.

<sup>301</sup> 47 U.S.C. 159(a).

entity regulatees, relief in exceptional circumstances. See Section IV, *supra*.

133. *Report to Small Business Administration*: The Commission will send a copy of this Report and Order, including a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. The Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

134. *Report to Congress*: The Commission will send a copy of this FRFA, along with this *Report and Order*, in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

**Attachment B—Sources of Payment Unit Estimates for FY 2007**

In order to calculate individual service fees for FY 2007, we adjusted FY 2006 payment units for each service to more accurately reflect expected FY

2007 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include our Universal Licensing System (ULS), International Bureau Filing System (IBFS), Consolidated Database System (CDBS) and Cable Operations and Licensing System (COALS), as well as reports generated within the Commission such as the Wireline Competition Bureau’s *Trends in Telephone Service* and the Wireless Telecommunications Bureau’s *Numbering Resource Utilization Forecast*.

We tried to obtain verification for these estimates from multiple sources and in all cases; we compared FY 2007 estimates with actual FY 2006 payment

units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2007 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 2007 payment units are based on FY 2006 actual payment units, it does not necessarily mean that our FY 2007 projection is *exactly* the same number as FY 2006. It means that we have either rounded the FY 2007 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, 218–219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services .....	Based on Wireless Telecommunications Bureau reports.
CMRS Messaging Services .....	Based on Wireless Telecommunications Bureau Competition Report findings.
AM/FM Radio Stations .....	Based on CDBS data, adjusted for exemptions, and actual FY 2006 payment units.
UHF/VHF Television Stations .....	Based on CDBS data, adjusted for exemptions, and actual FY 2006 payment units.
AM/FM/TV Construction Permits .....	Based on CDBS data, adjusted for exemptions, and actual FY 2006 payment units.
LPTV, Translators and Boosters, Class A Television.	Based on CDBS data, adjusted for exemptions, and actual FY 2006 payment units.
Broadcast Auxiliaries .....	Based on actual FY 2006 payment units.
BRS (formerly MDS/MMDS) .....	Based on Wireless Telecommunications Bureau reports and actual FY 2006 payment units.
Cable Television Relay Service (CARS) Stations.	Based on data from Media Bureau’s COALS database and actual FY 2006 payment units.
Cable Television System Subscribers .....	Based on publicly available data sources for estimated subscriber counts and actual FY 2006 payment units.
Interstate Telecommunication Service Providers	Based on actual FY 2006 interstate revenues reported on Telecommunications Reporting Worksheet, adjusted for FY 2007 revenue growth/decline for industry, and projections by the Wireline Competition Bureau.
Earth Stations .....	Based on International Bureau reports and actual FY 2006 payment units.
Space Stations (GSOs & NGSOs) .....	Based on International Bureau reports and actual FY 2006 payment units.
International Bearer Circuits .....	Based on International Bureau reports and actual FY 2006 payment units.
International HF Broadcast Stations, International Public Fixed Radio Service.	Based on International Bureau reports and actual FY 2006 payment units.

**Attachment C—Calculation of FY 2007 Revenue Requirements and Pro-Rata Fees**

Regulatory fees for the categories shaded in gray are collected by the

Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

Fee category	FY 2007 payment units	Years	FY 2006 revenue estimate	Pro-rated FY 2007 revenue requirement*	Computed new FY 2007 regulatory fee	Rounded new FY 2007 regulatory fee	Expected FY 2007 revenue
PLMRS (Exclusive Use) .....	1,250	10	440,000	426,300	34	35	437,500
PLMRS (Shared use) .....	15,500	10	2,500,000	2,422,162	16	15	2,325,000
Microwave .....	4,350	10	1,700,000	1,647,070	38	40	1,740,000
218–219 MHz (Formerly IVDS) .....	3	10	1,650	1,599	53	55	1,650
Marine (Ship) .....	8,000	10	800,000	775,092	10	10	800,000
GMRS .....	16,000	5	425,000	411,768	5	5	400,000
Aviation (Aircraft) .....	8,800	10	300,000	290,659	3	5	440,000
Marine (Coast) .....	360	10	120,000	116,264	32	30	108,000
Aviation (Ground) .....	1,650	10	150,000	145,330	9	10	165,000
Amateur Vanity Call Signs .....	14,700	10	177,116	171,601	1.17	1.17	171,990

Fee category	FY 2007 pay-ment units	Years	FY 2006 rev- enue estimate	Pro-rated FY 2007 revenue requirement*	Computed new FY 2007 regulatory fee	Rounded new FY 2007 regu- latory fee	Expected FY 2007 revenue
AM Class A .....	68	1	217,350	210,428	3,095	3,100	210,800
AM Class B .....	1,567	1	2,619,500	2,534,141	1,617	1,625	2,546,375
AM Class C .....	937	1	921,500	890,541	950	950	890,150
AM Class D .....	1,705	1	3,095,750	2,994,982	1,757	1,750	2,983,750
FM Classes A, B1 & C3 .....	3,027	1	6,519,500	6,311,615	2,085	2,075	6,281,025
FM Classes B, C, C0, C1 & C2 .....	3,002	1	7,924,300	7,675,996	2,557	2,550	7,655,100
AM Construction Permits .....	65	1	37,525	26,003	400	400	26,000
FM Construction Permits <sup>1</sup> .....	205	1	115,000	117,898	575	575	117,875
Satellite TV .....	125	1	141,450	137,046	1,096	1,100	137,500
Satellite TV Construction Permit .....	3	1	1,710	1,657	552	550	1,650
VHF Markets 1-10 .....	43	1	2,850,100	2,765,285	64,309	64,300	2,764,900
VHF Markets 11-25 .....	61	1	2,914,275	2,827,462	46,352	46,350	2,827,350
VHF Markets 26-50 .....	77	1	2,465,625	2,392,781	31,075	31,075	2,392,775
VHF Markets 51-100 .....	115	1	2,372,200	2,300,839	20,007	20,000	2,300,000
VHF Remaining Markets .....	198	1	1,045,200	1,012,657	5,114	5,125	1,014,750
VHF Construction Permits .....	3	1	30,600	15,377	5,126	5,125	15,375
UHF Markets 1-10 .....	91	1	1,846,750	1,787,645	19,644	19,650	1,788,150
UHF Markets 11-25 .....	76	1	1,528,000	1,478,819	19,458	19,450	1,478,200
UHF Markets 26-50 .....	115	1	1,284,075	1,242,489	10,804	10,800	1,242,000
UHF Markets 51-100 .....	168	1	1,092,000	1,056,977	6,292	6,300	1,058,400
UHF Remaining Markets .....	183	1	331,925	321,590	1,757	1,750	320,250
UHF Construction Permits <sup>1</sup> .....	22	1	33,725	38,517	1,751	1,750	38,500
Broadcast Auxiliaries .....	27,000	1	240,000	232,528	9	10	270,000
LPTV/Translators/Boosters/Class A TV ....	3,400	1	1,218,000	1,180,077	347	345	1,173,000
CARS Stations .....	780	1	148,750	144,119	185	185	144,300
Cable TV Systems .....	64,500,000	1	49,770,000	48,220,399	0.74760	0.75	48,375,000
Interstate Tele-communication Service Providers .....	51,000,000,000	1	140,184,000	135,819,336	0.00266312	0.00266	135,660,000
CMRS Mobile Services (Cellular/Public Mobile) .....	229,000,000	1	42,000,000	40,596,052	0.177	0.18	41,220,000
CMRS Messag. Services .....	7,500,000	1	520,000	600,077	0.08	0.08	600,000
BRS <sup>2</sup> .....	1,300	1	485,925	425,139	327	325	422,500
LMDS .....	410	1	90,750	134,077	327	325	133,250
International Bearer Circuits .....	7,200,000	1	7,791,000	7,548,425	1.05	1.05	7,560,000
International Public Fixed .....	1	1	1,925	1,865	1,865	1,875	1,875
Earth Stations .....	3,900	1	752,500	729,071	187	185	721,500
International HF Broadcast .....	5	1	4,100	3,972	794	795	3,975
Space Stations (Geostationary) .....	86	1	9,693,975	9,392,151	109,211	109,200	9,391,200
Space Stations (Non-Geostationary) .....	6	1	721,350	698,891	116,482	116,475	698,850
***** Total Estimated Revenue to be Collected .....			299,624,101	290,274,768			291,055,465
***** Total Revenue Requirement .....			298,771,000	290,295,160			290,295,160
Difference .....			853,101	(20,392)			760,305

\* - 0.028369018 factor applied based on the amount Congress designated for recovery through regulatory fees (Pub. L. 109-108 and 47 U.S.C. 159(a)(2)).

<sup>1</sup> The AM and FM Construction Permit revenues and the VHF and UHF Construction Permit revenues were adjusted to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service.

<sup>2</sup> MDS/MMDS category was renamed Broadband Radio Service (BRS). See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14169, para. 6 (2004) (R&O and FNPRM).

**Attachment D—FY 2007 Schedule of Regulatory Fees**

Regulatory fees for the categories shaded in gray are collected by the

Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

Fee category	Annual regulatory fee (U.S. \$'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90) .....	35
Microwave (per license) (47 CFR part 101) .....	40
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95) .....	55
Marine (Ship) (per station) (47 CFR part 80) .....	10
Marine (Coast) (per license) (47 CFR part 80) .....	30
General Mobile Radio Service (per license) (47 CFR part 95) .....	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category) .....	15
PLMRS (Shared Use) (per license) (47 CFR part 90) .....	15
Aviation (Aircraft) (per station) (47 CFR part 87) .....	5
Aviation (Ground) (per license) (47 CFR part 87) .....	10
Amateur Vanity Call Signs (per call sign) (47 CFR part 97) .....	1.17
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) .....	.18
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90) .....	.08
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 21) .....	325
Local Multipoint Distribution Service (per call sign) (47 CFR part 101) .....	325
AM Radio Construction Permits .....	400
FM Radio Construction Permits .....	575

Fee category	Annual regulatory fee (U.S. \$'s)
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10 .....	64,300
Markets 11–25 .....	46,350
Markets 26–50 .....	31,075
Markets 51–100 .....	20,000
Remaining Markets .....	5,125
Construction Permits .....	5,125
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10 .....	19,650
Markets 11–25 .....	19,450
Markets 26–50 .....	10,800
Markets 51–100 .....	6,300
Remaining Markets .....	1,750
Construction Permits .....	1,750
Satellite Television Stations (All Markets) .....	1,100
Construction Permits—Satellite Television Stations .....	550
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74) .....	345
Broadcast Auxiliaries (47 CFR part 74) .....	10
CARS (47 CFR part 78) .....	185
Cable Television Systems (per subscriber) (47 CFR part 76) .....	.75
Interstate Telecommunication Service Providers (per revenue dollar) .....	.00266
Earth Stations (47 CFR part 25) .....	185
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100) .....	109,200
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) .....	116,475
International Bearer Circuits (per active 64KB circuit) .....	1.05
International Public Fixed (per call sign) (47 CFR part 23) .....	1,875
International (HF) Broadcast (47 CFR part 73) .....	795

**FY 2007 Schedule of Regulatory Fees  
(Continued)**

**FY 2007 RADIO STATION REGULATORY FEES**

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000 .....	625	475	400	475	575	725
25,001–75,000 .....	1,225	925	600	725	1,150	1,250
75,001–150,000 .....	1,825	1,150	800	1,200	1,600	2,300
150,001–500,000 .....	2,750	1,950	1,200	1,425	2,475	3,000
500,001–1,200,000 .....	3,950	2,975	2,000	2,375	3,900	4,400
1,200,001–3,000,000 .....	6,075	4,575	3,000	3,800	6,350	7,025
>3,000,000 .....	7,275	5,475	3,800	4,750	8,075	9,125

**Attachment E—Factors, Measurements and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages**

*AM Stations*

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (RMS) figure milliVolt per meter (mV/m) @ 1 km for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was

calculated using techniques and methods specified in sections 73.150 and 73.152 of the Commission's rules.<sup>302</sup> Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3.<sup>303</sup> Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon.

<sup>302</sup> 47 CFR 73.150 and 73.152.  
<sup>303</sup> See *Map of Estimated Effective Ground Conductivity in the United States*, 47 CFR 73.190 Figure R3.

Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

*FM Stations*

The greater of the horizontal or vertical effective radiated power (ERP) (kW) and respective height above average terrain (HAAT) (m) combination was used. Where the antenna height above mean sea level (HAMSL) was available, it was used in lieu of the average HAAT figure to calculate

specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission’s rules to predict the

distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.<sup>304</sup> The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids

were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

**Attachment F—FY 2006 Schedule of Regulatory Fees**

Fee category	Annual regulatory fee (U.S. \$'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90) .....	20
Microwave (per license) (47 CFR part 101) .....	85
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95) .....	55
Marine (Ship) (per station) (47 CFR part 80) .....	10
Marine (Coast) (per license) (47 CFR part 80) .....	20
General Mobile Radio Service (per license) (47 CFR part 95) .....	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category) .....	10
PLMRS (Shared Use) (per license) (47 CFR part 90) .....	10
Aviation (Aircraft) (per station) (47 CFR part 87) .....	5
Aviation (Ground) (per license) (47 CFR part 87) .....	10
Amateur Vanity Call Signs (per call sign) (47 CFR part 97) .....	2.08
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) .....	.20
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90) .....	.08
Multipoint Distribution Services (MMDS/MDS) (per license sign) (47 CFR part 21) .....	275
Local Multipoint Distribution Service (per call sign) (47 CFR part 101) .....	275
AM Radio Construction Permits .....	395
FM Radio Construction Permits .....	575
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10 .....	64,775
Markets 11–25 .....	47,775
Markets 26–50 .....	32,875
Markets 51–100 .....	20,450
Remaining Markets .....	5,025
Construction Permits .....	3,400
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10 .....	20,750
Markets 11–25 .....	19,100
Markets 26–50 .....	10,975
Markets 51–100 .....	6,500
Remaining Markets .....	1,775
Construction Permits .....	1,775
Satellite Television Stations (All Markets) .....	1,150
Construction Permits—Satellite Television Stations .....	570
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74) .....	420
Broadcast Auxiliary (47 CFR part 74) .....	10
CARS (47 CFR part 78) .....	175
Cable Television Systems (per subscriber) (47 CFR part 76) .....	.79
Interstate Telecommunication Service Providers (per revenue dollar) .....	.00264
Earth Stations (47 CFR part 25) .....	215
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100) .....	111,425
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) .....	120,225
International Bearer Circuits (per active 64KB circuit) .....	1.47
International Public Fixed (per call sign) (47 CFR part 23) .....	1,925
International (HF) Broadcast (47 CFR part 73) .....	820

**FY 2006 Schedule of Regulatory Fees  
(Continued)**

**FY 2006.—RADIO STATION REGULATORY FEES**

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000 .....	625	500	400	475	575	750
25,001–75,000 .....	1,225	950	600	725	1,150	1,325
75,001–150,000 .....	1,850	1,200	800	1,200	1,575	2,450

<sup>304</sup> 47 CFR 73.313.

FY 2006.—RADIO STATION REGULATORY FEES—Continued

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
150,001–500,000 .....	2,775	2,025	1,200	1,425	2,450	3,200
500,001–1,200,000 .....	4,000	3,100	2,000	2,375	3,875	4,700
1,200,001–3,000,00 .....	6,150	4,750	3,000	3,800	6,325	7,500
>3,000,000 .....	7,375	5,700	3,800	4,750	8,050	9,750

**Attachment G**

**Parties Filing Comments on the Notice of Proposed Rulemaking**

American Association of Paging Carriers (“AAPC”)  
 ARCOS–1 USA, Inc., Brasil Telecom of American, Inc., Caribbean Crossing Ltd., Global Crossing Ltd., Hibernia Atlantic, Pacific Crossing Limited and PC Landing Corp. (“Joint Comments”)  
 Comcast Corporation (“Comcast”)  
 Iowa Utilities Board (“IUB”)  
 National Telecommunications Cooperative Association (“NTCA”)  
 Nuvio Corporation (“Nuvio”)  
 USA Mobility, Inc. (“USA Mobility”)  
 Voice on the Net Coalition (“VON Coalition”)  
 Dave Wilson  
 Wireless Communications Association International, Inc. (“WCA”)

**Parties Filing Reply Comments**

American Cable Association (“ACA”)  
 Enterprise Wireless Alliance (“EWA”)  
 National Cable & Telecommunication Association (“NCTA”)  
 National Exchange Carrier Association, Inc. (“NECA”); the National Telecommunications Cooperative Association (“NTCA”); the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”); and the Western Telecommunications Alliance (“WTA”) (“the Associations”)  
 Voice on the Net Coalition (“VON Coalition”)  
 Wireless Communications Association International, Inc. (“WCA”)

**Attachment H—Rule Changes**

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 to read as follows:

**PART 1—PRACTICE AND PROCEDURE**

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

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303, 309.

■ 2. Section 1.1152 is revised to read as follows:

**§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.**

Exclusive use services (per license)	Fee amount <sup>1</sup>	Address
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR Part 90)		
(a) New, Renew/Mod (FCC 601 & 159) .....	\$35.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) ...	35.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(c) Renewal Only (FCC 601 & 159) .....	35.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) .....	35.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
220 MHz Nationwide		
(a) New, Renew/Mod (FCC 601 & 159) .....	35.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159).	35.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(c) Renewal Only (FCC 601 & 159) .....	35.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) ..	35.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
2. Microwave (47 CFR Part 101) (Private)		
(a) New, Renew/Mod (FCC 601 & 159) .....	40.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) ...	40.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(c) Renewal Only (FCC 601 & 159) .....	40.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) .....	40.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
3. 218–219 MHz Service		
(a) New, Renew/Mod (FCC 601 & 159) .....	55.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) ...	55.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(c) Renewal Only (FCC 601 & 159) .....	55.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) .....	55.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
4. Shared Use Services		
Land Mobile (Frequencies Below 470 MHz—except 220 MHz)		
(a) New, Renew/Mod (FCC 601 & 159) .....	15.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159).	15.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(c) Renewal Only (FCC 601 & 159) .....	15.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) ..	15.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
General Mobile Radio Service		
(a) New, Renew/Mod (FCC 605 & 159) .....	5.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159).	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(c) Renewal Only (FCC 605 & 159) .....	5.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159) ..	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.

Exclusive use services (per license)	Fee amount <sup>1</sup>	Address
Rural Radio (Part 22)		
(a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159).	15.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
(b) Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159).	15.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
Marine Coast		
(a) New Renewal/Mod (FCC 601 & 159) .....	30.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159).	30.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
(c) Renewal Only (FCC 601 & 159) .....	30.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251-5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) ..	30.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
Aviation Ground		
(a) New, Renewal/Mod (FCC 601 & 159) .....	10.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159).	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
(c) Renewal Only (FCC 601 & 159) .....	10.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251-5245.
(d) Renewal Only (Electronic Only) (FCC 601 & 159) ...	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
Marine Ship		
(a) New, Renewal/Mod (FCC 605 & 159) .....	10.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) New, Renewal/Mod (Electronic Filing) (FCC 605 & 159).	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
(c) Renewal Only (FCC 605 & 159) .....	10.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251-5245.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159) ..	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
Aviation Aircraft		
(a) New, Renew/Mod (FCC 605 & 159) .....	5.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159).	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
(c) Renewal Only (FCC 605 & 159) .....	5.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251-5245.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159) ..	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
5. Amateur Vanity Call Signs		
(a) Initial or Renew (FCC 605 & 159) .....	1.17	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) Initial or Renew (Electronic Filing) (FCC 605 & 159) .....	1.17	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
6. CMRS Mobile Services (per unit) (FCC 159) .....	2.18	FCC, P.O. Box 358835, Pittsburgh, PA 15251-5835.
7. CMRS Messaging Services (per unit) (FCC 159) .....	2.08	FCC, P.O. Box 358835, Pittsburgh, PA 15251-5835.
8. Broadband Radio Service (formerly MMDS and MDS) .....	325	FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA 15251-5835.
9. Local Multipoint Distribution Service .....	325	FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA 15251-5835.

<sup>1</sup> Note that "small fees" are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee (categories 1 through 5) must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also apply as detailed in section 1.1102 of this chapter.

<sup>2</sup> These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.

■ 3. Section 1.1153 is revised to read as follows:

**§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.**

	Fee amount	Address
Radio [AM and FM] (47 CFR part 73)		
1. AM Class A:		
<=25,000 population .....	\$625	FCC, Radio, P.O. Box 358835, Pittsburgh, PA 15251-5835.
25,001-75,000 population .....	1,225	
75,001-150,000 population .....	1,825	
150,001-500,000 population .....	2,750	
500,001-1,200,000 population .....	3,950	
1,200,001-3,000,000 population .....	6,075	
>3,000,000 population .....	7,275	
2. AM Class B:		
<=25,000 population .....	475	
25,001-75,000 population .....	925	
75,001-150,000 population .....	1,150	
150,001-500,000 population .....	1,950	
500,001-1,200,000 population .....	2,975	
1,200,001-3,000,000 population .....	4,575	
>3,000,000 population .....	5,475	
3. AM Class C:		
<=25,000 population .....	400	
25,001-75,000 population .....	600	
75,001-150,000 population .....	800	
150,001-500,000 population .....	1,200	
500,001-1,200,000 population .....	2,000	

	Fee amount	Address
1,200,001–3,000,000 population .....	3,000	
>3,000,000 population .....	3,800	
4. AM Class D:		
<=25,000 population .....	475	
25,001–75,000 population .....	725	
75,001–150,000 population .....	1,200	
150,001–500,000 population .....	1,425	
500,001–1,200,000 population .....	2,375	
1,200,001–3,000,000 population .....	3,800	
>3,000,000 population .....	4,750	
5. AM Construction Permit .....	400	
6. FM Classes A, B1 and C3:		
<=25,000 population .....	575	
25,001–75,000 population .....	1,150	
75,001–150,000 population .....	1,600	
150,001–500,000 population .....	2,475	
500,001–1,200,000 population .....	3,900	
1,200,001–3,000,000 population .....	6,350	
>3,000,000 population .....	8,075	
7. FM Classes B, C, C0, C1 and C2:		
<=25,000 population .....	725	
25,001–75,000 population .....	1,250	
75,001–150,000 population .....	2,300	
150,001–500,000 population .....	3,000	
500,001–1,200,000 population .....	4,400	
1,200,001–3,000,000 population .....	7,025	
>3,000,000 population .....	9,125	
8. FM Construction Permits .....	575	
TV (47 CFR part 73) VHF Commercial:		
1. Markets 1 thru 10 .....	64,300	FCC, TV Branch, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Markets 11 thru 25 .....	46,350	
3. Markets 26 thru 50 .....	31,075	
4. Markets 51 thru 100 .....	20,000	
5. Remaining Markets .....	5,125	
6. Construction Permits .....	5,125	
UHF Commercial:		
1. Markets 1 thru 10 .....	19,650	FCC, UHF Commercial, P.O. Box 358835, Pittsburgh, PA 15251– 5835.
2. Markets 11 thru 25 .....	19,450	
3. Markets 26 thru 50 .....	10,800	
4. Markets 51 thru 100 .....	6,300	
5. Remaining Markets .....	1,750	
6. Construction Permits .....	1,750	
Satellite UHF/VHF Commercial:		
1. All Markets .....	1,100	FCC Satellite TV, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Construction Permits .....	550	
Low Power TV, Class A TV, TV/FM Translator, & TV/FM Booster (47 CFR part 74) .....	345	FCC, Low Power, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Broadcast Auxiliary .....	10	FCC, Auxiliary, P.O. Box 358835, Pittsburgh, PA 15251–5835.

■ 4. Section 1.1154 is revised to read as follows:

**§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.**

	Fee amount	Address
Radio Facilities:		
1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159).	\$40.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
Carriers:		
1. Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499–A)).	.00266	FCC, Carriers, P.O. Box 358835, Pittsburgh, PA 15251–5835.

■ 5. Section 1.1155 is revised to read as follows:

**§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.**

	Fee amount	Address
1. Cable Television Relay Service .....	\$185	FCC, Cable, P.O. Box 358835, Pittsburgh, PA 15251-5835.
2. Cable TV System (per subscriber) .....	.75	

■ 6. Section 1.1156 is revised to read as follows:

**§ 1.1156 Schedule of regulatory fees and filing locations for international services.**

	Fee amount	Address
<b>Radio Facilities:</b>		
1. International (HF) Broadcast .....	\$795	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251-5835.
2. International Public Fixed .....	1,875	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251-5835.
<b>Space Stations (Geostationary Orbit) .....</b>	109,200	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251-5835.
<b>Space Stations (Non-Geostationary Orbit) .....</b>	116,475	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251-5835.
<b>Earth Stations:</b>		
Transmit/Receive & Transmit Only (per authorization or registration).	185	FCC, Earth Station, P.O. Box 358835, Pittsburgh, PA 15251-5835.
<b>Carriers:</b>		
International Bearer Circuits (per active 64KB circuit or equivalent).	1.05	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251-5835.

**Note:** The following statements will not appear in the Code of Federal Regulations.

**Statement of Commissioner Michael J. Copps, Approving in Part, Concurring in Part**

*Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2007, Report and Order and Further Notice of Proposed Rulemaking in MD Docket 07-81*

I concur in today's item to emphasize my long-held and oft-repeated belief that the Commission should consider opening a formal rulemaking to address the adjustment of regulatory fees pursuant to section 9(b)(3) of the Act. In a rapidly-evolving communications marketplace, we need to look for ways to ensure that our regulatory fee methodologies continue to reflect the industries we regulate. In the absence of a separate rulemaking, I would have preferred to address the submarine cable issue in the *Further Notice* adopted herein. I hope that we act on the pending petition for rulemaking quickly.

**Concurring Statement of Commissioner Jonathan Adelstein**

*Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2007, Report and Order and Further Notice of Proposed Rulemaking, MD Docket No. 07-81 (Aug. 2, 2007)*

As in years past, I must concur to our Regulatory Fee Order because I remain troubled with the Commission's inability and reluctance to consider changes that occur from time to time in

the costs of regulatory fees for individual services. It is particularly disappointing that the Commission misses an opportunity to address in this *Further Notice* the regulatory fees paid by submarine cable operators, who have argued that the current fee structure results in certain operators paying fees that can approach the wholesale prices they receive from their consumers. Given that these operators have pending a petition for rulemaking before the Commission, it is high time for the Commission to seek comment on these issues and is regrettable that we do not do so here. I encourage the Commission to continue to improve its regulatory fee assessment processes so that in the future we are more able to make adjustments as appropriate.

[FR Doc. E7-15607 Filed 8-15-07; 8:45 am]  
BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 64**

[CG Docket No. 02-386; FCC 06-134]

**Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers**

**AGENCY:** Federal Communications Commission.

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

**SUMMARY:** In this document, the Commission announces that the Office

of Management and Budget (OMB) has approved, for a period of three years, the revised information collection(s) associated with the Commission's 2006 Order on Reconsideration concerning *Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers*, CG Docket No. 02-386, FCC 06-134. This notice is consistent with the Order on Reconsideration, which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of the revised rules.

**DATES:** The rules published at 71 FR 74819, December 13, 2006, are effective August 16, 2007.

**FOR FURTHER INFORMATION CONTACT:** David Marks, Consumer Policy Division, Consumer & Governmental Affairs Bureau at (202) 418-0347.

**SUPPLEMENTARY INFORMATION:** This document announces that, on June 25, 2007, OMB approved, for a period of three years, the revised information collection requirements contained in 47 CFR 64.4002, published at 71 FR 74819, December 13, 2006. The OMB Control Number is 3060-1084. The Commission publishes this notice of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please write to Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number, 3060-1084, in your

correspondence. The Commission will also accept your comments via the Internet if you send them to [PRA@fcc.gov](mailto:PRA@fcc.gov).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

### Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on June 25, 2007, for the revised information collection requirements contained in the Commission's rules at 47 CFR 64.4002. The OMB Control Number is 3060-1084. The total annual reporting burden for respondents for these collections of information, including the time for gathering and maintaining the collection of information, is estimated to be: 1,778 respondents, a total annual hourly burden of 39,840 hours, and \$0 in total annual costs.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB Control Number.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104-13, October 1, 1995, and 44 U.S.C. 3507.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7-16159 Filed 8-15-07; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 14

RIN 1018-AT69

#### Regulations To Implement the Captive Wildlife Safety Act

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

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, are implementing the Captive Wildlife Safety Act (CWSA) in a new subpart K of part 14, Importation,

Exportation, and Transportation of Wildlife, in Title 50 of the Code of Federal Regulations. The CWSA amends the Lacey Act by making it illegal to import, export, transport, sell, receive, acquire, or purchase, in interstate or foreign commerce, live lions, tigers, leopards, snow leopards, clouded leopards, cheetahs, jaguars, or cougars, or any hybrid combination of any of these species, unless certain exceptions are met.

**DATES:** This final rule is effective September 17, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Kevin Garlick, Special Agent in Charge, Branch of Investigations, U.S. Fish and Wildlife Service, (703) 358-1949.

**SUPPLEMENTARY INFORMATION:**

#### Background

The CWSA was signed into law on December 19, 2003 (Pub. L. 108-191). The purpose of the CWSA is to amend the Lacey Act Amendments of 1981 to further the conservation of certain wildlife species and to protect the public from dangerous animals.

In the early 1900s, Congress recognized the need to support States in protecting their game animals and birds by prohibiting the interstate shipment of wildlife killed in violation of State or territorial laws. Today this legislation is known as the Lacey Act, named for its principal sponsor, U.S. Representative John Fletcher Lacey. Most significantly amended in 1981, the Lacey Act makes it unlawful to import, export, transport, sell, receive, acquire, or purchase fish, wildlife, or plants taken, possessed, transported, or sold in violation of any Federal, State, foreign, or Native American tribal law, treaty, or regulation. The Lacey Act applies to all fish and wildlife (including their parts or products), and to wild plants (including plant parts) that are indigenous to the United States and are included in the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) or are listed under a State conservation law.

According to the U.S. Senate report, the Lacey Act did not explicitly address the problem of the increasing trade in certain big cat species. The big cat species addressed in this rule are the lion, tiger, leopard, snow leopard, clouded leopard, cheetah, jaguar, cougar, and any hybrid combination of any of these species. They are extremely effective predators, capable in the wild of taking down prey twice their own size. Severe damage to the prey's nervous system caused by damage to the vertebral column, along with massive

blood loss and nearly instant suffocation, all contribute to the prey's certain and nearly immediate death. Regardless of whether they were raised in captivity, big cats are hunters by nature: it is impossible to predict when they will revert to instinct. Contemporary experts on big cat behavior and physiology note that humans are not part of the big cats' natural diet, largely because big cats have learned to treat humans as another predator and to be wary of the dangers of human activity (for example, hunting and habitat encroachment). When big cats and humans do share territory or interact, usually because of human activity, any number of reasons, including hunger, can cause big cats to attack and inflict serious injuries. They are wild creatures that are never completely tamed, nor are they totally predictable, even if they have lived their entire lives with humans.

According to the U.S. Senate report, the ownership of big cats has dramatically increased in popularity. It is estimated that thousands of individual big cats are kept as pets in the United States. This increase is due, in part, to internet sales and auctions. This increase in popularity has raised concerns for public safety as well as for the welfare of the big cats. As big cats are often purchased when young, many owners are unable to cope with the high maintenance needs of mature big cats. Too often, the owners lack the resources and veterinary knowledge these grown cats require. In the hands of untrained exotic-pet fanciers, big cats are not only a potential danger to people, but are often victims themselves. Additionally, the burden of care often lands on already financially strained sanctuaries or humane societies after the big cats are abandoned because they are too dangerous to keep or too expensive to care for properly.

According to the U.S. Senate report, over the past 10 years, there have been thousands of incidents of human injury and death documented, involving many different species of wild animals, many of which were big cats. According to the Captive Wild Animal Protection Coalition, in the past 5 years there have been 123 incidents involving big cats, including 87 injuries or deaths to adults and children and 38 animal escapes. Nineteen States (Alabama, Alaska, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Nebraska, New Hampshire, New Mexico, Tennessee, Utah, Vermont, and Wyoming) prohibit the private possession of big cats. Sixteen States (Arizona, Delaware, Indiana, Maine,

Mississippi, Montana, New Jersey, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, and Virginia) have a partial ban on possession of big cats or require permits for their possession. Fifteen States (Arkansas, Idaho, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Missouri, Nevada, North Carolina, Ohio, South Carolina, Washington, West Virginia, and Wisconsin) do not address the issue of private ownership of big cats.

In consideration of the above information, Congress has recognized the need to address the issue of ownership of big cats on a nationwide basis. Therefore, with the passage of the CWSA, Congress amended the Lacey Act to address this issue. The CWSA amends the Lacey Act by adding prohibitions that make it illegal to import, export, transport, sell, receive, acquire, or purchase, in interstate or foreign commerce, live lions, tigers, leopards, snow leopards, clouded leopards, cheetahs, jaguars, or cougars, or any hybrid combination of any of these species, unless certain listed exceptions apply.

In this final rule, we are implementing the CWSA in a new subpart K of part 14, Importation, Exportation, and Transportation of Wildlife, in title 50 of the Code of Federal Regulations.

#### *Previous Federal Action*

On January 31, 2006, we published a proposed rule to establish the new subpart K, including the definitions, for the CWSA (71 FR 5041). The public comment period remained open until March 2, 2006.

#### *Summary of Comments Received From the Proposed Rule*

We received 1,485 comments, including 1,466 form letters, in support of the proposed rule. We received 14 comments opposed to the proposed rule.

#### Issues Raised in the Public Comments

##### Issue #1: Private Ownership of Big Cats

We received 11 comments addressing the ownership of big cats including 7 stating that the regulations to implement the CWSA should not ban private ownership, 1 stating that the regulations to implement the CWSA should ban private ownership, 2 stating that private ownership was not impacting public safety, and 1 stating that denying private ownership will have an adverse effect on productivity and innovation.

Our Response: Regulations must be consistent with Congress' intent for the statute. The CWSA prohibits the

importation, exportation, transportation, sale, receipt, acquisition, or purchase, in interstate or foreign commerce, of the prohibited wildlife species. However, the CWSA does not prohibit the ownership or possession of the prohibited wildlife species. The CWSA does not address all safety issues with privately owned big cats, although the statute does provide improved safety for the public by limiting the exception for accredited wildlife sanctuaries to those that prohibit direct contact with the prohibited wildlife species. The CWSA should not have a major impact on productivity or innovation, since it does not prohibit the acquisition or possession of the prohibited wildlife species within a given State.

##### Issue #2: Transportation of Pets Across State Lines

We received 25 comments stating that the CWSA should not regulate the transportation of personal property across State lines. Comments specified that: (1) The CWSA should allow interstate household moves; (2) Animals will be placed at risk when they are in need of veterinary care for those owners that have providers across State lines; (3) The feline community will be prevented from moving displaced big cats; (4) Interstate transport is vital to propagation; and (5) Private owners should be able to transport big cats across State lines for donation to U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) facilities or accredited sanctuaries.

Our Response: Congress set the prohibitions under the CWSA, which include the import, export, transport, sale, receipt, acquisition, or purchase, in interstate or foreign commerce, of any of the prohibited wildlife species. The prohibitions and exemptions contained in the CWSA are clearly stated, and we cannot develop regulations that alter these prohibitions or create exemptions for additional activities such as household moves, without the authority from Congress. It is important to note that the transport prohibition contained in the CWSA applies to any transportation of the prohibited wildlife species in interstate or foreign commerce, not only to transportation that involves commercial activity. This prohibition is based upon the accepted legal definition of interstate commerce, which includes the transportation of property between any U.S. State, territory or jurisdiction. That means that any person who owns a live specimen of a prohibited wildlife species and who wants to transport the animal in interstate commerce as a pet, for veterinary care or even as part of a

household move, is not allowed to do so under the prohibitions contained in the CWSA unless they qualify under one of the exemptions. If need be, APHIS-licensed organizations, accredited wildlife sanctuaries, or other entities exempted under the CWSA could make arrangements for the transportation across State lines of displaced big cats or for the transportation of big cats that are being donated to exempted entities by private individuals. Though we recognize that there may be reasons to transport the prohibited wildlife species across State lines for the purposes of propagation, the large number of big cats within the United States suggests that there are likely to be opportunities for propagation within a given State, which would not be prohibited under the CWSA.

##### Issue #3: Public Safety

We received eight comments regarding public safety and big cats, including five comments stating that the CWSA is falsely based on the need for public safety and three comments stating that the CWSA does not provide increased public safety.

Our Response: Statistics show a considerable number of injuries or deaths attributable to big cats. This number is likely to increase as the ownership of big cats increases in popularity, with many of the specimens ultimately being placed in sanctuaries that are accessible to the general public. The CWSA does not address all safety issues with privately owned big cats, although the statute does provide improved safety for the public by limiting the exception for accredited wildlife sanctuaries to those that prohibit direct contact with the prohibited wildlife species.

##### Issue #4: Influence of the Animal-Rights Movement or Animal Sanctuaries

We received 11 comments questioning the influence of the animal-rights movement or animal sanctuary operators on the development of the regulations to implement the CWSA, including the prominent role of the Captive Wild Animal Protection Coalition. These comments stated that these organizations might attempt to influence us in the development of these regulations.

Our Response: Neither the animal-rights movement nor any animal sanctuary operators improperly influenced us in the development of the regulations to implement the CWSA. One particular organization, the Captive Wild Animal Protection Coalition, did provide data for a U.S. Senate Report that was drafted during the

development of the CWSA, and we referenced that data in the proposed rule (71 FR 5041). We impartially considered all relevant information, including information received from the public, during the development of the final rule.

#### Issue # 5: Validity of Statistics on Incidents of Human Injury or Death Attributed to Big Cats

We received five comments questioning the validity of statistics on incidents of human injury or death attributed to big cats.

Our Response: As we have clarified in the preamble of this final rule, the statistics on incidents of human injury or death attributed to big cats were included in a U.S. Senate Report that was drafted during the development of the CWSA. These statistics thus served as part of Congress' basis for enacting the CWSA and were referenced for informational purposes in the proposed rule (71 FR 5041) and this final rule, but were not used in the development of our regulations to implement the CWSA.

#### Issue # 6: Accuracy of Big Cat Ownership Statistics

We received two comments questioning the accuracy of big cat ownership statistics in the preamble of the proposed rule.

Our Response: As we have clarified in the preamble of this final rule, the discussion on ownership statistics in the preamble of the proposed rule was included in a U.S. Senate Report that was drafted during the development of the CWSA. The report was referenced for informational purposes in the proposed rule and this final rule to illustrate the Congressional intent behind the CWSA, but the statistics were not used in the development of the regulations to implement the CWSA.

#### Issue # 7: Accuracy of the Nature of Big Cats

We received four comments questioning the nature of big cats and the inability of owners to cope with big cats detailed in the preamble of the proposed rule.

Our Response: As we have clarified in the preamble of this final rule, the supporting information on the nature of big cats and the inability of owners to cope with big cats in the preamble of the proposed rule was included in a U.S. Senate Report that was drafted during the development of the CWSA. This information served as part of Congress' basis for enacting the CWSA and was referenced for informational purposes in the proposed rule and this final rule, but

was not used in the development of the regulations to implement the CWSA.

#### Issue # 8: Protection of Wild Populations

We received eight comments that the CWSA does not promote the conservation of wild populations of the prohibited wildlife species.

Our Response: The CWSA primarily addresses public safety. Most captive big cats now in the United States were bred here, and the demand for these animals continues to be met without any impact on wild populations. In fact, even the endangered big cats moving in the domestic exotic pet trade are considered of little value to the ultimate survival of the species. We have no evidence to suggest that the popularity of these prohibited wildlife species in the U.S. pet trade has prompted removal of these animals from the wild, or that this trend represents a threat in any way to the conservation of the big cats.

#### Issue # 9: Species Covered in the Proposed Rule

We received five comments suggesting that the list of prohibited species includes species not authorized by Congress and suggesting changes to the list of prohibited wildlife species. These suggested changes include expanding the definition to include all wild and exotic cat species or reducing the definition to include only the lion, tiger, and jaguar, and not including the cougar as a prohibited species and not making hybrids subject to the CWSA.

Our Response: We have reviewed the intent of Congress with regard to the actual species to be included in the definition of "prohibited wildlife species" under the CWSA, since scientific names were not included in the CWSA. However, scientific names for "prohibited wildlife species," and any hybrids resulting from breeding of any combination of any of the prohibited wildlife species, were included in the report accompanying S. 269, the Senate version of the CWSA. Based upon this report, we conclude that Congress intended to include the lion (*Panthera leo*), tiger (*Panthera tigris*), leopard (*Panthera pardus*), snow leopard (*Uncia uncia*), clouded leopard (*Neofelis nebulosa*), jaguar (*Panthera onca*), cheetah (*Acinonyx jubatus*), and cougar (*Puma concolor*), including all subspecies of each of these species, or any hybrid combination of any of these species. Therefore, we are making no changes to the list of prohibited species under the CWSA.

#### Issue # 10: Accreditation of Wildlife Sanctuaries

We received 20 comments suggesting changes to the accreditation of wildlife sanctuaries in the proposed rule. Comments recommended that:

- We clarify the breeding prohibitions in these sanctuaries;
- We better explain how we will monitor these sanctuaries;
- Sanctuaries should not be self-accredited, but rather accredited by an outside accrediting organization;
- One organization's resource might be of assistance in helping us develop the criteria for accredited sanctuaries;
- Proof of sterilization should remove the restriction of having male and female specimens in the same cage;
- Legitimate sanctuaries should not be denied the right to possess the prohibited wildlife species;
- Breeding should be allowed in wildlife sanctuaries;
- The determination of whether an accredited wildlife sanctuary can breed should be made by an accrediting organization;
- The requirement to keep opposite sexes housed separately may be costly or impractical;
- Wildlife sanctuaries should not have to be tax-exempt;
- Commercial trade should not be considered when evaluating wildlife sanctuaries;
- Recordkeeping requirements on wildlife sanctuaries will create serious financial and resource burdens on those sanctuaries;
- The \$15,000 annual burden estimate for recordkeeping may cripple a small sanctuary; and
- We specify what happens if a sanctuary does not meet the criteria to be accredited.

Our Response: The CWSA specifically states that an accredited sanctuary must be tax-exempt, it must not commercially trade in the prohibited wildlife species, and it must not breed the prohibited wildlife species. Our definition of "propagate" clearly addresses that restriction. Our monitoring of these sanctuaries is accomplished through the requirement that accredited wildlife sanctuaries must maintain complete and accurate records of any possession, transportation, acquisition, disposition, importation, or exportation of the prohibited wildlife species and that these records must be accessible to Service officials for inspection upon request, at reasonable hours. We considered options for developing some type of formal accreditation mechanism for wildlife sanctuaries, but concluded for a number of reasons that such a step

was not practical. The CWSA itself sets specific criteria that must be met for a sanctuary to qualify as "accredited." We have decided that if a sanctuary meets these four criteria, it will qualify as accredited and be exempt from CWSA prohibitions. Other sanctuaries that do not meet these criteria will continue to be able to possess big cats but will not be able to import, export or transport them in interstate or foreign commerce. In the proposed rule (71 FR 5041), January 31, 2006, we stated that placing male and female big cats in the same cage for any period of time may result in breeding and is considered propagation; however, we recognize that sterilization will prevent propagation and that proof of that sterilization should assist a sanctuary in qualifying as "accredited." We will only consider a wildlife sanctuary to be exempt from the prohibitions of the CWSA if it meets the four criteria for accredited wildlife sanctuaries provided in the CWSA.

We are requiring accredited wildlife sanctuaries to maintain complete and accurate records of any possession, transportation, sale, acquisition, purchase, barter, disposition, importation, or exportation of the prohibited wildlife species. However, we do not anticipate that this recordkeeping requirement will impose any significant burden, because the maintenance of these records is typically a normal business practice. Most wildlife sanctuaries will likely only have custody of a limited number of specimens of the prohibited wildlife species. Therefore, complying with the requirement to make records available can likely be met by making available and copying, if needed, a small number of documents pertaining to the possession, transportation, acquisition, disposition, importation, or exportation of the prohibited wildlife species, which we estimate can be completed in an hour or less.

We estimate that there are no more than 750 wildlife sanctuaries that could qualify for the "accredited wildlife sanctuary" exemption. The total estimated annual burden for complying with this recordkeeping requirement for all of these wildlife sanctuaries combined should be 750 hours or less. We estimate that the average wage of individuals likely to be providing these documents is \$20.00 per hour. Therefore, the total estimated cost of this recordkeeping requirement for all of these wildlife sanctuaries would be \$15,000.00, if we requested that all wildlife sanctuaries copy their records. The estimated annual cost of this recordkeeping requirement for each wildlife sanctuary is \$20.00.

#### Issue #11: Other Exemptions Under the CWSA

We received 15 comments on certain other exemptions under the CWSA. These comments included the following:

- The definition of a "licensed" person is too broad;
- Only wildlife sanctuaries should be allowed to possess the prohibited species;
- The exemption for State-licensed veterinarians or registered persons is invalid;
- The registered person exemption needs to be clarified;
- The proposed criteria and recordkeeping requirements for accredited wildlife sanctuaries should be extended to all of the exempted entities;
- All exempted entities should prohibit direct contact, breeding, and selling;
- Specific facility and caging requirements should be established;
- Legitimate organizations should not have to justify their existence;
- Nonlicensed entities should be allowed to transport live big cats through the use of registered persons;
- A hobbyist or fancier's exemption should be created in the regulations to implement the CWSA;
- A blanket exemption should be created for public charities that are not regulated by any government agency other than the Internal Revenue Service; and
- Careless or incompetent owners should be prevented from obtaining APHIS permits.

Our Response: The exemptions provided in the CWSA are clearly stated, and we cannot develop regulations that are contrary to Congress' intent for those exemptions, remove any of those exemptions, or create additional exemptions. The CWSA and these regulations do not address who can possess big cats. The CWSA does provide an exemption for registered persons transporting these prohibited wildlife species. Specific facility and caging requirements for APHIS-licensed organizations are not addressed in the CWSA and are not included in our regulations to implement the CWSA. Specific facility and caging requirements are governed by the Animal Welfare Act (AWA), so any person licensed or registered under the AWA will be subject to those requirements. Also, States may have requirements for contact between people and animals, breeding, selling, and care, and State-licensed universities, wildlife rehabilitators, and

veterinarians would be subject to those requirements. The CWSA itself sets specific conditions that must be met for an "accredited sanctuary" to be exempted. If a sanctuary meets these four criteria, even without meeting specific facility and caging requirements, we will recognize it as accredited and exempt it from CWSA prohibitions. We will consider an organization to be covered by an exemption only if it's qualified for one of the exemptions provided in the CWSA. The CWSA does not require legitimate organizations to justify their existence. If an organization does not qualify, it does not necessarily mean that it is not legitimate. It simply means that it cannot move big cats under the exemptions provided in the CWSA. In order for a hobbyist, fancier, or a public charity to be exempted from the prohibitions of the CWSA, it would have to qualify for one of the existing exemptions provided in the CWSA. APHIS standards are not addressed in the CWSA and are not included in the regulations to implement the CWSA. Persons licensed or registered by APHIS under the AWA must comply with AWA requirements and will be held accountable under those standards by APHIS.

#### Issue # 12: Licensing of Entities by APHIS

We received six comments suggesting that APHIS should not license any of the entities exempted under the CWSA, or that APHIS should license exempted wildlife sanctuaries, or that the standards APHIS uses in licensing entities should be strengthened because they currently don't ensure public safety or animal welfare.

Our Response: The role that APHIS plays in the implementation of the CWSA is clearly defined in the CWSA itself, and includes the licensing or registration of certain entities that meet APHIS standards. APHIS standards are not addressed in the CWSA and are not included in our regulations to implement the CWSA. Persons licensed or registered by APHIS under the AWA must comply with AWA requirements and will be held accountable under those standards by APHIS.

#### Issue # 13: State or Local Regulation

We received seven comments addressing the State or local regulation of these prohibited wildlife species and public safety. These commenters asserted that: (1) This issue was most effectively addressed at the State or local level; (2) If needed, these regulations should clearly indicate that they take precedence over State law; (3)

Enforcement of the CWSA should be proactive and coordinated at all levels of government; (4) The information on State prohibitions in the preamble of the proposed rule was inaccurate; (5) The CWSA should not support State restrictions; and (6) The compartmentalization of these prohibited wildlife species within States will lead to additional State restrictions.

Our Response: Regulating the prohibited wildlife species and public safety at the State or local level is not the purpose of the CWSA. In fact, Congress specifically provided that nothing in the CWSA preempts or supercedes the authority of a State to regulate those species within the State. Rather, the CWSA makes it illegal to import, export, transport, sell, receive, acquire, or purchase, in interstate or foreign commerce, any prohibited wildlife species. We will welcome the coordination of the enforcement of the CWSA at all levels of government when there are opportunities for State or local government involvement. Information on the State prohibitions in the preamble of the proposed rule was included in a U.S. Senate Report that was drafted during the development of the CWSA. This information was included for informational purposes in the proposed rule and this final rule, but was not used in the development of our regulations to implement the CWSA.

#### Issue # 14: Direct Contact With the Prohibited Wildlife Species

We received three comments suggesting that the direct contact prohibition for accredited wildlife sanctuaries should be extended to keepers and caregivers and that these keepers and caregivers should be properly trained professionals and that the direct contact prohibition in the CWSA is already prohibited or heavily regulated by APHIS under the AWA.

Our Response: It was Congress' intent that the direct contact restriction in the CWSA apply only to accredited wildlife sanctuaries. The extent to which direct contact is already regulated under the AWA must be determined by APHIS. If an entity becomes licensed or registered by APHIS, it would be entitled to the APHIS exemption contained in the CWSA, regardless of whether it qualifies for the accredited wildlife sanctuary exemption.

#### Issue # 15: Captive-Bred Wildlife (CBW) Regulations

We received one comment stating that there needs to be clarification of the method to obtain a CBW registration in order to prevent a CBW registration from becoming a loophole to obtain the

prohibited wildlife species under the CWSA.

Our Response: Under our CBW regulations (50 CFR 17.21), individuals may export; re-import; deliver, receive, carry, transport or ship in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce certain endangered wildlife species as long as specific requirements are met. Prohibited wildlife species under the CWSA that are eligible for CBW regulation are the tiger, leopard, snow leopard, clouded leopard, jaguar, and cheetah. The new CWSA restrictions are in addition to the CBW regulations. Any person who wishes to engage in the specified activities authorized by the CWSA who is also regulated under the CBW regulations must comply with both, unless they qualify under one of the CWSA exemptions.

#### Issue # 16: Freedom of Religion and the Human Environment

We received two comments stating that the CWSA violates the Constitutional right to freedom of religion and will have a negative impact on the human environment regarding, for example, the spiritual bond between an owner and a big cat.

Our Response: Everyone has the right to freedom of thought, conscience, and religion. The law is clear, however, that religious beliefs do not allow people to engage in unlawful activities that could potentially endanger public safety. This regulation is based on the CWSA, the purpose of which is to amend the Lacey Act amendments of 1981 to further the conservation of certain wildlife species and to protect the public from dangerous animals. The Government has a clear and compelling interest in regulating activities that have been shown to be harmful to public health or safety. These regulations and the CWSA are neutral. Any person may seek to qualify for one of the exemptions under the CWSA; they need only meet the requirements for the exemption. In addition, nothing in the CWSA or these regulations prohibits possession of these species or limits use or movement of these species within a State. The CWSA limits only the ability to import, export, transport, sell, receive, acquire, or purchase, in interstate or foreign commerce, the prohibited wildlife species.

#### Issue # 17: Native American Use of the Cougar

We received one comment stating that Native Americans should be exempt from the prohibitions for cougars.

Our Response: Congress did not provide an exemption for Native American use of cougars. Therefore, Native Americans must meet the same regulatory requirements as other individuals who import, export, transport, sell, receive, acquire, or purchase, in interstate or foreign commerce, the prohibited wildlife species.

#### Issue # 18: Providing Financial Assistance To Help Carry Out the CWSA

We received two comments stating that financial assistance should be provided to assist organizations that are developing new techniques for the care and maintenance of the prohibited wildlife species and to establish sanctuaries that will be needed for the placement of these prohibited wildlife species resulting from CWSA prohibitions.

Our Response: This rulemaking establishes regulations that will enable us to enforce the CWSA. Providing financial assistance from funds allocated under the CWSA or funds from other sources is beyond the scope of this rulemaking.

#### Issue # 19: The CWSA Subverts the Original Intent of the Lacey Act

We received one comment stating that the CWSA subverts the original intent of the Lacey Act.

Our Response: Congress chose to regulate certain activities with wildlife under the Lacey Act. Congress has now determined that it is appropriate to regulate similar activities with the listed species, and chose to adopt these measures through amendment of the Lacey Act.

#### Issue # 20: The CWSA Is Raising a Novel Issue

We received one comment stating that the CWSA is raising a novel issue, under Executive Order 12866, by making illegal an activity that is currently legal.

Our Response: Laws often make formerly legal activities illegal. These regulations, as required under the CWSA, implement that law.

#### Issue # 21: Takings

We received one comment stating that the CWSA may result in takings, under Executive Order 12630, when an individual is moving a big cat across State lines.

Our Response: We have analyzed this regulation under Executive Order 12630 and have determined that it does not result in takings. This rule only prohibits importing, exporting,

transporting, selling, receiving, acquiring, or purchasing, in interstate or foreign commerce, of the prohibited wildlife species. This rule does not directly result in physical occupancy or acquisition of property or physical invasion of property by the Government without compensation.

Furthermore, this rule also does not result in a regulatory taking. The CWSA serves a legitimate public interest by promoting public safety and preventing interstate exploitation of the prohibited wildlife species. The rule does not so severely restrict the owner's use of his or her property as to deprive the owner of all economically beneficial use of the property. The owner may still possess big cat species or buy or sell them within the owner's State. Also, an owner who is relocating to another State may move his or her big cat if exempted under 50 CFR 14.255.

### Conclusion

In 2003, Congress enacted the CWSA to prohibit the import, export, sale, receipt, acquisition or purchase, in interstate or foreign commerce, of certain live wildlife species except by persons who meet the criteria of specific, listed exemptions. The new prohibitions become applicable on the effective date of final regulations that implement the statutory provisions. Thus, with this final rule, it will be unlawful for any person to engage in the prohibited activities unless they qualify under one of the exemptions.

### Required Determinations

#### *Executive Order 12866 (Regulatory Planning and Review)*

This rule has been reviewed by OMB under Executive Order 12866. Under the criteria in Executive Order 12866, this rule is not a significant regulatory action.

a. This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required.

The purpose of this rule is to regulate the movement of the prohibited wildlife species and to provide improved safety for the public by limiting the exception for accredited wildlife sanctuaries to those that prohibit direct contact with the prohibited wildlife species. The ESA already regulates the interstate sale or movement of tigers, leopards, snow leopards, clouded leopards, jaguars, and cheetahs. The CWSA would, therefore, have no substantial additional impact on commerce. Our records indicate that

in the period from 2001 through 2003: 164 tigers were imported, and 123 were exported; 53 leopards were imported, and 39 were exported; 2 snow leopards were imported, and 4 were exported; 9 jaguars were imported, and 5 were exported; and 43 cheetahs were imported. These specimens were imported or exported by organizations who qualified for authorizations under the ESA and who would likely qualify for one of the exemptions contained in the CWSA. Therefore, the CWSA would not have any substantial economic effect by restricting importations or exportations of these species.

Under our CBW regulations (50 CFR 17.21), individuals may export; re-import; deliver, receive, carry, transport or ship in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce certain endangered wildlife species as long as specific requirements are met.

Prohibited wildlife species under the CWSA that are eligible for CBW regulation include tigers, leopards, snow leopards, clouded leopards, jaguars, and cheetahs. There are approximately 350 approved CBW registrations, of which approximately 100 authorize activities with the prohibited wildlife species in the CWSA. However, it must be noted that most, if not all, CBW registration holders are APHIS licensed and are therefore exempted from the provisions of the CWSA. Therefore, the CWSA would not have any substantial economic effect on this segment of the live animal industry by restricting activities currently authorized under CBW regulation.

CITES prohibits most trade in tigers, leopards, snow leopards, clouded leopards, jaguars, and cheetahs. However, CITES regulates, though does not necessarily prohibit, the international trade of African lions and cougars. The CWSA could, therefore, have some impact on limiting imports or exports of African lions and cougars. Our records indicate that, in the period from 2001 through 2003, 22 African lions were imported and 15 were exported, and 14 cougars were imported and 19 were exported. Some of these importations or exportations may have been for commercial purposes; however, most, if not all, of the individuals who would be importing or exporting live African lions and cougars would probably qualify for one of the exemptions contained in the CWSA. Therefore, the CWSA would not have any substantial economic effect by restricting importations or exportations of these species.

The CWSA will prohibit the import, export, transport, sale, receipt, acquisition or purchase in interstate or foreign commerce, of African lions and cougars by individuals or businesses that would not qualify for one of the exemptions contained in the CWSA, even if those by individuals or businesses would qualify under CITES. Because we believe that there are very few people in this category, these restrictions are not expected to have a substantial economic effect on this segment of the live animal industry.

The CWSA will have its greatest potential impact on the import, export, transport, sale, receipt, acquisition, or purchase, in interstate or foreign commerce, of hybrids produced from the breeding of any combination of any of the prohibited wildlife species, by individuals who would not qualify for one of the exemptions contained in the CWSA. Hybrids produced from the breeding of any combination of tigers, leopards, snow leopards, clouded leopards, jaguars, or cheetahs would be exempt from the provisions of the ESA but not from the provisions of the CWSA. Generally speaking, the most common hybrids resulting from the breeding of any combination of any of the prohibited wildlife species would be the liger (a male lion and a female tiger) or the tiglon (a male tiger and a female lion). Numerous Web sites promote the existence of these hybrids, suggesting that there may be some demand for these animals for use as pets or for display purposes. We do not maintain domestic trade data on these hybrids; therefore, it is difficult to estimate the impact the CWSA will have on this segment of the live animal industry.

In addition to amending the Lacey Act by adding prohibitions that make it illegal to import, export, transport, sell, receive, acquire, or purchase, in interstate or foreign commerce, the prohibited wildlife species, the CWSA provides exemptions to these prohibitions for certain persons. Becoming eligible for these exemptions should not have any substantial economic effect on this segment of the live animal industry.

The only direct costs to be assumed by individuals who seek an exemption to the prohibitions of the CWSA would be the costs associated with the application process and with meeting APHIS compliance requirements to become licensed or registered under the AWA and the costs associated with meeting compliance requirements in order to become a State-licensed wildlife rehabilitator.

The costs for meeting APHIS compliance requirements under the

AWA are difficult to quantify because these costs are extremely variable, depending on the nature of the business of the individual who seeks to become licensed or registered. Application costs will vary, depending on the nature of the business of the individual. Licenses issued by APHIS under the AWA must be renewed every year with a standard application fee of \$10.00. Additional application costs are based upon the nature of the business of the individual and the size of that business. Additional application costs for animal exhibitors can range from \$30.00 to \$300.00 per year, depending on the number of animals on exhibit. Additional application costs for animal dealers can range from \$30.00 to \$500.00 per year, depending on the anticipated annual income of the business.

In addition to application fees, the costs for meeting APHIS compliance requirements can vary, depending on the current facilities maintained by the individual and to what degree those facilities meet those requirements. Construction costs for new facilities may also need to be increased in order to achieve compliance.

The costs for meeting compliance requirements in order to become a State-licensed wildlife rehabilitator are difficult to quantify because these costs are extremely variable, depending on the State where the applicant resides and the current facilities maintained by the individual and to what degree those facilities meet those requirements.

Each wildlife sanctuary that intends to qualify under the exemption to the prohibitions of the CWSA is prohibited from commercially trading in the prohibited wildlife species or the species' offspring, parts, or byproducts, and from propagating any of the prohibited wildlife species. Though this requirement may result in lost revenue for the sanctuary, it is not expected to result in a substantial negative economic effect for sanctuaries as a whole. In addition, if the owner of a sanctuary chooses to commercially trade in the prohibited wildlife species, he or she should become licensed or registered with APHIS under the AWA, and would thus qualify for that exemption in the CWSA.

The CWSA provides an exemption for individuals transporting live specimens of the prohibited wildlife species between individuals who qualify for one of the other exemptions provided in the CWSA. This rule requires that the transporting individuals produce evidence to prove that they are transporting specimens between other exempted individuals. However, these requirements would not increase costs

for the transporting individuals because APHIS already requires these individuals to be registered by meeting similar requirements.

In addition to amending the Lacey Act by adding prohibitions that make it illegal to import, export, transport, sell, receive, acquire, or purchase, in interstate or foreign commerce, the prohibited wildlife species, the CWSA provides improved safety for the public by limiting the exception for accredited wildlife sanctuaries to those that prohibit direct contact with the prohibited wildlife species. Activities that might result in direct contact between the prohibited wildlife species and any member of the public, such as photography, play sessions, or offsite programs, would prevent an otherwise accredited wildlife sanctuary from qualifying for the exemption. Though this requirement may result in lost revenue for sanctuaries, it is not expected to result in a substantial negative economic effect for wildlife sanctuaries as a whole.

b. This rule will not create inconsistencies with other agencies' actions.

We are the lead Federal agency regulating international wildlife trade, the issuance of permits to conduct activities affecting federally protected wildlife and their habitats, and carrying out the United States' obligations under CITES. Therefore, this rule has no effect on other agencies' responsibilities and will not create inconsistencies with other agencies' actions.

In addition, 19 States prohibit the private possession of big cats, and 16 States have a partial ban on possession of big cats or require permits for their possession. Therefore, the CWSA does not create inconsistencies with these States' restrictions, but rather supports them.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

This rule will not change the fee schedule for any permits issued by us or any licenses or registrations issued by APHIS.

d. This rule will not raise novel legal or policy issues.

This rule will not raise novel legal or policy issues because it is based upon Congress's passage of the CWSA, which reflects a heightened concern for public safety resulting from the increased trade in the prohibited wildlife species for use as pets and the increased risk of danger to members of the public when given opportunities for direct contact with the prohibited wildlife species.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). An initial regulatory flexibility analysis is not required. In addition, a Small Entity Compliance Guide is not required.

This rule regulates businesses that commercially trade in the prohibited wildlife species in interstate or foreign commerce. The purpose of this rule is to regulate the movement of these prohibited wildlife species and to provide improved safety for the public by limiting the exception for accredited wildlife sanctuaries to those that prohibit direct contact with the prohibited wildlife species.

Most of the businesses that commercially trade in the prohibited wildlife species in interstate or foreign commerce, would be considered small businesses as defined under the Regulatory Flexibility Act. These businesses are most logically placed in three primary industries: Zoos and Botanical Gardens; Nature Parks and Other Similar Institutions; and All Other Animal Production. The SBA size standard for the first two industries is \$6 million in average annual receipts, and the SBA size standard for the third industry is \$750,000 in average annual receipts. However, it should be noted that the nature of these businesses would require that most, if not all, of them must be licensed or registered under the AWA by APHIS, making them eligible for one of the exemptions provided in the CWSA. However, we recognize that there may be a small number of small businesses that do not fit into any of the above categories and are not eligible for one of the exemptions provided in the CWSA.

*Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

a. This rule does not have an annual effect on the economy of \$100 million or more.

For the reasons described above, we have determined that this rule will not have an annual effect on the economy of \$100 million or more. It is not anticipated that the restrictions imposed by the CWSA and the costs to become eligible for the exemptions contained in the CWSA will amount to an annual effect on the economy of \$100 million or more.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

The CWSA provides exemptions to its prohibitions for certain persons. Becoming eligible for these exemptions will increase costs for the live animal industry; however, as described above, we do not expect these increased costs to be major. The only direct costs to be assumed by individuals who seek an exemption to the prohibitions of the CWSA would be the costs associated with the application process and meeting compliance requirements in order to become licensed or registered under the AWA with APHIS, and the costs associated with meeting compliance requirements in order to become a State-licensed wildlife rehabilitator.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

The CWSA will not have significant adverse effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises because foreign-based enterprises that are subject to U.S. jurisdiction must comply with the same regulatory requirements as U.S.-based enterprises who buy or sell the prohibited wildlife species in interstate or foreign commerce.

#### *Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

Under the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), this rule will have no effects.

a. This rule will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required.

We are the lead Federal agency regulating international wildlife trade, the issuance of permits to conduct activities affecting federally protected wildlife and their habitats, and carrying out the United States' obligations under CITES. No small government assistance or impact is expected as a result of this rule.

b. This rule will not produce a Federal requirement that may result in the combined expenditure by State, local, or tribal governments of \$100 million or greater in any year, so it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

This rule will not result in any combined expenditure by State, local, or tribal governments.

#### *Executive Order 12630 (Takings)*

Under Executive Order 12630, this rule does not have significant takings implications. Under Executive Order 12630, this rule does not affect any constitutionally protected property rights. We have analyzed this regulation under Executive Order 12630 and have determined that it does not result in takings. This rule only prohibits importing, exporting, transporting, selling, receiving, acquiring, or purchasing, in interstate or foreign commerce, of the prohibited wildlife species. This rule does not result in physical occupancy of property or physical invasion of property by the Government.

Furthermore, this rule also does not result in a regulatory taking. The CWSA serves a legitimate public interest by promoting public safety and preventing interstate exploitation of the prohibited wildlife species. The rule does not so severely restrict the owner's use of his or her property as to deprive the owner of all economically beneficial use of the property. The owner may still possess big cat species or buy or sell them within the owner's State. Also, an owner who is relocating to another State may move his or her big cat if exempted under 50 CFR 14.255.

#### *Executive Order 13132 (Federalism)*

Under Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Addressing the prohibited wildlife species and public safety at the State or local level is not the purpose of the CWSA. The CWSA does not take precedence over State law. The CWSA makes it illegal to import, export, transport, sell, receive, acquire, or purchase, in interstate or foreign commerce, the prohibited wildlife species.

#### *Executive Order 12988 (Civil Justice Reform)*

Under Executive Order 12988, the Office of the Solicitor has determined that this rule does not overly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. Specifically, this rule has been reviewed to eliminate errors and ensure clarity, has been written to minimize lawsuits, provides a clear legal standard for affected actions, and

specifies in clear language the effect on existing Federal law or regulation.

#### *Paperwork Reduction Act*

This rule contains new information collection requirements for which OMB approval is required under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq. We may not conduct or sponsor and you are not required to respond to an information collection unless it displays a currently valid OMB control number.

The information collection associated with this rule has been approved under OMB control number 1018-0129, which expires on June 30, 2010.

We are requiring wildlife sanctuaries that seek to qualify as an "accredited wildlife sanctuary" under the CWSA to maintain complete and accurate records of any possession, transportation, acquisition, disposition, importation, or exportation of the prohibited wildlife species. These records must be up to date, and include: (1) The names and addresses of persons to or from whom any prohibited wildlife species has been acquired, imported, exported, purchased, sold, or otherwise transferred; and (2) the dates of these transactions. Accredited wildlife sanctuaries must maintain these records for 5 years, must make these records accessible to Service officials for inspection at reasonable hours, and must copy these records for Service officials, if requested. This rule does not contain any requirement that wildlife sanctuaries must submit an application to qualify as an "accredited wildlife sanctuary."

The requirement to make records available will be initiated on an as-needed basis. We estimate that there are no more than 750 wildlife sanctuaries that could qualify for the "accredited wildlife sanctuary" exemption.

We do not anticipate that this recordkeeping requirement will impose any significant burden, because the maintenance of these records is typically a normal business practice. Most wildlife sanctuaries will likely only have custody of a limited number of specimens of the prohibited wildlife species. Therefore, complying with the requirement to make records available can likely be met by making available and copying, if needed, a small number of documents pertaining to the possession, transportation, acquisition, disposition, importation, or exportation of the prohibited wildlife species, which we estimate can be completed in an hour or less. The total estimated annual burden for complying with this recordkeeping requirement for all of these wildlife sanctuaries combined

should be 750 hours or less. We estimate that the average wage of individuals likely to be providing these documents is \$20.00 per hour. Therefore, the total estimated cost of this recordkeeping requirement for all of these wildlife sanctuaries would be \$15,000.00, if we requested that all wildlife sanctuaries copy their records. The estimated annual cost of this recordkeeping requirement for each wildlife sanctuary is \$20.00.

#### *National Environmental Policy Act*

This rule has been analyzed under the criteria of the National Environmental Policy Act and 318 DM 2.2 (g) and 6.3 (D). This rule does not amount to a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/evaluation is not required. This rule is categorically excluded from further National Environmental Policy Act requirements, under part 516 of the Departmental Manual, Chapter 2, Appendix 1.10. This rule is a regulation that is of an administrative, legal, technical, or procedural nature and its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis under NEPA.

#### *Executive Order 13175 (Tribal Consultation) and 512 DM 2 (Government-to-Government Relationship With Tribes)*

Under the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no adverse effects. Individual tribal members must meet the same regulatory requirements as other individuals who import, export, transport, sell, receive, acquire, or purchase, in interstate or foreign commerce, the prohibited wildlife species.

#### *Executive Order 13211 (Energy Supply, Distribution, or Use)*

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The purpose of this rule is to regulate the movement of the prohibited wildlife species and to provide improved safety for the public by limiting the exception for accredited wildlife sanctuaries to those that prohibit direct contact with

the prohibited wildlife species. This rule is not a significant regulatory action under Executive Order 12866 and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

#### **Author**

The originator of this final rule is Mark Phillips, OLE, U.S. Fish and Wildlife Service, Washington, DC.

#### **List of Subjects in 50 CFR Part 14**

Animal welfare, Exports, Fish, Imports, Labeling, Reporting and recordkeeping requirements, Transportation, Wildlife.

#### **Regulation Promulgation**

■ For the reasons described above, we amend part 14, subchapter B of Chapter I, title 50 of the Code of Federal Regulations as set forth below.

#### **PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE**

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

**Authority:** 16 U.S.C. 668, 704, 712, 1382, 1538(d)–(f), 1540(f), 3371–3378, 4223–4244, and 4901–4916; 18 U.S.C. 42; 31 U.S.C. 9701.

■ 2. Revise § 14.3 to read as follows:

#### **§ 14.3 Information collection requirements.**

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this part 14 under 44 U.S.C. 3507 and assigned OMB Control Numbers 1018–0012, 1018–0092, and 1018–0129. The Service 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. You can direct comments regarding these information collection requirements to the Service's Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail) or (703) 358–2269 (fax).

■ 3. Add a new subpart K to read as follows:

#### **Subpart K—Captive Wildlife Safety Act Sec.**

14.250 What is the purpose of these regulations?

14.251 What other regulations may apply?

14.252 What definitions do I need to know?

14.253 What are the restrictions contained in these regulations?

14.254 What are the requirements contained in these regulations?

14.255 Are there any exemptions to the restrictions contained in these regulations?

#### **Subpart K—Captive Wildlife Safety Act**

#### **§ 14.250 What is the purpose of these regulations?**

The regulations in this subpart implement the Captive Wildlife Safety Act (CWSA), 117 Stat. 2871, which amended the Lacey Act Amendments of 1981, 16 U.S.C. 3371–3378, by adding paragraphs 2(g), 3(a)(2)(C), and 3(e) (16 U.S.C. 3371, 3372).

#### **§ 14.251 What other regulations may apply?**

The provisions of this subpart are in addition to, and are not in place of, other regulations of this subchapter B that may require a permit or describe additional restrictions or conditions for the importation, exportation, transportation, sale, receipt, acquisition, or purchase of wildlife in interstate or foreign commerce.

#### **§ 14.252 What definitions do I need to know?**

In addition to the definitions contained in part 10 of this subchapter, and unless the context otherwise requires, in this subpart:

*Accredited wildlife sanctuary* means a facility that cares for live specimens of one or more of the prohibited wildlife species and:

(1) Is approved by the United States Internal Revenue Service as a corporation that is exempt from taxation under § 501(a) of the Internal Revenue Code of 1986, which is described in §§ 501(c)(3) and 170(b)(1)(A)(vi) of that code;

(2) Does not commercially trade in prohibited wildlife species, including offspring, parts, and products;

(3) Does not propagate any of the prohibited wildlife species; and

(4) Does not allow any direct contact between the public and the prohibited wildlife species.

*Direct contact* means any situation in which any individual other than an authorized keeper or caregiver may potentially touch or otherwise come into physical contact with any live specimen of the prohibited wildlife species.

*Licensed person* means any individual, facility, agency, or other entity that holds a valid license from and is inspected by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) under the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) (See definition of "licensee" in 9 CFR 1.1.).

*Prohibited wildlife species* means a specimen of any of the following eight

species: Lion (*Panthera leo*), tiger (*Panthera tigris*), leopard (*Panthera pardus*), snow leopard (*Uncia uncia*), clouded leopard (*Neofelis nebulosa*), jaguar (*Panthera onca*), cheetah (*Acinonyx jubatus*), and cougar (*Puma concolor*) or any hybrids resulting from the breeding of any combination of any of these species, for example, a liger (a male lion and a female tiger) or a tiglon (a male tiger and a female lion), whether naturally or artificially produced.

*Propagate* means to allow or facilitate the production of offspring of any of the prohibited wildlife species, by any means.

*Registered person* means any individual, facility, agency, or other entity that is registered with and inspected by APHIS under the AWA (See definition of "registrant" in 9 CFR 1.1.).

**§ 14.253 What are the restrictions contained in these regulations?**

Except as provided in § 14.255, it is unlawful for any person to import, export, transport, sell, receive, acquire, or purchase, in interstate or foreign commerce, any live prohibited wildlife species.

**§ 14.254 What are the requirements contained in these regulations?**

In order to qualify for the exemption in § 14.255, an accredited wildlife sanctuary must maintain complete and accurate records of any possession, transportation, acquisition, disposition, importation, or exportation of the prohibited wildlife species covered by the CWSA. These records must be up to date, and must include the names and addresses of persons to or from whom any prohibited wildlife species has been acquired, imported, exported, purchased, sold, or otherwise transferred; and the dates of these transactions. The accredited wildlife sanctuary must maintain these records for 5 years, must make these records available to Service officials for inspection at reasonable hours, and must copy these records for Service officials, if requested. In addition, by declaring itself to be accredited under this subpart, a wildlife sanctuary agrees to allow access to its facilities and its prohibited wildlife specimens by Service officials at reasonable hours.

**§ 14.255 Are there any exemptions to the restrictions contained in these regulations?**

The prohibitions of § 14.253 do not apply to:

- (a) A licensed person or registered person;
- (b) A State college, university, or agency;
- (c) A State-licensed wildlife rehabilitator;
- (d) A State-licensed veterinarian;
- (e) An accredited wildlife sanctuary;

or

- (f) A person who:
  - (1) Can produce documentation showing that he or she is transporting live prohibited wildlife species between persons who are exempt from the prohibitions in § 14.253; and
  - (2) Has no financial interest in the prohibited wildlife species other than payment received for transporting them.

Dated: April 26, 2007.

**Todd Willens,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

**Editorial Note:** This document was received at the Office of the Federal Register on August 10, 2007.

[FR Doc. E7-16085 Filed 8-15-07; 8:45 am]

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# Proposed Rules

Federal Register

Vol. 72, No. 158

Thursday, August 16, 2007

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

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

RIN 3150-AI21

#### List of Approved Spent Fuel Storage Casks: TN-68 Revision 1

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage cask regulations by revising the Transnuclear, Inc. TN-68 dry storage cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to Certificate of Compliance (CoC) Number 1027. Amendment No. 1 would modify the CoC by revising several fuel parameters that include increasing fuel burnup to 60 gigawatts-day/metric ton of uranium, increasing total cask decay heat to 30 kilowatts, increasing maximum average fuel enrichment to 4.7 weight percent uranium-235, and decreasing minimum fuel assembly cooling time to 7 years. Amendment No. 1 would also add up to eight damaged fuel assemblies as authorized contents of the cask and reduce the cask spacing on the storage pad.

**DATES:** Comments on the proposed rule must be received on or before September 17, 2007.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number (RIN 3150-AI21) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

*Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

*E-mail comments to:* [SECY@nrc.gov](mailto:SECY@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking Web site at <http://rulemaking.llnl.gov>. Address questions about our rulemaking Web site to Carol Gallagher (301) 415-5905; e-mail [cag@nrc.gov](mailto:cag@nrc.gov). Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

*Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays [telephone (301) 415-1966].

*Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers at the NRC's Public Document Room (PDR), O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/NRC/ADAMS/index.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov). An electronic copy of the proposed CoC No. 1027, the proposed Technical Specifications (TS), and the preliminary safety evaluation report (SER) for Amendment No. 1 can be found in a package under ADAMS Accession No. ML071170621.

The proposed CoC No. 1027, the proposed TS, the preliminary SER for Amendment No. 1, and the

environmental assessment, are available for inspection at the NRC PDR, 11555 Rockville Pike, Rockville MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail [jmm2@nrc.gov](mailto:jmm2@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail [jmm2@nrc.gov](mailto:jmm2@nrc.gov).

**SUPPLEMENTARY INFORMATION:** For additional supplementary information, see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

#### Procedural Background

This rule is limited to the changes contained in Amendment No. 1 to CoC No. 1027 and does not include other aspects of the TN-68 design. Because NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule concurrently as a direct final rule elsewhere in this issue of the **Federal Register**. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on October 30, 2007. However, if the NRC receives significant adverse comments on the direct final rule by September 17, 2007, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a

substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TS.

For additional procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

#### List of Subjects In 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

#### PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

1. The authority citation for part 72 continues to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended; sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242; as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853

(42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241; sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1027 is revised to read as follows:

#### § 72.214 List of approved spent fuel storage casks.

\* \* \* \* \*

Certificate Number: 1027.

Initial Certificate Effective Date: May 30, 2000.

Amendment Number 1 Effective Date: October 30, 2007.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis

Report for the TN–68 Dry Storage Cask.

Docket Number: 72–1027.

Certificate Expiration Date: May 28, 2020.

Model Number: TN–68.

\* \* \* \* \*

Dated at Rockville, Maryland, this 31st day of July, 2007.

For the Nuclear Regulatory Commission.

**Martin J. Virgilio,**

*Acting Executive Director for Operations.*

[FR Doc. E7–16135 Filed 8–15–07; 8:45 am]

BILLING CODE 7590–01–P

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2007–28942; Directorate Identifier 2007–NM–093–AD]

RIN 2120–AA64

#### Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposed AD would require repetitive detailed and high-frequency eddy current inspections for cracking around the heads of the fasteners on the forward fastener row of certain areas of the station (STA) 259.5 circumferential butt splice, and repair if necessary. This proposed AD would also require a preventive modification, which would eliminate the need for the repetitive inspections. This proposed AD results from a report that an operator found multiple cracks in the fuselage skin of a Model 737–200 airplane, at the forward fastener row of the STA 259.5 circumferential butt splice between stringers 19 and 24. We are proposing this AD to prevent cracking of the STA 259.5 circumferential butt splice, which could result in loss of structural integrity of the fuselage skin and possible loss of cabin pressure.

**DATES:** We must receive comments on this proposed AD by October 1, 2007.

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

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

- *Fax:* (202) 493–2251.

- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

#### FOR FURTHER INFORMATION CONTACT:

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

#### SUPPLEMENTARY INFORMATION:

**Comments Invited**

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number “Docket No. FAA–2007–28942; Directorate Identifier 2007–NM–093–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

**Examining the Docket**

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

**Discussion**

We have received a report indicating that an operator found multiple cracks in the fuselage skin of a Model 737–200 airplane that had accumulated 69,350 total flight cycles. The cracking was found at the forward fastener row of the station (STA) 259.5 circumferential butt splice between stringers 19 and 24, and some cracks had joined into one large crack. This condition, if not corrected, could result in loss of structural integrity of the fuselage skin and possible loss of cabin pressure.

**Relevant Service Information**

We have reviewed Boeing Special Attention Service Bulletin 737–53–1267, dated November 28, 2006. The service bulletin describes procedures for doing repetitive detailed and high-frequency eddy current (HFEC) surface inspections for cracking around the heads of the fasteners on the forward fastener row of certain areas of the STA 259.5 circumferential butt splice, and applicable repair if necessary. Certain areas of the circumferential butt splice are those described in the Accomplishment Instructions of Service Bulletin 737–53–1267 as areas that have not had a preventive modification installed in accordance with Boeing Service Bulletin 737–53–1076, or have not had a Boeing, FAA-approved repair accomplished.

The service bulletin also describes procedures for doing a preventive modification of certain areas of the STA 259.5 circumferential butt splice, including removing the existing fasteners, doing an HFEC rotary probe inspection of the fastener holes, and, if no crack is found, oversizing the holes and installing new protruding head fasteners. The preventive modification eliminates the need for the repetitive inspections.

The service bulletin specifies compliance times that depend upon the

number of total flight cycles accumulated by the airplane. Compliance times for doing the initial inspections begin at or before the accumulation of 50,000 total flight cycles, with grace periods ranging between 500 and 4,500 flight cycles after the release date of the service bulletin. The service bulletin specifies that repetitive inspections shall be done thereafter at intervals of 9,000 flight cycles, until the preventive modification is done. The service bulletin specifies that all repairs are to be done before further flight and that the preventive modification is to be done before the accumulation of 75,000 total flight cycles or within 6,000 flight cycles after the release date of the service bulletin, whichever comes later.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

**FAA’s Determination and Requirements of the Proposed AD**

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

**Costs of Compliance**

There are about 2,150 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD, at an average labor rate of \$80 per work hour. Required parts would be supplied by the operator.

ESTIMATED COSTS

Action	Work hours	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection .....	5	\$400, per inspection cycle .....	654	\$261,600, per inspection cycle.
Preventive modification .....	24	\$1,920 .....	654	\$1,255,680.

**Authority for This Rulemaking**

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

detail the scope of the Agency’s authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, “General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in

air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on

products identified in this rulemaking action.

**Regulatory Findings**

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**Boeing:** Docket No. FAA-2007-28942; Directorate Identifier 2007-NM-093-AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by October 1, 2007.

**Affected ADs**

(b) Accomplishing repairs and modifications described in paragraphs (f) and (g) of this AD is considered acceptable for compliance with repair requirements of paragraphs (f) and (g) of AD 92-25-09, amendment 39-8424, for the areas of the station (STA) 259.5 circumferential butt splice only.

**Applicability**

(c) This AD applies to Boeing Model 737-100, -200, -200C, -300, -400, and -500 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 737-53-1267, dated November 28, 2006.

**Unsafe Condition**

(d) This AD results from a report that an operator found multiple cracks in the fuselage skin of a Model 737-200 airplane, at the forward fastener row of the STA 259.5 circumferential butt splice between stringers 19 and 24. We are issuing this AD to prevent cracking of the STA 259.5 circumferential butt splice, which could result in loss of structural integrity of the fuselage skin and possible loss of cabin pressure.

**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.

**Inspections**

(f) At the applicable initial compliance time specified in paragraph 1.E. "Compliance" of Boeing Special Attention Service Bulletin 737-53-1267, dated

November 28, 2006, except as provided by paragraph (j) of this AD: Do detailed and high-frequency eddy current inspections for cracking around the heads of the fasteners on the forward fastener row of certain areas of the station (STA) 259.5 circumferential butt splice, by doing all of the actions specified in Part 1 of the Accomplishment Instructions of the service bulletin, except as provided by paragraph (i) of this AD. Repeat the inspections thereafter at the intervals specified in paragraph 1.E. of the service bulletin. Doing the preventive modification specified in paragraph (h) of this AD terminates the repetitive inspection requirements of this paragraph.

**Repair**

(g) If any crack is found during any inspection required by this AD, before further flight, repair in accordance with Part 1 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737-53-1267, dated November 28, 2006.

**Preventive Modification**

(h) At the compliance time specified in paragraph 1.E. of Boeing Special Attention Service Bulletin 737-53-1267, dated November 28, 2006, except as provided by paragraph (j) of this AD: Do the preventive modification in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737-53-1267, dated November 28, 2006. Doing the preventive modification terminates the repetitive inspections required by paragraph (f) of this AD.

**Modification or Repair Done in Accordance with AD 92-25-09**

(i) Inspections described by paragraph (f) of this AD are not required for areas of the STA 259.5 circumferential butt splice that have been modified in accordance with the service information specified in Table 1 of this AD. (Boeing Service Bulletin 737-53-1076, Revision 4, dated September 26, 1991, is cited as an appropriate source of service information for doing certain requirements of AD 92-25-09.)

TABLE 1.—SERVICE INFORMATION

Boeing Service Bulletin	Revision level	Date
737-53-1076 .....	4 .....	September 26, 1991.
737-53-1076 .....	3 .....	September 20, 1990.
737-53-1076 .....	2 .....	February 8, 1990.
737-53-1076 .....	1 .....	November 23, 1988.
737-53-1076 .....	Original Issue .....	October 30, 1986.

**Compliance Times**

(j) Where the service bulletin specifies compliance times relative to the release date of Boeing Special Attention Service Bulletin 737-53-1267, dated November 28, 2006, this AD requires compliance at compliance times relative to the effective date of this AD.

**Alternative Methods of Compliance (AMOCs)**

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

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR

39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Issued in Renton, Washington, on July 30, 2007.

**Ali Bahrami,**

Manager, Transport Airplane Directorate,  
Aircraft Certification Service.

[FR Doc. E7-16104 Filed 8-15-07; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-28996; Directorate Identifier 2006-NM-217-AD]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Model A310 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Model A310 series airplanes. This proposed AD would require revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness to incorporate new and revised structural inspections and inspection intervals. This proposed AD results from issuance of new and revised structural inspections and inspection intervals. We are proposing this AD to detect and correct fatigue cracking, which could result in reduced structural integrity of the airplane.

**DATES:** We must receive comments on this proposed AD by September 17, 2007.

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

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

- *Fax:* (202) 493-2251.

- *Hand Delivery:* Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2007-28996; Directorate Identifier 2006-NM-217-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

##### Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647-5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after

the Docket Management System receives them.

##### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, notified us that an unsafe condition may exist on all Airbus Model A310 series airplanes. The EASA advises that Airbus has issued new and revised structural inspections and inspection intervals to detect and correct fatigue cracking. This condition, if not corrected, could result in reduced structural integrity of the airplane.

##### Relevant Service Information

Airbus has issued A310 Airworthiness Limitation Items (ALI) Document, AI/SE-M2/95A.0263/06, Issue 6, dated April 2006 (approved by the EASA on May 31, 2006) (hereafter referred to as "Issue 6 of the ALI"). That ALI document describes fatigue-related structural inspections arising from the evaluation of damage tolerance and widespread fatigue damage.

Airbus has also issued Temporary Revision (TR) 6.1, dated November 2006 (approved by the EASA on December 12, 2006), to Issue 6 of the ALI. Airbus TR 6.1 provides new and revised inspections to address certification of the new Model A310-300 weight variant airplanes (Airbus Modification 13302). The applicability, limit of validity, program rules, program notes, and definitions stated in Issue 6 of the ALI remain valid.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The EASA mandated the service information and issued airworthiness directive 2006-0260, dated August 25, 2006, to ensure the continued airworthiness of these airplanes in the European Union.

##### FAA's Determination and Requirements of the Proposed AD

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

for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require revising the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness (ICA) to incorporate new and revised structural inspections and inspection intervals. The proposed AD would also require sending certain inspection results to Airbus.

#### Differences Between the Proposed AD and the EASA Airworthiness Directive

Paragraph 1 of EASA airworthiness directive 2006–0260 specifies to adhere to the requirements defined in Issue 4, 5, or 6 of the A310 ALI Document, prior to the effective date of EASA airworthiness directive 2006–0260. This proposed AD, instead, would require revising the ALS of the ICA by incorporating Issue 6 of the ALI within 3 months after the effective date.

Although paragraph 2 of EASA airworthiness directive 2006–0260 mandates only Issue 6 of the ALI, this proposed AD would require incorporating both Issue 6 of the ALI and Airbus TR 6.1 into the FAA-approved maintenance program. Airbus issued TR 6.1 after issuance of EASA airworthiness directive 2006–0260. We have coordinated this difference with the EASA.

#### Costs of Compliance

This proposed AD would affect about 69 airplanes of U.S. registry. The proposed actions would take about 2 work hours per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is \$11,040, or \$160 per airplane.

#### Authority for This Rulemaking

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

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

products identified in this rulemaking action.

#### Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

##### § 39.13 [Amended]

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

**Airbus:** Docket No. FAA–2007–28996; Directorate Identifier 2006–NM–217–AD.

#### Comments Due Date

- (a) The FAA must receive comments on this AD action by September 17, 2007.

#### Affected ADs

- (b) None.

#### Applicability

- (c) This AD applies to all Airbus Model A310 series 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 according to paragraph (j) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25.1529–1.

#### Unsafe Condition

(d) This AD results from issuance of new and revised structural inspections and inspection intervals. We are issuing this AD to detect and correct fatigue cracking, which could result in reduced structural integrity 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.

#### Revision of Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA)

(f) Within 3 months after the effective date of this AD, do the actions specified in paragraphs (f)(1) and (f)(2) of this AD.

(1) Revise the ALS of the ICA to incorporate the structural inspections and inspection intervals defined in Airbus A310 Airworthiness Limitations Items (ALI) Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006 (approved by the EASA on May 31, 2006) (hereafter referred to as "Issue 6 of the ALI"). Accomplish the actions specified in Issue 6 of the ALI at the times specified in that ALI, except as provided by paragraph (g) of this AD. Thereafter, except as provided by paragraphs (f)(2) and (j) of this AD, no alternative structural inspection intervals may be approved. The actions specified in Issue 6 of the ALI must be accomplished in accordance with Issue 6 of the ALI.

(2) Revise the ALS of the ICA to incorporate the new and revised structural inspections and inspection intervals defined in Airbus Temporary Revision (TR) 6.1, dated November 2006 (approved by the EASA on December 12, 2006), to Issue 6 of the ALI. Thereafter, except as provided by paragraph (j) of this AD, no alternative structural inspection intervals may be approved.

#### Exception to Issue 6 of the ALI

(g) The tolerance (grace period) for compliance with Issue 6 of the ALI is within 1,500 flight cycles after the effective date of this AD provided that none of the following is exceeded:

(1) Thresholds or intervals in the operator's current approved maintenance schedule that are taken from a previous ALI issue, if existing, and are higher than or equal to those given in Issue 6 of the ALI.

(2) 18 months after the effective date of this AD.

(3) 50 percent of the intervals given in Issue 6 of the ALI.

(4) Any application tolerance specified in Section D of Issue 6 of the ALI.

#### Corrective Actions

(h) Damaged, cracked, or corroded structure detected during any inspection done in accordance with Issue 6 of the ALI must be repaired, before further flight, in accordance with Issue 6 of the ALI; or in accordance with other data meeting the certification basis of the airplane that has been approved by either the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, or the EASA (or its delegated agent). Where Issue 6 of the ALI specifies to contact Airbus for appropriate action: Before further flight, repair the damaged, cracked, or corroded structure using a method approved by either the Manager, International Branch, ANM-116, or the EASA (or its delegated agent).

#### Reporting Requirement

(i) If any damage that exceeds the allowable limits specified in Issue 6 of the ALI is detected during any inspection required by this AD: At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD, submit a report of the finding to Sebastien Aveilla, Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 (0) 5 61-93-28-72; e-mail [sebastien.aveilla@airbus.com](mailto:sebastien.aveilla@airbus.com). The report must include the ALI task reference, airplane serial number, the number of flight cycles and flight hours on the airplane, identification of the affected structure, location and description of the finding including its size and orientation, and the circumstance of detection and inspection method used. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120-0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) 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.

#### Alternative Methods of Compliance (AMOCs)

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

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

#### Related Information

(k) EASA airworthiness directive 2006-0260, dated August 25, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on August 2, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-16118 Filed 8-15-07; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-28924; Directorate Identifier 2007-NM-051-AD]

RIN 2120-AA64

#### Airworthiness Directives; Boeing Model 747-200C and -200F Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747-200C and -200F series airplanes. This proposed AD would require, among other actions, installing mounting brackets, support angles, and moisture curtains in the main equipment center. This proposed AD results from reports of water contamination in the electrical/electronic units in the main equipment center. We are proposing this AD to prevent water contamination of the electrical/electronic units, which could cause the electrical/electronic units to malfunction, and as a consequence, could adversely affect the airplane's continued safe flight.

**DATES:** We must receive comments on this proposed AD by October 1, 2007.

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

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

- *Fax:* (202) 493-2251.

- *Hand Delivery:* Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

#### FOR FURTHER INFORMATION CONTACT:

Marcia Smith, 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) 917-6484; fax (425) 917-6590.

#### SUPPLEMENTARY INFORMATION:

#### Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2007-28924; Directorate Identifier 2007-NM-051-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

#### Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647-5527) is located on the ground level of the West Building at the DOT street address stated in the

**ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

#### Discussion

We have received reports of water contamination in the electrical/electronic units in the main equipment center, on Boeing Model 747-200C and -200F series airplanes. The water contamination resulted in malfunctions and the replacement of multiple electrical/electronic units in the main equipment center. In one case, these malfunctions resulted in an air turn back, high pilot workload, and minimal cockpit indication. Water contamination of the electrical/electronic units, if not corrected, could cause the electrical/electronic units to malfunction, and as a consequence, could adversely affect the airplane's continued safe flight.

#### Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747-25A3430, dated February 15, 2007. This service information describes procedures for

installing mounting brackets, support angles, and moisture curtains in the main equipment center.

We also have reviewed Boeing Alert Service Bulletin 747-38A2073, Revision 3, dated May 22, 2003. This service information describes procedures for installing drip shields (including a drip pan assembly, drain tubing, and attaching hardware) over the forward, outboard halves of the E1-1 and E3-1 shelves in the main equipment bay.

For certain airplanes, the actions specified in Boeing Alert Service Bulletin 747-38A2073, Revision 3, dated May 22, 2003; Revision 2, dated April 26, 2001; Revision 1, dated June 21, 1990; or Original Release, dated November 30, 1989; must be done prior to or concurrently with the actions specified in Boeing Alert Service Bulletin 747-25A3430. (AD 2001-24-30, amendment 39-12547 (66 FR 64104, December 12, 2001) requires installing drip shields in accordance with Boeing Alert Service Bulletin 747-38A2073, Revision 2, or in accordance with Revision 1 or Original Release if done before the effective date of that AD.)

#### FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

#### Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing another modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, the FAA might consider additional rulemaking.

#### Costs of Compliance

There are about 79 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Installation .....	3	\$80	\$8,960	\$9,200	25	\$230,000
Prior to or concurrent requirements of AD 2001-24-30	32	80	4,497	7,057	25	176,425

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

We have determined that this proposed AD would not have federalism

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**Boeing:** Docket No. FAA-2007-28924; Directorate Identifier 2007-NM-051-AD.

#### Comments Due Date

- (a) The FAA must receive comments on this AD action by October 1, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 747–200C and –200F series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–25A3430, dated February 15, 2007.

**Unsafe Condition**

(d) This AD results from reports of water contamination in the electrical/electronic units in the main equipment center. We are issuing this AD to prevent water contamination of the electrical/electronic units, which could cause the electrical/electronic units to malfunction, and as a consequence, could adversely affect the airplane's continued safe flight.

**Compliance**

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

**Installations**

(f) Within 24 months after the effective date of this AD, install mounting brackets, support angles, and moisture curtains in the main equipment center, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3430, dated February 15, 2007.

**Prior or Concurrent Requirements**

(g) For airplanes identified as Group 1 and Group 3 airplanes in Boeing Alert Service Bulletin 747–25A3430, dated February 15, 2007: Prior to or concurrently with the requirements of paragraph (f) of this AD, install drip shields (including a drip pan assembly, drain tubing, and attaching hardware) over the forward, outboard halves of the E1–1 and E3–1 shelves in the main equipment bay, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–38A2073, Revision 3, dated May 22, 2003.

(h) Installation of drip shields before the effective date of this AD in accordance with paragraph (a) and Note 2 of AD 2001–24–30, amendment 39–12547, is acceptable for compliance with the corresponding actions in paragraph (g) of this AD.

**Alternative Methods of Compliance (AMOCs)**

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

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

Issued in Renton, Washington, on July 30, 2007.

**Ali Bahrami,**

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

[FR Doc. E7–16117 Filed 8–15–07; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

**[Docket No. FAA–2007–28923; Directorate Identifier 2007–NM–133–AD]**

**RIN 2120–AA64**

**Airworthiness Directives; Fokker Model F28 Mark 0070 and 0100 Airplanes**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

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

Over the years, several Fokker 100 (F28 Mark 0100) operators reported that a MLG (main landing gear) wheel fell off during regular operation of the aircraft. These incidents occurred due to a missing spacer, which had inadvertently not been installed during a previous wheel change. Omitting the installation of the wheel spacer allows the wheel to move sideways along the axle, which subsequently leads to bearing failure, followed by loss of the wheel. \* \* \* This condition, if not corrected, \* \* \* could conceivably result in loss of control of the aircraft during the take-off run, landing rollout or taxiing operations. \* \* \*

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by September 17, 2007.

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

- *DOT Docket Web Site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Fax:* (202) 493–2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room

W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

**Examining the AD Docket**

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

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

**SUPPLEMENTARY INFORMATION:****Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2007–28923; Directorate Identifier 2007–NM–133–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

**Discussion**

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the aviation authority for the Netherlands, has issued Dutch Airworthiness Directive NL–2005–008, dated June 30, 2005 (referred to after this as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

Over the years, several Fokker 100 (F28 Mark 0100) operators reported that a MLG (main landing gear) wheel fell off during regular operation of the aircraft. These incidents occurred due to a missing spacer, which had inadvertently not been installed during a previous wheel change. Omitting the installation of the wheel spacer allows the wheel to move sideways along the axle, which subsequently leads to bearing failure, followed by loss of the wheel. Investigation by Fokker and Messier-Dowty has shown that two separate items, the spacer and the axle nut, can be replaced by a single axle-nut/spacer assembly, to prevent the possibility of omitting the spacer. In 1995, Messier-Dowty issued Service Bulletin (SB) F100-32-72 to make sure that the operator does not assemble the axle nut without the spacer. Fokker subsequently issued SB F100-32-096 to notify Fokker 100 operators of the (optional) Messier-Dowty SB's existence. At a later stage, Fokker revised the SB to the status of "recommended". In spite of all this attention to the spacer problem, wheel losses are still being reported due to missing wheel nut spacers. This condition, if not corrected, may lead to further wheel loss incidents, each of which could conceivably result in loss of control of the aircraft during the take-off run, landing rollout or taxiing operations. Since a potentially unsafe condition has been identified that may exist or develop on aircraft of the same type design, this Airworthiness Directive requires the replacement of the axle-nut and spacer with an integrated axle-nut/spacer assembly. In addition, the Aircraft Maintenance Manual (AMM) and Illustrated Parts Catalogue (IPC) must be amended to prevent reversal to a separate axle-nut and spacer installation during a subsequent wheel change.

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

#### Relevant Service Information

Messier-Dowty has issued Service Bulletin F100-32-72, Revision 1, dated March 5, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

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

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

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

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

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

#### Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 13 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Required parts would cost about \$3,750 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$52,910, or \$4,070 per product.

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**Fokker Services B.V.:** Docket No. FAA-2007-28923; Directorate Identifier 2007-NM-133-AD.

#### Comments Due Date

- (a) We must receive comments by September 17, 2007.

#### Affected ADs

- (b) None.

#### Applicability

- (c) This AD applies to Fokker Model F.28 Mark 0070 and 0100 airplanes; certificated in any category; all serial numbers, if equipped with Messier-Dowty main landing gear (MLG) units.

#### Subject

- (d) Air Transport Association (ATA) of America Code 32: Landing gear.

**Reason**

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

Over the years, several Fokker 100 (F28 Mark 0100) operators reported that a MLG (main landing gear) wheel fell off during regular operation of the aircraft. These incidents occurred due to a missing spacer, which had inadvertently not been installed during a previous wheel change. Omitting the installation of the wheel spacer allows the wheel to move sideways along the axle, which subsequently leads to bearing failure, followed by loss of the wheel. Investigation by Fokker and Messier-Dowty has shown that two separate items, the spacer and the axle nut, can be replaced by a single axle-nut/spacer assembly, to prevent the possibility of omitting the spacer. In 1995, Messier-Dowty issued Service Bulletin (SB) F100-32-72 to make sure that the operator does not assemble the axle nut without the spacer. Fokker subsequently issued SB F100-32-096 to notify Fokker 100 operators of the (optional) Messier-Dowty SB's existence. At a later stage, Fokker revised the SB to the status of "recommended". In spite of all this attention to the spacer problem, wheel losses are still being reported due to missing wheel nut spacers. This condition, if not corrected, may lead to further wheel loss incidents, each of which could conceivably result in loss of control of the aircraft during the take-off run, landing rollout or taxiing operations. Since a potentially unsafe condition has been identified that may exist or develop on aircraft of the same type design, this Airworthiness Directive requires the replacement of the axle-nut and spacer with an integrated axle-nut/spacer assembly. In addition, the Aircraft Maintenance Manual (AMM) and Illustrated Parts Catalogue (IPC) must be amended to prevent reversal to a separate axle-nut and spacer installation during a subsequent wheel change.

**Actions and Compliance**

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

(1) Within 12 months after the effective date of this AD, replace each MLG wheel axle-nut and spacer with an integrated axle-nut/spacer assembly in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin F100-32-72, Revision 1, dated March 5, 2007.

**Note 1:** Fokker 70/100 Service Letter 102, Revision 1, dated February 12, 1998; and Fokker Service Bulletin SBF100-32-096, Revision 2, dated April 29, 2005, also pertain to this subject.

(2) As of 12 months after the effective date of this AD, no person may install an axle nut having part number (P/N) 201072670 or alternate P/N 201072765, or any spacer having P/N 201072699, on any airplane. Only axle nut subassemblies having P/N 201251273 or P/N 201650216 may be installed.

(3) Actions accomplished before the effective date of this AD in accordance with Messier-Dowty Service Bulletin F100-32-72, dated January 25, 1995, 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:

(1) The MCAI requires revising the AMM and IPC. As these documents are not FAA-approved, we do not require these revisions. Therefore, this AD requires compliance with paragraph (f)(2) of this AD, which accomplishes the intent of revising the AMM and IPC.

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1137; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

**Related Information**

(h) Refer to MCAI Dutch Airworthiness Directive NL-2005-008, dated June 30, 2005, Fokker 70/100 Service Letter 102, Revision 1, dated February 12, 1998, and Messier-Dowty Service Bulletin F100-32-72, Revision 1, dated March 5, 2007, for related information.

Issued in Renton, Washington, on July 30, 2007.

**Ali Bahrami,**

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-16123 Filed 8-15-07; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2007-28941; Directorate Identifier 2006-NM-276-AD]

RIN 2120-AA64

**Airworthiness Directives; Dassault Model Falcon 2000, Falcon 2000EX, Mystere-Falcon 900, Falcon 900EX, Fan Jet Falcon, Mystere-Falcon 50, Mystere-Falcon 20, and Falcon 10 Airplanes**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Dassault Model Falcon 2000, Mystere-Falcon 900, Falcon 900EX, Fan Jet Falcon, Mystere-Falcon 50, Mystere-Falcon 20, Mystere-Falcon 200, and Falcon 10 series airplanes. The existing AD currently requires repetitive tests and inspections to detect discrepancies of the overwing emergency exit, and corrective action if necessary. This proposed AD would expand the applicability of the existing AD and extend the repetitive test and inspection interval for all airplanes. This proposed AD results from reports of incorrect operation of the overwing emergency exit due to interference between the emergency exit and the interior accommodation. We are proposing this AD to prevent failure of the overwing emergency exits to open, and consequent injury to passengers or crew members during an emergency evacuation.

**DATES:** We must receive comments on this proposed AD by September 17, 2007.

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

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

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

- Fax: (202) 493-2251.

- Hand Delivery: Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606, for service information identified in this proposed AD.

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

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "Docket No. FAA-2007-28941; Directorate Identifier 2006-NM-276-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

**Examining the Docket**

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647-5527) is located on the ground level of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

**Discussion**

On June 9, 2000, we issued AD 2000-12-15, amendment 39-11793 (65 FR 37480, June 15, 2000), for all Dassault Model Falcon 2000, Mystere-Falcon 900, Falcon 900EX, Fan Jet Falcon, Mystere-Falcon 50, Mystere-Falcon 20, Mystere-Falcon 200, and Falcon 10 series airplanes. That AD requires repetitive tests and inspections to detect discrepancies of the overwing emergency exit, and corrective action if necessary. That AD resulted from issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. We issued that AD to prevent failure of the overwing emergency exits to open, and consequent injury to passengers or crew members during an emergency evacuation.

**Actions Since Existing AD Was Issued**

Since we issued AD 2000-12-15, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued the following EASA airworthiness directives, all dated June 7, 2006:

- 2006-0147 (for Model Falcon 10 airplanes);
- 2006-0148 (for Model Falcon 2000 and Falcon 2000EX airplanes);
- 2006-0149 (for Model Mystere-Falcon 50, Mystere-Falcon 900, and Falcon 900EX airplanes); and
- 2006-0156 (for Model Fan Jet Falcon, Mystere-Falcon 20, and Mystere-Falcon 200 airplanes).

The EASA airworthiness directives supersede the Direction Générale de l'Aviation Civile (DGAC) airworthiness directives referenced in the existing AD for accomplishing the required actions. The DGAC airworthiness directives require repeating the operational test and inspection at intervals not to exceed 13 months; the EASA airworthiness directives extend that interval to 24 months, and EASA airworthiness directive 2006-0148 adds Model Falcon 2000EX to the applicability specified in the existing AD.

**FAA's Determination and Requirements of the Proposed AD**

These airplanes are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the EASA has kept the FAA informed of the situation described above. We have examined the EASA's findings,

evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 2000-12-15 and would retain the requirements of the existing AD. This proposed AD would expand the applicability of the existing AD and extend the repetitive test and inspection interval for all airplanes.

**Explanation of Changes Made to Existing AD**

This proposed AD would retain all requirements of AD 2000-12-15. Since that AD was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2000-12-15	Corresponding requirement in this proposed AD
Paragraph (a) .....	Paragraph (f).
Paragraph (b) .....	Paragraph (h).
Paragraph (c) .....	Paragraph (i).

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this proposed AD, we have retained the language of the existing AD regarding that material.

We have clarified the inspection requirement contained in the proposed AD. Whereas the existing AD specifies a detailed visual inspection, we have revised this proposed AD to clarify that our intent is to require a detailed inspection. Additionally, a note has been added to the proposed AD to define that inspection.

We have revised the existing AD to clarify the appropriate procedure for notifying the principal inspector before using any approved alternative method of compliance (AMOC) on any airplane to which the AMOC applies.

We have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

After the existing AD was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline

industry, we find it necessary to increase the labor rate used in these calculations from \$60 per work hour to \$80 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

#### Costs of Compliance

This proposed AD would affect about 870 airplanes of U.S. registry.

The actions that are required by AD 2000-12-15 and retained in this proposed AD 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 currently required actions is \$80 per airplane, per test and inspection cycle.

The new proposed actions would 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 new actions specified in this proposed AD for U.S. operators is \$69,600, or \$80 per airplane, per test and inspection cycle.

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

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

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

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

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

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

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

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

##### § 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39-11793 (65 FR 37480, June 15, 2000) and adding the following new airworthiness directive (AD):

**Dassault Aviation (Formerly Avions Marcel Dassault-Breguet Aviation (AMD/BA)):**  
Docket No. FAA-2007-28941;  
Directorate Identifier 2006-NM-276-AD.

#### Comments Due Date

(a) The FAA must receive comments on this AD action by September 17, 2007.

#### Affected ADs

(b) This AD supersedes AD 2000-12-15.

#### Applicability

(c) This AD applies to all Dassault Model Falcon 2000, Falcon 2000EX, Mystere-Falcon 900, Falcon 900EX, Fan Jet Falcon, Mystere-Falcon 50, Mystere-Falcon 20, Mystere-Falcon 200, and Falcon 10 airplanes, certificated in any category.

#### Unsafe Condition

(d) This AD results from a report of incorrect operation of the overwing emergency exit. We are issuing this AD to prevent failure of the overwing emergency exits to open, and consequent injury to passengers or crew members during an emergency evacuation.

#### Compliance

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

#### Restatement of Requirements of AD 2000-12-15 With Revised Repetitive Interval

##### Operational Test and Inspection

(f) For Dassault Model Falcon 2000, Mystere-Falcon 900, Falcon 900EX, Fan Jet Falcon, Mystere-Falcon 50, Mystere-Falcon 20, Mystere-Falcon 200, and Falcon 10 airplanes: Within 30 days after July 20, 2000 (the effective date of AD 2000-12-15), perform an operational test and detailed inspection of the overwing emergency exit from inside the cabin to detect discrepancies (including separation, tearing, wearing, arcing, cracking) in the areas and components listed in Chapter 5 (ATA Code 52) of the applicable airplane maintenance manual (AMM). Accomplish the actions in accordance with the applicable AMM. If any discrepancy is detected during any test or inspection required by this paragraph, prior to further flight, repair in accordance with Chapter 5 (ATA Code 52) of the applicable AMM. Repeat the operational test and inspection thereafter at intervals not to exceed 24 months.

**Note 1:** For the purposes of this AD, a detailed inspection is: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

#### New Requirements of This AD

##### Operational Test and Inspection

(g) For Dassault Model Falcon 2000EX airplanes: Within 30 days after the effective date of this AD, perform the operational test and detailed inspection of the overwing emergency exit required by paragraph (f) of this AD. If any discrepancy is detected during any test or inspection required by this paragraph, prior to further flight, repair as required by paragraph (f). Repeat the operational test and inspection at intervals not to exceed 24 months.

#### Alternative Methods of Compliance (AMOCs)

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

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

#### Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to

a location where the requirements of this AD can be accomplished.

#### Related Information

(j) European Aviation Safety Agency airworthiness directives 2006-0147, 2006-0148, 2006-0149, and 2006-0156, all dated June 7, 2006, also address the subject of this AD.

Issued in Renton, Washington, on July 30, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate,  
Aircraft Certification Service.

[FR Doc. E7-16124 Filed 8-15-07; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-28990; Directorate Identifier 2007-NM-033-AD]

RIN 2120-AA64

#### Airworthiness Directives; Boeing Model 757-200, -200CB, and -300 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 757-200, -200CB, and -300 series airplanes. This proposed AD would require repetitive inspections for cracks of the intercostal tee clips and attachment fasteners at the number 3 and number 4 doorstops of the passenger door cutouts, or repetitive inspections for cracks of the intercostal tee clips; and related investigative/corrective actions if necessary. This proposed AD also provides an optional terminating action for the repetitive inspections. This proposed AD results from reports of cracked intercostal tee clips at the number 3 and number 4 doorstops of the passenger door cutouts. We are proposing this AD to detect and correct cracking of the tee clips, which could result in additional stress on the adjacent tee clips, surrounding intercostals, edge frame, door structure and doorstops. This additional stress could cause further cracking or breaking of the tee clips, which could result in failure of the door to seal and consequent rapid decompression of the airplane.

**DATES:** We must receive comments on this proposed AD by October 1, 2007.

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

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

- *Fax:* (202) 493-2251.

- *Hand Delivery:* Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

#### FOR FURTHER INFORMATION CONTACT:

Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6450; fax (425) 917-6590.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2007-28990; Directorate Identifier 2007-NM-033-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

#### Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647-5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

#### Discussion

We have received eight reports indicating that cracked intercostal tee clips were found at the number 3 and number 4 doorstops of the passenger door cutouts on certain Boeing Model 757-200, -200CB, and -300 series airplanes. These cracks were found during normal maintenance checks on passenger doorway number 4, at the aft edge frame of body station 1681.8 on the left and right sides. On two airplanes, cracks were found on the intercostal tee clips at both the number 3 and number 4 doorstops. The cracks occurred in the radius area of the tee clip, between the horizontal and vertical flange. The number of flight cycles for these airplanes was between 22,700 and 25,000. The cracks in the tee clips are attributed to a preload of the tee clip; continued flight with cracks in the tee clips can place additional stress on the adjacent tee clips, surrounding intercostals, edge frame, door structure and doorstops. This additional stress, if not corrected, could cause further cracking or breaking of the tee clips, which could result in failure of the door to seal and consequent rapid decompression of the airplane.

#### Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 757-53A0093, dated November 8, 2006. The service bulletin describes procedures for repetitive detailed inspections with a borescope for cracks of the intercostal tee clips; or repetitive detailed inspections for cracks of the intercostal tee clips and attachment fasteners at the number 3 and number 4 doorstops of the passenger door cutouts after the galley/lavatory has been removed; and related investigative and corrective actions if necessary. The related investigative and corrective actions include the following:

- Condition 1: For airplanes on which any tee clip for only door stop intercostal number 3 is cracked or broken; the procedures specify replacing any cracked tee clip with a new tee clip and contacting Boeing before further flight. In addition, the procedures describe inspections of the door stop fittings on the forward side of body station 1681.8 edge frame; the inner chord, web, and outer chord; the number 4 door structure including the door stop fittings and stop beams above and below the cracked tee clips; and the number 4 aft door frame.

- Condition 2: For airplanes on which any tee clip for only door stop intercostal number 4 is cracked or broken; the procedures specify replacing any cracked tee clip with a new tee clip and contacting Boeing before further flight. In addition, the procedures describe inspections of the tee clip and intercostal for cracking at door stop intercostal number 5; and from door stop number 3 through number 5: Inspecting the door stop fittings on the forward side of the body station 1681.8 edge frame; the inner chord, web, and outer chord; the number 4 door structure including the door stop fittings and stop beams above and below the cracked tee clips; and the number 4 aft door frame.

- Condition 3: For airplanes on which both tee clips for only door stop intercostal numbers 3 and 4 are cracked or broken; the procedures specify replacing the cracked tee clip with a new tee clip and contacting Boeing before further flight. In addition, the procedures describe inspections of the fasteners; the door stop fittings on the forward side of the body station 1681.8 edge frame; the inner chord, web, and outer chord; the number 4 door structure including the door stop fittings and stop beams above and below the cracked tee clips; for airplanes with greater than 28,000 flight cycles, the fasteners and the fillet radius of the stop fittings; and the number 4 aft door frame.

If cracked or broken tee clips are found during any inspection, the procedures describe inspecting the tee clip and intercostal for cracks of the door stop intercostal number 2 and doing inspections from door stop numbers 2 through 5. The additional inspections are for cracks of the door stop fittings; the inner chord, web, and outer chord; and the body station 1681.8 edge frame.

Replacing both tee clips on the left and right sides with new tee clips would eliminate the need for the repetitive inspections. Accomplishing the actions specified in the service

information is intended to adequately address the unsafe condition.

#### FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Difference Between the Proposed AD and Service Information."

#### Difference Between the Proposed AD and Service Information

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

#### Costs of Compliance

There are about 912 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 324 airplanes of U.S. registry.

The proposed detailed inspection, if accomplished, would take about 2 work hours per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the inspections proposed by this AD is \$51,840, or \$160 per airplane, per inspection cycle.

The proposed borescope inspection, if accomplished, would take about 3 work hours per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the inspections proposed by this AD is \$77,760, or \$240 per airplane, per inspection cycle.

#### Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701,

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

#### Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**Boeing:** Docket No. FAA-2007-28990; Directorate Identifier 2007-NM-033-AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by October 1, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 757-200, -200CB, and -300 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 757-53A0093, dated November 8, 2006.

**Unsafe Condition**

(d) This AD results from reports of cracked intercostal tee clips at the number 3 and number 4 doorstops of the passenger door cutouts. We are issuing this AD to detect and correct cracking of the tee clips, which could result in additional stress on the adjacent tee clips, surrounding intercostals, edge frame, door structure and doorstops. This additional stress could cause further cracking or breaking of the tee clips, which could result in failure of the door to seal and consequent rapid decompression of the airplane.

**Compliance**

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

**Repetitive Inspections/Investigative and Corrective Actions**

(f) Before the accumulation of 20,000 total flight cycles or within 3,000 flight cycles after the effective date of this AD, whichever is later: Do the applicable inspection specified in paragraph (f)(1) or (f)(2) of this AD by doing all the actions including all applicable related investigative (additional detailed inspections if necessary) and corrective actions; except as provided by paragraph (g) of this AD; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757-53A0093, dated November 8, 2006. All related investigative and corrective actions must be done before further flight.

(1) Do a detailed inspection for cracks of the intercostal tee clips and attachment fasteners at the number 3 and number 4 doorstops of the passenger door cutouts. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles until accomplishment of the terminating action specified in paragraph (h) of this AD.

(2) Do a detailed inspection with a borescope for cracks of the intercostal tee clips. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles until accomplishment of the terminating action specified in paragraph (h) of this AD.

(g) If any cracked structure is found during any inspection required by this AD, and the Accomplishment Instructions of Boeing Alert Service Bulletin 757-53A0093, dated November 8, 2006, specify to contact Boeing for appropriate action: Before further flight, repair any cracked structure using a method approved in accordance with the procedures specified in paragraph (i)(2) of this AD.

**Optional Terminating Action**

(h) Replacing both intercostal tee clips on the left and right sides with new tee clips in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 757-53A0093, dated November 8, 2006, terminates the repetitive inspections required by this AD.

**Alternative Methods of Compliance (AMOCs)**

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

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

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

Issued in Renton, Washington, on August 2, 2007.

**Ali Bahrami,**

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

[FR Doc. E7-16103 Filed 8-15-07; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

**[Docket No. FAA-2007-28987; Directorate Identifier 2007-NM-127-AD]**

**RIN 2120-AA64**

**Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-135ER, -135KE, -135KL, and -135LR Airplanes and Model EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP Airplanes**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI)

originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

It has been found the development of cracks in the forward fuselage right hand (RH) side skin during full-scale fatigue tests. Those cracks may quickly reach their critical length, reducing the aircraft structural integrity, with possible rapid decompression of the aircraft.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by September 17, 2007.

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

- *DOT Docket Web Site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Fax:* (202) 493-2251.

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

- *Hand Delivery:* Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2125; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the

**ADDRESSES** section. Include “Docket No. FAA–2007–28987; Directorate Identifier 2007–NM–127–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

### Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2007–05–01R1, effective July 4, 2007 (referred to after this as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

It has been found the development of cracks in the forward fuselage right hand (RH) side skin during full-scale fatigue tests. Those cracks may quickly reach their critical length, reducing the aircraft structural integrity, with possible rapid decompression of the aircraft.

The corrective action includes rework of the aircraft structure on the forward fuselage LH (left-hand) and RH sides. You may obtain further information by examining the MCAI in the AD docket.

### Relevant Service Information

EMBRAER has issued Service Bulletin 145–53–0067, Revision 01, dated February 27, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

### FAA’s Determination and Requirements of This Proposed AD

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

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

We have reviewed the MCAI and related service information and, in

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

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

### Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 624 products of U.S. registry. We also estimate that it would take about 60 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Required parts would cost about \$1,210 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$3,750,240, or \$6,010 per product.

### Authority for This Rulemaking

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

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

### Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on

the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**EMPRESA BRASILEIRA DE AERONAUTICA S.A. (EMBRAER):**  
Docket No. FAA–2007–28987;  
Directorate Identifier 2007–NM–127–AD.

### Comments Due Date

- (a) We must receive comments by September 17, 2007.

### Affected ADs

- (b) None.

### Applicability

- (c) This AD applies to all EMBRAER Model EMB–135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; certificated in any category.

### Subject

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

### Reason

- (e) The mandatory continuing airworthiness information (MCAI) states: It has been found the development of cracks in the forward fuselage right hand (RH) side skin during full-scale fatigue tests.

Those cracks may quickly reach their critical length, reducing the aircraft structural integrity, with possible rapid decompression of the aircraft.

The corrective action includes rework of the aircraft structure on the forward fuselage LH (left-hand) and RH sides.

**Actions and Compliance**

(f) Prior to the accumulation of 22,000 total flight cycles, or within 6 months after the effective date of this AD, whichever is later, unless already done, do the following actions:

(1) Add two reinforcements to the forward fuselage skin on the LH and RH sides between frames 9 to 10 and 10 to 11, and stringers 12 to 15. Install supports to the reinforcements and stringers as well as new fasteners to the reinforcements and supports, and reroute the electrical wiring on the affected area. Do all actions in accordance with EMBRAER Service Bulletin 145-53-0067, Revision 01, dated February 27, 2007.

(2) Accomplishing the detailed instructions and procedures described in the EMBRAER

Service Bulletin 145-53-0051, dated July 15, 2004; or EMBRAER Service Bulletin 145-53-0051, Revision 01, dated February 7, 2006; is considered acceptable for compliance with the actions 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, 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: Dan Rodina, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2125; 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 Brazilian Airworthiness Directive 2007-05-01R1, effective July 4, 2007, and the service bulletins listed in Table 1 of this AD, for related information.

TABLE 1.—SERVICE BULLETINS

EMBRAER Service Bulletin	Revision level	Date
145-53-0051 .....	Original .....	July 15, 2004.
145-53-0051 .....	01 .....	February 7, 2006.
145-53-0067 .....	01 .....	February 27, 2007.

Issued in Renton, Washington, on July 30, 2007.

**Ali Bahrami,**

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-16116 Filed 8-15-07; 8:45 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2007-27715; Directorate Identifier 2006-NM-140-AD]

RIN 2120-AA64

**Airworthiness Directives; Airbus Model A330 and A340 Airplanes**

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

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** The FAA is revising an earlier NPRM for an airworthiness directive (AD) that applies to all Airbus Model A330-200, A330-300, A340-200, and A340-300 series airplanes; and Model A340-541 and A340-642 airplanes. The original NPRM would have superseded

an existing AD that currently requires operators to revise the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness (ICA) to incorporate new information. This information includes, for all affected airplanes, decreased life limit values for certain components; and for Model A330-200 and -300 series airplanes, new inspections, compliance times, and new repetitive intervals to detect fatigue cracking, accidental damage, or corrosion in certain structures. The original NPRM proposed to revise the ALS, for all affected airplanes, by adding new Airworthiness Limitations Items (ALIs) to incorporate service life limits for certain items and inspections to detect fatigue cracking, accidental damage or corrosion in certain structures, in accordance with the revised ALS of the ICA. The original NPRM resulted from the issuance of new and more restrictive service life limits and structural inspections based on fatigue testing and in-service findings. This new action revises the original NPRM by adding airplanes, adding new requirements, and including more restrictive compliance thresholds and intervals. We are proposing this supplemental NPRM to detect and correct fatigue cracking, accidental damage, or corrosion in principal structural elements, and to

prevent failure of certain life-limited parts, which could result in reduced structural integrity of the airplane.

**DATES:** We must receive comments on this supplemental NPRM by September 10, 2007.

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

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

- *Fax:* (202) 493-2251.

- *Hand Delivery:* Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer

International Branch, ANM-116, FAA, International Branch, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2797; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to submit any relevant written data, views, or arguments regarding this proposal. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "Docket No. FAA-2007-27715; Directorate Identifier 2006-NM-140-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

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

**Examining the Docket**

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647-5527) is located on the ground level of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

**Discussion**

The FAA issued a notice of proposed rulemaking (NPRM) (the "original NPRM") to amend 14 CFR part 39 to include an AD that supersedes AD 2006-09-07, amendment 39-14577 (71 FR 25919, May 3, 2006). The existing AD applies to all Airbus Model A330-200, A330-300, A340-200, and A340-300 series airplanes; and Model A340-541 and A340-642 airplanes. The original NPRM was published in the **Federal Register** on March 28, 2007 (72 FR 14497). The original NPRM proposed to revise the ALS, for all affected airplanes, by adding new Airworthiness Limitations Items (ALIs) to incorporate service life limits for certain items and inspections to detect fatigue cracking, accidental damage, or corrosion in certain structures, in accordance with the revised ALS of the Instructions for Continued Airworthiness (ICA).

**Actions Since Original NPRM Was Issued**

Since we issued the original NPRM, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, notified us that an unsafe condition might exist on all Airbus Model A330 and A340 airplanes. The EASA advises that Airbus has revised its service life limits and structural inspections based upon certification requirements. Fatigue cracking, accidental damage, or corrosion in principal structural elements and failure of certain life limited parts, if not corrected, could result in reduced structural integrity of the airplane.

The EASA also advises that Airbus has revised Document AI/SE-M4/95A.0051/97, "A340 Airworthiness Limitations Items," from Issue 9, dated January 17, 2006, to Issue 10, dated February 1, 2007, to revise the applicability, threshold, and intervals of certain inspection tasks and to introduce new weight variant configurations. In addition, Airbus has issued A330 and A340 ALS Part 1—Safe Life Airworthiness Limitation Items, dated March 30, 2007, Sub-part 1-2, "Life Limits," and Sub-part 1-3, "Demonstrated Fatigue Lives," of both

ALS Part 1 documents to reduce certain limitations and add limitations corresponding to new weight variant configurations.

Incorporating these revisions into the ALS of the Instructions for Continued Airworthiness is intended to ensure the continued structural integrity of these airplanes.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The EASA mandated the service information and issued EASA airworthiness directives 2007-0133, dated May 11, 2007, and 2007-0158, dated June 4, 2007, to ensure the continued airworthiness of these airplanes in France. EASA airworthiness directive 2007-0133 supersedes airworthiness directives 2006-0129 and 2006-0130, both dated May 22, 2006; and EASA airworthiness directive 2007-0158 supersedes airworthiness directive 2006-0308, dated October 10, 2006. (EASA airworthiness directives 2006-0129 and 2006-0130, both dated May 22, 2006; and 2006-0308, dated October 10, 2006; were identified in the original NPRM.)

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

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

**FAA's Determination and Proposed Requirements of the Supplemental NPRM**

The changes discussed above expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

**Costs of Compliance**

This proposed AD would affect about 37 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

**ESTIMATED COSTS**

Action	Work hour	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Revise the ALS, required by AD 2006-09-07 .....	1	\$80	None	\$80	20	\$1,600
Revise the ALS, new proposed action .....	1	80	None	80	37	2,960

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39-14577 (71 FR 25919, May 3, 2006) and adding the following new airworthiness directive (AD):

**AIRBUS:** Docket No. FAA-2007-27715; Directorate Identifier 2006-NM-140-AD.

#### Comments Due Date

(a) The FAA must receive comments on this AD action by September 17, 2007.

#### Affected ADs

(b) This AD supersedes AD 2006-09-07.

#### Applicability

(c) This AD applies to all Airbus Model A330 and A340 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 according to paragraph (j) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25-1529-1.

#### Unsafe Condition

(d) This AD results from the issuance of new and more restrictive service life limits and structural inspections based on fatigue testing and in-service findings. We are issuing this AD to detect and correct fatigue cracking, accidental damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

#### Compliance

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

#### Restatement of Requirements of AD 2006-09-07

##### *Airworthiness Limitations Revision*

(f) Within 3 months after June 7, 2006 (the effective date of AD 2006-09-07): Revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness by incorporating into the ALS the documents in paragraphs (f)(1) and (f)(2) of this AD, as applicable.

(1) Airbus Document AI/SE-M4/95A.0089/97, "A330 Airworthiness Limitations Items," Issue 12, dated November 1, 2003, as specified in Section 9-2 of the Airbus A330 Maintenance Planning Document (MPD).

(2) Section 9-1, "Life limits/Monitored parts," Revision 05, dated April 7, 2005, of the Airbus A330 and A340 MPDs.

(g) Except as provided by paragraph (h) or (j) of this AD: After the actions in paragraph (f) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the documents listed in paragraph (f) of this AD.

#### New Requirements of This AD

##### *ALS Revision*

(h) Within 3 months after the effective date of this AD: Revise the ALS of the Instructions for Continued Airworthiness to incorporate the documents specified in paragraphs (h)(1) and (h)(2) of this AD, as applicable. Accomplishing the revision in this paragraph terminates the requirements in paragraph (f) of this AD.

(1) Airbus Document AI/SE-M4/95A.0089/97, "A330 Airworthiness Limitation Items (ALI)," Issue 14, dated October 10, 2005; or Airbus Document AI/SE-M4/95A.0051/97, "A340 Airworthiness Limitations Items," Issue 10, dated February 1, 2007.

(2) Sub-part 1-2 "Life Limits," and Sub-part 1-3 "Demonstrated Fatigue Lives," of Airbus A330 or A340 ALS Part 1, "Safe Life Airworthiness Limitation Items," dated March 30, 2007, as applicable.

(i) Except as provided by paragraph (j) of this AD: After the actions in paragraph (h) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the documents listed in paragraph (h) of this AD.

##### *Alternative Methods of Compliance (AMOCs)*

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

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

##### *Related Information*

(k) European Aviation Safety Agency airworthiness directives 2007-0133, dated May 11, 2007, and 2007-0158, dated June 4, 2007; also address the subject of this AD.

Issued in Renton, Washington, on August 2, 2007.

**Ali Bahrami,**

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

[FR Doc. E7-16112 Filed 8-15-07; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2007-28988; Directorate Identifier 2007-NM-047-AD]

RIN 2120-AA64

**Airworthiness Directives; Boeing Model 747-400 and -400D Series Airplanes**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747-400 and -400D series airplanes. This proposed AD would require installing new relays to allow the flightcrew to turn off electrical power to the in-flight entertainment (IFE) system and other non-essential passenger cabin systems through the left and right utility bus switches, and other specified actions. This proposed AD results from an IFE systems review. We are proposing this AD to ensure that the flightcrew is able to turn off electrical power to the IFE system and other non-essential passenger cabin systems through utility bus switches in the flight compartment, in the event of smoke or fumes. The flightcrew's inability to turn off electrical power to the IFE system and other non-essential passenger cabin systems could result in the inability to control smoke or fumes in the airplane flight deck or passenger cabin during a non-normal or emergency situation.

**DATES:** We must receive comments on this proposed AD by October 1, 2007.

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

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

- *Fax:* (202) 493-2251.

- *Hand Delivery:* Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays.

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

**FOR FURTHER INFORMATION CONTACT:**

Shohreh Safarian, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6418; fax (425) 917-6590.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2007-28988; Directorate Identifier 2007-NM-047-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

**Examining the Docket**

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647-5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

**Discussion**

The Federal Aviation Administration (FAA) completed a review of in-flight entertainment (IFE) systems installed on transport category airplanes. The review focused on the interface between the IFE system and airplane electrical system, with the objective of determining if any unsafe conditions exist with regard to the interface.

The type of IFE systems considered for review were those that contain video monitors (cathode ray tubes or liquid crystal displays, either hanging above the aisle or mounted on individual seat backs or seat trays), or complex circuitry (i.e., power supplies, electronic distribution boxes, extensive wire routing, relatively high power consumption, multiple layers of circuit protection, etc.). In addition, in-seat power supply systems that provide power to more than 20 percent of the total passenger seats were also considered for the review. The types of IFE systems not considered for review include systems that provide only audio signals to each passenger seat, ordinary in-flight telephone systems (e.g., one telephone handset per group of seats or bulkhead-mounted telephones), systems that have only a video monitor on the forward bulkhead(s) (or a projection system) to provide passengers with basic airplane and flight information, and in-seat power supply systems that provide power to less than 20 percent of the total passenger seats.

Items considered during the review include the following:

- Can the electrical bus(es) supplying power to the IFE system be de-energized when necessary without removing power from systems that may be required for continued safe flight and landing?

- Can IFE system power be removed when required without pulling IFE system circuit breakers (i.e., is there a switch (dedicated to the IFE system or a combination of loads) located in the flight deck or cabin that can be used to remove IFE power?

- If the IFE system requires changes to flightcrew procedures, has the airplane flight manual (AFM) been properly amended?

- If the IFE system requires changes to cabin crew procedures, have they been properly amended?

- Does the IFE system require periodic or special maintenance?

In all, we reviewed approximately 180 IFE systems. The review results indicate that potential unsafe conditions exist on some IFE systems installed on various transport category airplanes. These conditions can be summarized as:

- Electrical bus(es) supplying power to the IFE system cannot be de-energized when necessary without removing power from systems that may be required for continued safe flight and landing.

- Power cannot be removed from the IFE system when required without pulling IFE system circuit breakers (i.e., there is no switch dedicated to the IFE system or combination of systems for the purpose of removing power).

- Installation of the IFE system has affected crew (flightcrew and/or cabin crew) procedures, but the procedures have not been properly revised.

Boeing has received numerous reports of smoke or flames in the passenger cabin of Model 747-400 series airplanes. Investigation of several of these reports revealed that the source of the smoke and flames was the wiring for the passenger cabin IFE system, cabin lighting, or passenger seats. Currently, the flightcrew is not able to turn off power to the IFE system and other non-essential passenger cabin systems through utility bus switches in the flight compartment, in the event of smoke or fumes. The flightcrew's inability to turn off electrical power to the IFE system and other non-essential passenger cabin systems, if not corrected, could result in the inability to control smoke or fumes in the airplane flight deck or passenger cabin during a non-normal or emergency situation.

#### Relevant Service Information

We have reviewed Boeing Service Bulletin 747-24-2246, dated October 6, 2005. The service bulletin describes procedures for installing new relays to allow the flightcrew to turn off electrical power to the IFE system and other non-essential passenger cabin systems through the left and right utility bus switches, and doing other specified actions. The other specified actions include installing new wiring, rerouting existing wiring, removing certain wiring, and testing the cabin lighting, passenger IFE systems, and certain circuit breakers. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

#### FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

#### Costs of Compliance

There are about 490 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 62 airplanes of U.S. registry. The proposed actions would take about 123 work hours per airplane, at an average labor rate of \$80 per work hour. Required parts would cost between \$9,412 and \$11,936 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is up to \$1,350,112, or up to \$21,776 per airplane.

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**BOEING:** Docket No. FAA-2007-28988; Directorate Identifier 2007-NM-047-AD.

#### Comments Due Date

(a) The FAA must receive comments on this AD action by October 1, 2007.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Boeing Model 747-400 and -400D series airplanes, certificated in any category; as identified in Boeing Service Bulletin 747-24-2246, dated October 6, 2005.

#### Unsafe Condition

(d) This AD results from an in-flight entertainment (IFE) systems review. We are issuing this AD to ensure that the flightcrew is able to turn off electrical power to the IFE system and other non-essential passenger cabin systems through utility bus switches in the flight compartment, in the event of smoke or fumes. The flightcrew's inability to turn off electrical power to the IFE system and other non-essential passenger cabin systems could result in the inability to control smoke or fumes in the airplane flight deck or passenger cabin during a non-normal or emergency situation.

#### 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.

#### Install New Relays

(f) Within 60 months after the effective date of this AD, install new relays to allow the flightcrew to turn off electrical power to the IFE system and other non-essential passenger cabin systems through the left and right utility bus switches and do all other specified actions as applicable, by accomplishing all the applicable actions specified in the Accomplishment Instructions of Boeing Service Bulletin 747-24-2246, dated October 6, 2005. The other specified actions must be done before further flight after installing the new relays.

### 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.

Issued in Renton, Washington, on July 30, 2007.

**Ali Bahrami,**

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-16115 Filed 8-15-07; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-28925; Directorate Identifier 2007-NM-123-AD]

RIN 2120-AA64

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

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

**ACTION:** Notice of proposed rulemaking (NPRM).

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

During ground inspection of an A340-311 aircraft, it has been discovered that 5 fasteners were missing between Frame (FR) 18 and FR19 on longitudinal joint at stringer 28RH (right hand).

Further investigations have revealed that the missing fasteners have not been installed in production due to incorrect production instructions.

If not corrected, this situation could affect the structural integrity of the aircraft in the area of stringer 28 between FR18 and FR19 at longitudinal joint.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by September 17, 2007.

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

- **DOT Docket Web Site:** Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.
- **Fax:** (202) 493-2251.
- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- **Hand Delivery:** Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

#### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2797; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2007-28925; Directorate Identifier 2007-NM-123-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each

substantive verbal contact we receive about this proposed AD.

#### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007-0125, dated May 4, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

During ground inspection of an A340-311 aircraft, it has been discovered that 5 fasteners were missing between Frame (FR) 18 and FR19 on longitudinal joint at stringer 28RH (right hand).

Further investigations have revealed that the missing fasteners have not been installed in production due to incorrect production instructions.

If not corrected, this situation could affect the structural integrity of the aircraft in the area of stringer 28 between FR18 and FR19 at longitudinal joint.

In order to re-establish the structural strength of the aircraft, this Airworthiness Directive (AD) renders mandatory the inspection of the longitudinal joint at stringer 28 RH between FR18 and FR19 [for missing fasteners].

For airplanes on which any fastener is missing, the corrective actions include doing a detailed visual inspection for cracking of the adjacent fastener area from the outside, without removing the fasteners; and if no crack is found, doing a rotating probe inspection for cracks of the adjacent fastener holes after removing the fasteners, and replacing any missing fastener. The corrective actions also include contacting Airbus for repair instructions and repair if fasteners are not at nominal diameter or if any crack is found. You may obtain further information by examining the MCAI in the AD docket.

#### Relevant Service Information

Airbus has issued Service Bulletins A330-53-3170 and A340-53-4175, both dated March 27, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

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

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe

condition exists and is likely to exist or develop on other products of the same type design.

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

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

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

#### Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 9 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$2,880, or \$320 per product.

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national

Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

##### § 39.13 [Amended]

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

**AIRBUS:** Docket No. FAA-2007-28925; Directorate Identifier 2007-NM-123-AD.

#### Comments Due Date

(a) We must receive comments by September 17, 2007.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Airbus Model A330-200 and -300 series airplanes and Model A340-200 and -300 series airplanes; certificated in any category; all serial numbers (MSN) up to MSN 0402 included, except MSN 051.

#### Subject

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

#### Reason

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

During ground inspection of an A340-311 aircraft, it has been discovered that 5 fasteners were missing between Frame (FR) 18 and FR19 on longitudinal joint at stringer 28RH (right hand).

Further investigations have revealed that the missing fasteners have not been installed

in production due to incorrect production instructions.

If not corrected, this situation could affect the structural integrity of the aircraft in the area of stringer 28 between FR18 and FR19 at longitudinal joint.

In order to re-establish the structural strength of the aircraft, this Airworthiness Directive (AD) renders mandatory the inspection of the longitudinal joint at stringer 28 RH between FR18 and FR19 [for missing fasteners].

For airplanes on which any fastener is missing, the corrective actions include doing a detailed visual inspection for cracking of the adjacent fastener area from the outside, without removing the fasteners; and if no crack is found, doing a rotating probe inspection for cracks of the adjacent fastener holes after removing the fasteners, and replacing any missing fastener. The corrective actions also include contacting Airbus for repair instructions and repair if fasteners are not at nominal diameter or if any crack is found.

#### Actions and Compliance

(f) Before the accumulation of 14,000 flight cycles from the first flight of the aircraft, or within 1,500 flight cycles following the effective date of this AD, whichever occurs later, unless already done, do the following actions: Perform a detailed visual inspection of the longitudinal joint at stringer 28 RH between FR18 and FR19 for missing fasteners, and do all applicable corrective actions before further flight, in accordance with the instructions defined in Airbus Service Bulletin A330-53-3170 or A340-53-4175, both dated March 27, 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, 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: Tim Backman, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone (425) 227-2797; 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 2007-0125, dated May 4, 2007, and Airbus Service Bulletins A330-53-3170 and A340-53-4175, both dated March 27, 2007, for related information.

Issued in Renton, Washington, on July 30, 2007.

**Ali Bahrami,**

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

[FR Doc. E7-16111 Filed 8-15-07; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-28921; Directorate Identifier 2007-NM-091-AD]

RIN 2120-AA64

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

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737-300, -400, and -500 series airplanes. This proposed AD would require, among other actions, modifying the door-mounted escape system of the forward right side door slide compartment. This proposed AD results from reports indicating that the forward right escape slide inflated 90 degrees out of alignment after deployment from the forward right side slide compartment. We are proposing this AD to prevent the escape slide from being unusable during an emergency evacuation and consequent injury to passengers or crewmembers.

**DATES:** We must receive comments on this proposed AD by October 1, 2007.

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov>

and follow the instructions for sending your comments electronically.

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

- *Fax:* (202) 493-2251.
- *Hand Delivery:* Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

#### FOR FURTHER INFORMATION CONTACT:

Robert Hettman, Aerospace Engineer, Cabin & Environmental Systems Safety Branch, ANM-150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6457; fax (425) 917-6590.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2007-28921; Directorate Identifier 2007-NM-091-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

##### Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in

person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647-5527) is located on the ground level of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

##### Discussion

We have received reports indicating that the forward door escape slide inflated 90 degrees out of alignment after deployment from the forward right side slide compartment, on Boeing Model 737-300, -400, and -500 airplanes. During deployment of the escape slide, the escape slide may be temporarily restricted within the slide compartment. This added restriction can delay the escape slide from aligning to a proper orientation before inflation. If inflation begins before the escape slide extends from the door, it can result in a sideways slide deployment. This condition, if not corrected, could result in the escape slide being unusable during an emergency evacuation and consequent injury to passengers or crewmembers.

##### Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 737-25-1567, dated March 21, 2007. The service information describes procedures for modifying the door-mounted escape system of the forward right side door slide compartment. The modification includes:

- Removing the bottle retainer, rubber pad, and window; and cleaning the pan assembly.
- Modifying the window cutout and applying a primer coating and enamel finish.
- Installing a new window.

Boeing Service Bulletin 737-25-1430, Revision 1, dated April 10, 2003, which is required by AD 2004-02-08, amendment 39-13443 (69 FR 4452, January 30, 2004), is necessary to be done prior to or concurrently with Boeing Special Attention Service Bulletin 737-25-1567. Boeing Service Bulletin 737-24-1430 describes procedures for replacing the hinge assembly of the escape slide compartment with a new assembly.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

### FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

### Costs of Compliance

There are about 1,949 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 660 airplanes of U.S. registry. The modification and installation actions would take about 2 work hours per airplane, at an average labor rate of \$80 per work hour. Required parts would cost about \$207 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is \$242,220, or \$367 per airplane.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**BOEING:** Docket No. FAA-2007-28921; Directorate Identifier 2007-NM-091-AD.

#### Comments Due Date

(a) The FAA must receive comments on this AD action by October 1, 2007.

#### 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 737-25-1567, dated March 21, 2007.

#### Unsafe Condition

(d) This AD results from reports indicating that the forward door escape slide inflated 90 degrees out of alignment after deployment from the forward right side slide compartment. We are issuing this AD to prevent the escape slide from being unusable during an emergency evacuation and consequent injury to passengers or crewmembers.

#### 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.

#### Modification and Installation

(f) Within 60 months after the effective date of this AD, modify the door-mounted escape system of the forward right side door slide compartment, in accordance with the

Accomplishment Instructions of Boeing Special Attention Service Bulletin 737-25-1567, dated March 21, 2007.

### Prior to or Concurrent Requirement

(g) Prior to or concurrently with the requirements of paragraph (f) of this AD, accomplish the requirements of AD 2004-02-08, amendment 39-13443.

### Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on July 30, 2007.

**Ali Bahrami,**

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

[FR Doc. E7-16110 Filed 8-15-07; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-28989; Directorate Identifier 2007-NM-070-AD]

RIN 2120-AA64

#### Airworthiness Directives; Boeing Model 747 Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 747-200B, 747-200C, 747-200F, 747-300, 747-400, and 747SP series airplanes. The existing AD currently requires doing a detailed inspection of the left and right longeron extension fittings, and corrective action if necessary. This proposed AD would add airplanes to the applicability of the existing AD. This proposed AD results from reports that accidental drilling damage to the longeron extension fittings was found on airplanes not subject to the existing AD. We are proposing this AD to detect and correct accidental drilling damage of the

longeron extension fittings, which could lead to cracking of the longeron extension fittings and result in rapid decompression of the airplane.

**DATES:** We must receive comments on this proposed AD by October 1, 2007.

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

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

- *Fax:* (202) 493-2251.

- *Hand Delivery:* Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "Docket No. FAA-2007-28989; Directorate Identifier 2007-NM-070-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the

comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or may can visit <http://dms.dot.gov>.

##### **Examining the Docket**

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647-5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

##### **Discussion**

On April 28, 2006, we issued AD 2006-10-04, amendment 39-14588 (71 FR 27592, May 12, 2006), for certain Boeing Model 747-200B, 747-200C, 747-200F, 747-300, 747-400, and 747SP series airplanes. That AD requires doing a detailed inspection of the left and right longeron extension fittings, and corrective action if necessary. That AD resulted from cracking found in the longeron extension fitting at body station 1480 due to accidental damage during production. We issued that AD to detect and correct cracking in the longeron extension fitting, which could result in rapid decompression of the airplane.

##### **Actions Since Existing AD Was Issued**

Since we issued AD 2006-10-04, we received reports that accidental drill damage was discovered during inspections of the longeron extension fittings of five airplanes not subject to that AD, including one airplane manufactured before the airplanes specified in the effectivity of Boeing Alert Service Bulletin 747-53A2515, dated October 20, 2005 (cited in AD 2006-10-04 as the appropriate source of service information). Boeing therefore concluded that additional airplanes which might be subject to the unsafe condition should be added to the effectivity of a revision of that service bulletin.

##### **Relevant Service Information**

We have reviewed Boeing Alert Service Bulletin 747-53A2515, Revision 1, dated March 1, 2007. Revision 1 of the alert service bulletin is essentially

the same as the original issue, except that airplanes have been added to its effectivity.

##### **FAA's Determination and Requirements of the Proposed AD**

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2006-10-04 and would retain certain requirements of the existing AD. The proposed AD would also add airplanes to the applicability of the existing AD. The proposed AD would remove the reporting requirement of the existing AD. The proposed AD would also require accomplishing the actions specified in the service information described previously, except as discussed under "Difference Between the Proposed AD and the Service Bulletin."

##### **Difference Between the Proposed AD and the Service Bulletin**

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the

certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

##### **Interim Action**

We consider this proposed AD interim action. If final action is later identified, we may consider further rulemaking then.

##### **Costs of Compliance**

There are about 876 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 156 airplanes of U.S. registry.

The actions specified by this proposed AD were previously required by AD 2006-10-04, which was applicable to approximately 25 airplanes of U.S. registry. The actions required by that AD take about 1 work hour per airplane. We estimated the cost of the current requirements of that AD on U.S. operators to be \$2,000, or \$80 per airplane. Some operators of the 25 airplanes subject to AD 2006-10-04 may have already initiated the required actions. This proposed AD would add

no new costs associated with those airplanes.

This proposed AD would be applicable to approximately 131 additional airplanes of U.S. registry. New actions required by this proposed AD would take about 1 work hour per airplane. Based on the current labor rate of \$80 per work hour, we estimate the new costs imposed by this proposed AD on U.S. operators to be \$10,480, or \$80 per airplane. This figure is based on assumptions that no operator of these additional airplanes has yet done any of the proposed requirements of this AD, and that no operator would do those actions in the future if this AD were not adopted.

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with

this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

##### § 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39-14588 (71 FR 27592, May 12, 2006) and adding the following new airworthiness directive (AD):

**BOEING:** Docket No. FAA-2007-28989; Directorate Identifier 2007-NM-070-AD.

#### Comments Due Date

(a) The FAA must receive comments on this AD action by October 1, 2007.

#### Affected ADs

(b) This AD supersedes AD 2006-10-04.

#### Applicability

(c) This AD applies to Boeing Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, 747SR, and 747SP series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747-53A2515, Revision 1, dated March 1, 2007.

#### Unsafe Condition

(d) This AD results from reports that accidental drilling damage to the longeron extension fittings was found on airplanes not subject to the existing AD. We are issuing this AD to detect and correct accidental drilling damage of the longeron extension fittings, which could lead to cracking of the longeron extension fittings and result in rapid decompression of the airplane.

#### Compliance

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

#### Restatement of Certain Requirements of AD 2006-10-04

##### Detailed Inspection

(f) For Group 1 airplanes identified in Boeing Alert Service Bulletin 747-53A2515, Revision 1, dated March 1, 2007: At the applicable compliance time specified in

paragraph (f)(1) or (f)(2) of this AD, do a detailed inspection of the left and right longeron extension fittings for damage, and, before further flight, do the corrective action if applicable, by accomplishing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747-53A2515, dated October 20, 2005; or Revision 1, dated March 1, 2007.

**Note 1:** Boeing Alert Service Bulletin 747-53A2515, dated October 20, 2005; and Revision 1, dated March 1, 2007; refer to Boeing Alert Service Bulletin 747-53A2390, Revision 1, dated July 6, 2000, as an additional source of service information for replacing a damaged longeron fitting with a new longeron extension fitting.

(1) For airplanes that have accomplished the inspection of the splice area for cracking as specified in Boeing Alert Service Bulletin 747-53A2390, dated July 31, 1997; or Revision 1, dated July 6, 2000: Inspect in accordance with paragraph (f) of this AD before the airplane has accumulated 10,000 total flight cycles, or within 1,000 flight cycles after June 16, 2006 (the effective date of AD 2006-10-04), whichever is later.

(2) For airplanes that have not accomplished the inspection of the splice area for cracking as specified in Boeing Alert Service Bulletin 747-53A2390, dated July 31, 1997; or Revision 1, dated July 6, 2000: Inspect in accordance with paragraph (f) of this AD before the airplane has accumulated 10,000 total flight cycles, or within 250 flight cycles after June 16, 2006, whichever is later.

#### New Requirements of This AD

##### Detailed Inspection of Additional Airplanes

(g) For Group 2 and Group 3 airplanes identified in Boeing Alert Service Bulletin 747-53A2515, Revision 1, dated March 1, 2007: Except as provided by paragraphs (h) and (i) of this AD, at the applicable time specified in paragraph 1.E of Boeing Alert Service Bulletin 747-53A2515, Revision 1, dated March 1, 2007, do a detailed inspection of the left and right longeron extension fittings for damage and, before further flight, do the corrective action, as applicable; by accomplishing all the applicable actions specified in the Accomplishment Instructions of the alert service bulletin.

##### Compliance Times

(h) Where the alert service bulletin specifies compliance times relative to the release date of the alert service bulletin, this AD requires compliance at compliance times relative to the effective date of this AD.

##### Repair of Certain Conditions

(i) If any damage is found during any inspection required by this AD and the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair the damage using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

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

(j) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747-53A2515, dated October 20, 2005, are considered acceptable for

compliance with the corresponding actions of this AD.

#### Alternative Methods of Compliance (AMOCs)

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

(2) AMOCs approved previously in accordance with AD 2006-10-04, are approved as AMOCs for the corresponding provisions of this AD.

(3) 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.

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

Issued in Renton, Washington, on July 30, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-16121 Filed 8-15-07; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-28922; Directorate Identifier 2007-NM-132-AD]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Model A310 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

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

An incident occurred on one A300-600 aircraft at parking brake application. Both

engines were running, the aircraft started moving again despite parking brake application. Captain tried to stop the aircraft via the pedals but, as the parking brake selector valve was selected, the aircraft could not be stopped (as per design, activation of the parking brake inhibits the other braking modes, and consequently prevents the recovery of the normal braking through the pedals). As part of the investigation, the pressure limiter was removed and examined. The expertise revealed a metallic wire aimed at reducing the section of one port of this equipment was found broken. A part of this wire partially obstructed the hole receiving this wire, thus delaying the build up of parking brake pressure.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by September 17, 2007.

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

- *DOT Docket Web Site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

#### Examining the AD Docket

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

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

#### SUPPLEMENTARY INFORMATION:

#### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2007-28922; Directorate Identifier 2007-NM-132-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

#### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007-0151, dated May 22, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

An incident occurred on one A300-600 aircraft at parking brake application. Both engines were running, the aircraft started moving again despite parking brake application. Captain tried to stop the aircraft via the pedals but, as the parking brake selector valve was selected, the aircraft could not be stopped (as per design, activation of the parking brake inhibits the other braking modes, and consequently prevents the recovery of the normal braking through the pedals). As part of the investigation, the pressure limiter was removed and examined. The expertise revealed a metallic wire aimed at reducing the section of one port of this equipment was found broken. A part of this wire partially obstructed the hole receiving this wire, thus delaying the build up of parking brake pressure. In order to avoid recurrence of the failure mode described above, EASA issued Airworthiness Directive (AD) 2006-0178 to require the replacement of the parking brake pressure limiter (FIN 323292).

During embodiment of SB (Service Bulletin) 32-2133 on an A310 as per AD 2006-0178 (EASA AD 2006-0178 corresponds to FAA AD 2007-02-21, amendment 39-14908), an operator reported that the modified pressure limiter could not be fitted. Subsequent investigation concluded that A310 installation being slightly different from A300-600 aircraft, the approved solution was not directly adaptable to A310 aircraft.

\* \* \* This new AD, dealing with the same subject, requires the replacement of the brake pressure limiter by accomplishment of Airbus SB A310-32-2133, which has been

revised to include the adaptation kit for A310 aircraft.

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

#### Relevant Service Information

Airbus has issued Service Bulletin A310-32-2133, Revision 02, dated February 26, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

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

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

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

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

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

#### Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 68 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Labor costs may be covered under warranty as described in the service information. Required parts would cost about \$0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties,

some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$32,640, 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**AIRBUS:** Docket No. FAA-2007-28922; Directorate Identifier 2007-NM-132-AD.

#### Comments Due Date

(a) We must receive comments by September 17, 2007.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Airbus Model A310 series airplanes, certificated in any category, except airplanes on which Airbus Service Bulletin A310-32-2133, Revision 02, dated February 26, 2007, has been embodied in service.

#### Subject

(d) Air Transport Association (ATA) of America Code 32: Landing gear.

#### Reason

(e) The mandatory continuing airworthiness information (MCAI) states: An incident occurred on one A300-600 aircraft at parking brake application. Both engines were running, the aircraft started moving again despite parking brake application. Captain tried to stop the aircraft via the pedals but, as the parking brake selector valve was selected, the aircraft could not be stopped (as per design, activation of the parking brake inhibits the other braking modes, and consequently prevents the recovery of the normal braking through the pedals). As part of the investigation, the pressure limiter was removed and examined. The expertise revealed a metallic wire aimed at reducing the section of one port of this equipment was found broken. A part of this wire partially obstructed the hole receiving this wire, thus delaying the build up of parking brake pressure. In order to avoid recurrence of the failure mode described above, EASA (European Aviation Safety Agency), issued Airworthiness Directive (AD) 2006-0178 to require the replacement of the parking brake pressure limiter (FIN 323292).

During embodiment of SB (Service Bulletin) 32-2133 on an A310 as per AD 2006-0178 [EASA AD 2006-0178 corresponds to FAA AD 2007-02-21, amendment 39-14908], an operator reported that the modified pressure limiter could not be fitted. Subsequent investigation concluded that A310 installation being slightly different from A300-600 aircraft, the approved solution was not directly adaptable to A310 aircraft.

\* \* \* This new AD, dealing with the same subject, requires the replacement of the brake pressure limiter by accomplishment of Airbus SB A310-32-2133, which has been revised to include the adaptation kit for A310 aircraft.

**Actions and Compliance**

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

(1) Within 10 months after the effective date of this AD, replace the parking brake pressure limiter (FIN 323292), in accordance with the instructions given in Airbus Service Bulletin A310-32-2133, Revision 02, dated February 26, 2007.

**FAA AD Differences**

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

**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 EASA Airworthiness Directive 2007-0151, dated May 22, 2007; Airbus Service Bulletin A310-32-2133, Revision 02, dated February 26, 2007; and Messier-Bugatti Service Bulletin C24264-32-848, dated February 15, 2006, for related information.

Issued in Renton, Washington, on July 30, 2007.

**Ali Bahrami,**

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-16109 Filed 8-15-07; 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]

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:** Notice of proposed rulemaking (NPRM).

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

[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.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by September 17, 2007.

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

- *DOT Docket Web Site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Fax:* (202) 493-2251.

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

- *Hand Delivery:* Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

**Examining the AD Docket**

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

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

**SUPPLEMENTARY INFORMATION:****Streamlined Issuance of AD**

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

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

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2007-28944; Directorate Identifier 2006-NM-239-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2006-0282, dated September 12, 2006 (referred to after this as "the MCAI"), 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.

### Relevant Service Information

Airbus has issued Service Bulletins A300-57-0177, Revision 05, dated March 23, 2007; and A300-57-6029, Revision 06, dated March 23, 2007. The compliance times for the initial inspections range approximately from 200 flight cycles or 320 flight hours, whichever occurs first, to 46,700 flight cycles or 63,900 flight hours, whichever occurs first, depending on the model and configuration. The compliance times for the repetitive inspections range from 50 flight cycles or 50 flight hours, whichever occurs first, to 3,600 flight cycles or 8,170 flight hours, whichever occurs first, depending on the model and configuration. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

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

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

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

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

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

### Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 162 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**AIRBUS:** Docket No. FAA-2007-28944; Directorate Identifier 2006-NM-239-AD.

#### Comments Due Date

- (a) We must receive comments by September 17, 2007.

#### 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 action 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 of 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 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.

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

Issued in Renton, Washington, on July 31, 2007.

**Ali Bahrami,**

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

[FR Doc. E7-16097 Filed 8-15-07; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

**[Docket No. FAA-2007-28943; Directorate Identifier 2007-NM-011-AD]**

**RIN 2120-AA64**

**Airworthiness Directives; Boeing Model 767-300F Series Airplanes**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 767-300F series airplanes. This proposed AD would require replacing the rotomolded duct(s) of the mix manifold system with new duct(s). This proposed AD results from a report of failures of the duct joint seal of the mix manifold system. We are proposing this AD to prevent air conditioning leakage into the mix manifold bay. Such leakage could decrease the air flow to the flight compartment and main cabin or could allow smoke into the flight compartment in the event of a fire in the main cabin or forward cargo compartment.

**DATES:** We must receive comments on this proposed AD by October 1, 2007.

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

• **DOT Docket Web site:** Go to <http://dms.dot.gov> and follow the

instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

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

- *Fax:* (202) 493-2251.

- *Hand Delivery:* Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

**FOR FURTHER INFORMATION CONTACT:**

Jeffrey S. Palmer, 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) 917-6481; fax (425) 917-6590.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2007-28943; Directorate Identifier 2007-NM-011-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

**Examining the Docket**

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647-5527) is located on the ground level of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

**Discussion**

We have received a report of more than ten failures of the duct joint seal of the mix manifold system on Boeing Model 767-300F series airplanes. The seal failures resulted in air conditioning leakage into the mix manifold bay, which consequently decreased the air flow to the flight compartment and main cabin. The failed ducts were made from rotomolded nylon and were between 7 and 9 inches in diameter. Service history has shown that the ducts made from rotomolded nylon material that are larger than 6.5 inches in diameter can fail as a result of joint seal failures, loose clamps, and duct deformation due to insufficient rigidity. This condition, if not corrected, could result in air conditioning leakage into the mix manifold bay. Such leakage could decrease the air flow to the flight compartment and main cabin or could allow smoke into the flight compartment in the event of a fire in the main cabin or forward cargo compartment.

**Relevant Service Information**

We have reviewed Boeing Special Attention Service Bulletin 767-21-0192, dated March 23, 2006. The service information describes procedures for replacing the rotomolded duct(s) of the mix manifold system with new duct(s). Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

**FAA's Determination and Requirements of the Proposed AD**

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

**Costs of Compliance**

There are about 40 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 32 airplanes of U.S. registry. The proposed actions would take about 2 or 8 work hours per airplane, at an average labor rate of \$80 per work hour. Required parts would cost about \$4,123 or \$42,825 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is \$4,283 or \$43,465 per airplane. (The estimated work hours and costs depend on the airplane configuration).

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

for a location to examine the regulatory evaluation.

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**BOEING:** Docket No. FAA-2007-28943; Directorate Identifier 2007-NM-011-AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by October 1, 2007.

**Affected ADS**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 767-300F series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 767-21-0192, dated March 23, 2006.

**Unsafe Condition**

(d) This AD results from a report of failures of the duct joint seal of the mix manifold system. We are issuing this AD to prevent air conditioning leakage into the mix manifold bay. Such leakage could decrease the air flow to the flight compartment and main cabin or could allow smoke into the flight compartment in the event of a fire in the main cabin or forward cargo compartment.

**Compliance**

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

**Replacement**

(f) Within 36 months after the effective date of this AD, do the applicable action specified in Table 1 of this AD in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767-21-0192, dated March 23, 2006.

TABLE 1.—REPLACEMENT

For airplanes identified in the service bulletin as—	Do the following action—
(1) Group 1 airplanes.	Replace the rotomolded duct between the transition duct of the right cooling pack and the mix manifold with a new duct made of aluminum.
(2) Group 2 airplanes.	Replace the rotomolded ducts of the mix manifold system with new ducts made from Kevlar® and aluminum.

**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.

Issued in Renton, Washington, on July 30, 2007.

**Ali Bahrami,**

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-16095 Filed 8-15-07; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA-2006-25658; Directorate Identifier 2006-NM-054-AD]**

**RIN 2120-AA64**

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

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

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** The FAA is revising an earlier supplemental NPRM for an airworthiness directive (AD) that applies to certain Airbus Model A318, A319, A320, and A321 airplanes. The first supplemental NPRM would have superseded an existing AD that currently requires repetitive detailed

inspections of the inboard flap trunnions for any wear marks and of the sliding panels for any cracking at the long edges, and corrective actions if necessary. These actions resulted from reports of wear damage to the inboard flap trunnions after incorporation of the terminating modification, and certain airplanes were inadvertently excluded from the applicability in the original NPRM. This new action revises the first supplemental NPRM by adding airplanes that were recently added to the type certificate data sheet. We are proposing this second supplemental NPRM to detect and correct wear of the inboard flap trunnions, which could lead to loss of flap surface control and consequently result in the flap detaching from the airplane. A detached flap could result in damage to the tail of the airplane.

**DATES:** We must receive comments on this supplemental NPRM by September 10, 2007.

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

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

- *Fax:* (202) 493-2251.

- *Hand Delivery:* Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this second supplemental NPRM.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2125; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to submit any relevant written data, views, or arguments regarding this proposal. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number “Docket No. FAA-2006-25658;

Directorate Identifier 2006–NM–054–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this second supplemental NPRM. We will consider all comments received by the closing date and may amend this second supplemental NPRM in light of those comments.

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

#### Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

#### Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) (“the first supplemental NPRM”) to amend 14 CFR part 39 to include an AD that supersedes AD 2006–04–06, amendment 39–14487 (71 FR 8439, February 17, 2006). The existing AD applies to certain Airbus Model A318, A319, A320, and A321 airplanes. The first supplemental NPRM was published in the **Federal Register** on March 6, 2007 (72 FR 9880). The first supplemental NPRM proposed to continue to require repetitive detailed inspections of the inboard flap trunnions for any wear marks and of the sliding panels for any cracking at the long edges, and corrective actions if necessary. The first supplemental NPRM also proposed to revise the original NPRM by including airplanes that were inadvertently excluded from the applicability.

#### Actions Since First Supplemental NPRM Was Issued

Since we issued the first supplemental NPRM, Airbus has issued Service Bulletin A320–57–1133, Revision 02, including Appendix 01, dated December 12, 2006. (We referred to Airbus Service Bulletin A320–57–1133, Revision 01, dated August 7, 2006, in the first supplemental NPRM as the appropriate source of service information for accomplishing certain proposed actions.) The changes in Revision 02 are minor, and no additional work is necessary for airplanes modified by the previous issues; Revision 02 adds airplanes and recommends contacting Airbus for certain corrective actions. We have changed the applicable sections in the second supplemental NPRM to refer to Revision 02 as the appropriate source of service information for accomplishing certain proposed actions. In addition, we have changed paragraph (j) of the second supplemental NPRM to provide credit for accomplishing applicable actions before the effective date of the AD in accordance with Revision 01 of that service bulletin.

#### Comments

We have considered the following comments on the first supplemental NPRM.

#### Request to Expand Applicability

Airbus asks that we add Model A321–212, –213, and –232 airplanes to the applicability specified in paragraph (c) of the first supplemental NPRM. Airbus states that the AD should be applicable to all Model A318, A319, A320, and A321 airplanes that have received Airbus Modification 26495 in production or Airbus Service Bulletin A320–27–1117 in service.

We agree with Airbus for the reasons provided, and because those airplanes were added to Revision 9 of the U.S. type certificate data sheet (TCDS) on March 23, 2007. In addition, Airbus Model 318–121 and –122 airplanes were added to Revision 10 of the TCDS on May 31, 2007; therefore, we have also added those airplanes to the applicability in the second supplemental NPRM. We have changed paragraph (c) of the second supplemental NPRM accordingly.

#### Request To Remove Certain Requirements

Airbus asks that we remove the new requirement specified in paragraph (h) of the first supplemental NPRM. Airbus states that it does not concur with the new requirement to apply Airbus Service Bulletin A320–27–1117,

Revision 04, dated November 6, 2001, on Model A321–211 and –231 airplanes, except those on which Airbus Modification 26495 has been accomplished in production. Airbus notes that “\* \* \* the modification introduced by Service Bulletin A320–27–1117 has not been confirmed satisfactory; this is the reason why additional inspections have been defined in Service Bulletin A320–57–1133 and a final fix to this last inspection under definition.” Airbus adds that Airbus Service Bulletin A320–27–1117 was issued to provide terminating action of another inspection specified in Airbus Service Bulletin A320–27–1108, Revision 04, dated November 22, 1999, for Model A321 airplanes. Airbus notes that if there are still Model A321–211 and –231 airplanes that are pre-modification 26495 on which Airbus Service Bulletin A320–27–1117 has not been done, the inspections specified in Airbus Service Bulletin A320–27–1108, Revision 04, should continue to be performed until the final fix is available.

We agree with Airbus, we have determined that the subject modification is not adequate to address the identified unsafe condition. Therefore, for that reason, and the reasons provided by Airbus, we have removed paragraphs (h) and (i) from the second supplemental NPRM and reidentified subsequent paragraphs accordingly.

#### Difference Between Proposed Rule and Service Bulletin

Service Bulletin A320–57–1133, Revision 02, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions using a method approved by the FAA, or the European Aviation Safety Agency (EASA) (or its delegated agent), or the Direction Générale de l’Aviation Civile (DGAC) (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by the FAA, the EASA, or the DGAC would be acceptable for compliance with this proposed AD.

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

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

**FAA's Determination and Proposed Requirements of the Second Supplemental NPRM**

Certain changes discussed above expand the scope of the first

supplemental NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on the second supplemental NPRM.

**Costs of Compliance**

The following table provides the estimated costs for U.S. operators to comply with the second supplemental NPRM.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Modification in AD 2006-04-06.	14	\$80	The manufacturer states that it will supply required parts to operators at no cost.	\$1,120 .....	768	\$860,160.
Detailed inspection in AD 2006-04-06.	2	80	None .....	\$160, per inspection cycle.	768	\$122,880, per inspection cycle.
General visual inspection (new proposed action).	1	80	None .....	\$80, per inspection cycle.	754	\$60,320, per inspection cycle.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39-14487 (71 FR 8439, February 17, 2006) and adding the following new airworthiness directive (AD):

**AIRBUS:** Docket No. FAA-2006-25658; Directorate Identifier 2006-NM-054-AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by September 10, 2007.

**Affected ADs**

(b) This AD supersedes AD 2006-04-06.

**Applicability**

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

(1) Airbus Model A318-111, -112, -121, and -122 airplanes on which Airbus Modification 26495 has been incorporated in production.

(2) All Airbus Model A319-111, -112, -113, -114, -115, -131, -132, and -133 airplanes; Model A320-111 airplanes; Model A320-211, -212, -214, -231, -232, and -233 airplanes; and Model A321-111, -112, -131, -211, -212, -213, -231, and -232 airplanes.

**Unsafe Condition**

(d) This AD results from a determination that certain airplanes must be included in the applicability of the AD, and that the inspection type must be revised. We are issuing this AD to detect and correct wear of the inboard flap trunnions, which could lead to loss of flap surface control and consequently result in the flap detaching from the airplane. A detached flap could result in damage to the tail of the airplane.

**Compliance**

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

**Restatement of Requirements of AD 2006-04-06**

*Modification*

(f) For Model A319-111, -112, -113, -114, -115, -131, -132, and -133 airplanes; Model A320-111 airplanes; Model A320-211, -212, -214, -231, -232, and -233 airplanes; and Model A321-111, -112, and -131 airplanes; except those on which Airbus Modification 26495 has been accomplished in production: Within 18 months after January 8, 2001 (the effective date of AD 2000-24-02, amendment 39-12009), modify the sliding panel driving mechanism of the flap drive trunnions, in accordance with Airbus Service Bulletin A320-27-1117, Revision 02, dated January 18, 2000; or Revision 04, dated November 6,

2001. As of the effective date of this AD, only Revision 04 may be used.

**Note 1:** Accomplishment of the modification required by paragraph (f) of this AD before January 8, 2001, in accordance with Airbus Service Bulletin A320-27-1117, dated July 31, 1997; or Revision 01, dated June 25, 1999; is acceptable for compliance with that paragraph.

#### Detailed Inspections

(g) For Model A318-111 and -112 airplanes; Model A319-111, -112, -113, -114, -115, -131, -132, and -133 airplanes; Model A320-111 airplanes; Model A320-211, -212, -214, -231, -232, and -233 airplanes; and Model A321-111, -112, and -131 airplanes: At the latest of the applicable times specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, do a detailed inspection of the inboard flap trunnions for any wear marks and of the sliding panels for any cracking at the long edges, and do any corrective actions, as applicable, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Airbus Service Bulletin A320-57-1133, dated July 28, 2005; Revision 01, dated August 7, 2006; or Revision 02, dated December 12, 2006; except as provided by paragraph (n) of this AD. As of the effective date of this AD, only Revision 02 may be used. Any corrective actions must be done at the compliance times specified in Figures 5 and 6, as applicable, of the service bulletin; except as provided by paragraphs (k), (l), and (m) of this AD. Repeat the inspection thereafter at intervals not to exceed 4,000 flight hours until the inspection required by paragraph (h) of this AD is done.

**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."

(1) Before accumulating 4,000 total flight hours on the inboard flap trunnion since new.

(2) Within 4,000 flight hours after accomplishing paragraph (f) of this AD.

(3) Within 600 flight hours after March 24, 2006 (the effective date of AD 2006-04-06).

#### New Requirements of This AD

##### General Visual Inspections

(h) For all airplanes: At the time specified in paragraph (h)(1) or (h)(2) of this AD, as applicable, do a general visual inspection of the inboard flap trunnions for any wear marks and of the sliding panels for any cracking at the long edges, and do all applicable corrective actions by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Airbus Service Bulletin A320-57-1133, Revision 02, dated December 12, 2006; except as provided by paragraphs (i) and (o) of this AD. All corrective actions must be done at the compliance times

specified in Figures 5 and 6, as applicable, of the service bulletin; except as provided by paragraphs (l), (m), and (n) of this AD. Repeat the inspection thereafter at intervals not to exceed 4,000 flight hours. Accomplishing the general visual inspection required by this paragraph terminates the detailed inspection requirement of paragraph (g) of this AD.

**Note 3:** For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) For airplanes on which the detailed inspection required by paragraph (g) of this AD has been done before the effective date of this AD: Inspect before accumulating 4,000 total flight hours on the inboard flap trunnion since new, or within 4,000 flight hours after accomplishing the most recent inspection required by paragraph (g) of this AD, whichever occurs later.

(2) For airplanes other than those identified in paragraph (h)(1) of this AD: Inspect at the latest of the applicable times specified in paragraphs (h)(2)(i), (h)(2)(ii), and (h)(2)(iii) of this AD.

(i) Before accumulating 4,000 total flight hours on the inboard flap trunnion since new.

(ii) Within 4,000 flight hours after accomplishing paragraph (f) of this AD.

(iii) Within 600 flight hours after the effective date of this AD.

(i) Where Airbus Service Bulletin A320-57-1133, Revision 02, dated December 12, 2006, specifies to contact the manufacturer for instructions on how to repair certain conditions: Before further flight, repair using a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent), or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

##### Actions Done Using Previous Issues of Service Information

(j) Accomplishing the modification required by paragraph (f) of this AD before the effective date of this AD, in accordance with Airbus Service Bulletin A320-27-1117, Revision 03, dated August 24, 2001, is acceptable for compliance with the requirements of that paragraph.

(k) Accomplishing the inspections and corrective actions required by paragraph (h) of this AD before the effective date of this AD, in accordance with Airbus Service Bulletin A320-57-1133, dated July 28, 2005; or Revision 01, dated August 7, 2006; is acceptable for compliance with the requirements of that paragraph.

##### Compliance Times

(l) Where Airbus Service Bulletins A320-57-1133, dated July 28, 2005; Revision 01, dated August 7, 2006; and Revision 02, dated December 12, 2006; specify replacing the sliding panel at the next opportunity if damaged, replace it within 600 flight hours after the inspection required by paragraph (g) or (h) of this AD, as applicable.

(m) If any damage to the trunnion is found during any inspection required by paragraph (g) or (h) of this AD, before further flight, do the corrective actions specified in Airbus Service Bulletin A320-57-1133, Revision 01, dated August 7, 2006; or Revision 02, dated December 12, 2006.

##### Grace Period Assessment

(n) Where Airbus Service Bulletins A320-57-1133, dated July 28, 2005; Revision 01, dated August 7, 2006; and Revision 02, dated December 12, 2006; specify contacting the manufacturer for a grace period assessment after replacing the trunnion or flap, contact the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; the Direction Générale de l'Aviation Civile (or its delegated agent for the grace period assessment).

##### No Reporting Requirement

(o) Although Airbus Service Bulletins A320-57-1133, dated July 28, 2005; Revision 01, dated August 7, 2006; and Revision 02, dated December 12, 2006; specify to submit certain information to the manufacturer, this AD does not include that requirement.

##### Alternative Methods of Compliance (AMOCs)

(p)(1) The Manager, International Branch, ANM-116, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

##### Related Information

(q) French airworthiness directive F-2005-139, dated August 3, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on July 31, 2007.

**Ali Bahrami,**

Manager, Transport Airplane Directorate,  
Aircraft Certification Service.

[FR Doc. E7-16094 Filed 8-15-07; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2007-28973; Directorate Identifier 2007-NM-118-AD]

RIN 2120-AA64

**Airworthiness Directives; Boeing Model 747-400, -400D, and -400F Series Airplanes; Boeing Model 757 Airplanes; and Boeing Model 767 Airplanes**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing airplanes listed above. This proposed AD would require an inspection of certain lighted pushbutton switches in the flight compartment for configuration 'D' master modules and part numbers and corrective action if necessary. This proposed AD also provides an option to inspect panel assemblies for part numbers. This proposed AD results from a report indicating that the integrated drive generator failed in flight due to a possible switch malfunction. We are proposing this AD to ensure that certain lighted pushbutton switches in the flight compartment do not malfunction and cause the flightcrew to be unable to control critical airplane systems and continue safe airplane operation.

**DATES:** We must receive comments on this proposed AD by October 1, 2007.

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

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

- *By fax:* (202) 493-2251.

- *Hand Delivery:* Room W12-140 on the ground floor of the West Building,

1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

**FOR FURTHER INFORMATION CONTACT:**

Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6482; fax (425) 917-6590.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2007-28973; Directorate Identifier 2007-NM-118-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 submitted by the closing date and may amend the proposed AD in light of those comments.

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

**Examining the Docket**

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647-5527) is located on the ground floor of the West Building at the street address stated in the **ADDRESSES**

section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

**Discussion**

We have received a report indicating that the integrated drive generator (IDG) failed in flight on a Boeing Model 757 airplane. The failure caused considerable oil staining of the fan case, and fire damage to the inner skin of the fan cowl and to the engine wiring in the immediate area. The flightcrew had used a lighted pushbutton switch to disconnect the IDG before flight, but investigators concluded that the switch failed and did not disconnect the IDG. The IDG disconnect switch had a master module that was a configuration prior to configuration 'D.' Switches with master modules prior to configuration 'D' can malfunction due to "cap pop-up" (the switch releases from ON to OFF without detection or warning) or "jamming" (the switch gets stuck in one position and cannot be activated or deactivated).

These switches are used to control critical systems in the flight compartment. These critical systems include:

- Fuel management;
- Engine ignition and start control;
- Auxiliary power unit and cargo fire control;
- Ice and rain protection;
- Emergency lights/passenger oxygen;
- Electrical system;
- Battery/standby power;
- Air conditioning-temperature control;
- Autoflight-yaw damper;
- Engine electronic control;
- Pneumatic-bleed air control; and
- Landing gear actuator control.

Cap pop-up or jamming, if not corrected, could cause the flightcrew to be unable to control critical airplane systems and continue safe airplane operation.

The lighted pushbutton switches used to control critical systems in the flight compartment on Boeing Model 757 airplanes are identical to those installed on Boeing Model 747-400, -400D, and -400F series airplanes, and Model 767 airplanes. Therefore, all of these models might be subject to the identified unsafe condition.

**Relevant Service Information**

We have reviewed the Boeing service bulletins in the following table.

## BOEING ALERT SERVICE BULLETINS

Boeing alert service bulletin	Revision	Date	Model
747-33A2280 .....	1 .....	September 25, 2003	747-400, -400D, and -400F series airplanes.
757-33A0044 .....	1 .....	September 25, 2003	757-200, -200CB, and -200PF series airplanes.
757-33A0045 .....	1 .....	September 25, 2003	757-300 series airplanes.
767-33A0087 .....	1 .....	September 25, 2003	767-200, -300, and -300F series airplanes.
767-33A0088, including Appendix A .....	Original	December 19, 2001	767-400ER series airplanes.

These service bulletins describe procedures for examining certain lighted pushbutton switches in the flight compartment for configuration 'D' master modules and performing corrective action if a switch does not have a configuration 'D' master module. The corrective action if a switch does not have a configuration 'D' master module includes doing one of the replacements specified below and other actions:

- Replacing the switch without a configuration 'D' master module with a switch having a configuration 'D' master module.

- Replacing the switch master module with a new configuration 'D' master module.

- Replacing the panel assembly with a new panel assembly.

- Changing the part number of the panel assembly.

- Doing operational tests of the critical systems if components are replaced.

If a switch does have a configuration 'D' master module but does not have a correct part number of the panel assembly, the service bulletin specifies a corrective action of changing the part number of the panel assembly.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

The Boeing service bulletins refer to Korry Service Bulletin 433-33-05, dated July 23, 2001, as an additional source of service information for finding configuration 'D' switches, for replacing

the switch master module with a configuration 'D' master module, and for doing various operational tests after the replacement.

Korry Service Bulletin 433-33-06, dated November 7, 2001, is an appropriate source of service information for finding the one-to-one switch correlation between the existing switches and the new part number switches.

The Boeing service bulletins refer to the Boeing component service bulletins that are described below. The component service bulletins specify procedures for replacing the switch or switch master module at applicable critical locations in the flight compartment and for doing one-time operational tests after the replacement.

## BOEING COMPONENT SERVICE BULLETINS

Component service bulletin—	Date—	Model—	Critical location—
233N3203-21-01, Revision 1 .....	September 25, 2003	757 airplanes .....	Equipment Cooling Panel.
233N3204-30-02, Revision 1 .....	September 25, 2003	757 airplanes .....	Anti-ice Panel.
233N3206-28-02, Revision 1 .....	September 25, 2003	757-200, -200CB, and -200PF series airplanes.	Fuel Control Panel.
233N3209-24-03, Revision 1 .....	September 25, 2003	757 airplanes, and 767-200, -300, and -300F series airplanes.	Electrical Systems Panel.
233N3211-24-02, Revision 1 .....	September 25, 2003	757 airplanes and 767 airplanes .....	Battery/Standby Power Panel.
233N3215-36-01, Revision 1 .....	September 25, 2003	757 airplanes .....	Bleed Air Panel Assembly.
233N3216-22-01, Revision 1 .....	September 25, 2003	757 airplanes and 767 airplanes .....	Yaw Damper Panel Assembly.
233N3219-33-01, including Appendix A.	December 19, 2001	757-200, -200CB, and -200PF series airplanes.	Emergency Lights/Passenger Oxygen Panel.
233N3223-31-03, Revision 1 .....	September 25, 2003	757 airplanes .....	Engine Start/Ram Air Turbine Panel Assembly.
233N3224-73-01, Revision 1 .....	September 25, 2003	757-200, -200CB, and -200PF series airplanes.	Electronic Engine Control Power Panel Assembly.
233N6203-26-10, Revision 1 .....	September 25, 2003	757 airplanes, and 767-200, -300, and -300F series airplanes.	Auxiliary Power Unit/Cargo Fire Control Panel Assembly.
233T3210-33-01, Revision 1 .....	September 25, 2003	757 airplanes and 767 airplanes .....	Emergency Lights Panel.
233T3215-24-01, including Appendix A.	December 19, 2001	767-400ER series airplanes .....	Electrical Control Module Assembly.
233T3235-28-05, Revision 1 .....	September 25, 2003	767-200, -300, and -300F series airplanes.	Fuel Management Panel Assembly.
233T3236-21-05, Revision 1 .....	September 25, 2003	767 airplanes .....	Temperature Control Panel.
233T3237-36-04, Revision 1 .....	September 25, 2003	767 airplanes .....	Bleed Air Control Panel.
233T3241-30-03, Revision 1 .....	September 25, 2003	757-200, -200CB, and -200PF series airplanes, and 767-200, -300, and -300F series airplanes.	Wing and Engine Anti-ice Control Panel.
233T3242-73-02, Revision 1 .....	September 25, 2003	757 airplanes, and 767-200, -300, and -300F series airplanes.	Electronic Engine Control Panel.
233T3244-74-03, Revision 1 .....	September 25, 2003	767 airplanes .....	Engine Ignition and Start Control Panel.
233T6211-26-01, including Appendix A.	December 19, 2001	767-400ER series airplanes .....	Auxiliary Power Unit and Cargo Fire Control Module Assembly.
233U3201-30-04, Revision 1 .....	September 25, 2003	747-400, -400D, and -400F series airplanes.	Rain Removal/Anti-ice Module.

BOEING COMPONENT SERVICE BULLETINS—Continued

Component service bulletin—	Date—	Model—	Critical location—
233U3202–24–02, Revision 1 .....	September 25, 2003	747–400, –400D, and –400F series airplanes.	Electrical and Standby Power/Auxiliary Power Unit Start Module.
233U3203–36–01, Revision 1 .....	September 25, 2003	747–400, –400D, and –400F series airplanes.	Bleed Air Control Module.
233U3206–28–01, Revision 1 .....	September 25, 2003	747–400, –400D, and –400F series airplanes.	Engine Ignition Control/Fuel Jettison Module.
233U3208–22–02, Revision 1 .....	September 25, 2003	747–400, –400D, and –400F series airplanes.	Passenger Oxygen and Yaw Damper Module.
233U3214–26–06, Revision 1 .....	September 25, 2003	747–400, –400D, and –400F series airplanes.	Fire Control Module.
257U0002–32–04, including Appendix A.	December 19, 2001	747–400, –400D, and –400F series airplanes.	Landing Gear Actuator Control Lever Module Assembly.

**FAA’s Determination and Requirements of the Proposed AD**

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under “Differences Between the Proposed AD and the Service Bulletins.”

**Differences Between the Proposed AD and the Service Bulletins**

Although the Boeing service bulletins recommend a compliance time for accomplishing the inspection at the earliest opportunity when labor and facilities are available, subsequent to issuing the service bulletins, Boeing has recommended the actions be done within 60 months. The FAA concurs. In developing an appropriate compliance time for this proposed AD, we considered the degree of urgency associated with the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (8 work hours). In light of all of these factors, we find that a 60-month compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Where the Boeing service bulletins specify to “examine” certain parts, this proposed AD refers to a “general visual inspection.” We have included the definition for a general visual inspection in a note in the proposed AD.

The Boeing service bulletins specify inspecting the switch master module to determine if the master module is configuration ‘D’ and replacing the switch with a switch having a configuration ‘D’ master module if necessary. However, for the operators’ convenience and to reduce workload, this proposed AD would include

inspections for certain part numbers (an inspection of panel assemblies for part numbers and an inspection of the switches to determine if the switches have a new part number) that would result in no further action or fewer actions being required.

In contrast to the service bulletins, this proposed AD would allow an inspection of panel assemblies for part numbers. If the panel assemblies have certain part numbers, no further action would be required. If the panel assemblies have certain other part numbers, then this proposed AD would require inspecting to determine whether a configuration ‘D’ master module is installed or whether the switch has a new part number. If a configuration ‘D’ master module is installed or the switch has a new part number, then this proposed AD would require changing the part number of the panel assembly. If no new switch part number is found and the master module is not configuration ‘D,’ the corrective action includes replacing the switch with a new part number switch, replacing the switch with a switch having a configuration ‘D’ master module, or replacing the switch master module with a new configuration ‘D’ master module. The new switch must have one of the following part numbers (P/Ns): Boeing P/N S231T290–4201 through –4325 inclusive or Korry P/N 4336731004–4201 through –4325 inclusive. One-to-one correlation between the existing part number switches and the new part number switches is detailed in Korry Service Bulletin 433–33–06, dated November 7, 2001. We have coordinated this inspection and replacement with Boeing.

The Boeing service bulletins also specify doing a replacement of certain panel assemblies with new panel assemblies that have switches with configuration ‘D’ master modules. However, this proposed AD would

require only doing a general visual inspection of the applicable switches of the panel assemblies to identify configuration ‘D’ master modules and the P/N of the switch; the inspection is specified as an option in the Boeing service bulletins. We have determined that since only a few switches on a given panel might need to be replaced, doing the inspection of the applicable switches or panel assemblies is sufficient and cost-effective.

The Boeing service bulletins do not refer to any service information for the removal and/or installation of certain panels. This proposed AD would require operators to remove or install those parts according to a method approved by the FAA, or in accordance with the actions specified in paragraph (l) of this proposed AD. We have coordinated this difference with Boeing.

Boeing issued Information Notice 747–33A2280 IN 01, dated July 1, 2004, to clarify instructions specified in paragraph 3.B.14.b.(3) of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–33A2280, Revision 1, dated September 25, 2003. We have included this information in paragraph (n) of this proposed AD.

**Costs of Compliance**

There are about 2,511 airplanes of the affected designs in the worldwide fleet. This proposed AD would affect about 934 airplanes of U.S. registry.

The proposed inspection of switches would take about 8 work hours per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the proposed inspection for U.S. operators is \$597,760, or \$640 per airplane.

**Authority for This Rulemaking**

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

**Regulatory Findings**

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

responsibilities among the various levels of government.

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the ADDRESSES section for a location to examine the regulatory evaluation.

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator,

the FAA proposes to amend 14 CFR part 39 as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**BOEING:** Docket No. FAA-2007-28973; Directorate Identifier 2007-NM-118-AD.

**Comments Due Date**

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by October 1, 2007.

**Affected ADs**

(b) None.

**Applicability**

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

TABLE 1.—APPLICABILITY

Model—	As identified in Boeing alert service bulletin—
747-400, -400D, and -400F series airplanes .....	747-33A2280, Revision 1, dated September 25, 2003.
757-200, -200CB, and -200PF series airplanes .....	757-33A0044, Revision 1, dated September 25, 2003.
757-300 series airplanes .....	757-33A0045, Revision 1, dated September 25, 2003.
767-200, -300, and -300F series airplanes .....	767-33A0087, Revision 1, dated September 25, 2003.
767-400ER series airplanes .....	767-33A0088, including Appendix A, dated December 19, 2001.

**Unsafe Condition**

(d) This AD results from a report indicating that the integrated drive generator (IDG) failed in flight due to possible switch malfunction. We are issuing this AD to ensure that certain lighted pushbutton switches in the flight compartment do not malfunction and cause the flightcrew to be unable to control critical airplane systems and continue safe airplane operation.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within

the compliance times specified, unless the actions have already been done.

**Service Bulletin References**

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

**Note 1:** The Boeing alert service bulletins refer to Korry Service Bulletin 433-33-05, dated July 23, 2001, as an additional source of service information for finding configuration 'D' switches, for replacing the switch master module with a configuration

'D' master module, and for doing various operational tests after the replacement.

**Component Service Bulletin References**

(g) The Boeing service bulletins listed in Table 1 of this AD refer to the Boeing component service bulletins specified in Table 2 of this AD as additional sources of service information for replacing the switch or switch master module at critical locations, for doing operational tests after the replacement, and for identifying new panel part numbers.

TABLE 2.—BOEING COMPONENT SERVICE BULLETINS: SECONDARY SOURCES OF SERVICE INFORMATION

Boeing component service bulletin—	Date—	Model—	Critical location—
233N3203-21-01, Revision 1 .....	September 25, 2003	757 airplanes .....	Equipment Cooling Panel.
233N3204-30-02, Revision 1 .....	September 25, 2003	757 airplanes .....	Anti-ice Panel.
233N3206-28-02, Revision 1 .....	September 25, 2003	757-200, -200CB, and -200PF series airplanes.	Fuel Control Panel.
233N3209-24-03, Revision 1 .....	September 25, 2003	757 airplanes, and 767-200, -300, and -300F series airplanes.	Electrical Systems Panel.
233N3211-24-02, Revision 1 .....	September 25, 2003	757 airplanes and 767 airplanes .....	Battery/Standby Power Panel.
233N3215-36-01, Revision 1 .....	September 25, 2003	757 airplanes .....	Bleed Air Panel Assembly.
233N3216-22-01, Revision 1 .....	September 25, 2003	757 airplanes and 767 airplanes .....	Yaw Damper Panel Assembly.
233N3219-33-01, including Appendix A.	December 19, 2001	757-200, -200CB, and -200PF series airplanes.	Emergency Lights/Passenger Oxygen Panel.
233N3223-31-03, Revision 1 .....	September 25, 2003	757 airplanes .....	Engine Start/Ram Air Turbine Panel Assembly.

TABLE 2.—BOEING COMPONENT SERVICE BULLETINS: SECONDARY SOURCES OF SERVICE INFORMATION—Continued

Boeing component service bulletin—	Date—	Model—	Critical location—
233N3224–73–01, Revision 1 .....	September 25, 2003	757–200, –200CB, and –200PF series airplanes.	Electronic Engine Control Power Panel Assembly.
233N6203–26–10, Revision 1 .....	September 25, 2003	757 airplanes, and 767–200, –300, and –300F series airplanes.	Auxiliary Power Unit/Cargo Fire Control Panel Assembly.
233T3210–33–01, Revision 1 .....	September 25, 2003	757 airplanes and 767 airplanes .....	Emergency Lights Panel.
233T3215–24–01, including Appendix A.	December 19, 2001	767–400ER series airplanes .....	Electrical Control Module Assembly.
233T3235–28–05, Revision 1 .....	September 25, 2003	767–200, –300, and –300F series airplanes.	Fuel Management Panel Assembly.
233T3236–21–05, Revision 1 .....	September 25, 2003	767 airplanes .....	Temperature Control Panel.
233T3237–36–04, Revision 1 .....	September 25, 2003	767 airplanes .....	Bleed Air Control Panel.
233T3241–30–03, Revision 1 .....	September 25, 2003	757–200, –200CB, and –200PF series airplanes, and 767–200, –300, and –300F series airplanes.	Wing and Engine Anti-ice Control Panel.
233T3242–73–02, Revision 1 .....	September 25, 2003	757 airplanes, and 767–200, –300, and –300F series airplanes.	Electronic Engine Control Panel.
233T3244–74–03, Revision 1 .....	September 25, 2003	767 airplanes .....	Engine Ignition and Start Control Panel.
233T6211–26–01, including Appendix A.	December 19, 2001	767–400ER series airplanes .....	Auxiliary Power Unit and Cargo Fire Control Module Assembly.
233U3201–30–04, Revision 1 .....	September 25, 2003	747–400, –400D, and –400F series airplanes.	Rain Removal/ Anti-ice Module.
233U3202–24–02, Revision 1 .....	September 25, 2003	747–400, –400D, and –400F series airplanes.	Electrical and Standby Power/Auxiliary Power Unit Start Module.
233U3203–36–01, Revision 1 .....	September 25, 2003	747–400, –400D, and –400F series airplanes.	Bleed Air Control Module.
233U3206–28–01, Revision 1 .....	September 25, 2003	747–400, –400D, and –400F series airplanes.	Engine Ignition Control/Fuel Jettison Module.
233U3208–22–02, Revision 1 .....	September 25, 2003	747–400, –400D, and –400F series airplanes.	Passenger Oxygen and Yaw Damper Module.
233U3214–26–06, Revision 1 .....	September 25, 2003	747–400, –400D, and –400F series airplanes.	Fire Control Module.
257U0002–32–04, including Appendix A.	December 19, 2001	747–400, –400D, and –400F series airplanes.	Landing Gear Actuator Control Lever Module Assembly.

**Inspection**

(h) Within 60 months after the effective date of this AD: Do a general visual inspection of the switches specified in paragraphs (h)(1), (h)(2), (h)(3), (h)(4), and (h)(5) of this AD, as applicable, to identify configuration ‘D’ master modules and the part number (P/N) of the switch, in accordance with the applicable service bulletin, except as provided by paragraph (i) of this AD.

**Note 2:** For the purposes of this AD, a general visual inspection is “A visual examination of a interior or exterior area, installation or assembly to detect obvious damage, failure or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normal available lighting conditions such as daylight, hangar lighting, flashlight or drop-light and may require removal or opening of access panels or doors. Stands, ladders or platforms may be required to gain proximity to the area being checked.”

(1) For Model 757–200, –200CB, and –200PF series airplanes: Switches identified in step 1 and step 3 of Figure 1 of Boeing Alert Service Bulletin 757–33A0044, Revision 1, dated September 25, 2003.

(2) For Model 757–300 series airplanes: Switches identified in step 1 of Figure 1 of

Boeing Alert Service Bulletin 757–33A0045, Revision 1, dated September 25, 2003.

(3) For Model 767–200, –300, and –300F series airplanes: Switches identified in step 1 of Figure 1 of Boeing Alert Service Bulletin 767–33A0087, Revision 1, dated September 25, 2003.

(4) For Model 767–400ER series airplanes: Switches identified in step 1 of Figure 1 of Boeing Alert Service Bulletin 767–33A0088, dated December 19, 2001.

(5) For all airplanes: Switches identified for the panel assemblies specified in the applicable service bulletin.

**Optional Inspection**

(i) Instead of doing the inspection required by paragraph (h) of this AD, operators may inspect the part number of the panel assemblies specified in paragraphs (i)(1) and (i)(2) of this AD, as applicable, at the time specified in paragraph (h) of this AD. If the part number is identified as a new part number in paragraph 2.E. Existing Parts Accountability or Appendix B of the applicable service bulletin, no further action is required. If the part number is not identified as a new part number, the inspection required by paragraph (h) of this AD must be done at the specified time.

(1) For switches identified in paragraphs (h)(1), (h)(2), (h)(3), and (h)(4) of this AD: P3–1 and P10 panel assemblies, as applicable.

(2) For switches identified in paragraphs (h)(5) of this AD: The panel assemblies identified in the applicable service bulletin.

**Corrective Action**

(j) If during any inspection required by paragraph (h) of this AD, any switch is found that does not have a configuration ‘D’ switch master module and no switch part number specified in paragraph (j)(1)(i) or (j)(1)(ii) of this AD is found: Before further flight, do the actions specified in either paragraph (j)(1) or (j)(2) of this AD and do the part number revision, as applicable, specified in paragraph (j)(3) of this AD.

(1) Replace the switch with a switch specified in paragraph (j)(1)(i), (j)(1)(ii), or (j)(1)(iii) of this AD, in accordance with the applicable service bulletin, except as provided by paragraph (k) of this AD.

(i) Switches having Boeing P/N S231T290–4201 through –4325 inclusive.

(ii) Switches having Korry P/N 4336731004–4201 through –4325 inclusive.

**Note 3:** One-to-one switch correlation between the existing switches and the new part number switches can be found in Korry Service Bulletin 433–33–06, dated November 7, 2001.

(iii) Switches that have a configuration ‘D’ master module.

(2) Replace the switch master module with a new configuration ‘D’ master module in accordance with the applicable service bulletin.

(3) If all switches on a panel assembly have a configuration 'D' master module or have a switch part number specified in paragraph (j)(1)(i) or (j)(1)(ii) of this AD: Revise the part number of the panel assembly; in accordance with the applicable service bulletin.

(k) If during any inspection required by paragraph (h) of this AD, a configuration 'D' switch master module is found or the switch part number is specified in paragraph (j)(1)(i) or (j)(1)(ii) of this AD on all switches for a panel assembly: Before further flight, revise the part number of the panel assembly, in accordance with the applicable service bulletin.

#### Contact the FAA/Removal and Installation Procedures

(l) If the applicable service bulletin specifies removal or installation of certain parts and does not specify removal or installation instructions: Before further flight, remove or install those parts according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, or by doing the actions specified in paragraph (l)(1) of this AD for removal or paragraph (l)(2) of this AD for installation, as applicable.

(1) Remove the module/panel assembly by doing the actions specified in paragraphs (l)(1)(i), (l)(1)(ii), and (l)(1)(iii) of this AD.

(i) Hold the module/panel assembly in position and loosen the quick-release screws.

(ii) Carefully lower the module/panel assembly from the overhead panel.

(iii) Remove the electrical connectors attached to the rear of the module/panel assembly.

(2) Install the module/panel assembly by doing the actions specified in paragraphs (l)(2)(i) and (l)(2)(ii) of this AD.

(i) Make sure that the module/panel assembly is correctly aligned, and connect the electrical connectors to the rear of the unit.

(ii) Carefully lift the module/panel assembly into position and install it with the quick-release screws.

#### Operational Tests

(m) If any panel assemblies, switches, or master modules are replaced during any action required by this AD: Before further flight, do all applicable operational tests in accordance with the applicable service bulletin, except as provided by paragraph (n) of this AD.

(n) Where paragraph 3.B.14.b.(3) of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-33A2280, Revision 1, dated September 25, 2003, specifies procedures to do a test of the engine ignition control/fuel jettison module assembly, this AD requires that operators dry-motor the engine to remove the fuel from the tail pipe before doing the procedures in paragraph 3.B.14.b.(3). All fuel must be removed from the engine tail pipe before performing the test, because during the test the engine igniter will be energized.

#### Actions Accomplished According to Previous Issue of Service Bulletins

(o) Actions accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletins 747-33A2280,

757-33A0044, 757-33A0045, or 767-33A0087, all dated December 19, 2001, are considered acceptable for compliance with the corresponding action specified in this AD, provided that the actions specified in this AD are done on the switches for the additional panel assemblies specified in Revision 1 of the service bulletins.

#### Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on August 2, 2007.

**Ali Bahrami,**

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

[FR Doc. E7-16100 Filed 8-15-07; 8:45 am]

**BILLING CODE 4910-13-P**

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 422

[Docket No. SSA-2007-0009]

RIN 0960-AG36

#### Private Printing of Prescribed Applications, Forms, and Other Publications

**AGENCY:** Social Security Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The current regulation at 20 CFR 422.527 requires a person, institution, or organization (person) to obtain approval from the Social Security Administration (SSA) prior to reproducing, duplicating, or privately printing any application or other form prescribed by the Administration. Such approval has been required whether or not the person intended to charge a fee for SSA's application(s) or other form(s). Section 1140(a)(2)(A) of the Social Security Act (the Act) prohibits a person from charging a fee to reproduce, reprint, or distribute any SSA application, form, or publication unless he/she obtains the authorization of the Commissioner of Social Security in accordance with such regulations as he may prescribe. (42 U.S.C. 1320b-10(a)(2)(A)). This proposed rule would implement section 1140(a)(2)(A) of the Act by adding SSA's publications to the pre-authorization requirement identified

in 20 CFR 422.527 and by establishing that SSA's authorization is required only when the person intends to charge a fee. The proposed rule also would prescribe the procedures a person who intends to charge a fee must follow to obtain SSA's written authorization prior to reproducing, reprinting, and/or distributing SSA's applications, forms, or publications.

**DATES:** To be sure your comments are considered, we must receive the comments on or before October 15, 2007.

**ADDRESSES:** You may give us your comments by: Internet through the Federal eRulemaking portal at <http://www.regulations.gov>; sending a telefax to (410) 966-2830; or mailing a letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235-7703. You may also deliver your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on the Federal eRulemaking portal, or you may inspect them on a regular business days by making arrangements with the contact person shown in this preamble.

**FOR FURTHER INFORMATION CONTACT:** You may contact Renee Williams, Forms Management Team, Office of Publications and Logistics Management, 1325 Annex Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401 (410) 965-4163, for information about this regulation. For information on eligibility or claiming benefits, please call our national toll-free numbers, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, SSA Online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:** The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

#### Background

The current regulation at 20 CFR 422.527 requires any person who wishes to reproduce, duplicate, or privately print any application or other form prescribed by SSA to obtain prior approval of such use from SSA. Consistent with the requirements of 20 CFR 422.527, in 1992, SSA began approving requests from the public to duplicate or privately print the Administration's applications or other forms. The requirement to obtain SSA approval applied whether or not the person intended to charge a fee.

Section 312(a) of the Social Security Independence and Program Improvement Act (SSIPA) amended the Social Security Act (the Act) and, among other things, added section 1140(a)(2)(A) to the Act. Pub. L. 103–296, Sec. 312(a) (codified as 42 U.S.C. § 1320b–10(a)(2)(A)). This section prohibits any person from charging a fee to reproduce, reprint, or distribute SSA’s official applications, forms, or publications unless the Commissioner grants the person specific written authorization in accordance with regulations which the Commissioner shall prescribe. This proposed rule would implement section 312(a) of the SSIPA by adding SSA publications to the current regulation and by providing for SSA’s prior approval of requests to reproduce, reprint, and/or distribute its applications, forms, or publications when the person intends to charge a fee. Furthermore, our proposed rule would implement section 312(a) by establishing the procedure any person who intends to charge a fee for reproducing, reprinting, or distributing SSA materials must follow to obtain SSA’s prior approval. The requirement to obtain SSA’s prior approval would apply regardless of the means the person uses to transmit the document, e.g., Internet or direct mail. This regulation would help to ensure that consumers obtain accurate and current materials and information regarding the Administration’s programs.

**Clarity of This Regulation**

Executive Order 12866, as amended, requires each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make this proposed rule easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements of the rule clearly stated?
- Does the rule contain technical language or jargon that isn’t clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve the clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

**Regulatory Procedures**

*Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and

determined that this proposed rule does not meet the criteria for a significant regulatory action under Executive Order 12866, as amended.

*Regulatory Flexibility Act*

We certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

*Paperwork Reduction Act*

The proposed rule at 20 CFR 422.527 contains information collection requirements. SSA will collect the information called for in this regulation using Form SSA–1010, Request to Reproduce, Duplicate, or Distribute SSA Forms, Applications, or Publications.

Below is the estimated public reporting burden:

	SSA–1010
Number of Respondents .....	9
Frequency of Response .....	36
Average Burden per Response (minutes) .....	8
Estimated Annual Burden (hours) .....	43

We have submitted an Information Collection Request to the Office of Management and Budget (OMB) for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted to the OMB and to the Social Security Administration at the following addresses/fax numbers:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974, E-mail address: [OIRA\\_Submissions@omb.eop.gov](mailto:OIRA_Submissions@omb.eop.gov).  
 Social Security Administration, Attn: SSA Reports Clearance Officer, Rm. 1333 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, Fax Number: 410–965–6400.

Comments can be received for up to 60 days after publication of this notice and will be most useful if received by SSA within 30 days of publication. To receive a copy of the OMB clearance request, call the SSA Reports Clearance Officer at 410–965–0454.

**List of Subjects in 20 CFR Part 422**

Administrative practice and procedure, Organization and functions

(Government agencies), Social Security, Reporting and recordkeeping requirements.

Dated: May 30, 2007.

**Michael J. Astrue,**

*Commissioner of Social Security.*

For the reasons set forth in the preamble, we propose to amend § 422.527 of subpart F of part 422 of chapter III of title 20 of the Code of Federal Regulations as follows.

**PART 422—ORGANIZATION AND PROCEDURES**

**Subpart F—[Amended]**

1. The authority citation for subpart F of part 422 is revised to read as follows:

**Authority:** Sec. 1140(a)(2)(A) of the Social Security Act, 42 U.S.C. 1320b–10(a)(2)(A) (Pub. L. 103–296, Sec. 312(a)).

2. Section 422.527 is revised to read as follows:

**§ 422.527 Private printing and modification of prescribed applications, forms, and other publications.**

Any person, institution, or organization wishing to reproduce, reprint, or distribute any application, form, or publication prescribed by the Administration must obtain prior approval if he or she intends to charge a fee. Requests for approval must be in writing and include the reason or need for the reproduction, reprinting, or distribution; the intended users of the application, form, or publication; the fee to be charged; any proposed modification; the proposed format; the type of machinery (e.g., printer, burster, mail handling), if any, for which the application, form, or publication is being designed; estimated printing quantity; estimated printing cost per thousand; estimated annual usage; and any other pertinent information required by the Administration. Forward all requests for prior approval to: Office of Publications Management, 6401 Security Boulevard, Baltimore, MD 21235–6401.

[FR Doc. E7–16140 Filed 8–15–07; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Parts 606, 607, 610, and 640

[Docket No. 2007N-0264]

#### Revisions to the Requirements Applicable to Blood, Blood Components, and Source Plasma; Companion Document to Direct Final Rule

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

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend the biologics regulations by removing, revising, or updating specific regulations applicable to blood, blood components, and Source Plasma to be more consistent with current practices in the blood industry and to remove unnecessary or outdated requirements. We are taking this action as part of our continuing effort to reduce the burden of unnecessary regulations on industry and to revise outdated regulations without diminishing public health protection. This proposed rule is a companion to the direct final rule published elsewhere in this issue of the **Federal Register**.

**DATES:** Submit written or electronic comments by October 30, 2007.

**ADDRESSES:** You may submit comments, identified by Docket No. 2007N-0264, by any of the following methods: *Electronic Submissions* Submit electronic comments in the following ways:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Agency Web site: <http://www.fda.gov/dockets/ecomments>. Follow the instructions for submitting comments on the agency Web site. *Written Submissions*

Submit written submissions in the following ways:

- FAX: 301-827-6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described

previously, in the **ADDRESSES** portion of this document under Electronic Submissions.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change to <http://www.fda.gov/ohrms/dockets/default.htm>, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.fda.gov/ohrms/dockets/default.htm> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-827-6210.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Companion Document to Direct Final Rulemaking**

This proposed rule is a companion to the direct final rule published elsewhere in this issue of the **Federal Register**. This companion proposed rule provides the procedural framework to finalize the rule in the event that the direct final rule receives any significant adverse comments and is withdrawn. The comment period for this companion proposed rule runs concurrently with the comment period for the direct final rule. Any comments received under this companion proposed rule will also be considered as comments regarding the direct final rule. We are publishing the direct final rule because the rule is noncontroversial, and we do not anticipate that it will receive any significant adverse comments.

A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants terminating a direct final rulemaking, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with

section 553 of the Administrative Procedure Act (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending a regulation change in addition to those in the rule would not be considered a significant adverse comment unless the comment states why the rule would be ineffective without additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of a significant adverse comment.

If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, we will publish a confirmation document, before the effective date of the direct final rule, confirming that the direct final rule will go into effect on February 19, 2008. Additional information about direct rulemaking procedures is set forth in a guidance published in the **Federal Register** of November 21, 1997 (62 FR 62466).

##### **II. Legal Authority**

FDA is proposing to issue this new rule under the biological products and communicable diseases provisions of the Public Health Service Act (PHS Act) (42 U.S.C. 262-264), and the drugs, devices, and general administrative provisions of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321, 331, 351-353, 355, 360, 360j, 371, and 374). Under these provisions of the PHS Act and the act, we have the authority to issue and enforce regulations designed to ensure that biological products are safe, pure, potent, and properly labeled, and to prevent the introduction, transmission, and spread of communicable disease.

##### **III. Highlights of Proposed Rule**

FDA is proposing to amend the biologics regulations by removing, revising, or updating specific regulations applicable to blood, blood components, and Source Plasma to be more consistent with current practices in the blood industry and to remove unnecessary or outdated requirements. We are also issuing these amendments as a direct final rule because we have concluded that they are noncontroversial and that there is little likelihood that there will be comments opposing the rule. Any comment recommending additional changes to these regulations will not be considered

to be a "significant adverse comment" unless the comment demonstrates that the change being made in the direct final rule represents a major departure from current regulations or accepted industry standards, or cannot be implemented without additional amendments to the regulation. Below we identify each of the changes included in this proposed rule.

We are proposing to amend 21 CFR 606.3(i) by revising the definition of "processing" to mean any procedure employed after collection and before "or after" compatibility testing of blood. The current regulation states that processing means any procedure employed after collection and before compatibility testing of blood. Because blood components occasionally are further processed after compatibility testing has been performed, we are proposing this revision to the definition.

We are proposing to amend 21 CFR 607.65(f) by removing the words "approved for Medicare reimbursement and" and replacing with the words "that is certified under the Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. 263a) and 42 CFR part 493 or has met equivalent requirements as determined by the Centers for Medicare and Medicaid Services and which are". As a result of the Clinical Laboratory Improvement Amendments of 1988 (CLIA) and the implementing regulations adopted by the Centers for Medicaid and Medicare Services (CMS), the inspection regime relied on in a 1983 Memorandum of Understanding (MOU) between FDA and the Health Care Financing Administration (HCFA), now CMS, will be modified. Under the CLIA program, clinical laboratories must be surveyed by CMS (either directly or through a State survey agency), unless they are located in a CLIA-approved State, or are accredited by a CMS-approved accreditation organization. CLIA regulations apply to clinical laboratories regardless of whether or not the laboratories seek Medicare participation. FDA is proposing to amend this regulation to make it consistent with updates in the CMS regulations.

We are proposing to amend 21 CFR 610.53(c) by revising the dating period in the table for Platelets, Red Blood Cells Deglycerolized, and Red Blood Cells Frozen. Although the current recommended dating period would remain unchanged for Platelets and Red Blood Cells Deglycerolized, we are proposing to add that a different dating period could apply for these products if so specified in the directions for use for the blood collecting, processing, and

storage system approved for such use by the Director, Center for Biologics Evaluation and Research (CBER). This change would allow for flexible dating periods depending on the type of collecting, processing, and storage system used. In addition, under Red Blood Cells Frozen, we are proposing to revise the dating period from 3 years to 10 years, or as specified in the directions for use for the blood collecting, processing, and storage system approved for such use by the Director, CBER. This change would allow for flexible dating periods depending on the type of collecting, processing, and storage system used.

Under § 640.4(h) (21 CFR 640.4(h)), we are proposing to revise the temporary storage temperature for blood that is transported from the donor center to the processing laboratory. We are proposing a range between 1 and 10° C until the blood arrives at the processing laboratory. We are proposing this revision to be consistent with 21 CFR 600.15 which allows for shipping temperatures of Whole Blood to be from 1 to 10° C, and for consistency with current industry practice. In addition, we are proposing to revise the applicability of this requirement to Whole Blood unless it is to be further processed into another component, such as Platelets or Red Blood Cells Leukocytes Reduced. The current regulation applies only to Whole Blood unless the blood is to be used as a source for Platelets. This change would clarify that processing Whole Blood into other components, in addition to Platelets, is acceptable. For Whole Blood that is to be processed into another component, we are proposing that the blood must be stored in an environment maintained at a temperature range that is specified for that component in the directions for use for the blood collecting, processing, and storage system approved for such use by the Director, CBER. We are also proposing to replace the term donor "clinic" with donor "center" for consistency with § 640.4(b) and current terminology.

We are proposing to remove and reserve § 640.21(b) (21 CFR 640.21(b)) because this provision is obsolete, as well as proposing to remove the reference to plasmapheresis in 21 CFR 640.20(b). Improvements in technology now allow establishments to collect Platelets by automated methods eliminating the need for the collection of platelets by manual plasmapheresis. Currently, establishments may collect Platelets by automated platelet-specific apheresis collection procedures. We are proposing to amend § 640.21(c) by

adding that plateletpheresis donors must meet the criteria for suitability as prescribed in 21 CFR 640.3 and 640.63(c)(6), or as described in an approved biologics license application (BLA) or an approved supplement to a BLA, and that informed consent must be obtained as prescribed in 21 CFR 640.61. This revision would clarify that registered facilities must follow the suitability requirements for plateletpheresis donors.

We are proposing to remove and reserve § 640.22(b) (21 CFR 640.22(b)) because this regulation is obsolete. As previously mentioned, improvements in technology now allow establishments to collect Platelets by automated methods, eliminating the need for the collection of platelets by plasmapheresis. Currently, establishments may collect Platelets by automated platelet-specific apheresis collection procedures. We are proposing to amend § 640.22(c) by adding that if plateletpheresis is used, the procedure for collection must be as prescribed in 21 CFR 640.62—*Medical supervision*; 21 CFR 640.64—*Collection of blood for Source Plasma*; and 21 CFR 640.65—*Plasmapheresis*, or as described in an approved biologics license application or an approved supplement to a BLA. This revision would clarify that registered facilities must follow the collection of source material requirements for plateletpheresis donors.

We are proposing to amend 21 CFR 640.24(a) to allow Platelets to be pooled under certain circumstances. That is, Platelets may be pooled if such processing is specified in the directions for use for the blood collecting, processing, and storage system for approved such use by the Director, CBER. We are proposing to amend the regulation to provide flexibility depending on the type of collecting, processing, and storage system used.

We are proposing to amend 21 CFR 640.25(b)(2) by revising the pH level from "6.0" to "6.2" for consistency with current industry practice. Studies have shown that a lower pH may adversely affect platelet function (Refs. 1 and 2).

We are proposing to amend 21 CFR 640.30(a) by revising the term "product," to "component," for consistency with current terminology of the proper name. We are also proposing to add an alternative definition of Plasma, namely, "The fluid portion of human blood intended for intravenous use which is prepared by apheresis methods as specified in the directions for use for the blood collecting, processing, and storage system including closed and open systems." We are proposing this change because

Plasma is now collected by other methods, such as apheresis collection, in addition to being collected as a byproduct of Whole Blood collection.

We are proposing to amend 21 CFR 640.32(a) to add that a different storage temperature may be used for Whole Blood intended for further manufacturing into Plasma, Fresh Frozen Plasma, or Liquid Plasma. Any different storage temperature would be specified in the directions for use for the blood collecting, processing, and storage system. This change would allow for flexible storage temperatures depending on the particular type of system used.

We are proposing to amend 21 CFR 640.34(b) by adding the phrase “or collected by an apheresis procedure” in the second sentence to clarify that this section also applies to plasma collected by apheresis procedures. We would require that fresh frozen plasma using the apheresis procedure be prepared from blood collected by a single uninterrupted venipuncture with minimal damage to, and minimal manipulation of, the donor’s tissue.

We are proposing to amend § 640.64(b) (21 CFR 640.64(b)) by removing the second sentence that states, “The amount of anticoagulant required for the quantity of blood to be collected shall be in the blood container when it is sterilized.” We are proposing to remove this sentence because of technological advances. Now, the anticoagulant does not always have to be in the collection set. The anticoagulant can be connected by a “sterile docking” procedure or attached separately, as is the case with automated apheresis collection. We are also proposing to amend § 640.64(c) by removing the specific anticoagulant solution formulas and indicating that the anticoagulant solutions must be compounded and used according to a formula approved by the Director, CBER. We have determined that it is unnecessary to provide specific formulae for anticoagulant solutions in the regulations, and that manufacturers should be able to use any anticoagulant approved by the FDA for such use by the manufacturer.

We have also revised the above regulations, where applicable, by using “must” or “is” instead of “shall,” depending on the circumstances. We have made these revisions for plain language purposes. These editorial changes are for clarity only and do not change the substance of the requirements. We will continue to make these changes in other applicable regulations as they are revised in future rulemakings. In addition, we will continue to make the change from

“product” to “component” in other applicable regulations as they are revised in future rulemakings.

#### IV. Analysis of Impacts

##### A. Review Under Executive Order 12866, the Regulatory Flexibility Act, and the Unfunded Mandates Act of 1995

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed rule amendments have no compliance costs and do not result in any new requirements, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$122 million, using the most current (2005) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1–year expenditure that would meet or exceed this amount.

##### B. Environmental Impact

The agency has determined, under 21 CFR 25.31(h), that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

##### C. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies 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. Accordingly, the agency has concluded that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

##### V. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collection of information. Therefore clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

##### VI. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

##### VII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Scott Murphy, “Platelet Storage for Transfusion,” *Seminars in Hematology*, 22(3): 165–177, July 1985.
2. L. Dumont and T. VandenBroeke, “Seven-Day Storage of Apheresis Platelets Report of an In Vitro Study,” 43: 143–150, *Transfusion*, February 2003.

##### List of Subjects

###### 21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

###### 21 CFR Part 607

Blood.

###### 21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 640

Blood, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated by the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 606, 607, 610, and 640 be amended as follows:

**PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS**

1. The authority citation for 21 CFR part 606 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

2. Section 606.3 is amended by revising paragraph (i) to read as follows:

**§ 606.3 Definitions.**

\* \* \* \* \*

(i) *Processing* means any procedure employed after collection and before or after compatibility testing of blood, and includes the identification of a unit of

donor blood, the preparation of components from such unit of donor blood, serological testing, labeling and associated recordkeeping.

\* \* \* \* \*

**PART 607—ESTABLISHMENT REGISTRATION AND PRODUCT LISTING FOR MANUFACTURERS OF HUMAN BLOOD AND BLOOD PRODUCTS**

3. The authority citation for 21 CFR part 607 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 355, 360, 371, 374, 381, 393; 42 U.S.C. 262, 264, 271.

4. Section 607.65 is amended by revising the first sentence in paragraph (f) to read as follows:

**§ 607.65 Exemptions for blood product establishments.**

\* \* \* \* \*

(f) Transfusion services which are a part of a facility that is certified under the Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. 263a) and 42 CFR part 493 or has met

equivalent requirements as determined by the Centers for Medicare and Medicaid Services and which are engaged in the compatibility testing and transfusion of blood and blood components, but which neither routinely collect nor process blood and blood components. \* \* \*

**PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS**

5. The authority citation for 21 CFR part 610 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372, 374, 381; 42 U.S.C. 216, 262, 263, 263a, 264.

6. Section 610.53 is amended in paragraph (c) in the table by revising the entries for Platelets, Red Blood Cells Deglycerolized, and Red Blood Cells Frozen to read as follows:

**§ 610.53 Dating periods for licensed biological products.**

\* \* \* \* \*

(c) \* \* \*

A	B	C	D
Product	Manufacturer's storage period 1 to 5° C (unless otherwise stated).	Manufacturer's storage period 0° C or colder (unless otherwise stated).	Dating period after leaving manufacturer's storage when stored at 2 to 8° C (unless otherwise stated)
*	*	*	* * *
Platelets	Not applicable	do	72 hours from time of collection of source blood, provided labeling recommends storage at 20 to 24° C or between 1 and 6° C, or as specified in the directions for use for the blood collecting, processing, and storage system approved for such use by the Director, Center for Biologics Evaluation and Research (CBER).
*	*	*	* * *
Red Blood Cells Deglycerolized	do	do	24 hours after removal from storage at 65° C or colder, provided labeling recommends storage between 1 and 6° C, or as specified in the directions for use for the blood collecting, processing, and storage system approved for such use by the Director, CBER.
Red Blood Cells Frozen	do	do	10 years from date of collection of source blood, provided labeling recommends storage at 65° C or colder, or as specified in the directions for use for the blood collecting, processing, and storage system approved for such use by the Director, CBER.

\* \* \* \* \*

**PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS**

7. The authority citation for 21 CFR part 640 continues to read as follows:

**Authority:** 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

8. Section 640.4 is amended by revising paragraph (h) to read as follows:

**§ 640.4 Collection of the blood.**

\* \* \* \* \*

(h) *Storage.* Whole blood must be placed in storage at a temperature between 1 and 6° C immediately after collection unless the blood is to be further processed into another component or the blood must be transported from the donor center to the

processing laboratory. If transported, the blood must be placed in temporary storage having sufficient refrigeration capacity to cool the blood continuously at a temperature range between 1 and 10° C until arrival at the processing laboratory. At the processing laboratory, the blood must be stored at a temperature between 1 and 6° C. Blood from which a component is to be prepared must be held in an environment maintained at a temperature range specified for that

component in the directions for use for the blood collecting, processing, and storage system approved for such use by the Director, CBER.

9. Section 640.20 is amended by revising paragraph (b) to read as follows:

**§ 640.20 Platelets.**

\* \* \* \* \*

(b) *Source.* The source material for Platelets is plasma which may be obtained by whole blood collection or by plateletpheresis.

10. Section 640.21 is amended by removing and reserving paragraph (b) and revising paragraph (c) to read as follows:

**§ 640.21 Suitability of donors.**

\* \* \* \* \*

(b) [Reserved]

(c) Plateletpheresis donors must meet the criteria for suitability as prescribed in §§ 640.3 and 640.63(c)(6), or as described in an approved biologics license application (BLA) or an approved supplement to a BLA. Informed consent must be obtained as prescribed in § 640.61.

11. Section 640.22 is amended by removing and reserving paragraph (b) and revising paragraph (c) to read as follows:

**§ 640.22 Collection of source material.**

\* \* \* \* \*

(b) [Reserved]

(c) If plateletpheresis is used, the procedure for collection must be as prescribed in §§ 640.62, 640.64 (except paragraph (c)), and 640.65, or as described in an approved biologics license application (BLA) or an approved supplement to a BLA.

\* \* \* \* \*

12. Section 640.24 is amended by revising paragraph (a) to read as follows:

**§ 640.24 Processing.**

(a) Separation of plasma and platelets and resuspension of the platelets must be in a closed system. Platelets must not be pooled during processing unless the platelets are pooled as specified in the directions for use for the blood collecting, processing, and storage system approved for such use by the Director, Center for Biologics Evaluation and Research.

\* \* \* \* \*

**§ 640.25 [Amended]**

13. Section 640.25 is amended in paragraph (b)(2) by removing "6.0" and adding in its place "6.2".

14. Section 640.30 is amended by revising paragraph (a) to read as follows:

**§ 640.30 Plasma.**

(a) *Proper name and definition.* The proper name of this component is Plasma. The component is defined as:

(1) The fluid portion of one unit of human blood intended for intravenous use which is collected in a closed system, stabilized against clotting, and separated from the red cells; or

(2) The fluid portion of human blood intended for intravenous use which is prepared by apheresis methods as specified in the directions for use for the blood collecting, processing, and storage system including closed and open systems.

\* \* \* \* \*

15. Section 640.32 is amended by revising paragraph (a) to read as follows:

**§ 640.32 Collection of source material.**

(a) Whole Blood must be collected, transported, and stored as prescribed in § 640.4. When whole blood is intended for Plasma, Fresh Frozen Plasma, and Liquid Plasma, until the plasma is removed, the whole blood must be maintained at a temperature between 1 and 6° C or as specified in the directions for use for the blood collecting, processing, and storage system approved for such use by the Director, Center for Biologics Evaluations and Research. Whole blood intended for Platelet Rich Plasma must be maintained as prescribed in § 640.24 until the plasma is removed. The red blood cells must be placed in storage at a temperature between 1 and 6° C immediately after the plasma is separated.

\* \* \* \* \*

16. Section 640.34 is amended by revising the second sentence in paragraph (b) to read as follows:

**§ 640.34 Processing.**

\* \* \* \* \*

(b) *Fresh Frozen Plasma.* \* \* \* The plasma must be separated from the red blood cells or collected by an apheresis procedure, and placed in a freezer within 8 hours or within the timeframe specified in the directions for use for the blood collecting, processing, and storage system, and stored at 18° C or colder.

\* \* \* \* \*

17. Section 640.64 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 640.64 Collection of blood for source plasma.**

\* \* \* \* \*

(b) *Blood containers.* Blood containers and donor sets must be pyrogen-free, sterile, and identified by lot number.

(c) *The anticoagulant solution.* The anticoagulant solution must be sterile

and pyrogen-free. Anticoagulant solutions must be compounded and used according to a formula that has been approved for the applicant by the Director, Center for Biologics Evaluation and Research.

\* \* \* \* \*

Dated: July 23, 2007.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E7-15942 Filed 8-15-07; 8:45 am]

**BILLING CODE 4160-01-S**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 53 and 301**

[REG-142039-06; REG-139268-06]

**RIN 1545-BG18; 1545-BG20**

**Excise Taxes on Prohibited Tax Shelter Transactions and Related Disclosure Requirements; Disclosure Requirements With Respect to Prohibited Tax Shelter Transactions; Requirement of Return and Time for Filing; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Corrections to notice of proposed rulemaking by cross-reference to temporary regulations and notice of proposed rulemaking.

**SUMMARY:** This document contains corrections to notice of proposed rulemaking by cross-reference to temporary regulations (REG-142039-06) and notice of proposed rulemaking (REG-139268-06) that were published in the **Federal Register** on Friday, July 6, 2007 (72 FR 36927) providing guidance under 4965 of the Internal Revenue Code and relating to entity-level and manager-level excise taxes with respect to prohibited tax shelter transactions to which tax-exempt entities are parties; §§ 6033(a)(2) and 6011(g), relating to certain disclosure obligations with respect to such transactions; and §§ 6011 and 6071, relating to the requirement of a return and time for filing with respect to section 4965 taxes.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Galina Kolomietz, (202) 622-6070, or Michael Blumenfeld, (202) 622-1124 (not toll-free numbers). For questions specifically relating to qualified pension plans, individual retirement accounts, and similar tax-favored savings arrangements, contact Dana Barry, (202) 622-6060 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Background**

The notice of proposed rulemaking by cross-reference to temporary regulations and notice of proposed rulemaking that are the subjects of this correction are under sections 6011, 6033, 6071, and 4965 of the Internal Revenue Code.

**Need for Correction**

As published, proposed regulations (REG-142039-06 and REG-139268-06) contain errors that may prove to be misleading and are in need of clarification.

**Correction of Publication**

Accordingly, the publication of the proposed regulations (REG-142039-06 and REG-139268-06) which were the subjects of FR Doc.E7-12902), is corrected as follows:

**§ 53.4965-4 [Corrected]**

1. On page 36933, column 1, § 53.4365-4(c) *Example 2.*, line 12 of the paragraph, the language “by Notice 2006-16 (2006-9 IRB 538). The” is corrected to read “by Notice 2006-16 (2006-9 IRB 538)). The”.

**§ 53.4965-8 [Corrected]**

2. On page 36936, column 3, § 53.4965-8(e), line 2 of the paragraph, the language “*periods.* If a transaction (other than a” is corrected to read “*periods.* If a transaction other than a”.

**PART 301—PROCEDURE AND ADMINISTRATION**

3. On page 36938, column 1, paragraph 8, line 2, the language “301 continues to read, part, as follows:” is corrected to read “301 continues to read, in part, as follows:”.

**§ 301.6011(g)-1 [Corrected]**

4. On page 36938, column 1, § 301.6011(g)-1(a)(2)(i), line 4 of the paragraph, the language “of its tax-exempt, tax-indifferent or tax-” is corrected to read “of its tax-exempt, tax indifferent or tax-”.

5. On page 36938, column 1, § 301.6011(g)-1(a)(2)(ii), line 3 of the paragraph, the language “exempt, tax-indifferent or tax-favored” is corrected to read “exempt, tax indifferent or tax-favored”.

**§ 301.6033-5 [Corrected]**

6. On page 36939, column 1, § 301.6033-5, line 1 of the paragraph, the language “[The text of this section is the same” is corrected to read “[The

text of the proposed amendment to § 301.6033-5 is the same”.

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. E7-16080 Filed 8-15-07; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF AGRICULTURE****Forest Service****36 CFR Part 220**

**RIN 0596-AC49**

**National Environmental Policy Act Procedures**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of proposed rule; request for comment.

**SUMMARY:** The Forest Service is proposing to move its National Environmental Policy Act (NEPA) implementing procedures from Forest Service Manual (FSM) 1950 and Forest Service Handbook (FSH) 1909.15 to 36 Code of Federal Regulations, part 220 (36 CFR 220). The Agency also proposes to clarify existing NEPA procedures and add new procedures to incorporate Council on Environmental Quality (CEQ) guidance and to better align Agency NEPA procedures with Agency decision processes.

Agency explanatory guidance interpreting CEQ and Agency procedures in regulation will remain in FSH 1909.15. Agency NEPA authority, objectives, policy, and responsibilities will remain in FSM 1950.

This rule would meet 40 CFR 1507.3 by placing Agency-implementing procedures in their proper regulatory position. Maintaining Agency explanatory guidance in directives would facilitate timely Agency responses to new ideas, new information, procedural interpretations, training needs, and editorial changes to assist field units when implementing the NEPA process. Finally, the proposed changes to the Forest Service NEPA procedures are intended to provide an environmental analysis process that fits better with modern thinking on decisionmaking, collaboration, and adaptive management to meet the intent of NEPA through establishing incremental alternative development, and adaptive management principles.

**DATES:** Comments must be received in writing by October 15, 2007.

**ADDRESSES:** Comments concerning this notice should be sent by e-mail to

*fsnepa@contentanalysisgroup.com*, or by facsimile to 801-397-2601, or via the U.S. Postal Service to: NEPA Implementation Procedures, C/O Content Analysis Group, 1584 South 500 West, Suite 201, Woods Cross, UT 84010. Electronic or facsimile comments are preferred. If comments are sent via U.S. Postal Service, please do not submit duplicate electronic or facsimile comments. Please confine comments to the proposed move of existing NEPA procedures from FSH to regulation, proposed changes to existing NEPA procedures, and proposed new NEPA procedures and explain the reasons for any recommended changes.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying.

**FOR FURTHER INFORMATION CONTACT:** Joe Carbone, Ecosystem Management Staff, (202) 205-0884, Forest Service, USDA. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m. Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:****Background and Need for the Proposed Rule**

Council on Environmental Quality (CEQ) regulations at 40 CFR 1507.3 require Federal agencies to adopt procedures as necessary to supplement CEQ's regulations implementing the National Environmental Policy Act (NEPA) and to consult with CEQ during their development and prior to publication in the **Federal Register**. The regulation further encourages agencies to publish agency explanatory guidance for CEQ's regulations and agency procedures.

In 1979, the Forest Service chose to combine its implementing procedures and explanatory guidance in Agency directives (Forest Service Manual 1950 and Forest Service Handbook 1909.15). The blending of NEPA implementing procedures with explanatory guidance requires the Forest Service to provide for public notice and comment and to consult with CEQ, as required by 40 CFR 1507.3, when amending any guidance for explaining CEQ or Agency procedures, resulting in an increased administrative burden for the Agency and CEQ.

This proposal would meet the intent of 40 CFR 1507.3 by placing Agency-implementing procedures in their proper regulatory position. Placing Agency explanatory guidance in directives would facilitate quicker

Agency responses to new ideas, new information, procedural interpretations, training needs, and editorial changes.

Since the last major update of Forest Service NEPA policy in 1992, CEQ has issued guidance the Agency wishes to incorporate in its regulation. The Agency also wants to incorporate several concepts that are currently used, but for which there are no explicit provisions in the current procedures.

Finally, this proposal would allow for better integrating of NEPA procedures and documentation into current Agency decisionmaking processes, including collaborative and incremental decisionmaking.

Almost 30 years ago, CEQ stated in its preamble to the final NEPA implementing regulations (Nov. 29, 1978, 43 FR 55978) that the Environmental Impact Statement (EIS) has “tended to become an end in itself, rather than a means to making better decisions. They noted further; “One serious problem with the administration of NEPA has been the separation between an agency’s NEPA process and its decisionmaking process. In too many cases bulky EISs have been prepared and transmitted but not used by the decision-maker.” The innovation at that time was a new requirement for a “Record of Decision” (ROD) to show “how the EIS was used in arriving at the decision.” At that time, CEQ broadened the focus from emphasis on a single document (EIS) to “emphasize the entire NEPA process, from early planning through assessment and EIS preparation through decisions and provisions for follow-up.” Today, after receiving comments on a draft EIS, agencies prepare a final EIS and document their decision in a ROD, tying the analysis from the EIS to the final agency decision.

Almost 20 years later, a CEQ report, “The National Environmental Policy Act—A Study of Its Effectiveness After Twenty-five Years” (January 1997) stated that “frequently NEPA takes too long and costs too much, agencies make decisions before hearing from the public, documents are too long and technical for many people to use” and according to Federal agency NEPA liaisons, “the EIS process is still frequently viewed as merely a compliance requirement rather than as a tool to effect better decision-making. Because of this, millions of dollars, years of time, and tons of paper have been spent on documents that have little effect on decisionmaking.” They point out “some citizens’ groups and concerned individuals view the NEPA process as largely a one-way communications track that does not use

their input effectively” and “when they are invited to a formal scoping meeting to discuss a well-developed project about which they have heard little, they may feel they have been invited too late in the process.” Finally, the report states, “some citizens complain that their time and effort spent providing good ideas are not reflected in changes to proposals.”

A 2005 National Environmental Conflict Resolution Advisory Committee (NECRAC) Report chartered by the U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation reflected further on the state of the NEPA process 27 years after CEQ published its regulations and recommended furthering the evolution of making section 102 procedural requirements less an end in themselves and more as a means to fulfill the policies set out in section 101. The report calls for improvements in the “traditional model for NEPA implementation” where “agencies announce their plans, share their analyses of potential impacts of a range of options, solicit public comment, make decisions, deal with the fallout, if any, and move on to the next project.” This model results in agency decisions “based on a collection of views and interests” but “generally not a collective decision.” The report goes on to state that while not a failure, the traditional model for NEPA “does not take full advantage of the many strengths of section 101.”

The NECRAC recognized that “Americans expect to be able to work things out and make things better over time. It is not inevitable, and it is clearly not desirable, that society’s ability to constructively address and resolve conflicts should languish or fail to adapt to changing times. The current state of environmental and natural resource decision-making is dominated by the traditional model, which too often fails to capture the breadth and quality of the values and purposes of NEPA.” The Committee called for Federal decisionmaking that “enables interested parties” to “engage more effectively in the decisionmaking process” where “interested parties are no longer merely commenters on a Federal proposal, but act as partners in defining Federal plans, programs, and projects.”

The Federal Government has placed increasing emphasis on “cooperating agencies” “cooperative conservation,” “collaboration,” and “environmental conflict resolution.” CEQ guidance and direction on cooperating agencies and environmental conflict resolution includes:

- CEQ Memorandum for Heads of Federal Agencies: Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of NEPA, July 28, 1999;

- CEQ Memorandum for Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act, January 30, 2002; and

- CEQ & OMB Memorandum on Environmental Conflict Resolution, 28 November 2005.

As a part of its continuing efforts to improve the implementation of NEPA, CEQ issued a NEPA Task Force report in 2003 entitled “Modernizing NEPA Implementation”, which included recommendations to further collaboration in the NEPA process. Other Federal efforts include Executive Order 13352 on Facilitation of Cooperative Conservation, August 26, 2004, and Forest Service continuing emphasis on collaboration in Agency planning, NEPA analysis and decisionmaking (see <http://www.partnershipresourcecenter.org/policy/> for a list of laws and Forest Service policies related to collaboration).

As the Forest Service integrates the NEPA process and EIS into its collaborative and cooperative decisionmaking, the Agency needs an option to provide EIS documentation that reflects the way this interactive and incremental decisionmaking occurs. There is a need to ensure that the EIS is used in “arriving at the decision.” In order to do this, Forest Service NEPA procedures need an option to reflect a more modern environmental analysis process that fits better with today’s collaborative processes and is used differently than the traditional NEPA documentation model currently assumes. A “one size fits all” approach to NEPA documentation has not been effective. The option of providing documentation that reflects the collaborative processes as described in these procedures will allow the Forest Service to document the analysis that best fits the particular situation. As the NECRAC Report points out, there continues to be focus on preparing NEPA documents such as an EIS or environmental assessment (EA) for litigation rather than to facilitate an informed decision process. The proposed NEPA documentation requirements are intended to enable interested parties to engage more effectively in the decisionmaking process rather than merely as

commenters on proposals and documents.

Rather than a document to be used only for a final Agency decision, the EIS could evolve as the decision evolves incrementally and be useful throughout the process. The EIS would then be used as a tool to foster a collaborative and incremental decision-making process rather than an end in itself. The record would reflect a history of how the detailed statement was used in collaborative and incremental decisionmaking and the final draft and final EISs would address a more narrowly focused Agency action for a final decision. The responsible official will make available preliminary draft and/or preliminary final EISs to keep interested parties informed as the analysis progresses. While the proposed regulation does not require a decision to be made collaboratively, it does allow the Agency to meet the procedural requirements of section 102 (2) of NEPA while fostering fulfillment of the act's purpose in section 101.

Proposed NEPA procedures to allow for better alignment of an EIS with Agency decisionmaking include: (1) Allowing proposals and alternative(s) to be explored and modified throughout the NEPA process (36 CFR 220.2 (e)), and (2) allowing the circulation of multiple preliminary detailed statement(s) without filing requirements (36 CFR 220.2(g)(2)).

The intent is to use environmental information effectively by multiple parties during the NEPA process rather than only at distinct comment periods for a draft and final impact statement. This is to allow efficient and effective use of an EIS to influence Agency decisionmaking as interested parties regularly exchange and discuss issues; differences; and necessary environmental, social, and economic effects analyses while alternatives are explored, evaluated, and modified throughout the process. The intent is to focus on a deliberative public process and appropriate disclosure outlined in section 102 of NEPA to promote the act's purposes.

The Agency is also proposing to incorporate adaptive management into its procedures. This would allow procedural flexibility to manage natural resources in light of uncertainties.

As Agency NEPA procedures are being moved from the Forest Service Directive System to the Code of Federal Regulations, the following key changes would be made:

- Clarify actions subject to NEPA by summarizing the relevant CEQ regulations in one place.

- Recognize Agency obligations to take immediate emergency responses and emphasize the options available for subsequent proposals to address actions related to the emergency when normal NEPA processes are not possible.

- Incorporate CEQ guidance language regarding what past actions are "relevant and useful" in illuminating or predicting direct and indirect effects of a proposed action when doing cumulative effects analysis.

- Clarify that an alternative(s) including the proposed action may be modified through an incremental process.

- Clarify that adaptive management strategies may be incorporated into an alternative(s), including the proposed action.

- Incorporate CEQ guidance that states EAs need only analyze the proposed action if there are no unresolved conflicts concerning alternative uses of available resources.

#### **Section-by-Section Description of Proposed Changes**

The majority of implementing procedures found in FSH 1909.15 will transfer to 36 CFR part 220 and remain intact with organizational and grammatical changes added to reflect regulatory requirements. Rule organization, additions to current procedures, and significant changes to current procedures are outlined below.

Agency explanatory guidance interpreting CEQ regulations and this rule will remain in FSH 1909.15.

CEQ guidance memos, court cases, and Agency manual and handbook direction can be reviewed at <http://www.fs.fed.us/emc/NEPA>.

**Section 220.1 Purpose and Scope.** This section outlines the intent of the rule and identifies to which authority the rule is subject.

**Section 220.2 Applicability.** This section establishes that all Agency organizational elements are subject to the rule.

**Section 220.3 Definitions.** This section incorporates from FSH 1909.15 definitions for Decision Document, Decision Memo, Decision Notice, Environmentally Preferable Alternative, and adds definitions for Adaptive Management, Preliminary Environmental Impact Statements, Reasonably Foreseeable Future Actions, and Responsible Official.

**Section 220.4 General Requirements.** This section establishes procedures that apply to NEPA documents. Paragraph (a) Sets forth which Agency actions are subject to NEPA requirements by compiling pertinent sections from CEQ regulations in one place. Paragraph (b)

clarifies expectations for Agency NEPA compliance in the case of emergencies. This section clarifies that responsible officials can take immediate actions in response to the immediate effects of emergencies necessary to mitigate harm to life, property, or important resources without complying with the procedural requirements of NEPA, the CEQ regulations, or these proposed regulations. Furthermore, responsible officials can take urgent actions to respond to the immediate effects of an emergency when there is not sufficient time to comply with the procedural requirements of NEPA, the CEQ regulations, or these proposed regulations by consulting with the Washington Office (and CEQ in cases where the response action is expected to have significant environmental impacts) about alternative arrangements. Paragraph (c) states how the NEPA process is to be integrated with Agency decisionmaking. Paragraph (d) incorporates FSH language for the Schedule of Proposed Actions. Paragraph (e) incorporates FSH language on scoping and further states that a Schedule of Proposed Actions is not intended to be used as the sole scoping mechanism for a proposed action. Paragraph (f) consolidates and amends FSH language by incorporating CEQ guidance of June 24, 2005, which clarifies what past actions should be considered in a cumulative effects analysis. Paragraph (g) establishes language on the management of classified information. Paragraph (h) establishes language on incorporation by reference; and (i) clarifies situations involving applicants.

**Section 220.5 Environmental Impact Statements (EIS).** This section incorporates language from chapter 20 of the FSH. Paragraph (a) lays the foundation for which Agency actions with significant environmental effects normally require the preparation of an EIS. Existing FSH language, establishing specific classes of actions requiring an EIS would be moved to the rule with the exception of the present category for EISs required by law or regulation. This category is not needed as there are no laws or regulations presently requiring an EIS for a specific class of actions and if there are any in the future, such laws and regulations would apply regardless of this rule. Also, the rule lists classes of actions that "normally" require an EIS rather than the current language requiring an EIS. The change is consistent with the CEQ regulations at 40 CFR 1507.3(b)(2)(i). Paragraph (b) incorporates FSH language on the development and content of a Notice of

Intent. Paragraph (c) incorporates FSH language on the cancellation of a Notice of Intent. Paragraph (d) allows for variation in content and format of an EIS as long as it is consistent with CEQ regulations. Paragraph (e) amends FSH language on the development of alternatives by establishing that:

(1) No specific number of alternatives is required or prescribed;

(2) The No Action alternative may be considered through the effects analysis by contrasting the impacts of the proposed action and an alternative(s) with the current condition and expected future condition;

(3) As the decisionmaking/analysis process progresses an alternative(s), including the proposed action, may be modified through an incremental process. This enhances the collaborative decisionmaking process by allowing the responsible official, interested and affected persons, and agencies to make appropriate adjustments to the alternative(s) as the analysis progresses; and

(4) Adaptive management strategies may be incorporated into an alternative(s), including the proposed action. Adaptive management strategies would be clearly articulated and the effects of said strategies analyzed in the document.

Paragraph (f) establishes language on the documentation of environmental effects related to incremental alternative development and adaptive management. Paragraph (g) amends FSH language on circulating and filing the draft and final

EIS by including language that allows for making multiple preliminary EIS(s) available to the public. Paragraph (h) incorporates FSH language on the distribution of the record of decision.

**Section 220.6 Categorical Exclusions.** This section incorporates implementing language found in chapter 30 of the FSH. The headings are changed to be more explanatory but the content remains the same as the current FSH. No new categorical exclusions are proposed.

**Section 220.7 Environmental Assessment (EA).** This section incorporates implementing language found in chapter 40 of the FSH. Paragraph (a) consolidates FSH language outlining when an EA shall be prepared and indicating that there is no standard document format. Paragraph (b) establishes new language outlining what information shall be included in an EA based on CEQ guidance; specifically an EA must include: a description of the need for the project; a description of the proposed action and reasonable alternative(s) that meet the proposal's need for action; a brief description of analysis to determine whether to prepare an EIS; and a list of Tribes, agencies, and persons consulted.

Consistent with the National Environmental Policy Act, Section 102(E) and 40 CFR 1501.2(c), when there are no unresolved conflicts concerning alternative uses of available resources, the Agency need only analyze the proposed action. While this

provision is not intended to limit the alternatives to be considered, it recognizes situations where there are no conflicts and therefore no compelling need for alternatives. A stand-alone No Action alternative is not required. The environmental analysis may document consideration of a no-action alternative through the effects analysis by contrasting the impacts of the proposed action and any alternatives with the current condition and expected future condition if the proposed action were not implemented. As the decisionmaking/analysis process progresses, the alternative(s), including the proposed action, may be modified through an incremental process. This enhances the collaborative decisionmaking process by allowing the responsible official, interested and affected persons, and agencies to make appropriate adjustments to the alternative(s) as the analysis progresses. The modifications made during the process should be documented and available to the public and in the record. Adaptive management strategies may be incorporated into an alternative(s), including the proposed action. Adaptive management strategies should be clearly articulated and the effects of said strategies analyzed in the document. Paragraph (c) incorporates FSH language on content for a Decision Notice. Paragraph (d) incorporates FSH language on availability of the EA, Decision Notice, and Finding of No Significant Impact.

**SIDE-BY-SIDE COMPARISON OF MAJOR CHANGES TO EXISTING PROCEDURES**

Current procedures	Proposed procedures
<b>Emergency Response [§ 220.4(b)]</b>	
Quotes CEQ regulation (1506.11) and directs Agency official to call the Washington Office for other than fire suppression.	Clarifies responsibilities for initial actions related to an emergency as well as proposals to address subsequent actions related to emergencies beyond initial response.
<b>Cumulative Effects (Past Actions) [§ 220.4(e)]</b>	
Paraphrases CEQ definition of cumulative impacts and states that consideration must be given to past actions.	References CEQ guidance explaining that a past action must be "relevant and useful" in illuminating or predicting direct and indirect effects of a proposed action. (CEQ Memo, 6/24/05).
<b>Class of Actions Normally Requiring an EIS [§ 220.5(a)]</b>	
Identifies four classes: proposed actions where an EIS is required by law or regulation; proposals to carry out or approve aerial application of chemical pesticides; proposals that would substantially alter the undeveloped character of an inventoried roadless area; and proposals for major Federal actions that may significantly affect the quality of the human environment.	Existing classes of actions requiring an EIS are now listed as "normally" requiring an EIS. Existing class for EISs required by law or regulation is no longer included as there are no specific classes of actions that are currently required by law to prepare an EIS.
<b>Format for an EIS [§ 220.5(d)]</b>	
Focusing on CEQ procedures	References CEQ procedures.

SIDE-BY-SIDE COMPARISON OF MAJOR CHANGES TO EXISTING PROCEDURES—Continued

Current procedures	Proposed procedures
<b>Alternative Development for an EIS [§ 220.5(e)]</b>	
Paraphrases CEQ regulations	Provides an option that alternative(s) and the proposed action may be modified through an incremental process that must be documented and available in the record. Alternative(s) may include an adaptive management strategy that is clearly articulated, analyzed, and pre-specified.
<b>Environmental Effects [§ 220.5(f)]</b>	
Paraphrases CEQ regulations and is prescriptive on what to consider.	References CEQ requirements and describes that the responsible official must disclose any effects considered during the incremental development of an alternative(s) or adaptive management strategy.
<b>Circulation of Preliminary EIS(s) [§ 220.5(g)(2)]</b>	
Does not specifically allow circulation of preliminary detailed statement(s).	Allows for the circulation of preliminary detailed statement(s).
<b>Content for an EA [§ 220.7(b)]</b>	
Quotes CEQ regulation at 40 CFR 1508.9(b)	Clarifies that when no unresolved conflicts concerning alternative uses of available resources exist the Agency need only analyze the proposed action. An alternative(s), including the proposed action may be modified through an incremental process. Adaptive management strategies may be incorporated into an alternative(s). (CEQ memos September 8, 2005, and December 9, 2002).

**Regulatory Certification**

*National Environmental Policy Act*

The proposed rule would move existing procedures for implementing the National Environmental Policy Act (NEPA) from Agency handbook to 36 CFR part 220 and provide additional direction by regulation. The rule would not directly impact the environment. The CEQ does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency’s final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing agency NEPA procedures does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc. v. U.S. Forest Service*, 73 F. Supp. 2d 962, 972–73 (S.D. III. 1999), aff’d 230 F.3d 947, 954–55 (7th Cir. 2000).

*Regulatory Impact*

This proposed rule has been reviewed under USDA procedures and *Executive Order 12866, Regulatory Planning and Review*. It has been determined that this

is not an economically significant action. This action to issue agency regulations will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This action will not interfere with an action taken or planned by another agency. This action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. However, because of the extensive interest in National Forest System (NFS) planning and decision-making, this proposed rule to establish Agency implementing procedures for NEPA in the Code of Federal Regulations has been designated as significant and, therefore, is subject to Office of Management and Budget review under E.O. 12866.

In accordance with the Office of Management and Budget (OMB) Circular A–4, “Regulatory Analysis,” a cost/benefit analysis was conducted. The analysis compared the costs and benefits associated with the current condition of having Agency implementing procedures combined with Agency explanatory guidance in Forest Service Handbook (FSH) and the proposed condition of having implementing direction in regulation and explanatory guidance in FSH.

Many benefits and costs associated with the proposed rule are not quantifiable. Benefits, including collaborative and participatory public involvement to more fully address public concerns, timely and focused environmental analysis, flexibility in preparation of environmental documents, and improved legal standing indicate a positive effect of the new rule.

Moving implementing NEPA procedures from the FSH to regulation is expected to provide a variety of potentially beneficial effects. The rule would meet 40 CFR 1507.3 by placing Agency-implementing procedures in their proper regulatory position. Maintaining Agency explanatory guidance in the FSH would facilitate timely Agency responses to new ideas, new information, procedural interpretations, training needs, and editorial changes to addresses and internet links to assist field units when implementing the NEPA process. Finally, the proposed changes to the Forest Service NEPA procedures are intended to provide the Forest Service specific options to meet the intent of NEPA through collaboration, the establishment of incremental alternative development, and the use of adaptive management principles.

Based on the context of this analysis, no one factor creates a significant factor, but taken together does create the

potential for visible improvements in the Agency's NEPA program.

#### *Federalism*

The Agency has considered this proposed rule under the requirements of *Executive Order 13132, Federalism*. The Agency has concluded that the proposed rule conforms with the federalism principles set out in this Executive Order; will not impose any compliance costs on the states; and will not have substantial direct effects on the states or the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further assessment of federalism implications is necessary.

#### *Consultation and Coordination With Indian Tribal Governments*

Pursuant to *Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments"*, the Agency has assessed the impact of this proposed rule on Indian Tribal governments and has determined that it does not significantly or uniquely affect communities of Indian Tribal governments. The proposed rule deals with requirements for NEPA analysis and has no direct effect regarding the occupancy and use of NFS land.

The Agency has also determined that this proposed rule does not impose substantial direct compliance costs on Indian Tribal governments or preempt Tribal law. Therefore, it has been determined that this proposed rule does not have Tribal implications requiring advance consultation with Indian Tribes.

#### *No Takings Implications*

This proposed rule has been analyzed in accordance with the principles and criteria contained in *Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights*, and it has been determined that the proposed rule does not pose the risk of a taking of protected private property.

#### *Civil Justice Reform*

This proposed rule has been reviewed under *Executive Order 12988 of February 7, 1996, "Civil Justice Reform"*. After adoption of this proposed rule, (1) All State and local laws and regulations that conflict with this rule or that would impede full implementation of this rule would be preempted; (2) no retroactive effect would be given to this proposed rule;

and (3) the proposed rule would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

#### *Unfunded Mandates*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Agency has assessed the effects of this proposed rule on State, local, and Tribal governments and the private sector. This proposed rule does not compel the expenditure of \$100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

#### *Energy Effects*

This proposed rule has been reviewed under *Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*. It has been determined that this proposed rule does not constitute a significant energy action as defined in the Executive order.

#### *Controlling Paperwork Burdens on the Public*

This proposed rule does not contain any additional record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use, and therefore, imposes no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

#### **List of Subjects in 36 CFR Part 220**

Administrative practice and procedure, Environmental policy, National forests.

Therefore, for the reasons set forth in the preamble, the Forest Service proposes to add part 220 to Title 36 of the Code of Federal Regulations as follows:

#### **PART 220—NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE**

Sec.	
220.1	Purpose and scope.
220.2	Applicability.
220.3	Definitions.
220.4	General requirements.
220.5	Environmental impact statements.
220.6	Categorical exclusions.
220.7	Environmental assessment.

**Authority:** 42 U.S.C. 4321 *et seq.*; E.O. 11514; 40 CFR parts 1500–1508; 7 CFR part 1b.

#### **§ 220.1 Purpose and Scope.**

(a) *Purpose.* This part establishes USDA Forest Service procedures for compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508).

(b) *Scope.* This part supplements, and is to be used in conjunction with, the CEQ regulations and U.S. Department of Agriculture regulations at 7 CFR part 1b.

#### **§ 220.2 Applicability.**

This part applies to all organizational elements of the USDA Forest Service.

#### **§ 220.3 Definitions.**

The following definitions supplement terms defined at 40 CFR parts 1500–1508.

*Adaptive management.* A system of management practices based on clearly identified outcomes and monitoring to determine if management actions are meeting desired outcomes; and, if not, facilitating management changes that will best ensure that outcomes are met or re-evaluated. Adaptive management recognizes that knowledge about natural resource systems is sometimes uncertain.

*Decision Document.* A record of decision, decision memo, or decision notice.

*Decision Memo.* A concise written record of the responsible official's decision to implement an action categorically excluded from documentation in an environmental impact statement or environmental assessment. A decision memo is applicable to a prescribed set of categories.

*Decision Notice.* A concise written record of the responsible official's decision to implement an action when an environmental assessment and finding of no significant impact has been prepared.

*Environmentally Preferable Alternative.* The environmentally preferable alternative is the alternative that will best promote the national environmental policy as expressed in NEPA's section 101. Ordinarily, this means the alternative that causes the least harm to the biological and physical environment; it also means the alternative which best protects and preserves historic, cultural, and natural resources.

*Preliminary Environmental Impact Statement.* An interim environmental

document that a responsible official may use to initiate discussion, solicit comments, and inform interested parties and agency personnel while proposals, alternatives, and environmental effects are explored and considered prior to filing a draft or final environmental impact statement. A preliminary environmental impact statement is an option available for responsible officials to use and is not required.

**Reasonably Foreseeable Future Actions.** Those activities not yet undertaken, for which there are existing decisions, funding, or identified proposals.

**Responsible Official.** The Agency employee who has the authority to make and implement a decision on a proposed action.

#### **§ 220.4 General Requirements.**

(a) *Proposed actions subject to the National Environmental Policy Act requirements (42 U.S.C. 4321 et seq.).* A Forest Service proposal is subject to the National Environmental Policy Act Requirements when all of the following apply:

(1) The Forest Service has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal (40 CFR 1508.23);

(2) The proposed action is subject to Forest Service control and responsibility (40 CFR 1508.18);

(3) The proposed action would cause effects on the natural and physical environment and the relationship of people with that environment (40 CFR 1508.14) that can be meaningfully evaluated (40 CFR 1508.23); and

(4) The proposed action is not statutorily exempt from the requirements of section 102(2) of the National Environmental Policy Act.

(b) *Emergency responses.* (1) If the responsible official determines that an emergency exists that makes it necessary to take emergency actions before completing a NEPA analysis and documentation in accordance with the provisions in §§ 220.5 and 220.7, then these provisions apply.

(2) The responsible official may take emergency actions necessary to control the immediate impacts of the emergency to mitigate harm to life, property, or important resources. When taking such actions, the responsible official shall take into account the probable environmental consequences of the emergency action and mitigate foreseeable adverse environmental effects to the extent practical.

(3) If the responsible official determines that proposed emergency actions beyond actions noted in

paragraph (b)(2) of this section are not likely to have significant environmental impacts, the responsible official shall document that determination in an EA and FONSI prepared in accordance with these regulations, unless categorically excluded (§ 220.6). If the responsible official finds that the nature and scope of the subsequent actions related to the emergency require taking such proposed actions prior to completing an EA and FONSI, the responsible official shall consult with the Washington Office about alternative arrangements for NEPA compliance. Consultation with the Washington Office must be coordinated through the appropriate Regional Office.

(4) If the responsible official determines that proposed emergency actions beyond actions noted in paragraph (b)(2) of this section are likely to have significant environmental impacts, then the responsible official shall consult with CEQ, through the appropriate Regional Office and the Washington Office, about alternative arrangements as soon as possible. Alternative arrangements address the proposed actions necessary to control the immediate impacts of the emergency. Other proposed actions remain subject to NEPA analysis and documentation in accordance with these regulations.

(c) *Agency Decisionmaking.* (1) Forest Service Manual 1906 outlines Agency planning and decisionmaking. Forest Service Manual 1950 identifies the responsible official for the NEPA process as the Agency employee who has the delegated authority to make and implement a decision on a proposed action.

(2) For each Forest Service proposal (§ 220.4(a)), the responsible official shall coordinate and integrate NEPA review and relevant environmental documents with Agency decisionmaking by:

(i) Completing the environmental document review before making a decision on the proposal, consistent with 40 CFR 1506.1;

(ii) Considering environmental documents, public and Agency comments (if any) on those documents, and Agency responses to those comments (40 CFR 1505.1(d));

(iii) Including environmental documents, comments, and responses as part of the administrative record (40 CFR 1505.1(c));

(iv) Considering the alternatives analyzed in environmental document(s) before rendering a decision on the proposal; and

(v) Making a decision encompassed within the range of alternatives

analyzed in the environmental documents (40 CFR 1505.1(e)).

(d) *Schedule of Proposed Actions.* (1) A Schedule of Proposed Actions shall be published quarterly to inform interested persons where to get information about proposed Forest Service actions, including the status of environmental analyses.

(2) The Schedule of Proposed Actions shall include proposals that will result in Agency decision documents (§ 220.3).

(3) Actions proposed and decided between scheduled publications shall be identified in the next schedule.

(4) The Schedule of Proposed Actions shall include a contact for additional information on Forest Service proposals and actions.

(e) *Scoping (40 CFR 1501.7).* (1) Scoping is required for all Forest Service proposed actions, including those that would appear to be categorically excluded from further analysis and documentation in an environmental assessment or an environmental impact statement (§ 220.6).

(2) Scoping shall be consistent with 40 CFR 1501.7. However, because the nature and complexity of a proposed action determine the scope and intensity of analysis, no single scoping technique is required or prescribed.

(3) The Schedule of Proposed Actions is not intended to be used as the sole scoping mechanism for a proposed action.

(f) *Cumulative Effects Considerations of Past Actions (40 CFR 1508.7).* In accordance with The Council on Environmental Quality Guidance Memorandum on Consideration of Past Actions in Cumulative Effects Analysis dated June 24, 2005, the analysis of cumulative effects begins with consideration of the direct and indirect effects on the environment that are expected or likely to result from the alternative proposals for agency action. Agencies then look for present effects of past actions that are, in the judgment of the agency, relevant and useful because they have a significant cause-and-effect relationship with the direct and indirect effects of the proposal for agency action and its alternatives. CEQ regulations do not require the consideration of the individual effects of all past actions to determine the present effects of past actions. Once the agency has identified those present effects of past actions that warrant consideration, the agency assesses the extent that the effects of the proposal for agency action or its alternatives will add to, modify, or mitigate those effects. The final analysis documents an agency assessment of the cumulative effects of the actions

considered (including past, present, and reasonable foreseeable future actions) on the affected environment. With respect to past actions, during the scoping process and subsequent preparation of the analysis, the agency must determine what information regarding past actions is useful and relevant to the required analysis of cumulative effects.

Cataloging past actions and specific information about the direct and indirect effects of their design and implementation could in some contexts be useful to predict the cumulative effects of the proposal. The CEQ regulations, however, do not require agencies to catalogue or exhaustively list and analyze all individual past actions. Simply because information about past actions may be available or obtained with reasonable effort does not mean that it is relevant and necessary to inform decisionmaking.

(g) *Classified information (40 CFR 1507.3(c))*. To the extent practicable, the responsible official shall segregate any information classified in accordance with Executive order or statute. The responsible official shall maintain the confidentiality of such information in a manner required for the information involved. Such information may not be included in any publicly disclosed documents. If such material cannot be reasonably segregated, or if segregation would leave essentially meaningless material, the responsible official must withhold the entire analysis document from the public; however, the responsible official shall otherwise prepare the analysis documentation in accordance with applicable regulations.

(h) *Incorporation by Reference*. Consistent with 40 CFR 1502.21, material may be incorporated by reference into any environmental or decision document. This material must be reasonably available to the public and its contents briefly described in the environmental or decision document.

(i) *Applicants*. The responsible official shall make policies or staff available to advise potential applicants of studies or other information foreseeably required for acceptance of their applications. For situations involving an applicant, the responsible official should initiate the NEPA process upon acceptance of an application in accordance with 36 CFR 251.54(g).

#### § 220.5 Environmental Impact Statements.

(a) *Classes of Actions Normally Requiring Environmental Impact Statements*—

(1) *Class 1: Proposals to carry out or to approve aerial application of*

*chemical pesticides on an operational basis*. Examples include:

(i) Applying chemical insecticides by helicopter on an area infested with spruce budworm to prevent serious resource loss.

(ii) Authorizing the application of herbicides by helicopter on a major utility corridor to control unwanted vegetation.

(iii) Applying herbicides by fixed-wing aircraft on an area to release trees from competing vegetation.

(2) *Class 2: Proposals that would substantially alter the undeveloped character of an inventoried roadless area of 5,000 acres or more (FSH 1909.12)*. Examples include:

(i) Constructing roads and harvesting timber in a 56,000-acre inventoried roadless area where the proposed road and harvest units impact 3,000 acres in only one part of the roadless area.

(ii) Constructing or reconstructing water reservoir facilities in a 5,000-acre unroaded area where flow regimens may be substantially altered.

(iii) Approving a plan of operations for a mine which would cause considerable surface disturbance over 700 acres in a 10,000 acre roadless area.

(3) *Class 3: Other proposals to take major Federal actions that may significantly affect the quality of the human environment*. Examples include:

(i) Approving the use of 1,500 acres of National Forest System land to construct and operate an all-season recreation resort complex.

(ii) Authorizing the Bureau of Land Management to offer the sale of leases for oil and natural gas resources from beneath 400,000 acres of National Forest System lands that have historically demonstrated a relatively high potential for discovery and development of oil and natural gas.

(iii) Approving the construction and operation of an international gas pipeline beneath a previously undeveloped 30-mile long, 1,000-foot wide corridor within an ecologically sensitive area of National Forest System land.

(b) *Notice of Intent*. A notice of intent shall be prepared and published in the **Federal Register** as soon as practicable after deciding that an environmental impact statement will be prepared. In addition to the requirements of 40 CFR 1508.22, notices of intent must include the following:

(1) Title of the responsible official(s);

(2) Any permits or licenses required to implement the proposed action and the issuing authority;

(3) Lead, joint lead, or cooperating agencies if identified; and

(4) Address(es) to which comments may be sent.

(c) *Withdrawal Notice*. A withdrawal notice must be published in the **Federal Register** if, after publication of the notice of intent or notice of availability, an environmental impact statement is no longer necessary. A withdrawal notice must refer to the date and page number of the previously published notice.

(d) *Environmental Impact Statement Format and Content*. The responsible official may use any environmental impact statement format and design as long as the statement is in accordance with 40 CFR 1502.10.

(e) *Alternative(s)*. The environmental impact statement shall document the examination of reasonable alternatives to the proposed action. Reasonable alternatives should meet the purpose and need and address one or more significant issues (40 CFR 1501.7) related to the proposed action. Since an alternative may be developed to address more than one significant issue, no specific number of alternatives is required or prescribed. In addition to the requirements at 40 CFR 1502.14 the responsible official has an option to use the following procedures to develop and analyze alternatives.

(1) The effects of the no-action alternative may be documented by contrasting the current condition and expected future condition should the proposed action not be undertaken with the impacts of the proposed action and any reasonable alternatives.

(2) To facilitate collaborative processes and sound decisions, the responsible official may collaborate with interested parties to modify the proposed action and alternative(s) under consideration prior to issuing a draft environmental impact statement. In such cases, the responsible official may consider the incremental changes as alternatives considered. The documentation of these incremental changes to a proposed action or alternatives may be incorporated by reference in accordance with 40 CFR 1502.21 rather than duplicating the description and analysis in the statement.

(3) A proposed action or alternative(s) may include adaptive management strategies allowing for adjustment of the action during implementation. If the adjustments to an action are clearly articulated and pre-specified in the description of the alternative and fully analyzed, then the action may be adjusted during implementation without the need for further analysis. Adaptive management includes a monitoring component, approved adaptive actions that may be taken, and

environmental effects analysis for the adaptive actions approved.

(f) *Environmental Effects*. In addition to the environmental consequences requirements at 40 CFR 1502.16, the EIS must include the impacts considered during any incremental alternative development process and the environmental effects of any adaptive management strategy.

(g) *Circulating and Filing Draft and Final Environmental Impact Statements*. (1) The draft and final EISs shall be filed with the Environmental Protection Agency's Office of Federal Activities in Washington, DC (40 CFR 1506.9).

(2) If preliminary drafts are prepared the responsible official shall make those multiple preliminary draft and preliminary final EISs available to those interested and affected persons and agencies for comment; however, requirements at 40 CFR 1506.10 and 40 CFR 1502.19 shall only apply to the last draft and final EIS.

(3) When the responsible official determines that an extension of the review period on a draft EIS is appropriate, notice shall be given in the same manner used for inviting comments (40 CFR 1503.1) on the draft.

(h) *Distribution of the Record of Decision*. The responsible official shall notify interested or affected parties of the availability of the record of decision as soon as practical after signing.

#### § 220.6 Categorical Exclusions.

(a) *General*. A proposed action may be categorically excluded from further analysis and documentation in an EIS or EA only if there are no extraordinary circumstances related to the proposed action and if:

(1) The proposed action is within one of the categories established by the Secretary at 7 CFR part 1b.3; or

(2) The proposed action is within a category listed in section 220.6(d)(e).

(b) *Resource conditions*. (1) Resource conditions that should be considered in determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS are:

(i) Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species.

(ii) Flood plains, wetlands, or municipal watersheds.

(iii) Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas.

(iv) Inventoried roadless areas.

(v) Research natural areas.

(vi) American Indians and Alaska Native religious or cultural sites.

(vii) Archaeological sites, or historic properties or areas.

(2) The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion (CE). It is the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions and if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.

(c) *Scoping*. If the responsible official determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA. If the responsible official determines, based on scoping, that the proposed action may have a significant environmental effect, prepare an EIS.

(d) *Categories of actions for which a project or case file and decision memo are not required*. A supporting record and a decision memo are not required, but at the discretion of the responsible official, may be prepared for the following categories:

(1) Orders issued pursuant to 36 CFR part 261—Prohibitions to provide short-term resource protection or to protect public health and safety. Examples include but are not limited to:

(i) Closing a road to protect bighorn sheep during lambing season.

(ii) Closing an area during a period of extreme fire danger.

(2) Rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions. Examples include but are not limited to:

(i) Adjusting special use or recreation fees using an existing formula.

(ii) Proposing a technical or scientific method or procedure for screening effects of emissions on air quality related values in Class I wildernesses.

(iii) Proposing a policy to defer payments on certain permits or contracts to reduce the risk of default.

(iv) Proposing changes in contract terms and conditions or terms and conditions of special use authorizations.

(v) Establishing a Service-wide process for responding to offers to exchange land and for agreeing on land values.

(vi) Establishing procedures for amending or revising forest land and resource management plans.

(3) Repair and maintenance of administrative sites. Examples include but are not limited to:

(i) Mowing lawns at a district office.

(ii) Replacing a roof or storage shed.

(iii) Painting a building.

(iv) Applying registered pesticides for rodent or vegetation control.

(4) Repair and maintenance of roads, trails, and landline boundaries. Examples include but are not limited to:

(i) Authorizing a user to grade, resurface, and clean the culverts of an established National Forest System road.

(ii) Grading a road and clearing the roadside of brush without the use of herbicides.

(iii) Resurfacing a road to its original condition.

(iv) Pruning vegetation and cleaning culverts along a trail and grooming the surface of the trail.

(v) Surveying, painting, and posting landline boundaries.

(5) Repair and maintenance of recreation sites and facilities. Examples include but are not limited to:

(i) Applying registered herbicides to control poison ivy on infested sites in a campground.

(ii) Applying registered insecticides by compressed air sprayer to control insects at a recreation site complex.

(iii) Repaving a parking lot.

(iv) Applying registered pesticides for rodent or vegetation control.

(6) Acquisition of land or interest in land. Examples include but are not limited to:

(i) Accepting the donation of lands or interests in land to the National Forest System.

(ii) Purchasing fee, conservation easement, reserved interest deed, or other interests in lands.

(7) Sale or exchange of land or interest in land and resources where resulting land uses remain essentially the same. Examples include but are not limited to:

(i) Selling or exchanging land pursuant to the Small Tracts Act.

(ii) Exchanging National Forest System lands or interests with a State agency, local government, or other non-Federal party (individual or organization) with similar resource management objectives and practices.

(iii) Authorizing the Bureau of Land Management to issue leases on producing wells when mineral rights revert to the United States from private ownership and there is no change in activity.

(iv) Exchange of administrative sites involving other than National Forest System lands.

(8) Approval, modification, or continuation of minor, short-term (1 year or less) special uses of National Forest System lands. Examples include but are not limited to:

(i) Approving, on an annual basis, the intermittent use and occupancy by a State-licensed outfitter or guide.

(ii) Approving the use of National Forest System land for apiaries.

(iii) Approving the gathering of forest products for personal use.

(9) Issuance of a new permit for up to the maximum tenure allowable under the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b) for an existing ski area when such issuance is a purely ministerial action to account for administrative changes, such as a change in ownership of ski area improvements, expiration of the current permit, or a change in the statutory authority applicable to the current permit. Examples of actions in this category include, but are not limited to:

(i) Issuing a permit to a new owner of ski area improvements within an existing ski area with no changes to the master development plan, including no changes to the facilities or activities for that ski area.

(ii) Upon expiration of a ski area permit, issuing a new permit to the holder of the previous permit where the holder is not requesting any changes to the master development plan, including changes to the facilities or activities.

(iii) Issuing a new permit under the National Forest Ski Area Permit Act of 1986 to the holder of a permit issued under the Term Permit and Organic Acts, where there are no changes in the type or scope of activities authorized and no other changes in the master development plan.

(10) Amendment to or replacement of an existing special use authorization that involves only administrative changes and does not involve changes in the authorized facilities or increase in the scope or intensity of authorized activities, or extensions to the term of authorization, when the applicant or holder is in full compliance with the terms and conditions of the special use authorization. Examples include but are not limited to:

(i) Amending a special use authorization to reflect administrative changes such as adjustment to the land use fees, inclusion of non-discretionary environmental standards or updating a special use authorization to bring it into conformance with current laws or regulations (for example, new monitoring required by water quality standards).

(ii) Issuance of a new special use authorization to reflect administrative changes such as, a change of ownership or control of previously authorized facilities or activities, or conversion of the existing special use authorization to a new type of special use authorization (for example, converting a permit to a lease or easement).

(e) *Categories of actions for which a project or case file and decision memo are required.* A supporting record is required and the decision to proceed must be documented in a decision memo for the categories of action in paragraphs (e)(1) through (e)16 of this section. As a minimum, the project or case file should include any records prepared, such as: the names of interested and affected people, groups, and agencies contacted; the determination that no extraordinary circumstances exist; a copy of the decision memo; and a list of the people notified of the decision.

(1) Construction and reconstruction of trails. Examples include but are not limited to:

(i) Constructing or reconstructing a trail to a scenic overlook.

(ii) Reconstructing an existing trail to allow use by handicapped individuals.

(2) Additional construction or reconstruction of existing telephone or utility lines in a designated corridor. Examples include but are not limited to:

(i) Replacing an underground cable trunk and adding additional phone lines.

(ii) Reconstructing a power line by replacing poles and wires.

(3) Approval, modification, or continuation of minor special uses of National Forest System lands that require less than five contiguous acres of land. Examples include but are not limited to:

(i) Approving the construction of a meteorological sampling site.

(ii) Approving the use of land for a one-time group event.

(iii) Approving the construction of temporary facilities for filming of staged or natural events or studies of natural or cultural history.

(iv) Approving the use of land for a 40-foot utility corridor that crosses one mile of a National Forest.

(v) Approving the installation of a driveway, mailbox, or other facilities incidental to use of a residence.

(vi) Approving an additional telecommunication use at a site already used for such purposes.

(vii) Approving the removal of mineral materials from an existing community pit or common-use area.

(viii) Approving the continued use of land where such use has not changed since authorized and no changes in the physical environment or facilities are proposed.

(4) Reserved.

(5) Regeneration of an area to native tree species, including site preparation that does not involve the use of herbicides or result in vegetation type conversion. Examples include but are not limited to:

(i) Planting seedlings of superior trees in a progeny test site to evaluate genetic worth.

(ii) Planting trees or mechanical seed dispersal of native tree species following a fire, flood, or landslide.

(6) Timber stand and/or wildlife habitat improvement activities that do not include the use of herbicides or do not require more than one mile of low standard road construction. Examples include but are not limited to:

(i) Girdling trees to create snags.

(ii) Thinning or brush control to improve growth or to reduce fire hazard including the opening of an existing road to a dense timber stand.

(iii) Prescribed burning to control understory hardwoods in stands of southern pine.

(iv) Prescribed burning to reduce natural fuel build-up and improve plant vigor.

(7) Modification or maintenance of stream or lake aquatic habitat improvement structures using native materials or normal practices. Examples include but are not limited to:

(i) Reconstructing a gabion with stone from a nearby source.

(ii) Adding brush to lake fish beds.

(iii) Cleaning and resurfacing a fish ladder at a hydroelectric dam.

(8) Short-term (1 year or less) mineral, energy, or geophysical investigations and their incidental support activities that may require cross-country travel by vehicles and equipment, construction of less than one mile of low standard road, or use and minor repair of existing roads. Examples include but are not limited to:

(i) Authorizing geophysical investigations which use existing roads that may require incidental repair to reach sites for drilling core holes, temperature gradient holes, or seismic shot holes.

(ii) Gathering geophysical data using shot hole, vibroseis, or surface charge methods.

(iii) Trenching to obtain evidence of mineralization.

(iv) Clearing vegetation for sight paths or from areas used for investigation or support facilities.

(v) Redesigning or rearranging surface facilities within an approved site.

(vi) Approving interim and final site restoration measures.

(vii) Approving a plan for exploration which authorizes repair of an existing road and the construction of one-third mile of temporary road; clearing vegetation from an acre of land for trenches, drill pads, or support facilities.

(9) Implementation or modification of minor management practices to improve

allotment condition or animal distribution when an allotment management plan is not yet in place. Examples include but are not limited to:

- (i) Rebuilding a fence to improve animal distribution.
- (ii) Adding a stock watering facility to an existing water line.
- (iii) Spot seeding native species of grass or applying lime to maintain forage condition.

(10) Hazardous fuels reduction activities using prescribed fire, not to exceed 4,500 acres; and mechanical methods for crushing, piling, thinning, pruning, cutting, chipping, mulching, and mowing, not to exceed 1,000 acres. Such activities:

- (i) Shall be limited to areas:
  - (A) In the wildland-urban interface; or
  - (B) Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface.
- (ii) Shall be identified through a collaborative framework as described in "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and Environment 10-Year Comprehensive Strategy Implementation Plan";
- (iii) Shall be conducted consistent with Agency and Departmental procedures and applicable land and resource management plans;
- (iv) Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness; and
- (v) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction.

(11) Post-fire rehabilitation activities, not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds), to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities:

- (i) Shall be conducted consistent with Agency and Departmental procedures and applicable land and resource management plans;
  - (ii) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and
  - (iii) Shall be completed within 3 years following a wildland fire.
- (12) Harvest of live trees not to exceed 70 acres, requiring no more than ½ mile

of temporary road construction. Do not use this category for even-aged regeneration harvest or vegetation type conversion. The proposed action may include incidental removal of trees for landings, skid trails, and road clearing. Examples include but are not limited to:

- (i) Removal of individual trees for sawlogs, specialty products, or fuelwood.
- (ii) Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.

(13) Salvage of dead and/or dying trees not to exceed 250 acres, requiring no more than ½ mile of temporary road construction. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include but are not limited to:

- (i) Harvest of a portion of a stand damaged by a wind or ice event and construction of a short temporary road to access the damaged trees.
- (ii) Harvest of fire-damaged trees.

(14) Commercial and non-commercial sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than ½ mile of temporary road construction, including removal of infested/infected trees and adjacent live uninfested/uninfected trees as determined necessary to control the spread of insects or disease. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include but are not limited to:

- (i) Felling and harvest of trees infested with southern pine beetles and immediately adjacent uninfested trees to control expanding spot infestations.
- (ii) Removal and/or destruction of infested trees affected by a new exotic insect or disease, such as emerald ash borer, Asian long horned beetle, and sudden oak death pathogen.

(15) Issuance of a new special use authorization for a new term to replace an existing or expired special use authorization when the only changes are administrative, there are not changes to the authorized facilities or increases in the scope or intensity of authorized activities, and the applicant or holder is in full compliance with the terms and conditions of the special use authorization.

(16) Land management plans, plan amendments, and plan revisions developed in accordance with 36 CFR 219.1 through 219.16 that provide broad guidance and information for project and activity decisionmaking in a National Forest System unit. Proposals for actions that approve projects and activities, or that command anyone to

refrain from undertaking projects and activities, or that grant, withhold or modify contracts, permits or other formal legal instruments, are outside the scope of this category and shall be considered separately under Forest Service NEPA procedures.

(17) Approval of a Surface Use Plan of Operations for oil and natural gas exploration and initial development activities, associated with or adjacent to a new oil and/or gas field or area, so long as the approval will not authorize activities in excess of any of the following:

- (i) One mile of new road construction.
- (ii) One mile of road reconstruction.
- (iii) Three miles of individual or co-located pipelines and/or utilities disturbance.
- (iv) Four drill sites.

(f) *Decision Memos*. The responsible official shall notify interested or affected parties of the availability of the decision memo as soon as practical after signing. While sections may be combined or rearranged in the interest of clarity and brevity, decision memos must include the following content:

- (1) A heading, which must identify:
  - (i) Title of document: Decision Memo;
  - (ii) Agency and administrative unit;
  - (iii) Title of the proposed action; and
  - (iv) Location of the proposed action, including administrative unit, county, and State.

(2) Decision to be implemented and the reasons for categorically excluding the proposed action. Including:

- (i) The category of the proposed action.
- (ii) The rationale for using the category and, if more than one category could have been used, why the specific category was chosen.
- (iii) A finding that no extraordinary circumstances exist.

(3) Any interested and affected agencies, organizations, and persons contacted.

(4) Findings required by other laws such as, but not limited to findings of consistency with the forest land and resource management plan as required by the National Forest Management Act; or a public interest determination (36 CFR 254.3(c)).

(5) The date when the responsible official intends to implement the decision and any conditions related to implementation.

(6) Whether the decision is subject to review or appeal, the applicable regulations, and when and where to file a request for review or appeal.

(7) Name, address, and phone number of a contact person who can supply further information about the decision.

(8) The responsible official's signature and date when the decision is made.

**§ 220.7 Environmental Assessment.**

(a) *Environment Assessment.* An environmental assessment (EA) shall be prepared for proposals as described in 220.4(a) that are not categorically excluded from documentation (§ 220.6) and for which the need of an EIS has not been determined (§ 220.5). An EA may be prepared in any format useful to facilitate planning, decisionmaking, and public disclosure as long as the requirements of this paragraph are met. The EA may incorporate by reference information that is reasonably available to the public.

(b) *An EA must include the following:*

(1) Need for the proposal. The EA must briefly describe the need for the project.

(2) Proposed action and alternative(s). The EA shall briefly describe the proposed action and alternative(s) that meet the need for action. No specific number of alternatives is required or prescribed.

(i) When there are no unresolved conflicts concerning alternative uses of available resources (NEPA, section 102(2)(E)), the EA need only analyze the proposed action and proceed without consideration of additional alternatives.

(ii) The EA may document consideration of a no-action alternative through the effects analysis by contrasting the impacts of the proposed action and any alternative(s) with the current condition and expected future condition if the proposed action were not implemented.

(iii) The description of the proposal and alternative(s) may include a brief description of modifications and incremental design features developed through the analysis process to develop the range of alternatives considered.

(iv) A proposed action or alternative(s) may include adaptive management strategies allowing for adjustment of the action during implementation. If the adjustments to an action are clearly articulated and pre-specified in the description of the alternative and fully analyzed, then the action may be adjusted during implementation without the need for further analysis. Adaptive management includes a monitoring component, approved adaptive actions that may be taken, and environmental effects analysis for the adaptive actions approved.

(3) Environmental Impacts of the Proposed Action and Alternative(s). The EA:

(i) Shall briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s), to determine whether to prepare either an EIS or a

finding of no significant impact (40 CFR 1508.9).

(ii) Shall disclose the environmental effects of any adaptive management strategy.

(iii) Shall describe impacts in terms of context and intensity as described in the definition of "significantly" at 40 CFR 1508.27.

(iv) May discuss the impact(s) (direct, indirect, and cumulative) of alternatives together in a comparative description or describe the impacts of each alternative separately.

(v) May incorporate by reference data, inventories, other information and analyses.

(4) Agencies and Persons Consulted.

(c) *Decision Notice.* If an EA and finding of no significant impact (40 CFR 1508.13) have been prepared, the responsible official must document a decision to proceed with an action in a decision notice unless law or regulation requires another form of decision documentation. Decision notices must document the conclusions drawn and the decision(s) made based on the supporting record, including the EA and finding of no significant impact. While sections may be combined or rearranged in the interest of clarity and brevity, decision notices must include the following content:

(1) A heading, which must identify:

- (i) Title of document,
- (ii) Agency and administrative unit,
- (iii) Title of the project,
- (iv) Location of the action, including county, and State;

(2) Decision and rationale.

(3) Brief summary of public involvement.

(4) Findings required by other laws and regulations applicable to the decision at the time of decision. The responsible official must:

- (i) Cite the supporting record or analysis document that contains the information used to support the findings;
- (ii) Incorporate by reference the finding of no significant impact if not included with the decision notice; and
- (iii) Describe how the decision is consistent with applicable laws and regulations.

(5) Implementation date. The responsible official must identify the decision's expected implementation date.

(6) Administrative review or appeal opportunities. The responsible official must state whether the decision is subject to administrative review or appeal, cite the applicable regulations, and indicate when and where to file a request for review or appeal.

(7) Contact person. The responsible official must identify the name, address,

and phone number of a contact person who can supply additional information.

(8) Signature and Date. The responsible official must sign and date the decision notice.

(d) *Notification.* The responsible official shall notify interested or affected parties of the availability of the EA, finding of no significant impact and decision notice, as soon as practicable after each document is signed.

Dated: August 8, 2007.

**Sally Collins,**

*Associate Chief.*

[FR Doc. E7-15867 Filed 8-15-07; 8:45 am]

**BILLING CODE 3410-11-P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL-8455-8]

### Louisiana: Final Authorization of State Hazardous Waste Management Program Revisions

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

**ACTION:** Proposed rule.

**SUMMARY:** The State of Louisiana has applied to EPA for Final Authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant Final Authorization to the State of Louisiana. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

**DATES:** Send your written comments by September 17, 2007.

**ADDRESSES:** Send written comments to Alima Patterson, Region 6, Regional

Authorization Coordinator (6PD-O), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Louisiana during normal business hours at the following locations: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, phone number (214) 665-6444; or Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, Louisiana 70884-2178, phone number (225) 219-3559. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the immediate final rule which is located in the Rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Alima Patterson (214) 665-8533.

**SUPPLEMENTARY INFORMATION:** For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: July 25, 2007.

**Lawrence E. Starfield,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 07-4000 Filed 8-15-07; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[MD Docket No. 07-81; FCC 07-140]

#### Assessment and Collection of Regulatory Fees for Fiscal Year 2007

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, we seek comment on proposed changes to the section 9 regulatory fee structure for Broadband Radio Service (BRS).

**DATES:** Comments are due September 17, 2007, and reply comments are due October 15, 2007.

**ADDRESSES:** You may submit comments, identified by MD Docket No. 07-81, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs>. Follow the instructions for submitting comments.
- *E-mail:* [ecfs@fcc.gov](mailto:ecfs@fcc.gov). Include MD Docket No. 07-81 in the subject line of the message.
- *Mail:* Commercial overnight mail (other than U.S. Postal Service Express

Mail, and Priority Mail), must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: (202) 418-0530 or TTY (202) 418-0432.

**FOR FURTHER INFORMATION CONTACT:**

Roland Helvajian, Office of Managing Director at (202) 418-0444 or Rob Fream, Office of Managing Director at (202) 418-0408.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking, MD Docket No. 07-81, FCC 07-140, adopted on August 2, 2007 and released on August 6, 2007. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at <http://www.fcc.gov>.

Pursuant to §§ 1.1206(b), 1.1202 and 1.1203 of the Commission's rules, CFR 1.1206(b), 1.1202, 1.1203, this is as a "permit-but-disclose" proceeding. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.<sup>1</sup> Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System ("ECFS"), (2) the Federal Government's eRulemaking

Portal, or (3) procedures for filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998), 13 FCC Rcd 11322 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

<sup>1</sup> See 47 CFR 1.1206(b)(2).

• *People with Disabilities*: To request information in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

### Summary of Further Notice of Proposed Rulemaking

1. In WT Docket No. 03-66 (the *BRS/EBS Proceeding*), the Commission sought comment on proposed changes to the regulatory fee structure for BRS.<sup>2</sup> In 2006, the Commission adopted a new regulatory fee structure for BRS (the *2006 Decision*).<sup>3</sup> Specifically, as noted in the *FY 2007 NPRM*, the Commission adopted a megahertz-based approach for BRS regulatory fees and, using a concept similar to the Commission's annual scale of regulatory fees for broadcast television stations, established in the *2006 Decision* three rate tiers based on the BTA ranking of each license.<sup>4</sup>

2. In the *FY 2007 NPRM*, we sought comment on the implementation of the new BRS fee structure. Specifically, we invited commenters to suggest a simple method of calculating BRS regulatory fees that incorporates the complexity of using both elements of the *2006 Decision*, namely, the three rate tiers, to be based on the BTA ranking of each license, and the per megahertz fee. In particular, we invited comment on a formula or method for calculating regulatory fees that incorporates the *2006 Decision* in a manner "sensitive to rural operators in less densely populated areas."<sup>5</sup> WCA, the only commenter addressing this issue, does not object to the Commission seeking

comment on the methodology to use in feeing BRS.<sup>6</sup>

3. We clarify that our questions about BRS regulatory fees in the *FY 2007 NPRM* as well in this Further Notice are to implement the *2006 Decision*, and not to revisit the three-tier approach adopted in the *2006 Decision*.

4. Briefly, under the *2006 Decision*, BRS regulatory fees will use a MHz-based formula with three tiers of fees by markets. Instead of a flat fee amount per BRS license, BRS licensees will pay a fee in one of three fee categories based on Basic Trading Areas ("BTA") ranked by population size.<sup>7</sup> The highest fee will be assessed to licenses in BTAs ranked 1-60, licenses in BTAs ranked 61-200 will have a lesser fee, and licenses for BTAs ranked 201-493 will pay the lowest fee.<sup>8</sup> Although the revised framework for assessing BRS regulatory fees was adopted in the *2006 Decision*, the implementation of this new formula will require us to specify how each of the three BTA tiers should be weighted (in terms of fee amounts) relative to the others. We propose to use a weighted average approach based on the *2006 Decision* to establish three tiers of regulatory fees using a 3:2:1 ratio, *i.e.*, 3x for Tier 1, 2x for Tier 2, and 1x for Tier 3, where x equals the base fee amount (Pro-rated FY Revenue Requirement for BRS divided by the weighted total number of BRS payment units). In adopting three fee tiers for BRS, the Commission considered that BTAs ranked 1-60 generally have a population of greater than one million, BTAs ranked 61-200 generally have population of 250,000 to one million, and BTAs ranked 201-493 have a population of less than 250,000.<sup>9</sup> The Commission also concluded that the current methodology for assessing regulatory fees for BRS is particularly onerous for rural operators.<sup>10</sup> We seek comment on our proposal and specifically invite commenters to address whether it accurately implements the tiered approach adopted in the *2006 Decision*.

5. The second element of the *2006 Decision* involves setting a fee per megahertz of licensed BRS spectrum. However, throughout the nation, BTA-by-BTA, the BRS radio service and its licensees are in the midst of a multi-year transition to a new band plan that, among other things, is modifying the amount of spectrum designated and

licensed for BRS.<sup>11</sup> Given the complexities associated with this "moving target," we tentatively conclude that the public interest would be best served by implementing the fee per megahertz approach after the BRS transition concludes nationwide. We seek comment on this tentative conclusion.

### Initial Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act ("RFA"),<sup>12</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules in this Further Notice of Proposed Rulemaking ("FNPRM"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated herein. The Commission will send a copy of the FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>13</sup> In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.<sup>14</sup>

### I. Need for, and Objectives of, the Proposed Rules

7. On April 12, 2006, the Commission adopted a number of changes in the rules governing the 2500-2690 MHz band, for the Broadband Radio Service ("BRS") and the Educational Broadband Service ("EBS").<sup>15</sup> Among other things, the Commission adopted a megahertz ("MHz")-based formula for BRS licensees with tiered regulatory fees

<sup>11</sup> The transition plan creates a process for relocating Educational Broadband Service ("EBS") licensees and BRS licensees from their current channel locations to their new spectrum blocks in the Lower Band Segment ("LBS"), Middle band Segment ("MBS"), or Upper Band Segment ("UBS"). The transition occurs by BTA and is undertaken by a proponent or multiple proponents. A proponent(s) must pay the cost of transitioning EBS licensees. The transition occurs in the following three phases: the Initiation Phase, the Transition Planning Phase, and the Transition Completion Phase.

<sup>12</sup> 5 U.S.C. 603. The RFA, 5 U.S.C. 601-612, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

<sup>13</sup> 5 U.S.C. 603(a).

<sup>14</sup> *Id.*

<sup>15</sup> See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Order on Reconsideration and Fifth Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd 5606, 5756-59, paras. 367-376 (2006) ("2006 Decision").

<sup>2</sup> See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, WT Docket No. 03-66, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14296, para. 357 ("BRS/EBS Report and Order and FNPRM").

<sup>3</sup> See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, WT Docket No. 03-66, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd 5606, 5756-59, paras. 367-376 (2006) ("2006 Decision").

<sup>4</sup> See *FY 2007 NPRM*, 22 FCC Rcd at 7978, para. 8 n.8, citing *The 2006 Decision*. The three tiers are based on three categories of Basic Trading Areas ("BTA") population rankings: BTAs 1-60, BTAs 61-200, and BTAs 201-493. For BRS licensees that are licensed by geographic licensed service area (GSA), the BTA is the geographic center point of where its GSA is located. See *The 2006 Decision*, 21 FCC Rcd at 5759, para. 376.

<sup>5</sup> *FY 2007 NPRM*, 22 FCC Rcd at 7978, para. 8.

<sup>6</sup> WCA Comments at 1-2.

<sup>7</sup> See *The 2006 Decision*, 21 FCC Rcd at 5759, para. 376.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*, 21 FCC Rcd at 5759, n. 947.

<sup>10</sup> *Id.*, 21 FCC Rcd at 5758, para. 374.

based on market size. The FNPRM seeks comment on a new regulatory fee schedule for BRS, based on the tiered structure set forth in *The 2006 Decision*.

## II. Legal Basis

8. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended (“the Act”).<sup>16</sup>

## III. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

9. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules.<sup>17</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms, “small business,” “small organization,” and “small governmental jurisdiction.”<sup>18</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>19</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>20</sup> A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>21</sup> Nationwide, as of 2002, there were approximately 1.6 million small organizations.<sup>22</sup> The term “small governmental jurisdiction” is defined as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>23</sup> The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>24</sup> Census Bureau data for

2002 indicate that there were 87,525 local governmental jurisdictions in the United States.<sup>25</sup> We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”<sup>26</sup> Thus, we estimate that most governmental jurisdictions are small. Below, we discuss the total estimated numbers of small businesses that might be affected by our regulatory fee proceeding.

10. BRS, previously referred to as Multipoint Distribution Service (“MDS”) and Multichannel Multipoint Distribution Service (“MMDS”) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the BRS and Educational Broadband Service (“EBS”) (previously referred to as the Instructional Television Fixed Service (“ITFS”).<sup>27</sup> In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.<sup>28</sup> The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (“BTAs”). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.<sup>29</sup> After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently

approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission’s rules. Some of those 440 small business licensees may be affected by this regulatory fee proceeding.

11. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$13.5 million or less in annual receipts.<sup>30</sup> According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.<sup>31</sup> Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.<sup>32</sup> Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the regulatory fee decisions we will reach in this proceeding. This SBA small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.<sup>33</sup> Thus, we estimate that at least 1,932 licensees are small businesses. EBS is a non-profit non-broadcast service. We do not collect, nor are we aware of other collections of, annual revenue data for EBS licensees.

## IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

12. With certain exceptions, the Commission’s Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 Remittance Advice, and pay a regulatory fee based on the number of licenses or call signs.<sup>34</sup> Interstate telephone service

<sup>25</sup> U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.

<sup>26</sup> We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

<sup>27</sup> Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, MM Docket No. 94–131 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

<sup>28</sup> 47 CFR 21.961(b)(1).

<sup>29</sup> 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Act. 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA’s small business size standard.

<sup>30</sup> 13 CFR 121.201, NAICS code 517510.

<sup>31</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued Nov. 2005).

<sup>32</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

<sup>33</sup> The term “small entity” within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). We do not collect annual revenue data on EBS licensees.

<sup>34</sup> The following categories are exempt from the Commission’s Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (e.g., Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code)

<sup>16</sup> 47 U.S.C. 154(i) and (j), 159, and 303(r).

<sup>17</sup> 5 U.S.C. 603(b)(3).

<sup>18</sup> 5 U.S.C. 601(6).

<sup>19</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. 632. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. 601(3).

<sup>20</sup> 15 U.S.C. 632.

<sup>21</sup> 5 U.S.C. 601(4).

<sup>22</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>23</sup> 5 U.S.C. 601(5).

<sup>24</sup> 5 U.S.C. 601(5).

providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (e.g., cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

13. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. Licensees may also file electronically to minimize the burden of submitting multiple copies of the FCC Form 159. Applicants who pay small fees in advance and provide fee information as part of their application must use FCC Form 159.

14. BRS licensees currently are subject to the Commission's regulatory fees. This FNPRM seeks comment on how to revise the current regulatory fee schedule to comply with the tiered regulatory fee schedule required by the Commission in the *BRS/EBS Second Report and Order*. As a consequence of any new regulatory fee structures adopted in this proceeding, BRS licensees may have to provide additional information than they have

entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are Educational Broadband Service (EBS) (previously referred to as instructional television fixed service licensees). Regulatory fees are automatically waived for the licensee of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive-only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than \$10.

provided in the past and the regulatory fee schedule for these licensees will be modified.

15. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.<sup>35</sup> If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.<sup>36</sup> Further, in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), Public Law 104–134, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.<sup>37</sup> Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.*, and the DCIA. Appropriate enforcement measures as well as administrative and judicial remedies may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.<sup>38</sup>

16. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.<sup>39</sup> However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

#### V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

17. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or

reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>40</sup>

18. The Commission is obligated to collect regulatory fees each fiscal year to fund the Commission's operations. For example, the Omnibus Appropriations Act for FY 2007, Public Law 109–383, requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to section 9(a) of the Act, has required the Commission to collect for FY 2007.<sup>41</sup> With respect to BRS licensees, we are required to implement a tiered regulatory fee schedule based on market size and bandwidth. For this reason, we are seeking comment on an appropriate regulatory fee schedule for these licensees, to be implemented in the next fiscal year. Such a fee structure, when adopted, should result in a lower regulatory fee burden for smaller licensees, based on the licensees' market size and bandwidth.

19. We also note that the Commission's rules provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.<sup>42</sup> However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

#### VI. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

20. None.  
21. Accordingly, *it is ordered* pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r), this Further

<sup>35</sup> 47 CFR 1.1164.

<sup>36</sup> 47 CFR 1.1164(c).

<sup>37</sup> Public Law 104–134, 110 Stat. 1321 (1996).

<sup>38</sup> 31 U.S.C. 7701(c)(2)(B).

<sup>39</sup> 47 CFR 1.1166.

<sup>40</sup> 5 U.S.C. 603.

<sup>41</sup> 47 U.S.C. 159(a).

<sup>42</sup> 47 CFR 1.1166.

Notice of Proposed Rulemaking is hereby adopted.

22. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7-15606 Filed 8-15-07; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1, 15, 73, 74, and 76

[MB Docket No. 07-148; FCC 07-128]

#### DTV Consumer Education Initiative

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to require broadcasters, multichannel video programming distributors, retailers, and manufacturers to take steps to publicize the DTV transition. These would include public service announcements by broadcasters, including notices in cable, satellite, and other MVPD bills, notices from consumer electronics manufacturers, employee training by retailers, and adjustments to the DTV.gov Partners program. Because of the importance of making the benefits of the Digital Television transition understandable and available to the public, the Commission seeks comment generally on the best means of creating a coordinated, national DTV consumer education campaign.

**DATES:** Comments for this proceeding are due on or before September 17, 2007; reply comments are due on or before October 1, 2007.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 07-148, by any of the following methods:

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

- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters,

CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact *Eloise Gore*, [Eloise.Gore@fcc.gov](mailto:Eloise.Gore@fcc.gov), or *Lyle Elder*, [Lyle.Elder@fcc.gov](mailto:Lyle.Elder@fcc.gov), of the Media Bureau, Policy Division, (202) 418-2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rulemaking (NPRM)*, FCC 07-128, adopted on July 21, 2007, and released on July 30, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

#### I. Introduction

1. In this Notice of Proposed Rulemaking, we seek public comment on several proposals relating to consumer education about the digital television ("DTV") transition. From the beginning of the transition of the nation's broadcast television service from analog to digital television service, the Commission has been committed to working with representatives from industry, public interest groups, and Congress to make the significant benefits of digital broadcasting available to the public. The digital transition will make valuable spectrum available for both public safety uses and expanded wireless competition and innovation. It will also provide consumers with better quality television picture and sound, and make new services available through multicasting. These innovations, however, are dependent upon widespread consumer

understanding of the benefits and mechanics of the transition. The Congressional decision to establish a hard deadline of February 17, 2009, for the end of full-power analog broadcasting has made consumer awareness even more critical.

2. While the Commission has been engaged in various DTV outreach efforts, we seek comment on whether there are additional steps which we can and should take. Representatives John D. Dingell, Chairman of the Committee on Energy and Commerce, and Edward J. Markey, Chairman of the Subcommittee on Telecommunications and the Internet, recently wrote to the Commission to express interest in the pace and scope of consumer education about the transition. As the Congressmen observed, "the Commission is particularly well suited to lead this effort given its existing expertise and resources." Noting the particular dangers of insufficient outreach to certain communities, they proposed a number of specific actions that they believe the Commission should take. This notice requests comment on the Commission's authority to take these actions and invites discussion of their benefits and any other measures we could take to facilitate the transition.

#### II. Discussion

3. The Letter suggests that, as a general matter, "the Commission could use its existing authority to compel industry to contribute time and resources to a coordinated, national consumer education campaign." We agree that we should take whatever steps we can to promote a coordinated, national DTV consumer education campaign and seek comment on the best means of achieving that goal. In particular, we seek comment on the potential Commission initiatives raised by Representatives Dingell and Markey. For each potential initiative, we particularly seek comment on: (1) The Commission's authority to implement the proposal; (2) the likely effectiveness of the proposal (*i.e.*, whether it would appreciably increase public awareness and understanding of the DTV transition); (3) the best methods of implementation; (4) the policy implications; and (5) constitutional concerns, if any.

##### A. Broadcaster Public Service Announcements and Other Consumer Education Requirements

4. The Letter suggests that the Commission consider using its regulatory authority to "require television broadcasters to air periodic

public service announcements and a rolling scroll about the digital transition.”

5. We propose to require television broadcast licensees to conduct on-air consumer education efforts. Such on-air efforts, we believe, are the most effective and efficient way to reach over-the-air television viewers about the coming digital switch-over. What should these announcements include, and when and how often should they run? Should we impose similar requirements on all television broadcast licensees or should there be distinctions made among licensees? Should the Commission produce an announcement or group of announcements to be used by all broadcasters, or simply provide a list of points that must be conveyed in any compliant announcement? What text or images should the rolling scroll include? Would it be constant or intermittent? On what date would it begin to run, and during which hours would it be required? Would the on-air education requirements increase as the transition date approaches? How would we track the effectiveness of the outreach efforts? Should broadcasters be required to formally assess and report on consumer awareness and preparedness, particularly in certain communities? If so, which communities warrant special attention? Should there be some mechanism for making adjustments in our requirements to reflect these ongoing assessments? Should we adopt certification requirements to ensure that broadcasters are complying? Would forfeitures for noncompliance be appropriate in this area? If so, how would they be calculated?

6. We recognize that, even if the proposals discussed herein are successful at increasing consumer awareness of the February 17, 2009 deadline, many consumers will need additional assistance in preparing themselves for that date. For instance, consumers may have specific questions about the adequacy of their existing antenna or how to install a converter box when they get it home. We seek comment on what steps the Commission or industry can and should take to ensure that consumers have access to the information and assistance they need. This could include, for instance, the establishment or further development of a dedicated consumer help-line or other targeted assistance.

#### *B. Broadcaster Consumer Education Reporting*

7. The Letter suggests that the Commission consider requiring “broadcast licensees and permittees to

report, every 90 days, their consumer education efforts, including the time, frequency, and content of public service announcements aired by each station in a market, with civil penalties for noncompliance.”

8. What level of detail should reports to the Commission on consumer education efforts contain? What additional burdens would preparing, submitting, and retaining such reports place on licensees and permittees? Could these burdens be met by small broadcasters and NCE stations? Is there an alternative to requiring the filing of such reports with the Commission? For example, could broadcasters publicly summarize and describe their consumer outreach efforts via web pages, press releases, in their public file, or otherwise? How would this approach be monitored and enforced by the Commission? What benefits would these reports create for the government and public? How should any forfeitures for noncompliance be calculated?

#### *C. MVPD Customer Bill Notices*

9. The Letter suggests that the Commission consider requiring, “as a license condition or through customer service or other consumer protection or public interest requirements, all multichannel video programming distributors (MVPDs) to insert periodic notices in customer bills that inform consumers about the digital television transition and their customers’ future viewing options, with civil penalties for noncompliance.”

10. What should these notices include and how often should they be provided? Should the Commission provide a standard text, describing the transition, to be used by MVPDs, or simply a list of points that must be conveyed? How should these notices be conveyed to customers who rely on electronic billing or automatic billing? How should the phrase “future viewing options” be interpreted? How should any forfeitures for noncompliance be calculated?

#### *D. Consumer Electronics Manufacturer Notices*

11. The Letter suggests that the Commission consider requiring “manufacturers to include information with television receivers and related devices about the transition, with civil penalties for noncompliance.”

12. This proposal would require manufacturers to include information describing the transition with any television set or related device that they import or distribute in the United States. What would it mean to “include” information? Must this information be in written form and

physically packaged with each unit shipped? Could manufacturers make arrangements with retailers to provide information, either written or verbal, at the point of sale? As for the information itself, should the Commission provide a standard text to be used by all manufacturers, or simply a list of points that must be conveyed? What devices and classes of devices should be considered “related”? For example, should the requirement apply to VCRs, DVRs, DVD players, etc? Should this requirement apply to all new “television receivers and related devices,” that are imported or distributed in the United States after the effective date of these rules?

#### *E. Consumer Electronics Retailer Training and Education Reporting*

13. The Letter suggests that the Commission consider working “with NTIA to require retailers who participate in the converter box coupon program to detail their employee training and consumer information plans and have Commission staff conduct spot inspections to ascertain whether such objectives are being met at stores.”

14. We anticipate that any requirements and enforcement efforts tied to the converter box coupon program will be developed in consultation with the National Telecommunications and Information Administration. What would be an appropriate employee training and consumer information plan? Should NTIA and the FCC establish the elements of a legally sufficient plan? Would penalties for noncompliance be appropriate in this area? If so, would they most appropriately be based on failure to report a plan, failure to follow a reported plan, failure to establish a sufficient plan, or any of these?

#### *F. DTV.gov Partner Consumer Education Reporting*

15. The Letter suggests that the Commission consider requiring “partners identified on the Commission’s digital television Web site to report their specific consumer outreach efforts.”

16. At the moment, more than 50 partners are listed at [www.dtv.gov/partners.html](http://www.dtv.gov/partners.html). What level of detail would be mandated in these reports? Would they be confidential reports to the Commission or publicly filed? Alternatively, could we provide partners with guidelines and allow them to publicly announce, via web pages, press releases, or otherwise, their consumer outreach efforts? How would this approach be monitored and

enforced by the Commission? Would reporting simply become a requirement for "partner" status, such that failure to comply leads only to removal from the "Partners" page? If other penalties would be appropriate, what would they be and what would be the basis for our authority to impose them?

### G. Other Proposals

17. We note that the Letter contains several other potential consumer education mechanisms, including broadcaster public file requirements or other public announcements, notice requirements by telecommunications carriers that receive funds under the Low Income Federal universal service program, or reporting requirements by 700 MHz auction winners. We seek comment on these and other initiatives that the Commission can and should undertake to educate the public on the DTV transition.

## III. Procedural Matters

### A. Filing Requirements

18. *Ex Parte Rules.* This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under Section 1.1206(b) of the Commission's rules, *see* 47 CFR 1.1206(b). *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

19. *Comments and Reply Comments.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998). To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer &

Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

20. Comments filed through ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message: "Get form <your e-mail address>." A sample form and directions will be sent in reply.

21. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail, should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary: Office of the Secretary, Federal Communications Commission.

22. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418-0267 (voice), (202) 418-7365 (TTY), or [bill.cline@fcc.gov](mailto:bill.cline@fcc.gov). These documents also will be available from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy and

Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554; they can also be reached by telephone, at (202) 488-5300 or (800) 378-3160; by e-mail at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com); or via their Web site at <http://www.bcpiweb.com>. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

23. *Additional Information.* For additional information on this proceeding, contact Eloise Gore, [Eloise.Gore@fcc.gov](mailto:Eloise.Gore@fcc.gov), or Lyle Elder, [Lyle.Elder@fcc.gov](mailto:Lyle.Elder@fcc.gov), of the Media Bureau, Policy Division, (202) 418-2120.

### B. Paperwork Reduction Act of 1995 Analysis

24. This document contains potential information collection requirements. The Commission will invite the general public to comment at a later date on any rules developed as a result of this proceeding that require the collection of information, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. The Commission will publish a separate notice seeking these comments from the public. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we will also seek specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

### C. Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA) the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking* ("NPRM"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided in paragraph 18 of the Order. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

*D. Need for, and Objectives of, the NPRM*

2. Our goals in this proceeding are to further educate consumers about the digital television transition; to engage all sectors of the television industry in support of that transition; and, in so doing, to facilitate the nation's transition to digital broadcast television. Specifically, the *NPRM* considers whether the Commission should compel industry to participate in a coordinated, nationwide consumer outreach campaign, and seeks comment on other potential Commission initiatives. For each of these potential initiatives, we are concerned with the Commission's authority to implement them; the best method of implementation; their likely effectiveness; any policy implications; and any constitutional concerns.

3. Despite extensive consumer outreach efforts by the Commission and others, a large percentage of the public is not sufficiently informed about the DTV transition. This is a serious concern, because the many benefits of the transition could be severely limited by insufficient consumer awareness. Therefore, this *NPRM* proposes that the Commission spearhead a nationwide consumer education campaign, and solicits comment on six specific elements that might be part of such a campaign. These elements are based on specific potential Commission initiatives raised by Congressmen Dingell and Markey. The first potential initiative would require all MVPDs to include periodic notices about the transition in customer bills, and asks how these notices should be conveyed to customers who rely on electronic or automatic billing. The second would require all manufacturers of "television receivers or related devices" to include transition information with the devices, and asks about the scope of the term "related devices." The third potential initiative would require that the Commission work with NTIA to require retailers who participate in the converter box coupon program to create employee training and consumer information plans and file them with the Commission, which would conduct spot checks to verify compliance. The fourth potential initiative would require the "Partners" listed on the Commission's DTV.gov page to report their consumer outreach efforts, and asks what level of detail would be required and whether these reports would be publicly available. The final two potential initiatives would require public service announcements ("PSAs") about the transition and filings by broadcasters detailing their consumer

education efforts. The *NPRM* asks about the content of the announcements, the frequency with which they would be shown, and whether there should be forfeitures for noncompliance. Finally, the *NPRM* seeks comment generally on other proposals for consumer education.

*E. Legal Basis*

4. The authority for the action proposed in this rulemaking is contained in Sections 1, 4(i) and (j), 309(j), 325, 336, 338, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 309(j), 325, 336, 338, 534, and 535.

*F. Description and Estimate of the Number of Small Entities To Which the NPRM Will Apply*

5. The IRFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The IRFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). The rules we may adopt as a result of the comments filed in response to this *NPRM* would affect all MVPDs (including satellite carriers and cable operators), broadcast television stations, consumer electronics ("CE") retailers, and CE manufacturers. A description of these small entities, as well as an estimate of the number of such small entities, is provided below.

6. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution services (aka multichannel video programming distributors, "MVPDs"), which includes all such companies generating \$13.5 million or less in revenue annually. This category includes, among others, cable operators, direct broadcast satellite services, fixed-satellite services, home satellite dish services, multipoint distribution services, multichannel multipoint distribution service, Instructional Television Fixed Service, local multipoint distribution service, satellite master antenna television systems, and open video systems. Those MVPDs relying primarily or exclusively on satellite transmission could also be considered to fall under the "Satellite Telecommunications" category, NAICS Code 517410. According to Census

Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than \$10 million in revenue. The amount of \$10 million was used to estimate the number of small business firms because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$12.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. We address below each service individually to provide a more precise estimate of small entities.

7. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies adopted herein.

8. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, the Commission estimates that the number of cable operators serving 677,000

subscribers or fewer, totals 1,450. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, although the Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. Therefore the Commission is unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

9. *Satellite Carriers*. The term "satellite carrier" includes entities providing services as described in 17 U.S.C. 119(d)(6) using the facilities of a satellite or satellite service licensed under Part 25 of the Commission's rules to operate in Direct Broadcast Satellite (DBS) or Fixed-Satellite Service (FSS) frequencies. As a general practice, not mandated by any regulation, DBS licensees usually own and operate their own satellite facilities as well as package the programming they offer to their subscribers. In contrast, satellite carriers using FSS facilities often lease capacity from another entity that is licensed to operate the satellite used to provide service to subscribers. These entities package their own programming and may or may not be Commission licensees themselves. In addition, a third situation may include an entity using a non-U.S. licensed satellite to provide programming to subscribers in the United States pursuant to a blanket earth station license.

10. *Direct Broadcast Satellite ("DBS") Service*. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution. This definition provides that a small entity is one with \$13.5 million or less in annual receipts. Currently, only four operators hold licenses to provide DBS service, which requires a great investment of capital for operation. All four currently offer subscription services. Two of these four DBS operators, DIRECTV and EchoStar Communications Corporation ("EchoStar"), report annual revenues that are in excess of the threshold for a small business. DirecTV is the largest DBS operator and the second largest MVPD, serving an estimated 13.04

million subscribers nationwide. EchoStar, which provides service under the brand name Dish Network, is the second largest DBS operator and the fourth largest MVPD, serving an estimated 10.12 million subscribers nationwide. A third operator, Rainbow DBS, which provides service under the brand name VOOOM, reported an estimated 25,000 subscribers. It is a subsidiary of Cablevision's Rainbow Network, which also reports annual revenues in excess of \$13.5 million, and thus does not qualify as a small business. The fourth DBS operator, Dominion Video Satellite, Inc. ("Dominion"), which provides service under the brand name Sky Angel, offers religious (Christian) programming and does not report its annual receipts or publicly disclose its subscribership numbers on an annualized basis. The Commission does not know of any source which provides this information and, thus, we have no way of confirming whether Dominion qualifies as a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, we acknowledge the possibility that there are entrants in this field that may not yet have generated \$13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

11. *Fixed-Satellite Service ("FSS")*. The FSS is a radiocommunication service between earth stations at a specified fixed point or between any fixed point within specified areas and one or more satellites. The FSS, which utilizes many earth stations that communicate with one or more space stations, may be used to provide subscription video service. Therefore, to the extent FSS frequencies are used to provide subscription services, FSS falls within the SBA-recognized definition of Cable and Other Program Distribution, which includes all such companies generating \$13.5 million or less in revenue annually. Although a number of entities are licensed in the FSS, not all such licensees use FSS frequencies to provide subscription services. Two of the DBS licensees (EchoStar and DirecTV) have indicated interest in using FSS frequencies to broadcast signals to subscribers. It is possible that other entities could similarly use FSS frequencies, although we are not aware of any entities that might do so.

12. *Private Cable Operators (PCOs) also known as Satellite Master Antenna Television (SMATV) Systems*. PCOs,

also known as SMATV systems or private communication operators, are video distribution facilities that use closed transmission paths without using any public right-of-way. PCOs acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. The SBA definition of small entities for Cable and Other Program Distribution Services includes PCOs and, thus, small entities are defined as all such companies generating \$13.5 million or less in annual receipts. Currently, there are approximately 135 members in the Independent Multi-Family Communications Council (IMCC), the trade association that represents PCOs. Individual PCOs often serve approximately 3,000–4,000 subscribers, but the larger operations serve as many as 15,000–55,000 subscribers. In total, PCOs currently serve approximately 1.1 million subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten PCOs, we believe that a substantial number of PCOs qualify as small entities.

13. *Home Satellite Dish ("HSD") Service*. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Cable and Other Program Distribution, which includes all such companies generating \$13.5 million or less in revenue annually. HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. There are approximately 30 satellites operating in the C-band, which carry over 500 channels of programming combined; approximately 350 channels are available free of charge and 150 are scrambled and require a subscription. HSD is difficult to quantify in terms of annual revenue. HSD owners have access to program

channels placed on C-band satellites by programmers for receipt and distribution by MVPDs. Commission data shows that, between June 2003 and June 2004, HSD subscribership fell from 502,191 subscribers to 335,766 subscribers, a decline of more than 33 percent, after falling more than 28 percent during the previous year. The Commission has no information regarding the annual revenue of the four C-Band distributors.

14. *Open Video Systems ("OVS")*. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of Cable and Other Program Distribution Services, which provides that a small entity is one with \$13.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises, even though OVS is one of four statutorily-recognized options for local exchange carriers (LECs) to offer video programming services. As of June 2003, BSPs served approximately 1.4 million subscribers, representing 1.49 percent of all MVPD households. Among BSPs, however, those operating under the OVS framework are in the minority, with approximately eight percent operating with an OVS certification. Serving approximately 460,000 of these subscribers, Affiliates of Residential Communications Network, Inc. ("RCN") is currently the largest BSP and 11th largest MVPD. WideOpenWest is the second largest BSP and 15th largest MVPD, with cable systems serving about 288,000 subscribers as of September 2003. The third largest BSP is Knology, which currently serves approximately 174,957 subscribers as of June 2004. RCN received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. We thus believe that at least some of the OVS operators may qualify as small entities.

15. *Television Broadcasting*. The SBA defines a television broadcasting station as a small business if such station has no more than \$13 million in annual receipts. Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound." This category description continues, "These establishments

operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,374 commercial television stations (or approximately 72 percent) have revenues of \$13.5 million or less and thus qualify as small entities under the SBA definition. Although we are using BIA's estimate for purposes of this revenue comparison, the Commission has estimated the number of licensed commercial television stations to be 1374. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. According to 13 CFR 121.103(a)(1), "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both." Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission has estimated the number of licensed NCE television stations to be 380. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

16. *Class A TV, LPTV, and TV translator stations*. The rules and policies could also apply to licensees of Class A TV stations, low power television (LPTV) stations, and TV translator stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than \$13 million in annual receipts.

17. Currently, there are approximately 567 licensed Class A stations, 2,227 licensed LPTV stations, 4,518 licensed

TV translators and 11 TV booster stations. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than \$13 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

18. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

19. *Retailers*. The proposals in this NPRM would apply only to retailers that choose to participate in the converter box coupon program. The list of retailers who will be participating will not be finalized until March 2008, but they will likely include dedicated consumer electronics stores and Internet-based stores.

20. *Radio, Television, and Other Electronics Stores*. The Census Bureau defines this economic census category as follows: "This U.S. industry comprises: (1) Establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products; (2) establishments specializing in retailing a single line of consumer-type electronic products (except computers); or (3) establishments primarily engaged in retailing these new electronic products in combination with repair services." The SBA has developed a

small business size standard for Radio, Television, and Other Electronics Stores, which is: All such firms having \$8 million or less in annual receipts. According to Census Bureau data for 2002, there were 10,380 firms in this category that operated for the entire year. Of this total, 10,080 firms had annual sales of under \$5 million, and 177 firms had sales of \$5 million or more but less than \$10 million. An additional 123 firms had annual sales of \$10 million or more. As a measure of small business prevalence, the data on annual sales are roughly equivalent to what one would expect from data on annual receipts. Thus, the majority of firms in this category can be considered small.

21. *Electronic Shopping.* According to the Census Bureau, this economic census category "comprises establishments engaged in retailing all types of merchandise using the Internet." The SBA has developed a small business size standard for Electronic Shopping, which is: All such entities having \$23 million or less in annual receipts. According to Census Bureau data for 2002, there were 4,959 firms in this category that operated for the entire year. Of this total, 4,742 firms had annual sales of under \$10 million, and an additional 133 had sales of \$10 million to \$24,999,999. Thus, the majority of firms in this category can be considered small.

22. *Electronics Equipment Manufacturers.* Rules adopted in this proceeding could apply to manufacturers of television receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment as well as radio and television broadcasting and wireless communications equipment. These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer

equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities. The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information. The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

*G. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

23. The *Notice of Proposed Rulemaking* seeks comment on a range of potential changes to existing reporting, recordkeeping or other compliance requirements. If adopted, these proposals would require: MVPDs to modify their customer billing notices; broadcasters to make public service announcements and report their efforts; CE retailers to prepare and report transition plans and subject themselves to audit; CE manufacturers to provide customer notices about the transition;

and DTV.gov Partners to report their consumer education efforts.

*H. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered*

24. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. In this instance, we seek comment on the specific proposals outlined by Congressmen Dingell and Markey, but we are particularly interested in comments regarding alternatives that would reduce any burdens from these proposed rules. We urge small entities to provide data on the impact of the questions raised in the *Notice of Proposed Rulemaking* and how we might tailor our rules to address and minimize the impact on these small businesses. We expect that whichever alternatives are chosen, the Commission will seek to minimize any adverse effects on small entities.

*I. Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals*

25. None.

**IV. Ordering Clauses**

26. *It is ordered* that, pursuant to authority contained in Sections 4(i), 303(r), 335, and 336, of the Communications Act of 1934, as amended, 47 U.S.C. 54(i), 303(r), 335, and 336, this *Notice of Proposed Rulemaking* is hereby adopted.

27. *It is further ordered* that the Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Jacqueline R. Coles,**  
*Associate Secretary.*

[FR Doc. E7-16149 Filed 8-15-07; 8:45 am]

**BILLING CODE 6712-01-P**

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****49 CFR Part 571****[Docket No. NHTSA 2007-27818]****Federal Motor Vehicle Safety Standards; Occupant Crash Protection****AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.**ACTION:** Denial of petition for expedited rulemaking.

**SUMMARY:** This document denies a petition for expedited rulemaking submitted by the Smart Vision group to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant Crash Protection." The petition requested that the agency add a test procedure for the Dynamic Automatic Suppression System (DASS) option under the advanced air bag options in accordance with Part 552, Subpart B.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues: David Sutula, Office of Crashworthiness Standards, at (202) 366-3273. Fax: (202) 493-2739.

For legal issues: Edward Glancy, Office of Chief Counsel, at (202) 366-2992. Fax: (202) 366-3820.

You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:****I. The Petition**

On November 24, 2004, NHTSA received a petition for expedited rulemaking to establish a Dynamic Automatic Suppression System (DASS) test procedure, in accordance with 49 CFR Part 552, Subpart B. The petitioners, a consortium of four companies called Smart Vision, included: TRW, International Electronics Engineering (IEE), Siemens VDO and Bosch. The petitioners requested that the agency expedite adoption of their proposed test procedure for passenger side DASSs under S28.4 of FMVSS No. 208, "Occupant crash protection." The petition further requested that the agency, pursuant to 49 CFR Part 552.13(g), establish an effective date for the procedure nine months after the submission date of the petition.

**A. Initial Agency Response**

On December 20, 2004,<sup>1</sup> NHTSA responded in a letter to the petitioners that they had failed to provide certain

information required for the agency to consider the petition submission to be complete. On February 15, 2005, TRW and IEE submitted the requested information, submitted a revised test procedure proposal for the agency to consider, and requested that their petitions be considered independently. TRW and IEE also informed the agency that Siemens VDO and Bosch elected not to submit the required information to complete their petitions, and were no longer participating in the Smart Vision group.

**B. Proposed Test Procedure<sup>2</sup>**

The test procedure proposed by the petitioners uses a topographical representation of a Hybrid III 3-year-old test dummy<sup>3</sup> attached to what the petitioners describe as a thruster device. In this notice we will refer to the representation of the Hybrid III dummy as the test manikin. The thruster consists of a base plate that is placed in the right front passenger seat of the test vehicle, leveled, and secured to minimize movement. A motor is used to propel the test manikin linearly along a guided path in the base plate. The test manikin is then moved toward the automatic suppression zone (ASZ) along a horizontal, longitudinal path at a constant acceleration of 0.5 g until the DASS generates a signal indicating that the suppression zone has been breached. Three test sequences are initiated to determine a median suppression distance. Upon determination of the median suppression distance, the test manikin is moved horizontally rearward of the instrument panel (IP) by the median suppression distance and the passenger air bag deployed. Compliance is determined by measuring injury criteria in accordance with FMVSS No. 208 S21.5.

**II. Background**

FMVSS No. 208 specifies performance requirements for the protection of vehicle occupants in crashes (49 CFR 571.208). On May 12, 2000,<sup>4</sup> we published an interim final rule that amended FMVSS No. 208 to require advanced air bags (Advanced Air Bag Rule). Among other things, the rule addressed the risk of serious air bag-induced injuries, particularly for small women and young children, and

amended FMVSS No. 208 to require that future air bags be designed to minimize such risk. The Advanced Air Bag Rule established a rigid barrier crash test with a 5th percentile adult female test dummy, as well as several low risk deployment and static suppression tests using a range of dummy sizes and a number of specified child restraint systems (CRSs).

The Advanced Air Bag Rule allows for passenger side compliance through any of three different options: Low Risk Deployment (LRD), which defines a reduced deployment strength for occupants in close proximity to the air bag; suppression when a child is present, or DASS, which senses the location of an occupant with respect to the air bag, interprets the occupant characteristics and movement, and determines whether or not to allow the air bag to deploy. Performance tests for determining compliance with the LRD and suppression (presence) options were specified in the Advanced Air Bag Rule. A performance test for determining compliance with the DASS option was not specified in the rule because at that time it was not known what technologies would be used to attempt to meet the DASS option.

Accordingly, we established very general performance requirements for DASS and a special petition and expedited rulemaking process (49 CFR Part 552 Subpart B) for consideration of procedures for testing advanced air bag systems incorporating DASS. Among the components, this expedited rulemaking process: (1) Provides a definition for DASSs, (2) Requires the petitioner to submit specific information about the operation of the DASS and a proposed test method and supporting data and analyses to complete a rulemaking, (3) Allows the agency to request additional information if the petition fails to provide any of the information, and (4) Allows the agency to request additional supporting information and a DASS demonstration at any time during consideration of the petition.

After evaluating the petition, the agency would publish either a notice proposing to adopt the test procedure (or adopt the test procedure with changes or additions), or publish a notice denying the petition. After considering those comments on a proposed procedure, we would then decide whether the procedure should become a final rule and be added to Standard No. 208. We noted in the Advanced Air Bag Rule that we intended to minimize the number of different test procedures that are adopted for DASS and to ensure

<sup>2</sup> A copy of the proposed procedure can be found in the Docket for this notice.

<sup>3</sup> See 49 CFR part 572 Subpart P. At the option of the manufacturer, the DASS may be certified for 6-year-old compliance only by using the Hybrid III 6-year-old test dummy in 49 CFR part 572 Subpart N in place of the Hybrid III 3-year-old test dummy.

<sup>4</sup> See 65 FR 30680, May 12, 2000.

<sup>1</sup> See Docket for this letter.

ultimately that similar DASS are tested in the same way.

### III. Agency Request for Additional Information

In June 2005, the agency responded in a letter to the petitioners informing them that their petitions had been determined to be complete, would be considered simultaneously to the extent possible, and requested additional information and supporting data. The agency believed that the requested information was necessary to fully evaluate the petitions and to be able to publish a notice of proposed rulemaking (NPRM) for a DASS test procedure. The agency request for information addressed three main areas of concern: Dummy acceleration and kinematics, occupant recognition, and system latency.

#### A. Information Request Topics

*Dummy Acceleration and Kinematics:* The agency noted that the petition's choice of a constant horizontal acceleration in the vehicle longitudinal direction and the magnitude of the selected acceleration were based on the exploration of pre-impact braking as the only pre-crash vehicle maneuver. The agency asked about the likelihood that occupants may have more complex motion than that simulated by the proposed test procedure and how pre-crash maneuvering or long-duration, low-acceleration pre-crash events might influence the occupant's motion relative to the vehicle interior. The agency further believes that some crash events have a sufficiently long duration, allowing for significant occupant movement prior to the main deceleration event resulting in an air bag deployment decision. This was supported by event data recorder output collected from NHTSA's Special Crash Investigation<sup>5</sup> program on vehicles with Advanced Occupant Protection Systems.

*Occupant Recognition:* Section S14(b)(1) of 49 CFR Part 552 requires the petitioner to provide a description of the logic used by DASS to discriminate between an occupant's torso or head entering the ASZ as compared to an occupant's hand or arm, and whether and how the DASS discriminates between an occupant entering the ASZ and an inanimate object such as a newspaper or ball. The petitioner submitted a description of the DASS logic. However the proposed performance test used a single

topographical representation of the Hybrid III 3-year-old test dummy. The agency believes that this manikin could appear to the DASS to be an occupant, but many other real world occupants could have significantly different optical characteristics. The agency requested additional information regarding any testing that had been performed verifying the system logic, and inquired if the proposed procedure should include a metric that verifies the system's occupant discrimination logic.

*System Latency:* Because there is a short delay, due to information processing and communication speed, there would be a difference between where the DASS "thinks" the occupant is located at any time and where the occupant is truly located. The agency requested additional information regarding DASS strategies for counteracting system latency errors and inquired if the proposed test procedure should include a metric with differing acceleration profiles to assess the impact of system latency on DASS performance.

#### B. Petitioner Response

On November 30, 2005, the petitioners responded to the agency request for additional information. The petitioners provided additional information where possible, proposed that the agency issue a Notice of Proposed Rulemaking (NPRM) to help identify recommended solutions to areas where the petitioners could not provide answers to the agency's request for information, and requested an implementation date for the proposed test procedure of September 1, 2006.

*Dummy Acceleration and Kinematics:* The petitioners agreed that more complex occupant motion is possible during pre-crash maneuvering. However, the petitioners commented that the proposed test procedure was designed to capture the most common pre-crash movement in a repeatable manner and that it would not be possible to design a certification test procedure for "any" imaginable movement. The petitioners further commented that a test procedure with a pivoting movement would require development of a completely new tester and would not offer any further quality to the certification procedure. The petitioners commented that they had data demonstrating the viability of the proposed 0.5g acceleration profile in the proposed test procedure, but that they did not have supporting data for increasing the acceleration for the certification test or for increasing the duration of the test.

*Occupant Recognition:* The petitioners commented that a separate test of the logic should not be part of the certification test procedure. Rather, the complete DASS should be tested and the logic verified through a pass or fail result of a test of the system. The petitioners acknowledged that occupant recognition logic had been individually tested through "due-care" testing, and offered to review that data with the agency separately and confidentially.

*System Latency:* The petitioners commented that they were not aware of any well-founded data or measurements that would allow defining a worst case acceleration. Rather, it was suggested that certification testing would cover a significant portion of real-life situations. The petitioners further commented that a DASS, when incorporated into a vehicle, would provide for any expected system latency by extending the ASZ further into the occupant compartment. It was noted that a DASS could be tailored to provide several suppression zones depending on the air bag module and the occupant characteristics.

### IV. Ex Parte Meeting With Smart Vision

On September 25, 2006, the agency met with the petitioners to discuss their November 30, 2005 response. The agency informed the petitioners that in its review of the petitioner response, there remained several areas of concern. Specifically, the agency expressed concern that the petitioners did not provide any data to indicate that a DASS would operate outside of the test dummy scenario, and it is unclear what occupant accelerations and kinematics should be considered in the test procedure. It was further explained that it was unclear what the deployment risk would be with an occupant in the ASZ due to system latency, that the proposed test procedure was not fully completed and would need to be refined through the NPRM process, and that the requested implementation date of September 2006 was not realistic considering the questions that remained.

The agency also proposed a collaborative research program with the petitioners to develop data to support the proposed test procedure and allay the agency concerns. A key element of the proposed research was availability of a DASS-equipped vehicle on which to perform the required research. In separate correspondence subsequent to the September 25, 2006 meeting, the petitioners declined to participate in a cooperative research program citing a lack of availability of a DASS-equipped test vehicle and a shift in market

<sup>5</sup> Cases can be viewed on the agency's Web site at [www.nass.nhtsa.dot.gov/BIN/logon.exe/airmislogon](http://www.nass.nhtsa.dot.gov/BIN/logon.exe/airmislogon). Within the case type menu, select Advanced Occupant Protection Systems—AOPS.

demand away from advanced occupant detection systems, such as a DASS.

## V. Conclusion

The DASS option is intended to provide manufacturers the flexibility of deploying an air bag when such a deployment would not be harmful and may be potentially beneficial, as opposed to suppressing the air bag or relying on a low risk deployment. However, central to this idea is the availability of a test procedure that accurately describes the “real world” conditions to delineate DASS performance, regardless of the basic technology used within the suppression system. While there may be great potential benefits through use of occupant protection systems such as a DASS, there must also be robust and repeatable test protocols to assess such systems. The agency believes that the Smart Vision proposed test procedure was simply not sufficient for the agency to expedite a rulemaking that would establish the benchmark for assessment of future DASSs.

The agency continues to have interest in obtaining test data that would support development of a test procedure to assess DASSs. We welcome developers of DASS safety systems to approach the agency with proposals for collaborative research for such test procedure development. Specifically, the agency is interested in research that would address the areas of concern expressed above.

In accordance with 49 CFR part 552, this completes the agency’s review of the petition.

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30162; delegation of authority at 49 CFR 1.50.

Dated: August 10, 2007.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. E7-16139 Filed 8-15-07; 8:45 am]

**BILLING CODE 4910-59-P**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### **Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List *Astragalus anserinus* (Goose Creek milk-vetch) as Threatened or Endangered**

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

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list *Astragalus anserinus* (Goose Creek milk-vetch) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing *A. anserinus* may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the species, and we will issue a 12-month finding to determine if listing the species is warranted. To ensure that the status review is comprehensive, we are soliciting information and data regarding this species.

**DATES:** The finding announced in this document was made on August 16, 2007. To be considered in the 12-month finding for this petition, data, information, and comments must be submitted to us by October 15, 2007.

**ADDRESSES:** The complete supporting file for this finding is available for public inspection, by appointment, during normal business hours at the Snake River Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1387 S. Vinnell Way, Room 368, Boise, ID 83709. Please submit any new information, materials, comments, or questions concerning this species or this finding to the above address, or via electronic mail (e-mail) at [fw1srbocoment@fws.gov](mailto:fw1srbocoment@fws.gov).

**FOR FURTHER INFORMATION CONTACT:** Jeff Foss, Field Supervisor, Snake River Fish and Wildlife Office (see **ADDRESSES**); by telephone at 208-378-5243; or by facsimile at 208-378-5262. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339. Please include “*Astragalus anserinus* scientific information” in the subject line for faxes and e-mails.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Information Solicited**

When we make a finding that substantial information is presented to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on *Astragalus anserinus*. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry,

agricultural, or any other interested parties concerning the status of *A. anserinus*. We are seeking information regarding the species’ historical and current status and distribution, its biology and ecology, ongoing conservation measures for the species and its habitat, and threats to the species and its habitat.

We will base our 12-month finding on a review of the best scientific and commercial information available, including all information received during the public comment period. If you wish to provide comments, you may submit your comments and materials concerning this finding to the Field Supervisor, Snake River Fish and Wildlife Office (see **ADDRESSES**). Please note that comments merely stating support or opposition to the actions under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species shall be made “solely on the basis of the best scientific and commercial data available.” At the conclusion of the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### **Background**

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for “substantial information” within the Code of Federal

Regulations (CFR) with regard to a 90-day petition finding is “that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted” (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

We base this finding on information provided by the petitioner that we determined to be reliable after reviewing sources referenced in the petition and information available in our files at the time of the petition review. We evaluated that information in accordance with 50 CFR 424.14(b). Our process for making this 90-day finding under section 4(b)(3)(A) of the Act and 50 CFR 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the “substantial information” threshold.

On February 3, 2004, we received a petition dated January 30, 2004, from Red Willow Research, Inc., and 25 other concerned parties requesting that we emergency list *Astragalus anserinus* as threatened or endangered, and designate critical habitat concurrently with the listing. The other 25 concerned parties include the Prairie Falcon Audubon Society Chapter Board, Western Watersheds Project, Utah Environmental Congress, Sawtooth Group of the Sierra Club, and 21 private citizens; hereafter, we refer to them collectively as the petitioners. The petition clearly identified itself as a petition and included the requisite identification information as required in 50 CFR 424.14(a). The petition contains information on the natural history of *A. anserinus*, its population status, and potential threats to the species. Potential threats discussed in the petition include destruction and modification of habitat, disease and predation, inadequacy of existing regulatory mechanisms, and other natural and manmade factors such as exotic and noxious weed invasions and road construction and maintenance.

In a February 19, 2004, letter to the petitioners, we responded that our initial review of the petition for *Astragalus anserinus* determined that an emergency listing was not warranted, and that due to court orders and judicially approved settlement agreements for other listing actions, we would not be able to further address the petition to list the species at that time. However, funding has since become available to address this petition. As such, this finding addresses the petition.

### Species Information

*Astragalus anserinus* was first collected in 1982 by Duane Atwood from a location in Box Elder County, Utah. The species was subsequently described in 1984 by Atwood and Welsh (Baird and Tuhy 1991, p. 1). *A. anserinus* is a low-growing, matted, perennial forb in the pea or legume family (Fabaceae), with grey hairy leaves, pink-purple flowers, and brownish-red curved seed pods (Mancuso and Moseley 1991, p. 4). The petitioners state that at least eight other *Astragalus* species may be found sympatric (i.e., coincident or in overlapping ranges of geographic distribution) with *A. anserinus*, although five of the eight species are not mat-forming. This species is distinguished from the three other mat-forming *Astragalus* species primarily by its smaller leaflets and flowers, as well as the color and shape of the seed pods. Flowering typically occurs from late May to early June, and the species is assumed to be insect-pollinated, but the specific pollinator(s) is unknown (Baird and Tuhy 1991, p. 3). Mechanisms of seed dispersal are unknown (Baird and Tuhy 1991, p. 3).

*Astragalus anserinus* is endemic to the Goose Creek drainage in Cassia County, Idaho; Elko County, Nevada; and Box Elder County, Utah. Most sites are in an area encompassing approximately 10 square miles (mi) (26 square kilometers (km)). An additional disjunct site is known outside the Goose Creek drainage, approximately 22 mi (35 km) to the southwest in Nevada (USFWS 2006, p. 1). Rainfall in the Goose Creek area averages less than 12 inches (30 centimeters) annually. The plant is generally confined to dry, ashy (sometimes sandy), tuffaceous (volcanic ash and particulates) soils from the Salt Lake Formation (Mancuso and Moseley 1991, p. 12). Element Occurrences (EOs) (areas where a species is, or was, present (NatureServe 2002)) of *A. anserinus* have been documented at elevations ranging between 4,900 to 5,480 feet (1,494 and 1,670 meters) (Mancuso and Moseley 1991, p. 10). *A. anserinus* is frequently associated with other species that show a preference for ashy sites (Baird and Tuhy 1991, pp. 2–3).

### Population Status

The petition states that there were 19 known EOs of *Astragalus anserinus* as of 2003, including 7 in Idaho, 8 in Utah, and 4 in Nevada. The petition states that surveys conducted between the species' discovery in 1982 and 2003 did not document new range extensions, nor

any widely separated EOs or individuals. The petition also states that the EOs in Idaho experienced a 94.8 percent decline in numbers between 1985 and 2001. This rate of decline was based on survey results from seven EOs in Idaho that were sporadically monitored between 1985 and 2001 by Mancuso (2001a). The petition extrapolates this rate of decline across the range of the species to estimate only 542 *A. anserinus* individuals remaining as of 2001. Further extrapolation by the petitioners suggests that there would likely be approximately 28 plants remaining in 2011, for the 19 EOs identified in the petition.

The petition states that The Nature Conservancy ranked *Astragalus anserinus* as a G2 species, indicating it is “imperiled throughout its range because of rarity or because of other factors making it vulnerable to extinction,” and is considered critically imperiled in Idaho, Nevada, and Utah (Utah Division of Wildlife Resources (UDWR) 1998, p. 32; Nevada Natural Heritage Program (NNHP) 2001, p. 1; Idaho Conservation Data Center (ID CDC) 2006, p. 2).

Based on information in our files, *Astragalus anserinus* was known prior to 2004 from 20 EO records (7 in Idaho, 4 in Nevada, and 9 in Utah). Most known sites were on Federal land managed by the U.S. Bureau of Land Management (BLM) (USFWS 2006, Table 1). In 2004 and 2005, we led a multiagency census and survey effort for *A. anserinus* in cooperation with BLM, the U.S. Forest Service (USFS), and the State natural resource agencies of Idaho, Nevada, and Utah. Surveys typically entailed scouting an area and estimating numbers of individuals. Census efforts, which involved counting every individual, documented 3 additional *A. anserinus* sites in Idaho and 1 in Utah, for a total of 20 known EOs and 4 new sites pending confirmation as EOs (USFWS 2006, Table 1). The census efforts in 2004 and 2005 resulted in detections of 5,052 plants in Idaho, 33,476 plants in Utah, and 4,930 plants in Nevada, totaling 43,458 plants rangewide. State-specific information on the population status of *A. anserinus* is described below.

### Idaho

According to the petition, seven *Astragalus anserinus* EOs were identified in Idaho in 2003, occurring primarily on BLM lands, with partial EOs occurring on private land. The petition states that one of the EOs in Idaho declined between 1985 and 2001, from an estimated 2,635 plants to an estimated 136 plants. The petition

indicates that some discrepancy exists regarding the actual EO numbers in Idaho due to the survey techniques that were employed. Estimates were not obtained by actual counts, but by surveying representative areas and projecting numbers of plants observed across what appeared to be potential habitat. As such, the estimates may not be reliable.

Information in our records indicate that, prior to the 2004 and 2005 census efforts, there were seven EOs tracked by the Idaho Conservation Data Center, and numbers of *Astragalus anserinus* at most sites were estimates. The first EO was documented in 1985, but systematic or comprehensive surveys were not performed in Idaho until 1991 (Mancuso and Moseley 1991, p. iii). In 1991, *A. anserinus* counts were estimated at over 914 individuals in Idaho (Mancuso and Moseley 1991, pp. 2, 13–14).

During the 2004 census and survey effort, the seven known Idaho EOs were revisited, and three new sites were located. In total, 5,052 *Astragalus anserinus* individual plants were counted during the census effort, 2,460 of which occurred on the original 7 Idaho EOs (USFWS 2006, Table 1). Census data indicate stable counts at four EOs, an increase in count numbers at one EO (from 2003 surveys), and an unknown change at two EOs (complete censuses were not possible at these sites because part of the EOs are on private land and access is restricted). Due to different census and survey methodologies between those used prior to 2004, and those used for the 2004 and 2005 efforts, we are unable to estimate trends for the species in Idaho (USFWS 2006, Table 1).

#### Utah

According to the petition, eight *Astragalus anserinus* EO locations were identified in Utah prior to 2003. These EOs were located partially on BLM lands and partially on State or private lands, and most were estimated to be less than 1 acre (ac) (0.4 hectare (ha)) in size. The petition provides an estimate of 7,000 plants from a 1990 survey (Baird and Tuhy 1991), and indicates that a discrepancy exists regarding the actual numbers of individuals in Utah due to the survey techniques that were employed. Estimates were not obtained by actual counts, but by surveying representative areas and projecting numbers of plants observed across what appeared to be potential habitat. Thus, they may not be reliable. The petition also states that the 1991 population counts may have been significantly overestimated because more recent information has confirmed that *A.*

*anserinus* is not present in all areas determined to be potential habitat during the 1991 surveys.

Information in our records indicates that prior to the 2004 and 2005 census and survey efforts, there were nine known *Astragalus anserinus* EOs in Utah. Eight of these EOs were documented by the Utah Natural Heritage Program (UNHP), and the other was documented by the NNHP database, but was not included in the UNHP database (Mancuso and Moseley 1991, p. 2). In addition, at least one site that had not been submitted to the UNHP was known by the staff of BLM's Salt Lake City, Utah, Field Office. All 9 EOs in Utah were surveyed either in 1990 or 1991, documenting an estimated 7,617 individuals in Utah (Baird and Tuhy 1991, p. 2; NNHP 2001, p. 1).

During the 2004 and 2005 census efforts, six previously known *Astragalus anserinus* EOs (although only partial counts were conducted at three of the six sites) and one new site were visited. We counted 33,476 individuals at these 7 sites (EOs). Two other EOs, previously documented in Utah with the greatest numbers of individuals, were not visited during the 2004 and 2005 census efforts, due to difficulty of access and time limitations of surveyors (USFWS 2006, Table 1). Census data indicate higher count numbers of *A. anserinus* than previous estimates at five previously known EOs. Due to different census and survey methodologies used prior to 2004, and in the 2004 and 2005 efforts, we are unable to estimate trends for the species in Utah (USFWS 2006, Table 1).

#### Nevada

According to the petition, one area with four loosely connected *Astragalus anserinus* EOs had been identified in Nevada by 2003. The petition states that approximately 800 plants were observed during surveys conducted in 1993, and that no further surveys were conducted between 1993 and the time that the petition was submitted in 2004.

Reference information from NNHP (2001, p. 1) includes documentation of surveys in Nevada in 1991 and 1992, during which 4 EOs were located and numbers were estimated at 827 individuals. The 2004 and 2005 census efforts did not locate any new sites in Nevada. There are currently four EOs in Nevada, documented by the NNHP. During the 2004 and 2005 census efforts, all 4 EOs were visited, and 4,930 *Astragalus anserinus* individuals were counted. Although census data indicate increasing numbers at all EOs in Nevada, different census and survey methodologies used prior to 2004, and for the 2004 and 2005 efforts, prevent us

from estimating trends for the species in Nevada (USFWS 2006, Table 1).

#### Threats Analysis

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations at 50 CFR part 424, set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, we evaluated whether threats to *Astragalus anserinus* presented in the petition and other information available in our files at the time of the petition review reasonably indicate that listing the species may be warranted. Our evaluation of these threats is presented below.

##### *A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range*

The petition states that *Astragalus anserinus* is endemic to the Goose Creek watershed in Idaho, Utah, and Nevada, and that based on survey information available in 2003, the plant occurred at a total of 19 sites in Cassia County, Idaho; Box Elder County, Utah; and Elko County, Nevada. The petition also states that, based on the decline in estimated plant numbers at one site in Idaho (a 94.8 percent decrease between 1985 and 2001), the species was in danger of extinction throughout its range.

There is little information available regarding the EO size, viability, or distribution of *Astragalus anserinus* prior to 1989. Records prior to 2004 may not accurately reflect the species' historical distribution because they were limited in scope, although they were collected in a systematic, comprehensive manner with the goal of determining species distribution and abundance (Mancuso and Moseley 1991, p. 2).

Our survey records from 2004 and 2005 indicate that *Astragalus anserinus* exists in 24 known EOs. Ten of the EOs are in Idaho, nine in Utah, and five in Nevada (USFWS 2006, Table 1). Most of these sites occur on BLM lands. The Service, BLM, USFS, Idaho Conservation Data Center, NNHP, and Utah Conservation Data Center (UCDC)

conducted survey and census activities for the species in 2004 and 2005, and four new sites were identified (three in Idaho and one in Utah). Censuses included counts of individual plants, unlike the previous population surveys cited in the petition. As a result, counts of individuals at known EOs were higher than previously documented for one EO in Idaho, five EOs in Utah, and three EOs in Nevada. No counts of individuals at any known EOs demonstrated a decline, and the number of EOs has not decreased since 2003. Overall, it appears that the petitioners' claim of a decline in the number of individuals in Idaho has not occurred, and population declines have also not occurred at most of the EOs in Utah or Nevada.

#### Livestock Grazing and Water Developments

The petition cites ground-disturbing water developments, such as pipelines and placement of water sources within EOs for the purposes of livestock management, as threats to *Astragalus anserinus*. The petition states that road and water pipeline construction occurred within extant *A. anserinus* EOs in Idaho in 2001 and 2002. The petition also states that additional livestock-related water construction projects were planned in known EOs in both Utah and Idaho in 2004, and that these activities would likely result in loss of individual plants, reduction or loss of seed bank, permanent alteration of habitat, and increased potential for additional noxious and exotic weed introductions.

The petition does not provide specific information on the effects of the water pipeline that was constructed in Idaho during 2001 and 2002. A water tank on BLM lands fed by this pipeline is located at least 3,000 feet (1,000 meters) from *Astragalus anserinus* EOs and has been in place for 12 years (USFWS 2005b, p. 3). The pipeline to this tank (and an opening valve) is located above ground within an *A. anserinus* EO. Plans are being made to remove the water pipeline from the EO and bury it under the existing unimproved road at the site. An environmental assessment will be completed prior to implementation of this activity (USFWS 2005b, p.3), to identify and develop appropriate measures to avoid or minimize adverse effects of this activity, including potential effects to *A. anserinus*.

Based on information contained in our files, the first water pipeline in Goose Creek (Goose Creek Pipeline Number 1) was constructed in 1987 (Hardy 2005, p. 3), and supplies two water tanks within *Astragalus anserinus*

habitat in Utah. The 2004 census report indicates that vegetation was trampled and consumed more heavily closer to the water tanks, and that areas within approximately 150 feet (50 meters) of the tanks were completely denuded of vegetation due to livestock use. The denuded area around one water tank extended for 300 feet (100 meters). Thirteen plants were located at that location, but no data is available on whether the species was present in the area prior to construction (USFWS 2006, p. 2). This was a newly discovered *A. anserinus* site at an existing EO. We are unable to determine if plant numbers changed as a result of the water tank installation, because we do not have pre-construction data. Approximately 450 feet (140 meters) away from this same tank, another *A. anserinus* site (within the same EO) occurs and is occupied by more than 850 plants. This site is partially protected from livestock use due to its location on a steep bluff. A second water tank was constructed in 2005 on a large flat area. Based on limited survey efforts, we estimate the nearest *A. anserinus* plants to be approximately 1,600 feet (500 meters) from this tank (USFWS 2006, p. 3). The pipeline servicing this tank and another tank impacted the upper portion of this *A. anserinus* site. Areas disturbed by construction were seeded with nonnative forage species, and monitoring to detect the effects from this new water tank and pipeline is underway. Currently, there are four enclosure cages, and plant monitoring will occur inside and outside the cages (Hardy 2005, p. 6; USFWS 2005a, p. 3). In addition, BLM plans to construct a livestock enclosure around 1 acre (0.4 ha) of occupied habitat at this site, and undertake a census of *A. anserinus* within and adjacent to the enclosure (Hardy 2005, p. 6).

Information in our records indicates that a pipeline was constructed in Utah through two *Astragalus anserinus* EOs in 2004. BLM staff conducted site clearances in 2000, 2002, and in conjunction with the Service in 2004, prior to pipeline construction. No *A. anserinus* plants were found during the initial 2000 survey, but plants were documented during the 2002 survey. However, no plants were lost during construction of the pipeline (USFWS 2005a, p. 3).

The petition indicates that livestock cause impacts to *Astragalus anserinus* through trampling, increased levels of disturbance, and consumption of ash soils in attempts to alleviate mineral deficiencies resulting from their diet of low quality rangeland forage. The petition cites a report by Mancuso

(2001b) on Idaho EOs to support portions of this claim. The report stated that concerns for *A. anserinus* are focused on the sharp decline in the number of plants over the past decade and possible habitat degradation problems related to recent wildfires and ongoing livestock use impacts.

One report on Utah and Idaho occurrences of *Astragalus anserinus* (Mancuso and Moseley 1991, p. 22) identified indirect impacts from cattle grazing, such as trampling and trailing (moving cattle to, or between, allotments repeatedly on the same path), as primary existing threats to the species. However, neither this report nor the petition provides specific information on the magnitude or severity of livestock trampling and disturbance threats in Idaho, Nevada, or Utah.

Multi-agency surveys conducted in 2004 and 2005 failed to detect any evidence of livestock impacts to *Astragalus anserinus* due to soil consumption (USFWS 2006, p. 1). Neither the petition nor the information available in our files indicate that livestock soil consumption presents a threat to the species.

#### Public Land Management

The petition indicates that changes in land management in Cassia County, Idaho, would pose a threat to *Astragalus anserinus* EOs in that county. The petition provides general information about management proposals submitted to the Idaho Federal Lands Task Force Working Group (Task Force) by the Twin Falls/Cassia Resource Enhancement Trust (Enhancement Trust). The Task Force proposed that public lands management be turned over to State and private groups. The petition states that the Enhancement Trust proposes significant alteration of habitat in Cassia County, Idaho, including habitats that currently support the species. It also states that the Enhancement Trust may recommend increasing the length of the grazing season on Federal lands, which would be detrimental to *A. anserinus* EOs. However, the petition does not provide a citation or reference material for the Task Force information.

The alterations in land management identified in the petition have not occurred to date, and any change of management is speculative at this point. In addition, prior to occurring, Federal agencies must follow a specific process to relinquish ownership and management of public land, including compliance with the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and other laws. The

coordination with the Service that would take place during that process would provide an opportunity for us to recommend conservation measures for *Astragalus anserinus* and other species of concern at that time. The petition does not provide evidence, nor is there any information in our files, that such a land transfer is imminent, or that the potential management change may be a significant threat to *A. anserinus*.

#### Summary of Factor A

The petition identifies potential factors, including livestock grazing and water development, and public land management, as threats to *Astragalus anserinus* habitat that are causing a decline in estimated plant numbers. We find that the petition does not present substantial scientific or commercial information to indicate that livestock trampling or water development exist at levels that may threaten *A. anserinus*, that livestock soil consumption or public land management revisions may threaten the species, or that population declines exist in any of the EOs.

#### B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition indicates that any collection of *Astragalus anserinus* could pose additional and substantial risk to the species due to estimated low numbers of individuals (542 plants in all 3 States as of 2001). However, no collection efforts were documented, and we are unaware of any efforts in the planning stages. The petition states that past attempts to germinate seeds in the lab were not successful, and that this makes the species additionally vulnerable to any collection efforts. The petition cites a personal communication from Cheney (2000) on failed germination attempts, but does not provide a full citation or supporting information. We are, therefore, unable to determine whether collection may be a risk factor for *A. anserinus*, based on information contained in the petition. Further, we are not aware of any information indicating that the overutilization of *A. anserinus* for commercial, recreational, scientific, or educational purposes may represent a significant threat to the species.

#### Summary of Factor B

The petition identifies collection as a threat to *Astragalus anserinus*. However, we find that the petition does not present substantial scientific or commercial information to indicate that overutilization (collection) may threaten this species.

#### C. Disease or Predation

The petition states that disease and herbivory are potential threats to *Astragalus anserinus*. Information cited in the petition to support the claim that disease is a potential threat to the species is limited to an excerpt from Baird and Tuhy (1991): "It is possible that natural predation and disease have greater impacts on *A. anserinus* than those caused by livestock."

The petition provides general information about leguminous plants and possible herbivory of foliage and seeds, and indicates that natural herbivory of *Astragalus anserinus* exists. The petition states that regional fires have reduced the amount of habitat adjacent to *A. anserinus* EOs, increasing the likelihood of herbivory by invertebrates and wildlife. Herbivory by livestock is discussed as a potential threat to the species, with the magnitude of threat depending in part on whether water developments occur within EOs. Water developments are present within some EOs; however, no information presented in the petition, or available in our files, documents a relationship to herbivory by livestock. Livestock enclosure fencing is in place or planned for installation around *A. anserinus* occupied habitat in these EOs, reducing potential livestock impacts.

The petition also states that herbivory by introduced gallinaceous species (e.g., quail, partridge, and turkey) is a potential threat, and discusses general distribution and diet information for these species. However, the petition provides no information on the magnitude or extent of potential impacts of herbivory on *Astragalus anserinus*.

Information in our files indicates that fungal infection and insect or rabbit herbivory occur in some of the known *Astragalus anserinus* EOs (Glenné 2006). However, the documented fungus and herbivory conditions were not prevalent throughout an entire EO, nor throughout the range of *A. anserinus*. Accordingly, the magnitude of the threat from these factors appears to be low. We are not aware of any data indicating herbivory by livestock or introduced wildlife may be a factor threatening this species.

#### Summary of Factor C

The petition identifies disease and herbivory as threats to *Astragalus anserinus*. However, we find that the petition does not present substantial scientific or commercial information to indicate that either of these factors may threaten this species.

#### D. Inadequacy of Existing Regulatory Mechanisms

The petition states that State and Federal agencies have failed to conduct regular monitoring for *Astragalus anserinus* throughout its range, and have failed to protect it from numerous direct and indirect impacts associated with livestock (i.e., water developments, trampling, and grazing) and invasive, non-native plants (see Factors A and E). The petition also states that mechanisms to regulate and control these various activities have failed to prevent harm to *A. anserinus* habitat.

The petition also asserts that BLM has failed to enforce the Idaho Standards and Guidelines (State-specific policies under which lands are to be managed to maintain rangeland health and resources), and that the Nevada Standards and Guidelines are inadequate for the conservation of *Astragalus anserinus*. It further states that BLM in Utah has not adequately implemented the Utah Standards and Guidelines. The petition explains that BLM has indicated its intent to approve and construct water developments in Utah without conducting site-specific clearances, and refers to a project that would take place in a known occurrence of *A. anserinus*. Finally, the petition states that while the petitioners were under contract to the USFS, none of their recommended management or conservation actions for this species were ever implemented by the USFS or the Idaho Conservation Data Center.

Information in our records confirms that regular monitoring of *Astragalus anserinus* or its known EOs has not historically been conducted. The Goose Creek drainage is in a remote area not easily accessed for monitoring; however, coordinated, multi-agency efforts were conducted in 2004, 2005, and 2006, and additional surveys and censuses are planned in the future (USFWS 2005a, pp. 1 and 2; 2005b, pp. 1 and 2; 2006, pp. 7–9). The petition's assertion that BLM is likely to approve and construct water developments without conducting site-specific clearances is not supported by the information in our files.

Our records indicate that BLM conducted site-specific clearances in 2000 and 2002, prior to constructing the Goose Creek Pipeline number 2 in Utah (Hardy 2005, p. 5; USFWS 2005a, p. 3). Our records also indicate that, as a result of the clearance procedure and implementation of recommendations from the Service, there was no loss of *Astragalus anserinus* plants (Hardy 2005, p. 5; USFWS 2005a, p. 3). Finally, our records indicate that coordination among agencies on future development

projects, weed control efforts, and other conservation efforts is underway (USFWS 2005b, p. 3; USFWS 2006, p. 6).

#### Summary of Factor D

The petition states that State and Federal agencies have failed to monitor and protect *Astragalus anserinus*. However, we find that the petition does not present substantial scientific or commercial information indicating that a lack of agency monitoring and protection efforts may threaten the species.

#### *E. Other Natural or Manmade Factors Affecting the Species' Continued Existence*

The petition presents a number of other factors as having negative effects on the continued existence of *Astragalus anserinus*, including natural soil characteristics, failure of seeds to germinate, loss or lack of native pollinators, loss of genetic variability, fires and firefighting tactics, exotic and noxious weeds, road construction and maintenance, range improvements, off-road vehicle use, mining, and illegal trash dumping.

#### Germination Failure and Natural Soil Characteristics

The petition states that an attempt to germinate seeds collected from *Astragalus anserinus* was unsuccessful. The petition cites a personal communication from Cheney (2000) for the information on germination and translocation of the species, but does not provide us with a full citation or supporting documentation. It further states that future seed collection, laboratory germination, and transplanting individuals back into suitable habitat in the Goose Creek watershed do not represent a viable option for the species' recovery and enhancement. Based on the failure to germinate seeds in a laboratory setting, petitioners conducted soil tests at occupied and potentially suitable but unoccupied sites. Soil test results indicated that all occupied sites contained low nutrient levels. The petition states that poor nutrient levels at occupied sites make it unlikely that *A. anserinus* EOs will expand within known habitats, or colonize or recolonize unoccupied habitat.

The petition does not provide information on the techniques used during the attempted germination of *Astragalus anserinus*, and we are unable to assess whether appropriate dormancy breaking techniques were employed. Although the petition states that poor nutrient levels at occupied sites make it

unlikely that occurrences of *A. anserinus* will expand, we are unaware of any studies relating *A. anserinus* colonization potential to soil nutrients. The species may be more tolerant of low nutrient soils, which could be a factor in its current distribution. Mancuso and Moseley (1991, p. 12) state that *A. anserinus* occurs in very low densities in many locations, and is commonly missing from similar-looking habitats near sites where it occurs. On balance, the data do not appear to indicate that low germination success or low nutrient levels in soils may be threats to this species.

#### Native Pollinators

The petition states that the potential loss or lack of native plant pollinators has been noted as a threat to the persistence of *Astragalus anserinus*. It indicates that pollinators are adversely impacted by livestock through habitat degradation, loss of food sources, and trampling of ground nests, and that *A. anserinus* reproduction is then reduced by lack of pollination. Mancuso and Mosely (1991, p. 24) cited a study by Sugden (1985, p. 309) on the trampling effects of sheep grazing on a rare milk-vetch in California with a life history similar to that of *A. anserinus*. This study was compared to discussion by Mancuso and Mosely on livestock effects to *A. anserinus*. However, the petition does not present documentation of loss or decline of native pollinators within *A. anserinus* habitat.

#### Loss of Genetic Variability

The petition states that loss of genetic variability was likely occurring because *Astragalus anserinus* plants are few in number and the remaining individuals are widely scattered. No supporting data or information on whether genetic variability of *A. anserinus* is being lost is provided in the petition or its supporting materials. In addition, interagency census efforts conducted in 2004 and 2005 resulted in detections of 43,458 *A. anserinus* plants rangewide (USFWS 2006, Table 1).

#### Fires and Firefighting

The petition cites Mancuso (2001b) as stating that fires have had an apparent impact on Idaho EOs of *Astragalus anserinus*. It states that fires can result in additional herbivory of native plants and accelerated weed invasions, and that wildfires in 2000 resulted in blading of fire lines and roads (for firefighting) through occupied *A. anserinus* habitat (Petition, p. 56). The petitioners also provide one example of blading at a potential *A. anserinus* site (Petition, p. 21). However, interagency

surveys conducted in 2004 and 2005 did not document the blading of fire lines or roads through *A. anserinus* EOs (USFWS 2006, pp. 4–5 and Table 1). The petition does not provide information regarding the threat posed by fires and firefighting tactics to *A. anserinus* EOs in Utah and Nevada, and our files indicate that surveyors were unable to demonstrate a link between fires and increased herbivory in 2004 and 2005 (USFWS 2006, pp. 4–5, and Table 1).

#### Nonnative and Noxious Plants

The petition states that nonnative and noxious plants are currently impacting or threatening *Astragalus anserinus* EOs. It cites Mancuso and Moseley (1991) as having observed *Euphorbia esula* (leafy spurge) in the region in 1991, but not in any *A. anserinus* EOs, and that *E. esula* was documented in four EOs and near two EOs in 2001 (Mancuso 2001a).

Information in our files corroborates the petition's claim that nonnative and noxious plants may be impacting *Astragalus anserinus* EOs. Our records indicate that during the 2004 and 2005 surveys and census efforts, *Euphorbia esula* was detected at or near 7 of the 10 sites in Idaho and 2 of the 10 sites in Utah (USFWS 2006, p. 4), in spite of the fact that efforts to control *E. esula* within the Goose Creek drainage have been underway for several years. Control efforts for *E. esula* are increasing, but past efforts to control this species in the Goose Creek drainage have not halted its spread, and it has been found directly competing with *Astragalus anserinus* at three sites (USFWS 2006, p. 4). Based on the information provided in the petition and other information available in our files, we have determined that *Euphorbia esula* competition may present a threat to *A. anserinus*, because it often creates monocultures where little or no other native vegetation persists. *Euphorbia esula* displaces other vegetation by shading, reducing water and nutrients available to other plants, and producing plant toxins that prevent the growth of other plants beneath it. In addition, because of its persistent nature and ability to regenerate from small pieces of root, *E. esula* is extremely difficult to eradicate.

The petition also states that *Halogeton glomeratus* (halogeton) was present within one EO, and *Bromus tectorum* (cheatgrass) was present in four Idaho EOs in 2001, although these species were not documented at these locations in 2000. Information from our 2004 and 2005 surveys confirmed *H. glomeratus* near one *Astragalus anserinus* EO

(USFWS 2006, p. 4). It is presently undetermined whether the presence of *B. tectorum* or *H. glomeratus* may present a threat to *A. anserinus*.

#### Road Construction and Maintenance

The petition identifies loss of habitat and loss of individual *Astragalus anserinus* plants resulting from road construction and maintenance as a concern, and cites the widening of the Coal Banks road through an extant Idaho occurrence in 2001 as an example. However, it does not provide specific information on the threat of road construction and maintenance in other portions of *A. anserinus*'s range.

Information from our files, specifically Mancuso and Moseley (1991, p. 22), indicates that some habitat was likely destroyed during construction of a network of secondary roads that cross much of the Goose Creek Basin. During the 2004 and 2005 surveys, *Astragalus anserinus* was observed as generally occurring in loose soils, although a few plants were found in areas with compacted soils (USFWS 2006, p. 1). However, field observations suggest that *A. anserinus* is capable of withstanding, and is possibly adapted to, some level of natural disturbance, because plants were found in washes and on steep slopes where downward soil movement occurs (USFWS 2006, p. 1). *Astragalus anserinus* was found on unimproved roads and livestock trail margins, but not in tire tracks or livestock trails, presumably because compaction is too great (USFWS 2006, p. 1). Roads were observed in three *A. anserinus* EOs in Idaho, two EOs in Nevada, and one EO in Utah (USFWS 2006, Table 1). It is likely that road construction and maintenance have an adverse effect on *A. anserinus* through temporary loss of habitat or individuals, and that some habitat is lost through road development; however it is unclear whether such adverse effects may threaten the species.

#### Range Management

The petition identifies habitat loss from range management as a negative impact to *Astragalus anserinus*. Petitioners state that *Agropyron cristatum* (crested wheatgrass), which is seeded to establish forage for livestock and for erosion control, was growing within occupied *A. anserinus* habitat, resulting in habitat modifications that may preclude *A. anserinus*'s occupation. The petition also indicates that fencing and vegetation treatments, such as chaining or controlled burns, may contribute to adverse habitat modification. The petition does not provide specific information on the

magnitude, extent, or severity of these threats.

Our records indicate that range management in the Goose Creek area consists primarily of water development projects (see Pipeline and Water Development and Livestock under Factor A above) and *Agropyron cristatum* seedings. *A. cristatum* was documented at two *Astragalus anserinus* EOs in Idaho, one EO in Nevada, and three EOs and a new site in Utah, during the 2004 and 2005 census efforts (USFWS 2006, p. 5). *A. cristatum* seedings are extensive within *A. anserinus* habitat, especially in Utah. The two species are typically spatially separated, with *A. cristatum* growing on flatter areas and *A. anserinus* occurring on sloping areas (USFWS 2006, p. 5). Maps obtained from BLM's Salt Lake City Office indicate that *A. cristatum* was seeded directly on top of numerous *A. anserinus* EOs; however, this could not be confirmed during field observations. Since *A. cristatum* was seldom observed on steeper slopes where *A. anserinus* is established, the steep slopes may have been too difficult to plant and were avoided for this reason (USFWS 2006, p. 5).

#### Off-road Vehicle (ORV) Use, Mining, and Illegal Trash Dumping

The petition discusses ORV use as a potential threat to *Astragalus anserinus*, and cites DeBolt (1989) and Mancuso (2001b) as first describing ORV use as a threat to the species, because of rapidly increasing ORV use in Idaho, Nevada, and Utah. Neither a complete citation for the DeBolt reference nor supporting documentation is provided in the petition. The petition refers to illegal trash dumping as a potential threat to *A. anserinus*, and states that although dumping is limited in scope, the potential impact is important to consider. It also discusses mining that historically occurred in and near occupied habitat, and states that if mining efforts were to increase, they could present substantial threats to the species. The petition does not provide information on the number of *A. anserinus* occurrences impacted or the magnitude, extent, or severity of impacts from ORV use, trash dumping, or mining.

Our records indicate that one ORV track was observed in the 2004 surveys near an *Astragalus anserinus* EO, but not within the EO itself (USFWS 2006, Table 1). One trash dump was observed on private land near an *A. anserinus* EO in Utah during the 2004 surveys (USFWS 2006, p. 5). While ORV use and illegal trash dumping occur in the range of the species and may impact some

individuals, the magnitude and extent of these threats appear to be low at this time. We lack information on potential or actual threats that mining activities may present to *A. anserinus*.

#### Summary of Factor E

The petition identifies numerous potential factors, including seed germination failure and native soil characteristics, loss of native pollinators, loss of genetic variability, fires and firefighting tactics, nonnative and noxious plants, road construction and maintenance, range management, ORV use, mining, and illegal trash dumping, as threats to *Astragalus anserinus*. We find that the petition along with information available in our files presents substantial scientific or commercial information indicating that competition with *Euphorbia esula* may present a threat to *A. anserinus* from shading, reducing available water and nutrients, and producing plant toxins that prevent the growth of other plants beneath it. Because of its persistent nature and ability to regenerate from small pieces of root, *E. esula* is extremely difficult to eradicate. However, based on the available information, it is unclear whether the potential factors of seed germination failure and native soil characteristics, loss of native pollinators, loss of genetic variability, fires and firefighting tactics, road construction and maintenance, range management, ORV use, mining, and illegal trash dumping identified by the petition may threaten this species. We will consider information related to these factors during the status review.

#### Finding

We have reviewed the petition and literature cited in the petition, and evaluated the information determined to be reliable to make this finding. We also reviewed reliable information that was readily available in our files to evaluate the reliability of information in the petition. The petition presents information that degradation of habitat from invasive exotic species and noxious plant species may have contributed to habitat loss and population declines. The information in our files supports the petition's statements regarding this threat to *Astragalus anserinus*. Survey information available in our files corroborates that *Euphorbia esula* has been documented at several EOs, and may represent a threat to *A. anserinus*, based on *A. anserinus*' difficulty in competing with this nonnative, invasive species (USFWS 2006 p. 4). Therefore, based on our review, we find that the petition presents substantial

information indicating that listing *A. anserinus* may be warranted. As such, we are initiating a status review to determine whether listing *A. anserinus* under the Act is warranted.

We have also reviewed the available information to determine if the existing and foreseeable threats pose an emergency to *Astragalus anserinus*. We have determined that an emergency listing is not warranted at this time, based on the information provided in the petition and otherwise available in our files. This determination is based on the fact that none of the threats, aside from a catastrophic fire, are capable of eliminating a substantial portion of the species over the course of the next 2 or 3 years. Catastrophic and other natural wildfires are normally beyond management control and difficult to predict, but the open ash, sparsely vegetated habitat sites where *A. anserinus* occurs rarely burn. All known sites of the population are assumed extant, and a paucity of information makes it difficult to establish population trends. Based on the information contained in the petition and information provided through discussions with knowledgeable individuals, we do not believe that an emergency listing of this species is warranted because while the plant's current status range-wide is unclear or unknown, there are no known range-wide imminent threat(s). However, if at any time we determine that emergency listing of this species is warranted, we will seek to initiate an emergency listing.

#### References Cited

A complete list of all references cited is available, upon request, from the Snake River Fish and Wildlife Office (see **ADDRESSES**).

#### Author

The primary authors of this notice are staff members of the Snake River Fish and Wildlife Office (see **ADDRESSES**).

#### Authority

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

Dated: August 9, 2007.

#### H. Dale Hall,

Director, U.S. Fish and Wildlife Service.

[FR Doc. E7-16145 Filed 8-15-07; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; Status of the Rio Grande Cutthroat Trout

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

**ACTION:** Status review; reopening of public comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our review of the Rio Grande cutthroat trout (*Oncorhynchus clarki virginalis*) to determine if candidate status is warranted. The Endangered Species Act of 1973, as amended (Act), requires that we identify species of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial information. Through the Federal rulemaking process, we add these species to the List of Endangered and Threatened Wildlife at 50 CFR 17.11 or the List of Endangered or Threatened Plants at 50 CFR 17.12. As part of this program, we maintain a list of species that we regard as candidates for listing. A candidate is one for which we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened but for which preparation and publication of a proposal is precluded by higher-priority listing actions. During or prior to April of 2008, we will make a determination concerning the results of the status review for the Rio Grande cutthroat trout and, shortly thereafter, we will publish this determination in the **Federal Register**.

Comments previously submitted on the status of the Rio Grande cutthroat trout need not be resubmitted as they have been incorporated into the public record and will be fully considered in preparation of the final revised status review.

**DATES:** We will accept comments and information from all interested parties for our use in the status review and in preparing a revised finding until September 17, 2007.

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

1. You may mail or hand-deliver your written comments and information to Wally "J" Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New

Mexico Ecological Services Field Office, 2105 Osuna NE., Albuquerque, NM 87113.

2. You may fax your comments to Wally "J" Murphy, Field Supervisor, New Mexico Ecological Services Field Office, at (505) 346-2542.

3. You may send comments by electronic mail (e-mail) to [R2FWE\\_AL@fws.gov](mailto:R2FWE_AL@fws.gov).

4. You may go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Comments and materials received, as well as supporting documentation used in the preparation of the candidate status review, will be available for public inspection, by appointment, during normal business hours at the New Mexico Ecological Services Field Office, at the street address above (telephone: (505) 346-2525).

#### FOR FURTHER INFORMATION CONTACT:

Wally "J" Murphy, Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES**) (telephone: (505) 346-2525; facsimile: (505) 346-2542). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Background

For background information on the events leading to our notice of intent to initiate a status review for the Rio Grande cutthroat trout, refer to our notice published in the **Federal Register** on May 22, 2007 (72 FR 28664).

##### Request for Information

On May 22, 2007, we published a notice of intent to initiate a candidate status review for the Rio Grande cutthroat trout (72 FR 28644). We accepted public comments for inclusion in the status review for 45 days, ending July 6, 2007. In response to requests from interested parties, we are reopening the comment period for an additional 30 days (see **DATES**) to offer all interested parties an opportunity to submit data and information for inclusion in our status review for this species.

Our determination of candidate status for the Rio Grande cutthroat trout must be based upon the best available scientific and commercial data, as required under section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We request that you submit any information on the Rio Grande cutthroat trout not previously submitted for our review. We are particularly interested in any relevant information gathered since June 2002 concerning the following:

(1) Current population status (e.g., population estimates, age-structure, trend) for any of the populations of the Rio Grande cutthroat trout, including methodology used for population estimation and confidence intervals if available;

(2) Rio Grande cutthroat trout's susceptibility to whirling disease, and distribution of Rio Grande cutthroat trout infected by whirling disease in New Mexico and Colorado;

(3) Distribution of *Tubifex tubifex* (tubificid worms), an intermediate host of the parasite known to cause whirling disease in trout, and the susceptibility of these worms to the parasite in the streams of New Mexico and Colorado;

(4) Genetic classification of any Rio Grande cutthroat trout population(s);

(5) Condition of occupied habitat;

(6) Restoration projects that have been completed, including translocation, new barrier construction or barrier repair, habitat improvement projects, or nonnative trout removal projects;

(7) Results of barrier surveys;

(8) Distribution of nonnative trout or their population size and structure in streams currently occupied by Rio Grande cutthroat trout;

(9) Status of any of the thirteen "core" populations identified in the 2002 status review (see 67 FR 39936);

(10) Current and future threats to Rio Grande cutthroat trout populations and remaining habitat areas;

(11) Other regulatory mechanisms that address those threats; and the success of those mechanisms to date; and

(12) Whether any portion of the range of the species is a significant portion of the range, and whether there are threats in that portion sufficient to meet the standards for listing under the Act.

Our candidate status review will take into consideration all comments and any additional information received, including all previous comments and information submitted during the 2002 candidate status review. As such, information provided during the previous status review does not need to be resubmitted.

If you are submitting e-mail comments, please include "Attn: Rio Grande cutthroat trout" in your e-mail subject header. If you do not receive a confirmation from the system that we have received your e-mail, contact us directly by calling our New Mexico Ecological Services Field Office at (505) 346-2525. Please note that comments must be received by the date specified in the **DATES** section in order to be considered and that the e-mail address (*R2FWE\_AL@fws.gov*) will be

unavailable at the termination of the public comment period.

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.

#### **Author**

The primary author of this notice is the staff of the U.S. Fish and Wildlife Service's Southwest Ecological Services Regional Office.

#### **Authority**

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

Dated: August 10, 2007.

#### **H. Dale Hall,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. E7-16144 Filed 8-15-07; 8:45 am]

**BILLING CODE 4310-55-P**

# Notices

Federal Register

Vol. 72, No. 158

Thursday, August 16, 2007

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

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Glenn/Colusa County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items covered include: (1) Introductions, (2) Approve Minutes, (3) Public Comment, (4) Finalize Voting on Projects, (5) General Discussion, (6) Next Agenda.

**DATES:** The meeting will be held on August 27, 2007, from 1:30 p.m. and end at approximately 4:30 p.m.

**ADDRESSES:** The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals who wish to speak or propose agenda items send their names and proposals to Eduardo Olmedo, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

**FOR FURTHER INFORMATION CONTACT:** Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968-1815; e-mail [ggaddini@fs.fed.us](mailto:ggaddini@fs.fed.us).

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee will file written statements with the Committee staff before or after the meeting. Public input sessions are provided and individuals who made written requests by August 24, 2007 have the opportunity to address the Committee at those sessions.

Dated: August 8, 2007.

**Eduardo Olmedo,**

*Designated Federal Official.*

[FR Doc. 07-4004 Filed 8-15-07; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Tehama County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approve Minutes, (3) Public Comment, (4) Project Proposals/Action, (5) Chairman's Perspective, (6) General Discussion, (7) Next Agenda.

**DATES:** The meeting will be held on August 30, 2007 from 9 a.m. and end at approximately 12 p.m.

**ADDRESSES:** The meeting will be held at the Lincoln Street School, Pine Room, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Eduardo Olmedo, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

**FOR FURTHER INFORMATION CONTACT:** Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968-5329; e-mail [ggaddini@fs.fed.us](mailto:ggaddini@fs.fed.us).

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by August 27, 2007 will have the opportunity to address the Committee at those sessions.

Dated: August 9, 2007.

**Randy Jero,**

*Acting Designated Federal Official.*

[FR Doc. 07-4005 Filed 8-15-07; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Okanogan and Wenatchee National Forests Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Wenatchee-Okanogan Resource Advisory Committee will meet on Wednesday, August 29, and Monday, September 10 at the Okanogan and Wenatchee National Forest Headquarters Office, 215 Melody Lane, Wenatchee, WA. These meetings will begin at 9 a.m. and continue until 3 p.m. On August 29, 2007, committee members will review Okanogan County and Yakima County projects, and on September 10, 2007 committee members will review Chelan County and Kittitas County projects for Resource Advisory Committee consideration under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000. All Wenatchee-Okanogan Resource Advisory Committee meetings are open to the public. Interested citizens are welcomed to attend.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, (509) 664-9200.

August 10, 2007.

**Paul Hart,**

*Designated Federal Official, Okanogan and Wenatchee National Forests.*

[FR Doc. 07-4006 Filed 8-15-07; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Wrangell-Petersburg Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Wrangell-Petersburg Advisory Committee (RAC) has announced its next meeting. The meeting will be held via teleconference on September 20, 2007. The purpose of the meeting is to review project funding proposals pursuant to Title II, Public Law 106-393, H.R. 2389, the Secure Rural Schools and Community Self-

Determination Act of 2000, also called the "Payments to States Act". Public testimony regarding the proposals will also be taken.

**DATES:** The meeting will be held on September 20, 2007 from 8 a.m. until 5 p.m. (or the conclusion of public testimony).

**ADDRESSES:** The teleconference will be hosted at the two local Forest Service offices in Wrangell, at the Wrangell Ranger District, 525 Bennett Street, and in Petersburg, at the Petersburg Ranger District, 12 North Nordic Drive.

**FOR FURTHER INFORMATION CONTACT:**

Chris Savage, Petersburg District Ranger, P.O. Box 1328, Petersburg, AK 99833, phone (907) 772-3871, e-mail [csavage@fs.fed.us](mailto:csavage@fs.fed.us); or Mark Hummel, Wrangell District Ranger, P.O. Box 51, Wrangell, AK 99929, phone (907) 874-2323, e-mail [mhummel@fs.fed.us](mailto:mhummel@fs.fed.us). Toll-free conference calling is available for the meeting; please call or e-mail for specific information. For further information on RAC history, operations, and the application process, a Web site is available at [www.fs.fed.us/payments](http://www.fs.fed.us/payments). Once in the Web site, follow the links to the Wrangell-Petersburg Resource Advisory Committee.

**SUPPLEMENTARY INFORMATION:** This meeting will focus on the review and discussion proposals received by RAC for funding under Title II of the Payments to States legislation (Pub. L. 106-393). New proposals (initial reading) may be discussed at this meeting. The committee may make recommendations for project funding at this meeting. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: August 9, 2007.

**Olleke Rappe-Daniels,**

*Deputy Forest Supervisor.*

[FR Doc. 07-4007 Filed 8-15-07; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Notice of Meeting

**AGENCY:** Colville National Forest, Forest Service, USDA.

**SUMMARY:** Colville National Forest's Resource Advisory Committee will meet twice in September, in Colville, Washington. The purpose of these meetings is to review and provide recommendations for Title II projects to be funded by the Secure Rural Schools and Community Self-Determination Act,

more commonly known as Payments to Counties, in Fiscal Year 2008.

**DATES:** The meetings will be held on Wednesday, September 5, 2007, from 9 a.m. until 4 p.m., and on Wednesday, September 19, 2007, from 9 a.m. until 4 p.m. A public input session will be provided at each of the meetings. Comments will be limited to three minutes per person.

**ADDRESSES:** Both meetings will be held at the Colville Campus of Community Colleges of Spokane—Colville Center, 985 South Elm Street, Colville, WA 99114.

**FOR FURTHER INFORMATION CONTACT:** Rick Brazell, Forest Supervisor, the Designated Federal Official for the Colville National Forest Resource Advisory Committee. Colville National Forest, 765 South Main Street, Colville, WA 99114, 509-684-7000.

**SUPPLEMENTARY INFORMATION:** Both meetings are open to the public. Project discussion will be limited to Resource Advisory Committee members and Forest Service personnel. However, a public input session will be provided on the agenda, and individuals will have the opportunity to address the committee at that time.

**Rick Brazell,**

*Forest Supervisor.*

[FR Doc. 07-4008 Filed 8-15-07; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Del Norte County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Del Norte County Resource Advisory Committee (RAC) will meet on June 12 and 13, 2006, in Crescent City, California. The purpose of the meeting is for the RAC to vote and approve Fiscal Year 2008 Title II proposals submitted under Public Law 106-393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

**DATES:** The meeting will be held on August 27 and 28, 2007, from 6 to 8:30 p.m.

**ADDRESSES:** The meeting will be held at the Del Norte County Unified School District Board Room, 301 West Washington, Crescent City, California.

**FOR FURTHER INFORMATION CONTACT:** Julie Ranieri, Committee Coordinator, USDA,

Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441-3673. E-mail: [jraniere@fs.fed.us](mailto:jraniere@fs.fed.us).

**SUPPLEMENTARY INFORMATION:** The Del Norte Resource Advisory Committee will vote to approve proposals submitted for Fiscal Year 2008 Title II funding. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: August 10, 2007.

**Tyrone Kelley,**

*Acting Forest Supervisor.*

[FR Doc. 07-4009 Filed 8-15-07; 8:45 am]

**BILLING CODE 3410-11-M**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Hawaii State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the regulations of the Federal Advisory Committee Act (FACA), that a subcommittee meeting of the Hawaii Advisory Committee will convene at 3 p.m. and adjourn at 7 p.m. on Wednesday, August 22, 2007 in Room 10A in the Science Building at the Maui Community College, 310 Ka'ahumanu, Kahului, Hawaii. The purpose of the meeting is to hear from members of the public their comments about the "The Native Hawaiian Government Reorganization Act of 2007," also known as the Akaka bill, a bill that expresses the policy of the United States regarding the United States relationship with Native Hawaiians and provides a process for the recognition by the United States of the Native Hawaiian governing entity.

Members of the public are also entitled to submit written comments; the comments must be received in the Western Regional Office by September 1, 2007. The address is 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Angelica Trevino, Administrative Assistant, Western Regional Office, U.S. Commission on Civil Rights at (213) 894-3437 [TDY] 213-894-3435, or by e-mail at [atrevino@usccr.gov](mailto:atrevino@usccr.gov).

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter

should contact the Eastern Regional Office at least three (3) working days before the scheduled date of the planning meeting.

Records generated from this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, <http://www.usccr.gov>, or to contact the Eastern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA. It was not possible to publish this notice 15 days in advance of the meeting date because of internal processing delays.

Dated at Washington, DC, August 13, 2007.

**Ivy L. Davis,**

*Acting Chief, Regional Programs  
Coordination Unit.*

[FR Doc. E7-16150 Filed 8-15-07; 8:45 am]

**BILLING CODE 6335-01-P**

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Meeting.

**AGENCY:** United States Commission on Civil Rights.

**ACTION:** Notice of meeting.

**DATE AND TIME:** Friday, August 24, 2007; 9:30 a.m.

**PLACE:** U.S. Commission on Civil Rights, 624 Ninth Street, NW., Rm. 540, Washington, DC 20425.

Meeting Agenda:

I. Approval of Agenda.

II. Approval of Minutes of August 16, Meeting.

III. Announcements.

IV. Staff Director's Report.

V. Management and Operations

- Information Quality Guidelines.

VI. Program Planning

- Briefing Report on Racial Categorization in the Census.
- Briefing Report on Educational Effectiveness of HBCUs.
- Discovery Plan and Outline for FY 2008 Statutory Report.
- Update: Briefing on Minorities in Foster Care and Adoption.

VII. Future Agenda Items.

VIII. Adjourn.

#### FOR FURTHER INFORMATION CONTACT:

Manuel Alba, Press and Communications (202) 376-8582.

Dated: August 14, 2007.

**David Blackwood,**

*General Counsel.*

[FR Doc. 07-4043 Filed 8-14-07; 2:59 pm]

**BILLING CODE 6335-02-P**

## DEPARTMENT OF COMMERCE

### Bureau of the Census

#### Proposed Data Sharing Activity

**AGENCY:** Bureau of the Census, Department of Commerce.

**ACTION:** Notice and request for public comment.

**SUMMARY:** The Bureau of the Census (Census Bureau) conducts the Survey of Industrial Research and Development (R&D) under a joint partnership agreement with the National Science Foundation (NSF). The U.S. Census Bureau proposes to provide data collected from the 2004-2009 R&D surveys to the Bureau of Economic Analysis (BEA) for statistical purposes exclusively. In accordance with the requirement of Section 524(d) of the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA), we are providing the opportunity for public comment on this data-sharing action. Through the use of these shared data, the BEA will augment its existing R&D-related data, identify data quality issues arising from reporting differences in the BEA and Census Bureau surveys, and improve its survey sample frames. The NSF will be provided non-confidential aggregate data (public use) and reports that have cleared Census Bureau disclosure review. Disclosure review is a process conducted to verify that the data to be released do not reveal any confidential information.

**DATES:** Written comments must be submitted on or before October 15, 2007.

**ADDRESSES:** Please direct all written comments on this proposed program to the Director, U.S. Census Bureau, 4600 Silver Hill Road, Washington, DC 20233-0100.

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional information on this proposed program should be directed to Mr. Richard Hough, Special Studies Branch, Manufacturing and Construction Division, U.S. Census Bureau, 4600 Silver Hill Road, Washington, DC 20233-6900, by phone on (301) 763-4823 or by fax (301) 763-7783.

#### SUPPLEMENTARY INFORMATION:

##### Background

CIPSEA (Pub. L. 107-347, Subtitle V) allows the Census Bureau and the BEA to share certain business data for exclusively statistical purposes. Section 524(d) of the Act requires a **Federal Register** notice announcing the intent to

share data (allowing 60 days for public comment).

Section 524(d) also requires the Census Bureau to provide information about the terms of the agreement for data sharing. For purposes of this notice, the Census Bureau has decided to group these terms by three categories. The categories are:

- Shared data.
- Statistical purposes for the shared data.
- Data access and confidentiality.

##### Shared Data

The Census Bureau proposes to provide the BEA with data collected from the 2004-2009 R&D surveys. The agreement also calls for the BEA to share data from its Foreign Direct Investment in the United States and U.S. Direct Investment Abroad surveys with the Census Bureau. The BEA has issued a separate notice addressing this activity.

The BEA will use these data for statistical purposes exclusively. Through record linkage, the BEA will augment its existing R&D-related data, identify data quality issues arising from reporting differences in the BEA and Census Bureau surveys, and improve its survey sample frames.

##### Statistical Purposes for the Shared Data

The data collected from the R&D estimate the expenditures of research and development performed by United States-based industrial firms. The survey is conducted annually, however, the proposed data to be shared are from the 2004-2009 surveys only. Statistics from the annual surveys are published in the NSF's annual publication series "Research and Development in Industry." Data collected by this survey include company characteristics and R&D spending information. Characteristics data include net sales, total employment, and employment of scientists and engineers. R&D spending data include the following: Total spending; federally funded (total and by agency) spending for basic and applied R&D, for basic research by field, and for applied R&D by product group; R&D spending by state; and R&D financed by domestic firms but performed abroad. All data are collected under Sections 131, 182, 224, and 225 of Title 13, United States Code (U.S.C.).

##### Benefits

The aggregated data will provide a more integrated data set on R&D performance and funding with domestic and foreign ownership detail and will lead to a more complete account of international aspects of R&D

performance and funding, and related economic activity, both in the United States and abroad. The Census Bureau will also be able to improve the sample frame for the R&D by adding companies identified in the BEA frames not currently accounted for in the sample. The Census Bureau will be able to identify possible data quality issues by investigating reporting differences contained within the files which will lead to improved survey estimates.

#### Data Access and Confidentiality

Section 9 of Title 13, U.S.C., protects the confidentiality of these data. The data may be seen only by persons sworn to uphold the confidentiality of the information. Access to the shared data will be restricted to specifically authorized personnel and will be provided for statistical purposes only. All BEA employees with access to these data will attain Census Bureau Special Sworn Status (SSS), per Section 23(c) of Title 13, U.S.C., which provides that they, under penalty of law, must uphold the data's confidentiality. Selected NSF employees will provide the BEA with expertise on the aspects of R&D performance in the United States and by U.S. companies abroad; these NSF consultants assisting with the work at the BEA also will attain Census Bureau SSS. No confidential data will be provided to the NSF. To further safeguard the confidentiality of the data, the Census Bureau will conduct an Information Technology security review of the BEA prior to sharing any data files. Any results of this research are subject to Census Bureau disclosure protection.

Dated: August 10, 2007.

**Charles Louis Kincannon,**

*Director, Bureau of the Census.*

[FR Doc. E7-16141 Filed 8-15-07; 8:45 am]

BILLING CODE 3510-07-P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### Deemed Export Advisory Committee; Notice To Solicit Meeting Speakers and Presentations

The Deemed Export Advisory Committee (DEAC), which advises the Secretary of Commerce on deemed export licensing policy, will meet on Monday, September 10th, 2007 from approximately 9 a.m. to 12 p.m. for a public session. The DEAC is a Federal Advisory Committee that was established under the auspices of the Federal Advisory Committee Act, as amended, 5 U.S.C. app. 2. The meeting

location will be Washington, DC, with exact details to be announced in a subsequent **Federal Register** Notice. At this time, the Department of Commerce, Bureau of Industry and Security (BIS), would like to solicit stakeholders from industry, academia and other backgrounds to address the DEAC members on September 10 in an open session on issues related to deemed exports and, in particular, their organizations' perspectives and concerns related to U.S. deemed export control policies. Stakeholders are those individuals or organizations who have some experience in or knowledge of export control regulations and policies, who must apply these rules in the course of normal business or whose operations are directly impacted by those export regulations and policies mandated by the U.S. Government. BIS seeks to have an equal number of presenters from industry, academia, and other backgrounds. There may be up to three presenters from each group and speaking time may be limited to 10 minutes or less per speaker depending on the number of interested parties. Speakers may be selected on the basis of one or more of the following criteria (not in any order of importance): (1) Demonstrated experience in and knowledge of export control regulations; (2) demonstrated ability to provide DEAC members with relevant information related to deemed export policies and issues; (3) the degree to which the organization is impacted by the U.S. Government's export policies and regulations; and (4) industry area or academic type of institution represented. BIS reserves the right to limit the number of participants based on time considerations. For planning purposes, BIS requests that: (1) Interested parties inform BIS of their commitment, via e-mail or telephone call, to address the DEAC no later than 5 p.m. EST August 24, 2007, as well as provide a brief outline of the topics to be discussed by this same deadline; and, (2) once interested parties receive confirmation of their participation at the meeting, they provide either an electronic or paper copy of any prepared remarks/presentations no later than 5 p.m. EST September 3, 2007. Interested parties may contact Ms. Yvette Springer at [Yspringer@bis.doc.gov](mailto:Yspringer@bis.doc.gov) or (202) 482-2813. The purpose of this solicitation is only to solicit speakers for the September 10, 2007 DEAC meeting. However, all members of the public may submit written comments to BIS at any time for the DEAC's consideration.

Dated: August 13, 2007.

**Yvette Springer,**

*Committee Liaison Officer.*

[FR Doc. 07-4011 Filed 8-15-07; 8:45 am]

BILLING CODE 3510-JT-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-580-829]

#### Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On June 11, 2007, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on stainless steel wire rod from the Republic of Korea. The period of review is September 1, 2005, through August 31, 2006. We did not receive comments from interested parties, nor did we make any changes to the margin for the final results. The final margin for the respondent is listed below in the section entitled "Final Results of Review."

**EFFECTIVE DATE:** August 16, 2007.

**FOR FURTHER INFORMATION CONTACT:** Thomas Schauer, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482-0410.

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 11, 2007, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on stainless steel wire rod (SSWR) from the Republic of Korea. See *Stainless Steel Wire Rod from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 32074 (June 11, 2007) (*Preliminary Results*). We invited interested parties to comment on the *Preliminary Results*. We did not receive comments from interested parties, and we did not make any changes to the margin for the final results. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

##### Scope of the Order

For purposes of this order, the products covered are those SSWR that

are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling annealing, and/or pickling

and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar. The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most

wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches in diameter.

Two stainless steel grades are excluded from the scope of the order. SF20T and K-M35FL are excluded. The chemical makeup for the excluded grades is as follows:

SF20T

Carbon .....	0.05 max	.....	Chromium	19.00/21.00
Manganese .....	2.00 max	.....	Molybdenum	1.50/2.50
Phosphorous .....	0.05 max	.....	Lead-added	(0.10/0.30)
Sulfur .....	0.15 max	.....	Tellurium-added	(0.03 min)
Silicon .....	1.00 max	.....		

K-M35FL

Carbon .....	0.015 max	.....	Nickel	0.30 max
Silicon .....	0.70/1.00	.....	Chromium	12.50/14.00
Manganese .....	0.40 max	.....	Lead	0.10/0.30
Phosphorous .....	0.04 max	.....	Aluminum	0.20/0.35
Sulfur .....	0.03 max	.....		

The products subject to the order are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

**Facts Available**

For these final results, we continue to find that Changwon Specialty Steel Co., Ltd. (Changwon), and Dongbang Special Steel Co., Ltd. (Dongbang), and all of their affiliates (collectively, the respondent<sup>1</sup>) did not act to the best of their ability to participate in this review by not submitting a response to our antidumping duty questionnaire, thus withholding information necessary to calculate an accurate dumping margin and information which we requested. Accordingly, we continue to find that the use of adverse facts available is warranted under section 776 of the Act. For a detailed discussion of our application, selection, and corroboration of the rate we selected as adverse facts available, see the *Preliminary Results*, 72 FR at 32075.

<sup>1</sup> We collapsed Changwon and Dongbang in the less-than-fair-value investigation and in every subsequent review of this order because we found a close supplier relationship between the entities. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Korea*, 63 FR 40404, 40405 (July 29, 1998).

**Final Results of Review**

As a result of our review, we determine that a weighted-average dumping margin of 28.44 percent exists for the respondent for the period September 1, 2005, through August 31, 2006.

**Duty Assessment and Cash-Deposit Requirements**

The Department will determine, and the U.S. Bureau of Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. Because we are applying adverse facts available to all exports of subject merchandise produced or exported by the respondent, we will instruct CBP to assess the final percentage margin against the entered customs values on all applicable entries during the period of review. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

The following deposit requirements will be effective upon publication of these final results of this administrative review for all shipments of SSWR from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) The cash-deposit rate for the respondent will be 28.44 percent; (2) for merchandise exported by producers or exporters that were previously reviewed

or investigated, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the producer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash-deposit rate shall be 5.77 percent, the all-others rate established in the less-than-fair-value investigation, as adjusted in a subsequent remand redetermination. See *Stainless Steel Wire Rod From Korea: Amendment of Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision*, 66 FR 41550 (August 8, 2001). These cash-deposit requirements shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping

duties occurred and the subsequent assessment of double antidumping duties.

#### Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative protective order itself. 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 terms of an APO is a sanctionable violation.

These final results of administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 9, 2007.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E7-16156 Filed 8-15-07; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; as amended by Pub. L. 106-36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce 14th and Constitution Ave., NW, Room 2104 Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 2104, U.S. Department of Commerce.

*Docket Number: 07-051.* Applicant: Colorado College, Department of Physics, 14 E. Cache la Poudre, Colorado Springs, CO 80903 Instrument: Low Temperature Ultra-High Vacuum Scanning Tunneling Microscope. Manufacturer: Omicron Nanotechnology GmbH, Germany Intended Use: The instrument is intended to be used in a collaborative project with NIST to

develop a Josephson-junction based quantum computer. The instrument will provide detailed maps of the electron density of the materials as a function of spatial position and energy. Since electrical conductivity derives from electron density, the maps will allow study of how well electrons are locally conducted through various materials.

The instrument provides: (a) A scanning tunneling microscope mounted inside a 4 K liquid helium reservoir (with a 22-hour liquid helium refill time); (b) Operation at an equilibrium temperature of 4 K with in-situ sample preparation and tip transfer capability); (c) Low drift rates of 1 angstrom/hour (d) RMS vibration amplitudes of <0.005 angstrom in a 300 Hz bandwidth; and (e) Sample registry after deposition. Application accepted by Commissioner of Customs: July 31, 2007.

*Docket Number: 07-053.* Applicant: University of Kentucky, Dept. Civil Engineering, 161 Raymond Building, Lexington, KY 40506 Instrument: Soil Stiffness Testing System. Manufacturer: GDS Instruments, Ltd., UK. Intended Use: The instrument is intended to be used to measure soil stiffness at very small strains in a specially modified automated triaxial test apparatus. These measurements are critical to understanding and consequently predicting soil behavior for all geotechnical systems.

The instrument provides a vertically propagating S-wave transmitter and a P-wave receiver along with a vertically propagating P-wave transmitter and S-wave receiver and a master signal conditioning unit along with GDSBES software to control data acquisition and drive signal generation for S and P wave velocity tests as well as a Hall effect local strain set (2 axial, 1 radial) and mid-plane pore pressure kit. No domestic sources making similar devices provide an integrated system of this type of testing with the resolution required for advanced geotechnical research. Application accepted by Commissioner of Customs: August 3, 2007.

**Faye Robinson,**

*Director, Statutory Import Programs Staff, Import Administration.*

[FR Doc. E7-16152 Filed 8-15-07; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, as amended by Pub. L. 106-36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with Statutory Import Programs Staff, U.S. Department of Commerce, Room 2104, 14th and Constitution Ave., Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 2104, U.S. Department of Commerce.

*Docket Number: 07-047.* Applicant: University of Southern California, University Park, Los Angeles, CA 90089. Instrument: Electron Microscope, Model JEM-1400. Manufacturer: JEOL, Ltd., Japan. Intended Use: The instrument is intended to be used to decipher local structural organization in cells and tissues, to visualize the shapes of proteins as they undergo conformational reorganization into elongated amyloid fibrils and other spherical structures and to investigate other larger molecular nano-particles. Application accepted by Commissioner of Customs: June 18, 2007.

*Docket Number: 07-050.* Applicant: University of Massachusetts Medical School, 55 Lake Avenue North Worcester, MA 01655. Instrument: Electron Microscope, Model Quanta 200 FEG. Manufacturer: FEI Company, Czech Republic Intended Use: The instrument is intended to be used to study the distribution of cilia on cell surfaces, the structure of bone cells in healthy and diseased bone, the structure of fly antennae in flies with mutations homologous to human disease mutations, the structure of mouse embryos, the means of entry of pathogens into cells and the distribution of cell surface receptors involved in the immune response and various other biological issues. Application accepted by Commissioner of Customs: July 23, 2007.

*Docket Number: 07-049.* Applicant: Indiana University, 400 East Seventh

Street, Room 404, Bloomington, IN 47405. Instrument: Electron Microscope, Model JEM-3200FS. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used for, among other purposes: structure/function studies of modified icosahedral virus particles with long term applications in biomedical imaging and drug delivery; real time structure determination of viruses and their assembly intermediates for creating pH sensors and finding novel targets for drug delivery; analysis of microbial biofilms and the structural and chemical analysis of nanoparticles that are used as materials science platforms. Application accepted by Commissioner of Customs: July 23, 2007.

*Docket Number: 06-042.* Applicant: The University of Illinois at Urbana-Champaign, 616 E. Green St., Ste. 212, Champaign, IL 61820. Instrument: electron microscope, Model JEM-2200FS. Manufacturer: JEOL, Ltd., Japan. Intended Use: The instrument is intended to be used by a centralized facility for the microanalysis of materials. Properties of materials studied include: relation of structure to catalytic activity; strain and composition distribution within the nanostructures, effects of impurities on the strength of materials, domain structure, ordering mechanisms and coherency strain effects and structural motifs of chromosome architecture and its modification. Application accepted by Commissioner of Customs: July 10, 2006.

*Docket Number: 07-052.* Applicant: Scripps Research Institute, 10550 North Torrey Pines Road, La Jolla, CA 92037. Instrument: Electron Microscope (2), Tecnai G2 Spirit TWIN and Morgagni TEM. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument is intended to be used for structural investigations of biological macromolecular assemblies including: structure of COPII coated vesicles, molecular motors, electron dense labels for macromolecules, high resolution structures among bacteriophages, structure of the HIV capsid assembly and characterization of the chloroplast ribosome. Application accepted by Commissioner of Customs: July 31, 2007.

**Faye Robinson,**

*Director, Statutory Import Programs Staff, Import Administration.*

[FR Doc. E7-16153 Filed 8-15-07; 8:45 am]

**BILLING CODE 3510-DS-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[Docket No. 070213033-7033-01]

**RIN 0648-XC08**

**Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel Lottery in Areas 542 and 543**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notification of fishery assignments.

**SUMMARY:** NMFS is notifying the owners and operators of registered vessels of their assignments for the 2007 B season Atka mackerel fishery in harvest limit area (HLA) 542 and/or 543 of the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of the 2007 B season HLA limits established for area 542 and area 543 pursuant to the 2007 and 2008 harvest specifications for groundfish in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), August 15, 2007, until 1200 hrs, A.l.t., November 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management 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.

In accordance with § 679.20(a)(8)(iii)(A), owners and operators of vessels using trawl gear for directed fishing for Atka mackerel in the HLA are required to register with NMFS. Eleven vessels have registered with NMFS to fish in the B season HLA fisheries in areas 542 and/or 543. In order to reduce the amount of daily catch in the HLA by about half and to disperse the fishery over time and in accordance with § 679.20(a)(8)(iii)(B), the Administrator, Alaska Region, NMFS, has randomly assigned each vessel to the HLA directed fishery for

Atka mackerel for which they have registered and is now notifying each vessel of its assignment.

Vessels authorized to participate in the first HLA directed fishery in area 542 and/or in the second HLA directed fishery in area 543 in accordance with § 679.20(a)(8)(iii) are as follows: Federal Fishery Permit number (FFP) 3835 Seafisher, FFP 3423 Alaska Warrior, FFP 2443 Alaska Juris, FFP 2733 Seafreeze Alaska, and FFP 4092 Constellation.

Vessels authorized to participate in the first HLA directed fishery in area 543 in accordance with § 679.20(a)(8)(iii) are as follows: FFP 3400 Alaska Ranger, FFP 2134 Ocean Peace, FFP 4093 Alaska Victory, and FFP 3819 Alaska Spirit.

Vessels authorized to participate in the second HLA directed fishery in area 542 in accordance with § 679.20(a)(8)(iii) are as follows: FFP 2800 U.S. Intrepid, FFP 1879 American No. 1, FFP 3400 Alaska Ranger, FFP 2134 Ocean Peace, FFP 4093 Alaska Victory, and FFP 3819 Alaska Spirit.

**Classification**

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 unnecessary. This notice merely advises the owners of these vessels of the results of a random assignment required by regulation. The notice needs to occur immediately to notify the owner of each vessel of its assignment to allow these vessel owners to plan for participation in the B season HLA fisheries in area 542 and area 543.

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.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 13, 2007.

**James P. Burgess,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E7-16166 Filed 8-15-07; 8:45 am]

**BILLING CODE 3510-22-S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Determination Under the African Growth and Opportunity Act

August 13, 2007.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Directive to the Commissioner of Customs and Border Protection.

**SUMMARY:** The Committee for the Implementation of Textile Agreements (CITA) has determined that certain additional textile and apparel goods from Mali shall be treated as "handloomed, handmade, folklore articles, or ethnic printed fabrics" and qualify for preferential treatment under the African Growth and Opportunity Act. Imports of eligible products from Mali with an appropriate visa will qualify for duty-free treatment.

**EFFECTIVE DATE:** August 27, 2007.

**FOR FURTHER INFORMATION CONTACT:** Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Sections 112(a) and 112(b)(6) of the African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-200) ("AGOA"), as amended by section 7(c) of the AGOA Acceleration Act of 2004 (Pub. L. 108-274) ("AGOA Acceleration Act") (19 U.S.C. §§ 3721(a) and (b)(6)); sections 2 and 5 of Executive Order No. 13191 of January 17, 2001; Sections 25-27 and Paras. 13-14 of Presidential Proclamation 7912 of June 29, 2005.

AGOA provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries, including handloomed, handmade, or folklore articles of a beneficiary country that are certified as such by the competent authority in the beneficiary country. The AGOA Acceleration Act further expanded AGOA by adding ethnic printed fabrics to the list of textile and apparel products made in the beneficiary sub-Saharan African countries that may be eligible for the preferential treatment describes in section 112(a) of the AGOA. In Executive Order 13191 (January 17, 2001) and Presidential Proclamation 7912 (June 29, 2005), the President authorized CITA to consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being hand-loomed,

handmade, folklore articles, or ethnic printed fabrics. *See* 66 FR 7271, 7271-72 (January 22, 2001); 70 FR 37959, 37961 & 63 (June 30, 2005).

In a letter to the Commissioner of Customs dated January 18, 2001, the United States Trade Representative directed Customs to require that importers provide an appropriate export visa from a beneficiary sub-Saharan African country to obtain preferential treatment under section 112(a) of the AGOA. *See* 66 FR 7837 (January 25, 2001). The first digit of the visa number corresponds to one of nine groupings of textile and apparel products that are eligible for preferential tariff treatment. Grouping "9" is reserved for handmade, handloomed, folklore articles, or ethnic printed fabrics.

CITA has consulted with Malian authorities and has previously determined that handloomed fabrics, handloomed articles (e.g., handloomed rugs, scarves, place mats, and tablecloths), handmade articles made from handloomed fabrics, and certain folklore articles and ethnic printed fabrics are eligible for preferential treatment. *See* 71 FR 78408 (December 29, 2006). This directive expands Mali's existing Category 9 treatment to include certain additional folklore articles described in Annex A to this notice, if produced in and exported from Mali. These goods are eligible for preferential tariff treatment under section 112(a) of the AGOA, as amended. In the letter published below, CITA directs the Commissioner of Customs and Border Protection to allow duty-free entry of such products under U.S. Harmonized Tariff Schedule subheading 9819.11.27 if accompanied by an appropriate AGOA visa in grouping "9".

**R. Matthew Priest,**

*Chairman, Committee for the Implementation of Textile Agreements.*

#### Committee for the Implementation of Textile Agreements

August 13, 2007.

Commissioner of Customs,  
U.S. Customs and Border Protection,  
Washington, DC 20229.

Dear Commissioner: The Committee for the Implementation of Textiles Agreements ("CITA"), pursuant to Sections 112(a) and (b)(6) of the African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-200) ("AGOA"), as amended by Section 7(c) of the AGOA Acceleration Act of 2004 (Pub. L. 108-274) ("AGOA Acceleration Act") (19 U.S.C. §§ 3721(a) and (b)(6)), Executive Order No. 13191 of January 17, 2001, and Presidential Proclamation 7912 of June 29, 2005, has determined, effective on August 27, 2007, that certain folklore products described in Annex A are eligible for duty-free treatment

only if entered under subheading 9819.11.27 and accompanied by a properly completed visa for product grouping "9", in accordance with the provisions of the Visa Arrangement between the Government of Mali and the Government of the United States Concerning Textile and Apparel Articles Claiming Preferential Tariff Treatment under Section 112 of the Trade and Development Act of 2000. After further consultations with Malian authorities, CITA may determine that additional textile and apparel goods shall be treated as folklore articles.

Sincerely,  
R. Matthew Priest,  
*Chairman, Committee for the Implementation of Textile Agreements.*

#### ANNEX A: Malian Folklore Products

CITA has determined that the following textile and apparel goods shall be treated as folklore articles for purposes of the AGOA if made in Mali. Articles must be ornamented in characteristic Malian or regional folk style. An article may not include modern features such as zippers, elastic, elasticized fabrics, snaps, or hook-and-pile fasteners (such as Velcro © or similar holding fabric). An article may not incorporate patterns that are not traditional or historical to Mali, such as airplanes, buses, cowboys, or cartoon characters and may not incorporate designs referencing holidays or festivals not common to traditional Malian culture, such as Halloween and Thanksgiving.

#### Eligible folklore articles:

(a) Bogolan (Mudcloth) Bags: This bag is constructed of several narrow strips of 100% heavy cotton hand-woven fabric, hand or machine sewn together, dyed and painted in geometric shapes using natural dyes. The Bogolan bags may or may not have an interior lining which is generally made of machine-made fabric. Handles attached to the top of the bag are also made of the handwoven mudcloth fabric. Dimensions vary.

[FR Doc. E7-16154 Filed 8-15-07; 8:45 am]

**BILLING CODE 3510-DR-S**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Sunshine Act; Department of Defense Task Force on the Future of Military Health Care

**AGENCY:** Department of Defense.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended) and 41 Code of Federal Regulations (CFR) 102-3.140 through 160, the Department of Defense announces the following committee meeting:

**NAME OF COMMITTEE:** Department of Defense Task Force on the Future of

Military Health Care, a duly established subcommittee of the Defense Health Board.

**DATE OF MEETING:** September 5, 2007.

**TIME OF MEETING:** 9 a.m. to 3 p.m.

**PLACE OF MEETING:** National Transportation Safety Board Conference Center, 429 L'Enfant Plaza, Washington, DC 20594.

**PURPOSE OF MEETING:** To obtain, review, and evaluate information related to the Task force's congressionally directed mission to examine matters relating to the future of military health care. The Task Force members will receive briefings on topics related to the delivery of military health care during the public meeting.

**AGENDA:** Discussion topic will be Command and Control of the Military Health Care System.

Prior to the public meeting the Task Force will conduct a Preparatory Work Meeting from 8 a.m.–8:50 a.m. to solely analyze relevant issues and facts in preparation for the Task Force's next public meeting. In addition, the Task Force, following its public meeting, will conduct an additional Preparatory Work Meeting from 3:10 p.m. to 4 p.m. to analyze relevant issues and facts in preparation for the Task Force's next public meeting. Both Preparatory Meetings will be held at the National Transportation Safety Board Conference Center, and pursuant to 41 Code of Federal Regulations, Part 102–3.160(a). Both Preparatory Work Meetings are closed to the public.

Additional information and meeting registration is available online at the Task Force Web site: [www.DoDfuturehealthcare.net](http://www.DoDfuturehealthcare.net).

**FOR FURTHER INFORMATION CONTACT:** Colonel Christine Bader, Executive Secretary, Department of Defense Task Force on the Future of Military Health Care, TMA/Code: DHS, Five Skyline Place, Suite 810, 5111 Leesburg Pike, Falls Church, Virginia 22041–3206, (703) 681–3279, ext. 109 ([christine.bader@ha.osd.mil](mailto:christine.bader@ha.osd.mil)).

**SUPPLEMENTARY INFORMATION:** Open sessions of the meeting will be limited by space accommodations. Any interested person may attend; however, seating is limited to the space available at the National Transportation Safety Board Conference Center. Individuals or organizations wishing to submit written comments for consideration by the Task Force should provide their comments in an electronic (PDF Format) document through the Task Force Web site (<http://DoDfuturehealthcare.net>) at the "Contact Us" page, no later than five (5)

business days prior to the scheduled meeting.

Dated: August 13, 2007.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 07–4027 Filed 8–14–07; 10:27 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Sunshine Act Meeting of the Uniform Formulary Beneficiary Advisory Panel

**AGENCY:** Department of Defense, Assistant Secretary of Defense (Health Affairs).

**ACTION:** Notice of meeting.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) the Department of Defense announces the following Federal Advisory Committee Meeting:

**NAME OF COMMITTEE:** Uniform Formulary Beneficiary Advisory Panel (hereafter referred to as the Panel).

**DATE OF MEETING:** Tuesday, September 18, 2007.

**LOCATION:** Naval Heritage Center Theater, 701 Pennsylvania Avenue, NW., Washington, DC 20004.

**TIME:** 8 a.m. to 4 p.m.

**PURPOSE OF MEETING:** The Panel will review and comment on recommendations made to the Director, TRICARE Management Activity, by the Pharmacy and Therapeutics (P&T) Committee regarding the Uniform Formulary.

**MEETING AGENDA:** Sign-In; Welcome and Opening Remarks; Opportunity for Public Citizen Comments; Scheduled Therapeutic Class Review—(Leukotriene Modifying Agents (LMAs), Growth Stimulating Agents (GSAs), Second Generation (newer) Antihistamines (SGAs) and Designated newly Approved Drugs; Panel discussions, vote, and comments following each therapeutic class review.

**MEETING ACCESSIBILITY:** Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space this meeting is open to the public. Seating is limited and will be provided only to the first 220 people signing in. All persons must sign in legibly.

**WRITTEN STATEMENTS:** Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may

submit written statements to the membership of the Panel at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Panel's Designated Federal Officer. The Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—<https://www.fido.gov/facadatabase/public.asp>.

Written statements that do not pertain to the scheduled meeting of the Panel may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five (5) business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

**PUBLIC COMMENTS:** In addition to written statements, the Panel will set aside one (1) hour for individual or interested groups to address the Panel. To ensure consideration of their comments, individuals and interested groups should submit written statements as outlined in this notice. Additionally, they will be afforded the opportunity to address the Panel. Registration for addressing the Panel in on a first-come, first-serve basis. Those wishing to address the Panel will be given no more than five (5) minutes to present their comments, and at the end of the one (1) hour time period no further public comments will be accepted.

**FOR FURTHER INFORMATION CONTACT:** Major Travis Watson, Designated Federal Officer, Uniform Formulary Beneficiary Advisory Panel, Skyline 5, Suite 810–5111 Leesburg Pike, Falls Church, Virginia 22041–3206, Telephone: (703) 681–2890—Fax: (703) 681–1940, E-mail Address: [baprequests@tma.osd.mil](mailto:baprequests@tma.osd.mil).

Dated: August 13, 2007.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer.*

[FR Doc. 07–4028 Filed 8–14–07; 10:27 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[DoD–2007–OS–0088]

#### Privacy Act of 1974; Systems of Records

**AGENCY:** Defense Finance and Accounting Service, DOD.

**ACTION:** Notice to add a system of records.

**SUMMARY:** The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This action will be effective without further notice on September 17, 2007 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, 6760 E. Irvington Place, Denver, CO 80279-8000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Krabbenhoft at (303) 676-6045.

**SUPPLEMENTARY INFORMATION:** The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 9, 2007, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 2000, 65 FR 239.

Dated: August 10, 2007.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**T7905**

**SYSTEM NAME:**

Labor Cost and Reporting System.

**SYSTEM LOCATION:**

Defense Information Systems Agency (DISA) Defense Enterprise Computing Center (DECC)—St Louis, 4300 Goodfellow Boulevard, St Louis, MO 63120-0012.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

U.S. Army Active duty and Reserve military members and DoD civilian employees.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual's name, Social Security Number (SSN), rank, grade, hours, and job orders.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301 Departmental Regulation; Department of Defense Financial Management Regulation (DODFMR) 7000.14-R, Volume 5; 31 U.S.C. 3511, 3512, and 3513; and E.O. 9397 (SSN).

**PURPOSE(S):**

To compute and distribute employee labor costs and to provide labor reports to management.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the DoD's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders and electronic storage media.

**RETRIEVABILITY:**

Name and Social Security Number (SSN).

**SAFEGUARDS:**

Records are stored in a building protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. User IDs and passwords are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access.

**RETENTION AND DISPOSAL:**

Records are temporary in nature, cut off at the end of the fiscal year and destroyed 6 years and 3 months after cutoff. Records are destroyed by degaussing, burning, or shredding.

**SYSTEM MANAGER(S) AND ADDRESS:**

Standard Operation and Maintenance Army Research and Development System Manager, Defense Finance and Accounting Service—Indianapolis, Accounting Systems Division, 8899 E. 56th Street, Indianapolis, IN 46249-2700.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves

is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279-8000.

Requests should contain individual's full name, Social Security Number (SSN), current address, and telephone number.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279-8000.

Requests should contain individual's full name, Social Security Number (SSN), current address, and telephone number.

**CONTESTING RECORD PROCEDURES:**

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11-R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279-8000.

**RECORD SOURCE CATEGORIES:**

From the individual concerned and the Department of the Army.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E7-16133 Filed 8-15-07; 8:45 am]

BILLING CODE 5001-06-P

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

[DoD-2007-OS-0065]

**Privacy Act of 1974; Systems of Records**

**AGENCY:** Defense Finance and Accounting Service, DOD.

**ACTION:** Notice to add a system of records.

**SUMMARY:** The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record systems subject to

the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This action will be effective without further notice on September 17, 2007 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, 6760 E. Irvington Place, Denver, CO 80279-8000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Krabbenhoft at (303) 676-6045.

**SUPPLEMENTARY INFORMATION:** The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 9, 2007, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 2000, 65 FR 239.

Dated: August 10, 2007.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**T7906**

**SYSTEM NAME:**

Automated Disbursing System.

**SYSTEM LOCATION:**

Defense Information Systems Agency (DISA), Defense Enterprise Computing Center (DECC) Mechanicsburg—Bldg 308, Naval Support Activity (NSA), 5450 Carlisle Pike, Mechanicsburg, PA 17050-2411.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Navy civilian employees and active and reserve military members.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual's name, Social Security Numbers (SSN), rank, grade, check and electronic fund transfer disbursements, collections of debts or overpayments from entitlement systems, electronic funds transfer rejected transactions, and notice of change information regarding an individual's account from financial institutions.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; Department of Defense Financial Management Regulation (DoDFMR) 7000.14-R, Volume 5, Chapter 20; 31 U.S.C. Sections 3511, 3512, and 3513; and E.O. 9397 (SSN).

**PURPOSE(S):**

This system will be the disbursing system of record and the single source for consolidated disbursing information for the U.S. Navy.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Department of the Treasury and Federal Reserve Bank for reporting the financial status of the U.S. Navy funds and providing information on check issues and electronic funds transfers.

The DoD 'Blanket Routine Uses' published at the beginning of the DFAS' compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders and electronic storage media.

**RETRIEVABILITY:**

Name and Social Security Number (SSN).

**SAFEGUARDS:**

Records are stored in a building protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords are used to control access to the system data, and procedures are in place to detect and deter browsing and unauthorized access.

**RETENTION AND DISPOSAL:**

Records are temporary in nature, cut off at the end of the fiscal year and destroyed 6 years and 3 months after cutoff. Records are destroyed by degaussing, burning, or shredding.

**SYSTEM MANAGER(S) AND ADDRESS:**

System Manager, Defense Finance and Accounting Service, Information and

Technology Directorate, Accounting Systems Division, 1240 East Ninth Street, Cleveland, OH 44199-8002.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279-8000.

Requests should contain individual's full name, Social Security Number (SSN), current address, telephone number, and provide a reasonable description.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves that is contained in this system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279-8000.

Requests should contain individual's full name, Social Security Number (SSN), current address, telephone number, and provide a reasonable description.

**CONTESTING RECORD PROCEDURES:**

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11-R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279-8000.

**RECORD SOURCE CATEGORIES:**

From the individual and the U.S. Navy.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E7-16136 Filed 8-15-07; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

[DoD-2007-OS-0087]

**Privacy Act of 1974; Systems of Records**

**AGENCY:** Defense Logistics Agency, DOD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Defense Logistics Agency proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on September 17, 2007 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060-6221.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jody Sinkler at (703) 767-5045.

**SUPPLEMENTARY INFORMATION:** The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on August 9, 2007, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 10, 2007.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

#### **5500.40 CAAS**

**SYSTEM NAME:**

Police Force Records (September 14, 1999, 64 FR 49780).

**CHANGES:**

**SYSTEM IDENTIFIER:**

Delete "CAAS" from entry.

**SYSTEM NAME:**

Delete entry and replace with "DLA Security Force and Staff Records."

**SYSTEM LOCATION:**

Delete entry and replace with "Public Safety and Security Office, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 3533, Fort Belvoir, VA 22060-6220 and the Public Safety or Security Offices of the

DLA Field Activities. Addresses may be obtained from the System manager."

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with "Defense Logistics Agency (DLA) security and investigations personnel."

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with "Records contain individual's name, Social Security Number (SSN), date of birth, home address, telephone number, emergency notification data, driver's license number and expiration date, security clearance, weapons qualification, education and training data, professional certifications, issuance and receipt of property and equipment (uniforms, shields, credentials, weapons, ammunition), shift assignments, and related papers."

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with "10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; section 21 of the Internal Security Act of 1950 (50 U.S.C. 797); 18 U.S.C. 499, Military, Naval, or Official Passes; 18 U.S.C. 701, Official Badges, Identification Cards, Other Insignia; 18 U.S.C. 716, Police Badges; DOD Directive 5200.8, Security of Military Installations and Resources; 10 U.S.C. 1580, Emergency Essential Personnel, designation; 10 U.S.C. 1585, Carrying of Firearms; DOD 5210.56, Use of Deadly Force and the Carrying of Firearms by DOD Personnel Engaged in Law Enforcement and Security Duties; CJCSI 3121.01B, Standing Rules of Engagement/Standing rules for the Use of Force for U.S. Forces; 10 U.S.C. 1593, Uniform allowance: civilian employees; and E.O. 9397 (SSN)."

**PURPOSE(S):**

Delete entry and replace with "Information is maintained and used by DLA Security Managers, Security and Public Safety staffs, and Security Force Supervisors to provide data concerning the professional qualifications, training requirements, and health and readiness of Security Force personnel at DLA Headquarters and Field Activities. Records are also used for identification and emergency notification in case of accident or casualty; to maintain control and accountability of property (i.e., uniforms, shields, credentials, weapons, ammunition, and equipment); to ensure proper training; to develop schedules and procedures to improve efficiency. Records are used to determine if an individual is qualified in the use of firearms and vehicles, and for security clearance to handle classified information."

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, state or local law enforcement agencies for training or assistance in police or security operations.

To local hospitals and medical personnel for emergency treatment in case of accident or casualty.

To Federal and non-federal schools, academies, and similar institutions for training or certification purposes.

To Federal, state, or local disaster relief agencies for mutual aid.

The DOD "Blanket Routine Uses" set forth at the beginning of DLA's compilation of systems of records notices apply to this system."

**RETRIEVABILITY:**

Delete entry and replace with "Retrieved by individual's name, Social Security Number (SSN), shield or credential number, and/or by duty station."

**SAFEGUARDS:**

Delete entry and replace with "Records are maintained in areas accessible only to DLA Headquarters and Field Activities security supervisory and staff personnel who uses the records to perform their duties. All records are maintained on closed military installations with security force personnel performing installation access control and random patrols. Common Access Cards and personal identification numbers are used to authenticate authorized desktop and laptop computer users. Computer servers are scanned quarterly or monthly to assess system vulnerabilities. Systems security updates are accomplished daily. The computer files are password protected with access restricted to authorized users with a need for the information. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non duty hours, with access restricted during duty hours to authorized users with a need for the information."

**RETENTION AND DISPOSAL:**

Delete entry and replace with "Records are destroyed after 1 year, when no longer needed, superseded or obsolete, or upon termination of record subject, as applicable."

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with "Program Manager, Security Plans and Policy, Headquarters, Defense Logistics Agency, Office of Public Safety, 8725 John J. Kingman Road, Suite 3533, Fort Belvoir, VA 22060-6220, and the Security Managers within the DLA Field Activity responsible for the operation of security forces and staff at the DLA Field Activity."

**NOTIFICATION PROCEDURE:**

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA-GC (FOIA/Privacy), 8725 John J. Kingman Road, STOP 1644, Fort Belvoir, VA 22060-6221.

Requests should contain the individual's full name, Social Security Number (SSN), and the DLA activity where employed."

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA-GC (FOIA/Privacy), 8725 John J. Kingman Road, STOP 1644, Fort Belvoir, VA 22060-6221.

Requests should contain individual's full name, Social Security Number (SSN), and the DLA activity where employed."

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with "The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA-GC (FOIA/Privacy), 8725 John J. Kingman Road, STOP 1644, Fort Belvoir, VA 22060-6221."

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with "The record subject, DLA Security Managers, Security Staff, Security Force Supervisors, and training and educational institutions."

**S500.40****SYSTEM NAME:**

DLA Security Force and Staff Records.

**SYSTEM LOCATION:**

Public Safety and Security Office, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 3533, Fort Belvoir, VA 22060-6220 and the Public Safety and Security Offices of the DLA Field Activities. Addresses may be obtained from the System manager.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Defense Logistics Agency (DLA) security and investigations personnel.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records contain individual's name, Social Security Number (SSN), date of birth, home address, telephone number, emergency notification data, driver's license number and expiration date, security clearance, weapons qualification, education and training data, professional certifications, issuance and receipt of property and equipment (uniforms, shields, credentials, weapons, ammunition), shift assignments, and related papers.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; Section 21 of the Internal Security Act of 1950 (50 U.S.C. 797); 18 U.S.C. 499, Military, Naval, or Official Passes; 18 U.S.C. 701, Official Badges, Identification Cards, Other Insignia; 18 U.S.C. 716, Police Badges; DOD Directive 5200.8, Security of Military Installations and Resources; 10 U.S.C. 1580, Emergency Essential Personnel, designation; 10 U.S.C. 1585, Carrying of Firearms; DOD 5210.56, Use of Deadly Force and the Carrying of Firearms by DOD Personnel Engaged in Law Enforcement and Security Duties; CJCSI 3121.01B, Standing Rules of Engagement/Standing rules for the Use of Force for U.S. Forces; 10 U.S.C. 1593, Uniform allowance: civilian employees; and E.O. 9397 (SSN).

**PURPOSE(S):**

Information is maintained and used by DLA Security Managers, Security and Public Safety staffs, and Security Force Supervisors to provide data concerning the professional qualifications, training requirements, and health and readiness of Security Force personnel at DLA Headquarters and Field Activities. Records are also used for identification and emergency notification in case of accident or casualty; to maintain control and accountability of property (i.e. uniforms, shields, credentials, weapons, ammunition, and equipment); to ensure proper training; to develop schedules and procedures to improve efficiency. Records are used to determine if an

individual is qualified in the use of firearms and vehicles and for security clearance to handle classified information.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, state or local law enforcement agencies for training or assistance in police or security operations.

To local hospitals and medical personnel for emergency treatment in case of accident or casualty.

To Federal and non-federal schools, academies, and similar institutions for training or certification purposes.

To Federal, state, or local disaster relief agencies for mutual aid.

The DOD "Blanket Routine Uses" that appear at the beginning of DLA's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Paper records in file folders and electronic storage media.

**RETRIEVABILITY:**

Retrieved by individual's name, Social Security Number (SSN), shield or credential number, and/or by duty station.

**SAFEGUARDS:**

Records are maintained in areas accessible only to DLA Headquarters and Field Activities security supervisory and staff personnel who use the records to perform their duties. All records are maintained on closed military installations with security force personnel performing installation access control and random patrols. Common Access Cards and personal identification numbers are used to authenticate authorized desktop and laptop computer users. Computer servers are scanned quarterly or monthly to assess system vulnerabilities. Systems security updates are accomplished daily. The computer files are password protected with access restricted to authorized users with a need for the information. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non duty hours,

with access restricted during duty hours to authorized users with a need for the information.

**RETENTION AND DISPOSAL:**

Records are destroyed after 1 year, when no longer needed, superseded or obsolete, or upon termination of record subject, as applicable.

**SYSTEM MANAGER(S) AND ADDRESS:**

Program Manager, Security Plans and Policy, Headquarters, Defense Logistics Agency, Office of Public Safety, 8725 John J. Kingman Road, Suite 3533, Fort Belvoir, VA 22060-6220, and the Security Managers within the DLA Field Activity responsible for the operation of security forces and staff at the DLA Field Activity.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA-GC (FOIA/Privacy), 8725 John J. Kingman Road, STOP 1644, Fort Belvoir, VA 22060-6221.

Requests should contain individual's full name, Social Security Number (SSN), and the DLA activity where employed.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA-GC (FOIA/Privacy), 8725 John J. Kingman Road, STOP 1644, Fort Belvoir, VA 22060-6221.

Request should contain individual's full name, Social Security Number (SSN), and the DLA activity where employed.

**CONTESTING RECORD PROCEDURES:**

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA-GC (FOIA/Privacy), 8725 John J. Kingman Road, STOP 1644, Fort Belvoir, VA 22060-6221.

**RECORD SOURCE CATEGORIES:**

The record subject, DLA Security Managers, Security Staff, Security Force Supervisors, and training and educational institutions.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E7-16137 Filed 8-15-07; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF DEFENSE**

**Department of the Air Force**

**Air University Board of Visitors Meeting**

**ACTION:** Notice of meeting of Air University Board of Visitors.

**SUMMARY:** The purpose of the meeting is to give the board an opportunity to discuss Air University's proposed 2008 new board membership. Due to difficulties beyond the control of the Air University Board of Visitors the Department of the Air Force failed to process the Board's **Federal Register** meeting notice in sufficient time to publish notice of its meeting in the **Federal Register** for the 15-calendar days required by 41 CFR, 102-3.150(a). Accordingly, the Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102-3.150(b), waives the 15-calendar day notification requirement.

**DATES:** The Air University Board of Visitors will hold an open meeting on August 27, 2007, 1 CDT, telephone conference call (electronic meeting), 1-334-953-1945.

**FOR FURTHER INFORMATION CONTACT:** Contact Dr. Dorothy Reed, Chief of Academic Affairs, Air University Headquarters, Maxwell Air Force Base, Alabama 36112-6335, telephone (334)-953-5159.

**Bao-Anh Trinh,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. E7-16099 Filed 8-15-07; 8:45 am]

**BILLING CODE 5001-05-P**

**DEPARTMENT OF DEFENSE**

**Department of the Navy**

[USN-2007-0047]

**Privacy Act of 1974; System of Records**

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Department of the Navy proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on September 17, 2007 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS-36), 2000 Navy Pentagon, Washington, DC 20350-2000.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Doris Lama at (202) 685-325-6545.

**SUPPLEMENTARY INFORMATION:** The Department of the Navy's systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on August 9, 2007, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**NO1754-4**

**SYSTEM NAME:**

Navy Family Accountability and Assessment System (NFAAS) (August 4, 2006, 71 FR 44265).

**CHANGES:**

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with "Navy personnel (military and civilian) and their families who are involved in a natural or other man-made major disaster; catastrophic event; and/or assigned to a limited term deployment as an 'Individual Augmentee (IA)' in support of the Global War on Terrorism."

**CATEGORIES OF RECORDS IN THE SYSTEM:**

At beginning of entry, add "NFAAS Needs Assessment Survey that includes name; home and duty stations \* \* \*."

**PURPOSE(S):**

Add new second paragraph that reads: "To support individual readiness for deployment in support of the Global War on Terrorism; to provide

individuals selected for deployment and their families necessary information to ensure that they have access to needs including medical, identification of services at installations in their area, housing assistance, storage of personal property, financial assistance/counseling, pay and benefits information, DON Civilian Employees Human Resources services, family employment opportunities, child care options; education/school availability, general legal matters, pastoral care, clinical counseling, casualty/death benefits assistance, general readiness information, and to continue to maintain contact with the family members to ensure they receive all necessary support/assistance.”

\* \* \* \* \*

#### **N01754-4**

##### **SYSTEM NAME:**

Navy Family Accountability and Assessment System (NFAAS)

##### **SYSTEM LOCATION:**

Space and Naval Warfare Systems Center, 53560 Hull Street, San Diego, CA 92152-5001.

##### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Navy personnel (military and civilian) and their families who are involved in a natural or other man-made major disaster; catastrophic event; and/or assigned to a limited term deployment as an “Individual Augmentee (IA)” in support of the Global War on Terrorism.

##### **CATEGORIES OF RECORDS IN THE SYSTEM:**

NFAAS Needs Assessment Survey that includes name; home and duty stations addresses; home, business, and cell telephone numbers; military/civilian status; Social Security Number (SSN); dates of birth; Unit Identification Code (UIC); date of last contact; insurance company; FEMA Number; email address; dependent information; travel orders/vouchers; assessment date; needs assessment information; type of event; category classification; and command information.

##### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 5013, Secretary of the Navy and E.O. 9397 (SSN).

##### **PURPOSE(S):**

To support individual readiness for deployment in support of the Global War on Terrorism; to provide individuals selected for deployment and their families necessary information to ensure that they have access to needs including medical, identification of services at installations in their area,

housing assistance, storage of personal property, financial assistance/counseling, pay and benefits information, DON Civilian Employees Human Resources services, family employment opportunities, child care options; education/school availability, general legal matters, pastoral care, clinical counseling, casualty/death benefits assistance, general readiness information, and to continue to maintain contact with the family members to ensure they receive all necessary support/assistance.

To assess disaster-related needs (i.e., status of family members, housing, medical, financial assistance, employment, pay and benefits, transportation, child care, pastoral care/counseling, and general legal matters) of Navy personnel and their families who have been involved in a natural or other man-made major disaster or catastrophic event.

##### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD “Blanket Routine Uses” set forth at the beginning of the Navy’s compilation of systems of records notices also apply to this system.

##### **POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

##### **STORAGE:**

Electronic storage media.

##### **RETRIEVABILITY:**

Name, Social Security Number (SSN) and date of birth.

##### **SAFEGUARDS:**

Password controlled system, file, and element access is based on predefined need-to-know. Physical access to terminals, terminal rooms, buildings and activities’ grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers.

##### **RETENTION AND DISPOSAL:**

Records are destroyed two years after all actions are completed.

##### **SYSTEM MANAGER(S) AND ADDRESS:**

Commander, Navy Installations Command, 2713 Mitscher Road, SW., Ste. 300, Anacostia Annex, DC 20373-5882.

##### **NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Installations Command, 2713 Mitscher Road, SW., Ste. 300, Anacostia Annex, DC 20373-5882.

The request should include individual’s full name, Social Security Number (SSN), address, date of birth, and signature.

##### **RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Navy Installations Command, 2713 Mitscher Road, SW., Ste. 300, Anacostia Annex, DC 20373-5882.

The request should include individual’s full name, Social Security Number (SSN), address, date of birth, and signature.

##### **CONTESTING RECORD PROCEDURES:**

The Navy’s rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

##### **RECORD SOURCE CATEGORIES:**

Individual; personnel files; Needs Assessment Survey; Defense Manpower Data Center; Defense Civilian Personnel Data System (DCPDS); and command personnel.

##### **EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E7-16129 Filed 8-15-07; 8:45 am]

BILLING CODE 5001-06-P

## **DEPARTMENT OF EDUCATION**

### **Notice of Proposed Information Collection Requests**

**AGENCY:** Department of Education.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before October 15, 2007.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested

Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 10, 2007.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

#### **Office of Special Education and Rehabilitative Services**

*Type of Review:* Revision.

*Title:* Part B, Individuals With Disabilities Education Act Implementation of FAPE Requirements.

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 60.

*Burden Hours:* 469,860.

*Abstract:* This package provides instructions and forms necessary for States to report the extent to which children with disabilities served under IDEA-B receive special education and related services with their non-disabled peers. The form satisfies reporting

requirements and is used by the Office of Special Education Programs (OSEP) to monitor SEAs and for Congressional reporting.

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 3427. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](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. E7-16023 Filed 8-15-07; 8:45 am]

**BILLING CODE 4000-01-P**

## **DEPARTMENT OF EDUCATION**

### **Submission for OMB Review; Comment Request**

**AGENCY:** Department of Education.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before September 17, 2007.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov) or via fax to (202) 395-6974. Commenters should include the following subject line in their response "Comment: [insert OMB number], [insert abbreviated collection name, e.g., "Upward Bound Evaluation"]". Persons submitting comments electronically should not submit paper copies.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of

1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 10, 2007.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

#### **Office of Postsecondary Education**

*Type of Review:* Extension.

*Title:* Technological Innovation and Cooperation for Foreign Information Access Program.

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 50.

*Burden Hours:* 813.

*Abstract:* This is an application to participate in the Title IV Technological Innovation and Cooperation for Foreign Information Access Program which provides grants to institutions of higher education to support projects that will develop innovative programs using electronic technologies to collect, organize, preserve, and widely disseminate information on world regions and countries other than the United States that address our Nation's teaching and research needs in international education and foreign languages.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890-0001). Therefore, the 30-day public

comment period notice will be the only public comment public notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3422. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](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. E7-16024 Filed 8-15-07; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before September 17, 2007.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or via fax to (202) 395-6974. Commenters should include the following subject line in their response "Comment: [insert OMB number], [insert abbreviated collection name, e.g., "Upward Bound Evaluation"]". Persons submitting

comments electronically should not submit paper copies.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 8, 2007.

**James Hyler,**

*Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management.*

### Federal Student Aid

**Type of Review:** Extension of a currently approved collection.

**Title:** Federal Direct Consolidation Loan Program Application Documents.

**Frequency:** On occasion.

**Affected Public:** Individuals or households; Businesses or other for-profits.

**Reporting and Recordkeeping Hour Burden:**

Responses: 920,714.

Burden Hours: 680,480.

**Abstract:** These forms are the means by which an applicant applies for and promises to repay a Federal Direct Consolidation Loan and a lender verifies that a loan is eligible to be consolidated.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3429. When you access the information collection, click on "Download Attachments" to

view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](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. E7-16026 Filed 8-15-07; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before September 17, 2007.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or via fax to (202) 395-6974. Commenters should include the following subject line in their response "Comment: [insert OMB number], [insert abbreviated collection name, e.g., "Upward Bound Evaluation"]". Persons submitting comments electronically should not submit paper copies.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere

with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 10, 2007.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

### Office of Elementary and Secondary Education

*Type of Review:* Revision.

*Title:* Consolidated State Performance Report (CSPR).

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 52.

*Burden Hours:* 16,132.

*Abstract:* This information collection package contains the Consolidated State Performance Report (CSPR). It collects data that is required under section 1111 of the No Child Left Behind Act (NCLB) which mandates the requirements for the Secretary's report to Congress and information necessary for the Secretary to report on the Department's Government Performance and Results Act (GPRA) indicators.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3353. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to

[ICDocketMgr@ed.gov](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. E7-16155 Filed 8-15-07; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF ENERGY

[OE Docket No. EA-296-A]

### Application To Export Electric Energy; Rainbow Energy Marketing Corporation

**AGENCY:** Office of Electricity Delivery and Energy Reliability, DOE.

**ACTION:** Notice of Application.

**SUMMARY:** Rainbow Energy Marketing Corporation (Rainbow) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act (FPA).

**DATES:** Comments, protests or requests to intervene must be submitted on or before September 17, 2007.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE-20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0350 (fax 202-586-8008).

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell (Program Office) 202-586-9624 or Michael Skinker (Program Attorney) 202-586-2793.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On November 9, 2004, the Department of Energy (DOE) issued Order No. EA-296 authorizing Rainbow to transmit electric energy from the United States to Canada as a power marketer for a two-year term. That authorization expired on November 9, 2006. On July 31, 2007, Rainbow filed an application with DOE to renew the export authority contained in Order No. EA-296 for an additional five-year term.

Rainbow does not own or control any transmission or distribution assets, nor does it have a franchised service area. The electric energy which Rainbow proposes to export to Canada would be

purchased from electric utilities and Federal power marketing agencies within the United States.

Rainbow will arrange for the delivery of exports to Canada over the international transmission facilities currently owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company, and Vermont Electric Transmission Co.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Rainbow has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

In its application, Rainbow indicated that, due to an administrative oversight, it was unaware that Order No. EA-296 had expired and continued occasional exports. Rainbow asserts that it has not engaged in any transactions to export electric energy to Canada since being made aware that its export authority had expired and asserts that no export activities will commence until such time as DOE grants renewed authorization for such exports. Rainbow also requested expedited treatment of this renewal application.

**Procedural Matters:** Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Rainbow application to export electric energy to Canada should be clearly marked with Docket No. EA-296-A. Additional copies are to be filed directly with Joseph M. Wolfe, Rainbow Energy Marketing Corporation, Kirkwood Office Tower, 919 South 7th Street, Suite 405, Bismarck, ND 58504 and Steven A. Weiler, Justin P. Moeller, Leonard, Street and Deinard, The Army and Navy Club Building, 1627 Eye Street, NW., Suite 610, Washington, DC 20006.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant

to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the program's Home Page at <http://www.oe.energy.gov/304.htm>.

Issued in Washington, DC on August 10, 2007.

**Anthony J. Como,**

*Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. E7-16132 Filed 8-15-07; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

[OE Docket No. EA-328]

### Application To Export Electric Energy; RBC Energy Services L.P.

**AGENCY:** Office of Electricity Delivery and Energy Reliability, DOE.

**ACTION:** Notice of application.

**SUMMARY:** RBC Energy Services L.P. (RBC Energy) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests, or requests to intervene must be submitted on or before September 17, 2007.

**ADDRESSES:** Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE-20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0350 (FAX 202-586-8008).

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell (Program Office) 202-586-9624 or Michael Skinker (Program Attorney) 202-586-2793.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On July 9, 2007, the Department of Energy (DOE) received an application from RBC Energy for authority to transmit electric energy from the United States to Canada as a power marketer. RBC Energy, an Ontario limited partnership with its executive offices

and principal place of business in Toronto, Ontario, Canada, has requested an electricity export authorization with a 5-year term. RBC Energy does not own or control any electric generation, transmission, or distribution assets, nor does it have a franchised service area. The electric energy which RBC Energy proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States.

RBC Energy will arrange for the delivery of exports to Canada over the international transmission facilities presently owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company, Vermont Electric Power Company, and Vermont Electric Transmission Co.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by RBC Energy has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

*Procedural Matters:* Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the RBC Energy application to export electric energy to Canada should be clearly marked with Docket No. EA-328. Additional copies are to be filed directly with David J. Levine, Robin J. Bowen and Gregory K. Lawrence, McDermott Will & Emery LLP, 600 13th Street, NW., Washington, DC 20005-3096.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above and at <http://www.oe.energy.gov/304.htm>.

Issued in Washington, DC, on August 10, 2007.

**Anthony J. Como,**

*Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. E7-16105 Filed 8-15-07; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

[OE Docket No. EA-329]

### Application to Export Electric Energy; Sierra Power Asset Marketing, LLC

**AGENCY:** Office of Electricity Delivery and Energy Reliability, DOE.

**ACTION:** Notice of Application.

**SUMMARY:** Sierra Power Asset Marketing, LLC (Sierra Power) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests, or requests to intervene must be submitted on or before September 17, 2007.

**ADDRESSES:** Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE-20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, 20585-0350 (FAX 202-586-8008).

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell (Program Office) 202-586-9624 or Michael Skinker (Program Attorney) 202-586-2793.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On August 7, 2007, the Department of Energy (DOE) received an application from Sierra Power for authority to transmit electric energy from the United States to Canada as a power marketer. Sierra Power, a Colorado limited liability corporation with its principal place of business in Denver, Colorado, has requested an electricity export authorization with a 5-year term. Sierra Power does not own or control any electric generation, transmission, or distribution assets, nor does it have a

franchised service area. The electric energy which Sierra Power proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States.

Sierra Power will arrange for the delivery of exports to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company, Vermont Electric Power Company, and Vermont Electric Transmission Co.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Sierra Power has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

*Procedural Matters:* Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Sierra Power application to export electric energy to Canada should be clearly marked with Docket No. EA-329. Additional copies are to be filed directly with Doug White, Brad Nesiba, Sierra Power Asset Marketing, 3773 Cherry Creek North Drive, Suite 655, Denver, CO 80209 and Steven A. Weiler, Justin P. Moeller, Leonard, Street and Deinard, PA, The Army and Navy Club Building, 1627 Eye Street, NW., Suite 610, Washington, DC 20006.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address

provided above and at <http://www.oe.energy.gov/304.htm>.

Issued in Washington, DC, on August 10, 2007.

**Anthony J. Como,**

*Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. E7-16130 Filed 8-15-07; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Issuance of Order

August 9, 2007.

**BE Allegheny, LLC (Docket No. ER07-1112-000); BE CA LLC (Docket No. ER07-1113-000); BE Cleco LLC (Docket No. ER07-1114-000); BE Colquitt LLC (Docket No. ER07-1115-000); BE Ironwood LLC (Docket No. ER07-1116-000); BE KJ LLC (Docket No. ER07-1117-000); BE Rayle LLC (Docket No. ER07-1118-000); BE Red Oak LLC (Docket No. ER07-1119-000); BE Satilla LLC (Docket No. ER07-1120-000); BE Tenaska LLC (Docket No. ER07-1121-000); and BE Walton LLC (Docket No. ER07-1122-000)**

BE Allegheny LLC, BE CA LLC, BE Cleco LLC, BE Colquitt LLC, BE Ironwood LLC, BE KJ LLC, BE Rayle LLC, BE Red Oak LLC, BE Satilla LLC, BE Tenaska LLC and BE Walton LLC (collectively, the BE Subsidiaries) filed applications for market-based rate authority, with accompanying rate schedules. The proposed market-based rate schedules provide for the sale of energy, capacity and ancillary services at market-based rates. The BE Subsidiaries also requested waivers of various Commission regulations. In particular, the BE Subsidiaries requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by BE Subsidiaries.

On August 9, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Rates-Central, granted the request for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by the BE Subsidiaries, should file a protest with the Federal Energy Regulatory

Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is September 10, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, the BE Subsidiaries are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the BE Subsidiaries, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of the BE subsidiaries issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E7-16034 Filed 8-15-07; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL07-31-001]

#### DTE Pontiac North LLC; Notice of Filing

August 9, 2007.

Take notice that on June 19, 2007, pursuant to section 1266 of the Public Utility Holding Company Act of 2005 (2005), 366.1 of the Federal Energy Regulatory Commission's regulations, 18 CFR 366.1 (2006) and Order No. 667,

DTE Pontiac North LLC filed an amendment to its January 4, 2007, request for declaratory ruling of exempt wholesale generator status.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on August 20, 2007.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E7-16030 Filed 8-15-07; 8:45 am]

BILLING CODE 6717-01-P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EC07-122-000]

#### Energy East Corporation, Iberdrola, S.A.; Notice of Filing

August 10, 2007.

Take notice that on August 1, 2007, Energy East Corporation, on behalf of itself and its public utility affiliates and Iberdrola, S.A., on behalf of itself and its

public utility affiliates filed a joint application for authorization of merger under section 203 of the Federal Power Act and Part 33 of the Rules and Regulations of the Federal Energy Regulatory Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on September 10, 2007.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E7-16042 Filed 8-15-07; 8:45 am]

BILLING CODE 6717-01-P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ID-4371-001]

#### Heyeck, Michael; Notice of Filing

August 9, 2007.

Take notice that on July 27, 2007, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825(b), and Part 45

of the Regulations of the Federal Energy Regulatory Commission, 18 CFR Part 45 (2007), Michael Heyeck filed an application for authority to hold interlocking positions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on August 24, 2007.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E7-16037 Filed 8-15-07; 8:45 am]

BILLING CODE 6717-01-P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER07-1040-000]

#### Hopewell Cogeneration Limited Partnership; Notice of Issuance of Order

August 9, 2007.

Hopewell Cogeneration Limited Partnership (Hopewell) filed an

application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Hopewell also requested waivers of various Commission regulations. In particular, Hopewell requested that the Commission grant blanket approval under 18 C.F.R. Part 34 of all future issuances of securities and assumptions of liability by Hopewell.

On August 9, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Hopewell, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is September 10, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Hopewell is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Hopewell, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Hopewell's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 C.F.R. 385.2001(a)(1)(iii) and the instructions

on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7-16033 Filed 8-15-07; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. ER07-1031-000, ER07-1031-001]

#### KeyTex Energy LLC; Notice of Issuance of Order

August 9, 2007.

KeyTex Energy LLC (KeyTex) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. KeyTex also requested waivers of various Commission regulations. In particular, KeyTex requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by KeyTex.

On August 9, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by KeyTex, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is September 10, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, KeyTex is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of KeyTex, compatible with the public

interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of KeyTex's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7-16032 Filed 8-15-07; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL06-80-004]

#### Michigan Public Power Agency v. Midwest Independent Transmission System Operator, Inc.; Notice of Compliance Filing

August 9, 2007.

Take notice that on August 6, 2007, the Midwest Independent Transmission System Operator, Inc. tendered for filing on proposed revisions to its Open Access Transmission and Energy Markets Tariff in compliance with the directives of the Commission's order on rehearing dated February 6, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy

of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on August 27, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7-16029 Filed 8-15-07; 8:45 am]

BILLING CODE 6717-01-P

of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on August 24, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7-16036 Filed 8-15-07; 8:45 am]

BILLING CODE 6717-01-P

of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on August 24, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7-16038 Filed 8-15-07; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ID-3851-002]

#### Patton, Charles R.; Notice of Filing

August 9, 2007.

Take notice that on July 27, 2007, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825(b), and Part 45 of the Regulations of the Federal Energy Regulatory Commission, 18 CFR Part 45 (2007), Charles R. Patton filed an application for authority to hold interlocking positions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ID-5448-000]

#### Raba, Todd M.; Notice of Filing

August 9, 2007.

Take notice that on July 27, 2007, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825(b), and Part 45 of the Regulations of the Federal Energy Regulatory Commission, 18 CFR Part 45 (2007), Todd M. Raba filed an application for authority to hold interlocking positions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP07-559-000]

#### Transcontinental Gas Pipe Line Corporation; Notice of Request for Waiver of FERC Gas Tariff

August 9, 2007.

Take notice that on August 3, 2007, Transcontinental Gas Pipe Line Corporation (Transco) filed with the Federal Energy Regulatory Commission a request for waiver of section 55.2 of the general terms & conditions of Transco's FERC Gas Tariff to the extent necessary to: (i) Allow Transco to reserve capacity on Transco's Mobile Bay Lateral to be used for the proposed Pascagoula Expansion Project for up to 30 months prior to Transco filing an application with the Commission for certificate approval of the Project; and (ii) allow any shippers subscribing to the reserved capacity during the period of time between the date that the capacity is reserved and the in-service date of the Project to have a right of first refusal to the subscribed capacity during such interim period, all as more fully described in Transco's request for waiver.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practices and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E7-16041 Filed 8-15-07; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP07-562-000]

#### Williston Basin Interstate Pipeline Company; Notice of Request for Waiver of Disbursement of GRI Funds

August 9, 2007.

Take notice that on August 3, 2007, Williston Basin Interstate Pipeline Company (Williston Basin or Company), P.O. Box 5601, Bismarck, North Dakota

58506-5601, filed with the Commission a request for a waiver of the disbursement of GRI refunds to its customers as required pursuant to a 1998 Settlement Agreement in Docket No. RP97-371-000, *et al.* In lieu of that obligation, Williston Basin requests that it be allowed to make donation of such refund to the Low Income Home Energy Assistance Program (LIHEAP).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practices and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E7-16028 Filed 8-15-07; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2179-038]

#### Merced Irrigation District; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

August 9, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

- a. Application Type: Amendment of License.
- b. Project No.: 2179-038.
- c. Date Filed: March 19, 2007.
- d. Applicant: Merced Irrigation District.
- e. Name of Project: Merced River Hydroelectric Project.

f. Location: The project is located on the Merced River, in Mariposa County, California. The project consists of two developments: New Exchequer and Mc Swain.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791a-825r.

h. Applicant Contact: Mr. Ted Selb, Deputy General Manager, Merced Irrigation District, 744 West 20th Street, Merced, CA 95340, [tselb@mercedid.org](mailto:tselb@mercedid.org), telephone: (209) 722-5761.

i. FERC Contact: Any questions on this notice should be addressed to Mrs. Anumzziatta Purchiaroni at (202) 502-6191, or e-mail address: [anumzziatta.purchiaroni@ferc.gov](mailto:anumzziatta.purchiaroni@ferc.gov).

j. Deadline for filing comments and or motions: September 10, 2007.

k. Description of Request: The Merced Irrigation District (MID) is seeking authorization to construct a 1.8 megawatt (MW) energy recovery turbine-generator unit at its Mc Swain Development. The proposed unit would have a maximum capacity of 500 cubic feet per second (cfs), and would be enclosed in a new 28-foot-wide by 60 foot long, below-ground concrete building that would adjoin the north wall of the existing powerhouse. MID is proposing to install a new 50 foot long, 96 inch diameter steel pipe penstock that would connect the unit with the existing bypass. All construction work is proposed to be within the project boundary on land owned by the licensee. The proposed amendment would increase the authorized installed capacity of the project from 103.5 MW to 105.3 MW.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room,

located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502-8371. Information about this filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov); for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: [Please, update with the current sec], Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7-16039 Filed 8-15-07; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[ Project No. 82-021 ]

#### Alabama Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

August 9, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. Application Type: Amendment of License.  
b. Project No.: 82-021.  
c. Date Filed: July 11, 2007.  
d. Applicant: Alabama Power Company.

e. Name of Project: Mitchell Project.  
f. Location: The project is located on the Coosa River, Chilton, and Coosa Counties, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791a-825r.

h. Applicant Contact: Mr. R.M. Akridge, Alabama Power Company, 600 N. 18th Street, P.O. Box 2641, Birmingham, AL 35291, telephone: (205) 257-1000.

i. FERC Contact: Any questions on this notice should be addressed to Mr. Robert Bell at (202) 502-6062.

j. Deadline for filing comments and or motions: September 10, 2007.

k. Description of Request: Alabama Power Company, (Alabama) requests Commission approval to remove 33.5 acres of land at one location designated for general public recreation from the project boundary, and to add 38 acres of land to the project boundary at a different location designated for general public recreation.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling

(202) 502-8371. Information about this filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov); for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically

via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link.

**Kimberly D. Bose,**

Secretary.

[FR Doc. E7-16040 Filed 8-15-07; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. ER07-576-000; ER07-576-001]

#### Baltimore Gas and Electric Company; Notice of Technical Conference

August 9, 2007.

Take notice that Commission staff will convene a technical conference in the above-referenced proceeding on Wednesday, September 5, 2007, at 10 a.m. (EDT) in Room 3M-2A at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's July 24, 2007 order<sup>1</sup> in this proceeding directed staff to hold a technical conference to address the issues of whether Baltimore Gas and Electric Company's (BG&E's) proposed Transmission Owner Incentive (TOI) projects are non-routine and thereby satisfy the Commission's nexus requirement between BG&E's proposed 100-basis point return on equity incentive adder and its overall investment in the TOI projects.

To assist Commission staff and the parties to prepare for the conference, BG&E is directed to file its presentation for the conference on or before August 24, 2007. The presentation should address in detail the issues raised by the Commission in Paragraphs 48-55 and 60-64 of the July 24 Order on routine v. non-routine projects being eligible for transmission rate incentives. All parties will have an opportunity to file written comments to address BG&E's filing after the technical conference at a date to be established at the conference.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to [accessibility@ferc.gov](mailto:accessibility@ferc.gov) or call toll free 1-866-208-3372 (voice) or 202-208-1659 (TTY), or send a FAX

to 202-208-2106 with the required accommodations.

**Kimberly D. Bose,**

Secretary.

[FR Doc. E7-16035 Filed 8-15-07; 8:45 am]

BILLING CODE 6717-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8456-2]

### EPA Science Advisory Board; Notification of a Public Teleconference of the Science Advisory Board

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency Science Advisory Board (SAB) Staff Office announces a public teleconference of the Chartered Science Advisory Board to conduct a quality review of two draft SAB documents: (a) *SAB Homeland Security Advisory Committee Consultation on the EPA's Emergency Consequence Assessment Tool and Incident-based Microbial Risk Assessment Framework*, and (b) *SAB Radiation Advisory Committee Advisory on the Agency Draft White Paper Entitled Modifying EPA Radiation Risk Models Based on Bier VII*.

**DATES:** The SAB will hold the public teleconference on September 5, 2007. The teleconference will begin at 1 p.m. and end at 2:30 p.m. (Eastern Time).

**Location:** Telephone conference call only.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing to obtain general information concerning this public teleconference should contact Mr. Tom Miller, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343-9982; fax: (202) 233-0643; or e-mail at: [miller.tom@epa.gov](mailto:miller.tom@epa.gov). General information concerning the EPA Science Advisory Board can be found on the EPA Web Site at: <http://www.epa.gov/sab>.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the EPA SAB will hold a public teleconference to review two draft SAB documents. The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice to the 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 purpose of the public teleconference is to conduct a quality review of two draft SAB documents. These documents are the: (a) *Science Advisory Board's Homeland Security Advisory Committee Consultation on the EPA's Emergency Consequence Assessment Tool and Incident-based Microbial Risk Assessment Framework*, and (b) *Advisory on the Agency Draft White Paper Entitled Modifying EPA Radiation Risk Models Based on Bier VII*. In reviewing draft reports, the SAB considers whether: (i) The original charge questions to the SAB review panel were adequately addressed in the draft report, (ii) the draft report is clear and logical; and (iii) the conclusions drawn, or recommendations made in the draft report, are supported by the body of the report.

(a) The EPA National Homeland Security Research Center (NHSRC) requested that the SAB provide technical advice on its Emergency Consequence Assessment Tool (ECAT) and its preliminary incident-based Microbial Risk Assessment (MRA) Framework (see 72 FR 20538 of April 25, 2007) which are being developed by the NHSRC. ECAT is an interactive online risk assessment and management software tool to provide health advisors, and other emergency response officials, with rapid access to critical information during an environmental emergency or training exercise. ECAT is designed to assess and provide site-specific numeric estimates of health risks for selected chemical, biological and radiological threat agents; and identify appropriate response actions to mitigate these risks. Additionally, NHSRC asked the SAB for advice on its White Paper describing issues important to the development of a decision framework for assessing health risks and developing clean up levels associated with a decontamination response following exposure to microbial agents. Additional information about the SAB consultation on these two topics is available on the SAB Web Site at: <http://www.epa.gov/sab/panels/hsacadhoc.html>.

(b) EPA's Office of Radiation and Indoor Air (ORIA) asked the SAB to provide advice on a draft White Paper: *Modifying EPA Radiation Risk Models Based on BEIR VII*, dated August 2006 (see 71 FR 45545 of August 9, 2006; 71

<sup>1</sup> *Baltimore Gas and Electric Co.*, 120 FERC ¶ 61,084 (2007) (July 24 Order).

FR 62950 of October 26, 2006; and 72 FR 8379 of February 26, 2007). EPA's White Paper describes an updated methodology for quantifying estimated cancer risks from environmental exposures to radionuclides. The EPA's methodology is based on the National Research Council (NRC 2006) released *Health Risks from Exposure to Low levels of Ionizing Radiation BEIR VII Phase 2* which primarily addresses cancer and genetic risks from low doses of low-LET radiation (BEIR VII). Additional information about the SAB's review of EPA's White Paper, and the development of the SAB draft report, can be found on the Web at: [http://www.epa.gov/sab/panels/rac\\_adv\\_white\\_paper\\_rad\\_risk\\_models.htm](http://www.epa.gov/sab/panels/rac_adv_white_paper_rad_risk_models.htm).

**Availability of Teleconference Materials:** The draft agenda and other materials will be posted on the SAB Web site at: <http://www.epa.gov/sab/> prior to the teleconference.

**Procedures for Providing Public Input:** Interested members of the public may submit relevant written or oral information for the SAB to consider during the public teleconference. **Oral Statements:** In general, individuals or groups requesting an oral presentation at a public SAB teleconference will be limited to three minutes per speaker, with no more than a total of one-half hour for all speakers. Interested parties should contact Mr. Tom Miller, DFO, in writing (preferably via e-mail), by August 29, 2007, at the contact information noted above, to be placed on the public speaker list for this teleconference. **Written Statements:** Written statements should be received in the SAB Staff Office by August 30, 2007, so that the information may be made available to the SAB for their consideration prior to this teleconference. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail (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 Mr. Tom Miller at (202) 343-9982 or [miller.tom@epa.gov](mailto:miller.tom@epa.gov). To request accommodation of a disability, please contact Mr. Miller preferably at least ten days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated: August 10, 2007.

**Anthony F. Maciorowski,**  
*Deputy Director, EPA Science Advisory Board Staff Office.*  
[FR Doc. E7-16147 Filed 8-15-07; 8:45 am]  
**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 2, 2007.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. **DATES:** Written PRA comments should be submitted on or before October 15, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Les Smith, Federal Communications Commission, Room 1-C216, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [PRA@fcc.gov](mailto:PRA@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s) contact Les Smith at (202) 418-0217 or via the Internet at [PRA@fcc.gov](mailto:PRA@fcc.gov).

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-0589.

**Title:** FCC Remittance Advice and Continuation Sheet, Bill for Collection, FCC Remittance Advice for Regulatory Fees (E-Form).

**Form Number(s):** FCC Forms 159, 159-C, 159-B, and 159-E.

**Type of Review:** Revision of a currently approved collection.

**Respondents:** Individuals or households; Business or other for-profit entities; Not-for-profit institutions; Federal government; and State, local, or tribal government.

**Number of Respondents:** 150,000.

**Estimated Time per Response:** 10 minutes to 4 hours.

**Frequency of Response:** On occasion and annual reporting requirements; Third party disclosure.

**Obligation To Respond:** Required to obtain or retain benefits.

**Total Annual Burden:** 37,500 hours.  
**Total Annual Cost:** None.

**Nature and Extent of Confidentiality:** There is no need for confidentiality, except for personally identifiable information (PII) individuals may submit, which is covered by a system of records notice (SORN), FCC/OMD-9, "Commission Registration System (CORES)."

**Privacy Impact Assessment:** No, the FCC will conduct a Privacy Impact Assessment when it revises the information system(s) covered by FCC/OMD-9, "Commission Registration System (CORES)," SORN.

**Needs and Uses:** On August 2, 2007, the FCC released a *Report and Order and Further Notice of Proposed Rulemaking (R&O and FNPRM)*, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2007, MD Docket No. 07-81, FCC 07-140, in which it added licensees of earth stations and cable television relay service (CARS) stations to those entities for which the FCC will bill for regulatory fees. The Commission has also applied regulatory fee obligations to interconnected Voice over Internet Protocol (VoIP) providers. As a result of these two actions, which were taken in this *R&O* and *FNPRM*, the FCC is modifying FCC Form 159, 159-C, and 159-E to accommodate these two new billing requirements.

The Commission created a streamlined electronic form, FCC Form 159-E, to associate a mailed or faxed payment with regulatory fees, which are filed on-line. Pertinent information is taken directly from the regulatory fee electronic filing system (Fee Filer) and populated on the FCC Form 159-E, which can be printed by the filer. The FCC Form 159-E, essentially a simple payment voucher, contains summary information, which distinguishes the

payment but not detailed information about the fee(s). Specific associated fee information is available on a separate report, which the filer does not need to remit. Beginning with the FY 2005 regulatory fees, the Commission has required FCC Form 159-E to accompany all payments derived from the regulatory fee electronic filing system, except on-line payments, which do not require any paper submission. Payment may be made by check or money order, credit card or wire transfer.

The Commission uses this information to apply credit for the remittance against all regulatory fees within the associated electronic submission. The payment instrument must be in the dollar amount specified on the FCC Form 159-E for full credit to be applied.

Expanded use of the FCC Form 159-E is possible in the future as additional streamlining for this process is implemented. This form may be used in lieu of pre-populated FCC Form 159s, which are currently produced to facilitate remittance for various electronic filings. The FCC Form 159-E may, therefore, impact users of all electronic filing systems, as well as users of an FCC bill paying system (currently Fee Filer and the Red Light Display system).

This information collection may affect some individuals or households; however, the Commission has in place a registration process <http://www.fcc.gov>, which issues a Federal Registration Number (FRN) to each applicant/licensee, etc., for use in filing any of these FCC Forms 159/159-C, 159-B, and 159-E. As part of the registration process, the applicant/licensee's SSN or TIN is stored in a secure environment, which minimizes any potential privacy risks.

**OMB Control Number:** 3060-0949.

**Title:** Interstate Telecommunications Service Provider Worksheet, FCC Form 159-W.

**Form Number:** FCC Form 159-W.

**Type of Review:** Extension of a currently approved collection.

**Respondents:** Business and other for-profit entities.

**Number of Respondents:** 3,700.

**Estimated Time per Response:** 0.5 hours (30 minutes).

**Frequency of Response:** On occasion and annual reporting requirements.

**Obligation To Respond:** Required to obtain or retain benefits.

**Total Annual Burden:** 1,850 hours.

**Total Annual Costs:** None.

**Nature and Extent of Confidentiality:** There is no need for confidentiality, except for personally identifiable

information individuals may submit, which is covered by a system of records notice (SORN), FCC/OMD-9, "Commission Registration System (CORES)."

**Privacy Impact Assessment:** No, the FCC will conduct a Privacy Impact Assessment when it revises the information system(s) covered by FCC/OMD-9, "Commission Registration System (CORES)" SORN.

**Needs and Uses:** On August 2, 2007, the FCC released a *Report and Order and Further Notice of Proposed Rulemaking (R&O and FNPRM)*, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2007, MD Docket No. 07-81, FCC 07-140, in which it added licensees of earth stations and cable television relay service (CARS) stations to those entities for which the FCC will bill for regulatory fees. The Commission has also applied regulatory fee obligations to interconnected Voice over Internet Protocol (VoIP) providers. As a result of these two actions, which were taken in this R&O and FNPRM, the FCC is modifying FCC Form 159-W, among other things, as cited above in 3060-0589, to accommodate these two new billing requirements.

Section 9 of the Communications Act of 1934, as amended, authorizes the FCC to assess and to collect regulatory fees to recover costs incurred in carrying out the Commission's enforcement actions, policies, rulemaking activities, and user information services.

Telecommunications licensees and permittees that provide interstate, international, mobile, and satellite services, including telephone operator services, must pay those fees, which are based upon a percentage of the licensee/permittee's interstate revenues. The FCC bills telecommunications licensees and permittees using the FCC Form 159-W as the invoice. The FCC developed FCC Form 159-W to provide a convenient format for these telecommunications licensees and permittees to verify the information that is extracted from the interstate revenue information (which are already "populated" on this form) and to verify the simple calculation of the fee amount that is due, correcting any inaccuracies as necessary. The FCC uses this form to bill the telecommunications licensee or permittee the amount of its regulatory fee. The FCC is making minor revisions to FCC Form 159-W to provide a clearer format. Respondents may access FCC Form 159-W on line through the FCC's Web page: <http://www.fcc.gov/frnreg> if they wish to submit payment prior to being billed.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7-15577 Filed 8-15-07; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to OMB for Emergency Review and Approval

August 13, 2007.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a)

Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 31, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via e-mail to [Nicholas\\_A.\\_Fraser@omb.eop.gov](mailto:Nicholas_A._Fraser@omb.eop.gov) or via fax at 202-395-5167, and to the Federal Communications Commission via e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) or by U.S. mail to Jerry Cowden, Federal Communications Commission, Room 1-B135, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For additional information contact Jerry

Cowden via e-mail at [PRA@fcc.gov](mailto:PRA@fcc.gov) or at 202-418-0447. If you would like to obtain or view a copy of this information collection you may do so by visiting the FCC PRA Web page at: <http://www.fcc.gov/omd/pra>.

**SUPPLEMENTARY INFORMATION:** The Commission is requesting emergency OMB processing of this information collection and has requested OMB approval by September 13, 2007.

*OMB Control Number:* None.

*Title:* Request to state and local public safety entities for information on equipment operating in affected portion of 700 MHz public safety spectrum.

*Form No.:* Not applicable.

*Type of Review:* New collection.

*Respondents:* State, Local, or Tribal Governments.

*Number of Respondents:* 94 respondents; 94 responses.

*Estimated Time per Response:* An average of 21 hours per response.

*Frequency of Response:* One time reporting requirement.

*Obligation To Respond:* Required to obtain a benefit.

*Total Annual Burden:* 1,974 hours.

*Total Annual Cost:* None.

*Nature and Extent of Confidentiality:* An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

*Privacy Act Impact Assessment:* Not applicable.

*Needs and Uses:* The Commission is seeking emergency processing of this information collection by September 13, 2007.

Pursuant to the Commission's 700 MHz Second Report and Order (FCC 07-132, released August 10, 2007), this information collection requires every 700 MHz Band public safety licensee, whether holding individual narrowband authorizations or operating pursuant to a State License, to provide the following information to the Commission: (1) The total number of narrowband mobile and portable handsets in operation in channels 63 and 68, and the upper one megahertz of channels 64 and 69, as of 30 days after the date of adoption of its 700 MHz Second Report and Order, (2) the total number of narrowband base stations serving these handsets in operation, (3) contact information for each identified set of handsets and base stations, as appropriate, (4) the areas of operation of the mobile and portable units (such as defined by the jurisdictional boundaries of the relevant public safety departments), and (5) the location, in latitude and longitude, of the base stations.

In order to create a nationwide, interoperable public safety broadband network, the 700 MHz Second Report and Order establishes a public safety band plan consistent with such a network. It consolidates narrowband operations in the upper twelve megahertz of the 700 MHz Public Safety band and designates the lower ten megahertz of that band solely for broadband communications. It also shifts the public safety spectrum block down by one megahertz in order to avoid interference problems along the border with Canada. This requires relocation of all public safety narrowband operations in channels 63 and 68, and the upper one megahertz of channels 64 and 69. The 700 MHz Second Report and Order requires the winner of Upper 700 MHz Band D Block license to pay the costs associated with relocating public safety narrowband operations to the consolidated channels. It also assigns responsibility to a newly created Public Safety Broadband Licensee to administer the relocation process consistent with the requirements and deadlines set forth in 700 MHz Second Report and Order. This information collection will identify the actual numbers of radios and base stations that the winner of the D Block license will be responsible for paying the costs of relocating.

Federal Communications Commission.

**Jacqueline R. Coles,**

*Associate Secretary.*

[FR Doc. E7-16157 Filed 8-15-07; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[CG Docket 03-123; DA 07-3512]

### Consumer & Governmental Affairs Bureau Seeks Comment on Petition for Declaratory Ruling Regarding Video Relay Service (VRS) Provider Employment Contracts With VRS Communications Assistants (CAs)

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Commission is seeking comment on a petition for declaratory ruling filed by five Video Relay Service (VRS) providers (Petitioners) that Sorenson Communications, Inc.'s (Sorenson) alleged practice of using clauses in their employment contracts that forbid VRS Communications Assistants from working with other VRS providers for a period of one year after ending their

employment with Sorenson is contrary to the public interest and therefore should be prohibited.

**DATES:** Comments are due on or before September 4, 2007, and reply comments are due on or before September 19, 2007.

**ADDRESSES:** You may submit comments identified by [CG Docket No. 03-123], by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting electronic filings.

- Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting electronic filings.

- Parties who choose to file by paper should also submit their filings on diskette. These diskettes should be submitted, along with three paper copies, to: Diane Mason, Consumer & Governmental Affairs Bureau, Disability Rights Office, 445 12th Street, SW., Room 3-A503, Washington, DC 20554. Such submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 2003 or a compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case (CG Docket No. 03-123)), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, electronic filings must send diskette copies to the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY-CB402, Washington, DC 20554.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone (202) 418-0539 or TTY: (202) 418-0432.

For detailed instructions for submitting electronic filings and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Diane Mason, Consumer & Government Affairs Bureau, at (202) 418-7126 (voice), (202) 418-7828 (TTY) or e-mail [diane.mason@fcc.gov](mailto:diane.mason@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document DA 07-3512, released August 3, 2007, in CG Docket No. 03-123.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

- **Electronic Filers:** Filings may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting electronic filings.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the filing for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, which in this instance is CG Docket No. 03-123. Parties may also submit an electronic filing by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in response.

- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption in this proceeding, filers must submit two additional copies of each additional docket or rulemaking number.

- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All

hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

A copy of document DA 07-3512 and any subsequently file documents in this matter will be available during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554, (202) 418-0270. Document DA 07-3512 and any subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at their Web site, <http://www.bcpweb.com>, or call (800) 378-3160. A copy of DA 07-3512 and any subsequently filed documents in this matter may also be found by searching the Commission's Electronic Comment Filing System (ECFS) at <http://www.fcc.gov/cgb/ecfs> (insert CG Docket No. 03-123 into the Proceeding block).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

#### Synopsis

The Commission seeks comment on the *Petition for Declaratory Ruling and Complaint Concerning the Provision of Video Relay Service by Sorenson Communications, Inc.*, CG Docket 03-123, filed May 18, 2007, by five VRS providers: Hands On Video Relay Services, Inc., Communications Services for the Deaf VRS, LLC, Snap Telecommunications, Inc., GoAmerica, Inc., and Communication Access Center for the Deaf and Hard of Hearing (*Petitioners*). *Petitioners* claim that Sorenson's alleged employment contract clause that VRS Communications Assistants may not work with other similar entities for one year after employment at Sorenson is contrary to the public interest and therefore should be prohibited.

Federal Communications Commission.

**Nicole McGinnis,**

*Deputy Chief, Consumer & Governmental Affairs Bureau.*

[FR Doc. E7-16158 Filed 8-15-07; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL MARITIME COMMISSION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final notice of submission for OMB review.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Federal Maritime Commission (FMC or Commission) hereby gives notice that it has submitted to the Office of Management and Budget a request for a revision of an approved information collection regarding the licensing of ocean transportation intermediaries, as listed below.

**DATES:** Written comments on this final notice must be submitted on or before September 17, 2007.

**ADDRESSES:** Comments should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Maritime Commission, 725 17th Street, NW., Washington, DC 20503, [OIRA\\_Submission@OMB.EOP.GOV](mailto:OIRA_Submission@OMB.EOP.GOV) or fax (202) 395-5806, and to Peter J. King, Director, Office of Administration, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (Telephone: (202) 523-5800), [administration@fmc.gov](mailto:administration@fmc.gov). Please reference the information collection's title and OMB number in your comments.

**FOR FURTHER INFORMATION CONTACT:** To obtain additional information, copies of the information collection and instructions, or copies of any comments received, contact Jane Gregory, Management Analyst, Office of Administration, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (Telephone: (202) 523-5800), [jgregory@fmc.gov](mailto:jgregory@fmc.gov).

**SUPPLEMENTARY INFORMATION:** A notice that FMC would be submitting this request was published in the **Federal Register** on June 8, 2007, allowing for a 60-day comment period. No comments were received.

The FMC 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.

### Information Collection Open for Comment

*Title:* 46 CFR 515—Licensing, Financial Responsibility Requirements

and General Duties for Ocean Transportation Intermediaries and Related Forms.

*OMB Approval Number:* 3072-0018 (Expires August 31, 2007).

*Abstract:* Section 19 of the Shipping Act of 1984 (the "Act"), 46 U.S.C. 40901-40904 (2006), as modified by Public Law 105-258 (The Ocean Shipping Reform Act of 1998) and section 424 of Pub. L. 105-383 (The Coast Guard Authorization Act of 1998), provides that no person in the United States may act as an ocean transportation intermediary (OTI) unless that person holds a license issued by the Commission. The Commission shall issue an OTI license to any person that the Commission determines to be qualified by experience and character to act as an OTI. Further, no person may act as an OTI unless that person furnishes a bond, proof of insurance or other surety in a form and amount determined by the Commission to ensure financial responsibility. The Commission has implemented the provisions of section 19 in regulations contained in 46 CFR 515, including financial responsibility forms FMC-48, FMC-67, FMC-68, and FMC-69, Optional Rider Forms FMC-48A and FMC-69A, and its related license application form, FMC-18.

*Current Actions:* The Commission intends to revise Form FMC-18, Application for a License as an Ocean Transportation Intermediary. Specifically, language is being added to the Privacy Act Notice regarding voluntary disclosure of the applicant's Social Security Number, and the System of Records citation is being updated. In the Paperwork Reduction Act Notice, the estimated time to prepare an Application is being revised from 1.5 hours per response to 2 hours. Throughout the Application, any reference to the Bureau of Consumer Complaints and Licensing ("BCCL") has been changed to the Bureau of Certification and Licensing ("BCL"). Also, language has been added to Question 7(2) in Part B, and to Question 13(3) in Part D, allowing applicant or its qualifying individual to disclose whether he/she has "been declared bankrupt, been subject to a tax lien, or had legal judgment rendered for a debt." In accordance with the Privacy Act of 1974, this would allow the agency, to the greatest extent practicable, to collect information about an applicant that may be used in making a decision with respect to the granting of an OTI license, directly from the applicant.

*Type of Review:* Revision to an approved information collection.

*Needs and Uses:* The Commission uses information obtained under this part and through Form FMC-18 to determine the qualifications of OTIs and their compliance with shipping statutes and regulations and to enable the Commission to discharge its duties under the Act by ensuring that OTIs maintain acceptable evidence of financial responsibility. If the collection of information were not conducted, there would be no basis upon which the Commission could determine if applicants are qualified for licensing.

*Frequency:* This information is collected when applicants apply for a license or when existing licensees change certain information in their application forms.

*Type of Respondents:* The respondents are persons desiring to obtain a license to act as an OTI. Under the Act, OTIs may be either an ocean freight forwarder, a non-vessel-operating common carrier, or both.

*Number of Annual Respondents:* The Commission estimates a potential annual respondent universe of 4,765 entities.

*Estimated Time Per Response:* The time per response for completing Application Form FMC-18 averages 2 hours. The time to complete a financial responsibility form averages 20 minutes.

*Total Annual Burden:* The Commission estimates the total annual person-hour burden at 3,596 person-hours.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. E7-16064 Filed 8-15-07; 8:45 am]

**BILLING CODE 6730-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS-0990-New]

### Agency Information Collection Request; 60-Day Public Comment Request

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Agency Information Collection Request. 60-Day Public Comment Request.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information,

including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to [Sherette.funncoleman@hhs.gov](mailto:Sherette.funncoleman@hhs.gov), or call the Reports Clearance Office on (202) 690-6162. Written comments and recommendations for the proposed information collections must be received within 60-days, and directed to the OS Paperwork.

### Proposed Project

Meeting Request Routing System for [MedicalCountermeasures.gov](http://MedicalCountermeasures.gov)—New—Office of the Assistant Secretary for Preparedness and Response (ASPR)—Office of the Biomedical Advanced Research and Development Authority (BARDA).

Both naturally occurring and intentional public health threats have the potential to cause catastrophic harm in a variety of ways, including economic repercussions and adverse effects on health, in some cases leading to loss of life. To meet these challenges, federal government encourages open communication with its stakeholders in the research and development communities and in industry. One method of improving this communication will be through the [MedicalCountermeasures.gov](http://MedicalCountermeasures.gov) Web site. The two key functions of the [MedicalCountermeasures.gov](http://MedicalCountermeasures.gov) Web site will be (1) to centrally manage stakeholder requests for meetings with government to present product information related to medical countermeasures against public health disasters, both manmade and naturally occurring; and (2) to provide our stakeholders in industry and academia with information on government sponsored opportunities and events related to medical countermeasures.

In order to route product developers to the most appropriate personnel within the Department of Health and Human Services (HHS), HHS will collect some basic information about the company's product through [MedicalCountermeasures.gov](http://MedicalCountermeasures.gov). Using this information and a routing system

that has been developed with input from the participating agencies within HHS, including the Office of the Assistant Secretary for Preparedness and Response (ASPR), the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), and the National Institutes of Health (NIH), *MedicalCountermeasures.gov* will route the meeting request to the appropriate

person within HHS. HHS is collaborating with other agencies in the planning of this project, and hopes to expand this system to other agencies in the future. ASPR is requesting a three year clearance.

HHS expects that the respondents will be made up of developers of medical countermeasures to naturally occurring and intentional public health threats. Participation in this system will be

completely voluntary, and the information that is submitted to the system is for information only. We anticipate that the respondents will make a request on average once a year.

The estimate of 225 respondents is based on the number of stakeholders from the target group who signed up for the Public Health Emergency Medical Countermeasures Stakeholders Workshop.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Developers of medical countermeasures to naturally occurring and intentional public health threats. ....	225	1	8/60	30
Total .....	.....	225	.....	30

Dated: July 30, 2007.  
**Seleda Perryman,**  
*Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.*  
 [FR Doc. E7-16074 Filed 8-15-07; 8:45 am]  
**BILLING CODE 4150-37-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Announcement of Availability of Funds for a Cooperative Agreement To Provide Baccalaureate Nursing Education Supportive of Maternal-Child Nursing at Kabul Medical University (KMU) and Support for the Development of a Nursing Board for Registration and Licensure at the Ministry of Public Health**

**AGENCY:** Department of Health and Human Services, Office of the Secretary, Office of Global Health Affairs.

**ACTION:** Notice.

**SUMMARY:** The primary goal of this project is to assist Afghanistan in the development and strengthening of maternal and child health clinics/hospital systems by creating a solid, university-based, culturally-appropriate professional nursing educational program and building upon previous educational and training efforts. Funding is made available for the development of a basic baccalaureate program at Kabul Medical University and a registered nurse completion program at the Institute of Health Sciences (IHS) in Kabul, Afghanistan. The focus of both programs must be toward an emphasis on clinical training, to include the demonstration of direct

patient care alongside Afghan health-care nurse providers.

**Announcement Type:** Single Eligibility—FY 2007 Initial Announcement.

**GSA Catalog of Federal Domestic Assistance:** 93.017.

**DATES:** Application Availability: August 16, 2007. Optional Letter of Intent must be received by 5 p.m. ET August 23, 2007. Applications must be received by 5 p.m. ET August 31, 2007. Award date: September 15, 2007.

**SUPPLEMENTARY INFORMATION:** The Office of Global Health Affairs (OGHA) within the Department of Health and Human Services (HHS) announces that up to \$625,000 in fiscal year (FY) 2007 funds is available for one cooperative agreement to the Aga Khan Foundation (AKF), to provide support for the development of a basic baccalaureate program at Kabul Medical University and a registered nurse completion program at the Institute of Health Sciences (IHS) in Kabul, Afghanistan to include the implementation of curriculum reform in support of evidence-based theoretical and clinical nursing knowledge and practice in community based maternal-child health at Kabul Medical University, the strengthening of the nursing program at IHS and the development of a systematic program for faculty development and the development of a Board of Nursing for licensure and certification at the Ministry of Public Health (MoPH) of Afghanistan.<sup>1</sup> An emphasis will focus on clinical training,

which will include the demonstration of direct patient care alongside Afghan health-care nurse providers. All care will also reflect an interdisciplinary approach with full participation of the medical and allied health team in the delivery of care. Nurses can be the front-line provider of care and first point of contact in many clinic settings, especially for women and children.

The primary goal of this project is to assist Afghanistan in the development and strengthening of maternal and child health clinics/hospital systems by creating a solid, university-based, culturally-appropriate professional nursing educational program and building upon previous educational and training efforts at the IHS by enhancing its three-year program for basic nursing. The program will be approved initially for a program period of one year in the amount of \$625,000 available (including indirect costs), with continuing awards contemplated for year two and year three. Funding for the cooperative agreement in subsequent years is contingent upon the availability of funds and the satisfactory performance of the recipient.

**I. Funding Opportunity Description**

**Authority:** FY 2006 Labor/HHS/Education appropriations act, Pub. L. 109-149. 119 Stat. 2833, 2856 (Dec. 30, 2005), continued by sections 101(a)(5) and 104 of Division B of the FY 2007 Continuing Resolution, Pub. L. 110-5 (Feb. 15, 2007).

*Purpose of the Agreement*

HHS, in partnership with other relevant U.S. Government Departments and agencies, anticipates involvement in the development, administration and oversight of this program to improve

<sup>1</sup> The Baccalaureate Nursing Education and Nursing Registration and Licensure described in this document are not intended to be equal with U.S. or other Western standards for such training.

professional nursing education and training at Kabul Medical University and the IHS in Kabul, Afghanistan. The program will be for a program period of one year. Approximately a total of \$625,000 will be available for the one-year program period.

The primary goal of this project is assist Afghanistan in the development of maternal and child health clinics/hospital systems. One way is by creating a solid, university-based, culturally-appropriate professional nursing educational program and building upon previous educational and training efforts at the IHS by enhancing its three-year program for basic nursing.

A secondary goal is to support basic curriculum revision within the present nursing program in community-based maternal and child health related course work. The award recipient will also conduct a comprehensive evaluation of conditions and elements necessary for the eventual implementation of a culturally-appropriate licensing and certification program.<sup>2</sup> The funding will provide essential material resources within budgetary limitations for educational materials and for grant activities related to faculty leadership development.

Afghanistan has been at war with foreign forces and neighboring countries for over a quarter of a century and sectional violence has been rampant among ethnic groups. Over 5 million people including 300,000 children have died. Another 4.2 million Afghans have fled to Pakistan and Iran after the Soviet invasion in 1979 and repatriation continues to date. Afghanistan is a nation, which today even though nominally at peace, remains politically unstable with a resurgence of the Taliban movement primarily in the east and south. The past and present political situation impacts immensely on the physical security and health and psychological well-being of the Afghan people.

Afghanistan is among the countries with the poorest human development indicators. It has the second highest maternal death rate in the world and the highest infant and child mortality in Asia. Save the Children and others report that the greatest health risk to Afghan women is pregnancy. According to the United Nations Children's Fund (UNICEF) less than 15 percent of the births are attended by medically trained personnel and only 90 percent are assisted by a traditional midwife. For

every 100,000 live births, about 1,400 women die each year. When mothers die in childbirth, their infants are from three to ten times more likely to die before their second birthday due to preventable illnesses and poor immunization standards and practices. This unnecessary mortality can be partially attributed to the lack of safe drinking water where outside the cities only about 30 percent of the households have access to safe water. Drought and crop failure has diminished the supplies of grains and fresh produce contributing to significant malnutrition (54 percent) and vitamin deficiencies. The harsh winters and seasonal flooding also take its toll on the health of the population. Nearly 40 percent of the children less than three years of age are underweight and more than half of the children in this age group are stunted. Afghan men have an average life expectancy of 45 years of age and the average life expectancy for women is 47 years of age, though the Maternal Mortality Rate (MMR) is higher in rural and remote areas. Addressing poverty, lack of income and limited access to health-care have been recognized as priorities by the Afghanistan government and the international donor community.

Afghanistan's resources for education and access to schools have always been limited. During the Taliban era, many teachers left the country and those that remained received little or no continuing education. The Taliban neglected or destroyed school buildings. Women and girls were denied access to education during the Taliban era and even today, older girls are prohibited from sharing classroom education with boys. As a result, literacy rates vary significantly between men and women. Nearly half of the Afghan men are illiterate and women in Afghanistan have the lowest literacy rate in the world (between 9 percent and 15 percent). The World Bank reports (January 2006) that despite the success of back to school campaigns, half of the school age children are not educated. The United States Agency for International Development (USAID) reports that there are 5 million students in school and that only 34 percent of those are girls. Although this is higher than at any time in the history of Afghanistan, women and girls lag far behind men and boys in education and the gap is not narrowing.

The Afghanistan Ministry of Public Health (MoPH) has been reconstituted and has stated that their mission is "to provide health-care to all Afghans especially to women and children and to under-served areas of the country by working effectively with communities

and MoPH partners." The primary priorities of the MoPH are as follows:

- Reduce maternal and neonatal mortality;
- Reduce child mortality;
- Reduce communicable disease;
- Reduce malnutrition;
- Improve health system; and,
- Improve mental health.

The World Health Organization (WHO) Assignment Report (16–23 May 2002) summarized the constraints facing the Afghan Health Sector, which will be reexamined in light of their status today. These constraints are as follows:

- Lack of accurate information regarding the number and nature of the work of the health-care workforce especially nurses, midwives and allied health workers: As of 2006, this remains a problem. It is estimated that there are between 3,000 to 4,000 doctors in Afghanistan with a doctor to nurse-midwife ratio of 1:1. It has also been estimated that there are 11,000 medical students in 8 medical schools and 2,200 to 2,500 students in intermediate schools for nursing and midwifery. With the financial assistance of USAID and the Aga Khan Development Network (AKDN), 228 female graduates from more than 20 provinces completed the two-year competency-based program in April 2005. As of June 2006, 805 new midwives have received training from one of two programs with approximately 70 percent completing the shorter community midwifery program. This represented a 65 percent increase from the 467 trained midwives in Afghanistan after the fall of the Taliban in 2001. By the end of 2006, 830 new midwives were expected to be trained. USAID has also provided training to 6,036 Community Health Workers of whom over half are women. USAID also reports that 227 women graduated from literacy programs that prepare them to enter the health-care professions.

Nursing as a profession, without the major emphasis on midwifery, historically has been a male-dominated profession in Afghanistan. It is estimated that there are 3,800 nurses of whom 900 are female graduates from a three-year diploma program likely practicing midwifery rather than basic nursing. Because of the high mortality associated with childbirth, all initial efforts focused on providing support to decrease this health disparity. Numerous studies state that the country will eventually need 8,000 to 10,000 midwives to strengthen the overall quality of health-care. In the past, less attention has been directed toward the needs and utilization of basic or specialized nursing professions or the

<sup>2</sup> The Baccalaureate Nursing Education and Nursing Registration and Licensure described in this document are not intended to be equal with U.S. or other Western standards for such training.

development of a formal degree program in nursing. Most current efforts are being directed toward providing in-service or continuing education in a hospital-based curative oriented model.

Though most health planners would suggest that mortality associated with childbirth is a significant problem, it could also be argued that a comprehensive approach to health would be better served by devoting significant resources to the creation of a cadre of professional nurses. This nursing cadre would provide a wide repertoire of preventative as well as curative services in a wide variety of settings to patients of all ages and all genders. In 2002, recognizing the significant need for females to be prepared for a modern model of nursing practice, the Government of Afghanistan invited Aga Khan University of Nursing (AKU-SON), in collaboration with WHO, to support the development of Afghanistan's human resources in the health sector, especially midwifery, nursing and allied health within the Afghan Institute of Health Sciences (IHS).

The quantity of students graduating from the Aga Khan IHS nursing diploma program in Kabul are not as great as those graduating from the midwifery program. In 2006, of the eighty-six students graduating from the newly designed three-year diploma program, only 19 were female. Presently, there are 90 students in the second year and 70 in the first year. Across all years, the gender distribution has been disproportionately male and efforts to recruit females have become a priority, as it remains a major issue. Cognizant of the gender disparity, the MoPH declared that the class of 2007 will have a gender distribution of 80 percent female and 20 percent male on the condition that males serve in the rural areas.

- Lack of clarity/ role definition of different health practitioner categories:

This lack of specific role definition is particularly evident in the approach to the recent development of the nurse midwives for Afghanistan. Understandably, the curriculum and practice design focused on the need to deal with life threatening complications such as hemorrhage, which were occurring frequently in the rural areas and among unassisted births. In 2005, it was estimated that over 92 percent of births in Afghanistan were unassisted. Thus, two tracts of practitioners were trained or retrained if they had graduated from any of the variable length programs created after the national revolution in 1978. The difference in expectations for practice is generally determined by need or in this

case, by the lack of health-care in rural areas rather than by performance-based criteria. Similarly, with basic nursing, the curative services adopted from the Soviet Union were traditionally practiced within the confines of a health-care institution and did not extended into practice in the ambulatory unit or community. Historically, all health-care was supposed to take place within the walls of a hospital.

- Workforce imbalance and misdistribution: As stated previously, the ratio of nurses to physicians, ratio of midwives to nurses and the predominance of males in the health profession, remains problematic. This problem is particularly salient given the highly conservative culture of Afghanistan. This year however, Afghanistan has made progress, as both the medical and nursing diploma program will admit 80 percent female and 20 percent male students to the new class. Both programs will also limit their enrollment substantially. The question of misdistribution in the field remains problematic. The IHS will admit males to the nursing program on the condition that they return to the rural provinces to practice. As Benjamin Loevinsohn, a World Bank health specialist states, Health workers in Afghanistan are afflicted by the "3 wrongs": Wrong gender, wrong skills, and wrong location."

- Absence of national standards of curriculum development for all health professionals: Progress on this endeavor has been made in both basic nursing and midwifery. However, lack of exposure to the newest clinical knowledge and skills among the present health faculty makes the task very difficult. The lack of accepted academic preparation is a major obstacle. Presently, within the university community of scholars, only three percent of the 711 higher education teachers with a master's degree (39 percent) are female. Of the 132 faculty members with a Doctorate degree, none are female and of the 998 professors with a baccalaureate degree, only nine percent are female.

- Multiple categories and varying lengths of training programs within nursing, midwifery and allied health: The length of the midwifery training programs has been standardized by the MoPH. The nursing diploma program of AKU-SON also has a standardized length. Discussion of the length and content of the baccalaureate program remains to be determined, although the newly established Kabul University program will follow a four-year model.

The allied health programs follow a three-year technical school pattern.

- Proliferation of disease specific vertical training programs: Vertical training programs remain prevalent and are most widely seen in educational programs that resemble didactic continuing education programs, as these programs are promoted most often by the latest infusion of donor dollars.

- Lack of professional regulation of practice: Little progress has been made in the area of accreditation, licensure/ registration and certification. Nursing and midwifery have recognized this need and established it as a high priority. A positive development has been the formation of a professional midwife organization, which is in the process of qualifying for membership in the International Confederation of Midwives. The MoPH recognized the importance of nursing by establishing a Directorate of Nursing in 2006.

However, program funds are scarce or non-existent and the designation of responsibility for monitoring nursing and allied health has yet to be determined. It is therefore evident that the present Director and staff require assistance to accomplish this objective.

- Isolation and lack of coordination among professional health education schools: Unlike most programs in Afghanistan, basic nursing and midwifery programs supported by AKU-SON and USAID/JHPIEGO, an affiliate of John Hopkins University, are based on standardized competency-based curriculums, supervised routinely and coordinated centrally. The allied health programs outside of Kabul have closed due to a lack of resources, faulty physical facilities and equipment. Requests for donor support in this area have not materialized to date.

- Limited clinical experience/ deficiencies in clinical training in hospital and community settings: There has been marked improvement in identifying and obtaining access to appropriate clinical experiences particularly as it relates to maternity services, which have been the recipient of the majority of the donor funding. Similarly, in those community health clinics and provincial health district hospitals supported by the World Bank, European Community and USAID, deficiencies in clinical training have begun to disappear. At the tertiary care level, children's clinical services supported by bilateral partners have been rehabilitated to the extent that they have become excellent sites for clinical training. Premier hospitals supported by a heavy reliance of expatriate leadership and management have also provided opportunities beyond the provision of

basic care. Deficits in the fields of psychiatry and mental health as well as other areas of specialized and highly technical practice such as oncology and laboratory-intensive domains however continue to exist.

- Lack of coordination among educational institutions, services and policy-makers in preparing health professional cadres: Key individuals responsible for the education and practice of key professional groups have indicated a willingness to cooperate at the central level. Current bilateral funding tends to support midwifery development and with only a small percentage of donor dollars dedicated to medicine, even less was allocated to allied health. USAID has recognized that literacy at all levels is essential for development in the social sector. However, coordination between the Ministry of Education (MOE) and the MoPH still needs strengthening. The vital role of primary and secondary education in the development of professional education could also be significantly strengthened. Professional education demands critical thinking skills and an inquisitive mind for exploration of new information in the arts and sciences that are essential to the development of a humanistic role for the health practitioner.

- Lack of exposure to regional and international trends in health-care: The travel portfolio in the International Relations Department attests to the multiple trips abroad by key health professionals. Documentation to evidence the application of newly acquired information and skills and its subsequent affect on the quality of health-care delivery however does not exist. The Director of Information and Education did state that a system to track and monitor foreign travel is being implemented which will require that all trips abroad must be approved by the Ministry of Foreign Affairs (MOFA) with those of Director and above, approved by the President of Afghanistan.

The recipient of this cooperative agreement will support the development of a basic baccalaureate and a registered nurse completion program through the implementation of curriculum reform in support of evidence-based theoretical and clinical nursing knowledge and practice in community-based maternal-child health at Kabul Medical University and the strengthening of the nursing program at the Institute of Health Sciences (IHS). The recipient of this agreement will also develop a systematic program for faculty development and establish a Board of Nursing for licensure and certification at

the MoPH in Kabul, Afghanistan while building the Afghan capacity to assume these functions in the future.

It is anticipated that multiple sources of significant revenue, in addition to this cooperative agreement, will be available for leveraging in accomplishment of the objectives. These sources include current MoPH and MOHE operating expenses, supplies, and staff for IHS and Kabul Medical University and international donor contributions or in-kind donations to support educational reform and growth.

The recipient will develop and upon award, implement a formal, mutually agreed-upon one-year work plan. The work plan must contain all elements listed below including timelines for completion and designated responsible agents. Measurable goals, objectives, and outcomes are expected to be integrated into the work plan as follows:

- Provide a mission statement, including the projected scope of service;
- Develop an annual operational and personnel budget, including a plan to identify, optimize, consolidate and effectively utilize all available funding sources for Kabul Medical University (KMU) and IHS;
- Document and assess the current nursing training curriculum, identifying areas of need and devising sustainable solutions for curriculum reform;
- Assess the clinical training heads of faculty and students to establish and sustain quality training and education;
- Develop and implement a plan for the revision of the nursing curriculum to include a focus on evidence-based theoretical and clinical nursing knowledge and practice in maternal-child community health for the basic nursing and registered nurse completion program;
- Prepare new course syllabi and corresponding teaching/learning resource packets based on the revised curriculum;
- Create a plan to establish the linkage between the IHS curriculum and the basic baccalaureate program to demonstrate the articulation between both;
- Establish a system of credit by examination for presently active registered nurses so they may matriculate in the baccalaureate nursing program;
- Develop a system for nurse-midwives to receive credit for clinical practice and admission into the basic and subsequent Baccalaureate program;
- Create a model for the development of clinical educators and the recruitment of health-care workers from the community to function as adjunct clinical faculty;

- Develop and establish a system for faculty and student recruitment and community outreach;

- Create a plan for the development of a Management Information System (MIS) for documentation of all training and developmental efforts and achievements;

- Create a model for faculty training which may consist of planned exercises, mentoring by international experts and facilitation by peer networking. All efforts must compliment MoPH efforts and reflect IHS and Kabul Medical School education/training standards;

- Develop a quality assurance and quality improvement assessment, monitoring and evaluation system for faculty, students and programs;

- Establish a mechanism for national dialogue in collaboration with non-governmental organizations (NGOs) providing nursing training and continuing education and other partners in relation to health planning and policy development within the MoPH, MOHE, Ministry of Women's Affairs and others; and;

- Create a plan to support the MoPH Directorate of Nursing in the development of its capacity as a regulatory and authoritative body for nursing in Afghanistan.

The award recipient will be responsible for preparing any sub-recipient request for application (RFA), conducting the RFA announcement and competition process, awarding the grant(s) and monitoring the grant(s) performance.

Finally, the award recipient will monitor and report progress quarterly and annually and conduct a comprehensive evaluation of all required elements and conditions, including outcome measures for effectiveness and efficiency.

## II. Award Information

The administrative and funding instrument for this program will be the cooperative agreement, in which HHS will have substantial scientific and/or programmatic involvement during the performance of the project. Under the cooperative agreement, HHS/OGHA will support and/or stimulate award recipient activities by working with them in a non-directive partnership role. HHS staff will be substantially involved in the program activities, above and beyond routine monitoring. Through this cooperative agreement, HHS will collaborate in an advisory capacity with the award recipient, especially during the development and implementation of a mutually agreed-upon work plan. HHS will actively

participate in periodic reviews and in a final evaluation of the program.

HHS/OGHA provides policy and staffing support to the Secretary and other HHS leaders in the area of global health, and provides policy advice, leadership and coordination of international health matters across HHS, including leadership on major crosscutting global health initiatives and the Department's relationships with multilateral organizations.

Approximately up to \$625,000 (including indirect costs) is available under the Department of Health and Human Services Revised Continuing Appropriations Resolution, 2007, Division B, section 101(6), Public Law 109-289 (2007) to support this agreement.

The anticipated start date is September 15, 2007. There will only be one, single award made from this announcement. The project period for this agreement is for one year with an individual budget period of 12-months for a total of \$625,000. Continuation of this project and the level of funding are subject to satisfactory performance, availability of funds, and program priorities.

The award recipient must comply with all HHS management requirements for meeting progress against milestones and for financial reporting for this cooperative agreement. (Please see HHS Activities and Program Evaluation Sections below.)

HHS/OGHA activities for this program are as follows: In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant-monitoring. HHS Activities for this program are as follows:

- Organize an orientation meeting with the grantee to brief it on applicable U.S. Government and HHS expectations, regulations and key management requirements, as well as report formats and contents.
- Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement.
- Review and approve the grantee's annual work plan and detailed budget.
- Review and approve the grantee's monitoring and evaluation plan.
- Meet on a monthly basis with the grantee to assess monthly expenditures in relation to approved work plan and modify plans, as necessary.
- Meet on a quarterly basis with the grantee to assess quarterly technical and financial progress reports and modify plans as necessary.

- Meet on an annual basis with the grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year.

- Provide technical assistance, as mutually agreed upon, and revise annually during validation of the first and subsequent annual work plans.
- Provide in-country administrative support to help grantee meet U.S. Government financial and reporting requirements approved by the Office of Management and Budget (OMB) under 0920-0428 (Public Health Service Form 5161).

- Collaborate with the awardee on designing and implementing the activities listed above, including, but not limited to the provision of technical assistance to develop program activities, data management and analysis, quality assurance, the presentation and possibly publication of program results and findings, and the management and tracking of finances.

- Provide consultation and scientific and technical assistance based on appropriate, HHS/CDC documents to promote the use of best practices known at the time.

- Assist the recipient in developing and implementing quality-assurance criteria and procedures.

- Facilitate in-country planning and review meetings for technical assistance activities.

- Assure experienced HHS or other subject-matter experts from other relevant U.S. Government Departments and agencies will participate in the planning, development, implementation and evaluation of all phases of this project.

- Assist in establishing and maintaining U. S. Government, Afghan MoPH and NGOs contracts and agreements to carry out the program.

#### *Program Evaluation Criteria*

The applicant must have a comprehensive evaluation plan consistent with the scope, stated goals and objectives and funding level of the project. The evaluation plan should include both a process evaluation to track the implementation of the project activities and outcome evaluation criteria.

In addition to conducting internal evaluations, the successful applicant must be prepared to participate in external evaluations supported by the Afghan MoPH and HHS.

In addition to routine communications with the Afghan MoPH and HHS within 30 days following the end of each quarter, the grantee will submit a written quarterly performance

and financial status report of no more than ten pages in length to the Ministry and HHS. At a minimum, quarterly performance reports will include the following:

- A concise summary of the most significant achievements and problems encountered during the reporting period, e.g., a comparison of work progress with objectives established for the quarter against the award recipient's implementation schedule. Where the awardee does not meet objectives, the report must include a statement of cause and a summary of corrective actions.

- Specific action(s) HHS and/or the Afghan MoPH needs to undertake to alleviate obstacles to progress.

- Other pertinent information that will permit overview and evaluation of project operations.

Within 90 days following the end of each project period, the awardee must submit a final report that contains all required information and data to MoPH and HHS. At minimum, the report will contain the following:

- A summary of the major activities supported under the cooperative agreement and the major accomplishments that resulted from activities to improve performance.

- An analysis of the project, based on the challenges described in the "Background" Section of the RFA performed prior to or during the project period, including a description of the specific objectives stated in the grant application and the accomplishments and failures that resulted from activities during the grant agreement period. The awardee should place emphasis on indicators and measures of operational efficiency and effectiveness.

### **III. Eligibility Information**

#### *1. Eligible Applicants*

This is a single source, cooperative agreement with the Aga Khan Foundation (AKF), a non-denominational, international health, education and development agency operating in Afghanistan under the aegis of the Aga Khan Development Network (AKDN). The goal of the AKF's health program is to achieve sustainable improvements in health status among vulnerable groups, especially the geographically remote, women of childbearing age and children under five.

The U.S. Government remains committed to supporting efforts to improve the health status of women and children, while assisting in the further development of Afghanistan's overall health-care infrastructure. This proposal builds upon the extensive network of

the AKDN and leverages the established relationships between the AKDN and the Government of Afghanistan.

At the invitation of the Afghan government, the Aga Khan University School of Nursing (AKU-SON), a component of the Aga Khan Health Services (AKHS) has been assisting in strengthening and implementing programs at the Afghan Institute of Health Sciences (IHS) since 2002. In collaboration with the Ministry of Health, Government of Afghanistan, WHO and Aga Kahn University (AKU), AKU-SON aims to support the development of Afghanistan's human resources in the health sector, especially nurses, midwives and health personnel through technical assistance and capacity building. These efforts have included providing nurse-based services and enhancing the existing skills of nurses through in-service training.

In 2003, AKHS undertook the task of enhancing the operations of IHS for the purpose of creating a centre of excellence that meets Afghanistan's needs for nursing, midwifery and allied health personnel training. AKU-SON's capacity building measures at IHS, Kabul, are geared towards learning methodology, knowledge upgrading and clinical skills training for both faculty and students. The training programs of AKU-SON enable nursing and midwifery students to hone clinical skills prior to interventions on patients by working on models in a renovated learning lab. In the area of technical assistance, the School has played an important role in revising the nursing and midwifery curricula and translating reference material into the local Dari language. The revised curriculum, since established as the national curricula in Afghanistan, has been introduced in regional Institutes in Herat, Jalalabad, Mazar-e-Sharif and Kunduz in 2005. Under the revised curriculum, nurses are trained to work alongside medical teams in clinics, hospitals and outreach centers providing direct care as well as sharing their skills and training with others.

The AKHS consists of a Medical College and a School of Nursing. Both components work in an interactive partnership with the Aga Khan University Hospital, which serves as the principal clinical and teaching facility. Components of the nursing and midwifery programs are also taught by AKU in Kabul and Karachi.

The curriculum at Kabul Medical University is also based upon the AKU-SON curriculum being implemented at the health institutes. In 2006, the Afghan MoPH granted AKU-SON permission to share all teaching

materials. The AKU-SON curriculum consists of an eight semester, four-year program, which will provide graduates with education in subjects appropriate to the university level. The course catalog describes this curriculum as an education, which enables graduates to be competent practitioners of nursing, prepared to teach nursing, seek further qualification, and actively collaborate to improve the health of individuals, families, communities and the nation.

In 2007, AKU-SON is due to renew a five-year plan to strengthen nursing, midwifery and allied health education in Afghanistan. Since 2002, AKU-SON has been providing study tours to AKU and other colleges and universities to expose faculty to modern educational methods and systems. Every year since 2002, AKU-SON has also sponsored two faculty members for a Bachelor of Science in Nursing (BScN) and Master of Science in Nursing (MScN) degree at AKU in Pakistan. This education faculty has returned to Afghanistan and forms a small cadre of individuals qualified to lead Afghanistan nursing into the 21st Century.

The development of a baccalaureate degree in nursing in Afghanistan has always been a goal of AKU-SON. With funding from this cooperative agreement, AKF will be able to improve the government system of professional education for nurses in Afghanistan. This effort will work toward ensuring a cadre of nursing professionals who can provide the full range of quality prenatal, intrapartum and newborn care in all components of the Afghan health-care, including the community. HHS, through this cooperative agreement, will support the development of a multidisciplinary approach to health-care and will augment the funding and services AKDN and AKF are providing to foster the development of professional nursing. AKU-SON's reputation as a leader and as an advocate for the advancement of women in the health professions, especially nursing, is well established in the Central Asian region. AKDN and its many operating agencies, have demonstrated their commitment to Afghanistan in many spheres but have been relatively alone amongst donors in the support of the modernization of the health professions.

#### 2. Cost Sharing or Matching

Although cost sharing, matching funds, and cost participation are not a requirement of this agreement, if the applicant receives funding from other sources to underwrite the same or similar activities, or anticipate receiving such funding in the next 12 months,

they must detail how the disparate streams of financing complement each other.

#### 3. Other—(If Applicable)

N/A

### IV. Application and Submission Information

#### 1. Address To Request Application Kit

Application kits may be obtained by accessing Grants.gov at <http://www.grants.gov> or the eGrants system at <http://GrantSolution.gov>. To obtain a hard copy of the application kit, contact OPHS Office of Grants Management. Applications must be prepared using Form OPHS-1, which can be obtained at the Web sites noted above.

#### 2. Content and Form of Application Submission

##### Application Materials

A separate budget page is required for each budget year. The applicant must submit with their proposals a line-item budget (SF 424A) with coinciding justification to support each of the budget years. These forms will represent the full project period of Federal assistance requested. HHS/OGHA will reject proposals submitted without a budget and justification for each budget year requested in the application.

The applicant must include in their application a Project Abstract, submitted on 3.5-inch floppy disk. The abstract must be typed, single-spaced, and not exceed two (2) pages. Reviewers and staff will refer frequently to the information contained in the abstract, and therefore it should contain substantive information about the proposed projects in summary form. A list of suggested keywords and a format sheet for your use in preparing the abstract will accompany the application packet.

The applicant must include a Project Narrative in their grant applications. Format requirements are the same as for the "Project Abstract" Section; margins should be one-inch at the top and one-inch at the bottom and both sides; and typeset must be no smaller than 12 cpi and unreduced. The applicant should type biographical sketches either on the appropriate form or on plain paper and they should not exceed two pages; list only publications directly relevant to this project.

##### Application Format Requirements

If an applicant is applying on paper, the entire application may not exceed 80 pages in length, including the abstract, project and budget narratives, face page, attachments, any appendices

and letters of commitment and support. The applicant must number pages consecutively.

HHS/OGHA will deem non-compliant applications submitted electronically that exceed 80 pages when printed and will return them to the applicant without further consideration.

a. Number of Copies

If submitting in hard-copy, please submit one original and two unbound copies of the application. Please do not bind or staple the application. The application must be single sided.

b. Font

Please use an easily readable serif typeface, such as Times Roman, Courier, or CG Times. The applicant must submit the text and table portions of the application in not less than 12-point and 1.0 line spacing. HHS/OGHA will deem applications that do not adhere to the 12-point font requirement non-compliant.

c. Paper Size and Margins

For scanning purposes, please submit the application on 8½" x 11" white paper. Margins must be at least one inch at the top, bottom, left and right of the paper. Please left-align text.

d. Numbering

Please number the pages of the application sequentially from page one (face page) to the end of the application, including charts, figures, tables, and appendices.

e. Names

Please include the name of the applicant on each page.

f. Section Headings

Please put all section headings flush left in bold type.

Application Format

An application for funding must consist of the following documents in the following order:

i. Application Face Page

HHS/PHS Application Form OPHS-1, provided with the application package. Prepare this page according to instructions provided in the form itself.

DUNS Number

All applicant organizations must have a Data Universal Numbering System (DUNS) number to apply for a grant from the Federal Government. The DUNS number is a unique, nine-character identification number provided by the commercial company Dun and Bradstreet. There is no charge to obtain a DUNS number. Information

about obtaining a DUNS number is available at the following Internet address: <https://www.dnb.com/product/eupdate/requestOptions.html> or by calling 1-866-705-5711. Please include the DUNS number next to the Office of Management and Budget (OMB) Approval Number on the application face page. HHS/OGHA will not review applications that do not have a DUNS number.

Additionally, the applicant organization must register with the Federal Government's Central Contractor Registry (CCR) to do electronic business with the Federal Government. Information about registering with the CCR is available at the following Internet address: <http://www.hrsa.gov/grants/ccr.htm>.

Finally, the applicant that applies electronically through Grants.gov must register with the Credential Provider for Grants.gov. Information about this requirement is available at the following Internet address: <http://www.grants.gov/CredentialProvider>.

An applicant that is applying electronically through the HHS/OPHS GrantSolutions System must register with the provider. Information about this requirement is available at the following Internet address: <https://www.grantsolutions.gov/g/login.do>.

ii. Table of Contents

Provide a Table of Contents for the remainder of the application (including appendices), with page numbers.

iii. Application Checklist

Application Form HHS/OPHS-1, provided with the application package.

iv. Budget

Application Form HHS/OPHS-1, provided with the application package.

v. Budget Justification

The applicant must enter the amount of financial support (direct and indirect costs) they are requesting from the Federal granting agency for the first year on the Face Sheet of Application Form HHS/PHS 5161-1, Line 15a. The application should include funds for electronic-mail capability, unless access to the Internet is already available. The amount of financial support (direct and indirect costs) entered on the SF 424 is the amount an applicant is requesting from the Federal granting agency for the project year.

Personnel Costs: The applicant should explain their personnel costs by listing each staff member supported from Federal funds, name (if possible), position title, percent full-time

equivalency, annual salary, and the exact amount requested.

Fringe Benefits: The applicant must list the components that comprise the fringe benefit rate, for example, health insurance, taxes, unemployment insurance, life insurance, retirement plan, tuition reimbursement. The fringe benefits should be directly proportional to that portion of personnel costs allocated for the project.

Travel: The applicant must list travel costs according to local and long distance travel. For local travel the applicant should outline the mileage rate, number of miles, reason for the travel and the staff member/consumers who will be completing the travel.

Equipment: The applicant must list equipment costs, and provide justification for the need of the equipment to carry out the program's goals. The applicant must provide an extensive justification and a detailed status of current equipment when they request funds for the purchase of computers and furniture items.

Supplies: The applicant must list the items the project will use. In this category, separate office supplies from medical and educational purchases.

"Office supplies" could include paper, pencils, and the like; "medical supplies" are syringes, blood tubes, plastic gloves, etc., and "educational supplies" can be pamphlets and educational videotapes. The applicant must list these categories separately.

Subcontracts: To the extent possible, the applicant should standardize all subcontract budgets and justifications, and should present contract budgets by using the same object-class categories contained in the Standard Form 424A. The applicant must provide a clear explanation as to the purpose of each contract, how the organization estimated the costs, and the specific contract deliverables.

Other: The applicant must put all costs that do not fit into any other category into this category, and provide and explanation of each cost in this category.

vi. Staffing Plan and Personnel Requirements

The applicant must present a staffing plan, and provide a justification for the plan that includes education and experience qualifications and the rationale for the amount of time requested for each staff position. The applicant must include in Appendix B position descriptions that include the roles, responsibilities, and qualifications of proposed project staff. The applicant must include in Appendix C copies of biographical sketches for any key

employed personnel assigned to work on the proposed project.

#### vii. Project Abstract

The applicant must provide a summary of the application. Because HHS/OHGA often distributes the abstract to provide information to the American public and the U.S. Congress, the applicant should prepare this so it is clear, accurate, concise, and without reference to other parts of the application. It must include a brief description of the proposed grant project, including the needs addressed, the proposed work, and the population group(s) served.

The applicant must place the following at the top of the abstract:

- Project Title;
- Applicant Name;
- Address;
- Contact Phone Numbers (Voice, Fax);
- E-Mail Address; and
- Web Site Address, if applicable.

The project abstract must be single-spaced and limited to two pages in length.

#### viii. Program Narrative

This section provides a comprehensive framework and description of all aspects of the proposed program. It should be succinct, self-explanatory and well-organized so reviewers can understand the proposed project.

The applicant should use the following section headers for the Narrative:

##### • Introduction

This section should briefly describe the purpose of the proposed project.

##### • Work Plan

The applicant should describe the activities or steps to achieve each of the activities proposed in the methodology section and use a time line that includes each activity and identifies responsible staff.

##### • Resolution of Challenges

The applicant should discuss likely challenges designing and implementing the activities described in the Work Plan, and approaches to resolve such challenges.

##### • Evaluation and Technical Support Capacity

The applicant should describe their current, relevant experience, skills, and knowledge, including individuals on staff, materials published, and previous work of a similar nature.

##### • Organizational Information

The applicant should provide information on their current mission and structure, scope of current activities, and an organizational chart,

and describe how these all contribute to the ability of the organization to conduct the program requirements and meet program expectations.

#### ix. Appendices

The applicant must provide the following items to complete the content of their applications. Please note these are supplementary in nature, and are not a continuation of the project narrative. The applicant should label each appendix.

##### Appendix A: Tables, Charts, etc.

To give further details about the proposal.

##### Appendix B: Job Descriptions for Key Personnel

The applicant should keep each to one page in length as much as possible. Item 6 in the "Program Narrative" section of the HHS/PHS 5161-1 Form provides some guidance on items to include in a job description.

##### Appendix C: Biographical Sketches of Key Personnel

The applicant should include biographical sketches for persons who are occupying the key positions described in Appendix B, not to exceed two pages in length. In the event an applicant includes a biographical sketch for an identified individual not yet hired, it must include a letter of commitment from that person with the biographical sketch.

##### Appendix D: Letters of Agreement and/or Description(s) of Proposed/Existing Contracts (project specific)

The applicant must provide any documents that describe working relationships between the applicant agency and other agencies and programs cited in the proposal. Documents that confirm actual or pending contractual agreements should clearly describe the roles of the subcontractors and any deliverable. Letters of Agreement must be dated.

##### Appendix E: Organizational Chart for the Project

The applicant must provide a one-page figure that depicts the organizational structure of the project, including subcontractors and other significant collaborators.

##### Appendix F: Other Relevant Documents

Include here any other documents relevant to the application, including letters of support. Letters of support must be dated.

#### 3. Submission Dates and Times

To be considered for review, applications must be received by the Office of Public Health and Science, Office of Grants Management, by 5 p.m. Eastern Time on August 31, 2007. Applications will be considered as meeting the deadline if they are received on or before the deadline date. The application due date requirement in this announcement supersedes the instructions in the OPHS-1 form.

##### Application Submission

The Office of Public Health and Science (OPHS) provides multiple mechanisms for submission of applications, as described in the following sections. Applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of applications submitted using any of these mechanisms. Applications submitted to the OPHS Office of Grants Management after the deadlines described below will not be accepted for review. Applications which do not conform to the requirements of the grant announcement will not be accepted for review and will be returned to the applicant.

While applications are accepted in hard copy, the use of the electronic application submission capabilities provided is encouraged. Applications may only be submitted electronically via the electronic submission mechanisms specified below. Any applications submitted via any other means of electronic communication, including facsimile or electronic mail, will not be accepted for review.

Electronic grant application submissions must be submitted no later than 5 p.m. Eastern Time 90 days prior to your current budget period end date (refer to your most recent Notice of Grant Award box #7 for this information). All required hardcopy original signatures and mail-in items must be received by the OPHS Office of Grants Management no later than 5 p.m. Eastern Time on the next business day after the deadline date for your non-competing application.

Applications will not be considered valid until all electronic application components, hardcopy original signatures, and mail-in items are received by the OPHS Office of Grants Management according to the deadlines specified above. Application submissions that do not adhere to the due date requirements will be considered late and will be deemed ineligible.

Applicants are encouraged to initiate electronic applications early in the

application development process, and to submit early on the due date or before. This will aid in addressing any problems with submissions prior to the application deadline.

#### Electronic Submissions

The electronic grants management system, *GrantSolutions.gov*, provides for applications to be submitted electronically. When submitting applications via the GrantSolutions system, applicants are required to submit a hard copy of the application face page (Standard Form 424) with the original signature of an individual authorized to act for the applicant agency and assume the obligations imposed by the terms and conditions of the grant award. If required, applicants will also need to submit a hard copy of the Standard Form LLL and/or certain Program related forms (e.g., Program Certifications) with the original signature of an individual authorized to act for the applicant agency. When submitting the required forms, do not send the entire application. Complete hard copy applications submitted after the electronic submission will not be considered for review.

Electronic applications submitted via the GrantSolutions system must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. The applicant may identify specific mail-in items to be sent to the Office of Grants Management separate from the electronic submission; however these mail-in items must be entered on the GrantSolutions Application Checklist at the time of electronic submission, and must be received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation. When submitting the required forms, do not send the entire application. Complete hard copy applications submitted after the electronic submission will not be considered for review.

Upon completion of a successful electronic application submission, the GrantSolutions system will provide the applicant with a confirmation page indicating the date and time (Eastern Time) of the electronic application submission. This confirmation page will also provide a listing of all items that constitute the final application submission including all electronic application components, required hardcopy original signatures, and mail-in items, as well as the mailing address of the OPHS Office of Grants Management where all required hard copy materials must be submitted.

As items are received by the OPHS Office of Grants Management, the electronic application status will be updated to reflect the receipt of mail-in items. It is recommended that the applicant monitor the status of their application in the GrantSolutions system to ensure that all signatures and mail-in items are received.

#### Mailed or Hand-Delivered Hard Copy Applications

Applicants who submit applications in hard copy (via mail or hand-delivered) are required to submit an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Mailed or hand-delivered applications will be considered as meeting the deadline if they are received by the OPHS Office of Grant Management on or before 5 p.m. Eastern Time 90 days prior to your current budget period end date (refer to your most recent Notice of Grant Award box #7 for this information). The application deadline date requirement specified in this announcement supersedes the instructions in the OPHS-1. Applications that do not meet the deadline will be returned to the applicant unread.

#### 4. Intergovernmental Review

This program is not subject to the review requirements of Executive Order 12372, Intergovernmental Review of Federal Programs.

#### 5. Funding Restrictions

Allowability, allocability, reasonableness, and necessity of direct costs the applicant may charge appear in the following documents: OMB-21 (Institutes of Higher Education); OMB Circular A-122 (Nonprofit Organizations) and 45 CFR Part 74, Appendix E (Hospitals). Copies of these circulars are available on the Internet at the following Internet address: <http://www.whitehouse.gov/omb>. No pre-award costs are allowed.

#### 6. Other Submission Requirements

N/A.

### V. Application Review Information

#### 1. Criteria

OGHA will be screen the application for completeness and for responsiveness to the program guidance. Applicant should pay strict attention addressing these criteria, as they are the basis upon

which the application will be judged. If the application is judged to be non-responsive or incomplete, it will be returned to the applicant without review.

If the application is complete and responsive to the guidance, it will be evaluated for scientific and technical merit by an appropriate peer review group specifically convened for this solicitation and in accordance with HHS policies and procedures. As part of the initial merit review, all applications will receive a written critique. The application will be discussed fully by the ad hoc peer review group and assigned a priority score for funding. The application will be assessed according the following criteria:

- (1) Technical Approach (40 points):
- The applicant's presentation of a sound and practical technical approach for executing the requirements with adequate explanation, substantiation and justification for methods for handling the projected needs of the partner institution.
  - The successful applicant must demonstrate a clear understanding of the scope and objectives of the cooperative agreement, recognition of potential difficulties that may arise in performing the work required, presentation of adequate solutions, and understanding of the close coordination necessary between the OGHA/HHS, Afghanistan Ministry of Public Health, U.S. Agency for International Development, and other organizations, such as the World Health Organization and United Nations Children's Fund.
  - Applicant must submit a strategic plan that outlines the schedule of activities and expected products of the Group's work with benchmarks at months six, 12. The strategic plan should specifically address the expected progress of the Quality of Care program.

(2) Experience and Capabilities of the Organization (30 Points):

- The applicant should submit documented relevant experience of the organization in managing projects of similar complexity and scope of the activities.
- Clarity and appropriateness of lines of communication and authority for coordination and management of the project. Adequacy and feasibility of plans to ensure successful coordination among multiple-partner collaboration.
- Documented experience recruiting qualified medical personnel for projects of similar complexity and scope of activities.

(3) Personnel Qualifications and Experience (20 points):

- Project Leadership—For the technical and administrative leadership

of the project requirements, the successful applicant must demonstrate documented training, expertise, relevant experiences, leadership/management skills, and availability of a suitable overall project manager and surrounding management structure to successfully plan and manage the project. The successful applicant will provide documented history of leadership in the establishment and management of training programs that involve training of health-care professionals in countries other than the United States. Expertise in maternal and child health-care and services including documented training, expertise, relevant experience, leadership skills, and maternal and child health specific medical expertise. Documented managerial ability to achieve delivery or performance requirements as demonstrated by the proposed use of management and other personnel resources and to successfully manage the project, including subcontractor and/or consultant efforts, if applicable, as evidence by the management plan and demonstrated by previous relevant experience.

- **Partner Institutions and Other Personnel**—The applicant should provide documented evidence of availability, training, qualifications, expertise, relevant experience, education and competence of the scientific, clinical, analytical, technical and administrative staff and any other proposed personnel (including partner institutions, subcontractors and consultants), to perform the requirements of the work activities as evidenced by resumes, endorsements and explanations of previous efforts.

- **Staffing Plan**—The applicant should submit a staffing plan for the conduct of the project, including the appropriateness of the time commitment of all staff and partner institutions, the clarity and appropriateness of assigned roles, lines of authority. The applicant should also provide an organizational chart for each partner institution named in the application showing relationships among the key personnel.

- **Administrative and Organizational Framework**—Adequacy of the administrative and organizational framework, with lines of authority and responsibility clearly demonstrated, and adequacy of the project plan, with proposed time schedule for achieving objectives and maintaining quality control over the implementation and operation of the project. Adequacy of back-up staffing and the evidence that they will be able to function as a team. The framework should identify the institution that will assume legal and

financial responsibility and accountability for the use and disposition of funds awarded on the basis of this RFA.

- **Local Language Skills**—The applicant should demonstrate the ability of employees to fluently speak Pashto and Persian.

(4) **Facilities and Resources (10 Points):**

The applicant must document the availability and adequacy of facilities, equipment and resources necessary to carry out the activities specified under the "Program Requirements" Section of this announcement.

**2. Review and Selection Process**

The application will be reviewed, by a panel of peer reviewers. Each of the above criteria will be addressed and considered by the reviewers in assigning the overall score. The final award will be made by the Deputy Director, Asia and Pacific Division of the Office Global Health Affairs on the basis of score, program relevance and, availability of funds.

**VI. Award Administration Information**

**1. Award Notices**

OGHA/HHS does not release information about individual applications during the review process until final funding decisions have been made. When a decision has been made, the applicant will be notified by letter regarding the outcome of its application. The official document notifying an applicant that an application has been approved and funded is the Notice of Award, which specifies to the awardee the amount of money awarded, the purpose of the agreement, the terms and conditions of the agreement, and the amount of funding, if any, to be contributed by the awardee to the project costs.

**2. Administrative and National Policy Requirements**

The regulations set out at 45 CFR parts 74 and 92 are the Department of Health and Human Services (HHS) rules and requirements that govern the administration of grants. Part 74 is applicable to all recipients except those covered by part 92, which governs awards to state and local governments. The applicant funded under this announcement must be aware of and comply with these regulations. The CFR volume that includes parts 74 and 92 may be downloaded from [http://www.access.gpo.gov/nara/cfr/waisidx\\_03/45cfrv1\\_03.html](http://www.access.gpo.gov/nara/cfr/waisidx_03/45cfrv1_03.html).

**3. Reporting**

The project is required to have an evaluation plan, consistent with the scope of the proposed project and funding level that conforms to the project's stated goals and objectives. The evaluation plan should include both a process evaluation to track the implementation of project activities and an outcome evaluation to measure changes in knowledge and skills that can be attributed to the project. Project funds may be used to support evaluation activities.

In addition to conducting their own evaluation of projects, the successful applicant must be prepared to participate in an external evaluation, to be supported by HHS/OGHA and conducted by an independent entity, to assess efficiency and effectiveness for the project funded under this announcement.

Within 30 days following the end of each quarter, a performance report no more than ten pages in length must be submitted to OGHA/HHS. A sample monthly performance report will be provided at the time of notification of award. At a minimum, monthly performance reports should include:

- Concise summary of the most significant achievements and problems encountered during the reporting period, e.g. number of training courses held and number of trainees.

- A comparison of work progress with objectives established for the quarter using the grantee's implementation schedule, and where such objectives were not met, a statement of why they were not met.

- Specific action(s) that the grantee would like HHS/OGHA to undertake to alleviate a problem.

- Other pertinent information that will permit monitoring and overview of project operations.

- A quarterly financial report describing the current financial status of the funds used under this award. The awardee and OGHA will agree at the time of award for the format of this portion of the report.

Within 90 days following the end of the project period a final report containing information and data of interest to the Department of Health and Human Services, Congress, and other countries must be submitted to HHS/OGHA. The specifics as to the format and content of the final report and the summary will be sent to the successful applicant. At minimum, the report should contain:

- A summary of the major activities supported under the agreement and the major accomplishments resulting from

activities to improve mortality in partner country.

- An analysis of the project based on the problem(s) described in the application and needs assessments, performed prior to or during the project period, including a description of the specific objectives stated in the grant application and the accomplishments and failures resulting from activities during the grant period.

Quarterly performance reports and annual reports may be submitted to: Mr. Dewayne Wynn, Grants Management Specialist, Office of Grants Management, OPHS, HHS 1101 Wootton Parkway, Suite 550, Rockville, MD 20852, phone (240) 453-8822. A Financial Status Report (FSR) SF-269 is due 90 days after the close of each 12-month budget period and submitted to OPHS-Office of Grants Management.

### VII. Agency Contacts

For assistance on administrative and budgetary requirements, please contact: Mr. DeWayne Wynn, Grants Management Specialist, Office of Grants Management, OPHS, HHS, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852, phone (240) 453-8822.

For assistance regarding program requirements, please contact: Dr. Christopher Hickey, Department of Health and Human Services, Office of the Secretary, Office of Global Health Affairs, Asia-Pacific Division, 5600 Fishers Lane, Suite 18-101, Rockville, MD 20857, Phone Number: 301-443-1410.

### VIII. Tips for Writing a Strong Application

#### *Include DUNS Number*

You must include a DUNS Number to have your application reviewed. An application will not be reviewed without a DUNS number. To obtain a DUNS number, access <http://www.dunandbradstreet.com> or call 1-866-705-5711. Please include the DUNS number next to the OMB Approval Number on the application face page.

#### *Keep Your Audience in Mind*

Reviewers will use only the information contained in the application to assess the application. Be sure the application and responses to the program requirements and expectations are complete and clearly written. Do not assume that reviewers are familiar with the applicant organization. Keep the review criteria in mind when writing the application.

#### *Start Preparing the Application Early*

Allow plenty of time to gather required information from various sources.

#### *Follow the Instructions in This Guidance Carefully*

Place all information in the order requested in the guidance. If the information is not placed in the requested order, you may receive a lower score.

#### *Be Brief, Concise, and Clear*

Make your points understandable. Provide accurate and honest information, including candid accounts of problems and realistic plans to address them. If any required information or data is omitted, explain why. Make sure the information provided in each table, chart, attachment, etc., is consistent with the proposal narrative and information in other tables.

#### *Be Organized and Logical*

Many applications fail to receive a high score because the reviewers cannot follow the thought process of the applicant or because parts of the application do not fit together.

#### *Be Careful in the Use of Appendices*

Do not use the appendices for information that is required in the body of the application. Be sure to cross-reference all tables and attachments located in the appendices to the appropriate text in the application.

#### *Carefully Proofread the Application*

Misspellings and grammatical errors will impede reviewers in understanding the application. Be sure pages are numbered (including appendices) and that page limits are followed. Limit the use of abbreviations and acronyms, and define each one at its first use and periodically throughout application.

Dated: August 10, 2007.

**Mary Lou Valdez,**

*Deputy Director for Policy, Office of Global Health Affairs.*

[FR Doc. E7-16096 Filed 8-15-07; 8:45 am]

**BILLING CODE 4150-38-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### **Announcement of Availability of Funds for a Cooperative Agreement To Provide Basic Medical Education Supportive of Maternal-Child Health at Kabul Medical University (KMU) and Clinical Training in Obstetrics and Gynecology to Resident Physicians and Refresher Training to Attending Physicians at the Rabia Balkhi Women's Hospital**

**AGENCY:** Department of Health and Human Services, Office of the Secretary, Office of Global Health Affairs.

**ACTION:** Notice.

**SUMMARY:** The primary goal of this project is to assist Afghanistan in the development and strengthening of maternal and child health clinics/hospital systems by creating equitable and high quality obstetrical and gynecological and infant care at RBH and developing an evidence-based and culturally appropriate Obstetrical/Gynecological residency program and continuing education program for practicing physicians. Projects requesting funding should aim to expand the capacity of Kabul Medical University to develop and implement curriculum reform in support of evidence-based medical knowledge and practice in maternal-child health at Kabul Medical University and to provide leadership and clinical expertise to strengthen the Obstetric and Gynecology Residency Program; residency training refers to a sustainable training of physicians and specialists in obstetrics and gynecology based on Western accreditation standards that have been modified for the Afghan situation.

*Announcement Type:* Single Eligibility—FY 2007 Initial Announcement.

*GSA Catalog of Federal Domestic Assistance:* 93.017.

**DATES:** Application Availability: August 16, 2007. Optional Letter of Intent must be received by 5 p.m. ET August 23, 2007. Applications must be received by 5 p.m. ET August 31, 2007.

*Award date:* September 15, 2007.

**SUPPLEMENTARY INFORMATION:** The Office of Global Health Affairs (OGHA) within the Department of Health and Human Services (HHS) announces that an estimated \$625,000 in Fiscal Year (FY) 2007 funds is available for one cooperative agreement to expand the capacity of Kabul Medical University to develop and implement curriculum reform in support of evidence-based medical knowledge and practice in

maternal-child health at Kabul Medical University and to provide leadership and clinical expertise to strengthen the Obstetric and Gynecology Residency Program, approved by the Afghanistan Ministry of Public Health (MoPH) and improve health-care delivery at Rabia Balkhi Women's Hospital (RBH) in Kabul, Afghanistan. Residency training refers to a sustainable training of physicians and specialists in obstetrics and gynecology based on Western accreditation standards that have been modified for the Afghan situation. An emphasis will focus on clinical training, which will include the demonstration of direct patient care alongside Afghan health-care providers. All care will also reflect an interdisciplinary approach with full participation of the nurse midwifery staff in the delivery of care.

The primary goal of this project is to assist Afghanistan in the development and strengthening of maternal and child health clinics/hospital systems by creating equitable and high quality obstetrical and gynecological and infant care at RBH and developing an evidence-based and culturally appropriate Obstetrical/Gynecological residency program and continuing education program for practicing physicians. The program will be approved initially for a program period of one year in the amount of \$625,000 available (including indirect costs), with continuing awards contemplated for year two and year three. Funding for the cooperative agreement in subsequent years is contingent upon the availability of funds and the satisfactory performance of the grantee.

### I. Funding Opportunity Description

**Authority:** FY 2006 Labor/HHS/Education appropriations act, Pub. L. 109-149, 119 Stat. 2833, 2856 (Dec. 30, 2005), continued by sections 101(a)(5) and 104 of Division B of the FY 2007 Continuing Resolution, Pub. L. 110-5 (Feb. 15, 2007).

#### *Purposes of the Agreement*

HHS, in partnership with other relevant U.S. Government Departments and agencies, anticipates involvement in the development, administration and oversight of this program to provide basic medical education and clinical training in Obstetrics and Gynecology to resident physicians and refresher training to attending physicians. The program will be for a program period of one year. Approximately a total of \$625,000 will be available for this cooperative agreement.

The primary goal of this project is to assist Afghanistan in the development and strengthening of maternal and child health clinics/hospital systems by

creating equitable and high quality obstetrical and gynecological and infant care at RBH and developing an evidence-based and culturally appropriate Obstetrical/Gynecological residency program and continuing education program for practicing physicians.

A secondary goal is to support basic curriculum revision within the medical school in maternal and child health related course work. The award recipient will also conduct a comprehensive evaluation of conditions and elements necessary for the eventual implementation of a culturally appropriate Obstetrical/Gynecological licensing and certification program. The funding under this cooperative agreement will provide essential material resources within budgetary limitations for educational materials and for grant activities related to residency development and leadership.

Alongside this support, HHS/OGHA is currently providing support for staff development and continuing education at RBH. This new agreement is anticipated to focus on the expansion of physician-directed clinical efforts, but could also involve clinical training of teams, including the allied health and nursing personnel but is expected. HHS/OGHA is also currently providing support for hospital management development and facility management. It is expected that collaboration among grantees must occur to effectively provide the didactic and clinical training in a supportive physical environment within the labor law requirements of the Afghanistan MoPH.

Afghanistan has one of the highest maternal mortality rates (MMR) in the world with a rate of 1,600 maternal deaths per 100,000 live births. Preventable complications related to childbirth cause more than 85 percent of deaths among women of childbearing age in Afghanistan. An estimated one in five children dies before reaching their fifth birthday.

The government of Afghanistan has established improvement in women and child health as one of its highest priorities. The recovery from more than twenty years of civil unrest and war is underway but the restoration of the quality of the entire spectrum of health-care delivery, public health and health professional education remains a challenge.

The United States along with other countries, international organizations and nongovernmental organizations (NGOs) have provided assistance in the restoration of essential health services in Afghanistan. Former HHS Secretary Tommy G. Thompson signed a

Memorandum of Understanding (MOU) with the MoPH on October 2, 2002, pledging the support of American citizens to help in these efforts. In early 2003, HHS entered into collaboration with the MoPH to improve the maternal-child health services in Afghanistan. Upon the request of Minister Sidiq, HHS's first efforts were directed toward the rehabilitation of RBH and the restoration of health services at RBH.

RBH is the largest full-service women's hospital in Afghanistan. RBH was one of the referral hospitals for women under the Taliban and was declared the only women's hospital in 1997. It is located adjacent to a major bazaar in District 2 of Kabul and consists of a large two-story building and two ancillary buildings within a courtyard. It has a theoretical inpatient capacity of 212 to 250 beds of which 80 to 100 are designated for Gynecology and Obstetrics. Approximately 25 to 30 deliveries occurred each day in 2003 and approximately 7,500 to 11,000 babies were delivered there each year in the first years after the fall of the Taliban. The hospital continues to see approximately 300 to 400 out-patients daily. It is a referral hospital with no formal relations with other maternity departments or pediatric hospitals. Its main partner for sick newborns is Indira Gandhi Children's Hospital (IGCH), also in Kabul.

RBH, as well as most of the health-care hospitals in Afghanistan, continues to struggle with basic facility and human resource challenges that exceed those experienced in most other developing countries. Health-care professionals and support staff at RBH are working to provide quality health-care services in an environment which has been neglected during years of political upheaval and oppression. As a result, basic inpatient and outpatient services necessary to provide timely and accurate assessment and treatment of patients are frequently absent or in need of major improvement.

The latest data from CURE International states that there are 384 employees at RBH of which there are 19 attending physicians, 74 physicians, 56 midwives, 35 nurses and 68 allied health professionals including pharmacists, anesthetists, lab technicians, radiologists and administrative staff. In addition, International Medical Corps (IMC) has 27 trainers. Both CURE data and MoPH data indicate approximately a 1:1 total staff to bed ratio at RBH. In 2006, there were 13,275 live births. From January to March 2007, there were 3,542 births with 370 caesarean sections and 3,172 normal deliveries at RBH. The Maternal

Mortality Rate (MMR) for RBH in 2006 was 137 per 100,000 live births.

In April 2003, as a first step, HHS funded a clinical knowledge and skills refresher training program at RBH. The intent of this refresher training has been to update the knowledge and skills of the current RBH attending physicians and other professional staff. HHS provided focused, short-term training to the RBH staff to improve their basic knowledge levels and to update the clinical skills needed to respond to the critical needs of the high-risk patient community accessing care at the facility. Additionally, HHS, through the HHS/Centers for Disease Control and Prevention (CDC), provided expert technical guidance and advisory consultation for the continued development and implementation of a facility-based Health Management Information System (HMIS), Surveillance, Quality Assurance and Hospital Infection Prevention Program (HIPP) at RBH. Simultaneously, the Department of Defense (DOD) provided critical infrastructure improvements to the physical plant.

In 2004, HHS provided funding to continue the RBH training program through a \$2.2 million cooperative agreement with the implementing NGO, IMC. Through this cooperative agreement, IMC continues to support the provision of staff development and refresher training for clinical staff, including physicians, nurse-midwives and ancillary health-care workers and to work toward the development of a Residency program for Obstetrics and Gynecology. This agreement will conclude in October 2007.

During 2004 and 2005, many expatriate experts attempted to adapt a standard curriculum used in Obstetrical/Gynecological residency training programs in the United States to the Afghanistan environment. Early on, however, HHS and IMC recognized that it would take some time to assess its relevancy to the situation on the ground. Difficulties in recruiting qualified personnel to run a residency program and differing views on the appropriateness of a western-style program delayed plans for the residency program and IMC's efforts were therefore directed toward continuing education and refresher training. A series of committed expatriate staff, working in collaboration with IMC, however, were able to develop of a four-year residency program equivalent to those seen in developing countries. This curriculum was formally approved by the MoPH on November 30, 2007. Although the curriculum was approved, the implementation of this

contemporary model for a four-year residency program has not occurred as IMC staff and their colleagues at the academic board of MoPH recognized that there were significant gaps in the knowledge and clinical capability of present Afghan practicing obstetrician/gynecologist educators preventing them from assuming responsibility for the teaching and clinical supervision of practice in areas acknowledged as important and essential to the current accepted standards of obstetrics and gynecology practice. Despite numerous attempts, the present grantee has been unable to recruit skilled educators and clinicians to provide the needed expertise to implement the adapted residency program. Most significantly, without the capacity to recruit skilled obstetrical/gynecological clinical educators, the program can not meet its program objectives or provide quality care to the mothers and infants seeking care at RBH.

Though considerable renovation and rehabilitation of the physical plant was completed by 2005, there were still concerns surrounding the environment of care. In 2005, HHS sponsored an evaluative visit to the facility by members of the Interagency Advisory group. Upon their recommendation, a cooperative agreement was awarded in 2005 to CURE International to provide leadership and management development and consultation and facility management. Funding was also allocated to ensure a sufficient supply of materials, equipment and pharmaceuticals at RBH. As part of this effort, substantial work was completed in developing job descriptions and appraisals, which are necessary for the recruitment and retention of qualified staff. In 2006, the MoPH and CURE International signed a Memorandum of Understanding (MOU) for the operation of RBH. This agreement mandated payment of the Priority Reform and Restructure (PRR) salaries of all the staff including the resident staff. Subsequently, CURE implemented policies and procedures governing attendance and disciplinary action for lack of compliance with work responsibilities. Staffing requirements were modified to ensure continuous coverage 24 hours a day, 7 days a week. Today, a basic environment of care, which can support a quality resident program, is present at RBH.

Recognizing that the obstetrics/gynecology residents, though employed by the MoPH, are primarily products of the Kabul Medical University and that a quality residency program is built upon a strong foundation of medical

education, it is essential to encourage collaboration between academia and the practice arena. Kabul Medical University has been engaged in curriculum reform and is modernizing its approach to teaching and learning with the help of many donors from the United States and the international community. The recipient of this cooperative agreement must recognize and embrace the opportunity to support change in both areas. It is expected that the award recipient will be actively engaged in the university to promote excellence in teaching and to ensure a solid foundation in the basic sciences, social sciences, supporting clinical courses and accompanying courses supportive of a professional identity. Finally, efforts to design and implement a system for licensure, certification and accreditation of residency programs at the MoPH should be supported by obtaining expert advice and implemented by developing the capacity within both the MoPH and the Ministry of Higher Education (MOHE) to create the systems to achieve the monitoring and evaluation functions.

The primary role for the award recipient of this cooperative agreement will be to implement and support the continued development of the residency program and improve health-care delivery at RBH, while building the Afghan capacity to assume these functions in the future.

It is anticipated that multiple sources of significant revenue, in addition to this cooperative agreement, will be available for leveraging in accomplishment of the objectives. These sources include existing MoPH operational funds, supplies, and staff, current HHS/CURE funding to ensure a supportive management structure and the provision of necessary equipment, supplies and pharmaceuticals to support quality patient care and, likely additional donations or in-kind contributions from international donors.

This cooperative agreement is not anticipated to involve training of the non-physician clinical staff or training of administrative or executive management staff. The recipient will develop and upon award, implement a formal, mutually agreed-upon one-year work plan. The work plan must contain all of the elements listed below including timelines for completion and designated responsible agents. Measurable goals, objectives, and outcomes are expected to be integrated into the work plan as follows:

- Provide a mission statement, including projected scope of service;
- Develop an annual operational and personnel budget, including a plan to

identify, optimize, consolidate and effectively utilize all available funding sources;

- Recruit and maintain qualified expatriate obstetrical/gynecological faculty so that a constant presence is assured to implement and evaluate the residency program;
- Coordinate educational efforts to support the residency training with the presently funded CURE/IMC plan for clinical education and training. Include a discipline-specific needs assessment training plan with objectives using a variety of teaching methodologies, evaluation measures and timelines for competency skills assessment and testing;
- Create a plan for residency training, which may consist of planned exercises, mentoring by international experts and facilitation by peer networking. All efforts must build upon the MoPH-approved training program, complement MoPH efforts and reflect Institute of Health Sciences (IHS) and Kabul Medical School education/training standards.
- Provide a plan for the incorporation of the HHS/CDC-developed Health Management Information System (HMIS), including MoPH patient record-keeping into the practice standards;
- Develop a system for incorporating and implementing evidence-based standards of care and best practices, including an interface with the RBH quality assurance and quality improvement programs;
- Develop a process for internal monitoring and evaluation to include, in collaboration with MoPH/RBH/CURE, output and outcome indicators;
- Establish a system for providing advisement and consultation to Kabul Medical University on curriculum reform;
- Document and assess the current process for faculty development, identifying areas of need and devising sustainable solutions for curriculum reform;
- Develop a system for providing faculty development within the faculty responsible for maternal-child health at Kabul Medical University;
- Assess the climate for instituting a state-of-the-art licensure process and certification system; and,
- Serve as a liaison between the MoPH and MOHE.

The award recipient will be responsible for preparing any sub-recipient request for application (RFA), conducting the RFA announcement and competition process, awarding the grant(s) and monitoring the grant(s) performance.

Finally, the award recipient will monitor and report progress quarterly and annually and conduct a comprehensive evaluation of all required elements and conditions, including outcome measures for effectiveness and efficiency.

## II. Award Information

The administrative and funding instrument for this program will be the cooperative agreement, in which HHS will have substantial scientific and/or programmatic involvement during the performance of the project. Under the cooperative agreement, HHS/OGHA will support and/or stimulate award recipient activities by working with the recipient in a non-directive partnership role. HHS staff will be substantially involved in the program activities, above and beyond routine monitoring. Through this cooperative agreement, HHS will collaborate in an advisory capacity with the award recipient, especially during the development and implementation of a mutually agreed-upon work plan. HHS will actively participate in periodic reviews, and in a final evaluation of the program.

HHS/OGHA provides policy and staffing support to the Secretary and other HHS leaders in the area of global health, and provides policy advice, leadership and coordination of international health matters across HHS, including leadership on major crosscutting global health initiatives and the Department's relationships with multilateral organizations.

Approximately up to \$625,000 (including indirect costs) is available under the Department of Health and Human Services Revised Continuing Appropriations Resolution, 2007, Division B, Section 101(6), Pub. L. 109-289 (2007) to support this agreement.

The anticipated start date is September 15, 2007. There will only be one single award made from this announcement. The project period for this agreement is for one year for a total of \$625,000 with continuation grants contemplated for FY 2008 and FY 2009. Continuation of this project from one 12-month budget period to the next and the level of funding are subject to satisfactory performance, availability of funds, and program priorities.

The award recipient must comply with all HHS management requirements for meeting progress against milestones and for financial reporting for this cooperative agreement. (Please see HHS Activities and Program Evaluation Sections below.)

HHS/OGHA activities for this program are as follows:

- Organize an orientation meeting after the award is made with the award recipient to discuss applicable U.S. Government expectations as stated in this RFA, regulations, policies and key requirements, as well as report formats and contents.

- Review and approve the award recipient's work plan and detailed budget.
- Review and approve the award recipient's monitoring evaluation plan.
- Conference on a monthly basis with the award recipient to assess monthly progress and expenditures in relations to approved work plan, and modify plans, as necessary.
- Meet on an annual basis with the award recipient to review the progress report for each U.S. Government Fiscal Year.
- Assure experienced HHS or other subject-matter experts from other relevant U.S. Government Departments and agencies will participate in the planning, development, implementation and evaluation of all phases of this project.
- Assist in establishing and maintaining U.S. Government, Afghan Government and NGOs contracts and agreements to carry out the program.

### *Program Evaluation Criteria*

The applicant must have a comprehensive evaluation plan consistent with the scope, stated goals and objectives and funding level of the project. The evaluation plan should include both a process evaluation to track the implementation of the project activities and outcome evaluation criteria.

In addition to conducting internal evaluations, the successful applicant must be prepared to participate in external evaluations supported by the Afghan MoPH, MOHE and HHS.

In addition to routine communications with the Afghan MoPH, MOHE and HHS within 30 days following the end of each quarter, the grantee will submit a written quarterly performance and financial status report of no more than ten pages in length to the Ministries and HHS. At a minimum, quarterly performance reports will include the following:

- A concise summary of the most significant achievements and problems encountered during the reporting period, e.g. a comparison of work progress with objectives established for the quarter against the award recipient's implementation schedule. Where the award recipient does not meet objectives, the report must include a statement of cause and a summary of corrective actions.

- Specific action(s) HHS and/or the Afghan MoPH or MOHE needs to undertake to alleviate obstacles to progress.

- Other pertinent information that will permit overview and evaluation of project operations.

Within 90 days following the end of each project period, the awardee must submit a final report that contains all required information and data to the MoPH, MOHE and HHS. At a minimum, the report will contain the following:

- A summary of the major activities supported under the cooperative agreement and the major accomplishments that resulted from activities to improve performance.

- An analysis of the project, based on the challenges described in the "Background" Section of the RFA performed prior to or during the project period, including a description of the specific objectives stated in the grant application and the accomplishments and failures that resulted from activities during the grant agreement period. The recipient should place emphasis on indicators and measures of operational efficiency and effectiveness.

### III. Eligibility Information

#### 1. Eligible Applicants

This is a single source, cooperative agreement with the Aga Khan Foundation (AKF), a non-denominational, international health, education and development agency operating in Afghanistan under the aegis of the Aga Khan Development Network (AKDN). The AKF is one of ten development agencies, institutions, and programs in the AKDN that work primarily in the poorest parts of Asia and Africa. The AKF strives to improve the health of vulnerable population groups, especially mothers and children, and promote health services development on the national and regional levels.

The U. S. Government remains committed to supporting efforts to improve the health status of women and children, while assisting in further developing Afghanistan's overall health-care infrastructure. This proposal builds upon the extensive network of the AKDN and leverages the established relationships between the AKDN and the Government of Afghanistan.

The AKDN has played a prominent role in the application of the Afghan government's *Essential Package of Hospital Services (EPHS)* and has been instrumental in its nationwide implementation. AKDN has also served as a key advisor to the Ministry of Health during the drafting of its

*National Policy on Human Resource Development for Health*. Since 2002, the AKDN, through the AKF, has assisted in the construction and rehabilitation of Afghanistan's health-care infrastructure and contributed to the improvement of education and health services. Key achievements of the AKDN and AKF include the construction or rehabilitation of over 48 schools, two teacher-training colleges and 20 health facilities, the management of 24 health clinics and the establishment of 195 health posts.

AKDN's health-care activities have emphasized training for professionals at all tiers of the Afghan health-care system, from community health-care workers and laboratory technicians to nurses and physicians. Since 2003, the AKDN, under Aga Khan Health Services (AKHS), has managed the Bamyán District Hospital, the only referral health facility for the seven districts in the province and trained its staff in emergency midwifery and obstetric complications. AKDN has also operated Community Midwifery Education Training Schools in Bayman Town, Faizabad and Kabul to address a major need for qualified, local, female health professionals and provided training to over 217 physicians, 161 midwives, and 264 nurses through training and refresher training programs in Baghlan, Takhar, and Badakhshan, Afghanistan.

Aga Khan University (AKU), with multiple campuses including Kabul, Afghanistan and Karachi, Pakistan has served as the primary training institution for refresher courses and training programs for Afghan physicians, nurses and midwives and for postgraduate medical education for Afghan physicians enrolled in residency programs. In the international arena, AKU has assumed a dual role as both a standard-setting research institution and a disseminator of tested and replicable models and as such, has raised the bar for health-care in the developing world. In the Central Asian region, AKU has established itself as a major center for education, training and research in the health sciences and teacher education. Most significantly, AKU has also garnered a highly diverse faculty and student population in which at least 44 percent of AKU's faculty, many in senior posts and 50 percent of its students are female.

Established in 1983, the Aga Khan Medical College located at the Karachi campus, offers various undergraduate and postgraduate programs. The College's curricular objectives include clinical competence both in community settings and hospitals, as well as the assessment of health and prevention of

disease in communities through the primary health-care programs that AKU monitors in a number of urban squatter settlements. The College has agreements with leading academic institutions, including Harvard University in the United States, McGill and McMaster Universities in Canada and Karolinska Institute in Sweden, which have contributed to faculty and curriculum development. Through these partnerships, AKU is able to offer higher training and research, specifically in areas where such opportunities are not currently available in Pakistan.

In 1993, the AKU Institute for Educational Development (AKU-IED) was established to focus Aga Khan's efforts on the development of educational systems in the developing world. Through its network of Professional Development Centres (PDCs) in Pakistan, Central Asia, and East Africa, AKU-IED functions as an outreach center and training and support facility for professional teachers and education managers. The Institutes focus primarily on improving the performance of teachers and other stakeholders through professional development, ultimately leading to school improvement and offer a series of professional development programs for teachers and other educators, as well as graduate programs.

With funding from this cooperative agreement, AKF will be able to create a solid teaching hospital by utilizing the vast network of development agencies, institutions, and programs of the AKDN and building upon its previous educational and training efforts in Afghanistan. This effort will work toward developing an evidence-based and culturally appropriate Obstetrical/Gynecological residency program and continuing education program for practicing physicians. HHS, through this cooperative agreement, will augment the funding and services of the AKDN and AKF to foster equitable and high quality obstetrical and gynecological and infant care at RBH and promote the further development of Afghanistan's overall health-care infrastructure.

#### 2. Cost Sharing or Matching

Although cost-sharing, matching funds, and cost participation are not a requirement of this agreement, if the applicant receives funding from other sources to underwrite the same or similar activities, or anticipate receiving such funding in the next 12 months, they must detail how the disparate streams of financing complement each other.

### 3. Other—(If Applicable)

N/A.

## IV. Application and Submission Information.

### 1. Address To Request Application Kit

An application kit may be obtained by accessing Grants.gov at <http://www.grants.gov> or the eGrants system at <http://GrantSolution.gov>. To obtain a hard copy of the application kit, contact OPHS Office of Grant Management. Applications must be prepared using Form OPHS-1, which can be obtained at the websites noted above.

### 2. Content and Form of Application Submission

#### Application Materials

A separate budget page is required for each budget year. The applicant must submit with their proposals a line-item budget (SF 424A) with coinciding justification to support each of the budget years. These forms will represent the full project period of Federal assistance requested. HHS/OGHA will reject proposals submitted without a budget and justification for each budget year requested in the application.

The applicant must include in their application a Project Abstract, submitted on 3.5-inch floppy disk. The abstract must be typed, single-spaced, and not exceed two (2) pages. Reviewers and staff will refer frequently to the information contained in the abstract, and therefore it should contain substantive information about the proposed projects in summary form. A list of suggested keywords and a format sheet for your use in preparing the abstract will accompany the application packet.

The applicant must include a Project Narrative in their grant applications. Format requirements are the same as for the "Project Abstract" Section; margins should be one-inch at the top and one-inch at the bottom and both sides; and typeset must be no smaller than 12 cpi and un-reduced. The applicant should type biographical sketches either on the appropriate form or on plain paper and they should not exceed two pages; list only publications directly relevant to this project.

#### Application Format Requirements

If an applicant is applying on paper, the entire application may not exceed 80 pages in length, including the abstract, project and budget narratives, face page, attachments, any appendices and letters of commitment and support. The applicant must number pages consecutively.

HHS/OGHA will deem non-compliant applications submitted electronically that exceed 80 pages when printed and will return them to the applicant without further consideration.

#### a. Number of Copies

If submitting in hard-copy, please submit one (1) original and two (2) unbound copies of the application. Please do not bind or staple the application. The application must be single sided.

#### b. Font

Please use an easily readable serif typeface, such as Times Roman, Courier, or CG Times. The applicant must submit the text and table portions of the application in not less than 12-point and 1.0 line spacing. HHS/OGHA will deem applications that do not adhere to the 12-point font requirement non-compliant.

#### c. Paper Size and Margins

For scanning purposes, please submit the application on 8½" x 11" white paper. Margins must be at least one inch at the top, bottom, left and right of the paper. Please left-align text.

#### d. Numbering

Please number the pages of the application sequentially from page one (face page) to the end of the application, including charts, figures, tables, and appendices.

#### e. Names

Please include the name of the applicant on each page.

#### f. Section Headings

Please put all section headings flush left in bold type.

#### Application Format

An application for funding must consist of the following documents in the following order:

##### i. Application Face Page

HHS/PHS Application Form OPHS-1, provided with the application package. Prepare this page according to instructions provided in the form itself.

##### DUNS Number

All applicant organizations must have a Data Universal Numbering System (DUNS) number to apply for a grant from the Federal Government. The DUNS number is a unique, nine-character identification number provided by the commercial company Dun and Bradstreet. There is no charge to obtain a DUNS number. Information about obtaining a DUNS number is available at the following Internet

address: <https://www.dnb.com/product/eupdate/requestOptions.html> or by calling 1-866-705-5711. Please include the DUNS number next to the Office of Management and Budget (OMB) Approval Number on the application face page. HHS/OGHA will not review applications that do not have a DUNS number.

Additionally, the applicant organization must register with the Federal Government's Central Contractor Registry (CCR) to do electronic business with the Federal Government. Information about registering with the CCR is available at the following Internet address: <http://www.hrsa.gov/grants/ccr.htm>.

Finally, the applicant that applies electronically through Grants.gov must register with the Credential Provider for Grants.gov. Information about this requirement is available at the following Internet address: <http://www.grants.gov/CredentialProvider>.

An applicant that is applying electronically through the HHS/OPHS GrantSolutions System must register with the provider. Information about this requirement is available at the following Internet address: <https://www.grantsolutions.gov/g/login.do>.

##### ii. Table of Contents

Provide a Table of Contents for the remainder of the application (including appendices), with page numbers.

##### iii. Application Checklist

Application Form HHS/OPHS-1, provided with the application package.

##### iv. Budget

Application Form HHS/OPHS-1, provided with the application package.

##### v. Budget Justification

The applicant must enter the amount of financial support (direct and indirect costs) they are requesting from the Federal granting agency for the first year on the Face Sheet of Application Form HHS/PHS 5161-1, Line 15a. The application should include funds for electronic-mail capability, unless access to the Internet is already available. The amount of financial support (direct and indirect costs) entered on the SF 424 is the amount an applicant is requesting from the Federal granting agency for the project year.

Personnel Costs: The applicant should explain their personnel costs by listing each staff member supported from Federal funds, name (if possible), position title, percent full-time equivalency, annual salary, and the exact amount requested.

**Fringe Benefits:** The applicant must list the components that comprise the fringe benefit rate, for example, health insurance, taxes, unemployment insurance, life insurance, retirement plan, tuition reimbursement. The fringe benefits should be directly proportional to that portion of personnel costs allocated for the project.

**Travel:** The applicant must list travel costs according to local and long distance travel. For local travel the applicant should outline the mileage rate, number of miles, reason for the travel and the staff member/consumers who will be completing the travel.

**Equipment:** The applicant must list equipment costs, and provide justification for the need of the equipment to carry out the program's goals. The applicant must provide an extensive justification and a detailed status of current equipment when they request funds for the purchase of computers and furniture items.

**Supplies:** The applicant must list the items the project will use. In this category, separate office supplies from medical and educational purchases. "Office supplies" could include paper, pencils, and the like; "medical supplies" are syringes, blood tubes, plastic gloves, etc., and "educational supplies" can be pamphlets and educational videotapes. The applicant must list these categories separately.

**Subcontracts:** To the extent possible, the applicant should standardize all subcontract budgets and justifications, and should present contract budgets by using the same object-class categories contained in the Standard Form 424A. The applicant must provide a clear explanation as to the purpose of each contract, how the organization estimated the costs, and the specific contract deliverables.

**Other:** The applicant must put all costs that do not fit into any other category into this category, and provide and explanation of each cost in this category.

#### vi. Staffing Plan and Personnel Requirements

The applicant must present a staffing plan, and provide a justification for the plan that includes education and experience qualifications and the rationale for the amount of time requested for each staff position. The applicant must include in Appendix B position descriptions that include the roles, responsibilities, and qualifications of proposed project staff. The applicant must include in Appendix C copies of biographical sketches for any key employed personnel assigned to work on the proposed project.

#### vii. Project Abstract

The applicant must provide a summary of the application. Because HHS/OHGA often distributes the abstract to provide information to the American public and the U.S. Congress, the applicant should prepare this so it is clear, accurate, concise, and without reference to other parts of the application. It must include a brief description of the proposed grant project, including the needs addressed, the proposed work, and the population group(s) served.

The applicant must place the following at the top of the abstract:

- Project Title;
- Applicant Name;
- Address;
- Contact Phone Numbers (Voice, Fax);
- E-Mail Address; and
- Web Site Address, if applicable.

The project abstract must be single-spaced and limited to two pages in length.

#### viii. Program Narrative

This section provides a comprehensive framework and description of all aspects of the proposed program. It should be succinct, self-explanatory and well-organized so reviewers can understand the proposed project.

The applicant should use the following section headers for the Narrative:

- Introduction
  - Work Plan
- This section should briefly describe the purpose of the proposed project.
- Resolution of Challenges
- The applicant should describe the activities or steps to achieve each of the activities proposed in the methodology section and use a time line that includes each activity and identifies responsible staff.

The applicant should discuss likely challenges designing and implementing the activities described in the Work Plan, and approaches to resolve such challenges.

- Evaluation and Technical Support Capacity

The applicant should describe their current, relevant experience, skills, and knowledge, including individuals on staff, materials published, and previous work of a similar nature.

- Organizational Information
- The applicant should provide information on their current mission and structure, scope of current activities, and an organizational chart, and describe how these all contribute to the ability of the organization to

conduct the program requirements and meet program expectations.

#### ix. Appendices

The applicant must provide the following items to complete the content of their applications. Please note these are supplementary in nature, and are not a continuation of the project narrative. The applicant should label each appendix.

Appendix A: Tables, Charts, etc.

To give further details about the proposal.

Appendix B: Job Descriptions for Key Personnel

The applicant should keep each to one page in length as much as possible. Item 6 in the "Program Narrative" section of the HHS/PHS 5161-1 Form provides some guidance on items to include in a job description.

Appendix C: Biographical Sketches of Key Personnel

The applicant should include biographical sketches for persons who are occupying the key positions described in Appendix B, not to exceed two pages in length. In the event an applicant includes a biographical sketch for an identified individual not yet hired, it must include a letter of commitment from that person with the biographical sketch.

Appendix D: Letters of Agreement and/or Description(s) of Proposed/Existing Contracts

(Project specific). The applicant must provide any documents that describe working relationships between the applicant agency and other agencies and programs cited in the proposal. Documents that confirm actual or pending contractual agreements should clearly describe the roles of the subcontractors and any deliverable. Letters of Agreement must be dated.

Appendix E: Organizational Chart for the Project

The applicant must provide a one-page figure that depicts the organizational structure of the project, including subcontractors and other significant collaborators.

Appendix F: Other Relevant Documents

Include here any other documents relevant to the application, including letters of support. Letters of support must be dated.

#### 3. Submission Dates and Times

To be considered for review, applications must be received by the

Office of Public Health and Science, Office of Grants Management, by 5 p.m. Eastern Time on August 31, 2007. Applications will be considered as meeting the deadline if they are received on or before the deadline date. The application due date requirement in this announcement supersedes the instructions in the OPHS-1 form.

#### Application Submission

The Office of Public Health and Science (OPHS) provides multiple mechanisms for submission of applications, as described in the following sections. Applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of applications submitted using any of these mechanisms. Applications submitted to the OPHS Office of Grants Management after the deadlines described below will not be accepted for review. Applications which do not conform to the requirements of the grant announcement will not be accepted for review and will be returned to the applicant.

While applications are accepted in hard copy, the use of the electronic application submission capabilities provided is encouraged. Applications may only be submitted electronically via the electronic submission mechanisms specified below. Any applications submitted via any other means of electronic communication, including facsimile or electronic mail, will not be accepted for review.

Electronic grant application submissions must be submitted no later than 5 p.m. Eastern Time 90 days prior to your current budget period end date (refer to your most recent Notice of Grant Award box #7 for this information). All required hardcopy original signatures and mail-in items must be received by the OPHS Office of Grants Management no later than 5 p.m. Eastern Time on the next business day after the deadline date for your non-competing application.

Applications will not be considered valid until all electronic application components, hardcopy original signatures, and mail-in items are received by the OPHS Office of Grants Management according to the deadlines specified above. Application submissions that do not adhere to the due date requirements will be considered late and will be deemed ineligible.

Applicants are encouraged to initiate electronic applications early in the application development process, and to submit early on the due date or before. This will aid in addressing any

problems with submissions prior to the application deadline.

#### Electronic Submissions

The electronic grants management system, GrantSolutions.gov, provides for applications to be submitted electronically. When submitting applications via the GrantSolutions system, applicants are required to submit a hard copy of the application face page (Standard Form 424) with the original signature of an individual authorized to act for the applicant agency and assume the obligations imposed by the terms and conditions of the grant award. If required, applicants will also need to submit a hard copy of the Standard Form LLL and/or certain Program related forms (e.g., Program Certifications) with the original signature of an individual authorized to act for the applicant agency. When submitting the required forms, do not send the entire application. Complete hard copy applications submitted after the electronic submission will not be considered for review.

Electronic applications submitted via the GrantSolutions system must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. The applicant may identify specific mail-in items to be sent to the Office of Grants Management separate from the electronic submission; however these mail-in items must be entered on the GrantSolutions Application Checklist at the time of electronic submission, and must be received by the due date requirements specified above. Mail-in items may only include publications, resumes, or organizational documentation. When submitting the required forms, do not send the entire application. Complete hard copy applications submitted after the electronic submission will not be considered for review.

Upon completion of a successful electronic application submission, the GrantSolutions system will provide the applicant with a confirmation page indicating the date and time (Eastern Time) of the electronic application submission. This confirmation page will also provide a listing of all items that constitute the final application submission including all electronic application components, required hardcopy original signatures, and mail-in items, as well as the mailing address of the OPHS Office of Grants Management where all required hard copy materials must be submitted.

As items are received by the OPHS Office of Grants Management, the electronic application status will be

updated to reflect the receipt of mail-in items. It is recommended that the applicant monitor the status of their application in the GrantSolutions system to ensure that all signatures and mail-in items are received.

#### Mailed or Hand-Delivered Hard Copy Applications

Applicants who submit applications in hard copy (via mail or hand-delivered) are required to submit an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Mailed or hand-delivered applications will be considered as meeting the deadline if they are received by the OPHS Office of Grant Management on or before 5 p.m. Eastern Time 90 days prior to your current budget period end date (refer to your most recent Notice of Grant Award box #7 for this information). The application deadline date requirement specified in this announcement supersedes the instructions in the OPHS-1. Applications that do not meet the deadline will be returned to the applicant unread.

#### 4. Intergovernmental Review

This program is not subject to the review requirements of Executive Order 12372, Intergovernmental Review of Federal Programs.

#### 5. Funding Restrictions

Allowability, allocability, reasonableness, and necessity of direct costs the applicant may charge appear in the following documents: OMB-21 (Institutes of Higher Education); OMB Circular A-122 (Nonprofit Organizations) and 45 CFR part 74, Appendix E (Hospitals). Copies of these circulars are available on the Internet at the following Internet address: <http://www.whitehouse.gov/omb>. No pre-award costs are allowed

#### 6. Other Submission Requirements

N/A.

### V. Application Review Information

#### 1. Criteria

OGHA will screen the application for completeness and for responsiveness to the program guidance. Applicant should pay strict attention addressing these criteria, as they are the basis upon which the application will be judged. If the application is judged to be non-responsive or incomplete, it will be

returned to the applicant without review.

If the application is complete and responsive to the guidance, it will be evaluated for scientific and technical merit by an appropriate peer review group specifically convened for this solicitation and in accordance with HHS policies and procedures. As part of the initial merit review, all applications will receive a written critique. The application will be discussed fully by the ad hoc peer review group and assigned a priority score for funding. The application will be assessed according to the following criteria:

(1) *Technical Approach (40 points):*

- The applicant's presentation of a sound and practical technical approach for executing the requirements with adequate explanation, substantiation and justification for methods for handling the projected needs of the partner institution.

- The successful applicant must demonstrate a clear understanding of the scope and objectives of the cooperative agreement, recognition of potential difficulties that may arise in performing the work required, presentation of adequate solutions, and understanding of the close coordination necessary between the OGHA/HHS, Afghanistan Ministry of Public Health, U.S. Agency for International Development, and other organizations, such as the World Health Organization and United Nations Children's Fund.

- Applicant must submit a strategic plan that outlines the schedule of activities and expected products of the Group's work with benchmarks at months six and 12. The strategic plan should specifically address the expected progress of the Quality of Care program.

(2) *Experience and Capabilities of the Organization (30 Points):*

- The applicant should submit documented relevant experience of the organization in managing projects of similar complexity and scope of the activities.

- Clarity and appropriateness of lines of communication and authority for coordination and management of the project. Adequacy and feasibility of plans to ensure successful coordination among multiple-partner collaboration.

- Documented experience recruiting qualified medical personnel for projects of similar complexity and scope of activities.

(3) *Personnel Qualifications and Experience (20 points):*

- **Project Leadership**—For the technical and administrative leadership of the project requirements, the successful applicant must demonstrate documented training, expertise, relevant

experiences, leadership/management skills, and availability of a suitable overall project manager and surrounding management structure to successfully plan and manage the project. The successful applicant will provide documented history of leadership in the establishment and management of training programs that involve training of health-care professionals in countries other than the United States. Expertise in maternal and child health-care and services including documented training, expertise, relevant experience, leadership skills, and maternal and child health specific medical expertise. Documented managerial ability to achieve delivery or performance requirements as demonstrated by the proposed use of management and other personnel resources and to successfully manage the project, including subcontractor and/or consultant efforts, if applicable, as evidence by the management plan and demonstrated by previous relevant experience.

- **Partner Institutions and Other Personnel**—The applicant should provide documented evidence of availability, training, qualifications, expertise, relevant experience, education and competence of the scientific, clinical, analytical, technical and administrative staff and any other proposed personnel (including partner institutions, subcontractors and consultants), to perform the requirements of the work activities as evidenced by resumes, endorsements and explanations of previous efforts.

- **Staffing Plan**—The applicant should submit a staffing plan for the conduct of the project, including the appropriateness of the time commitment of all staff and partner institutions, the clarity and appropriateness of assigned roles, lines of authority. The applicant should also provide an organizational chart for each partner institution named in the application showing relationships among the key personnel.

- **Administrative and Organizational Framework**—Adequacy of the administrative and organizational framework, with lines of authority and responsibility clearly demonstrated, and adequacy of the project plan, with proposed time schedule for achieving objectives and maintaining quality control over the implementation and operation of the project. Adequacy of back-up staffing and the evidence that they will be able to function as a team. The framework should identify the institution that will assume legal and financial responsibility and accountability for the use and

disposition of funds awarded on the basis of this RFA.

(4) *Facilities and Resources (10 Points):*

The applicant must document the availability and adequacy of facilities, equipment and resources necessary to carry out the activities specified under the "Program Requirements" Section of this announcement.

2. *Review and Selection Process*

The application will be reviewed, by a panel of peer reviewers. Each of the above criteria will be addressed and considered by the reviewers in assigning the overall score. The final award will be made by the Deputy Director, Asia and Pacific Division of the Office Global Health Affairs on the basis of score, program relevance and, availability of funds.

**VI. Award Administration Information**

1. *Award Notices*

OGHA/HHS does not release information about individual applications during the review process until final funding decisions have been made. When a decision has been made, the applicant will be notified by letter regarding the outcome of its application. The official document notifying an applicant that an application has been approved and funded is the Notice of Award, which specifies to the awardee the amount of money awarded, the purpose of the agreement, the terms and conditions of the agreement, and the amount of funding, if any, to be contributed by the awardee to the project costs.

2. *Administrative and National Policy Requirements*

The regulations set out at 45 CFR parts 74 and 92 are the Department of Health and Human Services (HHS) rules and requirements that govern the administration of grants. Part 74 is applicable to all recipients except those covered by part 92, which governs awards to state and local governments. The applicant funded under this announcement must be aware of and comply with these regulations. The CFR volume that includes parts 74 and 92 may be downloaded from [http://www.access.gpo.gov/nara/cfr/waisidx\\_03/45cfrv1\\_03.html](http://www.access.gpo.gov/nara/cfr/waisidx_03/45cfrv1_03.html).

3. *Reporting*

The project is required to have an evaluation plan, consistent with the scope of the proposed project and funding level that conforms to the project's stated goals and objectives. The evaluation plan should include both a process evaluation to track the

implementation of project activities and an outcome evaluation to measure changes in knowledge and skills that can be attributed to the project. Project funds may be used to support evaluation activities.

In addition to conducting their own evaluation of projects, the successful applicant must be prepared to participate in an external evaluation, to be supported by HHS/OGHA and conducted by an independent entity, to assess efficiency and effectiveness for the project funded under this announcement.

Within 30 days following the end of each quarter, a performance report no more than ten pages in length must be submitted to OGHA/HHS. A sample monthly performance report will be provided at the time of notification of award. At a minimum, monthly performance reports should include:

- Concise summary of the most significant achievements and problems encountered during the reporting period, e.g. number of training courses held and number of trainees.
- A comparison of work progress with objectives established for the quarter using the grantee's implementation schedule, and where such objectives were not met, a statement of why they were not met.
- Specific action(s) that the grantee would like HHS/OGHA to undertake to alleviate a problem.
- Other pertinent information that will permit monitoring and overview of project operations.
- A quarterly financial report describing the current financial status of the funds used under this award. The awardee and OGHA will agree at the time of award for the format of this portion of the report.

Within 90 days following the end of the project period a final report containing information and data of interest to the Department of Health and Human Services, Congress, and other countries must be submitted to HHS/OGHA. The specifics as to the format and content of the final report and the summary will be sent to the successful applicant. At minimum, the report should contain:

- A summary of the major activities supported under the agreement and the major accomplishments resulting from activities to improve mortality in partner country.
- An analysis of the project based on the problem(s) described in the application and needs assessments, performed prior to or during the project period, including a description of the specific objectives stated in the grant application and the accomplishments

and failures resulting from activities during the grant period.

Quarterly performance reports and annual reports may be submitted to: Mr. Dewayne Wynn, Grants Management Specialist, Office of Grants Management, OPHS, HHS1101 Wootton Parkway, Suite 550, Rockville, MD 20852, phone (240) 453-8822. A Financial Status Report (FSR) SF-269 is due 90 days after the close of each 12-month budget period and submitted to OPHS—Office of Grants Management.

#### VII. Agency Contacts

For assistance on administrative and budgetary requirements, please contact: Mr. DeWayne Wynn, Grants Management Specialist, Office of Grants Management, OPHS, HHS, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852, phone (240) 453-8822.

For assistance with questions regarding program requirements, please contact: Dr. Christopher Hickey, Department of Health and Human Services, Office of the Secretary, Office of Global Health Affairs, Asia-Pacific Division, 5600 Fishers Lane, Suite 18-101, Rockville, MD 20857, Phone Number: 301-443-1410.

#### VIII. Tips for Writing a Strong Application

##### *Include DUNS Number*

You must include a DUNS Number to have your application reviewed. An application will not be reviewed without a DUNS number. To obtain a DUNS number, access <http://www.dunandbradstreet.com> or call 1-866-705-5711. Please include the DUNS number next to the OMB Approval Number on the application face page.

##### *Keep Your Audience in Mind*

Reviewers will use only the information contained in the application to assess the application. Be sure the application and responses to the program requirements and expectations are complete and clearly written. Do not assume that reviewers are familiar with the applicant organization. Keep the review criteria in mind when writing the application.

##### *Start Preparing the Application Early*

Allow plenty of time to gather required information from various sources.

##### *Follow the Instructions in this Guidance Carefully*

Place all information in the order requested in the guidance. If the information is not placed in the

requested order, you may receive a lower score.

##### *Be Brief, Concise, and Clear*

Make your points understandable. Provide accurate and honest information, including candid accounts of problems and realistic plans to address them. If any required information or data is omitted, explain why. Make sure the information provided in each table, chart, attachment, etc., is consistent with the proposal narrative and information in other tables.

##### *Be Organized and Logical*

Many applications fail to receive a high score because the reviewers cannot follow the thought process of the applicant or because parts of the application do not fit together.

##### *Be Careful in the Use of Appendices*

Do not use the appendices for information that is required in the body of the application. Be sure to cross-reference all tables and attachments located in the appendices to the appropriate text in the application.

##### *Carefully Proofread the Application*

Misspellings and grammatical errors will impede reviewers in understanding the application. Be sure pages are numbered (including appendices) and that page limits are followed. Limit the use of abbreviations and acronyms, and define each one at its first use and periodically throughout application.

Dated: August 10, 2007.

##### **Mary Lou Valdez,**

*Deputy Director for Policy, Office of Global Health Affairs.*

[FR Doc. E7-16114 Filed 8-15-07; 8:45 am]

**BILLING CODE 4150-38-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **National Committee on Vital and Health Statistics: Meeting**

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS) Ad Hoc Work Group on Secondary Uses of Health Data.

*Time and Date:* August 23, 2007, 9 a.m.–5:30 p.m., August 24, 2007, 9 a.m.–5:30 p.m.

*Place:* Hubert H. Humphrey Building, Room 305A, 200 Independence Avenue, SW., Washington, DC 20201.

*Status:* Open.

*Purpose:* The NCVHS Working Group will meet to discuss its work to develop a

conceptual framework that includes (1) a taxonomy describing types of uses and users of health data; (2) provides guiding principles that balance the risk, sensitivity, benefits, obligations, and protections of various uses of health data, and (3) clarifies terminology associated with various uses of health data. The group will also begin to gather information from a wide variety of stakeholders on issues related to secondary uses of data. Initial consideration will be placed on how data are used in the processing and management of data directly associated with quality measurement, reporting, and improvement.

*For Further Information Contact:*

Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Debbie Jackson, Senior Program Analyst, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2339, Hyattsville, Maryland 20782, telephone (301) 458-4614 or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone: (301) 458-4245. Information also is available on the NCVHS home page of the HHS Web site: <http://www.ncvhs.hhs.gov/> where an agenda for the meeting will be posted when available. Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458-4EEO (4336) as soon as possible.

Dated: August 9, 2007.

**James Scanlon,**

*Deputy Assistant Secretary for Science and Data Policy (OASPE), Office of the Assistant Secretary for Planning and Evaluation.*

[FR Doc. 07-4010 Filed 8-15-07; 8:45 am]

**BILLING CODE 4151-05-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[60Day-07-07BL]

**Proposed Data Collections Submitted for Public Comment and Recommendations**

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-4766 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer,

1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov).

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

Personal Flotation Devices (PFDs) and Commercial Fishermen: Preconceptions and Evaluation in Actual Use—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

NIOSH has the responsibility under Pub. L. 91-596 section 20 (Occupational Safety and Health Act of 1970) to conduct research relating to innovative methods, techniques, and approaches for dealing with occupational safety and health problems.

Commercial fishing is one of the most dangerous occupations in the United States, with a fatality rate 30 times higher than the national average. Most fishermen who die on the job drown subsequent to a vessel sinking (51%) or fall overboard (29%). Because drowning is the leading cause of death for commercial fishermen, its prevention is one of the highest priorities for those who work to make the industry safer.

The risk of drowning for commercial fisherman is high, yet most fishermen do not wear Personal Flotation Devices (PFDs) while on deck. From 1990 to 2005, 71 commercial fishermen drowned subsequent to a fall overboard in Alaska. None of the victims were wearing a PFD, and many were within minutes of being rescued when they lost their strength and disappeared under the surface of the water.

Although there are many new styles of PFDs on the market, it is unknown how many commercial fishermen are aware of them, or if they are more comfortable and wearable than the older styles. There have not been any published studies testing PFDs on commercial fisherman to measure product attributes and satisfaction.

The purpose of this study is to first, identify fishermen's perceptions of risk, safety attitudes, and beliefs about PFDs; and second, to evaluate a variety of modern PFDs with commercial fishermen to discover the features and qualities that they like and dislike. This study addresses the repeated recommendation by NIOSH that all commercial fishermen wear PFDs while on deck.

*Study Design*

NIOSH is requesting OMB approval to administer a survey to fishermen operating in several fisheries in Southwest Alaska. This questionnaire will contain questions that measure fishermen's risk perceptions, safety attitudes, and beliefs about PFDs. The questionnaire is short and will take about 20 minutes to complete. The sample size was determined to be 370 respondents in order to achieve a 95% confidence level.

Additionally, NIOSH is requesting approval to involve fishermen directly with an evaluation of the wearability of several different styles of PFDs during fishing operations. Fishermen will be asked to wear one of several styles of PFDs during their fishing season and rate the comfort and features that the PFD has. The PFD ratings will be collected at three times during the evaluation period, using a short form. Each of the three evaluation forms will take about 10 minutes to complete. The sample size for this portion of the study is 145 respondents but will still have a 95% confidence level. The purpose of this portion is to inform potential purchasers of PFD's of other fishermen's evaluations of different styles based on their experience with their use.

This study has the potential to greatly benefit the fishing industry. One of the first steps to increasing PFD use among commercial fishermen is gaining an understanding of fishermen's reasons for not wearing PFDs. With the empirical data at hand, safety professionals may be better equipped to address fishermen's concerns and remove the barriers that are currently in place.

Findings from the PFD evaluations will provide manufacturers valuable information about commercial fishermen's needs and expectations of PFDs. Because the PFD wearability ratings will be completed by fishermen during fishing operations, the results may have more credibility when they are disseminated to the industry. The PFD evaluation will also supply information to fishermen about which types of PFDs worked best for different types of fishing operations. There are no

costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of Respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Fishermen (Survey) .....	370	1	20/60	123
Fishermen (Evaluation) .....	145	3	10/60	73
Total .....				196

Dated: August 10, 2007.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E7-16113 Filed 8-15-07; 8:45 am]

BILLING CODE 4163-18-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[60Day-07-0210]

**Proposed Data Collections Submitted for Public Comment and Recommendations**

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-371-5960 or send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov).

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

List of Ingredients Added to Tobacco in the Manufacture of Cigarette Products (OMB No. 0920-0210)—Reinstatement with Change—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Comprehensive Smoking Education Act of 1984 (15 U.S.C. 1336 or Pub. L. 98-474) requires each person who manufactures, packages, or imports cigarettes to provide the Secretary of Health and Human Services (HHS) with a list of ingredients added to tobacco in the manufacture of cigarettes. This legislation also authorizes HHS to undertake research, and to report to the Congress (as deemed appropriate) discussing the health effects of these ingredients.

HHS has delegated responsibility for the implementation of this Act to CDC's Office on Smoking and Health (OSH). OSH has collected ingredient reports on cigarette products since 1986. Cigarette smoking is the leading preventable cause of premature death and disability in our Nation. Each year more than 400,000 premature deaths occur as the result of cigarette smoking related diseases.

The Centers for Disease Control and Prevention (CDC), Office on Smoking and Health (OSH) has been delegated the authority for implementing major components of the Department of Health and Human Services' (HHS) tobacco and health program, including collection of tobacco ingredients information. HHS's overall goal is to reduce death and disability resulting from cigarette smoking and other forms of tobacco use through programs of information, education and research. For the 2006 reporting year, 111 cigarette manufacturers and/or importers submitted ingredient reports to CDC. The total annual response burden reported for all 111 companies was 722 hours at a total cost of \$34,315. The average annual response burden for each company was 6.5 hours at a cost of \$47.56 per company. The cost to respondents is their time to complete the survey. The 111 manufacturers and/or importers were used as the respondent population for this submission.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Cigarette Manufacturers .....	111	1	6.5	722

Dated: August 10, 2007.

**Maryam Daneshvar,**  
Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7-16119 Filed 8-15-07; 8:45 am]

BILLING CODE 4163-18-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[60Day-07-0679]

**Proposed Data Collections Submitted for Public Comment and Recommendations**

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov).

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

Implementation of an Automated Management Information System (MIS) for the Division for Heart Disease and Stroke Prevention—REVISION—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

In 1993, the U.S. Congress authorized the Centers for Disease Control and Prevention (CDC) to establish the WISEWOMAN demonstration program to extend the services provided within the National Breast and Cervical Cancer

Early Detection Program (NBCCEDP) framework. A subset of the women (those who are 40–64 years of age) who participate in NBCCEDP may also participate in WISEWOMAN. Addressing risk factors such as elevated cholesterol, high blood pressure, obesity, sedentary lifestyle, poor diet, diabetes, and smoking can help reduce a woman's risk of cardiovascular disease-related illness and death.

The Division for Heart Disease and Stroke Division Management Information System will collect in electronic format: (a) Data needed to measure progress by State Heart Disease and Stroke Prevention and WISEWOMAN Programs toward, or achievement of, program performance measures. The respondent population will consist of State Health Department Heart Disease and Stroke Prevention Program Managers and WISEWOMEN Program Managers.

There are no costs to respondents except their time to participate in the survey. Thirty-four respondents from HDSP program and 15 respondents from the WISEWOMAN program will provide input into the proposed system. Respondents reside in each of 39 States, two Tribal organizations, and the District of Columbia.

**ESTIMATED ANNUALIZED BURDEN HOURS**

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
State Health Officials .....	49	2	6	588

Dated: August 10, 2007.

**Maryam I. Daneshvar,**  
Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7-16120 Filed 8-15-07; 8:45 am]

BILLING CODE 4163-18-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

[Document Identifier: CMS-R-308, CMS-116, CMS-1561/1561A, CMS-417, CMS-10227, CMS-437, CMS-724, CMS-10116, CMS-10142, and CMS-10225]

**Agency Information Collection Activities: Submission for OMB Review; Comment Request**

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed

collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* State Children's Health Insurance Program and Supporting Regulations in 42 CFR

431.636, 457.50, 457.60, 457.70, 457.340, 457.350, 457.431, 457.440, 457.525, 457.560, 457.570, 457.740, 457.750, 457.810, 457.940, 457.945, 457.965, 457.985, 457.1005, 457.1015, and 457.1180; *Form Number*: CMS-R-308 (OMB#: 0938-0841) *Use*: States are required to submit title XXI plans and amendments for approval by the Secretary pursuant to section 2102 of the Social Security Act in order to receive funds for initiating and expanding health insurance coverage for uninsured children. States are also required to submit State expenditure and statistical reports, annual reports and State evaluations to the Secretary as outlined in title XXI of the Social Security Act. *Frequency*: Yearly and Quarterly; *Affected Public*: State, Local or Tribal governments; *Number of Respondents*: 56; *Total Annual Responses*: 1,454,601; *Total Annual Hours*: 864,933.

2. *Type of Information Collection Request*: Revision of a currently approved collection. In this revision, a number of changes were made to the form and accompanying instructions to facilitate the completion and data entry of the form. Specifically, the enumeration of individuals involved in laboratory testing was eliminated, and the reporting of hours of laboratory operations was streamlined. Some fields were expanded to reflect changes in laboratory demographics (added prison and assisted living facility to location of laboratory testing) and to collect complete information on the number of tests performed in laboratories. There are no program changes; *Title of Information Collection*: Clinical Laboratory Improvement Amendments Application Form and Supporting Regulations at 42 CFR 493.1-.2001; *Form Number*: CMS-116 (OMB#: 0938-0581); *Use*: The application must be completed by entities performing laboratory testing specimens for diagnostic or treatment purposes. This information is vital to the certification process. *Frequency*: Reporting—Biennially; *Affected Public*: Business or other for-profit and Not-for-profit institutions; *Number of Respondents*: 187,000; *Total Annual Responses*: 17,960; *Total Annual Hours*: 22,450.

3. *Type of Information Collection Request*: Extension without change of a currently approved collection; *Title of Information Collection*: Health Insurance Benefit Agreement and Supporting Regulations at 42 CFR 489; *Form Numbers*: CMS-1561 and 1561A (OMB#: 0938-0832); *Use*: Applicants to the Medicare program are required to agree to provide services in accordance with Federal requirements. The CMS-

1561 and 1561A are essential for CMS to ensure that applicants are in compliance with the requirements. Applicants will be required to sign the completed form and provide operational information to CMS to assure that they continue to meet the requirements after approval; *Frequency*: Reporting—Other: All new applicants must complete; *Affected Public*: State, Local or Tribal Governments, Business or Other for-profits and Not-for-profit institutions; *Number of Respondents*: 3,300; *Total Annual Responses*: 3,300; *Total Annual Hours*: 275.

4. *Type of Information Collection Request*: Extension of a currently approved collection; *Title of Information Collection*: Hospice Request for Certification in the Medicare Program; *Form Number*: CMS-417 (OMB#: 0938-0313); *Use*: The Hospice Request for Certification Form is the identification and screening form used to initiate the certification process and to determine if the provider has sufficient personnel to participate in the Medicare program; *Frequency*: Reporting—Yearly; *Affected Public*: Private Sector: Business or other for-profits; *Number of Respondents*: 2,286; *Total Annual Responses*: 2,286; *Total Annual Hours*: 572.

5. *Type of Information Collection Request*: Existing collection in use without an OMB Control Number; *Title of Information Collection*: PACE State Plan Amendment Pre-print; *Form Number*: CMS-10227 (OMB#: 0938-NEW); *Use*: The Balanced Budget Act of 1997 created section 1934 of the Social Security Act that established the Program for the All-Inclusive Care for the Elderly (PACE). The legislation established the PACE program as a Medicaid State plan option serving the frail and elderly in the home and community. In accordance with the rule published in the November 24, 1999 **Federal Register** (64 FR 66271), if a State elects to offer PACE as an optional Medicaid benefit, it must complete a State Plan Amendment described as Enclosures #3, 4, 5, 6 and 7. In State Medicaid Director letters dated March 23, 1998 and November 9, 2000, CMS advised States that it had provided a suggested pre-print and supplemental pages for a State to express its intention to elect PACE as an option to its State plans. As pre-print packet Enclosures #3-7 were suggested and not required, CMS did not believe at the time that a suggested form required clearance from OMB. The PACE regulation 42 CFR Part 460 was first published in the **Federal Register** as an interim final rule on November 24, 1999. The final PACE rule was published on December 8, 2006.

CMS is seeking OMB approval to use Enclosures #3, 4, 5, 6 and 7. The information is used by CMS to affirm that the State elects to offer PACE an optional State plan service and the specifications of eligibility, payment and enrollment for the program. *Frequency*: Reporting—Once; *Affected Public*: State, Local or Tribal Governments; *Number of Respondents*: 56; *Total Annual Responses*: 56 possible responses but we have only received 20 thus far; *Total Annual Hours*: 1,120.

6. *Type of Information Collection Request*: Reinstatement with change of a previously approved collection; *Title of Information Collection*: Psychiatric Unit Criteria Worksheet and Supporting Regulations at 42 CFR 412.25 and 412.27. *Form Number*: CMS-437 (OMB# 0938-0358); *Use*: The psychiatric unit criteria worksheets are necessary to verify that these units comply and remain in compliance with the exclusion criteria for the Medicare prospective payment system. *Frequency*: Reporting—Annually; *Affected Public*: Business or other for-profit, Not-for-profit institutions, and State, Local and Tribal Government; *Number of Respondents*: 1,333; *Total Annual Responses*: 1,333; *Total Annual Hours*: 333.

7. *Type of Information Collection Request*: Extension of a currently approved collection; *Title of Information Collection*: Psychiatric Hospital Survey Data and Supporting Regulations at 42 CFR 482.60, 482.61, and 482.62; *Form Number*: CMS-724 (OMB#: 0938-0378); *Use*: The Medicare/Medicaid Psychiatric Hospital Survey is used to collect data that is not collected elsewhere and assists CMS in program planning and evaluation of survey needs. In addition, the survey assists CMS in maintaining an accurate data base on providers participating in the Medicare psychiatric hospital program; *Frequency*: Reporting—Yearly; *Affected Public*: Private Sector: Business or other for-profits; *Number of Respondents*: 420; *Total Annual Responses*: 200; *Total Annual Hours*: 100.

8. *Type of Information Collection Request*: Extension of a currently approved collection; *Title of Information Collection*: Medicare Program; Conditions of Payment of Power Mobility Devices, Including Power Wheelchairs and Power-Operated Vehicles (CMS-3017-F); *Form Numbers*: CMS-10116 (OMB#: 0938-0971); *Use*: The CMS is seeking the reapproval of the collection requirements associated with the final rule, CMS-3017-F (71 FR 17021), which was published on April 5, 2006, and

became effective on June 5, 2006. Specifically, we are seeking OMB approval for the following terms of clearance identified in the Notice of Action dated October 16, 2006, of which OMB has requested CMS to monitor the paperwork burden required of providers and suppliers to determine if the paperwork requirements impose any unnecessary burden on the industry and/or need to be revised in order to improve the utility of the information.

After analyzing the documentation requirements burden, CMS does not believe that the documentation requirements impose any additional unnecessary burden on the durable medical equipment (DME) Industry. We believe that most physicians are already conducting a face-to-face examination before prescribing a wheelchair. Given that physicians and treating practitioners can now prescribe power-operated vehicles (POVs), thereby removing the requirement that a specialist can order a POV, CMS believes that the increased burden of 48,600 hours for physicians and treating practitioners is based on the Congressional decision to allow a broader range of physicians and treating practitioners to prescribe POVs. This increased burden is offset by the new payments implemented in connection with the Final Rule, which is demonstrated by the shift in prescriptions from one class of equipment, power wheelchairs, to another class of equipment, POVs.

In addition, CMS believes that with the recent coverage decision on Mobility Assistive Equipment, the implementing details in the Final Rule (e.g., improved documentation for suppliers; physician and treating practitioner payments; improved classification of mobility equipment; the elimination of the certificate of medical necessity (CMN)), and the provider outreach and education provided by CMS, the DME program safeguard contractors (PSCs) and DME Medicare administrative contractors (MACs), the needs of mobility-impaired beneficiaries and the needs of suppliers have been better met. *Frequency*: Recordkeeping—On occasion; *Affected Public*: Business or for-profits, Not-for-profit institutions, and State, Local or Tribal governments; *Number of Respondents*: 38,000; *Total Annual Responses*: 243,000; *Total Annual Hours*: 48,600.

9. *Type of Information Collection Request*: Extension of a currently approved collection; *Title of Information Collection*: Bid Pricing Tool (BPT) for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDPs); *Use*: Under the Medicare

Prescription Drug, Improvement, and Modernization (MMA), Medicare Advantage organizations (MAO) and Prescription Drug Plans (PDP) are required to submit an actuarial pricing “bid” for each plan offered to Medicare beneficiaries. CMS requires that MAOs and PDPs complete the BPT as part of the annual bidding process. During this process, organizations prepare their proposed actuarial bid pricing for the upcoming contract year and submit them to CMS for review and approval. The purpose of the BPT is to collect the actuarial pricing information for each plan. The BPT calculates the plan’s bid, enrollee premiums, and payment rates. *Form Number*: CMS-10142 (OMB#: 0938-0944); *Frequency*: Yearly; *Affected Public*: Business or other for-profit and Not-for-profit institutions; *Number of Respondents*: 550 *Total Annual Responses*: 6,050; *Total Annual Hours*: 42,350.

10. *Type of Information Collection Request*: New collection; *Title of Information Collection*: Disclosures to Patients by Certain Hospitals and Critical Access Hospitals; *Form Numbers*: CMS-10225 (OMB#: 0938-New); *Use*: There is no Medicare prohibition against physician investment in a hospital or critical access hospital (CAH). Likewise, there is no Medicare requirement that a hospital or CAH have a physician on-site at all times, although there is a requirement that they be able to provide basic elements of emergency care to their patients. Medicare quality and safety standards are designed to provide a national framework that is sufficiently flexible to apply simultaneously to hospitals of varying sizes, offering varying ranges of services in differing settings across the Nation. At the same time, however, patients might consider an ownership interest by their referring physician and/or the presence of a physician on-site to be important factors in their decisions about where to seek hospital care. A well-educated consumer is essential to improving the quality and efficiency of the healthcare system. Accordingly, patients should be made aware of the physician ownership of a hospital, whether or not a physician is present in the hospital at all times, and the hospital’s plans to address patients’ emergency medical conditions when a physician is not present. The intent of the proposed disclosures are increase the transparency of the hospital’s ownership and operations to patients as they make decisions about receiving care at the hospital.

Based on public comments received during the 60-day comment period for the **Federal Register** notice (72 FR

21024) for this information collection request, we revised our burden estimates to include the burden associated with the physician-ownership disclosure and recordkeeping requirement for outpatient visits. In addition, we revised the burden associated with the disclosure requirement for critical access hospitals that may not have a physician on-site at all times to account for outpatient visits as well. *Frequency*: Reporting—On occasion; *Affected Public*: Business or for-profits, Not-for-profit institutions; *Number of Respondents*: 2,679; *Total Annual Responses*: 52,984,510; *Total Annual Hours*: 839,599.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@cms.hhs.gov](mailto:Paperwork@cms.hhs.gov), or call the Reports Clearance Office on (410) 786-1326.

Written comments and recommendations for the proposed information collections must be mailed or faxed within 30 days of this notice directly to the OMB desk officer:

OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395-6974.

Dated: August 9, 2007.

**Michelle Shortt**,  
Director, Regulations Development Group,  
Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E7-16160 Filed 8-15-07; 8:45 am]

BILLING CODE 4120-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2007N-0306]

#### Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practice Regulations for Type A Medicated Articles

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

**ACTION**: Notice.

**SUMMARY**: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain

information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the recordkeeping requirements for current good manufacturing practice (cGMP) regulations for Type A medicated articles.

**DATES:** Submit written or electronic comments on the collection of information by October 15, 2007.

**ADDRESSES:** Submit electronic comments on the collection of information to: <http://www.fda.gov/dockets/ecomments> or <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Jr., Office of the Chief Information Officer (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1472.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44

U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Current Good Manufacturing Practice Regulations for Type A Medicated Articles—21 CFR Part 226 (OMB Control Number 0910-0154)—Extension**

Under section 501 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351), FDA has the statutory authority to issue cGMP regulations for drugs, including Type A medicated articles. A Type A medicated article is a feed product containing a concentrated drug diluted with a feed carrier substance. A Type A medicated article is intended solely for use in the manufacture of another Type A medicated article or a Type B or Type C medicated feed. Medicated feeds are administered to animals for the

prevention, cure, mitigation, or treatment of disease or for growth promotion and feed efficiency.

Statutory requirements for cGMPs for Type A medicated articles have been codified under part 226 (21 CFR part 226). Type A medicated articles which are not manufactured in accordance with these regulations are considered adulterated under section 501(a)(2)(B) of the act. Under part 226, a manufacturer is required to establish, maintain, and retain records for type A medicated articles, including records to document procedures required under the manufacturing process to assure that proper quality control is maintained. Such records would, for example, contain information concerning receipt and inventory of drug components, batch production, laboratory assay results (i.e., batch and stability testing) and product distribution.

This information is needed so that FDA can monitor drug usage and possible misformulation of Type A medicated articles. The information could also prove useful to FDA in investigating product defects when a drug is recalled. In addition, FDA will use the cGMP criteria under part 226 to determine whether or not the systems used by manufacturers of Type A medicated articles are adequate to assure that their medicated articles meet the requirements of the act as to safety and also meet the article's claimed identity, strength, quality, and purity, as required by section 501(a)(2)(B) of the act.

The respondents for Type A medicated articles are pharmaceutical firms that manufacture both human and veterinary drugs, those firms that produce only veterinary drugs, and commercial feed mills.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN<sup>1</sup>

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total
226.42	115	260	29,000	0.75	22,425
226.58	115	260	29,000	1.75	52,325
226.80	115	260	29,000	0.75	22,425
226.102	115	260	24,000	1.75	52,325
226.110	115	260	29,000	0.25	7,475
226.115	115	10	1,150	0.5	575
Total					157,550

<sup>1</sup>There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the time required for record preparation and maintenance is based on agency communications with industry. Other information needed to calculate the total burden hours (i.e., manufacturing sites, number of Type A medicated articles being manufactured, etc.) are derived from agency records and experience.

Dated: August 9, 2007.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E7-16087 Filed 8-15-07; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2007N-0305]

#### Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practice Regulations for Medicated Feeds

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the recordkeeping requirements for current good manufacturing practice (cGMP) regulations for medicated feeds.

**DATES:** Submit written or electronic comments on the collection of information by October 15, 2007.

**ADDRESSES:** Submit electronic comments on the collection of information to: <http://www.fda.gov/dockets/ecomments> or <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm.

1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:**

Denver Presley, Jr., Office of the Chief Information Officer (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1472.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

#### Current Good Manufacturing Practice Regulations for Medicated Feeds—21 CFR Part 225 (OMB Control Number 0910-0152)—Extension

Under section 501 of the Federal Food, Drug, and Cosmetic Act (the act)

(21 U.S.C. 351), FDA has the statutory authority to issue cGMP regulations for drugs, including medicated feeds. Medicated feeds are administered to animals for the prevention, cure, mitigation, or treatment of disease, or growth promotion and feed efficiency. Statutory requirements for cGMPs have been codified under part 225 (21 CFR part 225). Medicated feeds that are not manufactured in accordance with these regulations are considered adulterated under section 501(a)(2)(B) of the act. Under part 225, a manufacturer is required to establish, maintain, and retain records for a medicated feed, including records to document procedures required during the manufacturing process to assure that proper quality control is maintained. Such records would, for example, contain information concerning receipt and inventory of drug components, batch production, laboratory assay results (i.e. batch and stability testing), labels, and product distribution.

This information is needed so that FDA can monitor drug usage and possible misformulation of medicated feeds, to investigate violative drug residues in products from treated animals and to investigate product defects when a drug is recalled. In addition, FDA will use the cGMP criteria under part 225 to determine whether or not the systems and procedures used by manufacturers of medicated feeds are adequate to assure that their feeds meet the requirements of the act as to safety and also that they meet their claimed identity, strength, quality, and purity, as required by section 501(a)(2)(B) of the act.

A license is required when the manufacturer of a medicated feed involves the use of a drug or drugs that FDA has determined requires more control because of the need for a withdrawal period before slaughter or because of carcinogenic concerns. Conversely, a license is not required and the recordkeeping requirements are less demanding for those medicated feeds for which FDA has determined that the drugs used in their manufacture need less control.

Respondents to this collection of information are commercial feed mills and mixer-feeders.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (REGISTERED LICENSED COMMERCIAL FEED MILLS)<sup>1</sup>

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeper	Total Annual Records	Hours per Recordkeeper	Total Hours
225.58(c) and (d)	1,060	45	47,700	.5	23,850
225.80(b)(2)	1,060	1,600	1,696,000	.12	203,520
225.102(b)(1)	1,060	7,800	8,268,000	.08	661,440
225.110(b)(1) and (b)(2)	1,060	7,800	8,268,000	.015	124,020
225.115(b)(1) and (b)(2)	1,060	5	5,300	.12	636
Total					1,289,066

<sup>1</sup>There are no capital or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (REGISTERED LICENSED MIXER-FEEDERS)<sup>1</sup>

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
225.42(b)(5) through (b)(8)	100	260	26,000	.15	3,900
225.58(c) and (d)	100	36	3,600	.5	1,800
225.80(b)(2)	100	48	4,800	.12	576
225.102(b)(1) through (b)(5)	100	260	26,000	.4	10,400
Total					16,676

<sup>1</sup>There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (NONREGISTERED UNLICENSED COMMERCIAL FEED MILLS)<sup>1</sup>

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
225.142	8,000	4	32,000	1	32,000
225.158	8,000	1	8,000	4	32,000
225.180	8,000	96	768,000	.12	92,160
225.202	8,000	260	2,080,000	.65	1,352,000
Total					1,508,160

<sup>1</sup>There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (NONREGISTERED UNLICENSED MIXER-FEEDERS)<sup>1</sup>

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
225.142	45,000	4	180,000	1	180,000
225.158	45,000	1	45,000	4	180,000
225.180	45,000	32	1,440,000	.12	172,000
225.202	45,000	260	11,700,000	.33	3,861,000
Total					4,393,000

<sup>1</sup>There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the times required for record preparation and maintenance is based on agency communications with industry. Other information needed to finally calculate the total burden hours (i.e., number of recordkeepers, number

of medicated feeds being manufactured, etc.) is derived from agency records and experience.

Dated: August 9, 2007.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E7-16088 Filed 8-15-07; 8:45 am]

**BILLING CODE 4160-01-S**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. 2007P-0074]

**Joint Meeting of the Nonprescription Drugs Advisory Committee and the Pediatric Advisory Committee; Notice of Meeting**

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

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committees:* Nonprescription Drugs Advisory Committee and the Pediatric Advisory Committee.

*General Function of the Committees:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on October 18 and 19, 2007, from 8 a.m. to 5 p.m.

*Addresses:* Electronic comments should be submitted to <http://www.fda.gov/dockets/ecomments>. Select "2007P-0074—Final Monograph for Cough, Cold, Allergy, Bronchodilator, Antiasthmatic Drug Products for Over-the-Counter Human Use" and follow the prompts to submit your statement. Written comments should be submitted to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, by close of business on August 28, 2007.

*Location:* The National Labor College, Lane Kirkland Center, Solidarity Hall, 10000 New Hampshire Ave., Silver Spring, MD. The phone number is 301-431-6400.

*Contact Person:* Darrell Lyons, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301-827-7001, FAX: 301-827-6776, e-mail: [darrell.lyons@fda.hhs.gov](mailto:darrell.lyons@fda.hhs.gov), or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), codes 3014512541 and 8732310001. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly

enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

*Agenda:* The committees will meet in joint session to discuss the safety and efficacy of over-the-counter (OTC) cough and cold products marketed for pediatric use. A citizen petition was submitted to FDA on March 1, 2007, that raised concerns about the safety and efficacy of cough and cold products in children under 6 years of age. The petition requested among other things that FDA amend the OTC drug monograph for Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (CCABADP) in 21 CFR Part 341 to require that labeling for OTC antitussive, expectorant, nasal decongestant, antihistamine, and combination cough and cold products state that these products have not been found to be safe or effective in children under 6 years of age for the treatment of cough and cold, and that these products should not be used for the treatment of cough and cold in children under 6 years of age. In addition, the petitioner requested the agency to notify manufacturers of these products whose labeling either uses such terms as "infant" or "baby" or displays images of children under the age of 6, that such marketing is not supported by scientific evidence and that manufacturers will be subject to enforcement action at any time. The petition and additional information can be found at the following Web site: <http://www.fda.gov/ohrms/dockets/dockets/07p0074/07p0074.htm>.

The committee's discussion will focus on several areas of interest which include: The extrapolation of efficacy data from adults to children of any age for cough and cold products; the safety profile of these products in children; the basis for dosing recommendations in the CCABADP monograph and the use of extrapolation of pharmacokinetic data to determine appropriate dosing in children; the basis of dosing recommendations for various age intervals of less than 2 years, 2 to 5 years of age, and 6 to 11 years of age; the use of the products in children less than 2 years of age; the potential for misuse, unintentional overdose, and excessive dosing; the ability of parents or caregivers to correctly dose and administer cough and cold products to their children; and the potential labeling changes recommended by the petitioner

and the effects they will have on the use of these products in children and the recommendations of health providers.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/ohrms/dockets/ac/acmenu.htm>; click on the year 2007 and scroll down to the appropriate advisory committee link.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 3, 2007. Oral presentations from the public will be scheduled between approximately 1 p.m. and 3 p.m. on October 18, 2007. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 25, 2007. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 26, 2007.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Darrell Lyons at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/oc/advisory/default.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 9, 2007.

**Randall W. Lutter,**

*Deputy Commissioner for Policy.*

[FR Doc. E7-16169 Filed 8-15-07; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### Processing Methods for Orthopedic, Cardiovascular, and Skin Allografts; Public Workshop

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

**ACTION:** Notice of public workshop.

The Food and Drug Administration (FDA), Center for Biologics Evaluation and Research (CBER), Center for Devices and Radiological Health (CDRH), and Office of Regulatory Affairs (ORA) and the Centers for Disease Control and Prevention (CDC) are announcing a public workshop entitled "Processing Methods for Orthopedic, Cardiovascular, and Skin Allografts." The purpose of the public workshop is to discuss various methods used to process tissue allograft, pre- and post-processing cultures, and disinfection and sterilization of tissues.

**Date and Time:** The public workshop will be held on October 11, 2007, from 8:30 a.m. to 5 p.m., and October 12, 2007, from 8:30 a.m. to 1 p.m.

**Location:** The public workshop will be held at the Masur Auditorium, Building 10 Clinical Center, National Institutes of Health, Bethesda, MD 20892.

**Contact:** Bernadette Kawaley, Center for Biologics Evaluation and Research (HFM-43), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448, 301-827-2000, FAX: 301-827-3079, e-mail:

[CBERTrainingSuggestions@fda.hhs.gov](mailto:CBERTrainingSuggestions@fda.hhs.gov) (Subject line: Tissue Processing Workshop).

**Registration:** Mail or fax your registration information (including name, title, firm name, address, telephone and fax numbers) to the contact person by September 18, 2007. There is no registration fee for the public workshop. Early registration is recommended because seating is limited. Registration on the day of the

public workshop will be provided on a space available basis beginning at 8 a.m.

If you need special accommodations due to a disability, please contact Bernadette Kawaley (see *Contact*) at least 7 days in advance.

**SUPPLEMENTARY INFORMATION:** The public workshop will feature presentations by experts from the government, the medical field and the tissue industry. The first day of the workshop will include discussions on: (1) Surgeon clinical practices, experiences, expectations, and assumptions regarding tissue allografts and patient safety; and (2) Pre- and Post-Processing cultures for microorganisms—usefulness, reliability, and validation. The second day of the workshop will focus on disinfection and sterilization of tissues—experiences, expectations, and challenges.

**Transcripts:** Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI-35), Food and Drug Administration, 5600 Fishers Lane, rm. 6-30, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page. A transcript of the public workshop will be available on the Internet at <http://www.fda.gov/cber/minutes/workshop-min.htm>.

Dated: August 10, 2007.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E7-16182 Filed 8-15-07; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Cancer Institute; 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 Cancer Institute Director's Consumer Liaison Group.

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 Cancer Institute Director's Consumer Liaison Group.

**Date:** October 24-25, 2007.

**Time:** 8:30 a.m. to 3:30 p.m.

**Agenda:** 1. Approval of Minutes; 2. Reports from Dr. John E. Niederhuber, NCI Director;

3. Reports on NCI Budget; Legislative Activity; NCI Scientific Initiatives reported by NCI staff; 4. Presentations on Eliminating Cancer Health Disparities; Translational Working Group; and the Adolescent and Young Adult Oncology (AYAO) Progress Review Group (PRG) 5. Public Comment; 6. Action Items and Conclusion.

**Place:** National Institutes of Health, Building 31, 9000 Rockville Pike, C Wing, 6th Floor, Conference Rm. 6, Bethesda, MD 20892.

**Contact Person:** Barbara Guest, Executive Secretary, Office of Liaison Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd, Room 2202, Bethesda, MD 20892-8324, Bethesda, MD 20892-8324, 301-496-0307, [guestb@mail.nih.gov](mailto:guestb@mail.nih.gov).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show on form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: [deainfo.nci.nih.gov/advisory/dclg/dclg.htm](http://deainfo.nci.nih.gov/advisory/dclg/dclg.htm), where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 9, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-4016 Filed 8-15-07; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Center for Complementary and Alternative Medicine; 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 Center for Complementary and Alternative Medicine Special Emphasis Panel, Basic Science.

*Date:* October 18–19, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Courtyard Marriott-Rio, Washingtonian Center, Gaithersburg, MD.

*Contact Person:* Dale L. Birkle, 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) 451–6570, [birkled@mail.nih.gov](mailto:birkled@mail.nih.gov).

*Name of Committee:* National Center for Complementary and Alternative Medicine Special Emphasis Panel, Training and Education.

*Date:* October 25–26, 2007.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*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: August 10, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–4012 Filed 8–15–07; 8:45 am]

**BILLING CODE 4140–07–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Neurological Disorders and Stroke; 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 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:* Training Grant and Career Development Review Committee.

*Date:* September 13–14, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

*Contact Person:* Raul A. Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC; 6001 Executive Blvd., Ste. 3208, Bethesda, MD 20892–9529, 301–496–9223, [saavedrr@ninds.nih.gov](mailto:saavedrr@ninds.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 9, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–4014 Filed 8–15–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; “Foxp3 complex”.

*Date:* September 13, 2007.

*Time:* 11 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

*Contact Person:* Sujata Vijh, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–594–0985, [vijhs@niaid.nih.gov](mailto:vijhs@niaid.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 9, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–4015 Filed 8–15–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel; Obstetrics & Gynecology, Northwestern University, Chicago, IL.

*Date:* September 12, 2007.

*Time:* 10 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, 5B01, Rockville, MD (Telephone Conference Call).

*Contact Person:* Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, [skandasa@mail.nih.gov](mailto:skandasa@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 9, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-4018 Filed 8-15-07; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Center for Scientific Review; 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 information properly 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:* Center for Scientific Review Special Emphasis Panel, Collaborations with NCBCs.

*Date:* September 11-12, 2007.

*Time:* 8 a.m. to 10 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Malgorzata Klosek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, (301) 435-2211, [klosekm@csr.nih.gov](mailto:klosekm@csr.nih.gov).

*Name of Committee:* Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Arthritis, Connective Tissue and Skin Study Section.

*Date:* September 17-18, 2007.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Crowne Plaza—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

*Contact Person:* Aftab A. Ansari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 594-6376, [ansaria@csr.nih.gov](mailto:ansaria@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, PAR-06-473 Transitional Research on the Relationship of Anxiety and Depression (R21).

*Date:* September 19-20, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Maribeth Champoux, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7759, Bethesda, MD 20892, (301) 594-3163, [champoum@csr.nih.gov](mailto:champoum@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Neuropsychiatric Mechanisms, Models and Pharmacology.

*Date:* September 20, 2007.

*Time:* 8 a.m. to 7:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Boris P. Sokolov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301-435-1197, [bsokolov@csr.nih.gov](mailto:bsokolov@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Resource for MRI of Neurodegenerative Disorders.

*Date:* September 23-24, 2007.

*Time:* 6 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Behrouz Shabestari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892, (301) 435-2409, [shabestb@csr.nih.gov](mailto:shabestb@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 9, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-4013 Filed 8-15-07; 8:45 am]

**BILLING CODE 4140-07-M**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**Proposed Low-Effect Habitat Conservation Plan for the City of Greeley Bellvue Filter Plant Raw Water Ponds Toe Drain Project, in Larimer County, CO**

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

**ACTION:** Notice of availability and receipt of application.

**SUMMARY:** This notice advises the public that the City of Greeley (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended. The proposed permit would authorize the incidental take of Preble's meadow jumping mouse, *Zapus hudsonius preblei* (Preble's), federally-listed as threatened, through loss and modification of its habitat, periodically used for foraging, breeding and/or hibernation, associated with construction and installation of a toe drain around the base of the perimeter of two raw water storage ponds located at the City of Greeley's Bellvue Filter Plant in Larimer County, Colorado. The duration of the permit would be 10 years from the date of issuance.

We announce the receipt of the Applicant's incidental take permit application, which includes a Low-Effect Habitat Conservation Plan (LEHCP) for Preble's at the Bellvue Filter Plant site. The LEHCP fully describes the project and the measures the Applicant would undertake to minimize and mitigate project impacts to Preble's. A bald eagle nest also exists near the project area. In the LEHCP, the Applicant proposes to avoid all adverse impacts to the bald eagle through restrictions on the timing of the project, and thus does not seek coverage under the permit for the eagle.

The Service plans to process the application under a categorical exclusion from the National Environmental Policy Act (NEPA) of 1969 in accordance with our Habitat Conservation Planning and Incidental Take Permit Processing Handbook (November 1996). We request comments on the permit application, including the LEHCP.

**DATES:** Written comments should be received on or before September 17, 2007.

**ADDRESSES:** Comments should be addressed to Susan Linner, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Field Office, P.O. Box

25486, Denver, Colorado 80225. Comments also may be submitted by facsimile to (303) 236-4005. Individuals wanting copies of the LEHCP and associated documents for review should immediately contact the above office. The LEHCP and associated documents also will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Adam Misztal, (303) 236-4753, U.S. Fish and Wildlife Service, Colorado Field Office (see above).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 9 of the Act and implementing regulations prohibit the "take" of a species listed as endangered or threatened. "Take" is defined under the Act, in part, as to kill, harm, or harass a federally listed species. However, the Service may issue permits to authorize "incidental take" of a listed species under limited circumstances. Implementing regulations define "incidental taking" as any taking otherwise prohibited, if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing permits for threatened species are located at 50 CFR 17.32.

The project is located at the City of Greeley's Bellvue Filter Plant in Larimer County, Colorado; S<sup>1</sup>/<sub>2</sub> of Section 14, in Township 8 North, Range 70 West. The Universal Transverse Mercator coordinates of the approximate center of the project area are Zone 13: 483780 mE, 4500530 mN. The Bellvue Filter Plant is the primary drinking water facility for the City of Greeley. The plant operates 24 hours a day, 7 days a week, year-round. The project involves the construction of a buried toe drain around the perimeter of two raw water ponds located at the Bellvue Filter Plant. The project is located adjacent to riparian habitat along the Cache la Poudre River, which is potentially occupied by Preble's. The project will disturb a total of 0.10 hectare (0.24 acre) of Preble's habitat 0.04 hectare (0.09 acre) of permanent impact and 0.06 hectare (0.15 acre) of temporary impact. Greeley will complete the project consistent with this LEHCP, which contains provisions to enhance habitat for Preble's and lists conservation measures for Preble's and bald eagles. The project will provide a net benefit for nesting bald eagles over the long term by protecting the two raw water ponds at the site that provide potential foraging habitat for the eagles. Greeley

does not anticipate incidental take of bald eagles related to the project and, therefore, as noted above does not seek coverage for the eagle under the permit.

Development of the LEHCP identified three alternatives—(1) Construct the project while minimizing impacts to Preble's and avoid adverse impacts to bald eagles to the maximum extent practicable (Preferred Alternative); (2) Construct only that portion of the project more than 91 meters (300 feet) from the 100-year floodplain (no impact to Preble's habitat); and (3) No action. A fourth alternative, waiting for a regional section 10(A)(1)(B) permit, also was considered but not carried forward, because no regional permit is currently planned that would cover the project area.

To mitigate impacts that may result from incidental take, the LEHCP provides a conservation plan that will likely provide a net benefit to the Preble's mouse and other wildlife by enhancing certain riparian corridors on the plant site and associated wetland areas through revegetation efforts and the creation of new habitat. Project construction will disturb 0.10 hectare (0.24 acre) of riparian shrubs and trees that provide potentially suitable habitat for Preble's. Approximately 0.04 hectare (0.09 acre) of this disturbance would be permanent. To mitigate for potential impacts to Preble's, Greeley will enhance 0.16 hectare (0.40 acre) of riparian habitat. Enhancement of this acreage will include the creation of a travel corridor between two existing habitat areas. Greeley also will reseed with native grasses and revegetate with native shrubs and trees. In addition, a qualified biologist will monitor implementation of the LEHCP, including all mitigation efforts, and will prepare an annual report on the progress of habitat improvement measures for a minimum of three growing seasons, or until success criteria are met.

The Service has made the preliminary determination that approval of the LEHCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1) and as a "low-effect" plan as defined by the Habitat Conservation Planning Handbook (November 1996). Determination of LEHCPs is based on the following three criteria: (1) Implementation of the LEHCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) Implementation of the LEHCP would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the

LEHCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or other resources that would be considered significant.

Based on this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination whether to prepare such additional documentation.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the LEHCP, and comments submitted herein to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, a permit will be issued for the incidental take of Preble's in conjunction with the construction and installation of the toe drain around the perimeter of the raw water ponds located at the Bellvue Filter Plant. The final permit decision will be made after public comments are considered.

Dated: July 31, 2007.

**Susan C. Linner,**

*Colorado Field Supervisor.*

[FR Doc. E7-16122 Filed 8-15-07; 8:45 am]

**BILLING CODE 4310-55-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**Intent To Prepare a Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for Little Sandy National Wildlife Refuge, Located in Wood County, TX**

**AGENCY:** Department of the Interior.

**ACTION:** Notice of intent.

**SUMMARY:** This notice advises the public that the Fish and Wildlife Service, Southwest Region, intends to gather information necessary to prepare a CCP and EA for Little Sandy National Wildlife Refuge, pursuant to the National Environmental Policy Act and its implementing regulations. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, to achieve the following:

- (1) Advise other agencies and the public of our intentions,
- (2) Obtain suggestions and information on the scope of issues to include in the environmental document.

**DATES:** Special mailings, newspaper articles, postings, and media announcements will inform people of

opportunities for written input throughout the CCP planning process. Refuge fact sheets will be made available at local libraries in the surrounding communities. This notice of intent/public scoping process will continue until January 1, 2007. Written comments submitted by mail or e-mail should be postmarked by that date to ensure consideration. Comments mailed after that date will be considered to the extent practical. Inquire at the following address for future dates of planning activities and due dates for comments.

**ADDRESSES:** Address comments and requests for more information to: Mark Williams, Refuge Manager, Little Sandy National Wildlife Refuge, P.O. Box 230, Karnack, Texas 75661; phone: 903-679-9144, fax: 903-679-9148. Information concerning this Refuge may also be found at the following Web site: <http://southwest.fws.gov>. Comments submitted via e-mail should be addressed to Tom Baca at [Tom\\_Baca@fws.gov](mailto:Tom_Baca@fws.gov) or Mark Williams at [Mark\\_Williams@fws.gov](mailto:Mark_Williams@fws.gov). Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law.

**FOR FURTHER INFORMATION CONTACT:** Tom Baca, Chief, Division of Planning, P.O. Box 1306, Albuquerque, New Mexico 87103-1306; phone: 505-248-6631; fax: 505-248-6874; e-mail [Tom\\_Baca@fws.gov](mailto:Tom_Baca@fws.gov).

**SUPPLEMENTARY INFORMATION:** The National Wildlife Refuge System Improvement Act of 1997 requires that all lands within the National Wildlife Refuge System (NWRS) are to be managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. Each refuge in the NWRS has specific purposes for which it was established. Those purposes are used to develop and prioritize management goals and objectives within the NWRS mission and to guide which public uses will occur on a given refuge.

The planning process will consider many elements including wildlife and habitat management, habitat protection and acquisition, wilderness preservation, public recreational activities, and cultural resource protection. Public input into the planning process is essential. The planning process is a way for the Service and the public to evaluate

refuge management goals and objectives for the best possible conservation efforts of this important wildlife habitat. Concurrently, this process is also providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

The Little Sandy National Wildlife Refuge is a 3,802 acre, permanent, "non development" easement located along the Sabine River in East Texas. The special interest in land was received by the United States for management as a unit of the National Wildlife Refuge System in December 1986. The interest in land was donated by the Little Sandy Hunting and Fishing Club in Wood County, Texas. An Environmental Assessment was completed in December 1986 describing the affected environment and the purposes of establishment of the Little Sandy National Wildlife Refuge. By acceptance of the easement donation on behalf of the United States, the Service was acting under the authority of the Migratory Bird Conservation Act of 1929 to protect and preserve habitat for waterfowl giving the Refuge its primary purposes. No funding for acquisition was required. The site would not be actively managed by the Service, and the use of the site as a hunting club by the Little Sandy Hunting and Fishing Club would be maintained into perpetuity. However, the "non development" easement prohibits the conversion of these lands to other land practices, such as timber harvest or alteration of wetlands notwithstanding specific authorization by Congress. Although active habitat manipulation (*i.e.*, restoration, maintenance, or enhancement of habitat) is limited, the Service is interested in engaging with the Little Sandy Hunt Club and other conservation partners in the formation of goals, objectives, and strategies leading to a better understanding of the full range of habitat and wildlife resources present on the Refuge. The Service is cognizant of its responsibility to request authorization from the Little Sandy Hunt Club prior to any engagement of on site activities.

The Refuge contains old growth bottomland hardwood habitat and associated wetlands that support wintering mallards (*Anas platyrhynchos*) and wintering and breeding wood ducks (*Aix sponsa*). The area also supports a large number of other wildlife and plant species, including the threatened American alligator (*Alligator mississippiensis*) and the once endangered bald eagle (*Haliaeetus leucocephalus*).

The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuge and how the Service will implement management strategies for the conservation and development of these natural resources.

The Service, through this notice of intent, formally begins the comprehensive conservation planning process for Little Sandy National Wildlife Refuge. The Service requests input on any and all issues concerning the Service's responsibilities to monitor and understand the full spectrum of habitat and wildlife resources present on the Refuge. Because the Refuge is an easement overlay upon private hunt club lands, the comprehensive plan to be developed will likely carry only a minimum of objectives and strategies pertaining to resource educational and interpretive opportunities that could be considered in partnership with the Little Sandy Hunt Club and/or other interested partners. The CCP is also likely to outline any issues regarding the protection of threatened and/or endangered species, migratory birds, native species, and their habitats.

Comments received will be used as part of the planning process. Individual comments will not be referenced in our reports or directly responded to. The Service will continue to solicit information from the public and other agencies via open houses, meetings, and written comments. Special mailings, newspaper releases, and announcements will continue to inform people of the time and place of opportunities for further input to the CCP.

Review of this project will be conducted in accordance with the National Environmental Policy Act of 1968, as amended (42 U.S.C 4321 *et seq.*), NEPA Regulations (40 CFR parts 1500-1508) found at <http://www.thecre.com/fedlaw/default.htm>, other appropriate Federal laws, and Service policies and procedures for compliance with those regulations.

The Service will prepare an Environmental Assessment (EA) in accordance with procedures for implementing NEPA found in the Department of the Interior Manual (DM Part 516, Chap. 6). The decision to prepare an Environmental Impact Statement instead of an EA would be contingent upon the complexity of issues following the scoping phase of the CCP process.

We estimate that the draft environmental documents will be available in fall 2007 for public review and comment.

**Authority:** This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105-57.

Dated: November 7, 2006.

**Christopher T. Jones,**

*Acting Regional Director, U.S. Fish and Wildlife Service, Albuquerque, New Mexico.*

**Editorial Note:** This document was received at the Office of the Federal Register on August 13, 2007.

[FR Doc. E7-16128 Filed 8-15-07; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### San Joaquin River National Wildlife Refuge, Stanislaus and San Joaquin Counties, CA

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

**ACTION:** Notice of availability: final comprehensive conservation plan and finding of no significant impact.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces that the San Joaquin River National Wildlife Refuge (Refuge) Final Comprehensive Conservation Plan (CCP) and Finding of No Significant Impact (FONSI) are available for distribution. The CCP, prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969, describes how the Service will manage the Refuge for the next 15 years.

**DATES:** The CCP and FONSI are available now. The FONSI was signed September 29, 2006. Implementation of the CCP may begin immediately.

**ADDRESSES:** Copies of the CCP and FONSI may be obtained by writing to the San Joaquin River National Wildlife Refuge, P.O. Box 2176, 947-C West Pacheco Boulevard, Los Banos, California 93635. Copies of the CCP and FONSI may also be obtained by writing to the U.S. Fish and Wildlife Service, Attn: Mark Pelz, CA/NV Refuge Planning Office, 2800 Cottage Way, W-1832, Sacramento, CA 95825. The CCP and FONSI is also be available for viewing and downloading online at <http://www.fws.gov/cno/refuges/planning.html>.

Printed copies of the CCP and FONSI are also available at the following libraries:

Stanislaus County Library, 1500 I Street, Modesto, California, 95354; Manteca City Library, 320 Center Road, Manteca, California, 95336; and

Merced County Library, 2100 O Street, Merced, California 95340.

**FOR FURTHER INFORMATION CONTACT:** Kim Forrest, Project Leader, San Luis National Wildlife Refuge Complex, P.O. Box 2176, 947-C West Pacheco Boulevard, Los Banos, California 93635 or Mark Pelz, Chief, Refuge Planning, CA/NV Refuge Planning Office, 2800 Cottage Way, W-1832, Sacramento, CA 95825, phone (916) 414-6504.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Refuge was established in 1987 primarily to protect and manage wintering habitat for Aleutian Canada geese, a federally listed endangered species. Since that time, the Refuge's focus has expanded to include protecting other sensitive species and restoring natural habitats and ecological processes. This Refuge and its management have been important factors in the recovery of the Aleutian Canada goose and its removal in 2001 from the Threatened and Endangered Species List. The Refuge is located just west of Modesto, California.

The Draft CCP and Environmental Assessment (EA) were available for a 30-day public review and comment period, which was announced via several methods including press releases; updates to constituents; and in the **Federal Register** (71 FR 120, June 22, 2006). The Draft CCP/EA identified and evaluated four alternatives for managing the Refuge for the next 15 years. Alternative A was the no-action alternative which described current Refuge management activities. Alternative B placed greater emphasis on wetland restoration and management and would expand visitor services for all priority public uses, including fishing and hunting. Alternative C focused on restoration and management of riparian habitats and providing non-consumptive wildlife-dependant recreation opportunities. Alternative D, (the selected alternative) includes a balance of wetland and riparian restoration and management and expands opportunities for all priority public uses, including fishing and hunting.

The Service received seven comment letters on the Draft CCP and EA during the review period. The comments received were incorporated into the CCP, when possible, and are responded to in an appendix to the CCP. In the FONSI, Alternative D was selected for implementation and is the basis for the CCP. The FONSI documents the decision of the Service and is based on

the information and analysis contained in the EA.

Under the selected alternative, the Service will manage the east unit of the Refuge primarily for Aleutian Canada geese and other migratory birds. In addition, the Service will restore both wetland and riparian habitats in proportions similar to their perceived occurrence before the land was used for agricultural purposes. Under the selected alternative, 1,457 wetland acres and 3,224 acres of riparian habitat will be restored or enhanced. Fishing and hunting will be permitted on the Refuge subject to State and Federal laws. Off-Refuge environmental education opportunities will include school and community presentations. Cultural resources on the Refuge will be assessed and preserved according to regulatory requirements.

The selected alternative best meets the Refuge's purposes, vision and goals; contributes to the Refuge System mission; addresses the significant issues and relevant mandates; and is consistent with principles of sound fish and wildlife management.

Dated: August 7, 2007.

**Ken McDermond,**

*Acting Manager, California/Nevada Operations, Sacramento, California.*

[FR Doc. E7-16107 Filed 8-15-07; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA-2007-0019]

#### Storage and Handling of Anhydrous Ammonia Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comment.

**SUMMARY:** OSHA solicits comments concerning its proposal to extend OMB approval of the information collection requirements contained in the Standard on the Storage and Handling of Anhydrous Ammonia (29 CFR 1910.111). Paragraphs (b)(3) and (b)(4) of the Standard have paperwork requirements that apply to nonrefrigerated containers and systems, and refrigerated containers, respectively; employers use these containers and systems to store and transfer anhydrous ammonia in the workplace.

**DATES:** Comments must be submitted (postmarked, sent, or received) by October 15, 2007.

**ADDRESSES:**

*Electronically:* You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA-2007-0019, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., EST.

*Instructions:* All submissions must include the Agency name and OSHA docket number for the ICR (OSHA-2007-0019). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

*Docket:* To read or download comments or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:** Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N-3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2222.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Paragraph (b)(3) of the Standard specifies that containers and systems have nameplates if required, and that these nameplates "be permanently attached to the system (as specified by paragraph (b)(3)(ii)(j)) so as to be readily accessible for inspection \* \* \* ." In addition, this paragraph requires that markings on containers and systems covered by paragraphs (c) ("Systems utilizing stationary, nonrefrigerated storage containers"), (f) ("Tank motor vehicles for the transportation of ammonia"), (g) ("Systems mounted on farm vehicles other than for the application of ammonia"), and (h) ("Systems mounted on farm vehicles for the application of ammonia") provide information regarding nine specific characteristics of the containers and systems. Similarly, paragraph (b)(4) of the Standard specifies that refrigerated containers be marked with a nameplate on the outer covering in an accessible place which provides information regarding eight specific characteristics of the container.

The required markings ensure that employers use only properly designed and tested containers and systems to store anhydrous ammonia, thereby preventing accidental release of, and exposure of employees to, this highly toxic and corrosive substance. In

addition, these requirements provide the most efficient means for an OSHA compliance officer to ensure that the containers and systems are safe.

**II. Special Issues for Comment**

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

**III. Proposed Actions**

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on the Storage and Handling of Anhydrous Ammonia (29 CFR 1910.111). The Agency is requesting to retain its current burden hour estimate associated with this Standard at 345 hours. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

*Type of Review:* Extension of a currently approved collection.

*Title:* Storage and Handling of Anhydrous Ammonia Standard (29 CFR 1910.111(b)(3) and (b)(4)).

*OMB Number:* 1218-0208.

*Affected Public:* Farms.

*Number of Respondents:* 2,030.

*Frequency:* On occasion.

*Average Time Per Response:* 10 minutes (.17 hour) for an employee to replace or revise markings on ammonia containers.

*Estimated Total Burden Hours:* 345.

*Estimated Cost (Operation and Maintenance):* \$0.

**IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions**

You may submit comments in response to this document as follows:

- (1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA-2007-0019).

You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627).

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

#### V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5-2002 (67 FR 65008).

Signed at Washington, DC, on August 9, 2007.

**Edwin G. Foulke, Jr.,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. E7-16043 Filed 8-15-07; 8:45 am]

**BILLING CODE 4510-26-P**

## NATIONAL COUNCIL ON DISABILITY

### Sunshine Act Meetings

**TYPE:** Quarterly Meeting  
"Teleconference Call."

**DATE AND TIME:** September 5, 2007, 12 p.m.—2 p.m.

**LOCATION:** National Council on Disability, 1331 F St., NW., Suite 850, Washington, DC 20004.

**STATUS:** September 5, 2007, 12 p.m.—2 p.m.—Open.

**AGENDA:** Opening Remarks, Discussion of Budget Planning for Fiscal Year 2009, Closing Remarks.

**SUNSHINE ACT MEETING CONTACT:** Mark S. Quigley, Director of Communications, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202-272-2004 (voice), 202-272-2074 (TTY), 202-272-2022 (fax).

**AGENCY MISSION:** NCD is an independent federal agency and is composed of 15 members appointed by the President, by and with the advice and consent of the Senate. NCD provides advice to the President, Congress, and executive branch agencies promoting policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature or severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

**ACCOMMODATIONS:** Those needing reasonable accommodations should notify NCD immediately.

**LANGUAGE TRANSLATION:** In accordance with E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for these meetings should notify NCD immediately.

Dated: August 10, 2007.

**Michael C. Collins,**

*Executive Director.*

[FR Doc. 07-4031 Filed 8-14-07; 12:11 pm]

**BILLING CODE 6820-MA-P**

## EXECUTIVE OFFICE OF THE PRESIDENT

### Office of National Drug Control Policy

#### High Intensity Drug Trafficking Areas; Petitions for Designation

**AGENCY:** Office of National Drug Control Policy.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Office of National Drug Control Policy Reauthorization Act of 2006, Public Law 109-469, section 707(c), the Director, National Drug Control Policy is establishing regulations under which interested coalitions of law enforcement agencies from an area may petition for designation as a high intensity drug trafficking area.

*Public Comment:* On June 4, 2007 (Volume 72, Number 106, Notices Page 30862-30864), the Executive Office of the President, Office of National Drug Control published Notice of its intent to issue this regulation. A 60-day public comment period was established. The June 4 Notice stated that any written comments must be received by ONDCP via electronic mail or facsimile on or before August 3, 2007. In addition, an ONDCP staff point of contact was listed to provide additional information as appropriate. ONDCP did not receive any comments. Therefore, ONDCP is issuing this Notice of the agency's intent to publish a regulation identical to the document published on June 4, 2007.

**SUPPLEMENTARY INFORMATION:** The Anti-Drug Abuse Act of 1988, the ONDCP Reauthorization Act of 1998, and the ONDCP Reauthorization Act of 2006 authorize the Director of the Office of National Drug Control Policy (ONDCP) to designate areas within the United States that exhibit serious drug trafficking problems and harmful impact of other areas of the country as High Intensity Drug Trafficking Areas (HIDTA). The HIDTA Program provides federal resources to those areas to help eliminate or reduce drug trafficking and its harmful consequences. Law enforcement organizations within HIDTAs assess drug trafficking problems and design specific initiatives to reduce or eliminate the production, manufacture, transportation, distribution, and use of illegal drugs and money laundering.

When designating a new HIDTA or adding counties to existing HIDTAs, the Director of ONDCP consults with the Attorney General, Secretary of Homeland Security, Secretary of Treasury, heads of national drug control agencies, and the appropriate governors, and considers the extent to which—

(1) The area is a significant center of illegal drug production, manufacturing, importation, or distribution;

(2) State, local, and tribal law enforcement agencies have committed resources to respond to the drug trafficking problem in the area, thereby indicating a determination to respond aggressively to the problem;

(3) Drug-related activities in the area are having a significant harmful impact

in the area, and in other areas of the country; and

(4) A significant increase in allocation of Federal resources is necessary to respond adequately to drug-related activities in the area.

The HIDTA Program helps improve the effectiveness and efficiency of drug control efforts by facilitating cooperation among drug control organizations through resource and information sharing, collocation, and implementing joint initiatives. HIDTA funds help Federal, State, local, and tribal law enforcement organizations invest in infrastructure and joint initiatives to confront drug trafficking organizations.

Each HIDTA is governed by its own executive board comprised of Federal, State and local law enforcement officials from the designated HIDTA region. The executive boards facilitate interagency drug control efforts to eliminate or reduce drug threats.

HIDTA-designated counties comprise approximately 13 percent of U.S. counties, and are present in 43 states, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia. The following 28 areas are designated HIDTAs:

*1990:* Houston, Los Angeles, New York/New Jersey, South Florida, and Southwest Border (California, Arizona, New Mexico, and South and West Texas).

*1994:* Washington/Baltimore (Maryland, Virginia, and District of Columbia) and Puerto Rico/U.S. Virgin Islands.

*1995:* Atlanta, Chicago, and Philadelphia/Camden.

*1996:* Rocky Mountain (Colorado, Montana, Utah, and Wyoming), Gulf Coast (Alabama, Louisiana, and Mississippi), Lake County (Indiana), Midwest (Iowa, Kansas, Missouri, Nebraska, North Dakota, and South Dakota) and Northwest (Washington).

*1997:* Michigan and Northern California.

*1998:* Appalachia (Kentucky, Tennessee, and West Virginia), Central Florida, Milwaukee, and North Texas (Texas and Oklahoma).

*1999:* Central valley California, Hawaii, New England (Connecticut, New Hampshire, Maine, Massachusetts, Rhode Island, and Vermont), Ohio, and Oregon.

*2001:* North Florida and Nevada.

To date, counties seeking HIDTA designation have communicated their interest to ONDCP in a variety of manners. Currently, no formal process or regulation exists outlining the application and selection process.

Historically, law enforcement coalitions interested in obtaining

designation as HIDTAs have submitted drug-related threat assessments for their counties which typically include a narrative analysis of the drug threat and statistical information related to the four statutory criteria. The proposed rule is intended to create a better coordinated and more meaningful process for reviewing applications. The rule sets forth a general process that enables interested coalitions of law enforcement agencies to submit petition for designation as a HIDTA. The criteria by which ONDCP will evaluate the petitions are set forth in this regulation. In addition, the proposed rule requires ONDCP to review submitted petitions on a regular basis.

### Sec. 1 General Provisions

(a) This regulation contains the rules that the Office of National Drug Control Policy (Office) follows in processing petitions for designation as a High Intensity Drug Trafficking Area (HIDTA), in accordance with the ONDCP Reauthorization Act of 2006, Public Law No. 109-469.

(b) Establishment—

(1) In General—There is established in the Office a program known as the High Intensity Drug Trafficking Areas Program (in this regulation referred to as the “Program”).

(2) Purpose—The purpose of the Program is to reduce drug trafficking and drug production in the United States by—

(A) Facilitating cooperation among Federal, State, local, and tribal law enforcement agencies to share information and implement coordinated enforcement activities;

(B) Enhancing law enforcement intelligence sharing among Federal, State, local, and tribal law enforcement agencies;

(C) Providing reliable law enforcement intelligence to law enforcement agencies needed to design effective enforcement strategies and operations; and

(D) Supporting coordinated law enforcement strategies which maximize use of available resources to reduce the supply of illegal drugs in designated areas and in the United States as a whole.

(c) Designation—

(1) In General—The Director, in consultation with the Attorney General, the Secretary of the Treasury, the Secretary of Homeland Security, heads of the National Drug Control Program agencies, and the Governor of each applicable State, may designate any specified area of the United States as a high intensity drug trafficking area.

(2) Activities—After making a designation under paragraph (1) and in order to provide Federal assistance to the area so designated, the Director may—

(A) Obligate such sums as are appropriated for the Program;

(B) Direct the temporary reassignment of Federal personnel to such area, subject to the approval of the head of the department or agency that employs such personnel;

(C) Take any other action authorized under the Office of National Drug Control Policy Reauthorization Act of 2006 to provide increased Federal assistance to those areas; and

(D) Coordinate activities under this section (specifically administrative, recordkeeping, and funds management activities) with State, local, and tribal officials.

(3) Factors for Consideration—In considering whether to designate an area as a high intensity drug trafficking area, the Director shall consider, in addition to such other criteria as the Director considers to be appropriate, the extent to which—

(A) The area is a significant center of illegal drug production, manufacturing, importation, or distribution;

(B) State, local, and tribal law enforcement agencies have committed resources to respond to the drug trafficking problem in the area, thereby indicating a determination to respond aggressively to the problem;

(C) Drug-related activities in the area are having a significant harmful impact in the area, and in other areas of the country; and

(D) A significant increase in allocation of Federal resources is necessary to respond adequately to drug-related activities in the area.

### Sec. 2 Instructions for Petitions

(a) A coalition of interested law enforcement agencies from an area may petition for designation as a HIDTA.

(b) Petitions must specify the geographical area for which HIDTA designation is requested. Areas are designated by county, therefore, such areas must be identified in the petition.

(c) Petitions must state specifically which law enforcement agencies are making the petition, a responsible official for each agency making the petition, and a point of contact for the coalition of interested law enforcement agencies.

(d) Petitions must include an assessment of the threat of illegal drugs in the area for which HIDTA designation is requested and must specifically respond to each of the following four requirements:

(1) The area is a significant center of illegal drug production, manufacturing, importation, or distribution;

(2) State, local, and tribal law enforcement agencies have committed resources to respond to the drug trafficking problem in the area, thereby indicating a determination to respond aggressively to the problem;

(3) Drug-related activities in the area are having a significant harmful impact in the area, and in other areas of the country; and

(4) A significant increase in allocation of Federal resources is necessary to respond adequately to drug-related activities in the area.

(e) Each of the requirements in Section 2(d) must be addressed and justified with sufficient information/documentation for each county proposed in the petition.

(f) If the petition proposes to designate additional counties to an already established HIDTA region, the petition shall include a letter from the Chairman of that HIDTA's Executive Committee indicating that the Executive Committee has reviewed the petition and sets forth its position related to the petition for designation.

(g) Petitions may be submitted to the Executive Office of the President, Office of National Drug Control Policy, Office of State, Local and Tribal Affairs, Washington, DC 20503 via facsimile at (202) 395-6721 or electronic mail at [ondcp\\_hidta@ondcp.eop.gov](mailto:ondcp_hidta@ondcp.eop.gov).

Comments or questions regarding this notice should be directed to Mr. Daniel Grayson, ONDCP Policy Analyst at (202) 395-4582.

### Sec. 3 Processing of Petitions

(a) Acknowledgements of Petitions. Upon receipt of a petition, the Office shall send an acknowledgement letter to the requester to confirm receipt of the petition and provide an assigned number for further reference.

(b) Petitions will be reviewed by the Office on a regular basis. The review will include a recommendation regarding the merit of the petition to the Director by a panel of qualified, independent experts who are designated by the Director.

(c) Notification of merit of petition. After the review is completed the requestor will be notified in writing regarding the disposition of the petition.

(d) The Director, Office of National Drug Control Policy, is solely responsible for making designation and

funding decisions relating to the HIDTA Program.

**Michael K. Gottlieb,**

*Assistant General Counsel, Office of National Drug Control Policy.*

[FR Doc. E7-16174 Filed 8-15-07; 8:45 am]

**BILLING CODE 3180-02-P**

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## NATIONAL NANOTECHNOLOGY COORDINATION OFFICE

### Nanoscale Science, Engineering and Technology Subcommittee, National Science and Technology Council, Committee on Technology; Priorities for Environmental, Health, and Safety Research Related to Engineered Nanoscale Materials: An Interim Document for Public Comment

August 10, 2007.

**ACTION:** Notice of public comment period.

**SUMMARY:** The National Nanotechnology Coordination Office (NNCO), on behalf of the Nanoscale Science, Engineering, and Technology (NSET) Subcommittee of the Committee on Technology, National Science and Technology Council (NSTC), will post a document for public comment on the Web site [www.nano.gov](http://www.nano.gov). The document, The Prioritization of Environmental, Health, and Safety Research Needs for Engineered Nanoscale Materials: An Interim Document for Public Comment, assigns priority to research needs and areas that were identified in the NSET Subcommittee document Environmental, Health, and Safety Research Needs for Engineered Nanoscale Materials, which was published on September 21, 2006. The comment period will commence on August 16, 2007 and end on September 17, 2007.

**Web site Posting:** The prioritization document and request for comment will be posted at the Web site of the National Nanotechnology Initiative, [www.nano.gov](http://www.nano.gov). (The document can be accessed from the indicated home page or by going directly to [http://www.nano.gov/html/society/ehs\\_priorities](http://www.nano.gov/html/society/ehs_priorities).) Comments can be submitted to the NSET Subcommittee via the Web site through September 17, 2007. Only written comments are being solicited at this time.

**FOR FURTHER INFORMATION CONTACT:** For information regarding this Notice, please contact Cate Alexander Brennan, National Nanotechnology Coordination Office. Telephone: (703) 292-4399. E-mail: [calexand@nnco.nano.gov](mailto:calexand@nnco.nano.gov).

**SUPPLEMENTARY INFORMATION:** The Nanoscale Science, Engineering, and Technology (NSET) Subcommittee coordinates planning, budgeting, and program implementation and review to ensure a balanced and comprehensive National Nanotechnology Initiative (NNI). The NSET Subcommittee is composed of representatives from agencies participating in the NNI. The NNCO provides technical and administrative support to the NSET Subcommittee in its work.

On September 21, 2006, the NSET Subcommittee released a document identifying environmental, health, and safety research and information needs related to understanding and management of potential risks of nanomaterials. The document, Environmental, Health, and Safety Research Needs for Engineered Nanoscale Materials, was created by the Nanotechnology Environmental and Health Implications (NEHI) Working Group of the NSET Subcommittee, which is composed of scientists and other agency representatives. The document reflects expert input from industry liaison groups and other research needs-identification efforts. (To read this document, see [http://www.nano.gov/NNI\\_EHS\\_research\\_needs.pdf](http://www.nano.gov/NNI_EHS_research_needs.pdf)).

On January 4, 2007, a public meeting was held in Arlington, VA, to receive input on research needs related to the environmental, health, and safety aspects of engineered nanoscale materials, and specifically, prioritization criteria for the research identified in the September 21, 2006, document. Input gained from the public at the January 4 meeting was considered in preparing the prioritization document, which is the subject of this call for public comment.

The additional feedback requested through this solicitation by the NSET Subcommittee and the NNI participating agencies is whether parties agree with the identified priorities of the Government or would suggest different or additional priorities. Support for the submitted perspectives is requested. The comment period is an opportunity for public input into the prioritization of research related to environmental, health, and safety aspects of nanomaterials. The prioritization document will be used by the Federal agencies as they set research priorities for Government-funded research programs.

For more information on the National Nanotechnology Initiative and its various working entities, please visit [www.nano.gov](http://www.nano.gov).

### How Can You Participate?

You can participate through written electronic submissions to the NNCO at [http://www.nano.gov/html/society/ehs\\_priorities](http://www.nano.gov/html/society/ehs_priorities). Submissions are welcome from all members of the public.

### How Will Public Input Be Used?

All comments and recommendations that are submitted will be considered by the NEHI Working Group. Input from multiple stakeholders with various interests will be valuable to the NNI. Through activities such as this solicitation, the NSET Subcommittee and NNI member agencies are making the priority-setting process dynamic, open, and transparent.

#### E. Clayton Teague,

Director, National Nanotechnology Coordination Office, Nanoscale Science, Engineering, and Technology Subcommittee of the National Science and Technology Council Committee on Technology.

[FR Doc. E7-16077 Filed 8-15-07; 8:45 am]

BILLING CODE 3170-WF-P

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-454 and STN 50-455]

### Exelon Generation Company, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating Licenses NPF-37 and NPF-66

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Exelon Generation Company, LLC (the licensee) to withdraw its June 16, 2006, application for proposed amendment to Facility Operating License Nos. NPF-37 and NPF-66 for the Byron Station, Unit Nos. 1 and 2, located in Ogle County, Illinois.

The proposed amendment would have revised the Updated Final Safety Analysis Report pertaining to tornado generated missile protection for certain systems and components.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 21, 2006 (17 FR 67393). However, by letter dated July 24, 2007, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 16, 2006, and the licensee's letter dated July 24, 2007, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public

File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, or 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 6th day of August 2007.

For the Nuclear Regulatory Commission.

#### Robert F. Kuntz,

Project Manager, Plant Licensing Branch III-2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7-16148 Filed 8-15-07; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Consolidated Decommissioning Guidance; Notice of Revision to, Withdrawal of Portions of, and Process for Updating

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of revision to, withdrawal of portions of, and process for updating NUREG-1757.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) staff is revising, withdrawing portions of, and describing the process for updating guidance in "Consolidated Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria" (NUREG-1757, Vol. 2, Rev. 1), Appendix N, "ALARA Analyses." This notice also describes the staff's process for developing interim guidance and future revisions to the three volumes of its "Consolidated Decommissioning Guidance" (NUREG-1757).

**ADDRESSES:** NUREG-1757 is available for inspection and copying for a fee at the Commission's Public Document Room, NRC's Headquarters Building, 11555 Rockville Pike (First Floor), Rockville, Maryland. The Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays. NUREG-1757 is also available electronically on the NRC Web site at: <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1757/>, and from the ADAMS Electronic Reading

Room on the NRC Web site at: <http://www.nrc.gov/reading-rm/adams.html>.

The NRC's decommissioning Web page is at: <http://www.nrc.gov/about-nrc/regulatory/decommissioning.html>.

#### FOR FURTHER INFORMATION CONTACT:

Duane W. Schmidt, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, Mail Stop T-8F5, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone: (301) 415-6919; e-mail: [dws2@nrc.gov](mailto:dws2@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

In September 2006, the NRC staff published Revision 1 of Volume 2 of NUREG-1757, entitled, "Consolidated Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria," which provides technical guidance on compliance with the radiological criteria for license termination in the NRC's License Termination Rule (LTR) (Code of Federal Regulations, Title 10, Part 20, Subpart E). Volume 2 is applicable to all licensees subject to the LTR. Volume 2 is one of three volumes of the NUREG-1757 series, which, combined, provide consolidated guidance on decommissioning.

The NRC staff considers the development of its guidance as an iterative process. Formal revisions to of NUREG-1757 (*i.e.*, publishing new revised volumes of NUREG-1757) are anticipated in the future. When these revised volumes are developed, the NRC staff intends to publish them as drafts for public comment. Between formal revisions of the NUREG-1757 volumes, errors needing correction or other revisions may be identified and the NRC staff may develop interim guidance and post it on the NRC's decommissioning web page, to make it available for use by licensees and other stakeholders.

During the review of a recently submitted decommissioning plan, proposing decommissioning in accordance with the restricted use provision of the LTR, the NRC staff determined that there are certain errors in Vol. 2 of NUREG-1757, Appendix N. The specific errors concern compliance with the "as low as is reasonably achievable" (ALARA) provisions of the LTR.

The guidance being corrected or withdrawn is described below.

Error 1. On page N-1 of Appendix N, the first paragraph provides a general introductory discussion of ALARA. In this paragraph, the word "feasible" is used twice when referring to ALARA. The correct word is "reasonable."

Error 2. On page N-4 of Appendix N, The last paragraph discusses the monetary value for collective dose averted and discount rates that may be used in ALARA calculations. In particular, the paragraph includes the following two sentences: "For doses averted within the first 100 years, a discount rate of 7% should be used. For doses averted beyond 100 years, a 3% discount rate should be used." The discussion of discount rate in these two sentences is incorrect. Therefore, these two quoted sentences are withdrawn from the guidance of NUREG-1757, Vol. 2 and should not be used.

Error 3. On page N-10 of Appendix N, Table N.2 summarizes acceptable parameter values for use in decommissioning ALARA analyses. This table includes a row describing the monetary discount rate, *r*. Consistent with Error 2, above, the description for the second column (the "value" description) of the row on monetary discount rate, *r*, is withdrawn from the guidance of NUREG-1757, Vol. 2.

Error 4. On page N-12 of Appendix N, Example 3 is an ALARA calculation for removing surface soil contaminated with a long-lived radionuclide. Use of the single discount rate in the example may be misleading, because the guidance in NUREG/BR-0058 recommends multiple analyses be performed. Therefore, Example 3 is withdrawn from Appendix N of NUREG-1757, Vol. 2, and should not be used.

Error 5. On page N-18 of Appendix N, the last paragraph again discusses acceptable values for the discount rate, *r*. In particular, this paragraph includes the sentence: "Values for *r* are given in NUREG/BR-0058, Revision 2, and OMB policy (OMB 1996)." The referenced guidance is out-of-date, and this quoted sentence is withdrawn from the guidance of NUREG-1757, Vol. 2.

The staff intends to develop interim guidance to address the withdrawn portions of guidance discussed above and will post the interim guidance on the NRC's decommissioning Web page, to make it available for use by licensees and other stakeholders.

The guidance in NUREG-1757 and any corrections to NUREG-1757 are intended for use by NRC staff and licensees. The NUREG and any corrections are not substitutes for NRC regulations, and compliance with them is not required. The NUREG and corrections describe approaches that are generally acceptable to NRC staff. However, methods and solutions different than those in the NUREG and corrections will be acceptable, if they provide a basis for concluding that the

decommissioning actions are in compliance with NRC regulations.

Dated at Rockville, MD, this 10th day of August, 2007.

For the Nuclear Regulatory Commission.

**Keith I. McConnell,**

*Deputy Director, Decommissioning & Uranium Recovery, Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.*

[FR Doc. E7-16131 Filed 8-15-07; 8:45 am]

**BILLING CODE 7590-01-P**

## **NUCLEAR REGULATORY COMMISSION**

### **Notice of Opportunity To Comment on Model Safety Evaluation on Technical Specification Improvement To Revise Control Rod Notch Surveillance Frequency, Clarify SRM Insert Control Rod Action, and Clarify Frequency Example**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Request for comment.

**SUMMARY:** Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE) relating to the revision of Standard Technical Specifications (STS), NUREG-1433 (BWR/4) and NUREG-1434 (BWR/6). Specifically the SE addresses: (1) The revision of the TS surveillance requirement (SR) 3.1.3.2 frequency in STS 3.1.3, "Control Rod OPERABILITY," (2) a clarification to the requirement to fully insert all insertable control rods for the limiting condition for operation (LCO) in STS 3.3.1.2, Required Action E.2, "Source Range Monitor Instrumentation" (NUREG-1434 only), and (3) the revision of Example 1.4-3 in STS Section 1.4 "Frequency" to clarify the applicability of the 1.25 surveillance test interval extension. The NRC staff has also prepared a model license amendment request and a model no significant hazards consideration (NSHC) determination relating to this matter. The purpose of these models are to permit the NRC to efficiently process amendments that propose to modify TS control rod SR testing frequency, clarify TS control insertion requirements, and clarify SR frequency discussions. Licensees of nuclear power reactors to which the models apply could then request amendments, confirming the applicability of the SE and NSHC determination to their plant licensing basis. The NRC staff is requesting

comment on the model SE, model amendment request, and model NSHC determination prior to announcing their availability for referencing in license amendment applications.

**DATES:** The comment period expires September 17, 2007. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** Comments may be submitted either electronically or via U.S. mail. Submit written comments to Chief, Rulemaking, Directives, and Editing Branch, Division of Administrative Services, Office of Administration, Mail Stop: T-6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received may be examined at the NRC's Public Document Room, 11555 Rockville Pike (Room O-1F21), Rockville, Maryland. Comments may be submitted by electronic mail to [CLIP@nrc.gov](mailto:CLIP@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Timothy Kobetz, Mail Stop: O-12H2, Technical Specifications Branch, Division of Inspection & Regional Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-415-1932.

#### **SUPPLEMENTARY INFORMATION:**

#### **Background**

Regulatory Issue Summary 2000-06, "Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors," was issued on March 20, 2000. The consolidated line item improvement process (CLIP) is intended to improve the efficiency of NRC licensing processes, by processing proposed changes to the STS in a manner that supports subsequent license amendment applications. The CLIP includes an opportunity for the public to comment on proposed changes to the STS after a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. This notice solicits comment on a proposed change to the STS that modifies a TS control rod SR testing frequency, clarifies TS control rod insertion requirements, and clarifies SR frequency discussions. The CLIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or announce the

availability of the change for adoption by licensees. Licensees opting to apply for this TS change are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves the modification of TS control rod SR testing frequency, clarification of TS control insertion requirements, and clarification of SR frequency discussions. This change was proposed for incorporation into the standard technical specifications by the Owners Groups participants in the Technical Specification Task Force (TSTF) and is designated TSTF-475 Revision 1. TSTF-475 Revision 1 can be viewed on the NRC's Web page at <http://www.nrc.gov/reactors/operating/licensing/techspecs.html>.

#### Applicability

This proposed TS change to modify TS control rod SR testing frequency, clarify TS control insertion requirements, and clarify SR frequency discussions is applicable to BWR NSSS plants. The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without the attached model SE and the NSHC. Variations from the approach recommended in this notice may, however, require additional review by the NRC staff and may increase the time and resources needed for by the NRC staff and may increase the time and resources needed for the review.

#### Public Notices

This notice requests comments from interested members of the public within 30 days of the date of publication in the **Federal Register**. After evaluating the comments received as a result of this notice, the staff will either reconsider the proposed change or announce the availability of the change in a subsequent notice (perhaps with some changes to the safety evaluation, model application or the proposed no significant hazards consideration determination as a result of public comments). If the staff announces the availability of the change, licensees wishing to adopt the change must submit an application in accordance with applicable rules and other regulatory requirements. For each application the staff will publish a notice of consideration of issuance of amendment to facility operating licenses, a proposed no significant

hazards consideration determination, and a notice of opportunity for a hearing. The staff will also publish a notice of issuance of an amendment to operating license to announce the modification of the TS control rod SR testing frequency, TS control rod insertion requirements, and SR frequency discussions for each plant that receives the requested change.

#### Proposed Safety Evaluation

*Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Consolidated Line Item Improvement Program, Technical Specification Task Force (TSTF) Change TSTF-475, Revision 1, Control Rod Notch Testing Frequency and Source Range Monitor Technical Specification Action To Insert Control Rods*

#### 1.0 Introduction

By letter dated August 30, 2004, BWR OWNERS Group (BWROG) submitted a request for changes to NUREG-1433, Standard Technical Specifications General Electric Plants, BWR/4 (Reference 1), and NUREG-1434, Standard Technical Specifications General Electric Plants, BWR/6 (Reference 2). The proposed changes would: (1) Revise the TS control rod notch surveillance frequency in TS 3.1.3, "Control Rod OPERABILITY," (2) clarify the TS requirement for inserting control rods for one or more inoperable SRMs in MODE 5, and (3) revise one Example in Section 1.4 "Frequency" to clarify the applicability of the 1.25 surveillance test interval extension.

These changes are based on Technical Specifications Task Force (TSTF) change traveler TSTF-475, Revision 1, that proposes revisions to the reference BWR standard technical specifications (STS) by: (1) Revising the frequency of SR 3.1.3.2, notch testing of each fully withdrawn control rod, from "7 days after the control rod is withdrawn and THERMAL POWER is greater than the LPSP of RWM" to "31 days after the control rod is withdrawn and THERMAL POWER is greater than the LPSP of the RWM", (2) adding the word "fully" to LCO 3.3.1.2 Required Action E.2 (NUREG-1434 only) to clarify the requirement to fully insert all insertable control rods in core cells containing one or more fuel assemblies when the associated SRM instrument is inoperable, and (3) revising Example 1.4-3 in Section 1.4 "Frequency" to clarify that the 1.25 surveillance test interval extension in SR 3.0.2 is applicable to time periods discussed in NOTES in the "SURVEILLANCE" column in addition to the time periods in the "FREQUENCY" column.

The purpose of these surveillances is to confirm control rod insertion capability which is demonstrated by inserting each partially or fully withdrawn control rod at least one notch and observing that the control rod moves. Control rods and control rod drive (CRD) Mechanism (CRDM), by which the control rods are moved, are components of the CRD System, which is the primary reactivity control system for the reactor. By design, the CRDM is highly reliable with a tapered design of the index tube which is conducive to control rod insertion.

A stuck control rod is an extremely rare event and industry review of plant operating experience did not identify any incidents of stuck control rods while performing a rod notch surveillance test.

The purpose of these revisions is to reduce the number of control rod manipulations and, thereby, reduce the opportunity for reactivity control events.

#### 2.0 Regulatory Evaluation

Title 10 of the Code of Federal Regulations (CFR), Part 50, Appendix A, General Design Criterion (GDC) 29, Protection against anticipated occurrence, requires that the protection and reactivity control systems be designed to assure an extremely high probability of accomplishing their safety functions in an event of anticipated operational occurrences. The design relies on the CRDS to function in conjunction with the protection systems under anticipated operational occurrences, including loss of power to all recirculation pumps, tripping of the turbine generator, isolation of the main condenser, and loss of all offsite power. The CRDS provides an adequate means of inserting sufficient negative reactivity to shut down the reactor and prevent exceeding acceptable fuel design limits during anticipated operational occurrences. Meeting the requirements of GDC 29 for the CRDS prevents occurrence of mechanisms that could result in fuel cladding damage such as severe overheating, excessive cladding strain, or exceeding the thermal margin limits during anticipated operational occurrences. Preventing excessive cladding damage in the event of anticipated transients ensures maintenance of the integrity of the cladding as a fission product barrier.

#### 3.0 Technical Evaluation

In order to perform this SE, the NRC staff reviewed the following information provided by the BWROG to justify the submitted license amendment request for STS NUREG-1433 and NUREG-1434

to revise the weekly control rod notch frequency to monthly, clarify the SRM TS action for inserting control rods, and the applicability of the 25% allowance in Example 1.4-3. Specifically, the following documents were reviewed during the NRC staff's evaluation:

- TSTF letter TSTF-04-07—Provided a description of the proposed NUREG-1433 and NUREG-1434 changes. TSTF-475 would change the weekly rod notch frequency to monthly, clarify the SRM TS actions for inserting control rods, and clarify the applicability of the 25% allowance in Example 1.4-3 (Reference 3).

- TSTF letter TSTF-06-13—Provided responses to NRC staff request for additional information (RAI) on (1) Industry experience with identifying stuck rods, (2) tests that would identify stuck rods, (3) continue compliance with SIL 139, (4) industry experience on collet failures, and (4) applying the 25% grace period to the 31 day control rod notch SR test frequency (Reference 4).

- BWROG letter BWROG-06036—Provided the GE Nuclear Energy Report, "CRD Notching Surveillance Testing for Limerick Generating Station," in which CRD notching frequency and CRD performance were evaluated (Reference 5).

- TSTF letter TSTF-07-19—Provided response to NRC staff RAI on CRD performance in Control Cell Core (CCC) designed plants, including TSTF-475, Revision 1 (Reference 6).

The CRD System is the primary reactivity control system for the reactor. The CRD System, in conjunction with the Reactor Protection System, provides the means for the reliable control of reactivity changes to ensure under all conditions of normal operation, including anticipated operational occurrences that specified acceptable fuel design limits are not exceeded. Control rods are components of the CRD System that have the capability to hold the reactor core subcritical under all conditions and to limit the potential amount and rate of reactivity increase caused by a malfunction in the CRD System.

The CRD System consists of a CRDM, by which the control rods are moved, and a hydraulic control unit (HCU) for each control rod. The CRDM is a mechanical hydraulic latching cylinder that positions the control blades. The CRDM is a highly reliable mechanism for inserting a control rod to the full-in position. The collet piston mechanism design feature ensures that the control rod will not be inadvertently withdrawn. This is accomplished by engaging the collet fingers, mounted on the collet piston, in notches located on

the index tube. Due to the tapered design of the index tube notches, the collet piston mechanism will not impede rod insertion under normal insertion or scram conditions.

The collet retainer tube (CRT) is a short tube welded to the upper end of the CRD which houses the collet mechanism which consist of the locking collet, collet piston, collet return spring and an unlocking cam. The collet mechanism provides the locking/unlocking mechanism that allows the insert/withdraw movement of the control rod. The CRT has three primary functions: a) to carry the hydraulic unlocking pressure to the collet piston, b) to provide an outer cylinder, with a suitable wear surface for the metal collet piston rings, and c) to provide mechanical support for the guide cap, a component which incorporates the cam surface for holding the collet fingers open and also provides the upper rod guide or bushing.

According to the BWROG, at the time of the first CRT crack discovery in 1975 each partially or fully withdrawn operable control rod was required to be exercised one notch at least once each week. It was recognized that notch testing provided a method to demonstrate the integrity of the CRT. Control rod insertion capability was demonstrated by inserting each partially or fully withdrawn control rod at least one notch and observing that the control rod moves. The control rod may then be returned to its original position. This ensures the control rod is not stuck and is free to insert on a scram signal.

It was determined that during scrams, the CRT temperature distribution changes substantially at reactor operating conditions. Relatively cold water moves upward through the inside of the CRT and exits via the flow holes into the annulus on the outside. At the same time hot water from the reactor vessel flows downward on the outside surface of the CRT. There is very little mixing of the cold water flowing from the three flow holes into the annulus and the hot water flowing downward. Thus, there are substantial through wall and circumferential temperature gradients during scrams which contribute to the observed CRT cracking.

Subsequently, many BWRs have reduced the frequency of notch testing for partially withdrawn control rods from weekly to monthly. The notch test frequency for fully withdrawn control rods are still performed weekly. The change, for partially withdrawn control rods, was made because of the potential power reduction required to allow control rod movement for partially

withdrawn control rods, the desire to coordinate scheduling with other plant activities, and the fact that a large sample of control rods are still notch tested on the weekly basis. The operating experience related to the changes in CRD performance also provided additional justification to reduce the notch test frequency for the partially withdrawn control rods.

In response to the NRC staff RAIs and to support their position to reduce the CRD notch testing frequency, the BWROG provided plant data and GE Nuclear Energy report, CRD Notching Surveillance Testing for Limerick Generating Station (CRDNST). The GE report provided a description of the cracks noted on the original design CRT surfaces. These cracks, which were later determined to be intergranular, were generally circumferential, and appeared with greatest frequency below and between the cooling water ports, in the area of the change in wall thickness. Subsequently, cracks associated with residual stresses were also observed in the vicinity of the attachment weld. Continued circumferential cracking could lead to 360 degree severance of the CRT that would render the CRD inoperable which would prevent insertion, withdrawal or scram. Such failure would be detectable in any fully or partially withdrawn control rod during the surveillance notch testing required by the Technical Specifications. To a lesser degree, cracks have also been noted at the welded joint of the interim design CRT but no cracks have been observed in the final improved CRT design. In a request for additional information, BWROG response of being unable to find a collet housing failure since 1975 supported the NRC staff review of not finding a collet housing failure. To date, operating experience data shows no reports of a severed CRT at any BWR. No collet housing failures have been noted since 1975. On a numerical basis for instance, based on BWROG assumption that there are 137 control rods for a typical BWR/4 and 193 control rods for a typical BWR/6, the yearly performance would be 6590 rod notch tests for a BWR/4 plant and 9284 for a BWR/6 plant. For example, if all BWRs operating in the U.S. are taken into consideration, the yearly performances of rod notch data would translate into approximately 240,000 rod notch tests without detecting a failure.

In addition, the IGSCC crack growth rates were evaluated, at Limerick Generating Station, using GE's PLEDGE model with the assumption that the water chemistry condition is based on GE recommendations. The model is

based on fundamental principles of stress corrosion cracking which can evaluate crack growth rates as a function of water oxygen level, conductivity, material sensitization and applied loads. It was determined that the additional time of 24 days represented an additional 10 mils of growth in total crack length. The small difference in growth rate would have little effect on the behavior between one notch test and the next subsequent test. Therefore, from the materials perspective based on low crack growth rates, a decrease in the notch test frequency would not affect the reliability of detecting a CRDM failure due to crack growth.

Also, the BWR scram system has extremely high reliability. In addition to notch testing, scram time testing can identify failure of individual CRD operation resulting from IGSCC-initiated cracks and mechanical binding. Unlike the CRD notch tests, these single rod scram tests cover the other mechanical components such as scram pilot solenoid operated valves, the scram inlet and outlet air operated valves, and the scram accumulator, as well as operation of the control rods. Thus, the primary assurance of scram system reliability is provided by the scram time testing since it monitors the system scram operation and the complete travel of the control rod.

Also, the HCUs, CRD drives, and control rods are also tested during refueling outages, approximately every 18–24 months. Based on the data collected during the preceding cycle of operation, selected control rod drives, are inspected and, as required, their internal components are replaced. Therefore, increasing the CRD notch testing frequency to monthly would have very minimal impact on the reliability of the scram system.

The NRC staff has reviewed the BWROG TSTF's proposal to amend the TS SR 3.1.3.2, "Control Rod OPERABILITY" from seven days to monthly. Based on the following evaluation condition: (1) Slow crack growth rate of the CRT; (2) the improved CRT design; (3) a higher reliable method (scram time testing) to monitor CRD scram system functionality; (4) GE chemistry recommendations; and (5) no known CRD failures have been detected during the notch testing exercise, the NRC staff concluded that the changes would reduce the number of control rod manipulations thereby reducing the opportunity for potential reactivity events while having a very minimal impact on the extremely high reliability of the CRD system. Therefore, the NRC staff finds the change acceptable with the commitment to implement GE water

quality for the CRD system recommendations. Furthermore, the utilities should consider the replacement of the CRT, when possible, with the GE CRT improved design.

The NRC staff has reviewed the BWROG TSTF-475 proposal to amend the NUREG-1434, Specification 3.3.1.2, Required Action E.2 from "Initiate action to insert all insertable control rods in core cells containing one or more fuel assemblies" to "Initiate action to fully insert all insertable control rods in core cells containing one or more fuel assemblies." The NRC staff finds the revision acceptable because the requirement to insert control rods is meant to require control rods to be fully inserted and adding "fully" does not change but clarifies the intent of the action.

The NRC staff has reviewed the BWROG TSTF-475 proposal to amend Example 1.4-3 in Section 1.4 "Frequency," to make the 1.25 provision in SR 3.0.2 to be equally applicable to time periods specified in the "FREQUENCY" column and in the NOTE in the "SURVEILLANCE" column. The NRC staff finds this change acceptable since the revision would make it consistent with the definition of specified "Frequency" provided in the second paragraph of Section 1.4 which states that the specified "Frequency" is referred to throughout this section and each of the Specifications of Section 3.0, Surveillance Requirement (SR) Applicability. The specified "Frequency" consists of the requirements of the Frequency column of each SR, as well as certain Notes in the Surveillance column that modify performance requirements.

### 3.1 Conclusion

The NRC staff has reviewed the licensee's proposal to amend existing TS sections SR 3.1.3.2, "Control Rod OPERABILITY," NUREG-1434, LCO 3.3.1.2 Required Action E.2, "Source Range Monitor (SRM) Instrumentation," and Example 1.4-3, "Frequency" applicable to SR 3.0.2. The NRC staff has concluded that the TS revisions will have a minimal affect on the high reliability of the CRD system while reducing the opportunity for potential reactivity events; thus, meeting the requirement of CFR, Part 50, Appendix A, GDC 29. Therefore, the staff concludes that the amendment request is acceptable.

Based on the considerations discussed above, the Commission has concluded that: (1) There is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities

will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

### 4.0 State Consultation

In accordance with the Commission's regulations, the [ ] State official was notified of the proposed issuance of the amendment. The State official had [(1) No comments or (2) the following comments—with subsequent disposition by the staff].

### 5.0 Environmental Consideration

The amendments change a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20 and change surveillance requirements. The NRC staff has determined that the amendments involve no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendments involve no significant hazards considerations, and there has been no public comment on the finding [FR ]. Accordingly, the amendments meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9) [and (c)(10)]. Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendments.

### 6.0 Conclusion

The Commission has concluded, on the basis of the considerations discussed above, that (1) There is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

### 7.0 References

1. NUREG-1433, "Standard Technical Specifications General Electric Plants, BWR/4, Revision 3," August 31, 2003.
2. NUREG-1434, "Standard Technical Specifications General Electric Plants, BWR/6, Revision 3," August 31, 2003.
3. Letter TSTF-04-07 from the Technical Specifications Task Force to the NRC, TSTF-475 Revision 0, "Control Rod Notch Testing Frequency and SRM Insert Control Rod

Action,” May 5, 2005, ADAMS accession number ML042520035.

4. Letter TSTF-06-13 from the Technical Specifications Task Force to the NRC, “Response to NRC Request for Additional Information Regarding TSTF-475, Revision 0,” dated July 3, 2006, ADAMS accession number ML0618403421.

5. Letter BWROG-06036 from the BWR Owners Group to the NRC, “Response to NRC Request for Additional Information Regarding TSTF-475, Revision 0,” dated November 16, 2006, Enclosure of the GE Nuclear Energy Report, “CRD Notching Surveillance Testing for Limerick Generating Station,” dated November 2006, ADAMS accession number ML0632502580.

6. Letter TSTF-07-19 from the Technical Specifications Task Force to the NRC, “Response to NRC Request for Additional Information Regarding TSTF-475, Revision 0,” dated May 22, 2007, ADAMS accession number ML0714204280.

The following example of an application was prepared by the NRC staff to facilitate use of the consolidated line item improvement process (CLIIP). The model provides the expected level of detail and content for an application to revise technical specifications regarding revision of control rod notch surveillance test frequency, clarification of SRM insert control rod action, and a clarification of a frequency example. Licensees remain responsible for ensuring that their actual application fulfills their administrative requirements as well as Nuclear Regulatory Commission regulations.

U.S. Nuclear Regulatory Commission,  
Document Control Desk,  
Washington, DC 20555.

*Subject:*

PLANT NAME  
DOCKET NO. 50-  
APPLICATION FOR TECHNICAL  
SPECIFICATION CHANGE REGARDING  
REVISION OF CONTROL ROD NOTCH  
SURVEILLANCE TEST FREQUENCY,  
CLARIFICATION OF SRM INSERT  
CONTROL ROD ACTION, AND A  
CLARIFICATION OF A FREQUENCY  
EXAMPLE USING THE CONSOLIDATED  
LINE ITEM IMPROVEMENT PROCESS.

Gentleman: In accordance with the provisions of 10 CFR 50.90 [LICENSEE] is submitting a request for an amendment to the technical specifications (TS) for [PLANT NAME, UNIT NOS.].

The proposed amendment would: (1) Revise the TS surveillance requirement (SR) frequency in TS 3.1.3, “Control Rod OPERABILITY”, (2) clarify the requirement to fully insert all insertable control rods for the limiting condition for operation (LCO) in TS 3.3.1.2, required Action E.2, “Source Range Monitoring Instrumentation,” and (3) revise Example 1.4-3 in Section 1.4 “Frequency” to clarify the applicability of the 1.25 surveillance test interval extension.

Attachment 1 provides a description of the proposed change, the requested confirmation of applicability, and plant-specific verifications. Attachment 2 provides the existing TS pages marked up to show the proposed change. Attachment 3 provides revised (clean) TS pages. Attachment 4

provides a summary of the regulatory commitments made in this submittal.

[LICENSEE] requests approval of the proposed License Amendment by [DATE], with the amendment being implemented [BY DATE OR WITHIN X DAYS].

In accordance with 10 CFR 50.91, a copy of this application, with attachments, is being provided to the designated [STATE] Official.

I declare under penalty of perjury under the laws of the United States of America that I am authorized by [LICENSEE] to make this request and that the foregoing is true and correct. (Note that request may be notarized in lieu of using this oath or affirmation statement). If you should have any questions regarding this submittal, please contact [NAME, TELEPHONE NUMBER]

Sincerely,  
[Name, Title]

Attachments:

1. Description and Assessment.
2. Proposed Technical Specification Changes.
3. Revised Technical Specification Pages.
4. Regulatory Commitments.
5. Proposed Technical Specification Bases Changes.

CC: NRC Project Manager.  
NRC Regional Office.  
NRC Resident Inspector.  
State Contact.

## Attachment 1—Description and Assessment

### 1.0 Description

The proposed amendment would: (1) Revise the TS surveillance requirement (SR 3.1.3.2) frequency in TS 3.1.3, “Control Rod OPERABILITY”, (2) clarify the requirement to fully insert all insertable control rods for the limiting condition for operation (LCO) in TS 3.3.1.2, Required Action E.2, “Source Range Monitoring Instrumentation”, and (3) revise Example 1.4-3 in Section 1.4 “Frequency” to clarify the applicability of the 1.25 surveillance test interval extension.

The changes are consistent with Nuclear Regulatory Commission (NRC) approved Industry/Technical Specification Task Force (TSTF) STS change TSTF-475, Revision 1. The **Federal Register** notice published on [DATE] announced the availability of this TS improvement through the consolidated line item improvement process (CLIIP).

### 2.0 Assessment

#### 2.1 Applicability of Published Safety Evaluation

[LICENSEE] has reviewed the safety evaluation dated [DATE] as part of the CLIIP. This review included a review of the NRC staff’s evaluation, as well as the supporting information provided to support TSTF-475, Revision 1. [LICENSEE] has concluded that the justifications presented in the TSTF

proposal and the safety evaluation prepared by the NRC staff are applicable to [PLANT, UNIT NOS.] and justify this amendment for the incorporation of the changes to the [PLANT] TS.

### 2.2 Optional Changes and Variations

[LICENSEE] is not proposing any variations or deviations from the TS changes described in the modified TSTF-475, Revision 1 and the NRC staff’s model safety evaluation dated [DATE].

### 3.0 Regulatory Analysis

#### 3.1 No Significant Hazards Consideration Determination

[LICENSEE] has reviewed the proposed no significant hazards consideration determination (NSHCD) published in the **Federal Register** as part of the CLIIP. [LICENSEE] has concluded that the proposed NSHCD presented in the **Federal Register** notice is applicable to [PLANT] and is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

#### 3.2 Verification and Commitments

As discussed in the notice of availability published in the **Federal Register** on [DATE] for this TS improvement, the [LICENSEE] verifies the applicability of TSTF-475 to [PLANT], and commits to establishing Technical Specification Bases for TS as proposed in TSTF-475, Revision 1.

These changes are based on TSTF change traveler TSTF-475 (Revision 1) that proposes revisions to the BWR STS by: (1) Revising the frequency of SR 3.1.3.2, notch testing of fully withdrawn control rod, from “7 days after the control rod is withdrawn and THERMAL POWER is greater than the LPSP of RWM” to “31 days after the control rod is withdrawn and THERMAL POWER is greater than the LPSP of the RWM”, (2) adding the word “fully” to LCO 3.3.1.2 Required Action E.2 (NUREG-1434 only) to clarify the requirement to fully insert all insertable control rods in core cells containing one or more fuel assemblies when the associated SRM instrument is inoperable, and (3) revising Example 1.4-3 in Section 1.4 “Frequency” to clarify that the 1.25 surveillance test interval extension in SR 3.0.2 is applicable to time periods discussed in NOTES in the “SURVEILLANCE” column in addition to the time periods in the “FREQUENCY” column.

### 4.0 Environmental Evaluation

[LICENSEE] has reviewed the environmental evaluation included in the model safety evaluation dated [DATE] as part of the CLIIP. [LICENSEE]

has concluded that the staff's findings presented in that evaluation are applicable to [PLANT] and the evaluation is hereby incorporated by reference for this application.

**Attachment 2—Proposed Technical Specification Changes (Mark-Up)**

**Attachment 3—Proposed Technical Specification Pages**

**Attachment 4—List of Regulatory Commitments**

The following table identifies those actions committed to by [LICENSEE] in

this document. Any other statements in this submittal are provided for information purposes and are not considered to be regulatory commitments. Please direct questions regarding these commitments to [CONTACT NAME].

Regulatory commitments	Due date/event
[LICENSEE] will establish the Technical Specification Bases for [TS B 3.1.3, TS B 3.1.4, and TS B 3.3.1.2] as adopted with the applicable license amendment.	[Complete, implemented with amendment or within X days of implementation of amendment].
[LICENSEE] will establish the water quality controls as recommended by SIL No. 148, Water Quality Control for the Control Rod System," September 15, 1975.	[Complete, implemented with amendment or within X days of implementation of amendment].

**Attachment 5—Proposed Changes to Technical Specification Bases Pages**

**Proposed No Significant Hazards Consideration Determination**

*Description of Amendment Request:* [Plant Name] requests adoption of an approved change to the Standard Technical Specifications (STS) for General Electric (GE) Plants (NUREG-1433, BWR/4 and NUREG-1434, BWR/6) and plant specific technical specifications (TS), that allows: (1) Revising the frequency of SR 3.1.3.2, notch testing of fully withdrawn control rod, from "7 days after the control rod is withdrawn and THERMAL POWER is greater than the LPSP of RWM" to "31 days after the control rod is withdrawn and THERMAL POWER is greater than the LPSP of the RWM", (2) adding the word "fully" to LCO 3.3.1.2 Required Action E.2 (NUREG-1434 only) to clarify the requirement to fully insert all insertable control rods in core cells containing one or more fuel assemblies when the associated SRM instrument is inoperable, and (3) revising Example 1.4-3 in Section 1.4 "Frequency" to clarify that the 1.25 surveillance test interval extension in SR 3.0.2 is applicable to time periods discussed in NOTES in the "SURVEILLANCE" column in addition to the time periods in the "FREQUENCY" column. The staff finds that the proposed STS changes are acceptable because the number of control rod manipulations is reduced thereby reducing the opportunity for potential reactivity events while having a very minimal impact on the extremely high reliability of the CRD system as discussed in the technical evaluation section of this safety evaluation.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant

hazards consideration is presented below:

*Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated*

The proposed change generically implements TSTF-475, Revision 1, "Control Rod Notch Testing Frequency and SRM Insert Control Rod Action." TSTF-475, Revision 1 modifies NUREG-1433 (BWR/4) and NUREG-1434 (BWR/6) STS. *The changes:* (1) Revise TS testing frequency for surveillance requirement (SR) 3.1.3.2 in TS 3.1.3, "Control Rod OPERABILITY", (2) clarify the requirement to fully insert all insertable control rods for the limiting condition for operation (LCO) in TS 3.3.1.2, Required Action E.2, "Source Range Monitoring Instrumentation" (NUREG-1434 only), and (3) revise Example 1.4-3 in Section 1.4 "Frequency" to clarify the applicability of the 1.25 surveillance test interval extension. The consequences of an accident after adopting TSTF-475, Revision 1 are no different than the consequences of an accident prior to adoption. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

*Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated*

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident

whose consequences exceed the consequences of accidents previously analyzed. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

*Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety*

TSTF-475, Revision 1 will: (1) Revise the TS SR 3.1.3.2 frequency in TS 3.1.3, "Control Rod OPERABILITY", (2) clarify the requirement to fully insert all insertable control rods for the limiting condition for operation (LCO) in TS 3.3.1.2, "Source Range Monitoring Instrumentation" (NUREG-1434 only), and (3) revise Example 1.4-3 in Section 1.4 "Frequency" to clarify the applicability of the 1.25 surveillance test interval extension. The GE Nuclear Energy Report, "CRD Notching Surveillance Testing for Limerick Generating Station," dated November 2006, concludes that extending the control rod notch test interval from weekly to monthly is not expected to impact the reliability of the scram system and that the analysis supports the decision to change the surveillance frequency. Therefore, the proposed changes in TSTF-475, Revision 1 are acceptable and do not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Dated at Rockville, Maryland, this 9th day of August, 2007.

For the Nuclear Regulatory Commission.

**Carl Schulten,**

*Acting Chief, Technical Specifications  
Branch, Division of Inspection & Regional  
Support, Office of Nuclear Reactor  
Regulation.*

[FR Doc. E7-16138 Filed 8-15-07; 8:45 am]

**BILLING CODE 7590-01-P**

## **PENSION BENEFIT GUARANTY CORPORATION**

### **Submission of Information Collection for OMB Review; Comment Request; Filings for Reconsiderations**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of request for OMB approval.

**SUMMARY:** Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act, a collection of information under its regulation on Rules for Administrative Review of Agency Decisions. This notice informs the public of PBGC's request and solicits public comment on the collection of information.

**DATES:** Comments should be submitted by September 17, 2007.

**ADDRESSES:** Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at [OIRA\\_DOCKET@omb.eop.gov](mailto:OIRA_DOCKET@omb.eop.gov) or by fax to (202) 395-6974. Copies of the collection of information may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by visiting the Disclosure Division 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.) PBGC's regulation on Rules for Administrative Review of Agency Decisions may be accessed on PBGC's Web site at <http://www.pbgc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Donald F. McCabe, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, 202-326-4024. (For TTY/TDD users, call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:** PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR part 4003) prescribes rules governing the issuance of initial determinations by PBGC and the procedures for requesting and obtaining reconsideration of initial determinations through reconsideration or appeal. Subpart A of the regulation specifies which initial determinations are subject to reconsideration. Subpart C prescribes rules on who may request reconsideration, when to make such a request, where to submit it, form and content of reconsideration requests, and other matters relating to reconsiderations.

Any person aggrieved by an initial determination of PBGC under 4003.1(b)(1) (determinations that a plan is covered by section 4021 of ERISA), 4003.1(b)(2) (determinations concerning premiums, interest, and late payment penalties under section 4007 of ERISA), § 4003.1(b)(3) (determinations concerning voluntary terminations), or § 4003.1(b)(4) (determinations concerning allocation of assets under section 4044 of ERISA) may request reconsideration of the initial determination. Requests for reconsideration must be in writing, be clearly designated as requests for reconsideration, contain a statement of the grounds for reconsideration and the relief sought, and contain or reference all pertinent information.

PBGC is requesting that OMB approve this collection of information for three years. 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.

PBGC estimates that an average of 940 appellants per year will respond to this collection of information. PBGC further estimates that the average annual burden of this collection of information is 0.35 hours and \$550 per person, with an average total annual burden of 329 hours and \$519,350.

Issued in Washington, DC, this 10th day of August, 2007.

**John H. Hanley,**

*Director, Legislative and Regulatory  
Department, Pension Benefit Guaranty  
Corporation.*

[FR Doc. E7-16101 Filed 8-15-07; 8:45 am]

**BILLING CODE 7709-01-P**

## **PENSION BENEFIT GUARANTY CORPORATION**

### **Agency Information Collection Activities: Submission of Information Collection for OMB Review—Termination of Single Employer Plans; Missing Participants; PBGC Forms 500-501, 600-602**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of request for extension of OMB approval.

**SUMMARY:** The Pension Benefit Guaranty Corporation ("PBGC") is requesting that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of a collection of information in its regulations on Termination of Single Employer Plans and Missing Participants, and implementing forms and instructions (OMB control number 1212-0036, expires September 30, 2007). This notice informs the public of PBGC's request and solicits public comment on the collection of information.

**DATES:** Comments should be submitted by September 17, 2007.

**ADDRESSES:** Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at [OIRA\\_DOCKET@omb.eop.gov](mailto:OIRA_DOCKET@omb.eop.gov) or by fax to (202) 395-6974.

Copies of the request for extension (including the collection of information) may be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address, visiting the Disclosure Division, faxing a request to 202-326-4042, 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.) The Disclosure Division will e-mail, fax, or mail the request to you, as you request. The regulations and forms and instructions relating to this collection of information may be accessed on PBGC's Web site at <http://www.pbgc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jo Amato Burns, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 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 202-326-4223, ext. 3072.)

**SUPPLEMENTARY INFORMATION:** Under section 4041 of the Employee

Retirement Income Security Act of 1974, as amended (ERISA), a single-employer pension plan may terminate voluntarily only if it satisfies the requirements for either a standard or a distress termination. Pursuant to ERISA section 4041(b), for standard terminations, and section 4041(c), for distress terminations, and PBGC's termination regulation (29 CFR part 4041), a plan administrator wishing to terminate a plan is required to submit specified information to PBGC in support of the proposed termination and to provide specified information regarding the proposed termination to third parties (participants, beneficiaries, alternate payees, and employee organizations). In the case of a plan with participants or beneficiaries who cannot be located when their benefits are to be distributed, the plan administrator is subject to the requirements of ERISA section 4050 and PBGC's missing participants regulation (29 CFR part 4050). As noted above, these regulations may be accessed on PBGC's Web site at <http://www.pbgc.gov>.

The collection of information under these regulations and the implementing forms and instructions has been approved by OMB under control number 1212-0036 (expires September 30, 2007). PBGC is requesting that OMB extend its approval for three years. 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.

PBGC estimates that 1,259 plan administrators will be subject to the collection of information requirements in PBGC's termination and missing participants regulations and implementing forms and instructions each year, and that the total annual burden of complying with these requirements is 2,081 hours and \$2,766,679. Much of the work associated with terminating a plan is performed for purposes other than meeting these requirements.

Issued in Washington, DC, this 10th day of August, 2007.

**John H. Hanley,**

*Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.*

[FR Doc. E7-16102 Filed 8-15-07; 8:45 am]

**BILLING CODE 7709-01-P**

## POSTAL REGULATORY COMMISSION

[Docket No. MC2007-5; Order No. 25]

### Negotiated Service Agreement

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice and order.

**SUMMARY:** This document establishes a docket for consideration of the Postal Service's request for approval of contract rates with Life Line Screening of America. It identifies key elements of the proposed agreement, which involves Standard Mail letter rates, and addresses preliminary procedural matters.

**DATES:** 1. August 31, 2007: Deadline for filing notices of intervention.

2. September 7, 2007: Deadline for responses to proposal for limiting issues.

3. September 11, 2007: Prehearing conference, 10 a.m.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, General Counsel, 202-789-6820 and [stephen.sharfman@prc.gov](mailto:stephen.sharfman@prc.gov).

**SUPPLEMENTARY INFORMATION:** On August 8, 2007, the United States Postal Service filed a request seeking a recommended decision from the Postal Regulatory Commission approving a Negotiated Service Agreement (NSA) with Life Line Screening of America (Life Line Screening).<sup>1</sup> The NSA is proffered as a new baseline agreement. The Request, which includes six attachments, was filed pursuant to chapter 36 of title 39, United States Code.<sup>2</sup>

The Postal Service has identified Life Line Screening, along with itself, as parties to the NSA. This identification serves as notice of intervention by Life Line Screening. It also indicates Life Line Screening shall be considered a co-proponent, procedurally and substantively, of the Postal Service's Request during the Commission's

<sup>1</sup> Request of the United States Postal Service for a Recommended Decision on Classifications and Rates to Implement a Baseline Negotiated Service Agreement with Life Line Screening, August 8, 2007 (Request).

<sup>2</sup> Attachments A and B to the Request contain proposed changes to the Domestic Mail Classification Schedule and the associated rate schedules; Attachment C is a certification required by Commission rule 193(i) specifying that the cost statements and supporting data submitted by the Postal Service, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books; Attachment D is an index of testimony and exhibits; Attachment E is a compliance statement addressing satisfaction of various filing requirements; and Attachment F is a copy of the Negotiated Service Agreement.

review of the NSA. Rule 191(b) [39 CFR 3001.191(b).] An appropriate Notice of Life Line Screening of Appearance and Filing of Testimony as Co-Proponent, August 8, 2007, also was filed.

In support of the Request, the Postal Service has filed Direct Testimony of Michelle K. Yorgey on Behalf of the United States Postal Service, August 8, 2007 (USPS-T-1) and library reference USPS-LR-L-1, MC2004-3 Opinion and Further Recommended Decision Analysis for the Life Line Screening NSA. Life Line Screening has separately filed Direct Testimony of Eric Greenberg on Behalf of Life Line Screening, August 8, 2007 (LLS-T-1). The Postal Service has reviewed the Life Line Screening testimony and, in accordance with rule 192(b) [39 CFR 3001.192(b)], states that such testimony may be relied upon in presentation of the Postal Service's direct case. USPS-T-1 at 1.

The Postal Service has filed a proposal for limitation of issues in this docket.<sup>3</sup> The Postal Service asserts that the Life Line Screening NSA and the Bookspan NSA contain similar elements. [70 FR 42602.] The Postal Service identifies issues that were previously decided in Bookspan and key issues that are unique to the instant Request. The Postal Service requests an order limiting the scope of discovery to key new issues.

The Postal Service's Request, accompanying testimonies of witnesses Yorgey (USPS-T-1), and Greenberg (LLS-T-1), and other related material are available for inspection at the Commission's docket section during regular business hours. They can also be accessed electronically, via the Internet, on the Commission's Web site (<http://www.prc.gov>).

#### I. Life Line Screening NSA

The Postal Service proposes to enter into a new baseline three-year NSA with Life Line Screening. The agreement offers Life Line Screening declining block rates for Standard Mail letters. Life Line Screening will be able to use the Standard Mail letters for soliciting potential and existing customers for direct-to-consumer preventive health screenings. The Postal Service estimates it will benefit by \$4.87 million over the life of the NSA. Request at 5.

The purpose of the Life Line Screening NSA is to encourage Life Line Screening to increase its use of Standard Mail letters for selling health care screening services nationwide. Without such incentives, the Postal Service contends that Life Line Screening's

<sup>3</sup> United States Postal Service Proposal for Limitation of Issues, August 8, 2007.

direct mail marketing volumes are expected to decline due to sensitivity to direct mail cost increases. *Id.* at 2.

The Life Line Screening NSA provides discounts based on a block rate structure for Standard Mail letter-size pieces. Life Line Screening must reach a volume commitment level, which is set higher than the lowest block volume level, before any discounts are payable. During the first year of the agreement, discounts may be earned for annual volumes above 90 million pieces once a volume commitment of 95 million pieces has been reached. During the second year of the agreement, discounts may be earned for annual volumes above 88 million pieces once a volume commitment of 93 million pieces has been reached. During the third year of the agreement, discounts also may be earned for annual volumes above 88 million pieces once a volume commitment of 93 million pieces has been reached. Discounts, under the proposed declining block rate structure, range from 1 to 3 cents per piece during each year of the agreement. *See* Request, Attachment B.

The volume commitment levels for the second and third years of the agreement are subject to adjustment based on the actual volumes mailed in the previous year. If at the end of the first or second years, the actual volume is 12 percent or more above the prior year's commitment, the following year's commitment will be revised to be the average of the prior year's actual volume and the following year's original commitment. If at the end of the first or second years, the actual volume is 5 percent or more below the prior year's commitment, the following year's commitment will be decreased by the percentage difference between the prior year's actual volume and the prior year's original commitment. *See* Request, Attachment A.

As a means to protect the Postal Service's financial interests, the Life Line Screening NSA contains additional risk mitigation features. The Postal Service has established three tiers within each letter volume block. The highest discount tier for the first year of the agreement applies to volumes between 110 million and 118 million mailpieces. If Life Line Screening exceeds 118 million pieces by an additional 10 million pieces, the agreement will be terminated. Either party also may unconditionally cancel the agreement with 30 days' written notice. *Id.*

## II. Commission Analysis

*Applicability of the rules for baseline NSAs.* For administrative purposes, the

Commission has docketed the instant filing as a request for a new baseline NSA pursuant to rule 195 [39 CFR 3001.195].

*Representation of the general public.* In conformance with section 3624(a) of title 39, the Commission designates Kenneth E. Richardson, acting director of the Commission's Office of the Consumer Advocate, to represent the interests of the general public in this proceeding. Pursuant to this designation, Mr. Richardson will direct the activities of Commission personnel assigned to assist him and, upon request, will supply their names for the record. Neither Mr. Richardson nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

*Intervention.* Those wishing to be heard in this matter are directed to file a notice of intervention on or before August 31, 2007. The notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site (<http://www.prc.gov>), unless a waiver is obtained for hardcopy filing. Rules 9(a) and 10(a) [39 CFR 3001.9(a) and 10(a).] Notices should indicate whether participation will be on a full or limited basis. *See* rules 20 and 20a [39 CFR 3001.20 and 20a.] No decision has been made at this point on whether a hearing will be held in this case.

*Prehearing conference.* A prehearing conference will be held September 11, 2007 at 10 a.m. in the Commission's hearing room. Participants intending to object to the Postal Service's proposal for limiting issues or intending to identify issue(s) that would indicate the need to schedule a hearing shall file a written explanation of their position by September 7, 2007. Participants should be prepared to discuss these issues during the prehearing conference. The Commission intends to issue a ruling on these issues shortly after the prehearing conference.

## III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. MC2007-5 to consider the Postal Service Request referred to in the body of this order.

2. The Commission will sit *en banc* in this proceeding.

3. Kenneth E. Richardson, acting director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.

4. The deadline for filing notices of intervention is August 31, 2007.

5. A prehearing conference will be held September 11, 2007 at 10 a.m. in the Commission's hearing room.

6. Participants intending to object to the Postal Service's proposal for limiting issues or intending to identify issue(s) that would indicate the need to schedule a hearing, shall file a written explanation of their position by September 7, 2007.

7. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

**Garry J. Sikora,**

*Acting Secretary.*

[FR Doc. E7-16089 Filed 8-15-07; 8:45 am]

**BILLING CODE 7710-FW-P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

XBRL Voluntary Program Questionnaire. OMB Control No. 3235-NEW; SEC File No. 270-577.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request to approve the collection of information discussed below.

The title of the questionnaire is "XBRL Voluntary Program Questionnaire."

The XBRL Voluntary Program Questionnaire consists mainly of questions based on the respondent's experience with submitting eXtensible Business Reporting Language ("XBRL") tagged data to the Commission on a voluntary basis as a supplemental exhibit to specified filings under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) and Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*).

The Commission needs the information to learn about the voluntary program from the participant perspective. Responses to the questionnaire are voluntary and will be publicly available. The Commission plans to use the information to help it assess the feasibility and desirability of using tagged data on a more widespread and, possibly, mandated, basis in the future. In addition, the information may

also be used by the Commission or its staff in connection with public analyses of the responses. The likely respondents to the questionnaire are the participants in the voluntary program.

We estimate that each of 80 respondents will respond once and take 4 hours per response for a total reporting burden of 320 hours.

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 control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov); and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: August 9, 2007.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-16091 Filed 8-15-07; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension: Rule 17f-1(g); SEC File No. 270-30; OMB Control No. 3235-0290.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

- Rule 17f-1(g) (17 CFR 240.17f-1(g)) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(f)) ("Act") Requirements for reporting and inquiry with respect to

missing, lost, counterfeit or stolen securities.

Paragraph (g) of Rule 17f-1 requires that all reporting institutions (i.e., every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System and bank insured by the FDIC) maintain and preserve a number of documents related to their participation in the Lost and Stolen Securities Program ("Program") under Rule 17f-1. The following documents must be kept in an easily accessible place for three years, according to paragraph (g): (1) Copies or all reports of theft or loss (Form X-17F-1A) filed with the Commission's designee; (2) All agreements between reporting institutions regarding registration in the Program or other aspects of Rule 17f-1; and (3) all confirmations or other information received from the Commission or its designee as a result of inquiry.

Reporting institutions utilize these records and reports (a) to report missing, lost, stolen or counterfeit securities to the database, (b) to confirm inquiry of the database, and (c) to demonstrate compliance with Rule 17f-1. The Commission and the reporting institutions' examining authorities utilize these records to monitor the incidence of thefts and losses incurred by reporting institutions and to determine compliance with Rule 17f-1. If such records were not retained by reporting institutions, compliance with Rule 17f-1 could not be monitored effectively.

The Commission estimates that there are 25,628 reporting institutions (respondents) and, on average, each respondent would need to retain 33 records annually, with each retention requiring approximately 1 minute (33 minutes or .55 hours). The total estimated annual burden is 14,095.4 hours (25,628 × .55 hours = 14,095.4). Assuming an average hourly cost for clerical work of \$22.00, the average total yearly record retention cost for each respondent would be \$12.10. Based on these estimates, the total annual cost for the estimated 25,628 reporting institutions would be approximately \$310,099.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted within 60 days of this notice.

Dated: August 9, 2007.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-16162 Filed 8-15-07; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension: Rule 17a-1; SEC File No. 270-244; OMB Control No. 3235-0208.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 17a-1 (17 CFR 240.17a-1) under the Securities Exchange Act of 1934 (the "Act") (15 U.S.C. 78a *et seq.*) requires that all national securities exchanges, national securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board keep on file for a period of five years, two years in an accessible place, all documents that they make or receive respecting their self-regulatory activities, and that such documents be available for examination by the Commission.

The Commission staff estimates that the average number of hours necessary for compliance with the requirements of Rule 17a-1 is 50 hours per year. There

are 22 entities required to comply with the rule: 10 National securities exchanges, 1 national securities association, 10 registered clearing agencies, and the Municipal Securities Rulemaking Board. In addition, 3 national securities exchanges notice-registered pursuant to Section 6(g) of the Act are required to preserve records of determinations made under Rule 3a55-1, which the Commission staff estimates will take 1 hour per exchange, for a total of 3 hours. Accordingly, the Commission staff estimates that the total number of hours necessary to comply with the requirements of Rule 17a-1 is 1,103 hours. The average cost per hour is \$50. Therefore, the total cost of compliance for the respondents is \$55,150.

Rule 17a-1 does not assure confidentiality for the records maintained pursuant to the rule. The records required by Rule 17a-1 are available only for examination by the Commission staff, state securities authorities and the self-regulatory organizations. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522, and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation. Please note that 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 control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov); and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted within 30 days of this notice.

Dated: August 8, 2007.

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E7-16163 Filed 8-15-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56236; File No. SR-Amex-2007-85]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Establish a New Class of Off-Floor Market Makers in ETFs and Equities Called Designated Amex Remote Traders

August 9, 2007.

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 August 8, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt changes to its rules to create a new class of off-floor market makers in all ETF and equity-traded securities that trade on the Exchange, including the implementation of related changes to the Exchange's AEMIS<sup>SM</sup> trading platform. These market makers, to be called "Designated Amex Remote Traders" or "DARTs," will electronically enter competitive quotations on a regular basis sufficient to satisfy market maker regulatory requirements. Business requirements will include minimum performance standards, including that the quotations entered must be on one side of the NBBO for a required percentage of the time in all assigned securities. The purpose of the new program is to (1) encourage competitive quoting within the Amex and between the Amex and other market centers, (2) retain and increase order flow by attracting new market makers to the Exchange, and (3) encourage greater depth at or around the NBBO.

The text of the proposed rule change is available on the Amex's Web site at <http://www.amex.com>, the Amex's principal office, and at the Commission's Public Reference Room.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

#### 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 Amex 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 Amex 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

In order to (1) Encourage competitive quoting within the Amex and between the Amex and other market centers, (2) retain and increase equity and ETF order flow in AEMI by attracting new market makers to the Exchange, and (3) encourage greater depth at or around the NBBO, the Exchange proposes to adopt changes to its rules to create a new class of off-floor market makers in all ETF and equity-traded securities that trade on the Exchange, including the implementation of related changes to the Exchange's AEMI trading platform. These market makers, to be called "Designated Amex Remote Traders" or "DARTs," will electronically enter competitive quotations on a regular basis sufficient to satisfy market maker regulatory requirements. DARTs will also have to meet certain business requirements, which will include minimum performance standards. The Exchange anticipates that the implementation of the DARTs program should increase the liquidity available in those securities to which DARTs are assigned and reduce the likelihood of tolerance breaches in AEMI due to the resultant additional depth at or around the NBBO.

DARTs will be members or member organizations physically located off-floor that will electronically enter competitive quotations into AEMI on a regular basis in all securities to which they are assigned in the DART program. The proposed DART program is similar to the Supplemental Registered Options Traders ("SROT") program implemented by the Amex for options,<sup>3</sup> with its own unique caveats. Under the DART proposal, an Amex specialist firm may also be a DART, although it may

<sup>3</sup> See Amex Rule 993-ANTE (Supplemental Registered Options Traders).

not be registered as such in securities in which it is also the specialist. In ETFs, DARTs will trade in an identical way as Registered Traders in the same securities on the Exchange when auto-ex is on, with similar obligations under Exchange rules such as those relating to a course of dealings that contributes to the maintenance of a fair and orderly market. DARTs in equity-traded securities will be subject to the same obligations as DARTs in ETFs and will not be subject to the stabilization rules that are applicable to equity specialists. DARTs will not participate in any post-trade allocation in connection with an auction trade; instead, a DART's participation in an auction pair-off on the Exchange will be limited to the amount of its quotation on the AEMI Book at the time of the pair-off.

Amex will establish minimum requirements for a DART to remain in the program, which may be modified by the Exchange from time to time. First, they must provide competitive quotations on a regular basis sufficient to satisfy market maker regulatory requirements. Business requirements will include minimum performance standards determined from time-to-time by the Exchange, including that a DART's quotations must be on one side of the NBBO for a required percentage of the time in all assigned securities. Other such performance standards will include average displayed size, average quoted spread, and the ability of the DART to transact in underlying markets in the case of a derivative security. A DART that fails to comply with one or more of the performance standards, as determined by the Chief Executive Officer of the Exchange or his/her designee, may be subject to loss of the benefits to which it would otherwise be entitled under Amex rules by virtue of its status as a DART (e.g., rebates for providing liquidity), including suspension or termination of DART status. A DART may be either a regular member of the Exchange or an associate member of the Exchange that meets the requirements for electronic access to the Exchange's automated systems. DARTs will receive benefits for participating in and meeting the requirements of the DART program. The benefits currently being considered by the Exchange may include, but would not necessarily be limited to:

- (i) Rebates for providing liquidity as the contra to any customer orders/quotes executed on AEMI;
- (ii) no charges for proprietary trades by DART program participants; and/or
- (iii) no limitation on the number of equity and ETF securities in which a

DART could be assigned to make markets.

The Exchange expects that the proposed rules for the DART program will set a high bar for prospective DART participants, and, while management anticipates starting the program with a limited group of DARTs, no specific upper limit on the number of DARTs is anticipated. In addition to the requirements cited above, DARTs shall be required to meet eligibility criteria similar to those specified in the SROT program, which include:

- (i) Adequacy of resources including capital, technology and personnel;
- (ii) History of stability, superior electronic capacity, and superior operational capacity;
- (iii) Level of market-making and/or specialist experience in a broad array of securities;
- (iv) Ability to interact with order flow in all types of markets;
- (v) Existence of order flow commitments;
- (vi) Willingness and ability to make competitive markets on the Exchange and otherwise promote the Exchange in a manner that is likely to enhance the ability of the Exchange to compete successfully for order flow in the equity and ETF securities it trades; and
- (vii) The number of member organizations requesting approval to act as a DART.

The Exchange would use the factor relating to the existence of order flow commitments to evaluate existing order flow commitments between a DART applicant and order flow providers. A future change to, or termination of, any such commitments would not be used by the Exchange at any point in the future to terminate or take remedial action against a DART. Furthermore, the Exchange would not take remedial action solely because orders subject to any such commitments were not subsequently routed to the Exchange. The factor relating to willingness to promote the Exchange includes assisting in meeting and educating market participants, maintaining communications with member firms in order to be responsive to suggestions and complaints, responding to suggestions and complaints, and other similar activities. The Exchange would use this criterion to determine which applicants would best be able to enhance the competitiveness of the Exchange. The Exchange would not apply this factor to in any way restrict, either directly or indirectly, a DART's activities as a market maker or specialist on other exchanges, or to restrict how a DART handle orders held by it in a

fiduciary capacity to which it owes a duty of best execution.

Finally, the Exchange will propose in future rule filings certain other significant changes to AEMI in order to enhance the DART program's chances of success. Those proposed changes are expected to include:

- (i) Significantly reducing the parity window from the current two-second joining time to a significantly shorter time period, which should increase the competition among liquidity providers to establish a new market;
- (ii) Providing reserve interest to DARTs and other quoting participants; and
- (iii) Allowing DARTs to use PPI orders (currently limited to Specialists and Registered Traders).

The regulatory requirements applicable to DARTs will be surveilled for by the NASD Amex Regulatory Division ("NASD") consistent with current surveillance procedures for Registered Traders on the Exchange. NASD staff will work with Amex technical staff on planning the necessary changes to AEMI to capture required surveillance data and in surveilling the increased number of market makers that the program is expected to attract. Adjustments to current technology and surveillance procedures will likely also be necessitated by the fact that the DARTs will not be physically located on the floor of the Exchange.

The specific AEMI rules to which changes are being proposed are discussed below.

#### Rule 110A—AEMI. Designated Amex Remote Traders

This proposed new rule will contain the basic requirements for DARTs as described herein, in the same manner that Rule 110—AEMI contains the basic requirements for Registered Traders.

#### Rule 1A—AEMI. Applicability, Definitions, References and Phase-In

The Exchange is proposing revisions to Rule 1A—AEMI in order to (i) Update the definition of the AEMI Book to include electronic submissions from DARTs, (ii) provide that a Crowd Order includes any bid or offer in the AEMI Book entered by a DART, (iii) provide a definition of a DART with a cross-reference to proposed Rule 110A—AEMI, (iv) update the definition of the Specialist Order Book to exclude bids and offers of DARTs, and (v) make a minor unrelated correction to the definition of Exchange Traded Funds ("ETFs").

**Rule 109—AEMI. “Stopping” Stock**

The Exchange proposes to revise Rule 109—AEMI to add DARTs to the list of Amex market participants prohibited from granting or accepting a stop with respect to a security traded in AEMI.

**Rule 112—AEMI. Suspension of Registration of Registered Trader or Designated Amex Remote Trader**

The Exchange is proposing to add a provision to this rule to provide for the suspension of the registration of a DART under circumstances similar to the current provision that provides for the suspension of a Registered Trader. Both types of participants are market makers with respect to securities traded in AEMI.

**Rule 115—AEMI. Exchange Procedures for Use of Unusual Market Exception**

The Exchange proposes to revise Rule 115—AEMI to provide procedures that will cover situations in which DARTs are unable to publish quotations or are streaming in incorrect quotes under unusual market conditions. The Exchange also is proposing to correct an inaccuracy in the current rule in order to clarify that such issues with respect to Registered Traders are handled via the Service Desk and not by a Floor Official.

**Rule 123—AEMI. Manner of Bidding and Offering**

The Exchange is proposing revisions to this rule to provide that AEMI shall accept electronic bids and offers from DARTs and include them in the AEMI Book. The proposed changes would also place DARTs on a par with Specialists and Registered Traders in terms of their ability to stream bids and offers into AEMI at multiple price levels and would require (as with Specialists and Registered Traders) that all quotes provided be two-sided. DARTs would also be prohibited from streaming in a quote that locks or crosses an existing quote that the same DART has previously streamed in for the same security.

**Rule 128A—AEMI. Automatic Execution**

The Exchange is proposing two minor changes to Rule 128A—AEMI so that DARTs will be treated in the same manner as Registered Traders in connection with certain automatic executions when a DART's quotation (i) matches the Amex Published Quote (“APQ”) on the other side of the market or (ii) would lock or cross the APQ in certain circumstances.

**Rule 128B—AEMI. Auction Trades**

The changes being proposed to this rule would exclude DARTs from participation in any post-trade allocation in connection with an auction, as described above.

**Rule 157—AEMI. Orders With More Than One Broker**

The Exchange proposes to add a new paragraph to this rule that would place restrictions on DARTs similar to those that Registered Traders are subject to in terms of not being able to (i) Place a Crowd Order with a broker or (ii) maintain an order on the Specialist Order Book, while the DART is maintaining a bid or offer for the security in AEMI.

**Rule 719—AEMI. Comparison of Exchange Transactions**

The Exchange is proposing to add DARTs to one of the equity account type codes used for market maker transactions in the equities and ETFs in which they are registered.

**Rule 957. Accounts, Orders and Records of Registered Traders, Designated Amex Remote Traders, Specialists and Associated Persons**

The Exchange is proposing changes to Rule 957 that will place the same requirements on DARTs that Registered Traders are subject to with respect to reporting certain trading accounts and orders to the Exchange and producing books, records, and other information pertaining to certain transactions.

**2. Statutory Basis**

The proposed rule change is designed to be consistent with Regulation NMS, as well as consistent with section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of section 6(b)(5),<sup>5</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system and, in general, to protect investors and the public interest.

**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.

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

**C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others**

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

**Electronic Comments**

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR—Amex—2007—85 on the subject line.

**Paper Comments**

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR—Amex—2007—85. 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 Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2007-85 and should be submitted on or before September 6, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-16052 Filed 8-15-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56235; File No. SR-BSE-2007-37]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend the Existing Fee Schedules

August 9, 2007.

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 July 18, 2007, the Boston Stock Exchange, Inc. ("BSE"), 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 BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes amending certain transaction fees set forth in the Boston Equities Exchange ("BeX") fee schedule. The text of the proposed rule change is available at <http://www.bostonstock.com>, at the BSE, and

at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis For, the Proposed Rule Change

###### 1. Purpose

The Exchange is proposing to amend the revenue sharing provision of the BeX fee schedule for the revenue sharing program. BeX proposes to share fifty percent of gross revenues generated from the Liquidity Taker transaction fees for each symbol traded. The revenue would be shared with the top three liquidity-providing Member Firms based on monthly BeX executed share volume in each security. Cross trade volume would not be eligible to be counted for purposes of determining BeX executed share volume in this revenue sharing program. In addition, Chapter II "Dealings on the Exchange", section 26 "Anti-Manipulative Provisions" of the BSE rules prohibits firms from executing wash sale trades. If the Exchange determines that a wash sale trade has occurred, the volume from such a trade would not be counted for the purposes of determining BeX executed share volume for this revenue sharing program.<sup>3</sup>

The new revenue sharing program would work as follows: First, total monthly BeX generated liquidity taking revenues would be determined on a per symbol basis; Second, the total monthly BeX generated liquidity taking revenues would be split in half, with fifty percent going to BeX and fifty percent to be allocated among the top three liquidity providing Member Firms in each security ("Eligible Revenues"). BeX would split the pool of Eligible Revenues with the top three liquidity providers in each security as follows: In

each calendar month, each of the top three providers would share in the pool of Eligible Revenues on a pro-rata basis based on their percentage of executed liquidity versus the total executed liquidity for the top three providers. Additionally, a minimum of 25,000 total monthly BeX executed shares must be executed by a liquidity provider to be eligible to participate in the revenue sharing program for any specific security.

The following is an example of how the revenue sharing program would work for any one security: Assume 1,125,000 total shares of liquidity were provided and executed by five separate firms for the month. Of the 1,125,000 total shares, the top three liquidity providers represented 1,000,000 shares with the top firm providing 700,000, the second place firm providing 200,000 and the third place firm providing 100,000. Since the top firm represented seventy percent of the total liquidity provided by the top three firms (700,000 of the 1,000,000 shares), this firm would receive seventy percent of the Eligible Revenues. The second place firm would receive twenty percent of the Eligible Revenues and the third place firm would receive ten percent of the Eligible Revenues.

In the event firms are tied at certain volume levels, those firms would share the applicable percentage of Eligible Revenues among all firms that are tied at the same levels. The following is an example of how this would work: Assume 1,200,000 total shares of liquidity were provided and executed by seven separate firms for the month. Of the 1,200,000 total shares, the top three liquidity providers represented 1,000,000 with the top firm providing 700,000, and the second, third, and fourth place firms providing 150,000 shares each. In this example, the top firm would receive seventy percent of the Eligible Revenue. The remaining thirty percent of Eligible Revenue would be shared equally with the three firms, each of whom had executed 150,000 shares. Each of the three firms would receive ten percent of the Eligible Revenue.

BeX would also report BeX-provided liquidity information daily on its Web site, accumulated on a month-to-date basis. This would show the total liquidity provided in each security and would be updated at the close of each business day. This information would also be updated hourly on the last trading day of the month. In addition, all of the different firms providing liquidity, as well as the individual levels of liquidity provided, would be reported on an anonymous basis (*i.e.*,

<sup>6</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> Telephone conversation between Kathy Marshall, Vice President, Business Strategist, BSE and Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission on August 9, 2007.

Firm A, Firm B, Firm C, etc.) in a matrix format by security and by firm.<sup>4</sup> This would allow firms to determine their ranking in a security at any given point during the month and at any given hour on the last trading day of the month. To maintain a fair and equitable distribution of information, BeX staff would be prohibited from communicating, outside of the publicly available Web site information as described above, with any Member Firms regarding their liquidity providing levels as well as the levels of any other Member Firms.

This proposed method of revenue sharing is designed to attract volume to BeX. Firms do not need to reach high overall volume levels in an effort to participate in this revenue sharing program. It is designed to provide incentives for competitive quoting as well as liquidity provision in less active securities. BeX believes that this proposal is fair and equitable and would lead to broad participation by firms of all sizes with varied business models.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act,<sup>5</sup> in general, and further the objectives of section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among member and issues and other persons using Exchange facilities. The Exchange believes that sharing revenue with the top three liquidity providers creates a more competitive environment than sharing revenue, on a pro-rata basis, with all participants because it creates an incentive for firms to provide competitive quotes in order to participate. The Exchange also believes

<sup>4</sup> The matrix will list in the left column each individual security in which liquidity has been provided over the course of the month. Listed to the right of each security will be total liquidity provided on a month to date (MTD) basis. The exception to this will be the last trading day of the month in which total MTD liquidity provided will be reflected on an hourly basis. Across the top of the matrix, anonymous firm names will be listed with Firm A always representing the top liquidity provider in each issue, Firm B always representing the second top provider and Firm C always representing the third top provider and will continue through Firm Z. In the event that more than 26 firms provide liquidity in a security, the firm names will continue with Firm AA and so on. To the extent that fewer than 26 firms have provided liquidity in a security, those firms that have not provided liquidity will be assigned a zero value in the matrix. See E-mail from Kathy Marshall, Vice President, Business Strategist, BSE, to Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission dated July 26, 2007.

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

that sharing revenue across all participants, on a pro-rata basis, would dilute the amount shared and thus make it non-competitive with prevailing fee structures of other market centers. In addition, the Exchange believes that sharing on a per symbol basis (as opposed to an aggregate basis) allows for a broader participation of firms with various business models, as opposed to the typical larger firms, with high volumes, who are generally eligible to participate in programs with tiered volume structures.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2007-37 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BSE-2007-37. 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 BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BSE-2007-37 and should be submitted on or before September 6, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-16054 Filed 8-15-07; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>7</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56231; File No. SR-CBOE 2007-73]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change To Assess, on a Retroactive Basis, Certain CBOE and CBSX Market Data Fees

August 9, 2007.

On June 28, 2007, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to retroactively apply certain recently modified market data fees. The proposal was published for comment in the *Federal Register* on July 10, 2007.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

The Exchange proposes to retroactively apply the recent increase in monthly fees for enhanced TickerXpress ("TX")<sup>4</sup> market data from \$200 per month to \$300 per month and the recently adopted fee of \$100 per TX user per month for use of TX software for the use and display of market data. The Exchange also proposes to retroactively apply CBSX's recently adopted market data infrastructure fee, which is a monthly fee assessed to recoup fees paid to a third-party market data vendor and other parties to help establish facilities at CBSX through which the third-party market data vendor can provide CBSX participants with certain market data. The market data infrastructure fee is equal to \$19,400 divided by the number of CBSX participants receiving the market data.

These changes in the Exchange's market data fees became effective on June 1, 2007, pursuant to a previous rule change submitted by the Exchange.<sup>5</sup> The Exchange now proposes to retroactively apply these fee changes for the period April 1, 2007, through May 31, 2007.

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> Specifically, the Commission finds that the proposal is consistent with section 6(b)(4) of the Act,<sup>7</sup> which requires the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using Exchange facilities. In approving this proposal, the Commission notes the Exchange's statements that: (1) Retroactively applying the TX market data fees will compensate the Exchange for its increased costs in providing the TX data and will partially offset the license fees paid by the Exchange to its third-party provider for making the TX software available to users during this time period; and (2) retroactively applying the market data infrastructure fee will enable the Exchange to recoup the fees CBSX paid during this time period for providing the infrastructure to make the market data available to CBSX participants.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-CBOE-2007-73) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-16053 Filed 8-15-07; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56237; File No. SR-NASDAQ-2007-043]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To Remove Provisions Governing the Operation of the ACES System

August 9, 2007.

#### I. Introduction

On April 25, 2007, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act

of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to remove its rule provisions governing the operation of the ACES system. The Exchange filed Amendments No. 1 and 2 to the proposed rule change on May 29, 2007, and June 5, 2007, respectively. The proposal was published for comment in the *Federal Register* on June 18, 2007.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendments No. 1 and 2.

#### II. Description of the Proposal

The Exchange proposes to delete the Rule 6200 Series and Rule 7026, which govern the operations of the ACES system. The Exchange's rule book contains rules pertaining to "facilities" of the exchange, and the Exchange believes that ACES is not a "facility" within the meaning of the Act.

The ACES system is a neutral communications service that allows Nasdaq members and non-members to route orders to one another. Market participants may execute orders received through ACES in any manner that they deem consistent with duties of best execution and other applicable industry obligations. ACES does not effect trade executions or report executed trades to the consolidated tape. Because ACES merely allows market participants to route orders to one another for execution and does not effect trade executions or report executed trades to the consolidated tape, the Exchange does not believe that ACES constitutes a facility of a national securities exchange within the meaning of the Act, nor does it believe it is required to file or maintain rules regarding the operation of ACES.

In the past, when Nasdaq's parent entity, The Nasdaq Stock Market, Inc., was a subsidiary of the National Association of Securities Dealers, Inc. ("NASD"), ACES rules were not included in the NASD Manual, based on Nasdaq's and NASD's understanding that ACES is not a facility of the NASD. These rules were, nevertheless, approved as Nasdaq rules in connection with Nasdaq's registration as a national securities exchange. Nasdaq now proposes the deletion of these rules based on its conclusion that ACES is not a Nasdaq facility and that therefore these rules are not required under the Act. However, Nasdaq represented that it would file a proposed rule change if

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 56000 (July 2, 2007), 72 FR 37554.

<sup>4</sup> TX is an Exchange service that supplies market data to Exchange market makers trading on the Hybrid Trading System.

<sup>5</sup> See Securities Exchange Act Release No. 55882 (June 8, 2007), 72 FR 32931 (June 14, 2007) (notice of filing and immediate effectiveness of SR-CBOE-2007-54).

<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</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> See Securities Exchange Act Release No. 55892 (June 11, 2007), 72 FR 33550 ("Notice").

ACES were modified in a manner that caused it to be deemed an exchange facility or if ACES fees were tied to fees for, or usage of, exchange services.

### III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>4</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b) of the Act,<sup>5</sup> because the ACES system is not a "facility" of the Exchange as that term is defined in section 3 of the Act.<sup>6</sup>

Sections 6(b)<sup>7</sup> and 19(b)(1)<sup>8</sup> of the Act and Rule 19b-4 thereunder<sup>9</sup> require a national securities exchange to file its rules with the Commission. Section 3(a)(27) of the Act<sup>10</sup> and Rule 19b-4 define the "rules" of an exchange with reference to its "facilities." In particular, a rule of an exchange includes "any material aspect of the operation of the facilities" of the exchange or any statement with respect to "the rights, obligations or privileges" of exchange members or persons having or seeking access to the facilities of the exchange.<sup>11</sup> Section 3(a)(2) of the Act defines "facility," when used with respect to an exchange, to include:

Its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any services thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.<sup>12</sup>

The Commission agrees with the Exchange's conclusion that ACES, as currently operated, is not a facility of the Exchange. The Exchange has represented that ACES is a "pure router" that allows one subscriber (the "routing subscriber") to send an order from a Nasdaq workstation directly to the order management system of another ACES subscriber (the "receiving subscriber"). Moreover, the Exchange has represented that the ACES system is

not linked with the Exchange's core systems, including the Nasdaq Market Center, the Exchange's automated system for order execution and trade reporting. It is not possible for an order to be routed to the Nasdaq Market Center via the ACES system.

Once an order has been routed through ACES, the receiving subscriber may execute the order in any manner it determines to be consistent with its duty of best execution and other applicable regulatory obligations. The receiving subscriber is not required to route the order to, or execute the order on, the Nasdaq Market Center. Because the ACES system does not route orders to the Exchange, the Commission agrees with the Exchange's conclusion that ACES does not have the "purpose of effecting \* \* \* a transaction on an exchange."<sup>13</sup>

The Exchange has also represented that ACES does not report executed trades. Rather, the receiving subscriber is responsible for ensuring that the execution of each order sent through ACES is reported in accordance with the applicable rules of the market center where the order was executed.<sup>14</sup> Thus, the Commission similarly agrees with the Exchange's conclusion that ACES does not have the "purpose of \* \* \* reporting a transaction on an exchange."<sup>15</sup>

A consequence of deleting the ACES rules from the Exchange's rule book is that the Exchange will be able to change its ACES rules without providing public notice via filing of proposed changes with the Commission under section 19(b) of the Act. However, the Commission notes that if the Exchange seeks to modify the operations of the ACES system in a manner that would cause the system to fit within the definition of an exchange facility, the Exchange would be required to file a proposed rule change with the Commission pursuant to section 19(b) of the Act. For example, if the Exchange were to tie ACES fees in any way to fees for, or usage of, any Exchange services (for example, by offering a discount in ACES fees as an incentive for use of Exchange services, or vice versa), the Commission would consider such fees to be Exchange fees that must be filed with the Commission pursuant to section 19(b) of the Act.

### IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (File No. SR-NASDAQ-2007-043), as modified by Amendments No. 1 and 2, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E7-16090 Filed 8-15-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56232; File No. SR-NYSEArca-2007-69]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Adoption of Revised Initial and Continued Listing Standards for the Pilot Program Expiring on November 30, 2007

August 9, 2007.

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 July 23, 2007, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comment 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 Commission approved the current NYSE Arca initial and continued listings standards for the listing of common stock of operating companies as a six-month pilot program ("Pilot Program").<sup>3</sup> The Pilot Program was subsequently extended for an additional six months, until November 30, 2007.<sup>4</sup> NYSE Arca is now proposing to amend the Pilot Program. The

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> See 15 U.S.C. 78c(a)(2).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78s(b)(1).

<sup>9</sup> 17 CFR 240.19b-4.

<sup>10</sup> 15 U.S.C. 78c(a)(27).

<sup>11</sup> 17 CFR 240.19b-4.

<sup>12</sup> 15 U.S.C. 78c(a)(2).

<sup>13</sup> See 15 U.S.C. 78c(a)(2).

<sup>14</sup> The ACES rules require the receiving subscriber to send an execution message to ACES so that ACES may notify the routing subscriber of the terms of the execution, see Nasdaq Rule 6250, but this does not constitute the "reporting" of the transaction.

<sup>15</sup> See 15 U.S.C. 78c(a)(2).

<sup>16</sup> *Id.*

<sup>17</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> See Securities Exchange Act Release No. 54796 (November 20, 2006), 71 FR 69166 (November 29, 2006) (SR-NYSEArca-2006-85).

<sup>4</sup> See Securities Exchange Act Release No. 55838 (May 31, 2007), 72 FR 31642 (June 7, 2007) (SR-NYSEArca-2007-51).

proposed amended initial listing standard will exclude from qualification some companies that currently qualify to list but whose size or financial performance is not consistent with that of the kind of issuer NYSE Arca intends to list on the NYSE Arca Marketplace. The amendments to the continued listing standards will increase certain of the numerical requirements of common stock Continued Listing Standard One to set the continued listing requirements at a level that is more consistent with the proposed higher initial listing requirements. The text of the proposed rule change is available on the Exchange's Web site at [www.nysearca.com](http://www.nysearca.com), at the Exchange's Office of the Secretary, and at the Commission.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 self-regulatory organization 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 Commission approved the current NYSE Arca initial and continued listings standards for the listing of common stock of operating companies as a six-month Pilot Program. NYSE Arca subsequently extended the Pilot Program for an additional six months until November 30, 2007 and now proposes to amend the Pilot Program. Based on its experience in the initial six-month period, NYSE Arca has concluded that the listing standards adopted under the Pilot Program would qualify many companies for listing that are much smaller than the minimum size it wishes to include in its target market. The proposed amended initial listing standard will exclude from qualification some companies that currently qualify to list but whose size or financial performance is not consistent with that of the kind of issuer NYSE Arca intends to list on the NYSE Arca Marketplace. The amendments to the continued

listing standards will increase certain of the numerical requirements of common stock Continued Listing Standard One to set the continued listing requirements at a level that is more consistent with the proposed higher initial listing requirements.

The current NYSE Arca listings standards require for initial listing that, at the time of initial listing, the listed class of common stock shall have:<sup>5</sup>

- At least 1.1 million publicly held shares.
- A closing price per share of \$5 or more.
- A minimum of 400 round lot shareholders.

In addition, the requirements of one of Standards One, Two or Three below must be met:

#### Standard One

- The issuer of the security had annual income from continuing operations before income taxes of at least \$1 million in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

- The market value of publicly held shares is at least \$8 million.

- The issuer of the security has stockholders' equity of at least \$15 million.

#### Standard Two

- The issuer of the security has stockholders' equity of at least \$30 million.

- The market value of publicly held shares is at least \$18 million.

- The issuer has a two-year operating history.

#### Standard Three

- The market value of publicly held shares is at least \$20 million.

- The issuer has:

- A market value of listed securities of at least \$75 million (currently traded issuers must meet this requirement and the \$5 closing price requirement for 90 consecutive trading days prior to applying for listing); or

- Total assets and total revenue of at least \$75 million each for the most recently completed fiscal year or in each of two of the last three most recently completed fiscal years.

NYSE Arca proposes to eliminate Standards One and Two and require all issuers to qualify under an amended version of existing Standard Three. The market value of publicly held shares requirement of Standard Three will be raised from \$20 million to \$45 million. All issuers will be required to meet the

market value of listed shares alternative of Standard Three, which will be raised from \$75 million to \$150 million. In addition, the issuer of the security will be required to meet two of the following four conditions:

- Total assets of at least \$75 million.
- Total revenues of at least \$50 million for the most recently completed fiscal year.
- Stockholders' equity of at least \$50 million.
- Positive pre-tax earnings in the most recently completed fiscal year.

The other existing requirements of Standard Three will continue to be applied in their current form.

NYSE Arca also proposes to amend Rule 5.5(b) to increase the numerical requirements of common stock Continued Listing Standard One as follows:

- The publicly held shares requirement is raised from 750,000 to 1.1 million shares.
- The market value of publicly held shares requirement is raised from \$5 million to \$15 million.

In addition, the stockholders' equity continued listing requirement will be raised from \$10 million to \$15 million.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will 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.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> See NYSE Arca Equities Rule 5.2(c).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2007-69 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2007-69. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days

between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2007-69 and should be submitted on or before September 6, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-16161 Filed 8-15-07; 8:45 am]

**BILLING CODE 8010-01-P**

## SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2007-0057]

### Demonstration Project on Direct Payment of Fees to Non-Attorney Representatives

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice.

**SUMMARY:** In prior notices published in the **Federal Register**, we provided guidance on the requirements for participation in the Non-Attorney Direct Payment Demonstration Project mandated by Section 303 of the Social Security Protection Act of 2004 (SSPA). In this notice, we are announcing that we are revising our earlier guidance in two respects. First, we have decided to replace the requirement that insurance policies must be underwritten by a firm that is licensed to provide insurance in the State where the individual practices with a requirement that the underwriting firm be legally permitted to provide insurance in that State. This change will allow us to accept insurance policies offered by "surplus lines carriers." Second, we are changing the manner in which we will make open-book reference materials available to test-takers.

#### **FOR FURTHER INFORMATION CONTACT:**

Marg Handel, Social Security Administration, Office of Income Security Programs, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-4639.

#### **SUPPLEMENTARY INFORMATION:**

<sup>8</sup> 17 CFR 200.30-3(a)(12).

### Liability Insurance Requirements

Section 303(b)(3) of the SSPA requires non-attorney representatives who want to participate in the direct payment demonstration project to secure and maintain "professional liability insurance, or equivalent insurance, which the Commissioner has determined to be adequate to protect claimants in the event of malpractice by the representative." In a notice published in the **Federal Register** on January 13, 2005, we announced that to satisfy this requirement the insurance policy must be underwritten by a firm that is licensed to provide insurance in the State in which the non-attorney representative conducts business (70 FR 2447, 2449). At the time, we believed this requirement was needed to ensure legitimacy of the insurance policy and provide protection for the claimants in the event of the carrier's insolvency.

In the 2007 application period, several applicants relied on insurance policies obtained from so-called "surplus lines" insurers or "non-admitted" carriers. These carriers provide insurance for unusual or unique situations where coverage is unavailable from authorized or traditional insurers. Though some of those carriers may be licensed to provide insurance in the particular State where the policyholder conducts business, more often they are not. Therefore, under the guidance set out in our January 13, 2005 notice, policies underwritten by such "surplus lines" insurers or "non-admitted" carriers generally would not satisfy the insurance prerequisite for participation in the direct payment demonstration project.

Upon further examination, we have decided that insurance provided by surplus lines insurers or non-admitted carriers can be adequate to protect claimants in the event of malpractice by the representative. Surplus lines insurance policies are legally valid contracts. As with traditional professional liability insurance policies, the quality, type and scope of the professional liability protection afforded by the "surplus" policy depends exclusively on the provisions of the policy itself and has no relationship to whether the policy was issued by an admitted/licensed carrier (conventional policies) or a "surplus lines" carrier. Our earlier guidance that the policy "must be underwritten by a firm that is licensed to provide insurance in the State in which the non-attorney representative conducts business" unintentionally excluded such policies from consideration. Accordingly, we have decided to revise our earlier

guidance. We have decided that it is sufficient that a representative's insurance policy is underwritten by a business entity that is legally permitted to provide professional liability insurance in the State in which the non-attorney representative conducts business.

Except for the change described above, the liability insurance requirements previously announced remain in effect.

#### Available Reference Materials

In our January 13, 2005 notice, we also announced that we would provide each applicant eligible to sit for the examination required by SSPA section 303(b)(4) a copy of the Compilation of Social Security Laws, Volume 1 (Compilation), to use as an open-book reference during the examination. Based on experience we have gained in the first four examinations, we have decided that providing a limited number of copies of the Compilation at each testing site for test-takers to consult during the examination is sufficient. Therefore, instead of giving each test-taker a copy of the Compilation, we will make available at each testing site sufficient copies of the Compilation for use by test-takers during the examination.

#### Additional Information

Additional information on the demonstration project is available on our Representing Claimants Web site at <http://www.ssa.gov/representation/> or can be obtained by writing to:

- CPS Human Resource Services, SSA Non-Attorney Representative Demonstration Project, 241 Lathrop Way, Suite A, Sacramento, CA 95815-4242; or
- E-mail, sent to [SSA@cps.ca.gov](mailto:SSA@cps.ca.gov); or
- Telephone, toll free at 1-800-376-5728. The local number in Sacramento is 916-263-3600.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

Dated: August 8, 2007.

**Marianna LaCanfora,**

*Assistant Deputy Commissioner for Disability and Income Security Programs.*

[FR Doc. E7-16187 Filed 8-15-07; 8:45 am]

BILLING CODE 4191-02-P

## DEPARTMENT OF STATE

### [Public Notice 5895]

#### Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

**SUMMARY:** Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates indicated pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

**DATES:** Effective Date: As shown on each of the 17 letters.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan M. Clark, Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663-2023.

**SUPPLEMENTARY INFORMATION:** Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

May 24, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a license for the export of defense articles or defense services sold commercially under contract in the amount of \$100,000,000 or more.

The transaction contained in the attached certification involves defense services associated with the Helicopter Long Range Active Sonar (HELTRAS) Mod. 2 System for the Canadian Maritime Helicopter Program for end use by the Canadian Ministry of National Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,  
*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 027-07.

May 25, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, re-certification of a proposed manufacturing license agreement for the manufacture of defense articles abroad in the amount of \$100,000,000 or more.

The transaction described in the attached certification involves the transfer of technical data, assistance, and manufacturing know-how to Japan for the manufacture of the AN/ASA-70 Tactical Display Group for the Japanese P-3C Anti-Submarine Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,  
*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 028-07.

May 29, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad in the amount of \$100,000,000 or more.

The transaction described in the attached certification involves the transfer of technical data, assistance and manufacturing know-how for the manufacture of the AN-APS-137B(V)5 Radar for the Japanese Maritime Self Defense Force (JMSDF).

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause

competitive harm to the United States firm concerned.

Sincerely,  
Jeffrey T. Bergner,  
*Assistant Secretary Legislative Affairs.*  
Enclosure: Transmittal No. DDTC  
042-07.

June 7, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of technical data, defense services, and defense articles in the amount of \$50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services, and defense articles to support the manufacture of GF-15 aircraft major structural components.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,  
Jeffrey T. Bergner,  
*Assistant Secretary Legislative Affairs.*  
Enclosure: Transmittal No. DDTC  
015-07.

June 7, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of \$50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services, and defense articles to support the sale of the Sensor Fused Weapon to the United Arab Emirates Air Force and Air Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification,

which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,  
Jeffrey T. Bergner,  
*Assistant Secretary Legislative Affairs.*  
Enclosure: Transmittal No. DDTC  
017-07.

June 7, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and for the export of defense articles or defense services sold commercially under contract in the amount of \$100,000,000 or more.

The transaction described in the attached certification involves the transfer of technical data, defense articles and defense services, including manufacturing know-how, to Germany for the manufacture of 120mm tank training ammunition.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,  
Jeffrey T. Bergner,  
*Assistant Secretary Legislative Affairs.*  
Enclosure: Transmittal No. DDTC  
018-07.

June 7, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to Japan for the manufacture of the AN/APX-72 Identification Friend or Foe (IFF) Transponder for integration into

Japanese Ministry of Defense aircraft and ships.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,  
Jeffrey T. Bergner,  
*Assistant Secretary Legislative Affairs.*  
Enclosure: Transmittal No. DDTC  
040-07.

June 7, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of major defense equipment and defense articles in the amount of \$100,000,000 or more.

The transaction contained in the attached certification involves the transfer to Commonwealth of Australia of additional technical data, defense services, and defense articles necessary to support the Royal Australian Air Forces F/A-18 Aircraft Mid-Life Hornet Upgrade Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,  
Jeffrey T. Bergner,  
*Assistant Secretary Legislative Affairs.*  
Enclosure: Transmittal No. DDTC  
041-07.

June 8, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of technical data, defense services, and defense articles in the amount of \$50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and defense articles to support the sale of four C-17A aircraft to Canada.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,  
Jeffrey T. Bergner,  
*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 061-07.

June 15, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of \$50,000,000 or more.

The transaction described in the attached certification involves the transfer of technical data, defense services, and defense articles for licensed production of the Airborne Early warning and Control System (AEW & C) for ultimate sale to and end-use by the Republic of Korea, Ministry of National Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,  
Jeffrey T. Bergner,  
*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 054-07.

June 19, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment.

The transaction described in the attached certification involves the transfer of defense articles, technical data, and defense systems to Norway for the manufacture of Gunner's Thermal Systems.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,  
Jeffrey T. Bergner,  
*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 021-07.

June 19, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for defense services sold commercially under contract in the amount of \$100,000,000 or more.

The transaction described in the attached certification involves the transfer of defense articles, technical data, and defense services for the LITENING Advanced Targeting Pods in support of the Australian F/A-18 Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,  
Jeffrey T. Bergner,  
*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 023-07.

June 19, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of firearms sold commercially under contract in the amount of \$1,000,000 or more.

The transaction contained in the attached certification involves the export of firearms to Colombia for the ultimate use by the Colombian Armed Forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,  
Jeffrey T. Bergner,  
*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 038-07.

June 19, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) & (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles, including technical data, and defense services in the amount of \$50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles and services to the Republic of Korea for the manufacture of selected components, and the assembly of the Korean Electro-Optical Tracking System for end-use by the Republic of Korea Army.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,  
Jeffrey T. Bergner,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 044-07.

June 29, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles and defense services in the amount of \$50,000,000 or more.

The transaction contained in the attached certification concerns future commercial activities with Russia, Ukraine, and Norway related to the launch of all commercial and foreign non-commercial satellites from the Pacific Ocean utilizing a modified oil platform.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,  
*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 071-07.

June 29, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles and defense services in the amount of \$50,000,000 or more.

The transaction contained in the attached certification concerns future commercial activities with Russia related to the launch of all commercial and foreign non-commercial satellites from Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause

competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,  
*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 072-07.

June 29, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles and defense services in the amount of \$100,000,000 or more.

The transaction contained in the attached certification concerns future commercial activities related to the co-development of the Galaxy Express space launch vehicle upgrade program for Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,  
*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 073-07.

Dated: August 8, 2007.

**Susan M. Clark,**

*Director, Office of Defense Trade Controls Licensing, Department of State.*

[FR Doc. E7-16176 Filed 8-15-07; 8:45 am]

**BILLING CODE 4710-25-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No. FAA-2006-25755]

#### Operating Limitations at New York LaGuardia Airport; Denial of Request for Extension of Comment Period

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

**ACTION:** Denial of request for extension of comment period.

**SUMMARY:** This document denies the request to extend the comment period on the FAA's notice of proposed

amendments to its December 12, 2006, order that places temporary limitations on flight operations at New York's LaGuardia Airport. The notice of proposed amendments was published in the **Federal Register** on August 7, 2007.

**DATES:** The closing date for comments on the notice of proposed amendments published on August 7, 2007 (72 FR 44214), remains September 6, 2007.

**ADDRESSES:** You may review the petition to extend the public comment period and other comments under Docket Number FAA-2006-25755 through the DOT Docket Web site at <http://dms.dot.gov> or at 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:** Komal Jain, Regulations Division, Office of the Chief Counsel, telephone (202) 267-3073; e-mail [komal.jain@faa.gov](mailto:komal.jain@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

On December 27, 2006, the FAA adopted operational limitations on New York LaGuardia Airport (LaGuardia) flights through an order (the Order) that became effective on January 1, 2007. 71 FR 77854. On August 7, 2007, the FAA subsequently proposed several amendments to the Order to improve the administration of the congestion management program at LaGuardia. Comments to that document are to be received on or before September 6, 2007.

By written request, dated August 7, 2007, the Air Transport Association of America, Inc. (ATA) and the Regional Airline Association (RAA) asked the FAA to extend the comment period for an additional 30 days. The FAA does not believe that an extension of time is necessary. The ATA and RAA recognized that a substantial number of the proposed amendments to the Order are technical corrections that they themselves identified to the FAA. While it may be difficult to coordinate comments from the petitioners' association during this "peak vacation" period and the Labor Day holiday, the FAA believes there is a stronger interest in the timely issuance of these amendments.

Issued in Washington, DC, on August 10, 2007.

**James W. Whitlow,**

*Deputy Chief Counsel.*

[FR Doc. 07-4003 Filed 8-10-07; 3:38 pm]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration**

[U.S. DOT Docket Number NHTSA-2007-28104]

**Reports, Forms, and Recordkeeping Requirements**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Correction Notice.

**SUMMARY:** This document corrects the mailing addresses and the completeness of the notice published on June 21, 2007 (72 FR 34348) for the Paperwork Reduction Action of 1995 (44 U.S.C. 3501 *et seq.*, OMB Control Number 2127-0573).

**DATES:** Comments must be received on or before August 20, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Mazzyck at the National Highway Traffic Safety Administration, Office of International Vehicle, Fuel Economy and Consumer Standards, 1200 New Jersey Avenue, SE., West Building, Room W43-443, Washington, DC 20590. Ms. Mazzyck's telephone number is (202-366-4139). Please identify the relevant collection of information by referring to its OMB Control Number.

**SUPPLEMENTARY INFORMATION:** The National Highway Traffic Safety Administration is correcting the mailing addresses in the June 21, 2007 notice. The U.S. Department of Transportation's Docket Management Facility has moved to a new location. You may mail comments identified by DOT Docket No. NHTSA-2007-28104 to Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590.

You may hand deliver comments or obtain access to the docket to read background documents or comments received on this collection by going to 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Additionally, NHTSA is correcting the omission of information from the June 21, 2007, notice. Specifically, comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of

the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: August 10, 2007.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. E7-16108 Filed 8-15-07; 8:45 am]

**BILLING CODE 4910-59-P**

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration**

[Docket No. NHTSA-2007-28733; Notice 1]

**Bentley Motors, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance**

Bentley Motors, Inc. (Bentley) has determined that certain motor vehicles that it produced between July 2006 and March 2, 2007 do not comply with paragraphs S4.5.1(b)(3) and S4.5.1(e)(3) of 49 CFR 571.208, Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*. Bentley has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Bentley has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Bentley's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 244 model year 2007 Bentley Arnage and Azure model passenger cars produced between July 2006 and March 2, 2007. Paragraph S4.5.1(b)(3) of FMVSS No. 208 requires:

(3) Vehicles certified to meet the requirements specified in S19, S21, or S23 on or after September 1, 2003 shall have a label permanently affixed to either side of the sun visor, at the manufacturer's option, at each front outboard seating position that is equipped with an inflatable restraint. The label shall conform in content to the label shown in Figure 11 of this standard and shall comply with the requirements of S4.5.1(b)(3)(i) through S4.5.1(b)(3)(iv).

(i) The heading area shall be yellow with the word "WARNING" and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 cm<sup>2</sup> (4.7 in<sup>2</sup>).

(iii) The pictogram shall be black on a white background. The pictogram shall be no less than 30 mm (1.2 in) in length.

(iv) If the vehicle does not have a back seat, the label shown in the figure may be modified by omitting the statement: "The BACK SEAT is the SAFEST place for CHILDREN."

(v) If the vehicle does not have a back seat or the back seat is too small to accommodate a rear-facing child restraint consistent with S4.5.4.1, the label shown in the figure may be modified by omitting the statement: "Never put a rear-facing child seat in the front."

Paragraph S4.5.1(e)(3) of FMVSS No. 208 requires:

(3) Vehicles certified to meet the requirements specified in S19, S21, and S23 on or after December 1, 2003, that are equipped with an inflatable restraint for the passenger position shall have a label attached to a location on the dashboard or the steering wheel hub that is clearly visible from all front seating positions. The label need not be permanently affixed to the vehicle. This label shall conform in content to the label shown in Figure 12 of this standard and shall comply with the requirements of S4.5.1(e)(3)(i) through S4.5.1(e)(3)(iv).

(i) The heading area shall be yellow with black text.

(ii) The message area shall be white with black text. The message area shall be no less than 30 cm<sup>2</sup> (4.7 in<sup>2</sup>).

(iii) If the vehicle does not have a back seat, the label shown in Figure 12 may be modified by omitting the statement: "The back seat is the safest place for children."

(iv) If the vehicle does not have a back seat or the back seat is too small to accommodate a rear-facing child restraint consistent with S4.5.4.1, the label shown in Figure 12 may be modified by omitting the statement: "Never put a rear-facing child seat in the front."

Bentley states that it has corrected the problem that caused these errors so that they will not be repeated in future production. Bentley also states that it believes the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted.

Bentley explains that instead of the "advanced air bag" warning labels required pursuant to the paragraphs S4.5.1(b)(3) and S4.5.1(e)(3) of FMVSS No. 208 the affected vehicles were equipped with the "pre-advanced" air bag warning labels conforming to paragraph S4.5.1(b)(1) and S4.5.1(e)(1).

Bentley argues that because the "pre-advanced" sun visor labels used on the vehicles carry essentially the equivalent or even more emphatic warnings to

those required in the regulation and because the owner's manual information correctly describes the advanced air bag system, there is no safety risk or cause for consumer confusion arising from the installed labeling.

Bentley additionally states that the vehicles otherwise comply with all advanced air bag requirements, that the owner manuals contain the correct information required for advanced airbags, and that it has no record of customers contacting the company with inquiries, complaints, or comments with regard to air bag warning labels.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except Federal holidays.

c. Electronically by logging onto the Docket Management System Web site at <http://dms.dot.gov>. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1-202-493-2251, or may be submitted to the Federal eRulemaking Portal: go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

*Comment closing date:* September 17, 2007.

**Authority:** 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: August 10, 2007.

**Claude H. Harris,**  
Director, Office of Vehicle Safety Compliance.  
[FR Doc. E7-16127 Filed 8-15-07; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2007-28927; Notice 1]

#### Sidump'r Trailer Company, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Sidump'r Trailer Company, Inc. ("Sidump'r") has determined that the rear impact guards on certain trailers that it manufactured between January 10, 2006 and April 13, 2007 do not comply with paragraph S5.1 of 49 CFR 571.224, Federal Motor Vehicle Safety Standard (FMVSS) No. 224, *Rear Impact Protection*. Sidump'r has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Sidump'r has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of the Sidump'r petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are approximately 416 model 223, 325 and 425 side dump bulk material hauling trailers manufactured by Sidump'r between January 10, 2006 and April 13, 2007. Paragraph S5.1.3 *Guard Rear Surface* of FMVSS No. 224 requires:

At any height 560 mm or more above the ground, the rearmost surface of the horizontal member of the guard shall be located as close as practical to a transverse vertical plane tangent to the rear extremity of the vehicle, but no more than 305 mm forward of that plane.

Paragraph S5.1.2 *Guard Height* of FMVSS No. 224 requires:

The vertical distance between the bottom edge of the horizontal member of the guard and the ground shall not exceed 560 mm at any point across the full width of the member.

Sidump'r first became aware of the noncompliance of these trailers when Sidump'r received a customer inquiry on or about February 27, 2007 regarding the rear impact guards installed on the subject trailers. As a result of this inquiry, Sidump'r stated that it commenced a thorough engineering evaluation of the rear end of the subject trailers to determine whether they meet the requirements of FMVSS No. 224. Following this engineering evaluation

and after consultation with its counsel, Sidump'r determined that the trailers do not comply with FMVSS No. 224.

Specifically, Sidump'r has determined that the location of those guards does not meet the requirements of paragraph S5.1.3 of FMVSS No. 224 because there is a "push block" located at the rear of the trailer chassis extending 23.62 inches (600 mm) to the rear of the rear impact guard. Sidump'r stated that it considered the "push blocks" to be the "rear extremities" of the subject trailers. Therefore, it concluded that the rearmost surface of the horizontal members of the rear impact guards are located 11.62 inches (295 mm) too far forward of the "rear extremity" of the trailers to conform with the requirements of paragraph S5.1.3.

Sidump'r also examined the possibility of the "push block" itself serving as the rear impact guard. It determined that the "push block" itself does not constitute a compliant rear impact guard as originally installed because it exceeds the maximum ground clearance of 22 inches (560 mm) allowed by paragraph S5.1.2 of FMVSS No. 224 by 1.5 inches (38.1 mm).

Sidump'r stated that it has corrected the problem that caused the noncompliance in the trailers they produced after April 20, 2007 by modifying the design of the trailers to incorporate a horizontal member mounted to the underside of the "push block" assembly.

Sidump'r also stated that it believes this noncompliance is inconsequential to motor vehicle safety and that no further corrective action is warranted due to the geometric characteristics of the trailers and the nature of their field usage. Specifically, Sidump'r makes the arguments that the overall level of safety of the subject trailers is equivalent to a compliant trailer because their "push block" is comparable to a compliant rear impact guard based on dimensional considerations, and that the trailers spend a limited amount of time on public roads.

Sidump'r additionally supported its position by citing several previous decisions where NHTSA granted temporary exemptions to FMVSS No. 224 as the result of petitions filed under 49 CFR Part 555 *Temporary Exemption From Motor Vehicle Safety and Bumper Standards* for noncompliances that it considers similar in consequence to those covered in the instant petition.

Sidump'r did not state if it knows of any accidents or other issues associated with this noncompliance.

Interested persons are invited to submit written data, views, and

arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S.

Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S.

Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. Electronically by logging onto the Docket Management System Web site at <http://dms.dot.gov>. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1-202-493-2251, or may be submitted to the Federal eRulemaking Portal: go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

*Comment closing date:* September 17, 2007.

**Authority:** 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: August 10, 2007.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. E7-16093 Filed 8-15-07; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Notice 2004-59

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2004-59, Plan Amendments Following Election of Alternative Deficit Reduction Contribution.

**DATES:** Written comments should be received on or before October 15, 2007 to be assured of consideration.

**ADDRESSES:** Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202)622-3179, or through the internet at ([Larnice.Mack@irs.gov](mailto:Larnice.Mack@irs.gov)).

**SUPPLEMENTARY INFORMATION:**

*Title:* Plan Amendments Following Election of Alternative Deficit Reduction Contribution.

*OMB Number:* 1545-1889.

*Notice Number:* Notice 2004-59.

*Abstract:* Notice 2004-59 sets forth answers to certain questions raised by the public when there is an amendment to an election to take advantage of the alternative deficit reduction contribution described in Public Law 108-218. This notice requires what are designed as restricted amendments.

*Current Actions:* There are no changes being made to the notice at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, and not-for-profit institutions.

*Estimated Number of Respondents:* 100.

*Estimated Average Time Per Respondent:* 4 hours.

*Estimated Total Annual Burden Hours:* 400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 1, 2007.

**R. Joseph Durbala,**

*IRS Reports Clearance Officer.*

[FR Doc. E7-16072 Filed 8-15-07; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 5500, 5500-C/R, and Schedules (1998 Version)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5500, 5500-C-R, and Schedules Annual Return/Report of Employee Benefit Plan (1998 Version).

**DATES:** Written comments should be received on or before October 15, 2007 to be assured of consideration.

**ADDRESSES:** Direct all written comments to R. Joseph Durbala Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or

copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3179, or through the internet at (*Larnice.Mack@irs.gov*).

**SUPPLEMENTARY INFORMATION:**

*Title:* Annual Return/Report of Employee Benefit Plan (1998 Version).

*OMB Number:* 1545-0710.

*Form Number:* 5500, 5500-C/R, and Schedules.

*Abstract:* Form 5500 and 5500-C/R are annual information returns filed by employee benefit plans. The IRS uses this information to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.

*Current Actions:* Only delinquent filers would have the need for the 1998 (or prior) year versions of these forms.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 3,874.

*Estimated Time Per Respondent:* Varies.

*Estimated Total Annual Burden Hours:* 60,796.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information

technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 1, 2007.

**R. Joseph Durbala,**

*IRS Reports Clearance Office.*

[FR Doc. E7-16079 Filed 8-15-07; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**[PS-102-88]**

**Proposed Collection; Comment Request for Regulation Project**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS-102-88 (TD 8612), Income, Gift and Estate Tax (20.2056A-3, 20.2056A-4, and 20.2056A-10).

**DATES:** Written comments should be received on or before October 15, 2007 to be assured of consideration.

**ADDRESSES:** Direct all written comments to R. Joseph Durbala Internal Revenue Service, Room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, Room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3179, or through the Internet at (*Larnice.Mack@irs.gov*).

**SUPPLEMENTARY INFORMATION:**

*Title:* Income, Gift and Estate Tax.

*OMB Number:* 1545-1360.

*Regulation Project Number:* PS-102-88.

*Abstract:* This regulation concerns the availability of the gift and estate tax marital deduction when the donee spouse or the surviving spouse is not a United States citizen. The regulation provides guidance to individuals or fiduciaries: (1) For making a qualified

domestic trust election on the estate tax return of a decedent whose surviving spouse is not a United States citizen in order that the estate may obtain the marital deduction, and (2) for filing the annual returns that such an election may require.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 2,300.

*Estimated Time per Respondent:* 2 hours, 40 minutes.

*Estimated Total Annual Burden Hours:* 6,150.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 1, 2007.

**R. Joseph Durbala,**

*IRS Reports Clearance Officer.*

[FR Doc. E7-16082 Filed 8-15-07; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Proposed Collection; Comment Request for Form 8867**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8867, Paid Preparer's Earned Income Credit Checklist.

**DATES:** Written comments should be received on or before October 15, 2007 to be assured of consideration.

**ADDRESSES:** Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3179, or through the Internet at ([Larnice.Mack@irs.gov](mailto:Larnice.Mack@irs.gov)).

**SUPPLEMENTARY INFORMATION:**

*Title:* Paid Preparer's Earned Income Credit Checklist.

*OMB Number:* 1545-1629.

*Form Number:* 8867.

*Abstract:* Form 8867 helps preparers meet the due diligence requirements of Internal Revenue Code section 6695(g), which was added by section 1085(a)(2) of the Taxpayer Relief Act of 1997. Paid preparers of Federal Income tax returns or claims for refund involving the earned income credit (EIC) must meet the due diligence requirements in determining if the taxpayer is eligible for the RIC and the amount of the credit. Failure to do so could result in a \$100 penalty for each failure. Completion of Form 8867 is one of the due diligence requirements.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Responses:* 8,368,447.

*Estimated Time per Respondent:* 1 hour, 20 minutes.

*Estimated Total Annual Burden Hours:* 11,130,035.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 1, 2007.

**R. Joseph Durbala,**

*IRS Reports Clearance Officer.*

[FR Doc. E7-16083 Filed 8-15-07; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF VETERANS AFFAIRS****Privacy Act of 1974**

**AGENCY:** Department of Veterans Affairs (VA).

**ACTION:** Notice of amendment to system of records.

**SUMMARY:** The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their system of records. Notice is hereby given that VA is amending the

system of records entitled "Consolidated Data Information System-VA" (97VA105) as set forth in the **Federal Register** 66 FR 3650-3653 dated January 16, 2001. VA is amending the system by revising the System Location, Categories of Records Maintained in the System, Purpose(s), Routine Uses of Records Maintained in the System, Retention and Disposal, System Manager and Record Source Categories. VA is republishing the system notice in its entirety.

**DATES:** Comments on the amendment of this system of records must be received no later than September 17, 2007. If no public comment is received, the amended system will become effective September 17, 2007.

**ADDRESSES:** Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 273-9515 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS).

**FOR FURTHER INFORMATION CONTACT:** Stephanie H. Putt, Veterans Health Administration (VHA) Privacy Officer (19F2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (727) 320-1839.

**SUPPLEMENTARY INFORMATION:** Under section 527 of Title 38, U.S.C., and the Government Performance and Results Act of 1993, Public Law 103-62, VA is required to measure and evaluate, on an ongoing basis, the effectiveness of VA benefit programs and services. In performing this required function, VA must collect, collate and analyze full statistical data regarding participation, provision of services, categories of beneficiaries, and planning of expenditures for all VA programs. This combined database is necessary for the Veterans Health Administration (VHA) to accurately and timely assess the current health care usage by the patient population served by VA, to forecast future demand for VA medical care by individuals currently eligible for service by VA medical facilities, and to understand the numerous implications of cross-usage between VA and non-VA health care systems.

As VA has widened its scope of the Centers for Medicare and Medicaid Services (CMS) data usage and further centralized the source of data in order to improve efficiency and protect privacy/security of data elements, it was necessary to implement changes to the management and use of these records. A summary of these changes follows:

1. The purpose of this system of records has been revised to add the need to use the records and information for audit and evaluation of Department programs, for determinations of eligibility for benefits and for research as defined by Common Rule.

2. The records are now maintained and retained at the primary and secondary VA recipient CMS data site locations listed in Appendix 5.

3. Under Categories of Records information from the Persian Gulf registry has been added and the types of CMS records maintained now includes health care utilization, demographic, enrollment, and survey/assessment files including veteran and non-veteran data. In addition, information on veterans enrolled for VA health care who have participated in the periodic "VHA Survey of Veteran Enrollees' Health and Reliance Upon VA" is now included in the system.

4. System Manager and Address was updated to reflect: Manager, Medicare and Medicaid Analysis Center, 100 Grandview Rd., Suite 114, Braintree, MA 02184.

Under section 264, Subtitle F of Title II of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Public Law 104-191, 100 STAT. 1936, 2033-34 (1996), the United States Department of Health and Human Services (HHS) published a final rule, as amended, establishing Standards for Privacy of Individually-Identifiable Health Information, 45 CFR Parts 160 and 164. VHA may not disclose individually-identifiable health information (as defined in HIPAA and the Privacy Rule, 42 U.S.C. 1320(d)(6) and 45 CFR 164.501) pursuant to a routine use unless either: (a) The disclosure is required by law, or (b) the disclosure is also permitted or required by the HHS Privacy Rule. The disclosures of individually-identifiable health information contemplated in the routine uses published in this amended system of records notice are permitted under the Privacy Rule or required by law. However, to also have authority to make such disclosures under the Privacy Act, VA must publish these routine uses. Consequently, VA is adding a preliminary paragraph to the routine uses portion of the system of records notice stating that any

disclosure pursuant to the routine uses in this system of records notice must be either required by law or permitted by the Privacy Rule before VHA may disclose the covered information. VA is also proposing to amend the following routine use disclosures of information maintained in the system:

- Routine use 3 has been amended in its entirety. On its own initiative, the VA may disclose information, except for the names and home addresses of veterans and their dependents, to a Federal, State, local, tribal or foreign agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. On its own initiative, the VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

- Routine uses 4, 5, 7, and 8 have revised for ease of readability and clarification. VA is also proposing to add the following routine use disclosure of information maintained in the system:

- Routine use 9 was added to disclose to appropriate agencies, entities, and persons under the following circumstances: When (1) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

The Privacy Act permits VA to disclose information about individuals without their prior written consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which we collected the information. In all of the routine use

disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law.

The Report of Intent to Publish an Amended System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: August 1, 2007.

**Gordon H. Mansfield,**

*Deputy Secretary of Veterans Affairs.*

#### **97VA105**

##### **SYSTEM NAME:**

Consolidated Data Information System-VA.

##### **SYSTEM LOCATION(S):**

Records will be maintained at primary and secondary Department of Veteran Affairs (VA) recipient sites for the Centers for Medicare & Medicaid Services (CMS) data (see VA Appendix 5).

##### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records include information concerning veterans, their spouses and their dependents, family members, active duty military personnel, and individuals who are not VA beneficiaries, but who receive health care services from the Veterans Health Administration (VHA).

##### **CATEGORIES OF RECORDS IN THE SYSTEM:**

Categories of records in the system will include veterans' names, addresses, dates of birth, VA claim numbers, social security numbers (SSNs), and military service information; medical benefit application and eligibility information; code sheets and follow-up notes; sociological, diagnostic, counseling, rehabilitation, drug and alcohol, dietetic, medical, surgical, dental, psychological, and/or psychiatric medical information; prosthetic, pharmacy, nuclear medicine, social work, clinical laboratory and radiology information; patient scheduling information; family information such as next of kin, spouse and dependents' names, addresses, social security numbers and dates of birth; family medical history; employment information; financial information; third-party health plan information; information related to registry systems,

such as Ionizing Radiation, Gulf War and Agent Orange; date of death; VA claim and insurance file numbers; travel benefits information; military decorations; disability or pension payment information; amount of indebtedness arising from 38 U.S.C. benefits; medical and dental treatment in the Armed Forces and claim information; applications for compensation, pension, education and rehabilitation benefits; information related to incarceration in a penal institution; medication profile such as name, quantity, prescriber, dosage, manufacturer, lot number, cost and administration instruction; pharmacy dispensing information such as pharmacy name and address.

The records will include information on the Department of Defense (DoD) military personnel from two categories of DoD files: (1) Utilization files that contain inpatient and outpatient records, and (2) eligibility files from the Defense Eligibility Enrollment Reporting System (DEERS) containing data on all military personnel including those discharged from the Armed Services since 1972.

The records will include information on Medicare beneficiaries from CMS databases including: Health care usage, demographic, enrollment, and survey/assessment files including veteran and non-veteran data.

The records include information on Medicaid beneficiaries' utilization and enrollment from State databases.

The records will include information on veterans enrolled for VA health care who have participated in the periodic "VHA Survey of Veteran Enrollees" Health and Reliance Upon VA."

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Section 527 of 38 U.S.C. and the Government Performance and Results Act of 1993, Public Law 103-62.

**PURPOSE(S):**

The purpose of this system of records is to conduct statistical studies and analyses which will support the formulation of Departmental policies and plans by identifying the total current health care usage of the VA patient population. The records and information may be used by VA for audit and evaluation of Department programs and for determinations of eligibility for benefits. The information may be used to conduct research.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

VA may disclose protected health information pursuant to the following

routine uses where required by law, or required or permitted by 45 CFR Parts 160 and 164.

1. Disclosure of identifying information, such as names, SSNs, demographic and utilization data, may be made to Federal, State, local, or tribal agencies such as the DoD, CMS, and Medicare Payment Advisory Commission (MedPAC), as part of statistical matching programs for the purpose of better identifying the total current health care usage of the patient population served by VA in order to forecast future demand for VA medical care by VA medical facilities.

2. Disclosure may be made to Federal, State, local, and tribal government agencies and national health organizations in order to assist in the development of programs that will be beneficial to claimants and assure that they are receiving all benefits to which they are entitled.

3. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

4. Disclosure may be made, excluding name and address (unless name and address are furnished by the requestor) for research purposes determined to be necessary and proper, to epidemiological and other research facilities approved by the System Manager or the Under Secretary for Health, or designee.

5. Any record in the system records may be disclosed to a Federal agency for the conduct of research and data analysis to perform a statutory purpose of that Federal agency upon the prior written request of that agency, provided that there is legal authority under all applicable confidentiality statutes and regulations to provide the data and the VHA Medicare and Medicaid Analysis Center (MAC) has determined prior to

the disclosure that VA data handling requirements are satisfied. MAC may disclose limited individual identification information to another Federal agency for the purpose of matching and acquiring information held by that agency for MAC to use for the purposes stated for this system of records.

6. Disclosure may be made to National Archives and Records Administration (NARA), General Services Administration (GSA) in records management inspections conducted under authority of 44 U.S.C.

7. VA may disclose information in this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

8. Disclosure may be made to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has an agreement or contract to perform the services of the contract or agreement. This routine use includes disclosures by the individual or entity performing the service for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

9. Any records may be disclosed to appropriate agencies, entities, and persons under the following circumstances: When (1) It is suspected or confirmed that the security or confidentiality of information in the

system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Data are maintained on magnetic tape, disk, or laser optical media.

**RETRIEVABILITY:**

Records may be retrieved by name, name and one or more criteria (e.g., dates of birth, death and service), SSN or VA claim number.

**SAFEGUARDS:**

1. Access to and use of these records is limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

2. Access to Automated Data Processing files is controlled at two levels: (1) Terminals, central processing units, and peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected; and (2) the system recognizes authorized users by means of an individually unique password entered in combination with an individually unique user identification code.

3. Access to automated records concerning identification codes and codes used to access various VA

automated communications systems and records systems, as well as security profiles and possible security violations is limited to designated automated systems security personnel who need to know the information in order to maintain and monitor the security of VA's automated communications and veterans' claim records systems. Access to these records in automated form is controlled by individually unique passwords/codes. Agency personnel may have access to the information on a need to know basis when necessary to advise agency security personnel or for use to suspend or revoke access privileges or to make disclosures authorized by a routine use.

4. Access to VA facilities where identification codes, passwords, security profiles and possible security violations are maintained is controlled at all hours by the Federal Protective Service, VA or other security personnel and security access control devices.

**RETENTION AND DISPOSAL:**

Copies of back-up computer files will be maintained at primary and secondary VA recipient sites for CMS data (see Appendix 5). Records will be maintained and disposed of in accordance with the records disposal authority approved by the Archivist of the United States, the National Archives and Records Administration, and published in Agency Records Control Schedules.

**SYSTEM MANAGER AND ADDRESS:**

Manager, Medicare and Medicaid Analysis Center, 100 Grandview Rd., Suite 114, Braintree, MA 02184.

**NOTIFICATION PROCEDURE:**

Individuals wishing to inquire whether this system of records contains information about them should submit a signed written request to the Manager, Medicare and Medicaid Analysis Center, 100 Grandview Rd., Suite 114, Braintree, MA 02184.

**RECORDS ACCESS PROCEDURES:**

An individual who seeks access to records maintained under his or her

name or other personal identifier may write the System Manager named above and specify the information being contested.

**CONTESTING RECORD PROCEDURES:**

(See Records Access Procedures above.)

**RECORD SOURCE CATEGORIES:**

Information may be obtained from the Patient Medical Records System (24VA136); Patient Fee Basis Medical and Pharmacy Records (23VA136); Veterans and Beneficiaries Identification and Records Location Subsystem (38VA23); Compensation, Pension, Education and Rehabilitation Records (58VA21/22); all other potential VA and non-VA sources of veteran demographic information; DoD utilization files and DEERS files; and CMS databases.

**VA Appendix 5**

**Primary and Secondary VA Recipient Sites of CMS Data**

1. Primary Site: Medicare and Medicaid Analysis Center, 100 Grandview Rd., Suite 114, Braintree, MA 02184.
2. Secondary Site: Veterans Health Administration (VHA) Office of the Assistant Deputy Under Secretary for Health (ADUSH) for Policy and Planning, 810 Vermont Avenue, NW., Washington, DC, 20420. Location of data for ADUSH at 811 Vermont Avenue, NW., Washington, DC, 20420; Silver Springs, MD; and/or Martinsburg, WV.
3. Secondary Site: VA Information Resource Center (VIREC), Hines VA Medical Center, 5th Ave & Roosevelt Ave, Hines, IL, 60141.
4. Secondary Site: VA Office of the Inspector General (OIG), 53CT, 1615 Woodward Street, Austin, TX, 78772.
5. Secondary Site: VA Austin Automation Center (AAC), 1615 Woodward Street, Austin, TX, 78722.
6. Secondary Site: VA Chief Business Office (CBO), Director of Business Development, 810 Vermont Ave, NW., Washington, DC, 20420.
7. Secondary Site: VISN Support Service Center (VSSC), 1615 Woodward Street, Austin, TX, 78722.

[FR Doc. E7-16046 Filed 8-15-07; 8:45 am]

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# Federal Register

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**Thursday,  
August 16, 2007**

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**Part II**

## **The President**

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**Notice of August 15, 2007—Continuation  
of Emergency Regarding Export Control  
Regulations**



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**Presidential Documents**

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Title 3—

Notice of August 15, 2007

The President

**Continuation of Emergency Regarding Export Control Regulations**

On August 17, 2001, consistent with the authority provided to me under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), I issued Executive Order 13222. In that order, I declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States in light of the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*). Because the Export Administration Act has not been renewed by the Congress, the national emergency declared on August 17, 2001, must continue in effect beyond August 17, 2007. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13222.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,  
*August 15, 2007.*

# Reader Aids

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Correction; published 8-16-07

**COMMENTS DUE NEXT WEEK****AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

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Fish and shellfish; mandatory country of origin labeling;

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Oranges, grapefruit, tangerines, and tangelos grown in Florida; comments due by 8-20-07; published 6-20-07 [FR E7-11929]

Raisins produced from grapes grown in California; comments due by 8-22-07; published 8-7-07 [FR 07-03856]

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**AGRICULTURE DEPARTMENT****Grain Inspection, Packers and Stockyards Administration**

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Air quality implementation plans; approval and promulgation; various States:  
Tennessee; comments due by 8-22-07; published 7-23-07 [FR E7-14171]

Air quality implementation plans; approval and promulgation; various States:  
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#### HEALTH AND HUMAN SERVICES DEPARTMENT Centers for Medicare & Medicaid Services

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Medicaid Integrity Program; limitation on contractor liability; comments due by 8-20-07; published 7-20-07 [FR E7-14115]

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Principal investigator definition and multiple or concurrent awards conditions; comments due by 8-24-07; published 6-25-07 [FR E7-12223]

#### HOMELAND SECURITY DEPARTMENT

Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006; implementation; comments due by 8-21-07; published 6-22-07 [FR 07-03101]

#### HOUSING AND URBAN DEVELOPMENT DEPARTMENT

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#### INTERIOR DEPARTMENT Fish and Wildlife Service

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State or local law enforcement or prosecutive officials testimony while serving on Justice Department task forces; comments due by 8-20-07; published 6-21-07 [FR E7-12038]

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Locality pay areas; adjustments; comments due by 8-21-07; published 6-22-07 [FR E7-12096]

#### STATE DEPARTMENT

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Program services fees and charges; comments due by 8-21-07; published 6-22-07 [FR E7-11810]

#### TRANSPORTATION DEPARTMENT

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Southwest Indiana; comments due by 8-20-07; published 7-19-07 [FR 07-03516]

#### TRANSPORTATION DEPARTMENT Federal Aviation Administration

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Cirrus Design Corp.; comments due by 8-20-07; published 6-21-07 [FR E7-12006]

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Symphony Aircraft Industries, Inc. Model SA160 airplane; comments due by 8-20-07; published 7-19-07 [FR E7-14050]

#### TREASURY DEPARTMENT

Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006; implementation; comments due by 8-21-07; published 6-22-07 [FR 07-03101]

#### VETERANS AFFAIRS DEPARTMENT

Veterans Benefits, Health Care, and Information Technology Act of 2006; implementation:  
Information security matters; data breaches; comments due by 8-21-07; published 6-22-07 [FR 07-03085]

#### LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.archives.gov/federal-register/laws.html>.

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#### H.R. 2863/P.L. 110-75

To authorize the Coquille Indian Tribe of the State of Oregon to convey land and interests in land owned by the Tribe. (Aug. 13, 2007; 121 Stat. 724)

#### H.R. 2952/P.L. 110-76

To authorize the Saginaw Chippewa Tribe of Indians of the State of Michigan to convey land and interests in lands owned by the Tribe. (Aug. 13, 2007; 121 Stat. 725)

#### H.R. 3006/P.L. 110-77

To improve the use of a grant of a parcel of land to the State of Idaho for use as an

agricultural college, and for other purposes. (Aug. 13, 2007; 121 Stat. 726)

#### S. 375/P.L. 110-78

To waive application of the Indian Self-Determination and Education Assistance Act to a specific parcel of real property transferred by the United States to 2 Indian tribes in the State of Oregon, and for other purposes. (Aug. 13, 2007; 121 Stat. 727)

#### S. 975/P.L. 110-79

Granting the consent and approval of the Congress to an interstate forest fire protection compact. (Aug. 13, 2007; 121 Stat. 730)

#### S. 1716/P.L. 110-80

To amend the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, to strike a requirement relating to forage producers. (Aug. 13, 2007; 121 Stat. 734)

Last List August 13, 2007

#### CORRECTION

In the last **List of Public Laws** printed in the *Federal Register* on August 13, 2007, H.R. 2025, Public Law 110-65, and H.R. 2078, Public Law 110-67, were printed incorrectly. They should read as follows:

#### H.R. 2025/P.L. 110-65

To designate the facility of the United States Postal Service located at 11033 South State Street in Chicago, Illinois, as the "Willye B. White Post Office Building". (Aug. 9, 2007; 121 Stat. 568)

#### H.R. 2078/P.L. 110-67

To designate the facility of the United States Postal Service located at 14536 State Route 136 in Cherry Fork, Ohio, as the "Staff Sergeant Omer T. 'O.T.' Hawkins Post Office". (Aug. 9, 2007; 121 Stat. 570)

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