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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.

## FARM CREDIT ADMINISTRATION

### 12 CFR Part 630

**RIN 3052–AC40**

### Disclosure to Investors in System-Wide and Consolidated Bank Debt Obligations of the Farm Credit System; Effective Date

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice of effective date.

**SUMMARY:** The Farm Credit Administration (FCA or Agency), through the FCA Board (Board), issued a direct final rule with opportunity for comment under part 630 on November 15, 2007 (72 FR 64129) amending our regulation on the external auditor's assessment of internal control over financial reporting concerning the System-wide annual report to investors. The opportunity for comment expired on December 17, 2007. The FCA received no comments and therefore, the direct final rule becomes effective without change. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is January 31, 2008.

**DATES:** *Effective Date:* The regulation amending 12 CFR part 630 published on November 15, 2007 (72 FR 64129) is effective January 31, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Wade Wynn, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4414, TTY (703) 883–4434

or

Laura McFarland, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4020.

**Authority:** (12 U.S.C. 2252(a)(9) and (10)).

Dated: January 31, 2008.

**Roland E. Smith,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. E8–2381 Filed 2–7–08; 8:45 am]

**BILLING CODE 6705–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 30591; Amdt. No. 3254]**

### Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This Rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective February 8, 2008. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 8, 2008.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *nfdc.FAA.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA regional Office of the region in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:**

Harry. J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPs, Takeoff Minimums and/or ODPs. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not

use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the SIAPs, the associated Takeoff Minimums, and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

## The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure before adopting these SIAPs, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

## Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on January 25, 2008.

**James J. Ballough,**

*Director, Flight Standards Service.*

## Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

**Effective 13 MAR 2008**

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Dothan, AL, Dothan Regional, ILS OR LOC RWY 32, Amdt 8
Dothan, AL, Dothan Regional, RNAV (GPS) RWY 14, Amdt 1
Dothan, AL, Dothan Regional, RNAV (GPS) RWY 32, Orig
Dothan, AL, Dothan Regional, VOR OR TACAN–A, Amdt 12
Dothan, AL, Dothan Regional, Takeoff Minimums and Obstacle DP, Orig
Evergreen, AL, Middleton Field, RNAV (GPS) RWY 1, Orig
Evergreen, AL, Middleton Field, RNAV (GPS) RWY 10, Orig
Evergreen, AL, Middleton Field, RNAV (GPS) RWY 19, Orig
Evergreen, AL, Middleton Field, RNAV (GPS) RWY 28, Orig
Evergreen, AL, Middleton Field, VOR/DME RWY 10, Amdt 3
Evergreen, AL, Middleton Field, Takeoff Minimums and Obstacle DP, Amdt 1
Anaktuvuk Pass, AK, Anaktuvuk Pass, RNAV (GPS)–A, Orig
Anaktuvuk Pass, AK, Anaktuvuk Pass, NDB–B, Amdt 1
Anaktuvuk Pass, AK, Anaktuvuk Pass, GPS–A, Orig, CANCELLED
Anaktuvuk Pass, AK, Anaktuvuk Pass, Takeoff Minimums and Obstacle DP, Amdt 1
Galena, AK, Edward G. Pitka, Sr. ILS OR LOC/DME RWY 25, Amdt 1A
St Mary's, AK, St. Marys, RNAV (GPS) Y RWY 17, Amdt 2
St Mary's, AK, St. Marys, RNAV (GPS) Y RWY 35, Amdt 1
St Mary's, AK, St. Marys, RNAV (GPS) Z RWY 17, Orig
St Mary's, AK, St. Marys, RNAV (GPS) Z RWY 35, Orig
St Mary's, AK, St. Marys, LOC/DME RWY 17, Amdt 4
St Mary's, AK, St. Marys, NDB RWY 35, Amdt 1
Oroville, CA, Oroville Muni, NDB RWY 1, Amdt 3, CANCELLED
Petaluma, CA, Petaluma Muni, VOR RWY 29, Orig, CANCELLED
Red Bluff, CA, Red Bluff Muni, NDB RWY 33, Amdt 2A, CANCELLED
Middletown, DE, Summit, VOR OR GPS–B Amdt 1B, CANCELLED
Preston, MN, Fillmore County, RNAV (GPS) RWY 29, Orig.
Preston, MN, Fillmore County, (GPS) RWY 29, Orig, CANCELLED
Newport, OR, Newport Muni, ILS OR LOC RWY 16, Amdt 1B
North Bend, OR, Southwest Oregon Regional, ILS OR LOC RWY 4, Amdt 6B
Myrtle Beach, SC, Myrtle Beach Intl, RADAR 1, Amdt 1C, CANCELLED
Rock Hill, SC, Rock Hill/York Co/Bryant Field, ILS OR LOC RWY 2, Amdt 1
Rock Hill, SC, Rock Hill/York Co/Bryant Field, RNAV (GPS) RWY 2, Orig
Rock Hill, SC, Rock Hill/York Co/Bryant Field, RNAV (GPS) RWY 20, Orig
Rock Hill, SC, Rock Hill/York Co/Bryant Field, GPS RWY 2, Orig-C, CANCELLED
Rock Hill, SC, Rock Hill/York Co/Bryant Field, GPS RWY 20, Orig-C, CANCELLED
Rock Hill, SC, Rock Hill/York Co/Bryant Field, VOR OR GPS–A, Amdt 9C, CANCELLED
Ogden, UT, Ogden-Hinckley, Takeoff Minimums and Obstacle DP, Amdt 2
Newport, VT, Newport State, NDB–A, Amdt 3, CANCELLED

Riverton, WY, Riverton Regional, ILS OR LOC RWY 28, Amdt 1B
Martinsburg, WV, Eastern WV Regional/Shepherd, LOC/DME BC RWY 8, Amdt 6, CANCELLED

The FAA published an Amendment in Docket No. 30587, Amdt No. 3251 to Part 97 of the Federal Aviation Regulations (Vol. 73, FR No. 16, Page 4073 dated Thursday, January 24, 2008) under section 97.29 effective March 13, 2008, which is hereby corrected to read as follows:

Waterville, ME, ILS OR LOC RWY 5, Amdt 2B

The FAA published an Amendment in Docket No. 30587, Amdt No. 3251 to Part 97 of the Federal Aviation Regulations (Vol. 73, FR No. 16, Page 4073 dated Thursday, January 24, 2008) under section 97.29 effective April 10, 2008, which is hereby rescinded:

Burlington, VT, Burlington Intl, ILS OR LOC/DME RWY 33, Amdt 1

The FAA published an Amendment in Docket No. 30587, Amdt No. 3251 to Part 97 of the Federal Aviation Regulations (Vol. 73, FR No. 16, Page 4073 dated Thursday, January 24, 2008) under section 97.29 effective February 14, 2008, which is hereby corrected to read as follows:

Omaha, NE, Epply Airfield, ILS OR LOC RWY 32L, Amdt 1
Omaha, NE, Epply Airfield, ILS OR LOC/DME RWY 14L, Amdt 1
Omaha, NE, Epply Airfield, ILS OR LOC/DME RWY 14R, ILS RWY 14R (CAT II), ILS RWY 14R (CAT III), Amdt 4
Omaha, NE, Epply Airfield, RNAV (GPS) RWY 14L, Amdt 1
Omaha, NE, Epply Airfield, Takeoff Minimums and Obstacle DP, Amdt 5

[FR Doc. 08–535 Filed 2–7–08; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

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

**[Docket No. FDA–2008–N–0067]**

## Revisions to the Requirements Applicable to Blood, Blood Components and Source Plasma; Confirmation of Effective Date and Technical Amendment

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

**ACTION:** Direct final rule; confirmation of effective date and technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date of February 19, 2008, for the direct final rule that appeared in the **Federal Register** of August 16, 2007 (72 FR 45883). The direct final rule amends 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. In addition, FDA is making technical amendments to the biologics regulations in response to comments received on the direct final rule.

**DATES:** The effective date for the regulation is confirmed as February 19, 2008. The effective date of the technical amendment is also February 19, 2008.

**FOR FURTHER INFORMATION CONTACT:** Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of August 16, 2007 (72 FR 45883), FDA solicited comments concerning the direct final rule for a 75-day period ending October 30, 2007. FDA stated that the effective date of the direct final rule would be on February 19, 2008, 6 months after the end of the comment period, unless any significant adverse comment was submitted to FDA during the comment period. FDA received several letters of comment on the direct final rule; however, FDA did not receive any significant adverse comments. Therefore, FDA is confirming the effective date of the direct final rule and making two technical amendments in response to comments received. Comments were received from private industry, an individual, organizations representing the blood industry, and an employee of the Food and Drug Administration. The comments received and FDA's responses to the comments are discussed below as follows:

Two comments stated that under paragraph (c) of 21 CFR 610.53, there was an error in a temperature listed in the table under Red Blood Cells Deglycerolized and Red Blood Cells Frozen.

FDA agrees. In the **Federal Register** of September 24, 2007 (72 FR 54208), FDA issued a notice to correct a typographical error in the codified section of the direct final rule. The table in paragraph (c) of section 610.53 was corrected by replacing 65°C with -65°C.

One comment requested clarification of the proposed change in wording from ''toward'' to ''at'' concerning the specified temperature range under 21 CFR 640.4(h) because coolers do not have the capacity to maintain a temperature range between 1 and 10°C.

FDA agrees with the comment and therefore, is revising the regulation to use ''toward'' rather than ''at''.

One comment requested that under 21 CFR 640.24(d) the pH be revised from ''not less than 6.0'' to ''not less than 6.2'' to be consistent with the change in 21 CFR 640.25(b)(2) (§ 640.25(b)(2)) and with industry practice.

Because both of these provisions refer to the same pH requirement, FDA agrees and is revising 21 CFR 640.24(d) as requested.

One comment agreed with the change in pH under § 640.25(b)(2) but stated that there was no mention of the number of units that must meet this requirement and therefore the assumption is that 100 percent of the units must meet the requirement which they believe is unachievable.

We believe that the four units we require to be tested for quality control purposes under § 640.25(b) must meet the criteria listed under this regulation. However, FDA recently issued a document entitled ''Guidance for Industry and FDA Review Staff: Collection of Platelets by Automated Methods,'' dated December 2007 (December 17, 2007; 72 FR 71418). In this guidance, we provide recommendations on quality control monitoring. Therefore, no additional changes are warranted.

Two comments requested that FDA revise the definition under 21 CFR 640.30(a) to include ''for intravenous or further manufacturing use'' to facilitate use of plasma for further manufacturing use that has been collected concurrently with the collection of another blood component by apheresis. In addition, the comments requested that 21 CFR 640.34 and other provisions in the regulations be revised and harmonized to allow interchangeability of the plasma from intravenous use to manufacturing use after blood collection.

FDA presently has this issue under consideration and may address this in future rulemaking, if warranted. This comment is beyond the scope of this rulemaking.

One comment requested that FDA provide the rationale for the revision to 21 CFR 640.34(b) requiring fresh frozen plasma collected by an apheresis procedure to be prepared from blood collected by single uninterrupted venipuncture, and why it was differentiated from other components collected by apheresis. The comment also questioned whether the current practice of using a sterile connecting device to attach a sterile needle in the event of blood flow interruption would be prohibited in the future.

The rationale for requiring blood and blood components, including fresh frozen plasma collected by an apheresis procedure, to be collected by a single uninterrupted venipuncture is to help ensure minimal tissue damage which could activate the coagulation cascade. This is also a requirement for Platelet collection. Under 21 CFR 640.22(d), the regulation states that Platelet phlebotomy shall be performed by a single uninterrupted venipuncture with minimal damage to, and minimal manipulation of, the donor's tissue. FDA does not anticipate, in the near future, any change in the policy for using a sterile connecting device to attach a sterile needle to a collection set in the event of a blood flow interruption.

**List of Subjects**

*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 part 640 is amended as follows:

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

■ 1. 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.

■ 2. 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 toward 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.

**§ 640.24 [Amended]**

■ 3. Section 640.24 is amended in the first sentence of paragraph (d) by removing ''6.0'' and adding in its place ''6.2''.

Dated: February 1, 2008.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E8–2322 Filed 2–7–08; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 9379]**

**RIN 1545–BG35**

## Time and Manner for Electing Capital Asset Treatment for Certain Self-Created Musical Works

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

**ACTION:** Temporary regulation.

**SUMMARY:** This document contains a temporary regulation that provides the time and manner for making an election to treat the sale or exchange of musical compositions or copyrights in musical works created by the taxpayer (or received by the taxpayer from the works' creator in a transferred basis transaction) as the sale or exchange of a capital asset. The regulation reflects changes to the law made by the Tax Increase Prevention and Reconciliation Act of 2005 and the Tax Relief and Health Care Act of 2006. The regulation affects taxpayers making the election under section 1221(b)(3) of the Internal Revenue Code (Code) to treat gain or loss from such a sale or exchange as capital gain or loss. The text of this temporary regulation also serves as the text of the proposed regulation (REG–153589–06) set forth in the Proposed Rules section of this issue of the **Federal Register**.

**DATES:** *Effective Date:* This regulation is effective on February 8, 2008.

*Applicability Dates:* For dates of applicability, see § 1.1221–3T(d).

**FOR FURTHER INFORMATION CONTACT:** Jamie Kim, (202) 622–4950 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 1221(a) of the Internal Revenue Code (Code) generally provides that capital assets include all property held by a taxpayer with certain specified exclusions. Section 1221(a)(1) excludes from the definition of a capital asset inventory property or property held by a taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. Section 1221(a)(3) excludes from the definition of a capital asset copyrights, literary, musical, or artistic compositions, letters or memoranda, or similar property held by a taxpayer whose personal efforts created the property (or held by a taxpayer whose basis in the property is determined by reference to the basis of such property in the hands of the taxpayer whose personal efforts created the property).

Section 1221(b)(3) of the Code, added by section 204 of the Tax Increase Prevention and Reconciliation Act of 2005 (Public Law 109–222, 120 Stat. 345) and amended by section 412 of the Tax Relief and Health Care Act of 2006 (Public Law 109–432, 120 Stat. 2922), provides that, at the election of a taxpayer, the section 1221(a)(1) and (a)(3) exclusions from capital asset status do not apply to musical compositions or copyrights in musical works sold or exchanged by a taxpayer described in section 1221(a)(3). Thus, if a taxpayer who owns a musical composition or copyright in a musical work created by the taxpayer (or transferred to the taxpayer by the work's creator in a section 1221(a)(3)(C) transferred basis transaction) elects the application of this provision, gain or loss from the sale or exchange of the musical composition or copyright is treated as capital gain or loss.

### Explanation of Provisions

This temporary regulation provides rules regarding the time and manner for making an election under section 1221(b)(3) to treat gain or loss from the sale or exchange of certain musical compositions or copyrights in musical works as gain or loss from the sale or exchange of a capital asset.

### 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 this regulation. For application of the Regulatory Flexibility Act (5 U.S.C. Chapter 6) please refer to the cross reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section

7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of these regulations is Jamie Kim of the Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

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

Income taxes, Reporting and recordkeeping requirements.

**Amendments to the Regulations**

■ Accordingly, 26 CFR part 1 is 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 1.1221–3T is added to read as follows:

**§ 1.1221–3T Time and manner for electing capital asset treatment for certain self-created musical works (temporary).**

(a) *Description.* Section 1221(b)(3) allows an electing taxpayer to treat the sale or exchange of a musical composition or copyright in a musical work created by the taxpayer's personal efforts (or having a basis determined by reference to the basis of such property in the hands of a taxpayer whose personal efforts created such property) as the sale or exchange of a capital asset. As a consequence, gain or loss from the sale or exchange is treated as capital gain or loss. An election may be made for sales and exchanges in taxable years beginning after May 17, 2006.

(b) *Time and manner for making the election.* An election described in this section is made separately for each musical composition (or copyright in a musical work) sold or exchanged during the taxable year. An election must be made on or before the due date (including extensions) of the income tax return for the taxable year of the sale or exchange. An election is to be made on Schedule D, ''Capital Gains and Losses,'' of the appropriate income tax form (for example, Form 1040, ''U.S. Individual Income Tax Return;'' Form 1065, ''U.S. Return of Partnership Income;'' Form 1120, ''U.S. Corporation Income Tax Return'') by treating the sale or exchange as the sale or exchange of a capital asset, in accordance with the form and its instructions.

(c) *Revocability of election.* An election described in this section is revocable with the consent of the Commissioner. To seek consent to revoke an election, a taxpayer must submit a request for a letter ruling under the appropriate revenue procedure. See, for example, Rev. Proc. 2007–1, 2007–1 CB 1 (updated annually). Alternatively, an automatic extension of 6 months from the due date of the taxpayer's income tax return (excluding extensions) is granted to revoke an election, provided the taxpayer timely filed the taxpayer's income tax return and, within this 6-month extension period, the taxpayer files an amended income tax return that treats the sale or exchange as the sale or exchange of property that is not a capital asset. See § 601.601(d)(2)(ii)(*b*) of this Chapter.

(d) *Effective/applicability date.* (1) The rules of this section apply to sales and exchanges in taxable years beginning after May 17, 2006.

(2) *Expiration date.* This section expires on February 7, 2011.

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

Approved: January 28, 2008.

**Eric Solomon,**

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

[FR Doc. E8–2309 Filed 2–7–08; 8:45 am]

BILLING CODE 4830–01–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R01–OAR–2007–1054; A–1–FRL–8524–9]**

## Approval and Promulgation of Air Quality Implementation Plans; Maine; Transportation Conformity

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision establishes transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures. The intended effect of this action is to approve State criteria and procedures to govern transportation conformity determinations. This action is being taken in accordance with the Clean Air Act.

**DATES:** This direct final rule will be effective April 8, 2008, unless EPA receives adverse comments by March 10, 2008. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R01–OAR–2007–1054 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: arnold.anne@epa.gov.*
3. *Fax:* (617) 918–0047.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2007–1054'', Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.
5. *Hand Delivery or Courier. Deliver your comments to:* Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R01–OAR–2007–1054. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov,* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you

submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency; the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017.

**FOR FURTHER INFORMATION CONTACT:** Donald O. Cooke, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1668, fax number (617) 918–0668, e-mail *cooke.donald@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose
A. What Is Transportation Conformity?
B. Transportation Conformity Provisions of SAFETEA–LU
II. State Submittal
III. Final Action
IV. Statutory and Executive Order Reviews

## I. Background and Purpose

On October 3, 2007, the State of Maine submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of a new regulation ''Chapter 139 Transportation Conformity'' to implement Section 176(c)(4)(E) of the Clean Air Act as amended (42 U.S.C. 7401, *et seq.*), with respect to the conformity of transportation plans, programs and projects which are developed, funded, or approved by the United States Department of Transportation (U.S. DOT), and by Metropolitan Planning Organizations (MPOs) or other recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (Title 49 U.S.C. Chapter 53).

### *A. What Is Transportation Conformity?*

Transportation conformity is required under Section 176(c) of the Clean Air Act to ensure that Federally supported highway, transit projects, and other activities are consistent with (''conform to'') the purpose of the SIP. Conformity currently applies to areas that are designated nonattainment, and those redesignated to attainment after 1990 (maintenance areas) with plans developed under section 175A of the Clean Air Act, for the following transportation related criteria pollutants: Ozone, particulate matter ($PM_{2.5}$ and $PM_{10}$), carbon monoxide (CO), and nitrogen dioxide ($NO_2$). Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS). The transportation conformity regulation is found in 40 CFR part 93 and provisions related to conformity SIPs are found in 40 CFR 51.390.

### *B. Transportation Conformity Provisions of SAFETEA–LU*

On August 10, 2005, the ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users'' (SAFETEA–LU) was signed into law. SAFETEA–LU revised a number of aspects related to section 176(c) of the Clean Air Act's transportation conformity provisions. One of the changes was to streamline the requirements for conformity SIPs. Prior to SAFETEA–LU being signed into law, states were required to address all of the Federal conformity rule's provisions in their conformity SIPs. Most of the sections of the Federal rule were required to be copied verbatim from the Federal rule into a state's SIP, as previously required under 40 CFR 51.390(d).

Under SAFETEA–LU, states are required to address and tailor only three sections of the conformity rule in their conformity SIPs. These three sections of the Federal rule which must meet a state's individual circumstances are: 40 CFR 93.105, which addresses consultation procedures; 40 CFR 93.122(a)(4)(ii), which requires that written commitments be obtained for control measures that are not included in a Metropolitan Planning Organization's transportation plan and transportation improvement program prior to a conformity determination, and that such commitments be fulfilled; and, 40 CFR 93.125(c) which requires that written commitments be obtained for mitigation measures prior to a project level conformity determination, and that project sponsors must comply with such commitments. In general, states are no longer required to submit conformity SIP revisions that address the other sections of the conformity rule. This provision took effect on August 10, 2005, when SAFETEA–LU was signed into law.

## II. State Submittal

Maine's ''Chapter 139: Transportation Conformity,'' includes provisions addressing: applicability; definitions; priority of projects; consultation roles, responsibilities, and procedures; public notice; and project-level mitigation and control measures.

We have reviewed Maine's submittal to assure consistency with the current Clean Air Act, as amended by SAFETEA–LU, and EPA regulations (40 CFR part 93 and 40 CFR 51.390) governing state procedures for transportation conformity and interagency consultation and have concluded that the submittal is approvable. Specifically, Maine's rule adequately addresses the three sections of the Federal rule discussed above.

## IV. Final Action

EPA is approving Maine's ''Chapter 139 Transportation Conformity,'' and incorporating this regulation into the Maine SIP.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision

should relevant adverse comments be filed. This rule will be effective April 8, 2008 without further notice unless the Agency receives relevant adverse comments by March 10, 2008.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 8, 2008 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Because this rule approves pre-existing 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 8, 2008. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 24, 2008.

**Ira W. Leighton,**

*Acting Regional Administrator, EPA New England.*

■ Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

## Subpart U—Maine

■ 2. Section 52.1020 is amended by adding paragraph (c)(64) to read as follows:

### § 52.1020 Identification of plan.

* * * * *

(c) * * *

(64) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on October 3, 2007.

(i) Incorporation by reference.

(A) Maine Administrative Procedure Act (MAPA) 1 Form which provides certification that the Attorney General approved Chapter 139 ''Transportation Conformity,'' as to form and legality, dated September 10, 2007.

(B) Chapter 139 of the Maine Department of Environmental Protection Regulations, ''Transportation Conformity,'' effective in the State of Maine on September 19, 2007.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

■ 3. In § 52.1031, Table 52.1031 is amended by adding a new entry for state citation Chapter 139 to read as follows:

**§ 52.1031 EPA-approved Maine regulations.**

* * * * *

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

| State citation | Title/subject | Date adopted by State | Date approved by EPA | Federal Register citation | 52.1020 |
|---|---|---|---|---|---|
| * | * | * | * | * | * |
| 139 ..... | Transportation Conformity ..... | 9/19/07 | 2/08/08 | [Insert Federal Register page number where the document begins]. | (c) 64 |
| * | * | * | * | * | * |

Note.—1. The regulations are effective statewide unless stated otherwise in comments section.

[FR Doc. E8–2247 Filed 2–7–08; 8:45 am]
BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 70

**[EPA–R07–OAR–2007–0829; FRL–8526–2]**

### Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Kansas

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a revision to the Kansas State Implementation Plan (SIP) for the purpose of revoking the Sulfur Compound Emissions rule and for the purpose of approving revisions to the Class I major source operating permit annual emissions inventory rule and several Class II minor source operating permits rules.

EPA is also approving an additional submittal by the State of Kansas pertaining to amendments of the Class II operating permit rules which were amended by the Kansas Department of Health and Environment (KDHE) on February 20, 1998, but had not previously been submitted for EPA approval. In addition, EPA is approving a revision to the Class II operating permit rules adopted in 2005. The Class II operating permit rules were primarily revised to align the annual emission inventory reporting date deadline with the June 1 payment of Annual Emissions Fee rule.

EPA approval will ensure consistency between the state and the Federally-approved rules.

**DATES:** This direct final rule will be effective April 8, 2008, without further notice, unless EPA receives adverse comment by March 10, 2008. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–0829, by one of the following methods:

1. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
2. E-mail: *grier.gina@epa.gov*.
3. Mail: Gina Grier, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. Hand Delivery or Courier. Deliver your comments to Gina Grier, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

*Instructions:* Direct your comments to Docket ID No. EPA–R07–OAR–2007–0829. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Gina Grier at (913) 551–7078 or by e-mail at *grier.gina@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?

What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is the Part 70 operating permits program?
What is the Federal approval process for an operating permits program?
What is being addressed in this document?
Have the requirements for approval of a SIP revision and a Part 70 revision been met?
What action is EPA taking?

**What is a SIP?**

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

**What is the Federal approval process for a SIP?**

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

**What does Federal approval of a state regulation mean to me?**

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

**What is the Part 70 operating permits program?**

The CAA Amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or $PM_{10}$; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state operating permits program are also subject to public notice, comment, and our approval.

**What is the Federal approval process for an operating permits program?**

In order for state regulations to be included in the Federally-enforceable Title V operating permits program, states must formally adopt regulations consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the approved operating permits program. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 502 of the CAA, including revisions to the state program, are included in the Federally-approved operating permits program. Records of such actions are maintained in the CFR at Title 40, part 70, appendix A, entitled ''Approval Status of State and Local Operating Permits Programs.''

**What is being addressed in this document?**

*Revocation of Sulfur Compounds Emissions Rule*

EPA is approving the revocation of the Kansas for Sulfur Compound Emissions rule, K.A.R. 28–19–22. The rule, which is related to emissions of sulfur compounds, and was originally adopted in 1972, established limitations for sulfur oxides emissions from primary nonferrous (i.e., lead and zinc) smelters, and prohibited emission or combustion of process gas streams (such as those found at petroleum refineries) containing hydrogen sulfide above the specified limits. Subsequent to the adoption of this rule and its inclusion into the SIP, the lead and zinc smelters in Kansas subject to this rule have ceased to operate, and refineries once potentially subject to this rule are now subject to more stringent requirements for sulfur emissions under the new source performance standards (NSPS).

The Kansas Department of Health and Environment has determined that the sulfur rule may be revoked without adverse impact on air quality.

EPA's review of the material submitted indicates the state has amended the air quality rules in accordance with the requirements of the Clean Air Act. State action to revoke the sulfur rule and to change the inventory

regulations does not impair its ability to protect the NAAQS. Language in both 1998 and 2005 permit-by-rule revisions was clarified and rearranged but there were no substantive changes of the requirements. We have reviewed the information submitted by Kansas in support of this determination and agree with this conclusion.

*Revisions to Class I and Class II Operating Permit Rules for 1998 and 2005 Submissions*

Six of the regulations proposed for amendment consist of the operating permit regulations principally concerning the emission inventory requirements, and permit-by-rules which include a due date for inventory submittals. The time for filing the reports was set in the 1998 amendments as June 1 of each year.

In the 2005 revisions for Class II permit-by-rule regulations, K.A.R. 28–19–561 through 28–19–563, changes were made so that these rules were consistent with the provisions of the Class II inventory regulation, K.A.R. 28–19–546. (*i.e.*, instead of specifying the due date in the permit-by-rule regulations, the regulations will now reference the date set by K.A.R. 28–19–546, so that only one rule will require revision to accomplish the change.) This reference changed the submittal date back to April 1 of each year, to decrease the short-term surge of combined Class I and Class II submittals and alleviate the workload for KDHE staff.

The 2005 revision to K.A.R. 28–19–517, annual emissions inventories for the Class I operating permits clarifies that under the circumstance that June 1 falls on a weekend or holiday, the deadline for application submittal will fall on the next business day (Title V).

The 2005 revision to K.A.R. 28–19–542, reporting requirements for sources operating under a permit-by-rule has been updated to cross-reference a recently adopted permit-by-rule, K.A.R. 28–19–564. EPA previously approved rule K.A.R. 28–19–564 (SIP).

In the 1998 revision, K.A.R. 28–19–546, annual emission inventory, requirements for Class II operating permits was amended to change the annual emissions inventory reporting date for owners and operators of stationary sources operating under Class II operating permits from April 1 to June 1, to comply with the change in the payment date from April 1 to June 1 (SIP). The 2005 revision was revised to modify the date from June 1 back to April 1. The rule also clarified that if April 1 falls on a weekend or holiday, the deadline for application submittal will fall on the next business day (SIP).

The 1998 revision to K.A.R. 28–19–561, reciprocating engines under a permit-by-rule, was amended to change the annual emissions inventory reporting date for owners and operators of stationary sources operating under Class II operating permits from April 1 to June 1, and include language to define the time period requirements for record retention. K.A.R. 28–19–546 was revised to change the date back to April 1 and additional amendments were made to clarify that the requirements to develop compliance plans are not triggered by paperwork violations, but only by the operation of a source at a level exceeding the defined levels of the regulation (SIP).

In the 2005 revision to K.A.R. 28–19–561, reciprocating engines, K.A.R. 28–19–546 was referenced and changes stipulate that the requirements will apply to stationary reciprocating engines with a capacity equal to or greater than 730 horsepower, 550 kilowatts, or 5.1 million Btu per hour fuel input. A source with less capacity shall be presumed to have a potential-to-emit less than 100 tons of regulated pollutant per year (SIP).

In the 1998 revisions for K.A.R. 28–19–562, organic solvent evaporative sources under a permit-by-rule, was amended to change the annual emissions inventory reporting date for owners and operators of stationary sources operating under Class II operating permits from April 1, to June 1, and include language to define the time period requirements for record retention (SIP). In the 2005 revisions, K.A.R. 28–19–562, organic solvent evaporative sources order was rearranged, but the emission levels and requirements of the rule were retained (SIP). K.A.R. 28–19–546 was also referenced.

In the revisions for 1998 K.A.R. 28–19–563, hot asphalt facilities permit-by-rule was amended to change the annual emissions inventory reporting date for owners and operators of stationary sources operating under Class II operating permits from April 1, to June 1, and include language to define the time period requirements for record retention (SIP). In the 2005 revisions, K.A.R. 28–19–546 was revised to change the date submittal back to April 1 and the rule was rearranged, but the emission levels and requirements of the rule were retained (SIP).

The 2005 revisions for Class II permit-by-rule regulations were changed to make these rules consistent with the provisions of the Class II inventory regulation. Grammatical revisions are also proposed to better conform to the Department of Administration's requirements.

While not a part of the SIP, and therefore not a component of this SIP revision, it should be noted that the Class III operating permit regulations (K.A.R. 28–19–575 through 578) were also revoked and the revocation was part of the same hearing as for these SIP regulations.

**Have the requirements for approval of a SIP revision and a Part 70 revision been met?**

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria or 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the Technical Support Document that is part of this docket, the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations. Finally, the submittal met the substantive requirements of Title V of the 1990 CAA Amendments and 40 CFR part 70.

EPA's review of the material submitted indicates the state has amended the air quality rules in accordance with the requirements of the Clean Air Act. Revisions to revoke the sulfur rule and to change the inventory regulations do not interfere with attainment of the NAAQS. Language in the permit-by-rule revisions was rearranged but had no substantive changes of the requirements.

**What action is EPA taking?**

We are processing this action on the State's amendments to the SIP approved rules and the 40 CFR part 70 operating permit program as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

**Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves

state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP and Title V submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 8, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

*40 CFR Part 70*

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: January 28, 2008.

**John B. Askew,**

*Regional Administrator, Region 7.*

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart R—Kansas

■ 2. In § 52.870 the table in paragraph (c) is amended by:

■ a. Removing the entry for K.A.R. 28–19–22 under Processing Operation Emissions;

■ b. Revising the entries for K.A.R. 28–19–542; 28–19–546, 28–19–561; 28–19–562 and 28–19–563 to read as follows:

**§ 52.820 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED KANSAS REGULATIONS

| Kansas citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control | | | | |
| * | * | * | * | * |
| Class II Operating Permits | | | | |
| * | * | * | * | * |
| K.A.R. 28–19–542 | Permit-By-Rule | 09/23/2005 | 02/08/2008 [*insert FR page number where the document begins*]. | |
| Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control | | | | |

EPA-APPROVED KANSAS REGULATIONS—Continued

| Kansas citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * * * | | * * | * |
| K.A.R. 28–19–546 | Annual Emission Inventory | 09/23/2005 | 02/08/2008 [*insert FR page number where the document begins*]. | |
| K.A.R. 28–19–561 | Permit-by-Rule; Reciprocating Engines | 09/23/2005 | 02/08/2008 [*insert FR page number where the document begins*]. | |
| K.A.R. 28–19–562 | Permit-by-Rule; Organic Solvent Evaporative Sources. | 09/23/2005 | 02/08/2008 [*insert FR page number where the document begins*]. | |
| K.A.R. 28–19–563 | Permit-by-Rule; Hot Mix Asphalt Facilities | 09/23/2005 | 02/08/2008 [*insert FR page number where the document begins*]. | |
| * | * * * | | * * | * |

* * * * *

## PART 70—[AMENDED]

■ 3. The authority citation for part 70 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

■ 4. Appendix A to part 70 is amended by adding paragraph (d) under ''Kansas'' to read as follows:

### Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Kansas

* * * * *

(d) The Kansas Department of Health and Environment submitted for program approval rule K.A.R. 28–19–517 on January 27, 2006. The state effective date was September 23, 2005. This revision to the Kansas program is approved effective April 8, 2008.

* * * * *

[FR Doc. E8–2189 Filed 2–7–08; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2002–0201; FRL–8342–4]**

## Inert ingredients: Denial of Pesticide Petitions 2E6491 (N-Acyl Sarcosines and Sodium N-Acyl Sarcosinates), 7E4810 (Crezasin), and 7E4811 (Mival)

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

**ACTION:** Final rule.

**SUMMARY:** EPA is denying three petitions to amend or establish exemptions from pesticide tolerances because insufficient data were available to the Agency to make the safety finding of FFDCA section 408(c)(2): PP 2E6491 submitted by Hampshire Chemical Corporation to amend the inert ingredient tolerance exemption under 40 CFR 180.1207 for certain N-acyl sarcosines and sodium N-acyl sarcosinates, and PP 7E4810 (Crezasin) and PP 7E4811 (Mival) submitted by Globe Tech Industries Corporation to establish an inert ingredient tolerance exemption under § 180.920.

**DATES:** This regulation is effective February 8, 2008. Objections and requests for hearings must be received on or before April 8, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2002–0201. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Martin, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–2857; e-mail address: *martin.kathleen@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to, those engaged in the following activities:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be

affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document?*

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

*C. Can I File an Objection or Hearing Request?*

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2002–0201 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before April 8, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2002–0201, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

## II. Background

*A. What Action is the Agency Taking?*

1. Denial of Pesticide Petition 2E6491 (N-Acyl Sarcosines and Sodium N-Acyl Sarcosinates).

In December 1999, EPA established exemptions from the requirement of a tolerance at 40 CFR 180.1207 for residues of certain N-acyl sarcosines and sodium N-acyl sarcosinates when used as inert ingredients (surfactants) at levels not to exceed 10% in pesticide formulations containing glyphosate (64 FR 68044; December 6, 1999). The specific N-acyl sarcosines and sodium N-acyl sarcosinates were: N-oleoyl sarcosine (CAS 110-25-8); N-stearoyl sarcosine (CAS 142-48-3); N-lauroyl sarcosine (CAS 97-78-9); N-myristoyl sarcosine (CAS 52558-73-3); N-cocoyl sarcosine mixture (CAS 68411-97-2); N-methyl-N-(1-oxo-9-octodecenyl) glycine (CAS 3624-77-9); N-methyl-N-(1-oxooctadecyl) glycine (CAS 5136-55-0); N-methyl-N-(1-oxododecyl) glycine (CAS 137-16-6); N-methyl-N-(1-oxotetradecyl glycine (CAS 30364-51-3); and N-cocoyl sarcosine sodium salt mixture (CAS 61791-59-1).

In the **Federal Register** of September 18, 2002 (67 FR 58799) (FRL–7194–5), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 2E6491) by Hampshire Chemical Corporation. The petition requested that 40 CFR 180.1207, which pertains to the N-acyl sarcosines and sodium N-acyl sarcosinates listed in the previous paragraph, be amended to add pesticide formulations containing the active ingredients 2,4-D, atrazine, dicamba, and glufosinate ammonium; the existing tolerance exemption is limited to formulations containing glyphosate. No comments were received in response to the notice of filing.

In evaluating the petitioner's request (PP 2E6491), EPA determined that significant and important data were missing from the petitioner's submission. First, certain data submitted by the petitioner (e.g., acute, subchronic, and chronic toxicity) are inadequate and not acceptable. The data are unpublished, and no basic quality information (in compliance with Good Laboratory Practices) is provided, including when the studies were conducted. Second, the submitter did not provide adequate developmental and reproductive toxicity data. In making the FFDCA safety determination, EPA considers the validity, completeness, and reliability of the data that are available to the Agency (FFDCA sections 408(b)(2)(D) and 408(c)(2)(B)), and the available information concerning the special susceptibility of infants and children. If reproductive and developmental toxicity data are not available, or if such information is not available in the open literature, screening level reproductive and developmental toxicity data may be acceptable for assessing the special susceptibility of infants and children. For the sarcosines, EPA communicated with the petitioner regarding the developmental/reproductive toxicity data gap; no further information or data were received.

Because the safety finding, as required under FFDCA section 408(c)(2), could not be made due to insufficient data, EPA is denying the petitioner's request to amend the existing tolerance exemption for the N-acyl sarcosines and sodium N-acyl sarcosinates.

2. Denial of Pesticide Petitions 7E4810 (Crezasin) and 7E4811 (Mival).

In the **Federal Register** of December 2, 1997 (62 FR 63940) (FRL–5751–9), EPA issued two notices pursuant to section 408 of FFDCA, 21 U.S.C. 346a announcing the filing of pesticide petitions (PP 7E4810 and PP 7E4811) by Globe Tech Industries Corporation. The petitions requested that EPA establish inert ingredient tolerance exemptions under 40 CFR 180.920 for the use of Crezasin (PP 7E4810) and Mival (PP 7E4811) in pesticide formulations used on growing crops only.

In evaluating the petitioner's requests, EPA determined that significant and important data in the petitioner's submission were inadequate and not acceptable, including the residue chemistry and the description of the chemicals' product chemistry data. EPA has been unable to contact or locate the petitioner, Globe Tech Corporation, about the data deficiencies. In making the FFDCA safety determination, EPA considers the validity, completeness, and reliability of the data that are available to the Agency (FFDCA section 408(b)(2)(D) and 408(c)(2)(B)). Because the safety finding required under FFDCA section 408(b)(2) could not be

made due to insufficient data, EPA is denying the petitioner's request to establish inert ingredient tolerance exemptions under 40 CFR 180.920 for the use of Crezasin (PP 7E4810) and Mival (PP 7E4811).

*B. What is the Agency's Authority for Taking this Action?*

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.''

## III. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

*A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2002–0201 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 8, 2008.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564-6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to Public Information and Records Integrity Branch (PIRIB) for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA–HQ–OPP–2002–0201, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

*B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## IV. Statutory and Executive Order Reviews

This final rule denies a request to amend an exemption from tolerance under FFDCA section 408(d). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, 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). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled Federalism (64 FR 43255, August 10, 1999).

Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (59 FR 22951, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

### V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 28, 2008.

**Marty Monell,**

*Acting Director, Office of Pesticide Programs.*

[FR Doc. E8–2175 Filed 2–7–08; 8:45 am]

BILLING CODE 6560–50–S

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## GENERAL SERVICES ADMINISTRATION

## 41 CFR Part 102–42

**[FMR Amendment 2008–03; FMR Case 2008–102–1; Docket 2008-0001; Sequence 1]**

**RIN 3090–AI45**

## Federal Management Regulation; FMR Case 2008–102–2, Change in Consumer Price Index Minimal Value

**AGENCY:** Office of Governmentwide Policy, General Services Administration, (GSA).

**ACTION:** Final rule.

**SUMMARY:** Public Law 95–105 requires that at 3-year intervals following January 1, 1981, minimal value for foreign gifts be redefined by the Administrator of General Services, after consultation with the Secretary of State, to reflect changes in the Consumer Price Index for the immediately preceding 3-year period. The required consultation has been completed and the minimal value has been increased to mean $335 or less as of January 1, 2008.

**DATES:** *Effective Date*: This final rule is effective February 8, 2008.

*Applicability Date:* January 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Holcombe, Director, Asset Management Policy Division (202) 501–3828 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FMR Amendment 2008–03, FMR Case 2008–102–1.

**SUPPLEMENTARY INFORMATION:**

### A. Executive Order 12866

The General Services Administration (GSA) has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

### B. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501–3520.

### D. Small Business Reform Act

This final rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

### List of Subjects in 41 CFR Part 102–42

Excess government property, Government property management.

Dated: January 27, 2008.

**Lurita Doan,**

*Administrator of General Services.*

■ For the reasons set forth in the preamble, GSA amends 41 CFR part 102–42 as set forth below:

## PART 102–42—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

■ 1. The authority citation for 41 CFR part 102–42 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 5 U.S.C. 7342.

**§ 102–42.10 [Amended]**

■ 2. Amend § 102–42.10, in the definition of *Minimal value*, by removing ''$305'' and adding ''$335'' in its place.

[FR Doc. E8–2359 Filed 2–7–08; 8:45 am]

BILLING CODE 6820–14–S

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 65

**[Docket No. FEMA–B–7761]**

### Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

**DATES:** These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Assistant Administrator of FEMA reconsider the changes. The modified BFEs may be changed during the 90-day period.

**ADDRESSES:** The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

**SUPPLEMENTARY INFORMATION:** The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001, *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by the other Federal, State, or regional entities. The changes BFEs are in accordance with 44 CFR 65.4.

*National Environmental Policy Act.* This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

*Regulatory Classification.* This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

*Executive Order 12988, Civil Justice Reform.* This interim rule meets the applicable standards of Executive Order 12988.

### List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

## PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

**Authority** 42 U.S.C. 4001, *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

### § 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

| State and county | Location and case No. | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Arizona: Pinal | City of Casa Grande (07–09–1769P). | November 14, 2007; November 21, 2007; *Copper Basin News.* | The Honorable Robert M. Jackson, Mayor, City of Casa Grande, 510 East Florence Boulevard, Casa Grande, AZ 85222. | December 5, 2007 | 040080 |
| Arizona: Yavapai | City of Prescott (07–09–1688P). | November 15, 2007; November 22, 2007; *Prescott Daily Courier.* | The Honorable Rowle Simmons, Mayor, City of Prescott, 201 South Cortez Street, Prescott, AZ 86303. | February 21, 2008 | 040098 |
| California: Alameda | City of Hayward (08–09–0157P). | November 21, 2007; November 28, 2007; *The Daily Review.* | The Honorable Michael Sweeney, Mayor, City of Hayward, 777 B Street, Hayward, CA 94541. | February 27, 2008 | 065033 |
| California: Riverside | City of Perris (07–09–0955P). | November 8, 2007; November 15, 2007; *The Press-Enterprise.* | The Honorable Daryl R. Busch, Mayor, City of Perris, 101 North D Street, Perris, CA 92570. | February 14, 2008 | 060258 |
| California: Riverside | Unincorporated areas of Riverside County (07–09–0955P). | November 8, 2007; November 15, 2007; *The Press-Enterprise.* | The Honorable John F. Tavaglione, Chairman, Board of Supervisors, Riverside County, 4080 Lemon Street, Fifth Floor, Riverside, CA 92501. | February 14, 2008 | 060245 |
| Colorado: Jefferson | City of Lakewood (07–08–0666P). | November 15, 2007; November 22, 2007; *The Golden Transcript.* | The Honorable Steve Burkholder, Mayor, City of Lakewood, Lakewood Civic Center South, 480 South Allison Parkway, Lakewood, CO 80226. | February 21, 2008 | 085075 |

| State and county | Location and case No. | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Connecticut: New Haven. | Town of Branford (07–01–0657P). | October 4, 2007; October 11, 2007; *New Haven Register*. | The Honorable Cheryl Morris, First Selectwoman, Town of Branford, 1019 Main Street, Branford, CT 06405. | September 19, 2007 ..... | 090073 |
| Florida: Duval ..... | City of Jacksonville (07–04–2369P). | November 12, 2007; November 19, 2007; *Jacksonville Daily Record*. | The Honorable John Peyton, Mayor, City of Jacksonville, City Hall at Saint James, Fourth Floor, 117 West Duval Street, Jacksonville, FL 32202. | February 19, 2008 ..... | 120077 |
| Florida: Okaloosa ..... | Unincorporated areas of Okaloosa County (07–04–4369P). | November 15, 2007; November 22, 2007; *Northwest Florida Daily News*. | Mr. James D. Curry, County Administrator, Okaloosa County, 1804 Lewis Turner Boulevard, Suite 400, Fort Walton Beach, FL 32547. | February 21, 2008 ..... | 120173 |
| Florida: Polk ..... | City of Davenport (07–04–5360P). | November 7, 2007; November 14, 2007; *The Polk County Democrat*. | The Honorable Peter Rust, Mayor, City of Davenport, P.O. Box 125, Davenport, FL 33836–0125. | October 29, 2007 ..... | 120410 |
| Georgia: Columbia ... | Unincorporated areas of Columbia County (07–04–4563P). | November 14, 2007; November 21, 2007; *Columubia County News-Times*. | The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809. | October 30, 2007 ..... | 130059 |
| Georgia: Coweta ..... | City of Newnan (07–04–4787P). | November 15, 2007; November 22, 2007; *The Times-Herald*. | The Honorable Keith Brady, Mayor, City of Newnan, City Hall, 25 LaGrange Street, Newnan, GA 30263. | February 21, 2008 ..... | 130062 |
| Georgia: DeKalb ..... | City of Atlanta (07–04–3101P). | November 14, 2007; November 21, 2007; *The Atlanta Journal and Constitution*. | The Honorable Shirley Franklin, Mayor, City of Atlanta, 55 Trinity Avenue, Suite 2500, Atlanta, GA 30303. | February 20, 2008 ..... | 135157 |
| Georgia: DeKalb ..... | City of Decatur (07–04–3101P). | November 14, 2007; November 21, 2007; *Dunwoody Crier*. | The Honorable Bill Floyd, Mayor, City of Decatur, P.O. Box 220, Decatur, GA 30031. | February 20, 2008 ..... | 135159 |
| Georgia: DeKalb ..... | Unincorporated areas of DeKalb County (07–04–3101P). | November 14, 2007; November 21, 2007; *Dunwoody Crier*. | The Honorable Burrell Ellis, Chairman, DeKalb County, Board of Commissioners, 1300 Commerce Drive, Decatur, GA 30030. | February 20, 2008 ..... | 130065 |
| Georgia: Murray ..... | Unincorporated areas of Murray County (07–04–2594P). | November 16, 2007; November 23, 2007; *The Dalton Daily Citizen*. | The Honorable Jim Welch, Murray County Commissioner, P.O. Box 1129, Chatsworth, GA 30705. | February 22, 2008 ..... | 130366 |
| Iowa: Linn ..... | City of Marion (07–07–1087P). | November 21, 2007; November 28, 2007; *Cedar Rapids Gazette*. | The Honorable John Nieland, Mayor, City of Marion, 195 35th Street, Marion, IA 52302. | February 27, 2008 ..... | 190191 |
| Iowa: Linn ..... | Unincorporated areas of Linn County (07–07–1087P). | November 21, 2007; November 28, 2007; *Cedar Rapids Gazette*. | The Honorable Linda Langston, Chairperson, Linn County Board of Supervisors, 930 First Street, Southwest, Cedar Rapids, IA 52404. | February 27, 2008 ..... | 190829 |
| Maine: Lincoln ..... | Town of Bristol (07–01–0799P). | November 8, 2007; November 15, 2007; *The Lincoln County News*. | The Honorable Chad Hanna, Chairman, Board of Selectmen, Town of Bristol, P.O. Box 147, Bristol, ME 04539. | October 23, 2007 ..... | 230215 |
| Massachusetts: Bristol. | Town of Easton (07–01–0531P). | November 9, 2007; November 16, 2007; *The Easton Journal*. | The Honorable Colleen A. Corona, Chairman, Board of Selectmen, Town of Easton, 136 Elm Street, North Easton, MA 02356. | February 15, 2008 ..... | 250053 |
| Missouri: Greene ..... | Unincorporated areas of Greene County (07–07–1448P). | November 8, 2007; November 15, 2007; *Springfield News-Leader*. | The Honorable David Coonrod, Presiding Commissioner, Greene County, 933 North Robberson, Springfield, MO 65802. | February 14, 2008 ..... | 290782 |
| Missouri: Jackson .... | City of Lee's Summit (07–07–1867P). | November 23, 2007; November 30, 2007; *Lee's Summit Journal*. | The Honorable Karen Messerli, Mayor, City of Lee's Summit, 220 Southeast Green Street, Lee's Summit, MO 64063. | December 10, 2007 ..... | 290174 |
| Nebraska: Lancaster | City of Lincoln (07–07–0628P). | November 8, 2007; November 15, 2007; *Lincoln Journal Star*. | The Honorable Chris Beutler, Mayor, City of Lincoln, 555 South 10th Street, Second Floor, Room 208, Lincoln, NE 68508. | October 24, 2007 ..... | 315273 |
| Nevada: Clark ..... | Unincorporated areas of Clark County (07–09–1179P). | November 8, 2007; November 15, 2007; *Las Vegas Review-Journal*. | The Honorable Rory Reid, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89106. | February 14, 2008 ..... | 320003 |
| Nevada: Washoe ..... | Unincorporated areas of Washoe County (07–09–1314P). | November 14, 2007; November 21, 2007; *Reno Gazette-Journal*. | The Honorable Robert Larkin, Chair, Washoe County Board of Commissioners, P.O. Box 11130, Reno, NV 89520. | November 30, 2007 ..... | 320019 |
| New York: Rockland | Town of Clarkstown (07–02–0757P). | November 1, 2007; November 8, 2007; *Rockland County Times*. | The Honorable Alexander J. Gromack, Supervisor, Town of Clarkstown, 10 Maple Avenue, New City, NY 10956. | April 16, 2008 ..... | 360679 |
| North Carolina: Wake | Unincorporated areas of Wake County (06–04–C341P). | December 10, 2007; December 17, 2007; *The News and Observer*. | Mr. David C. Cooke, Manager, Wake County, 337 South Salisbury Street, Suite 1100, Raleigh, NC 27602. | December 3, 2007 ..... | 370368 |
| Oklahoma: Cleveland | City of Moore (07–06–1082P). | November 8, 2007; November 15, 2007; *The Norman Transcript*. | The Honorable Glenn Lewis, Mayor, City of Moore, 301 North Broadway, Moore, OK 73160. | February 14, 2008 ..... | 400044 |
| Oklahoma: Payne .... | City of Stillwater (07–06–0679P). | November 15, 2007; November 22, 2007; *Stillwater NewsPress*. | The Honorable Roger L. McMillan, Mayor, City of Stillwater, 723 South Lewis Street, Stillwater, OK 74076. | November 30, 2007 ..... | 405380 |

| State and county | Location and case No. | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Oklahoma: Payne | Unincorporated areas of Stillwater County (07–06–0679P). | November 15, 2007; November 22, 2007; *Stillwater NewsPress*. | The Honorable Gloria A. Hesser, County Commissioner, District No. 2, Stillwater, 315 West Sixth Street, Suite 203, Stillwater, OK 74074. | November 30, 2007 | 400493 |
| Oklahoma: Tulsa | City of Sand Springs (07–06–2114P). | November 15, 2007; November 22, 2007; *Tulsa World*. | The Honorable Robert L. Walker, Mayor, City of Sand Springs, P.O. Box 338, Sand Springs, OK 74063. | November 30, 2007 | 400211 |
| Oklahoma: Tulsa | Unincorporated areas of Tulsa County (07–06–2114P). | November 15, 2007; November 22, 2007; *Tulsa World*. | The Honorable Randi Miller, Chair, Tulsa County Board of Commissioners, 500 South Denver Avenue, Tulsa, OK 74103. | November 30, 2007 | 400462 |
| Pennsylvania: Chester. | Township of West Goshen (07–03–1259P). | November 15, 2007; November 22, 2007; *Daily Local News*. | The Honorable Robert White, Chairman, Board of Supervisors, West Goshen Township, 1025 Paoli Pike, West Chester, PA 19380–4699. | February 21, 2008 | 420293 |
| Pennsylvania: Montgomery. | Township of Lower Moreland (07–03–0583P). | November 8, 2007; November 15, 2007; *The Globe*. | The Honorable Kurt G. Mayer, President, Lower Moreland Township Commissioners, 640 Red Lion Road, Huntingdon Valley, PA 19006. | October 24, 2007 | 420702 |
| Pennsylvania: Montgomery. | Township of Plymouth (07–03–1103P). | November 14, 2007; November 21, 2007; *The Times Herald*. | The Honorable Alexander Fazzini, Chair, Plymouth Township Council, 700 Belvoir Road, Plymouth Meeting, PA 19462. | February 20, 2008 | 420955 |
| Puerto Rico: Puerto Rico. | Commonwealth of Puerto Rico (07–02–0993P). | November 15, 2007; November 22, 2007; *The San Juan Star*. | The Honorable Anibal Acevedo-Vila, Governor of Puerto Rico, P.O. Box 82, La Fortaleza, San Juan, PR 00901. | February 21, 2008 | 720000 |
| South Carolina: Lexington. | Town of Springdale (07–04–5295P). | November 8, 2007; November 15, 2007; *The Lexington County Chronicle*. | The Honorable Pat G. Smith, Mayor, Town of Springdale, 2915 Platt Springs Road, Springdale, SC 29170. | October 31, 2007 | 450138 |
| Texas: Collin | City of McKinney (07–06–1687P). | November 8, 2007; November 15, 2007; *McKinney Courier-Gazette*. | The Honorable Bill Whitfield, Mayor, City of McKinney, 222 North Tennessee Street, McKinney, TX 75069. | February 14, 2008 | 480135 |
| Texas: Collin | City of Plano (07–06–0629P). | November 8, 2007; November 15, 2007; *Plano Star Courier*. | The Honorable Pat Evans, Mayor, City of Plano, 1520 Avenue K, Plano, TX 75074. | October 31, 2007 | 480140 |
| Texas: Collin | Unincorporated areas of Collin County (07–06–1687P). | November 8, 2007; November 15, 2007; *McKinney Courier-Gazette*. | The Honorable Keith Self, Collin County Judge, Collin County Government Center, 210 South McDonald Street, Suite 626, McKinney, TX 75069. | February 14, 2008 | 480130 |
| Texas: Harris | Unincorporated areas of Harris County (07–06–1886P). | November 15, 2007; November 22, 2007; *Houston Chronicle*. | The Honorable Ed Emmett, Harris County Judge, 1001 Preston, Suite 911, Houston, TX 77002. | February 20, 2008 | 480287 |
| Texas: Kendall | Unincorporated areas of Kendall County (07–06–0875P). | November 16, 2007; November 23, 2007; *The Boerne Star*. | The Honorable Eddie John Vogt, Kendall County Judge, Kendall County Courthouse, 201 East San Antonio Street, Boerne, TX 78006. | November 29, 2007 | 480417 |
| Texas: Tarrant | City of Arlington (07–06–1545P). | October 11, 2007; October 18, 2007; *Arlington Star-Telegram*. | The Honorable Robert Cluck, Mayor, City of Arlington, 101 West Abram Street, Arlington, TX 76010. | September 28, 2007 | 485454 |
| Texas: Tarrant | City of Benbrook (07–06–1254P). | November 8, 2007; November 15, 2007; *Fort Worth Star-Telegram*. | The Honorable Jerry Dittrich, Mayor, City of Benbrook, 911 Winscott Road, Benbrook, TX 76126. | February 14, 2008 | 480586 |
| Texas: Tarrant | City of Fort Worth (07–06–1254P). | November 8, 2007; November 15, 2007; *Fort Worth Star-Telegram*. | The Honorable Mike J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102. | February 14, 2008 | 480596 |
| Texas: Tarrant | City of Fort Worth (07–06–1675P). | November 8, 2007; November 15, 2007; *Fort Worth Star-Telegram*. | The Honorable Mike J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102. | February 14, 2008 | 480596 |
| Texas: Tarrant | City of Fort Worth (07–06–2141P). | November 8, 2007; November 15, 2007; *Fort Worth Star-Telegram*. | The Honorable Michael Moncrief, Mayor, City of Fort Worth, City Hall, 1000 Throckmorton Street, Fort Worth, TX 76102. | February 14, 2008 | 480596 |
| Texas: Tarrant | City of Fort Worth (07–06–2202P). | October 11, 2007; October 18, 2007; *Fort Worth Star-Telegram*. | The Honorable Michael Moncrief, Mayor, City of Fort Worth, City Hall, 1000 Throckmorton Street, Fort Worth, TX 76102. | January 17, 2008 | 480596 |
| Texas: Tarrant | Unincorporated areas of Tarrant County (07–06–1254P). | November 8, 2007; November 15, 2007; *Fort Worth Star-Telegram*. | The Honorable Glen Whitley, Tarrant County Judge, 100 East Weatherford Street, Suite 501, Fort Worth, TX 76196. | February 14, 2008 | 480582 |
| Texas: Tarrant | Unincorporated areas of Tarrant County (07–06–2141P). | November 8, 2007; November 15, 2007; *Fort Worth Star-Telegram*. | The Honorable Glen Whitley, Tarrant County Judge, 100 East Weatherford Street, Suite 501, Fort Worth, TX 76196. | February 14, 2008 | 480582 |
| Virginia: Montgomery | Unincorporated areas of Montgomery County (07–03–1077P). | November 8, 2007; November 15, 2007; *Roanoke Times*. | The Honorable Steve L. Spradlin, Chair, Montgomery County Board of Supervisors, 1553 Oilwell Road, Blacksburg, VA 24060. | February 14, 2008 | 510099 |
| Virginia: Wise | Town of Wise (07–03–1197P). | November 8, 2007; November 15, 2007; *The Coalfield Progress*. | The Honorable Clifton Carson, Mayor, Town of Wise, P.O. Box 1100, Wise, VA 24293. | February 14, 2008 | 510179 |

| State and county | Location and case No. | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Wisconsin: Columbia & Sauk. | City of Wisconsin Dells (07–05–4282P). | November 14, 2007; November 21, 2007; *Wisconsin Dells Events*. | The Honorable Eric Helland, Mayor, City of Wisconsin Dells, P.O. Box 655, Wisconsin Dells, WI 53965. | November 30, 2007 ..... | 550065 |
| Wisconsin: Milwaukee. | City of West Allis (07–05–4106P). | November 1, 2007; November 8, 2007; *Milwaukee Journal Sentinel*. | The Honorable Jeannette Bell, Mayor, City of West Allis, City Hall, Room 123, 7525 West Greenfield Avenue, West Allis, WI 53214. | October 18, 2007 ..... | 550285 |
| Wyoming: Sweetwater. | City of Rock Springs (07–08–0796P). | September 22, 2007; September 27, 2007; *Rock Springs Daily Rocket-Miner*. | The Honorable Timothy A. Kaumo, Mayor, City of Rock Springs, 212 D Street, Rock Springs, WY 82901. | October 1, 2007 ..... | 560051 |
| Wyoming: Sweetwater. | Unincorporated areas of Sweetwater County (07–08–0796P). | September 22, 2007; September 27, 2007; *Rock Springs Daily Rocket-Miner*. | The Honorable Wally Johnson, Chairman, Sweetwater County, Board of Commissioners, 80 West Flamingo Gorge Way, Green River, WY 82935. | October 1, 2007 ..... | 560087 |

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: January 25, 2008.

**David I. Maurstad,**

*Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. E8–2380 Filed 2–7–08; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 635

**RIN 0648–XF39**

## Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; inseason retention limit adjustment.

**SUMMARY:** NMFS has determined that the daily Highly Migratory Species (HMS) Angling category retention limits for Atlantic bluefin tuna (BFT) should be adjusted in order to prevent overharvest of the 2008 Angling category quota. Vessels permitted in the HMS Angling and HMS Charter/Headboat categories are eligible to land BFT under the HMS Angling category quota. This action is being taken to meet domestic management objectives for the BFT fishery.

**DATES:** Effective February 11, 2008, through December 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, 978–281–9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the Consolidated Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP) (71 FR 58058, October 2, 2006).

The 2008 BFT fishing year began on January 1, 2008, and ends December 31, 2008. The final 2008 BFT quota specifications and effort controls were published on December 31, 2007 (72 FR 74193). These final specifications established an Angling category retention limit of one school BFT (27 inches (68.6 cm) to less than 47 inches (199.4 cm)), and two large school/small medium BFT (i.e., two BFT measuring 47 inches (119.4 cm) to less than 73 inches (185.4 cm)) per vessel per day/trip. NMFS stated in the 2008 final specifications and effort controls that adjustments to the 2008 Angling category quotas and retention limits may be necessary once complete estimates from the Large Pelagics Survey (LPS) for the 2007 fishing year were available.

Final LPS 2007 fishing year estimates of the number of fish landed are now available, although mean weight estimates for each size class will not be available until late spring to calculate total landings (weight) and for comparison of landings to available subquotas. Pending availability of final average weight calculations from the 2007 fishing year, NMFS is proceeding with use of the average of 2004–2006 mean weights as proxies for 2007 mean weights, to reflect recent fishery conditions and reduce the effect of inter-annual variability of fish size that may result from varying retention limits, weather conditions, etc. This methodology results in recreational estimates, including LPS estimates and NC BFT Census Tagging Program data, of 100.9 mt of school BFT, 256.3 mt of large school BFT, and 105.7 mt of small medium BFT. Note that the final LPS estimates (in number of fish) indicate a substantial overharvest of the large school/small medium BFT subquota regardless of the reference time frame selected for use of proxy mean weights to calculate the final recreational landings (in tonnage). The estimated landings of large school/small medium BFT (362 mt) were more than twice the allocated subquota for that size range (144 mt). With total estimated recreational landings of 464.1 mt, the total Angling category quota of 269.2 mt also has been exceeded. However, due to the magnitude of the underharvest of the total available quota (which, for 2007, was 1,629 mt), no quota redistribution for the 2007 fishing year is necessary, nor is any adjustment of the Angling category quota for 2008. Specifically, total commercial and recreational landings for the 2007 fishing year were 656.7 mt, resulting in an underharvest of 997.5 mt, which exceeds substantially the amount the United States was allowed to carry forward to the 2008 fishing year (i.e., 595 mt, one half of the U.S. base quota).

Despite the availability of overall quota, it is necessary for NMFS to use this best available information to take prompt action to avoid overharvest in 2008, to remain in accordance with the Consolidated HMS FMP and implement quota specifications, and address concern for the biological impact of overharvesting smaller size classes of BFT on the stock, which is classified as overfished. Therefore, to reduce large school/small medium BFT landings for 2008, NMFS is taking action through an inseason retention limit adjustment, described below.

Under § 635.23(b)(3), NMFS may increase or decrease the HMS Angling

category daily retention limit based on the criteria provided in § 635.27(a)(8). As discussed above, the determination to adjust the retention limit is primarily based on the catches of large school/small medium BFT in 2007 and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii)), and the anticipated availability of large school/small medium BFT on the fishing grounds § 635.27(a)(8)(ix). NMFS anticipates that reduction of the retention limit for large school/small medium BFT will result in landings during 2008 that would not exceed the available subquota (183.4 mt) as set in the 2008 quota specifications (72 FR 74193, December 31, 2007).

**Daily Retention Limits**

Pursuant to this action and the final 2008 BFT specifications, noted above, the BFT daily retention limit per vessel for the HMS Angling category and the HMS Charter/Headboat category (while fishing recreationally) is one BFT measuring 27 inches (68.6 cm) to less than 47 inches (119.4 cm), and one BFT measuring 47 inches (119.4 cm) to less than 73 inches (185.4 cm). In the case of multi-day trips, the daily limit applies. This action does not change the annual Angling category limit of one large medium or giant BFT (73 inches (185.4 cm) or greater) per vessel.

**Monitoring and Reporting**

NMFS selected the daily retention limit to apply for the remainder of 2008, or until changed, after examining current and previous fishing year catch and effort rates, taking into consideration public comment on the annual specifications, and analyzing the available quota for the 2008 fishing year. NMFS will continue to monitor the BFT fishery closely through dealer landing reports, the Automated Landings Reporting System, state harvest tagging programs in North Carolina and Maryland, and the LPS. Depending on the level of fishing effort, NMFS may determine that additional retention limit adjustments are necessary prior to December 31, 2008. Closures or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access the internet at www.hmspermits.gov, for updates on quota monitoring and retention limit adjustments.

**Classification**

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action. LPS Angling category estimates and NC recreational census data, recently made available, indicate an overharvest of the Angling category quota in 2007, particularly the large school/small medium BFT subquota. An adjustment to the daily retention limit for large school/small medium BFT is warranted. Delaying this action would be contrary to the public interest because it could result in insufficient reduction of large school/small medium BFT landings and could result in more restrictive actions being needed later in the season (such as seasonal closures). Further, for fishing trip planning purposes, NMFS seeks to provide as much notice as possible about the fishing regulations that will apply during the active portion of the fishing year (beginning in late spring) so that anglers and charter/headboat operators can plan their fishing trips accordingly.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness of this action.

This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: February 5, 2008.

**Emily H. Menashes**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E8–2349 Filed 2–7–08; 8:45 am]

BILLING CODE 3510–22–S

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 070213033–7033–01]**

**RIN 0648–XF52**

## Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel by Vessels in the Amendment 80 Limited Access Fishery in the Eastern Aleutian District and Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Atka mackerel for vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District and Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allowance of the 2008 Atka mackerel allowable catch (TAC) specified for vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District and Bering Sea subarea of the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), February 5, 2008, through 1200 hrs, A.l.t., September 1, 2008.

**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.

The A season allowance of the 2008 Atka mackerel TAC allocated to vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District and Bering Sea subarea of the BSAI is 3,654 metric tons (mt) as established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007) and revision (72 FR 71802, December 19, 2007). See § 679.20(a)(8)(ii)(A) and § 679.91(c)(4).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allowance of the 2008 Atka mackerel TAC allocated to vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District and Bering Sea subarea of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,644 mt and is setting aside the remaining 10 mt as incidental catch to support other groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel by vessels participating in the Amendment 80 limited access fishery in the Eastern

Aleutian District and Bering Sea subarea of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Atka mackerel by vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District and Bering Sea subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 4, 2008.

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 § 679.91 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: February 5, 2008.

**Emily H. Menashes**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 08–567 Filed 2–5–08; 12:10 pm]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 73, No. 27
Friday, February 8, 2008

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

### 9 CFR Part 201

**RIN 0580–AB01**

### Swine Contractors

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We propose to add ''swine contractors'' to the list of regulated entities subject to specific regulations under the Packers and Stockyards Act (the P&S Act). In 2002, Congress added swine contractors as entities regulated under the P&S Act. The specific regulations we propose to amend prohibit regulated entities from circulating misleading reports about market conditions or prices. We also propose to amend regulations that address inspection of business records and facilities, information that regulated entities are required to share with the Secretary of Agriculture, and USDA's responsibility to refrain from unauthorized disclosure of that information. The goal of these regulations is to ensure fairness in the marketing of livestock, meat, and poultry. Adding swine contractors to specific regulations under the P&S Act will assist swine contractors and swine production contract growers with determining which regulations apply to them. Adding swine contractors to specific regulations will also make it easier for GIPSA to identify potential violations and to enforce the provisions of the P&S Act and regulations.

**DATES:** We will consider comments we receive by April 8, 2008.

**ADDRESSES:** We invite you to submit comments on this proposed rule. You may submit comments by any of the following methods:

- E-Mail: Send comments via electronic mail to *comments.gipsa@usda.gov.*
- Mail: Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643–S, Washington, DC 20250–3604.
- Fax: Send comments by facsimile transmission to: (202) 690–2173.
- Hand Delivery or Courier: Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643–S, Washington, DC 20250–3604.
- Federal e-Rulemaking Portal: Go to *http://www.regulation.gov.* Follow the on-line instruction for submitting comments.

*Instructions:* All comments should make reference to the date and page number of this issue of the **Federal Register**.

*Background Documents:* Regulatory analyses and other documents relating to this action will be available for public inspection in Room 1643–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604 during regular business hours.

*Read Comments:* All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)). Please call the GIPSA Management Support Services staff at (202) 720–7486 to arrange a public inspection of comments.

**FOR FURTHER INFORMATION CONTACT:** S. Brett Offutt, Director, Policy and Litigation Division, P&SP, GIPSA, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720–7363, *s.brett.offutt@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

The Grain Inspection, Packers and Stockyards Administration (GIPSA) enforces the Packers and Stockyards (P&S) Act of 1921 (the P&S Act). Under authority granted the Secretary of Agriculture (Secretary) and delegated to us, we are authorized (7 U.S.C. 228) to make those regulations necessary to carry out the provisions of the P&S Act.

The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) amended the P&S Act to define and add ''swine contractors'' as a regulated entity. A swine contractor is defined as ''any person engaged in the business of obtaining swine under a swine production contract for the purpose of slaughtering the swine or selling the swine for slaughter, if (A) the swine is obtained by the person in commerce; or (B) the swine (including products from the swine) obtained by the person is sold or shipped in commerce.'' ((7 U.S.C. 182 (12))

Adding swine contractors to specific regulations under the P&S Act will assist swine contractors and swine production contract growers with determining which regulations apply to them. It will also make it easier for GIPSA to identify potential violations and enforce the provisions of the P&S Act and regulations.

## Description of Proposed Changes

We now propose to amend the following regulations (9 CFR part 201) under the P&S Act to add the words ''swine contractors'' to the list of those subject to the regulations:

- Section 201.53 Persons subject to the Act not to circulate misleading reports about market conditions or prices.
- Section 201.94 Information as to business; furnishing of by packers, live poultry dealers, stockyard owners, market agencies, and dealers.
- Section 201.95 Inspection of business records and facilities.
- Section 201.96 Unauthorized disclosure of business information prohibited.

The proposed modification to § 201.53 would inform swine contractors that they are prohibited from knowingly making, issuing, or circulating false or misleading reports, records, or representations about market conditions, about prices, or about the sale of livestock, meat, or live poultry. The proposed modification to § 201.94 would require swine contractors to furnish the Secretary or his duly authorized representatives, if requested by such representatives, with business information required in order to carry out provisions of the P&S Act and regulations in 9 CFR part 201. The proposed modification to § 201.95 would require swine contractors to permit authorized representatives of the Secretary to enter their places of business to examine and copy business records, and to inspect facilities. The proposed modification to § 201.96 would prohibit agents or employees of the United States from disclosing a swine contractor's business information without the consent of the swine contractor, except in the specific circumstances listed in § 201.96.

**Options Considered**

We considered not making these regulatory changes and continuing to protect the interests of swine producers indirectly through regulation of packers, dealers, and market agents. However, that option would not reflect the intent of Congress in amending the P&S Act to give the Secretary authority over swine contractors. We have the authority and the responsibility to directly regulate swine contractors. We could also take legal action against a swine contractor for alleged violations of the P&S Act without amending the regulations. However, that action would not clearly inform all swine contractors and swine production contract growers about the requirements that apply to swine contractors. Issuing the proposed regulations would make it clear to swine contractors and swine production contract growers which parts of the regulations apply to them, and would make it easier for GIPSA to identify potential violators and to enforce provisions of the P&S Act.

**Effects on Regulated Entities**

If we implement these regulatory changes, swine contractors will have to open their business records and facilities to authorized representatives of GIPSA upon request. Some swine contractors may have to change their policies to allow access and to accommodate GIPSA representatives. We are not requiring that new information or records be kept by swine contractors, unless existing information or records are false or misleading about market conditions, prices, or sales of livestock, meat, or live poultry. This proposed rule would give swine contractors assurance that business information examined by GIPSA will be kept confidential, except under specific circumstances. Furthermore, swine production contract growers will be given increased assurance of fair treatment by swine contractors.

**Executive Order 12866 and Regulatory Flexibility Act**

The Office of Management and Budget (OMB) has designated this rule as not significant for the purposes of Executive Order 12866.

We have determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). The proposed rule will affect swine contractors. Most of these entities are slaughterers or processors of swine with more than 500 employees and do not meet the applicable size standards for small entities in the Small Business Administration Regulations (13 CFR 121.201). A 2007 study of U.S. pork producers found that firms that market more than 50,000 head of swine per year account for nearly all of contracted swine production in the U.S.

In accordance with 5 U.S.C. 605 of the Regulatory Flexibility Act, we are not providing an initial regulatory flexibility analysis because this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Small swine production contract growers should benefit indirectly from the proposed amendments, which should provide fairness in the marketing of swine and swine products.

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act and we believe that it will not have a significant impact on a substantial number of small entities. We welcome comments on the cost of compliance with this rule, and particularly on the impact of this proposed rule on small entities. We also welcome comments on alternatives to the proposed rule that could achieve the same purpose with less cost or burden.

**Executive Order 12988**

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

**Paperwork Reduction Act**

This proposed rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). It does not involve collection of new or additional information by the federal government.

**E-Government Act Compliance**

GIPSA 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.

**List of Subjects in 9 CFR Part 201**

Confidential business information, Reporting and recordkeeping requirements, Stockyards, Trade practices.

For the reasons set forth in the preamble, we propose to amend 9 CFR part 201 to read as follows:

## PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

1. The authority citation for part 201 is revised to read as follows:

**Authority:** 7 U.S.C. 182, 222, and 228, and 7 CFR 2.22 and 2.81.

2. Revise § 201.53 to read as follows:

**§ 201.53 Persons subject to the Act not to circulate misleading reports about market conditions or prices.**

No packer, swine contractor, live poultry dealer, stockyard owner, market agency, or dealer shall knowingly make, issue, or circulate any false or misleading reports, records, or representation concerning the market conditions or the prices or sale of any livestock, meat, or live poultry.

3. Revise § 201.94 to revise the heading and to read as follows:

**§ 201.94 Information as to business; furnishing of by packers, swine contractors, live poultry dealers, stockyard owners, market agencies, and dealers.**

Each packer, swine contractor, live poultry dealer, stockyard owner, market agency, and dealer, upon proper request, shall give to the Secretary or his duly authorized representatives in writing or otherwise, and under oath or affirmation if requested by such representatives, any information concerning the business of the packer, swine contractor, live poultry dealer, stockyard owner, market agency, or dealer, or which may be required in order to carry out the provisions of the Act and regulations in this part within such reasonable time as may be specified in the request for such information.

4. Revise § 201.95 to read as follows:

**§ 201.95 Inspection of business records and facilities.**

Each stockyard owner, market agency, dealer, packer, swine contractor, and live poultry dealer, upon proper request, shall permit authorized representatives of the Secretary to enter its place of business during normal business hours and to examine records pertaining to its business subject to the Act, to make copies thereof and to inspect the facilities of such persons subject to the Act. Reasonable accommodations shall be made available to authorized representatives of the Secretary by the stockyard owner, market agency, dealer, packer, swine contractor, or live poultry dealer for such examination of records and inspection of facilities.

5. Revise § 201.96 to read as follows:

**§ 201.96 Unauthorized disclosure of business information prohibited.**

No agent or employee of the United States shall, without the consent of the stockyard owner, market agency, dealer, packer, swine contractor, or live poultry dealer concerned, divulge or make known in any manner, any facts or information regarding the business of such person acquired through any examination or inspection of the business or records of the stockyard owner, market agency, dealer, packer, swine contractor, or live poultry dealer, or through any information given by the stockyard owner, market agency, dealer, packer, swine contractor, or live poultry dealer pursuant to the Act and regulations, except to such other agents or employees of the United States as may be required to have such knowledge in the regular course of their official duties or except insofar as they may be directed by the Administrator or by a court of competent jurisdiction, or except as they may be otherwise required by law.

**James E. Link,**

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. E8–2376 Filed 2–7–08; 8:45 am]

**BILLING CODE 3410–KD–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0147; Directorate Identifier 2007–NM–294–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes, Equipped with CFM56–7 Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 737–600, –700, and –800 series airplanes. The existing AD currently requires repetitive inspections to detect damage of the aft strut insulation blanket, and eventual replacement of the insulation blankets with new, improved blankets. This proposed AD would add airplanes to the applicability and require installation of a new heat insulation blanket and new cover plate on the left and right side engine struts. This proposed AD would not retain the requirements of the existing AD and would terminate the requirements of the existing AD. This proposed AD results from reports of damaged heat insulation blankets on the engine struts. We are proposing this AD to prevent exposure of the lower surface of the strut to extreme high temperatures, consequent creation of a source of fuel ignition, and increased risk of an uncontrollable fire and possible fuel tank explosion.

**DATES:** We must receive comments on this proposed AD by March 24, 2008.

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

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

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

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Kathrine Rask, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0147; Directorate Identifier 2007–NM–294–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

### Discussion

On February 4, 1999, we issued AD 99–04–11, amendment 39–11035 (64 FR 6791, February 11, 1999), for certain Boeing Model 737–600, –700, and –800 series airplanes. That AD requires repetitive inspections to detect damage of the aft strut insulation blanket. That AD also requires eventual replacement of the insulation blankets with new, improved blankets, which constitutes terminating action for the requirements of that AD. That AD resulted from reports of damaged aft strut insulation blankets. We issued that AD to prevent such damage, which could result in exposure of the lower surface of the strut to extreme high temperatures, consequent creation of a source of fuel ignition, and increased risk of an uncontrollable fire and possible fuel tank explosion.

### Actions Since Existing AD Was Issued

Since we issued AD 99–04–11, we have received reports of failures of the insulation blankets that were installed in accordance with the requirements of that AD. A failed heat insulation blanket might go undetected in that area.

### Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 737–54–1045, dated July 25, 2007. The service bulletin describes procedures for installing a new heat insulation blanket, P/N S315A213–57, and a new cover plate on the left and right side engine struts. 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 develop on

other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 99–04–11 and require accomplishing the actions specified in the service bulletin described previously. This proposed AD would also add Model 737–700C and –900 series airplanes to the applicability.

### Costs of Compliance

There are about 2,148 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 740 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The average labor rate is $80 per work hour.

ESTIMATED COSTS

| Action | Work hours | Parts | Cost per airplane | Fleet cost |
|---|---|---|---|---|
| Installation (new proposed action) | 4 | $4,730 | $5,050 | $3,737,000 |

### 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 39–11035 (64 FR 6791, February 11, 1999) and adding the following new airworthiness directive (AD):

**Boeing:** Docket No. FAA–2008–0147; Directorate Identifier 2007–NM–294–AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by March 24, 2008.

**Affected ADs**

(b) This AD supersedes AD 99–04–11.

**Applicability**

(c) This AD applies to Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 737–54–1045, dated July 25, 2007.

**Unsafe Condition**

(d) This AD results from reports of damaged heat insulation blankets on the engine struts. We are issuing this AD to prevent exposure of the lower surface of the strut to extreme high temperatures, consequent creation of a source of fuel ignition, and increased risk of uncontrollable fire and possible fuel tank explosion.

**Compliance**

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

**Installation**

(f) Within 60 months after the effective date of this AD, install a new heat insulation blanket, P/N S315A213–57, and a new cover plate on the left and right side engine struts in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–54–1045, dated July 25, 2007.

**Parts Installation**

(g) As of the effective date of this AD, no person may install a heat insulation blanket, P/N S315A213–42 or –47, on any airplane.

**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 January 31, 2008.

**Ali Bahrami,**

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

[FR Doc. E8–2351 Filed 2–7–08; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2008–0148; Directorate Identifier 2007–NM–299–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747 Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all Boeing Model 747 airplanes. This proposed AD would require a one-time inspection of certain fuselage skins at section 41 to find any external doublers that cover the inspection areas and to identify the external doublers that end on a stringer and those that do not, and related investigative and corrective actions if necessary. This proposed AD results from reports of cracks found at fastener locations in the fuselage skins at section 41. We are proposing this AD to detect and correct fuselage skin cracks at fastener locations along the skin-to-stringer attachments, which could join together and become large and consequently result in rapid decompression of the cabin.

**DATES:** We must receive comments on this proposed AD by March 24, 2008.

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

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

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

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** 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 send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0148; Directorate Identifier 2007–NM–299–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

### Discussion

We have received two reports of cracks found at fastener locations in the fuselage skins at section 41. One operator reported finding skin cracks at a fastener location at stringer 5 (S–5) near station (STA) 365, on a Model 747–200F series airplane. These cracks were found during incorporation of the skin modification specified in Boeing Service Bulletin 747–53–2272. The cracks were 0.25 inch long and located on the forward and aft side of the fastener hole. The airplane had accumulated 13,726 total flight cycles. In the other report, multiple skin cracks were found during Boeing Model 747–400 series airplane fatigue testing. That test article had accumulated 40,000 test cycles. The cracks were found at locations where there are no internal doublers, at stringers 10 and 13, and between STA 260 and STA 300. Fuselage skin cracks at fastener locations along the skin-to-stringer attachments, if not corrected, could join together and become large and consequently result in rapid decompression of the cabin.

### Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–53A2704, dated October 4, 2007. The service bulletin describes procedures for doing a one-time general visual inspection of certain fuselage skins at section 41 to find any external doublers that cover the inspection area and to identify the external doublers that end on a stringer and those that do not; and related investigative and corrective actions if necessary. The related investigative actions include the following:

- Removing any external doubler and doing a one-time detailed inspection and an open-hole high frequency eddy current (HFEC) inspection for any crack in the skin at the skin-to-stringer attachments, for an inspection area where the skin-to-stringer attachment is covered by an external doubler that ends on a stringer in the inspection area.
- Doing repetitive external HFEC inspections for any crack in the skin at the skin-to-stringer attachments, for an inspection area where the skin-to-stringer attachment is not covered by an external doubler.

For the one-time general visual inspection, one-time detailed inspection, one-time open-hole HFEC inspection, and the initial external HFEC inspection, the service bulletin specifies a compliance time of 16,000 or 25,000 total flight cycles depending on the airplane configuration, or 2,000 flight cycles after the date on the service bulletin, whichever occurs later. The service bulletin also specifies that if a skin panel was replaced, the inspection threshold for the affected area can be calculated from the time it was replaced. For the repetitive external HFEC inspections, the service bulletin specifies a repeat interval of 3,000 flight cycles.

The corrective actions include repairing any crack found in an inspection area, and installing a new external doubler where any external doubler has been removed from the inspection area. The service bulletin specifies accomplishing the corrective actions before further flight.

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

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se) same type design(s). This proposed AD would require accomplishing the actions specified in the service

information described previously, except as discussed under ''Differences Between the Proposed AD and Service Bulletin.''

**Differences Between Proposed AD and Service Bulletin**

Although Figure 19 of the service bulletin specifies doing a ''detailed visual inspection'' of the fastener holes, this proposed AD would require doing a ''detailed inspection.''

This proposed AD expands the inspection area at certain skin-to-stringer attachments. In Figure 3 of the service bulletin, S–5 and S–5A from STA 340 to STA 360 should be bold in the illustration to include those areas as part of the recommended inspection (similar to Figure 8 for the right side). Also, in Figure 15 of the service bulletin, S–14A from STA 200 to STA 220 should be bold in the illustration to include that area as part of the recommended inspection (similar to Figure 17 for the right side). Boeing is aware of these discrepancies, concurs with the changes, and has issued Information Notice (IN) 747–53A2704 IN 01, dated December 19, 2007, to inform operators of the errors. We have included this information in paragraph (g) of this proposed AD.

**Clarification of Proposed Requirements**

The service bulletin notes that, at locations where external doublers exist that do not end on a stringer in the inspection area, repetitive inspections of the skin for cracking at critical rows of fasteners are required in accordance with Boeing Document Number D6–36181, ''Repair Assessment Guidelines—Model 747.'' These inspections would not be required by this AD, since compliance is already required by sections 91.410, 121.370, 125.248, and 129.32 of the Federal Aviation Regulations (14 CFR 91.410, 121.370, 125.248, and 129.32).

**Costs of Compliance**

We estimate that this proposed AD would affect 165 airplanes of U.S. registry. We also estimate that it would take up to 64 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $844,800 or $5,120 per product.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

We determined that this 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.

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

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

Air transportation, Aircraft, Aviation safety, 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:

**Boeing:** Docket No. FAA–2008–0148; Directorate Identifier 2007–NM–299–AD.

**Comments Due Date**

(a) We must receive comments by March 24, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to all 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.

**Unsafe Condition**

(d) This AD results from reports of cracks found at fastener locations in the fuselage skins at section 41. We are issuing this AD to detect and correct fuselage skin cracks at fastener locations along the skin-to-stringer attachments, which could join together and become large and consequently result in rapid decompression of the cabin.

**Compliance**

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

**Repetitive Inspections and Related Investigative/Corrective Actions**

(f) At the applicable compliance times specified in Tables 1 and 2 of paragraph 1.E. of Boeing Alert Service Bulletin 747–53A2704, dated October 4, 2007: Do a general visual inspection of the fuselage skins at section 41 to find any external doublers that cover the inspection area and to identify the external doublers that end on a stringer in the inspection area and those that do not, and do all the related investigative and corrective actions as applicable, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of the service bulletin, except as provided by paragraph (g) of this AD. Repeat the related investigative actions thereafter at the interval specified in Tables 1 and 2 of the service bulletin, as applicable.

**Exceptions to the Service Bulletin**

(g) Where Tables 1 and 2 of paragraph 1.E. of Boeing Alert Service Bulletin 747–53A2704, dated October 4, 2007, specify counting the compliance time from ''* * * after the date on this service bulletin,'' this AD requires counting the compliance time from the effective date of this AD. Where Figure 19 of the service bulletin specifies doing a ''detailed visual inspection'' for any crack at fastener holes common to the stringer, this AD would require doing a detailed inspection. In Figure 3 of the service bulletin, also inspect the areas at stringer 5 (S–5) and S–5A between station (STA) 340 and STA 360 (similar to Figure 8 for the right side). In Figure 15 of the service bulletin, also inspect the area at S–14A between STA 200 and STA 220 (similar to Figure 17 for the right side).

**Alternative Methods of Compliance (AMOCs)**

(h)(1) The Manager, Seattle Aircraft Certification Office, FAA, *ATTN:* Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, 1601 Lind Avenue, SW., Renton,

Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

(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 January 31, 2008.

**Ali Bahrami,**

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

[FR Doc. E8–2352 Filed 2–7–08; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0149; Directorate Identifier 2007–NM–319–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 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 certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposed AD would require replacing the existing straight-to-90-degree hose assembly for the Lavatory ''A'' water supply. The replacement is a new straight hose assembly and a separate 90-degree elbow fitting. This proposed AD results from a report of a separated hose assembly for the passenger water system. We are proposing this AD to prevent a water leak into the flight deck ceiling, which could result in an electrical short and possible loss of several functions essential to safe flight.

**DATES:** We must receive comments on this proposed AD by March 24, 2008.

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

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

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

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** 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 send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0149; Directorate Identifier 2007–NM–319–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

### Discussion

We have received a report of a separated hose assembly for the passenger water system. The hose assembly supplies potable water through a 90-degree end fitting to Lavatory ''A.'' The break occurred at the 90-degree end fitting when the elbow separated at a soldered joint adjacent to the hose assembly sleeve. The break was located just above and inside the flight deck entry door, and resulted in water spilling into the flight deck ceiling, which affected various radios and the Aircraft Communications Addressing and Reporting System (ACARS) and caused them to become inoperative. These affected parts had to be replaced due to water damage. An analysis of the broken hose assembly showed signs of previous small leaks. It was concluded that an incompletely soldered joint failed and consequently separated. A broken hose assembly in this location, if not corrected, could leak into the flight deck ceiling and result in an electrical short and possible loss of several functions essential to safe flight.

### Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737–38A1054, dated August 23, 2007. The service bulletin describes procedures for replacing the existing straight-to-90-degree hose assembly for the Lavatory ''A'' water supply. The replacement is a new straight hose assembly and a separate 90-degree elbow fitting.

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

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other airplanes of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously.

### Costs of Compliance

We estimate that this proposed AD would affect 779 airplanes of U.S. registry. We also estimate that it would take between 4 and 7 work-hours per airplane to comply with this proposed AD, depending on the airplane configuration. The average labor rate is $80 per work-hour. Required parts would cost about $400 per product. Based on these figures, we estimate the

cost of this proposed AD to the U.S. operators to be between $560,880 and $747,840, or between $720 and $960 per product.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866,
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

**Boeing**: Docket No. FAA–2008–0149; Directorate Identifier 2007–NM–319–AD.

**Comments Due Date**

(a) We must receive comments by March 24, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737–38A1054, dated August 23, 2007.

**Unsafe Condition**

(d) This AD results from a report of a separated hose assembly for the passenger water system. We are issuing this AD to prevent a water leak into the flight deck ceiling, which could result in an electrical short and possible loss of several functions essential to safe flight.

**Compliance**

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

**Replacement**

(f) Within 60 months after the effective date of this AD, replace the existing straight-to-90-degree hose assembly for the Lavatory ''A'' water supply with a new straight hose assembly and a separate 90-degree elbow fitting, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–38A1054, dated August 23, 2007.

**Parts Installation**

(g) As of the effective date of this AD, any hose assembly part having a part number identified in Table 1 of this AD must not be used in any location that is subject to the requirements of this AD. However, those parts may be used in other locations if not otherwise prohibited.

TABLE 1.—SPARE PARTS PROHIBITED FOR THIS AD

| Airplane group identified in Boeing Alert Service Bulletin 737–38A1054, dated August 23, 2007 | Existing part Nos. |
|---|---|
| 1 and 2 | 10–61998–430, AS4471–08–0401, or AS4471–08–0404. |
| 3 | 10–61998–25 or 10–60871–125. |
| 4 | 10–61998–31 or 10–60871–139. |

**Alternative Methods of Compliance (AMOCs)**

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Marcia Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6484; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

Issued in Renton, Washington, on January 31, 2008.

**Ali Bahrami,**

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

[FR Doc. E8–2353 Filed 2–7–08; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0151; Directorate Identifier 2007–NM–347–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 727 Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all Boeing Model 727 airplanes. This proposed AD would require repetitive inspections for any crack in the area of the elevator side fitting/hinge fitting joint and for any crack or elongation inside and outside of the holes in the clevis and in the lug, corrective actions if necessary, and other specified actions. This proposed AD results from reports of elongated holes and cracks found in the lugs of the attachment fittings of the elevator quadrant upper support assembly at the tip of the vertical fin. We are proposing this AD to detect and correct damage to the aft attachment lugs of the elevator quadrant support assembly that could lead to failure of the lugs. This condition could accelerate wear elsewhere in the elevator control system, which could reduce the crew's ability to maintain safe flight.

**DATES:** We must receive comments on this proposed AD by March 24, 2008.

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

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

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

## Examining the AD Docket

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

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

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0151; Directorate Identifier 2007–NM–347–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

## Discussion

We have received reports of elongated holes or cracks found in the lugs of the attachment fittings on three Boeing Model 727 airplanes. The attachment fittings are located on the left and right sides of the elevator quadrant upper support assembly at the tip of the vertical fin. In one incident, the lug was cracked completely through. The airplanes had accumulated between 28,385 and 72,448 total flight hours and between 16,387 and 47,485 total flight cycles. Damage to the aft attachment lugs of the elevator quadrant support assembly could lead to failure of the lugs. This condition, if not corrected, could accelerate wear elsewhere in the elevator control system, which could reduce the crew's ability to maintain safe flight.

## Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 727–55–0092, dated June 4, 2007. Part 2 of the Accomplishment Instructions of the service bulletin describes procedures for doing repetitive detailed inspections for any crack in the area of the elevator side fitting/hinge fitting joint, repetitive detailed inspections for elongation inside and outside of the holes in the clevis and in the lug, and high frequency eddy current (HFEC) inspections for any crack inside and outside of the holes in the clevis and in the lug. The service bulletin specifies doing these initial inspections within 18 months of the date on the service bulletin. The service bulletin also specifies repeating the inspections at intervals not to exceed 24 months, 4,000 flight hours, or 3,000 flight cycles, whichever occurs first, until the repair or modification specified in Part 3 of the Accomplishment Instructions is done.

The service bulletin also describes procedures for doing corrective actions if necessary. The corrective actions, which the service bulletin specifies doing before further flight, include the following actions:

- Repairing the elevator side fittings and hinge fittings as specified in Part 3 of the Accomplishment Instructions if any crack, or any hole diameter elongation over 0.3203 inch, is found during the inspections specified in Part 2 of the service bulletin. The repair includes oversizing the holes, fabricating new bushings, installing and in-line reaming the fabricated bushings through the entire stack-up, and installing the elevator side fittings.
- Replacing the bushings with fabricated bushings if any hole diameter elongation over 0.3203 inch is found during the inspections specified in Part 4 of the Accomplishment Instructions of the service bulletin.
- Contacting Boeing for repair instructions if any damage is beyond the repair limits or any crack is found in the area of the elevator side fitting/hinge fitting joint, during any inspection specified in Part 2 or Part 4 of the Accomplishment Instructions of the service bulletin.

The service bulletin also describes procedures for doing other specified actions, which include the following:

- Either installing the elevator side fittings and access panels and restoring the cable tension, or modifying the elevator side fittings and hinge fittings, if all of the holes are found acceptable during the inspections specified in Part 2 of the Accomplishment Instructions. The modification includes oversizing the holes, fabricating and installing new bushings, in-line reaming the fabricated bushings through the entire stack-up, and installing the elevator side fittings. The service bulletin specifies that the modification must be done in conjunction with the Part 2 detailed and HFEC inspections.
- After the repair or modification specified in Part 3 of the Accomplishment Instructions has been done, doing repetitive detailed inspections for any crack in the area of the elevator side fitting/hinge fitting joint and repetitive detailed inspections for elongation inside and outside of the holes in the clevis and in the lug as specified in Part 4 of the Accomplishment Instructions. The service bulletin specifies doing the

initial inspections within 24,000 flight hours or 16,000 flight cycles, whichever occurs first, after accomplishing the repair or modification specified in Part 3 of the service bulletin. The service bulletin also specifies repeating the inspections at intervals not to exceed 24,000 flight hours or 16,000 flight cycles, whichever occurs first.

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

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se) same type design(s). This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference between the Proposed AD and Service Bulletin.''

### Difference Between the Proposed AD and 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.

### Costs of Compliance

We estimate that this proposed AD would affect 401 airplanes of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $64,160 or $160 per product, 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 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.

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

**Boeing**: Docket No. FAA–2008–0151; Directorate Identifier 2007–NM–347–AD.

#### Comments Due Date

(a) We must receive comments by March 24, 2008.

#### Affected ADs

(b) None.

#### Applicability

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

#### Unsafe Condition

(d) This AD results from reports of elongated holes and cracks found in the lugs of the attachment fittings of the elevator quadrant upper support assembly at the tip of the vertical fin. We are issuing this AD to detect and correct damage to the aft attachment lugs of the elevator quadrant support assembly that could lead to failure of the lugs. This condition could accelerate wear elsewhere in the elevator control system, which could reduce the crew's ability to maintain safe flight.

#### Compliance

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

#### Repetitive Inspections and Corrective/Other Specified Actions

(f) At the applicable compliance times specified in paragraph 1.E. of Boeing Special Attention Service Bulletin 727–55–0092, dated June 4, 2007, except as provided by paragraph (g) of this AD: Do the detailed inspection for any crack in the area of the elevator side fitting/hinge fitting joint, detailed inspections for elongation inside and outside of the holes in the clevis and in the lug, and high frequency eddy current (HFEC) inspections for any crack inside and outside of the holes in the clevis and in the lug, and do all the applicable corrective actions and other specified actions, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of the service bulletin, except as provided by paragraph (h) of this AD. Repeat the inspections thereafter at the applicable intervals specified in paragraph 1.E. of the service bulletin. Accomplishing the repair or modification specified in Part 3 of the service bulletin only terminates the repetitive inspections specified in Part 2 of the service bulletin.

#### Exception to Compliance Times

(g) Where Boeing Special Attention Service Bulletin 727–55–0092, dated June 4, 2007, specifies counting the compliance time from ''* * * the date on this service bulletin,'' this AD requires counting the compliance time from the effective date of this AD.

#### Exception to Corrective Actions

(h) If any damage beyond the repair limits or any crack is found in the area of the elevator side fitting/hinge fitting joint during any inspection required by this AD, and Boeing Special Attention Service Bulletin 727–55–0092, dated June 4, 2007, specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

#### Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office, FAA, ATTN: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone

(425) 917–6577; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

(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 January 31, 2008.

**Ali Bahrami,**

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

[FR Doc. E8–2354 Filed 2–7–08; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0152; Directorate Identifier 2007–NM–348–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–400, –500, –600, –700, –700C, –800, and –900 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 certain Boeing Model 737–400, –500, –600, –700, –700C, –800, and –900 series airplanes. This proposed AD would require an inspection to determine the part and serial numbers of the windshield wiper motors for the pilot's and first officer's windshields, and the applicable corrective action. This proposed AD results from two reports that the left and right windshield wipers stopped working in flight. We are proposing this AD to prevent failure of the windshield wipers in wet weather, which could result in decreased visibility for the flightcrew.

**DATES:** We must receive comments on this proposed AD by March 24, 2008.

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

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

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

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Nick Wilson, 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) 917–6476; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0152; Directorate Identifier 2007–NM–348–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

### Discussion

We have received two reports that the left and right windshield wipers stopped working in flight. In one incident, the left and right windshield wiper motors stopped at the same time during a landing approach in wet weather. Investigation revealed that the power converter module for the windshield wipers was not properly soldered. Failure of the windshield wipers in wet weather, if not corrected, could result in decreased visibility for the flightcrew.

### Other Related Rulemaking

On October 2, 2003, we issued AD 2003–20–13, amendment 39–13331 (68 FR 58268, October 9, 2003), applicable to certain Boeing Model 737–400, –500, –600, –700, and –800 series airplanes. That AD requires either modification of the wiring to the windshield wiper motors in the flight compartment or replacement of those windshield wiper motor/converters with new motor/converters. That AD resulted from reports of the windshield motors stalling during flight. We issued that AD to prevent a reduction in flightcrew visibility due to stalled wiper motors during heavy precipitation and a period of substantial crew workload, which could result in damage to the airplane structure and injury to flightcrew, passengers, or ground personnel during final approach for landing. For certain airplanes, accomplishing the modification required by paragraph (b) of AD 2003–20–13 is acceptable for compliance with certain requirements of this proposed AD.

### Relevant Service Information

We have reviewed Boeing Service Bulletin 737–30A1057, Revision 1, dated October 31, 2007, for Model 737–600, –700, –700C, –800, and –900 series airplanes; and Boeing Alert Service Bulletin 737–30A1059, dated September 10, 2007, for Model 737–400 and –500 series airplanes. The service bulletins describe procedures for looking at the windshield wiper motors for the pilot's and first officer's windshields to determine the part number and serial number of the windshield wiper motors, and doing the applicable corrective action. The corrective actions include the following:

- Replacing the windshield wiper motor with an improved windshield wiper motor if the part and serial numbers cannot be read, or if the part and serial numbers are listed in

Appendix A of Rosemount Aerospace Service Bulletin 2313M–347/2313M–348–30–01, dated June 30, 2006, and the ''Module Replacement Completed (Yes/No)'' column is marked ''No.'' (The part number is identified as the model number in Appendix A of the Rosemount Aerospace service bulletin.)

• Changing the part number if the part and serial numbers are not listed in Appendix A of Rosemount Aerospace service bulletin, or if the part and serial numbers are listed in Appendix A of Rosemount Aerospace service bulletin and the ''Module Replacement Completed (Yes/No)'' column is marked ''Yes.''

The Boeing service bulletins refer to the Rosemount Aerospace service bulletin as an additional source of service information for determining whether the windshield wiper motor has been previously replaced and for changing the part number.

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

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se) same type design(s). This proposed AD would require accomplishing the actions specified in the service information described previously.

## Costs of Compliance

We estimate that this proposed AD would affect 767 airplanes of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the proposed inspection. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $61,360 or $80 per product.

## Authority for This Rulemaking

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

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

## Regulatory Findings

We determined that this 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.

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

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

**Boeing**: Docket No. FAA–2008–0152; Directorate Identifier 2007–NM–348–AD.

**Comments Due Date**

(a) We must receive comments by March 24, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to the Boeing airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Model 737–400 and –500 series airplanes as identified in Boeing Alert Service Bulletin 737–30A1059, dated September 10, 2007.

(2) Model 737–600, –700, –700C, –800, and –900 series airplanes as identified in Boeing Service Bulletin 737–30A1057, Revision 1, dated October 31, 2007.

**Unsafe Condition**

(d) This AD results from two reports that the left and right windshield wipers stopped working in flight. We are issuing this AD to prevent failure of the windshield wipers in wet weather, which could result in decreased visibility for the flightcrew.

**Compliance**

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

**Inspection and Corrective Actions if Necessary**

(f) Within 60 months after the effective date of this AD, inspect to determine the part number and serial number of the windshield wiper motors for the pilot's and first officer's windshields, and do all the applicable corrective actions, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–30A1059, dated September 10, 2007 (for Model 737–400 and –500 series airplanes); or Boeing Service Bulletin 737–30A1057, Revision 1, dated October 31, 2007 (for Model 737–600, –700, –700C, –800, and –900 series airplanes); as applicable. A review of airplane maintenance records is acceptable in lieu of the inspection if the part number and serial number of the windshield wiper motors can be conclusively determined from that review.

**Note 1:** The Boeing service bulletins refer to Rosemount Aerospace Service Bulletin 2313M–347/2313M–348–30–01, dated June 30, 2006, as an additional source of service information for determining whether the windshield wiper motor has been previously replaced and for changing the part number.

**Credit for Modification Done According to AD 2003–20–13**

(g) For Model 737–400, –500, –600, –700, and –800 series airplanes: Accomplishing the modification required by paragraph (b) of AD 2003–20–13, amendment 39–13331, is acceptable for compliance with the requirements of paragraph (f) of this AD, provided that no Rosemount Aerospace windshield wiper motor having part number (P/N) 2313M–347–3 or P/N 2313M–348–3 has been installed.

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

(h) For Model 737–600, –700, –700C, –800, and –900 series airplanes: Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–30A1057, dated October 6, 2006, are acceptable for compliance with the requirements of paragraph (f) of this AD.

**Parts Installation**

(i) As of the effective date of this AD, no person may install Rosemount Aerospace windshield wiper motors having P/N 2313M–347–3 or P/N 2313M–348–3 on any airplane.

**Alternative Methods of Compliance (AMOCs)**

(j)(1) The Manager, Seattle Aircraft Certification Office, FAA, ATTN: Nick Wilson, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6476; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

Issued in Renton, Washington, on January 31, 2008.

**Ali Bahrami,**

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

[FR Doc. E8–2355 Filed 2–7–08; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NM–33–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120, –120ER, –120FC, –120QC, and –120RT Airplanes

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

**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** This document revises an earlier proposed airworthiness directive (AD), applicable to all EMBRAER Model EMB–120 series airplanes, that would have required revising the airplane flight manual to include operational limitations for use of the autopilot, and installing two placards that advise the flight crew to check the pitch trim before descent. This new action would retain the original requirements, but with revised placard language. This new action would also require modifying the elevator trim system, which would terminate the requirements of the AD. The actions specified by this new proposed AD are intended to prevent pitch trim upsets if the pitch trim actuators jam or freeze, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by March 4, 2008.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–33–AD, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–33–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**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

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–33–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–33–AD, 1601 Lind Avenue SW., Renton, Washington 98057–3356.

### Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to all EMBRAER Model EMB–120 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on April 1, 2003 (68 FR 15684). That NPRM would have required revising the airplane flight manual to include operational limitations for use of the autopilot, and installing two placards that advise the flight crew to check the pitch trim before descent. That NPRM was prompted by pitch trim upsets during the autopilot-coupled descent phase of flight, which have been attributed to jammed or frozen pitch trim actuators. That condition, if not corrected, could result in reduced controllability of the airplane.

### New Relevant Service Information

The original NPRM cited EMBRAER Service Bulletin 120–25–0262, dated October 15, 2001, and Change 01, dated September 3, 2002, as the appropriate sources of service information for installing the placards. Since we issued the original NPRM, EMBRAER revised the service bulletin. Change 02, dated October 30, 2003, recommends revised

placard language that clarifies that the pitch trim system is to be checked only before the initial descent.

EMBRAER has issued Service Bulletins 120–27–0095 and 120–27–0096, both dated February 16, 2007, which describe procedures for modifying the elevator trim system. Service Bulletin 120–27–0095 describes procedures for replacing the elevator trim tab actuators with new ones that have been developed using corrosion-resistant internal materials and other improvements, including a damper coupled to one of the two actuators. Service Bulletin 120–27–0096 describes procedures for replacing some segments of the elevator trim tab control cables. The replacement segments have a different diameter, and have been developed to contribute to the new actuator dampening function specified in Service Bulletin 120–27–0095.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The Agência Nacional de Aviação Civil (ANAC), which is the airworthiness authority for Brazil, mandated the service information and issued Brazilian airworthiness directive 2001–06–01R4, effective August 23, 2007, to ensure the continued airworthiness of these airplanes in Brazil.

**Comments**

Due consideration has been given to the comments received in response to the original NPRM.

**Support for Original NPRM**

SkyWest Airlines concurs with the proposed requirement to revise the Limitations section of the Collins APS–65B Autopilot AFM Supplement. The Air Line Pilots Association (ALPA) concurs (conditionally, based on its comments as discussed below) with the proposed actions.

**Request for Appropriate Solution for Mechanical Problem**

ALPA asserts that the original NPRM would implement an operational fix to address a mechanical problem, and requests that we revise the original NPRM to adequately correct the unsafe condition. ALPA notes that the original NPRM addresses pitch trim actuators that freeze in position when moisture accumulates at colder temperatures. ALPA requests that the FAA and EMBRAER identify the extent of water intrusion in this area and look into a mechanical means to preclude the actuators from jamming. ALPA also notes that the original NPRM does not identify the cause of the jammed pitch trim actuators. ALPA explains that pitch trim actuators have become mechanically jammed on other EMBRAER aircraft due to insufficient power available from the actuator. If the cause of the jamming can be mechanical, ALPA requests that the FAA and the manufacturer identify a means to preclude such a failure.

We agree. In this supplemental NPRM, we consider the AFM revisions and placards to be interim solutions, and propose to also mandate the modifications described in Service Bulletins 120–27–0095 and 120–27–0096, which would terminate the proposed requirements to revise the AFM and install the placards.

**Assertion Regarding Jamming Conditions**

The commenter, Thomas Kuhlman, states that the original NPRM apparently assumes that all or most of the jamming occurs during cruise flight. Mr. Kuhlman instead asserts, based on the supportive data that accompany his comment, that the pitch trim actuator jamming can and does occur when moisture is present in freezing conditions.

Although Mr. Kuhlman makes no specific request regarding the original NPRM's proposed requirements, we agree with his rationale. When actuator internal frictions are within their normal specified ranges, the system can manage normal envelope load increases attributed to events such as speed variations and cold soak environment icing, so a jam attributable solely to a cold soak environment is unlikely. If contamination is gradually occurring inside the actuators, the proposed manual checks of the pitch trim systems on initial descent on every flight will inform the flight crew of degraded system performance, and affected actuators would then be removed before they reach a condition that could lead to a complete jam. In any event, as stated previously, we have revised this supplemental NPRM to require modifications that will adequately address the commenter's concerns.

**Request To Allow Autopilot Re-Engagement Under Certain Conditions**

SkyWest concurs with the proposed requirement in the original NPRM to revise the elevator trim jamming procedure specified in the flight controls failure paragraph of the AFM abnormal procedures section, but requests that we allow the flight crew to re-engage the autopilot once pitch trim is recovered. The commenter asserts that SkyWest's experience suggests that, once normal elevator trim operation was restored, continued use of the autopilot did not result in any abnormal operation.

We disagree. When free pitch trim is restored after jamming, the appropriate approach is to continue the flight manually without the autopilot and report the issue to maintenance, rather than re-engaging the autopilot, so the cause of the jam can be evaluated and corrected before further use of the autopilot. We have not changed the supplemental NPRM regarding this issue.

**Request To Revise AFM Normal Procedures**

SkyWest reports that its EMB–120 SOP already includes an advisory to check the pitch trim before initiating a descent if trim jamming is suspected. The commenter requests that we revise the original NPRM to include these revised procedures in the descent checklist in the AFM's normal procedures section.

We acknowledge that conducting such checks whenever a trim system jam is suspected is a reasonable practice. But conducting such manual checks of the pitch trim system at every flight before initial descent on autopilot is a more effective approach because it will detect jamming before it is suspected. We have not changed the supplemental NPRM regarding this issue.

**Request To Revise Placard Language**

SkyWest asserts that the placard language proposed in the original NPRM, which specifies a check before any (all) descents, will compromise the safe operation of Model EMB–120 airplanes. The commenter reports that it is not unusual to level off at intermediate altitudes four to eight times during descent from cruise altitude and approach, depending on cruise altitude, terminal area requirements, and type of approach. As a result, the proposed limitation would require the pilot to disconnect the autopilot during flight an equal number of times, including just before ILS glide slope intercept. The commenter requests that we change the proposed placard language to the following: ''Perform pitch trim system check prior to initial descent and anytime elevator trim jamming is suspected.'' According to the commenter, limiting the checks in this way would ensure that the check is completed at least once per flight (consistent with EMBRAER's recommendations from the 2002 World Wide Operators Conference), but mandating a check before every descent would create a distraction,

unnecessarily increase pilot workload, and compromise safety.

We partially agree. EMBRAER has revised the placard language to require trim system checks only before initial descent. Manually checking the system when jamming is suspected would be a natural reaction, so it is not necessary to add the extra requested words to the placard. We have revised paragraph (c) in this supplemental NPRM to mandate Change 02 of the service bulletin.

**Request To Remove Placard Requirement: Potential Pilot Distraction**

The commenter, Thomas Kuhlman, feels that the proposed requirement to test the trim system before every descent could result in little effect, or even decreased safety due to pilot distraction, during arrival procedures with multiple descents. He also notes that most precision approaches have a level flight segment just before glide slope intercept. The AD as proposed would require an elevator trim test at the critical glide slope intercept.

We infer the commenter wants us to remove the proposed requirement to install the placards. We partially agree. We agree with the manufacturer's recommendation to check the system manually before initial descent only. As we stated previously, the placard language has been revised in Change 02 of Service Bulletin 120–25–0262, and in corresponding paragraph (c) of this supplemental NPRM, to clarify that such checks are necessary only before the initial descent of every flight. Limiting the number of checks in this way would maintain the safety of the fleet and still address the commenter's concern about potential pilot distraction during critical phases of flight.

**Request To Remove Placard Requirement: Inadequate Solution**

The commenter, SkyWest Airlines, states that merely installing the placards as proposed in the original NPRM would not adequately address the problem of elevator trim jamming. The commenter notes that this procedure would be inconsistent with its findings: In the 18 months before the original NPRM was issued, there were ten incidents involving elevator trim jamming; of these, four occurred in the descent phase of flight, four occurred in the cruise phase of flight, and two occurred during climb to cruise altitude. The commenter concludes that advising the flight crew to perform a pitch trim check only during descent will not prevent problems associated with pitch upset.

We infer that the commenter wants us to require revised procedures during other phases of flight. We partially agree. We agree that the pitch trim can jam during any phase of flight. But while the data provided by SkyWest might reflect results for SkyWest, the fleet data suggest that most of the reported events occurred during the descent phase or during transition from cruise to descent. The possibility that a pitch trim jam can occur during any flight phase does not render the proposed approach ineffective. The multiple system checks will assist in reducing the possibility of a pitch oscillation event due to actuator performance degradation. Since the comment was submitted, we revised this supplemental NPRM to add the modifications of the elevator trim system, which will address the identified unsafe condition and eliminate the need for the placards.

**Explanation of Additional Changes to Original NPRM**

We have revised the applicability identified in the original NPRM to identify model designations as published in the most recent type certificate data sheet for the affected models.

To correspond with the ANAC AD, we have revised paragraph (b) of this supplemental NPRM to specify that the revised AFM language in that paragraph also be included in the Normal Procedures section (in addition to the Limitations section) of the autopilot system supplement.

**Conclusion**

Since certain changes described above expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

**Cost Impact**

The following table provides the estimated costs for U.S. operators to comply with this supplemental NPRM.

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts | Cost per product | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| AFM revisions | 1 | $80 | $0 | $80 | 103 | $8,240 |
| Placard installation | 2 | 80 | 182 | 342 | 103 | 35,226 |
| Actuator replacement | 7 | 80 | 16,670 | 17,230 | 103 | 1,774,690 |
| Cable replacement | 14 | 80 | 1,050 | 2,170 | 103 | 223,510 |

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Authority for This Rulemaking**

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

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

## Regulatory Impact

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that 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) if promulgated, 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. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Empresa Brasileira De Aeronautica S.A. (Embraer):** Docket 2003–NM–33–AD.

*Applicability:* All Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent pitch trim upsets if the pitch trim actuators jam or freeze, which could result in reduced controllability of the airplane, accomplish the following:

**Revision of Airplane Flight Manual (AFM): AFM–120/794**

(a) Within 100 flight hours after the effective date of this AD, revise the FAA-approved AFM, EMBRAER AFM–120/794, as specified in paragraphs (a)(1) and (a)(2) of this AD. These actions may be accomplished by inserting a copy of this AD into the AFM.

(1) Revise the FLIGHT CONTROLS FAILURES paragraph of the Abnormal Procedures section by replacing the existing ELEVATOR TRIM JAMMING procedure with the following:

''ELEVATOR TRIM JAMMING

| | |
|---|---|
| Control Wheel | Hold Firmly. |
| Autopilot | Disengage. |
| Airspeed | Reduce. |

**NOTE:** Minimum airspeed with flap 0°—160 KIAS

| | |
|---|---|
| Pitch trim command | Check all switches and elevator trim wheel. |

If pitch trim is recovered:
Re-trim the airplane and continue the flight with the autopilot disengaged, not exceeding the airspeed when the trim was recovered.
If pitch trim is not recovered:
Land at the nearest suitable airport.
Approach and landing configuration:

| | |
|---|---|
| Landing gear | Down. |
| Flaps | 25. |
| Airspeed | Vref25. |

*CAUTION:* DO NOT TRY TO RE-ENGAGE THE AUTOPILOT.''

(2) Revise the Normal Procedures section of the AFM, after the current checklist item for activating the FASTEN BELTS switch, by inserting the following:

''PITCH TRIM SYSTEM CHECK

| | |
|---|---|
| Control Wheel | Hold firmly. |
| Autopilot | Disengage. |
| Power Levers | As required. |
| Elevator Trim Wheels | As required. |

*CAUTION:* MANUALLY SET THE ELEVATOR TRIM WHEELS TO THE REQUIRED DESCENT ATTITUDE.

If any trim system binding (if trim wheel rotates more than one trim wheel index mark after being released), or abnormal trim operation is observed:

| | |
|---|---|
| Elevator Trim Jamming Procedure | Perform. |

*CAUTION:* DO NOT TRY TO RE-ENGAGE THE AUTOPILOT.

If no abnormal trim operation is observed:

| | |
|---|---|
| Flight Director Vertical Mode | As required. |
| Autopilot | Reengage.'' |

**AFM Revision: Collins APS–65B Autopilot AFM Supplement**

(b) Concurrently with the AFM revisions required by paragraph (a) of this AD, revise the Limitations section of the Collins APS–65B Autopilot System Supplement to include the following (this may be accomplished by inserting a copy of this AD into the AFM Supplement):

''(1) The autopilot must not be used during descent unless a trim check has been performed successfully prior to descent, as follows:

PITCH TRIM SYSTEM CHECK

| | |
|---|---|
| Control Wheel | Hold firmly. |

Autopilot ..... Disengage.
Power Levers ..... As required.
Elevator Trim Wheels ..... As required.

*CAUTION:* MANUALLY SET THE ELEVATOR TRIM WHEELS TO THE REQUIRED DESCENT ATTITUDE.

If any trim system binding (if trim wheel rotates more than one trim wheel index mark after being released), or abnormal trim operation is observed:

Elevator Trim Jamming Procedure ..... Perform.

*CAUTION:* DO NOT TRY TO RE-ENGAGE THE AUTOPILOT.

If no abnormal trim operation is observed:

Flight Director Vertical Mode ..... As required.
Autopilot ..... Reengage.

''(2) If an elevator trim jamming is detected during flight and the pitch trim system resumes normal operation on ground, only a ferry flight using a special permit may be performed to return the aircraft to a maintenance base for replacement of the actuators. In this case, the use of autopilot is prohibited.''

**Placard Installation**

(c) Within 300 flight hours after the effective date of this AD, install two placards on the glareshield, advising the flight crew to check the pitch trim before initial descent, in accordance with Part II of the Accomplishment Instructions of EMBRAER Service Bulletin 120–25–0262, Change 02, dated October 30, 2003.

**Elevator Trim System Modification**

(d) Within 36 months after the effective date of this AD, modify the elevator trim system, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 120–27–0095 and 120–27–0096, both dated February 16, 2007. Accomplishment of the modification terminates the requirements of paragraphs (a), (b), and (c) of this AD, and the corresponding AFM revisions and placards may be removed.

**Parts Installation**

(e) As of 36 months after the effective date of this AD, no person may install, on any airplane, an elevator trim tab actuator or control cable having a part number identified in Table 1 of this AD.

TABLE 1.—PROHIBITED PARTS

| Part | Part No. |
|---|---|
| Elevator trim tab actuator .. | 120–19685–001<br>120–19685–003<br>120–19685–007<br>120–38650–001<br>120–39205–001<br>5299<br>5299–1 |
| Control cable ..... | 120–27729–095<br>120–27729–097<br>120–31370–095<br>120–31370–097 |

**Alternative Methods of Compliance**

(f)(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.

**Note 1:** The subject of this AD is addressed in Brazilian airworthiness directive 2001–06–01R4, effective August 23, 2007.

Issued in Renton, Washington, on February 1, 2008.

**Ali Bahrami,**

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

[FR Doc. E8–2356 Filed 2–7–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 880

**[Docket No. 2007N–0484]**

## Devices: General Hospital and Personal Use Devices; Reclassification of Medical Device Data System

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

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to reclassify, on its own initiative, the Medical Device Data System (MDDS) from class III (premarket approval) to class I (general controls). This action does not include medical device data systems with new diagnostic or alarm functions. FDA is also proposing that the MDDS be exempt from the premarket notification requirements when it is indicated for use only by a healthcare professional and does not perform irreversible data compression.

**DATES:** Submit written or electronic comments on the proposed rule by May 8, 2008. Submit comments regarding information collection by March 10, 2008, to the Office of Management and Budget (OMB) (see **ADDRESSES**). FDA proposes that any final regulation based on this proposal become effective 60 days after its date of publication in the **Federal Register**. See section VIII of the **SUPPLEMENTARY INFORMATION** section of the preamble for further information about the effective date.

**ADDRESSES:** You may submit comments, identified by Docket No. 2007N–0484, by any of the following methods:

*Electronic Submissions*

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

*Written Submissions*

Submit written submissions in the followings 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.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket*: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the

''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

*Information Collection Provisions*: Submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs, OMB. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:**

Anthony D. Watson, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3700.

**SUPPLEMENTARY INFORMATION:**

## I. Background (Regulatory Authorities)

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513(a)(1) of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are:

- Class I (general controls),
- Class II (special controls), and
- Class III (premarket approval).

FDA refers to devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), as ''preamendment devices.'' FDA classifies these devices after it:

1. Receives a recommendation from a device classification panel (an FDA advisory committee);
2. Publishes the panel's recommendation for comment, along with a proposed regulation classifying the device; and
3. Publishes a final regulation classifying the device.

FDA has classified most preamendments devices under these procedures.

The agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

Reclassification of postamendment devices is governed by section 513(f)(3) of the act, formerly section 513(f)(2) of the act. This section provides that FDA may initiate the reclassification of a device classified into class III under section 513(f)(1) of the act, or the manufacturer or importer of a device may petition the Secretary of Health and Human Services for the issuance of an order classifying the device in class I or class II. FDA's regulations in 21 CFR 860.134 set forth the procedures for the filing and review of a petition for reclassification of such class III devices. In order to change the classification of the device, it is necessary that the proposed new classification have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

FDAMA added section 510(l) to the act. Section 510(l) of the act provides that a class I device is exempt from the premarket notification requirements under section 510(k) of the act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury. FDA refers to the criteria that designate a class I device as not exempt from premarket notification as ''reserved criteria.'' An exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting a premarket notification to FDA.

## II. Regulatory History of the Device

Computer-based and software-based products are subject to regulation as devices when they meet the definition of a device contained in section 201(h) of the act (21 U.S.C. 321(h)). In 1989, FDA prepared a general policy statement on how it planned to determine whether a computer-based product and/or software based product is a device and, if so, how FDA intended to regulate it. This document became known as the ''Draft Software Policy.'' The scope and intention of the 1989 policy were based on the existing state of computer and software technology at that time. That policy included the principle that the level of FDA oversight of software should depend primarily on the risk to the patient should the software fail to perform in accordance with its specifications.

Since 1989, the use of computer-based products and software-based products as medical devices has grown exponentially. In addition, device interconnectivity and complexity have grown in ways that could not have been predicted in 1989. This growth and expansion have created new considerations for elements of risk that did not previously exist. FDA realized that the Draft Software Policy was not adequate to address all of the issues related to the regulation of computer-based and software-based medical devices. Based on this history and the complexity and diversity of computer software, FDA decided it would be impractical to prepare one ''software'' or ''computer'' policy that would be able to address all the issues related to the regulation of computer- and software-based medical devices. Nonetheless, the principle that the level of FDA oversight of software should depend primarily on the risk to the patient should the software fail to perform in accordance with its specifications remains important. Many software classifications reflect this principle, including:

- FDA has classified software used in computer aided detection of cancerous lesions in the breast in class III;
- FDA has classified software used in computer tomography (CT) and X-ray systems to provide images to assist in clinical decisionmaking in class II; and
- FDA has classified laboratory information systems in class I.

This principle also informs this proposed reclassification, in which FDA is focusing on a category of post amendment computer- and software-based devices that present a low risk and should not be subject to premarket review that have not been classified elsewhere. An examination of modern medical device networks and computer infrastructure helped FDA to identify a category of computer based and software products that meet the definition of a device, which the FDA would consider to pose minimal risks, and that should not be Class III and should not require premarket submission. This medical device has been named a ''Medical Device Data System.''

## III. Device Description

A medical device data system (MDDS) is a device intended to provide one or more of the following uses:

- The electronic transfer or exchange of medical device data from a medical device, without altering the function or parameters of any connected devices. For example, this would include software that interrogates a ventilator every 15 minutes and transfers information about patient $CO^2$ levels to a central patient data repository;

• The electronic storage and retrieval of medical device data, without altering the function or parameters of connected devices. For example, this would include software that stores historical blood pressure information for later review by a healthcare provider;

• The electronic display of medical device data, without altering the function or parameters of connected devices. For example, this would include software that displays the previously stored electrocardiogram for a particular patient;

• The electronic conversion of medical device data from one format to another format in accordance with a preset specification. For example, this would include software that converts digital data generated by a pulse oximeter into a digital format that can be printed.

• Examples of medical device data systems that would be used in the home are systems that periodically collect data from glucose meters or blood pressure devices for later review by a healthcare provider.

Medical device data consist of numerical or other information available from a medical device in a form suitable for processing by computer. Medical device data can represent many types of information (e.g., clinical values, alarm conditions, error messages). MDDS are not intended or designed to provide any real time, active, or online patient monitoring functions. Medical device data systems can deliver and store alarm data but do not have the capability to display, create, or detect alarm conditions, or to actually sound an alarm. In particular, a MDDS can record the fact that an alarm sounded, but cannot by itself sound an alarm in response to patient information. Medical device data systems cannot create alarms that are not already present from the connected medical devices. By themselves, MDDS do not provide any diagnostic or clinical decision making functions. Medical device data systems can transmit, exchange, store, or retrieve data in its original format or can be used to convert the medical device data from one format to another so that the arrangement or organization of the medical device data is in accordance with preset specifications.

In developing its current regulatory strategy for MDDS, FDA considered how the risks presented by an MDDS compare to existing manual processes for managing these data. Hospitals, clinics, and other healthcare facilities are well-aware of the shortcomings of manual functions and have introduced other manual oversight to reduce their effects, such as audits of records and multiple-person checks of paperwork prior to treatments. These facilities have also introduced electronic systems to help reduce the human element in these errors. However, when data are being stored, retrieved, transferred, exchanged, or displayed electronically, an additional element of risk is introduced. This element of risk would not be present for a manual transfer of files or information because the information is readily apparent to the healthcare provider.

When manual data is converted to electronic form, data can be altered in such a way as to not be transparent to the user and pose a risk to the patient. In effect, even though manual functions have their risks (e.g., illegible handwriting, wrong charts, etc.), when these functions are automated, users tend to rely entirely on the technology because the technology is assumed to alleviate those risks. This is especially true when software systems are designed to interface with a number of unspecified medical devices. Thus, regulatory oversight of MDDS is critical to ensuring that there is an adequate expectation of performance.

It is FDA's long-standing practice to not regulate those manual office functions that are simply automated for the ease of the user (e.g., office automation) and that do not include MDDS as described previously. For example, the report-writing functions of a computer system that allow for the manual (typewriter like) input of data by practitioners would not be considered as a MDDS, because these systems are not directly connected to a medical device. In addition, software that merely performs library functions, such as storing, indexing, and retrieving information not specific to an individual patient, is not considered to be a medical device. Examples include medical texts or the Physician's Desk Reference on CD-ROM that are indexed and cross-referenced for ease of use. This proposed regulation does not address software that allows a doctor to enter or store a patient's health history in a computer file.

## IV. Proposed Reclassification

Because MDDS that are subject to the rulemaking are new post amendment devices, they are deemed to be class III by operation of the statute (section 513(f) of the act (21 U.S.C. 360c(f)). FDA believes that classification in class I, with appropriate application of the Quality System Regulation (part 820 (21 CFR part 820)), will provide reasonable assurance of the safety and effectiveness of this device. FDA is proposing that the Medical Device Data System be reclassified from class III to class I. In addition, FDA is proposing that when the device is indicated for use only by a healthcare professional and does not perform irreversible data compression, in accordance with section 510(l) of the act (21 U.S.C. 360(l)), it would be exempt from the premarket notification procedures in subpart E of part 807, subject to the limitations in § 880.9 (21 CFR 880.9). For purposes of this regulation, ''healthcare professional'' is any practitioner licensed by the law of the State in which he or she practices to use or order the use of the device. When the device is indicated for use by a lay user, or performs irreversible data compression, FDA believes that the device presents a potential for unreasonable risk of illness or injury. FDA is proposing that MDDS devices indicated for lay use or that perform irreversible data compression not be exempt from premarket notification requirements.

## V. Risks to Health

FDA believes that general controls, including the Quality System regulation and the requirements for Design Controls as per § 820.30, will provide a reasonable assurance of safety and effectiveness for a MDDS. Risks to health from this device would be caused by inadequate software quality. Specifically, the risk to health would be that incorrect medical device data is stored, retrieved, transferred, exchanged, or displayed, resulting in incorrect treatment or diagnosis of the patient. As explained below, FDA believes the risk related to inadequate software quality can be mitigated through application of the Quality System Regulation.

## VI. Summary of Reasons for Reclassification

FDA believes that the MDDS should be reclassified into class I because general controls would provide reasonable assurance of safety and effectiveness and special controls and premarket approval are not necessary to provide such assurance. FDA believes that the application of the Quality System Regulation (part 820), particularly the design control provisions, would significantly reduce the risk of errors from these devices that might cause incorrect treatment or diagnosis of the patient. The design controls section (§ 820.30) of the QS regulation (§ 820.30) applies to the design of devices including class I devices with software. FDA does not intend to apply design controls retroactively to currently legally

marketed MDDS devices. However, changes to existing designs or to currently marketed devices must be made in accordance with design control requirements, even if the original design was not subject to these requirements, § 820.30. This approach to implementing design controls for MDDS is consistent with the way FDA implemented design controls after the issuance of the Quality System Regulation in 1996.

## VII. Summary of Data Upon Which the Reclassification is Based

FDA is basing this proposed rule upon the history of use of this type of device in clinical practice as well as the substantial knowledge of FDA staff about this device type. These types of systems provide no new or unique clinical algorithms or clinical functions that have not already been reviewed and cleared in existing medical devices; therefore, no new pre-market review or evaluation should be required. Further, FDA believes that the proper application of a Quality System approach to the design and development of MDDS devices will ensure their quality. FDA believes that this is the least burdensome approach to the regulation of these medical devices.

## VIII. Effective Date

FDA intends that this rule, if finalized, will become effective 60 days after the date of publication of the final rule. However, FDA intends to continue to exercise enforcement discretion after publication of any final rule so that manufacturers who are already on the market with MDDS devices may have sufficient time to come into compliance as follows: FDA expects manufacturers who are already marketing a MDDS device before publication of a final rule and who meet the criteria for exemption from premarket notification to register and list under part 807 within 60 days after publication of the final rule. If a premarket notification is required, FDA expects manufacturers who are marketing an MDDS device without FDA clearance to submit a premarket notification within 90 days of the effective date of a final rule and to obtain final clearance of a premarket notification within 180 days after publication of a final rule. FDA expects manufacturers who are required to obtain clearance of a premarket notification to register and list within 30 days after receiving a substantial equivalence order for their device. Manufacturers who are not already marketing an MDDS device will be required to comply with any final rule as of the effective date.

## IX. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this proposed reclassification 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.

## X. Analysis of Impact

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 this action is deregulatory and imposes no new burdens, 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 $127 million, using the most current (2006) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

### *Background*

An MDDS is a device that electronically stores, transfers, displays, or reformats patient medical data. It does not provide any diagnostic or clinical decision making functions. A MDDS could, for example, store alarm data being generated by a connected medical device, but would not be able to generate alarms on its own. The MDDS device is currently classified into class III, the highest level of regulatory oversight. The MDDS was initially placed in this classification by default. MDDS manufacturers, as makers of class III devices, bear all costs associated with premarket approval, including the cost of submitting the premarket approval application (PMA) and payment of user fees. The costs associated with the submission of the PMA are substantial, potentially reaching $1,000.000.

Although we can identify several MDDS devices and device manufacturers, we nevertheless do not know the size of the affected industry because FDA has not been enforcing registration and listing requirements for manufacturers of MDDS devices. We welcome comment on the size and other characteristics of the affected industry.

FDA is proposing to reclassify MDDS devices from class III to class I. Based on the history of use of this type of device in clinical practice and on the experience of FDA reviewers, the agency concludes that in the hands of a healthcare professional, a MDDS is safe and effective under general controls. The application of general controls, including the software design controls in part 820, would be consistent with the principle of applying the least degree of regulatory control necessary to provide reasonable assurance of safety and effectiveness. The application of this lowest level of regulatory oversight would be consistent with the treatment of other devices with similar risk profiles. Software used to store, transmit, and communicate patient medical data, such as Laboratory Information Systems and Medical Image Communication Systems, is typically classified into class I.

FDA has already recognized that the class III requirements are not necessary for ensuring the safety and effectiveness of MDDS devices and has been exercising enforcement discretion with MDDS device manufacturers. These firms have not been required to submit PMAs or meet other requirements typically required of manufacturers of class III devices, but the agency believes that all or nearly all firms in this industry have in place good business practices, including quality systems. If FDA were to discontinue enforcement discretion, most firms would continue to comply with the class I provisions.

### *Cost of the Proposed Regulation*

This proposed regulation is deregulatory. Device manufacturers currently subject to class III requirements would be subject to the

less burdensome requirements for makers of class I devices. Of course, changing the device classification may not have an impact on the practices of MDDS device manufacturers as long as FDA continues its practice of enforcement discretion. For the purpose of this analysis, however, we assume that enforcement discretion would not be permanent. The regulatory alternatives are therefore class III, II, or I controls, enforced by the agency. This proposed rule would re-classify MDDS devices as class I, which would reduce the applicable regulatory requirements.

Manufacturers of class I devices are required to: (1) Register and list their MDDS devices with the agency, (2) conform to applicable medical device current good manufacturing practice requirements (part 820), (3) comply with Medical Device Reporting (MDR) requirements (21 CFR part 803), and (4) submit a premarket notification for the device unless it is exempt. This proposed rule proposes to exempt MDDS devices unless they are indicated for use by someone other than a healthcare professional, perform irreversible data compression, or exceed the limitations in § 880.9. MDDS devices indicated for use solely by a healthcare professional, are exempt from the premarket notification requirements.

*Registration and listing*. The majority of manufacturers of MDDS devices would incur a cost to register and list their devices with the agency. We estimate this burden to be less than 1 hour per year for manufacturers familiar with this requirement, and up to 2 hours of time for manufacturers not currently producing any FDA-regulated devices. Manufacturers would also face user fees of $1,708 in fiscal year (FY) 2008 to register and list their devices with the agency. These fees would rise to $2,364 in 2012.

*Current Good Manufacturing Practices (CGMP)/Quality System Regulation (QSR) compliance/Medical Device Reporting*. Based on experience with this and similar devices, FDA believes that most manufacturers of these devices already have quality systems in place as part of good business practices. Good quality systems would include complaint-handling procedures. FDA's QSR (part 820) requirements are very flexible and FDA believes that these manufacturers will be able to conform their systems to FDA requirements with little difficulty or cost. Manufacturers are already required to report to FDA whenever they learn that their device may have caused or contributed to a death or serious injury to a patient. The cost of complying with these requirements would be small, but would vary depending on the number and nature of the devices manufactured and the nature of the firm's current quality system. Firms with existing quality systems should be able to adapt their complaint procedures to incorporate MDR reporting with little difficulty. Based on our understanding of the industry and that it has in place measures to ensure quality, we believe most firms would be able to adapt their systems to meet FDA's QSR and MDR regulations for no more than $20,000. Again, this would not be a cost imposed by this proposed rule, but the cost of an existing burden manufacturers may not have incurred because FDA's practice of enforcement discretion with manufacturers of MDDS devices.

*Premarket notification*. If FDA finalizes the classification of MDDS devices into class I, a manufacturer of a MDDS device that is indicated for use solely in a health care facility would not need to comply with the PMA requirement that applies to class III devices or submit a premarket notification. FDA is unaware of any MDDS devices that are not intended for use solely by healthcare professionals, so we believe all or nearly all MDDS devices will be exempt from premarket review. A manufacturer of a MDDS device that is indicated for use by anyone other than a healthcare professional or that performs irreversible data compression would need to submit a premarket notification, but the burden of submitting a premarket notification is substantially less than that of submitting a PMA. A premarket notification for a MDDS device would be far less complex than a PMA. The cost of preparing and submitting such a notification would be several thousand dollars. The user fees for a premarket notification would be $3,404 for FY 2008, increasing to $4,717 in 2012. In contrast, the cost of submitting a PMA can reach $1,000,000, plus user fees of an additional $185,000 in FY 2008, increasing to $256,384 in 2012.

In summary, this device reclassification would substantially reduce an existing burden on the manufacturers of MDDS devices. The regulatory burden of compliance with the general controls provisions applicable to the manufacturers of all class I devices is attributable to statutory requirements that already apply but have not been enforced. Assuming that continued enforcement discretion is not a viable long-term regulatory alternative, the proposed rule would reduce the regulatory burden for manufacturers of MDDS devices. Considering the cost of submitting a PMA plus the relevant user fees, the reduction could be $1,000,000 per device.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because reclassification of the affected devices from class III to class I would relieve manufacturers of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), the agency does not believe that this proposed rule would have a significant economic impact on a substantial number of small entities. FDA requests comment on this issue.

## XI. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information addressed in the proposed rule have been approved by OMB in accordance with the PRA under the QSR (part 820, OMB Control No. 0910–0073) and the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB Control No. 0910–0120).

## XII. 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, if finalized, would not contain policies that would 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 tentatively concludes 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 has not been prepared.

## XIII. Submission of Comments

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

of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic submissions will be accepted by FDA through FDMS only.

**List of Subjects in 21 CFR Part 880**

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, FDA proposes to amend 21 CFR part 880 as follows:

## PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

1. The authority citation for 21 CFR part 880 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Part 880 is amended in subpart G by adding § 880.6310 to read as follows:

**§ 880.6310 Medical Device Data System.**

(a) *Identification.* (1) A medical device data system (MDDS) is a device intended to provide one or more of the following uses:

(i) The electronic transfer or exchange of medical device data from a medical device, without altering the function or parameters of any connected devices.

(ii) The electronic storage and retrieval of medical device data from a medical device, without altering the function or parameters of connected devices.

(iii) The electronic display of medical device data from a medical device, without altering the function or parameters of connected devices.

(iv) The electronic conversion of medical device data from one format to another format in accordance with a preset specification.

(2) Medical device data consists of numerical or other information available from a medical device in a form suitable for processing by computer. Medical device data can represent any type of information or knowledge, e.g., clinical values, alarm conditions, error messages. This identification does not include a device that creates diagnostic, decision support, or alarm functions. It also does not include the report-writing functions of a data system that allows for the manual input of data by practitioners. This identification does not include devices with any real time, active, or online patient monitoring.

(b) *Classification.* Class I (general controls). When the device is indicated for use only by a healthcare professional and does not perform irreversible data compression, it is exempt from the premarket notification procedures in subpart E of part 807, subject to the limitations in § 880.9. When the device is indicated to be prescribed by a healthcare professional for use by a lay user, or performs irreversible data compression, or for over-the-counter use by a lay user, the device requires the submission and clearance of a premarket notification.

Dated: January 25, 2008.

**Daniel G. Schultz,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. E8–2325 Filed 2–7–08; 8:45 am]

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[REG–153589–06]**

**RIN 1545–BG34**

## Time and Manner for Electing Capital Asset Treatment for Certain Self-Created Musical Works

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

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulation.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing a temporary regulation that provides the time and manner for making an election to treat the sale or exchange of musical compositions or copyrights in musical works created by the taxpayer (or received by the taxpayer from the works' creator in a transferred basis transaction) as the sale or exchange of a capital asset. The temporary regulation reflects changes to the law made by the Tax Increase Prevention and Reconciliation Act of 2005 and the Tax Relief and Health Care Act of 2006. The temporary regulation affects taxpayers making the election under section 1221(b)(3) of the Internal Revenue Code (Code) to treat gain or loss from such a sale or exchange as capital gain or loss. The text of the temporary regulation also serves as the text of this proposed regulation.

**DATES:** Written or electronic comments and requests for a public hearing must be received by May 8, 2008.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–153589–06), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–153589–06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG–153589–06).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulation, Jamie Kim, (202) 622–4950; concerning submission of comments or requesting a hearing, *Richard.A.Hurst@irscounsel.treas.gov,* (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background and Explanation of Provisions**

Temporary regulation in the Rules and Regulations section of this issue of the **Federal Register** amends the Income Tax Regulations (26 CFR part 1) relating to section 1221(b)(3) of the Internal Revenue Code (Code). The temporary regulation provides rules regarding the time and manner for making an election under section 1221(b)(3) to treat the sale or exchange of certain musical compositions or copyrights in musical works as the sale or exchange of a capital asset. The text of the temporary regulation also serves as the text of this proposed regulation. The preamble to the temporary regulation explains the amendments.

**Special Analyses**

It has been determined that this notice of proposed rulemaking 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 this regulation, and because the regulation does 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 Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Requests for a Public Hearing**

Before this proposed regulation is adopted as a final regulation, consideration will be given to any

written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these regulations is Jamie Kim of the Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

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

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be 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 1.1221–3 is added to read as follows:

**§ 1.1221–3 Time and manner for electing capital asset treatment for certain self-created musical works.**

[The text of proposed § 1.1221–3 is the same as the text of § 1.1221–3T(a) through (d)(1) published elsewhere in this issue of the **Federal Register**.]

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. E8–2307 Filed 2–7–08; 8:45 am]

BILLING CODE 4830–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R01–OAR–2007–1054; A–1–FRL–8524–8]**

### Approval and Promulgation of Air Quality Implementation Plans; Maine; Transportation Conformity

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision establishes transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures. The intended effect of this action is to approve State criteria and procedures to govern transportation conformity determinations. This action is being taken in accordance with the Clean Air Act.

**DATES:** Written comments must be received on or before March 10, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R01–OAR–2007–1054 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: arnold.anne@epa.gov.*
3. *Fax:* (617) 918–0047.
4. *Mail:* ''EPA–R01–OAR–2007–1054'', Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.
5. *Hand Delivery or Courier. Deliver your comments to:* Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Donald O. Cooke, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1668, fax number (617) 918–0668, e-mail *cooke.donald@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: January 24, 2008.

**Ira W. Leighton,**

*Acting Regional Administrator, EPA New England.*

[FR Doc. E8–2248 Filed 2–7–08; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 70

**[EPA–R07–OAR–2007–0829; FRL–8526–1]**

### Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Kansas

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the Kansas State Implementation Plan (SIP) for the purpose of revoking the Sulfur Compound Emissions rule and for the purpose of approving revisions to a Class I major source operating permit annual emissions inventory rule and several Class II minor source operating permits rules. EPA is also proposing to approve additional amendments adopted by KDHE on February 20, 1998 which pertain to the Class II operating permit rules. The rules were primarily revised to align the annual emission inventory reporting date deadline with the June 1 payment of applicable emissions fees. EPA's proposed approval of these amendments would ensure consistency between the state and the Federally-approved rules.

**DATES:** Comments on this proposed action must be received in writing by March 10, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–0829 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: grier.gina@epa.gov.*
3. *Mail:* Gina Grier, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier. Deliver your comments to:* Gina Grier, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Gina Grier at (913) 551–7078, or by e-mail at *grier.gina@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision and Title V revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: January 28, 2008.

**John B. Askew,**

*Regional Administrator, Region 7.*

[FR Doc. E8–2188 Filed 2–7–08; 8:45 am]

BILLING CODE 6560–50–P

# Notices

Federal Register

Vol. 73, No. 27

Friday, February 8, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

February 4, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### Animal Plant and Health Inspection Service

*Title:* Importation of Hass Avocado from Mexico

*OMB Control Number:* 0579–0129

*Summary of Collection:* The Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture is responsible for preventing plant diseases or insect pests from entering the United States, preventing the spread of pests not widely distributed in the United States, and eradicating those imported when eradication is feasible. The Plant Protection Act (7 U.S.C. 7701–7772) authorizes APHIS to carry out this mission. APHIS will collect information from a variety of individuals, both within and outside of the United States, who are involved in growing, packing, handling, transporting, and importing foreign logs, trees, shrubs, and other articles. APHIS regulations allow fresh Hass Avocado fruit grown in approved orchards in Michoacan, Mexico to be imported into the United States under certain conditions.

*Need and Use of the Information:* APHIS will collect information using form PPQ 587 ''Application for Permit to Import Plants or Plant Products,'' to ensure that fresh Hass Avocados from Mexico do not harbor insect pests (including Avocado stem weevils, seed weevils, and seed moths). The information collected will ensure that fresh Hass Avocados from Mexico do not harbor exotic insect pests.

*Description of Respondents:* Business or other for profit; Federal Government.

*Number of Respondents:* 2,205.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion.

*Total Burden Hours:* 107,061.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E8–2306 Filed 2–7–08; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2008–0006]**

### Notice of Request for Extension of Approval of an Information Collection; Importation of Poultry Meat and Other Poultry Products From Sinaloa and Sonora, Mexico

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

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of poultry meat and other poultry products from Sinaloa and Sonora, Mexico.

**DATES:** We will consider all comments that we receive on or before April 8, 2008.

**ADDRESSES:** You may submit comments by either of the following methods: *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0006* to submit or view comments and to view supporting and related materials available electronically.

*Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0006, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0006.

*Reading Room:* You may read any comments that we receive on this docket in our reading room. The reading room is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

*Other Information:* Additional information about APHIS and its

programs is available on the Internet at *http://www.aphis.usda.gov*.

**FOR FURTHER INFORMATION CONTACT:** For information on the importation of poultry meat and other poultry products from Sinaloa and Sonora, Mexico, contact Dr. Christopher Robinson, Assistant Director, Technical Trade Services—Products, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737; (301) 734–3277. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS* Information Collection Coordinator, at (301) 734–7477.

**SUPPLEMENTARY INFORMATION:**

*Title:* Importation of Poultry Meat and Other Poultry Products from Sinaloa and Sonora, Mexico.

*OMB Number:* 0579–0144.

*Type of Request:* Extension of approval of an information collection.

*Abstract:* Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of animal diseases and pests. To fulfill this mission, APHIS regulates the importation of animals and animal products into the United States. The regulations are contained in title 9, chapter 1, subchapter D, parts 91 through 99, of the Code of Federal Regulations.

The regulations in part 94, among other things, restrict the importation of poultry meat and other poultry products from Mexico and other regions of the world where exotic Newcastle disease (END) has been determined to exist. The regulations allow the importation of poultry meat and poultry products from the Mexican States of Sinaloa and Sonora under conditions that protect against the introduction of END into the United States.

To ensure that these items are safe for importation, we require that certain data appear on the foreign meat inspection certificate that accompanies the poultry meat or other poultry products from Sinaloa and Sonora. We also require that serially numbered seals be applied to containers carrying the poultry meat or other poultry products.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average 1 hour per response.

*Respondents:* Federal animal health authorities in Mexico and operators of slaughtering and processing plants in Sinaloa and Sonora, Mexico, who engage in the export of poultry meat and other poultry products to the United States.

*Estimated annual number of respondents:* 20.

*Estimated annual number of responses per respondent:* 2.

*Estimated annual number of responses:* 40.

*Estimated total annual burden on respondents:* 40 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 4th day of February 2008.

**Kevin Shea,**

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

[FR Doc. E8–2369 Filed 2–7–08; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Proposed New Fee Sites; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

**AGENCY:** Umatilla National Forest, USDA Forest Service.

**ACTION:** Notice of Proposed New Fee Sites.

**SUMMARY:** The Umatilla National Forest is proposing to charge fees at 39 recreation sites. Fees are assessed based on the leval of amenities and services provided, cost of operation and maintenance, market assessment, and public comment. The fees listed below are only proposed. The final fees will be determined upon further analysis and public comment. Funds from fees would be retained locally and used for the continued operation and maintenance of these recreation sites. The public has been notified of proposed fees in several ways. In July of 2007, signs were posted at all potentially affected campgrounds, rental cabins, and trail heads requesting public feedback on the proposed fees. Press releases regarding the Umatilla National Forest's recreation facility master plan and fee proposals were issued to area newspapers on September 11 of 2007. The release was followed by 7 open houses held in communities across the Forest during September and October. The fee proposal continues to be advertised on the Umatilla National Forest's Web site.

*Rental Cabins:* Fremont Caretaker's Cabin on the North Fork John Day Ranger District and Tucannon Guard Station on the Pomeroy Ranger District will be available for overnight rental. A financial analysis is being completed to determine the rental fees; the range being considered is from $70 to $100 per night. Cabin rentals offer a unique experience and are a popular offering in National Forests. Both cabins were recently restored to maintain their eligibility to the National Register of Historic Places. Fees would continue to help protect and maintain cabins and their historic integrity.

*Campgrounds:* The Umatilla National Forest is proposing to begin charging fees at 20 campgrounds. These sites provide similar amenities as sites that currently require fees. They are as follows: Big Creek, Divide Wells, Driftwood, Drift Fence, Gold Dredge, Oriental, and Winom campgrounds in the North Fork John Day Ranger District; Coalmine Hill, Fairview, and Penland campgrounds in the Heppner Ranger District; Alder thicket, Big Springs,

Forest boundary, Godman, Ladybug, Midway, Misery Springs, Panjab, Pataha, and Wickiup campgrounds on the Pomeroy Ranger District. A financial analysis is being completed to determine fee rates.The fees proposed to help maintain these sites would range between $5 and $14 for single sites, $10–$16 for double sites, $20–$40 for group sites. There would be an extra $5.00 charge per additional vehicle per campsite at all the listed campgrounds.

*Trailheads:* The Umatilla National Forest proposes charging fees at the following 17 trailheads: North Fork John Day, Frazier, Winom, and Big Creek trailheads on the North Fork John Day Ranger District; Elk Flats, Meadow Creek, Panjab, Teepee, Three Forks, Timothy Springs, Tucannon, and Twin Buttes on Pomeroy Ranger District; and Burnt Cabin, Deduct Pond, Middle Point, North Fork Umatilla, and Rough Fork on the Walla Walla Ranger District. These sites would be established as fee sites since amenities such as toilets, garbage service, and interpretive signing have been or will be added. Recreation Passes such as the Northwest Forest Pass would cover day use fees for these trailheads. Northwest Forest Passes are $5 for a daily pass and $30 for an annual pass.

**DATES:** Proposed fees would begin after June 2008 and are contingent upon completion of certain improvements. The cabin rentals would be available once a final decision is made and are offered through the National Recreation Reservation Service.

**ADDRESSES:** Kevin Martin, Forest Supervisor, Umatilla National Forest, 2517 SW. Hailey Avenue, Pendleton, Oregon 97801.

**FOR FURTHER INFORMATION CONTACT:** Larry Randall, Umatilla Recreation Fee Coordinator, 509–522–6276. Information about proposed fee changes can also be found on the Umatilla National Forest Web site: *http://www.fs.fed.us/r6/uma/recreation/rfa/fee_changes. shtml.*

**SUPPLEMENTARY INFORMATION:** The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation. People wanting to rent Fremont Caretaker's Cabin or Tucannon Guard Station would need to do so through the National Recreation Reservation Service, at *http://www.recreation.gov* or by calling 1–877–444–6777 when it becomes available.

Dated: January 30, 2008.

**Kevin Martin,**

*Forest Supervisor.*

[FR Doc. 08–566 Filed 2–7–08; 8:45 am]

**BILLING CODE 3410–11–M**

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## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Notice of Proposed Change to Section IV of the Virginia State Technical Guide

**AGENCY:** Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

**ACTION:** Notice of Availability of proposed changes in the Virginia NRCS State Technical Guide for review and comment.

**SUMMARY:** It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS State Technical Guide specifically in practice standards: #578, Stream Crossing; #574, Spring Development; #561, Heavy Use Area protection; #575, Animal Trails and Walkways; and #560, Access Road. These practices will be used to plan and install conservation practices on cropland, pastureland, woodland, and wildlife land.

**DATES:** Comments will be received for a 30-day period commencing with the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** Inquire in writing to John A. Bricker, State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229–5014; Telephone number (804) 287–1691; Fax number (804) 287–1737. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS Web site: *http://www.va.nrcs.usda.gov/technical/draftstandards.html.*

**SUPPLEMENTARY INFORMATION:** Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: January 23, 2008.

**John A. Bricker,**

*State Conservationist, Natural Resources Conservation Service, Richmond, Virginia.*

[FR Doc. E8–2321 Filed 2–7–08; 8:45 am]

**BILLING CODE 3410–16–P**

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## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

### Announcement of Rural Cooperative Development Grant Application Deadlines and Funding Levels

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Notice of solicitation of applications.

**SUMMARY:** Rural Business-Cooperative Service programs are administered through USDA Rural Development. USDA Rural Development announces the availability of approximately $4.4 million in competitive grant funds for the fiscal year (FY) 2008 Rural Cooperative Development Grant (RCDG) Program. The intended effect of this notice is to solicit applications for FY 2008 and award grants on or before September 12, 2008. The maximum award per grant is $200,000 and matching funds are required.

**DATES:** Applications for grants must be submitted on paper or electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than April 8, 2008, to be eligible for FY 2008 grant funding. Late applications are not eligible for FY 2008 grant funding.

Electronic copies must be received by April 8, 2008, to be eligible for FY 2008 grant funding. Late applications are not eligible for FY 2008 grant funding.

**ADDRESSES:** Application materials for a RCDG may be obtained at *http://www.rurdev.usda.gov/rbs/coops/rcdg/rcdg.htm* or by contacting the applicant's USDA Rural Development State Office at (202) 720–4323 and pressing ''1''.

Submit completed paper applications for a grant to Cooperative Programs, Attn: RCDG Program, 1400 Independence Avenue, SW., Mail Stop 3250, Room 4016-South, Washington, DC 20250–3250. The phone number that should be used for courier delivery is (202) 720–7558.

Submit electronic grant applications at *http://www.grants.gov*, following the instructions found on this Web site.

**FOR FURTHER INFORMATION CONTACT:** Visit the program Web site at *http://www.rurdev.usda.gov/rbs/coops/rcdg/rcdg.htm* for application assistance or contact your USDA Rural Development State Office at (202) 720–4323 and press ''1'', or select the Contacts link at the above Web site. Applicants are encouraged to contact their State Offices well in advance of the deadline to discuss their projects and ask any questions about the application process.

**SUPPLEMENTARY INFORMATION:**

## Overview

*Federal Agency:* Rural Business-Cooperative Service (RBS).

*Funding Opportunity Title:* Rural Cooperative Development Grant.

*Announcement Type:* Initial announcement.

Catalog of Federal Domestic Assistance Number: 10.771.

**DATES:** *Application Deadline:* Completed applications for grants may be submitted on paper or electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than April 8, 2008, to be eligible for FY 2008 grant funding. Late applications are not eligible for FY 2008 grant funding.

Electronic copies must be received by April 8, 2008, to be eligible for FY 2008 grant funding. Late applications are not eligible for FY 2008 grant funding.

## I. Funding Opportunity Description

RCDGs are authorized by section 310B(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(e)). Regulations are contained in 7 CFR part 4284, subparts A and F. The primary objective of the RCDG program is to improve the economic condition of rural areas through cooperative development. Grant funds are provided for the establishment and operation of Centers that have the expertise or who can contract out for the expertise to assist individuals or entities in the startup, expansion or operational improvement of cooperative businesses. The program is administered through USDA Rural Development State Offices.

### *Definitions*

The definitions published at 7 CFR 4284.3 and 7 CFR 4284.504 are incorporated by reference.

## II. Award Information

*Type of Award:* Grant.

*Fiscal Year Funds:* FY 2008.

*Approximate Total Funding:* $4,400,000.

*Approximate Number of Awards:* 22

*Approximate Average Award:* $200,000.

*Floor of Award Range:* None.

*Ceiling of Award Range:* $200,000.

*Anticipated Award Date:* September 12, 2008.

*Budget Period Length:* 12 months.

*Project Period Length:* 12 months.

## III. Eligibility Information

### *A. Eligible Applicants*

Grants may be made to nonprofit corporations and institutions of higher education. Grants may not be made to public bodies.

### *B. Cost Sharing or Matching*

Matching funds are required. Applicants must verify in their applications that all matching funds are available for the time period of the grant. The matching fund requirement is 25 percent of the total project cost (5 percent in the case of 1994 Institutions). Unless provided by other authorizing legislation, other Federal grant funds cannot be used as matching funds. However, matching funds may include loan proceeds from Federal sources. Matching funds must be spent in advance or as a pro-rata portion of grant funds being expended. All of the matching funds must be provided by either the applicant or a third party in the form of cash or in-kind contributions. All of the matching funds must be spent on eligible expenses and must be from eligible sources. The Center must be able to document and verify the number of hours worked and the value associated with the in-kind contribution. Additionally, if the in-kind contributions are from board members for their time, travel, incidentals, etc., the Center must have established written policies explaining how these costs are normally reimbursed, including rates. Otherwise, the in-kind contributions will not be considered eligible expenses and may cause the application to be determined ineligible for funding. In-kind contributions provided by individuals, businesses, or cooperatives who are being assisted by the Center can not be provided for the benefit of their own projects as USDA Rural Development considers this to be a conflict of interest or the appearance of a conflict of interest.

### *C. Other Eligibility Requirements*

*Grant Period Eligibility:* Applications should have a timeframe of no more than 365 days with the time period beginning no earlier than October 1, 2008 and no later than January 1, 2009. Projects must be completed within the 1-year timeframe. The Agency will not approve requests to extend the grant period.

*Completeness Eligibility:* Applications without sufficient information to determine eligibility and scoring will be considered ineligible. Applications that are non-responsive to this notice will be considered ineligible.

*Activity Eligibility:* Applications must propose the development or continuation of the cooperative development center concept or they will not be considered for funding. Additionally, applications that focus assistance to only one cooperative will not be considered for funding. Applications requesting more than the maximum grant amount will not be considered for funding. Applications that have ineligible costs that equal more than 10 percent of the total project costs will be determined ineligible, and not be considered for funding. If an application has ineligible costs of 10 percent or less of total project costs and is selected for funding, the applicant must remove all ineligible costs from the budget and replace them with eligible activities or the amount of the grant award will be reduced accordingly.

## IV. Application and Submission Information

### *A. Address To Request Application Package*

The application package for applying on paper for this funding opportunity can be obtained at *http://www.rurdev.usda.gov/rbs/coops/rcdg/rcdg.htm*. Alternatively, applicants may contact their USDA Rural Development State Office at (202) 720–4323 and press ''1''. For electronic applications, applicants must visit *http://www.grants.gov* and follow the instructions.

### *B. Content and Form of Submission*

Applications must be submitted on paper or electronically. An application guide may be viewed at *http://www.rurdev.usda.gov/rbs/coops/rcdg/rcdg.htm*. It is recommended that applicants use the template provided on the Web site. The template can be filled out electronically and printed out for submission with the required forms for paper submission or it can be filled out electronically and submitted as an attachment through *http://www.grants.gov*.

The submission must include all pages of the application. It is recommended that the application be in black and white, not color. Those

evaluating the application will only receive black and white images.

If the application is submitted electronically, the applicant must follow the instructions given at *http://www.grants.gov*. Applicants are advised to visit the site well in advance of the application deadline if they plan to apply electronically to ensure they have obtained the proper authentication and have sufficient computer resources to complete the application.

Applicants must complete and submit the following elements. The Agency will screen all applications for eligibility and to determine whether the application is complete and sufficiently responsive to the requirements set forth in this notice to allow for an informed review. Information submitted as part of the application will be protected to the extent permitted by law.

1. Form SF–424, ''Application for Federal Assistance.'' The form must be completed, signed and submitted as part of the application package.

Please note that applicants are required to have a DUNS number to apply for a grant from USDA Rural Development. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. There is no charge. To obtain a DUNS number, access *http://www.dnb.com/us/* or call 866–705–5711. For more information, see the RCDG Web site at *http://www.rurdev.usda.gov/rbs/coops/rcdg/rcdg.htm* or contact the applicant's USDA Rural Development State Office at (202) 720–4323 and press ''1''.

2. Form SF–424A, ''Budget Information—Non-Construction Programs.'' This form must be completed and submitted as part of the application package.

3. Form SF–424B, ''Assurances—Non-Construction Programs.'' This form must be completed, signed, and submitted as part of the application package.

4. Survey on Ensuring Equal Opportunity for Applicants. The Agency is required to make this survey available to all nonprofit applicants. Submitting this form is voluntary.

5. Title Page. The Title Page, not to exceed one page, should include the title of the project as well as any other relevant identifying information.

6. Table of Contents. For ease of locating information, each proposal must contain a detailed Table of Contents (TOC) immediately following the Title Page. The TOC should include page numbers for each component of the application.

7. Executive Summary. A summary of the proposal, not to exceed two pages, must briefly describe the Center, including project goals and tasks to be accomplished, the amount requested, how the work will be performed (e.g., Center staff, consultants, or contractors) and the percentage of work that will be performed among the parties.

8. Eligibility. The applicant must describe, not to exceed two pages, how it meets the applicant, matching, grant period and activity eligibility requirements.

9. Proposal Narrative. The proposal narrative is limited to a total of 40 pages.

i. Project Title. The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project. If a title page was included under number 5 above, it is not necessary to include an additional title page under this section.

ii. Information Sheet. A separate one-page information sheet listing each of the evaluation criteria referenced in the RFP, followed by the page numbers of all relevant material and documentation contained in the proposal that address or support the criteria. If the evaluation criteria are listed on the Table of Contents and specifically and individually addressed in narrative form, then it is not necessary to include an information sheet under this section.

iii. Goals of the Project. The applicant must include the following statements in this section of the narrative to demonstrate that the Center is following these statutory requirements:

1. A statement that substantiates that the Center will effectively serve rural areas in the United States;

2. A statement that the primary objective of the Center will be to improve the economic condition of rural areas through cooperative development;

3. A description of the contributions that the proposed activities are likely to make to the improvement of the economic conditions of the rural areas for which the Center will provide services; and

4. A statement that the Center, in carrying out its activities, will seek, where appropriate, the advice, participation, expertise, and assistance of representatives of business, industry, educational institutions, the Federal government, and State and local governments.

iv. Work Plan. Please see section V. A. 8. for specific requirements on the work plan and budget. The work plan and budget should be presented under proposal evaluation criterion number 8. It is not necessary to include the work plan and budget under this section.

v. Performance Evaluation Criteria. The Agency has established annual performance measures to evaluate the RCDG program. Applicants must provide estimates on the following performance measures.

- Number of groups who are not legal entities assisted.
- Number of businesses that are not cooperatives assisted.
- Number of cooperatives assisted.
- Number of businesses incorporated that are not cooperatives.
- Number of cooperatives incorporated.
- Total number of jobs created as a result of assistance.
- Total number of jobs saved as a result of assistance.
- Number of jobs created for the Center as a result of RCDG funding.
- Number of jobs saved for the Center as a result of RCDG funding.

It is permissible to have a zero in a performance element. When calculating jobs created, estimates should be based upon actual jobs to be created by the Center as a result of the RCDG funding or actual jobs to be created by businesses or cooperatives as a result of assistance from the Center. When calculating jobs saved, estimates should be based only on actual jobs that would have been lost if the Center did not receive RCDG funding or actual jobs that would have been lost without assistance from the Center. If the application is selected for funding, the applicant will be required to report actual numbers for these performance elements on a semi-annual basis and in the final performance report. Additional information on post-award requirements can be found in section VI. Applicants may also suggest additional performance criteria in the event the proposal receives grant funding. The criteria are not binding on USDA, but should be specific, measurable performance criteria. The inclusion of additional performance criteria beyond the nine listed above is voluntary.

vi. Undertakings. The applicant must include the following statements in this section of the narrative and expressly undertake to do them.

1. Take all practicable steps to develop continuing sources of financial support for the Center, particularly from sources in the private sectors;

2. Make arrangements for the Center's activities to be monitored and evaluated; and

3. Provide an accounting for the money received by the grantee in accordance with 7 CFR part 4284, subpart F.

vii. Delivery of Cooperative Development Assistance. Please see section V. A. 7. for specific requirements on delivery of cooperative development assistance. Delivery should be presented under proposal

evaluation criterion number 7. It is not necessary to include discussion on delivery of cooperative development assistance under this section.

viii. Qualifications of Personnel. Please see section V. A. 9. for specific requirements on qualifications of personnel. Qualifications of personnel should be presented under proposal evaluation criterion number 9. It is not necessary to include discussion on qualifications of personnel under this section.

ix. Support and commitments. Please see section V. A. 10. for specific requirements on support and commitments. Support and commitments should be presented under proposal evaluation criterion number 10. It is not necessary to include discussion on support and commitments under this section.

x. Future Support. Please see section V. A. 11. for specific requirements on future support. Future support should be presented under proposal evaluation criterion number 11. It is not necessary to include discussion on future support under this section.

xi. Proposal Evaluation Criteria. Each of the evaluation criteria referenced in this funding announcement must be specifically and individually addressed in narrative form. Applications that do not address all of the proposal evaluation criteria will be considered ineligible. See Section V. A. for a description of the Proposal Evaluation Criteria.

10. Certification of Judgment Owed to the United States. Applicants must certify that the United States has not obtained a judgment against them. No grant funds shall be used to pay a judgment obtained by the United States. It is suggested that applicants use the following language for the certification. ''[INSERT NAME OF APPLICANT] certifies that the United States has not obtained a judgment against it and will not use grant funds to pay any judgments obtained by the United States.'' A separate signature is not required.

11. Certification of Matching Funds. Applicants must certify that matching funds will be available at the same time grant funds are anticipated to be spent and that matching funds will be spent in advance of grant funding, such that for every dollar of the total project cost, not less than the required amount of matching funds will have been expended prior to submitting the request for reimbursement. Please note that this certification is a separate requirement from the Verification of Matching Funds requirement. Applicants should include a statement for this section that reads as follows: ''[INSERT NAME OF APPLICANT] certifies that matching funds will be available at the same time grant funds are anticipated to be spent and that matching funds will be spent in advance of grant funding, such that for every dollar of the total project cost, at least 25 cents (5 cents for 1994 Institutions) of matching funds will have been expended prior to submitting the request for reimbursement.'' A separate signature is not required.

12. Verification of Matching Funds. Applicants must provide documentation of all proposed matching funds, both cash and in-kind. Matching funds must be spent or donated for goods and services that are eligible expenditures for this grant program as well as be used for eligible purposes. The documentation must be included in Appendix A and will not count towards the 40-page limitation.

If matching funds are to be provided in cash, the following requirements must be met.

*Applicant:* The application must include a statement verifying (1) the amount of the cash and (2) the source of the cash. If the applicant is paying for goods and/or services as part of the matching funds contribution, the expenditure is considered a cash match, and should be verified as such.

*Third-party:* The application must include a signed letter from the third party verifying (1) how much cash will be donated and (2) when it will be donated. Specific dates (month/date/year) corresponding to the proposed grant period or to the dates within the grant period when matching contributions will be made available, must be included in the letter.

If matching funds are to be provided by an in-kind donation, the following requirements must be met.

*Applicant:* The application must include a signed letter from the applicant or its authorized representative verifying (1) the goods and/or services to be donated (i.e., provide the details about the goods and/or services to be provided), (2) when the goods and/or services will be donated (i.e., specific dates (month/date/year) corresponding to the proposed grant period or to the dates within the grant period when matching contributions will be made available) and (3) the value of the goods and/or services.

*Third-Party:* The application must include a signed letter from the third party verifying (1) the goods and/or services to be donated (i.e., provide the details about the goods and/or services to be provided), (2) when the goods and/or services will be donated (i.e., specific dates (month/date/year) corresponding to the proposed grant period or to the dates within the grant period when matching contributions will be made available) and (3) the value of the goods and/or services.

Applicants should note that only goods or services for which no expenditure is made can be considered in-kind. Verification for in-kind contributions that are over-valued will not be accepted. The valuation process for in-kind funds does not need to be included in the application. However, the applicant must be able to demonstrate how the valuation was derived at the time of notification of tentative selection for the grant award. If the applicant cannot satisfactorily demonstrate how the valuation was determined, the grant award may be withdrawn or the amount of the grant may be reduced.

Verification for funds donated outside the proposed time period of the grant will not be accepted.

Examples of unacceptable matching funds are in-kind contributions from individuals, businesses, or cooperatives being assisted by the Center to benefit their own project, donations of fixed equipment and buildings, and costs related to the preparation of the RCDG application package.

Expected program income may not be used to fulfill the matching funds requirement at the time of application. However, if there are contracts in place at the time of application, they may be treated as cash match. If program income is earned during the time period of the grant, it is subject to the requirements of 7 CFR part 3015, subpart F and 7 CFR part 3019.24 and any provisions in the Grant Agreement.

### *C. Submission Dates and Times*

*Application Deadline Date:* April 8, 2008.

*Explanation of Deadlines:* Paper applications must be postmarked by the deadline date (see section IV.F for the address). Electronic applications must be received by *http://www.grants.gov* by the deadline date. If the application does not meet the deadline above, it will not be considered for funding. The applicant will be notified if the application does not meet the submission requirements. The applicant will also be notified by mail or by e-mail if the application is received on time.

### *D. Intergovernmental Review of Applications*

Executive Order 12372, Intergovernmental review of Federal programs, applies to this program. This EO requires that Federal agencies

provide opportunities for consultation on proposed assistance with State and local governments. Many states have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of states that maintain an SPOC, please see the White House Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.* If an applicant's state has an SPOC, the applicant may submit a copy of the application directly for review. Any comments obtained through the SPOC must be provided to USDA Rural Development for consideration as part of the application. If the applicant's state has not established an SPOC, or the applicant does not want to submit a copy of the application, USDA Rural Development will submit the application to the SPOC or other appropriate agency or agencies.

Applicants are also encouraged to contact the USDA Rural Development State Office for assistance and questions on this process. The USDA Rural Development State Office can be reached at (202) 720–4323 and selecting option ''1'' or by viewing the following Web site: *http://www.rurdev.usda.gov/.*

*E. Funding Restrictions*

Funding restrictions apply to both grant funds and matching funds. Grant funds may be used to pay up to 75 percent (95 percent where the grantee is a 1994 Institution) of the total project cost.

1. Grant funds and matching funds may be used for, but are not limited to, providing the following to individuals, cooperatives, small businesses and other similar entities in rural areas served by the Center:

i. Applied research, feasibility, environmental and other studies that may be useful for the purpose of cooperative development.

ii. Collection, interpretation and dissemination of principles, facts, technical knowledge, or other information for the purpose of cooperative development.

iii. Training and instruction for the purpose of cooperative development.

iv. Loans and grants for the purpose of cooperative development in accordance with this notice and applicable regulations.

v. Technical assistance, research services and advisory services for the purpose of cooperative development.

2. No funds made available under this solicitation shall be used for any of the following activities:

i. To duplicate current services or replace or substitute support previously provided. If the current service is inadequate, however, grant funds may be used to expand the level of effort or services beyond that which is currently being provided;

ii. To pay costs of preparing the application package for funding under this program;

iii. To pay costs of the project incurred prior to the date of grant approval;

iv. To fund political activities;

v. To pay for assistance to any private business enterprise that does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

vi. To pay any judgment or debt owed to the United States;

vii. To plan, repair, rehabilitate, acquire, or construct a building or facility, including a processing facility;

viii. To purchase, rent, or install fixed equipment, including laboratory equipment or processing machinery;

ix. To pay for the repair of privately owned vehicles;

x. To fund research and development;

xi. To pay costs of the project where a conflict of interest exists; or

xii. To fund any activities prohibited by 7 CFR parts 3015 or 3019.

*F. Other Submission Requirements*

A paper application for a grant must be submitted to Cooperative Programs, Attn: RCDG Program, 1400 Independence Avenue, SW., Mail Stop 3250, Room 4016-South, Washington, DC 20250–3250. The phone number that should be used for courier delivery is (202) 720–7558. Electronically submitted applications must apply using the following internet address: *http://www.grants.gov.* Applications may not be submitted by electronic mail, facsimile, or by hand-delivery. Each application submission must contain all required documents in one envelope, if by mail or courier delivery service.

**V. Application Review Information**

*A. Proposal Evaluation Criteria*

All eligible and complete applications will be evaluated based on the following criteria. Evaluators will base scores only on the information provided or cross-referenced in each individual evaluation criterion. The maximum amount of points available is 65.

1. *Administrative capabilities.* (0–7 points) The application will be evaluated to determine whether the subject Center has a track record of administering a Nationally-coordinated, regional or state-wide operated project. Centers that have capable financial systems and audit controls, personnel and program administration performance measures and clear rules of governance will receive more points than those not evidencing this capacity.

2. *Technical assistance and other services.* (0–7 points) The Agency will evaluate the applicant's demonstrated expertise in providing technical assistance in rural areas.

3. *Economic development.* (0–7 points) The Agency will evaluate the applicant's demonstrated ability to assist in the retention of businesses, facilitate the establishment of cooperatives and new cooperative approaches and generate employment opportunities that will improve the economic conditions of rural areas.

4. *Linkages.* (0–7 points) The Agency will evaluate the applicant's demonstrated ability to create horizontal linkages among businesses within and among various sectors in rural areas of the United States and vertical linkages to domestic and international markets.

5. *Commitment.* (0–7 points) The Agency will evaluate the applicant's commitment to providing technical assistance and other services to underserved and economically distressed areas in rural areas of the United States.

6. *Matching Funds.* (0, 3 or 5 points) All applicants must demonstrate matching funds equal to at least 25 percent (5 percent for 1994 Institutions) of total project costs. Applications exceeding these minimum commitment levels will receive more points. If the applicant provides eligible matching funds of 25 percent, 0 points will be awarded; 26 to 50 percent, 3 points will be awarded; or greater than 50 percent, 5 points will be awarded. If the applicant is a 1994 Institution and provides eligible matching funds of 5 percent, 0 points will be awarded; 6 to 20 percent, 3 points will be awarded; or greater than 20 percent, 5 points will be awarded.

7. *Delivery.* (0–5 points) The Agency will evaluate whether the Center has a track record of providing technical assistance in rural areas and accomplishing effective outcomes in cooperative development. The Center's potential for delivering effective cooperative development assistance, the expected effects of that assistance, the sustainability of cooperative organizations receiving the assistance, and the transferability of the Center's cooperative development strategy and focus to other States will also be assessed.

8. *Work Plan/Budget.* (0–5 points) The work plan will be reviewed for detailed actions and an accompanying timetable for implementing the proposal. Clear,

logical, realistic and efficient plans will result in a higher score. Budgets will be reviewed for completeness and the quality of non-Federal funding commitments. Applicants must discuss the specific tasks (whether it be by type of service or specific project) to be completed using grant and matching funds. The work plan should show how customers will be identified, key personnel to be involved, and the evaluation methods to be used to determine the success of specific tasks and overall objectives of Center operations. The budget must present a breakdown of the estimated costs associated with cooperative development activities as well as the operation of the Center and allocate these costs to each of the tasks to be undertaken. Matching funds as well as grant funds must be accounted for in the budget.

9. *Qualifications of those Performing the Tasks.* (0–5 points) The application will be evaluated to determine if the personnel expected to perform key center tasks have a track record of positive solutions for complex cooperative development or marketing problems, or a successful record of conducting accurate feasibility studies, business plans, marketing analysis, or other activities relevant to Cooperative development center success. The applicant must also identify whether the personnel expected to perform tasks are full/part-time Center employees or contract personnel.

10. *Local support.* (0–5 points) Applications will be reviewed for previous and expected local support for the Center, plans for coordinating with other developmental organizations in the proposed service area, and coordination with State and local institutions. Support documentation should include recognition of rural values that balance employment opportunities with environmental stewardship and other positive rural amenities. Centers that demonstrate strong support from potential beneficiaries and formal evidence of the Center's intent to coordinate with other developmental organizations will receive more points than those not evidencing such support and formal intent. Support should be discussed directly within the response to this criterion. The applicant may submit a maximum of 10 letters of support or intent to coordinate with the application. These letters should be included in Appendix B of the application and will not count against the 40-page limit for the narrative.

11. *Future support.* (0–5 points) Applicants should describe their vision for Center operations in future years, including issues such as sources and uses of alternative funding; reliance on Federal, State, and local grants; and the use of in-house personnel for providing services versus contracting out for that expertise. To the extent possible, applicants should document future funding sources that will help achieve long-term sustainability of the Center. Applications that demonstrate their vision for funding center operations for future years, including diversification of funding sources and building in-house technical assistance capacity, will receive more points for this criterion.

*B. Review and Selection Process*

The Agency will screen all of the proposals to determine whether the application is eligible and sufficiently responsive to the requirements set forth in this notice to allow for an informed review.

The Agency will evaluate applications using a panel of qualified reviewers who will score the applications in accordance with the point allocation specified in this notice. Applications will be submitted to the Administrator in rank order, together with funding level recommendations.

*C. Anticipated Announcement and Award Dates*

*Award Date:* The announcement of award selections is expected to occur on or about September 12, 2008.

## VI. Award Administration Information

*A. Award Notices*

Successful applicants will receive a notification of tentative selection for funding from USDA Rural Development. Applicants must comply with all applicable statutes and regulations before the grant award will be approved. Unsuccessful applicants will receive notification by mail.

*B. Administrative and National Policy Requirements*

7 CFR parts 3015, 3019, and 4284 are applicable to this program. To view these regulations, please see the following internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to grantees selected for this program:

- Grant Agreement.
- Letter of Conditions.
- Form RD 1940–1, ''Request for Obligation of Funds.''
- Form RD 1942–46, ''Letter of Intent to Meet Conditions.''
- Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.''
- Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.''
- Form AD–1049, ''Certification Regarding Drug-Free Workplace Requirements (Grants).''
- Form RD 400–4, ''Assurance Agreement.''
- RD Instruction 1940–Q, Exhibit A–1, ''Certification for Contracts, Grants and Loans.''

Additional information on these requirements can be found at *http://www.rurdev.usda.gov/rbs/coops/rcdg/rcdg.htm.*

*Reporting Requirements:* Grantees must provide USDA Rural Development with an original or electronic copy that includes all required signatures of the following reports. The reports should be submitted to the Agency contact listed on the Grant Agreement and Letter of Conditions. Failure to submit satisfactory reports on time may result in suspension or termination of the grant.

1. Form SF–269 or SF–269A. A ''Financial Status Report'' listing expenditures according to agreed upon budget categories, on a semi-annual basis. Reporting periods end each March 31 and September 30. Reports are due 30 days after the reporting period ends.

2. Semi-annual performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the work plan is not being met, the report should discuss the problems or delays that may affect completion of the project. Objectives for the next reporting period should be listed. Compliance with any special conditions on the use of award funds should be discussed. The report should also include a summary at the end of the report with the following elements to assist in documenting the annual performance goals of the RCDG program for Congress.

- Number of groups who are not legal entities assisted.
- Number of businesses that are not cooperatives assisted.
- Number of cooperatives assisted.
- Number of businesses incorporated that are not cooperatives.
- Number of cooperatives incorporated.
- Total number of jobs created as a result of assistance.
- Total number of jobs saved as a result of assistance.
- Number of jobs created for the Center as a result of RCDG funding.

• Number of jobs saved for the Center as a result of RCDG funding.

Reports are due as provided in paragraph 1 of this section. Supporting documentation must also be submitted for completed tasks. The supporting documentation for completed tasks includes, but is not limited to: Feasibility studies, marketing plans, business plans, publication quality success stories, applied research reports, copies of surveys conducted, articles of incorporation and bylaws and an accounting of how outreach, training, and other funds were expended.

3. Final project performance reports. These reports shall include all of the requirements of the semi-annual performance reports and responses to the following:

i. What have been the most challenging or unexpected aspects of this program?

ii. What advice would the Grantee give to other organizations planning a similar program? These should include strengths and limitations of the program. If the Grantee had the opportunity, what would they have done differently?

iii. If an innovative approach was used successfully, the Grantee should describe their program in detail so that other organizations might consider replication in their areas.

The final performance report is due within 90 days of the completion of the project.

**VII. Agency Contacts**

For general questions about this announcement and for program technical assistance, applicants should contact their USDA Rural Development State Office at *http://www.rurdev.usda.gov/rbs/coops/rcdg/Contacts.htm.* The State Office can be reached by calling (202) 720–4323 and pressing ''1''. If an applicant is unable to contact their State Office, please contact a nearby State Office or the USDA Rural Development National Office at 1400 Independence Avenue, SW., Mail Stop 3250, Rm. 4016–South, Washington, DC 20250–3250, telephone: (202) 720–7558, e-mail: *cpgrants@wdc.usda.gov.*

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Dated: January 31, 2008.

**Ben Anderson,**

*Administrator, Rural Business-Cooperative Service.*

[FR Doc. E8–2328 Filed 2–7–08; 8:45 am]

BILLING CODE 3410–XY–P

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

### Announcement of Small, Minority Producer Grant Program Application Deadlines

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Notice of solicitation of applications.

**SUMMARY:** The Rural Business-Cooperative Service announces the availability of approximately $1.463 million in competitive grant funds for fiscal year (FY) 2008 for cooperatives and associations of cooperatives to assist small, minority agricultural producers. USDA Rural Development Cooperative Programs hereby requests proposals from eligible cooperatives and associations of cooperatives for a competitively awarded grant to fund technical assistance to small, minority agricultural producers in rural areas. The maximum award per grant is $175,000.

**DATES:** Applications for grants must be submitted on paper or electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than April 8, 2008, to be eligible for FY 2008 grant funding. Late applications are not eligible for FY 2008 grant funding.

Electronic copies must be received by April 8, 2008, to be eligible for FY 2008 grant funding. Late applications will not be eligible for FY 2008 grant funding.

**ADDRESSES:** Application materials for the Small, Minority Producers Grant Program (SMPG) may be obtained at *http://www.rurdev.usda.gov/rbs/coops/smpg/smpg.htm* or by contacting the applicant's USDA Rural Development State Office at (202) 720–4323 and pressing ''1''.

Submit electronic grant applications at *http://www.grants.gov*, following the instructions found on this Web site. Submit completed paper applications for a grant to the applicant's State Office as follows:

A list of Rural Development State Offices follows:

*Alabama*

USDA Rural Development, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3623.

*Alaska*

USDA Rural Development, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7722.

*Arizona*

USDA Rural Development, 230 North First Avenue, Suite 206, Phoenix, AZ 85003–1706, (602) 280–8717.

*Arkansas*

USDA Rural Development, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3280.

*California*

USDA Rural Development, 430 G Street, AGCY 4169, Davis, CA 95616, (530) 792–5829.

*Colorado*

USDA Rural Development, 655 Parfet Street, Room E–100, Lakewood, CO 80215, (720) 544–2903.

*Delaware/Maryland*

USDA Rural Development, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3580.

*Florida/Virgin Islands*

USDA Rural Development, 4440 NW. 25th Place, Gainesville, FL 32606, (352) 338–3482.

*Georgia*

USDA Rural Development, 111 East Spring St., Monroe, GA 30655, (770) 267–1413, Ext. 113.

*Hawaii*

USDA Rural Development, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8313.

*Idaho*

USDA Rural Development, 9173 West Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5623.

*Illinois*

USDA Rural Development, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6202.

*Indiana*

USDA Rural Development, 5975 Lakeside Blvd., Indianapolis, IN 46278, (317) 290–3100.

*Iowa*

USDA Rural Development, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4714.

*Kansas*

USDA Rural Development, 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2744.

*Kentucky*

USDA Rural Development, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7435.

*Louisiana*

USDA Rural Development, 3727 Government St., Alexandria, LA 71302, (318) 473–7960.

*Maine*

USDA Rural Development, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9168.

*Massachusetts/Rhode Island/Connecticut*

USDA Rural Development, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4319.

*Michigan*

USDA Rural Development, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5157.

*Minnesota*

USDA Rural Development, 375 Jackson St., Suite 410, St. Paul, MN 55101, (651) 602–7814.

*Mississippi*

USDA Rural Development, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–5457.

*Missouri*

USDA Rural Development, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–9320.

*Montana*

USDA Rural Development, 900 Technology Blvd., Suite B, P.O. Box 850, Bozeman, MT 59771, (406) 585–2540.

*Nebraska*

USDA Rural Development, 100 Centennial Mall North, Room 152 Federal Building, Lincoln, NE 68508, (402) 437–5554.

*Nevada*

USDA Rural Development, 1390 S. Curry St., Carson City, NV 89703, (775) 887–1222, Ext. 19.

*New Jersey*

USDA Rural Development, 8000 Midlantic Drive, Suite 500N, Mt. Laurel, NJ 08054, (856) 787–7753.

*New Mexico*

USDA Rural Development, 6200 Jefferson Street, NE, Room 255, Albuquerque, NM 87109, (505) 761–4952.

*New York*

USDA Rural Development, 441 S. Salina St., Suite 357, Syracuse, NY 13202, (315) 477–6400.

*North Carolina*

USDA Rural Development, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2040.

*North Dakota*

USDA Rural Development, Federal Building, Room 208, 220 East Rosser Avenue, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2065.

*Ohio*

USDA Rural Development, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2425.

*Oklahoma*

USDA Rural Development, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1036.

*Oregon*

USDA Rural Development, 1201 NE Lloyd Blvd., Suite 801, Portland, OR 97232–1274, (503) 414–3366.

*Pennsylvania*

USDA Rural Development, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2182.

*Puerto Rico*

USDA Rural Development, IBM Building, 654 Munoz Rivera Avenue, Suite 601, Hato Rey, PR 00918–6106, (787) 766–5091, Ext. 251.

*South Carolina*

USDA Rural Development, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5881.

*South Dakota*

USDA Rural Development, Federal Building, Room 210, 200 4th Street, SW, Huron, SD 57350, (605) 352–1142.

*Tennessee*

USDA Rural Development, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1341.

*Texas*

USDA Rural Development, 101 South Main Street, Suite 102, Temple, TX 76501, (254) 742–9780.

*Utah*

USDA Rural Development, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4328.

*Vermont/New Hampshire*

USDA Rural Development, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6069.

*Virginia*

USDA Rural Development, 1606 Santa Rosa Road, Suite 238, Richmond, VA 23229, (804) 287–1594.

*Washington*

USDA Rural Development, 1835 Black Lake Blvd. SW., Suite B, Olympia, WA 98512, (360) 704–7729.

*West Virginia*

USDA Rural Development, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 252–8644, Ext. 146.

*Wisconsin*

USDA Rural Development, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7610.

*Wyoming*

USDA Rural Development, Dick Cheney Federal Building, 100 East B Street, Room 1005, P.O. Box 11005, Casper, WY 82602–5006, (307) 233–6700.

**FOR FURTHER INFORMATION CONTACT:** Visit the program Web site at *http://www.rurdev.usda.gov/rbs/coops/smpg/smpg.htm* for application assistance or contact a USDA Rural Development State Office. Applicants are strongly encouraged to contact their State Offices well in advance of the deadline to discuss their projects and ask any questions about the application process.

**SUPPLEMENTARY INFORMATION:**

## Overview

*Federal Agency:* USDA Rural Business Cooperative Service.

*Funding Opportunity Title:* Small, Minority Producer Grant.

*Announcement Type:* Initial announcement.

*Catalog of Federal Domestic Assistance Number:* 10.771.

**DATES:** Application Deadline: Completed applications for grants may be submitted on paper or electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than April 8, 2008, to be eligible for FY 2008 grant funding. Late applications are not eligible for FY 2008 grant funding.

Complete electronic copies must be received by April 8, 2008, to be eligible for FY 2008 grant funding. Late applications are not eligible for FY 2008 grant funding.

## I. Funding Opportunity Description

This notice is issued pursuant to the Agriculture, Rural Development, Food and Drug and Related Agencies Appropriations Act 2008 that authorizes not to exceed $1.463 million for cooperatives or associations of cooperatives whose primary focus is to provide assistance to small, minority producers and whose governing board and/or membership is comprised of at least 75 percent minority. The Secretary of Agriculture has delegated the

program's administration to USDA Rural Development Cooperative Programs.

The primary objective of this grant program is to provide technical assistance to small, minority agricultural producers through eligible minority cooperatives and minority associations of cooperatives. Grants are awarded on a competitive basis. The maximum award amount per grant is $175,000.

**Definitions**

*Agency*—Rural Business-Cooperative Service, an agency of the United States Department of Agriculture (USDA) Rural Development or a successor agency.

*Agricultural Commodity*—An unprocessed product of farms, ranches, nurseries, and forests. Agricultural commodities include: livestock, poultry, and fish; fruits and vegetables; grains, such as wheat, barley, oats, rye, triticale, rice, corn, and sorghum; legumes, such as field beans and peas; animal feed and forage crops; seed crops; fiber crops, such as cotton; oil crops, such as safflower, sunflower, corn, and cottonseed; trees grown for lumber and wood products; nursery stock grown commercially; Christmas trees; ornamentals and cut flowers; and turf grown commercially for sod. Agricultural commodities do not include horses or animals raised as pets, such as cats, dogs, and ferrets.

*Cooperative Programs*—The office within USDA Rural Development, and its successor organization, that administers programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451, *et seq.*) and such other programs identified in USDA regulations.

*Economic Development*—The economic growth of an area as evidenced by increase in total income, employment opportunities, decreased out-migration of population, value of production, increased diversification of industry, higher labor force participation rates, increased duration of employment, higher wage levels, or gains in other measurements of economic activity, such as land values.

*Feasibility Study*—An analysis of the economic, market, technical, financial, and management feasibility of a proposed Project.

*Minority*—Individuals who have been subjected to racial, ethnic, gender prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Minority groups are Women, African Americans, American Indians, Alaskan Natives, Hispanics, Asian and Pacific Islanders.

*Minority Association of Cooperatives*—An association of cooperatives whose primary focus is to provide assistance to small, minority agricultural producers and where the governing board and/or membership is comprised of at least 75 percent minority.

*Minority Cooperative*—A farmer- or rancher-owned and -controlled business, organized and chartered as a cooperative, from which benefits are derived and distributed equitably on the basis of use by each of the farmer or rancher owners whose primary focus is to provide assistance to small, minority agricultural producers and where the governing board and/or membership is comprised of at least 75 percent minority.

*Operating Cost*—The day-to-day expenses of running a business; for example: utilities, rent, salaries, depreciation, product production costs, marketing and advertising, and other basic overhead items.

*Project*—Includes all activities to be funded by the Small Minority Agricultural Producer Grant and any matching funds.

*Small, Minority Agricultural Producer*—Minority persons or 100 percent minority-owned entities, including farmers, ranchers, loggers, agricultural harvesters, and fishermen, with gross annual sales of not more than $250,000 that engage in the production or harvesting of an agricultural commodity.

*Rural and Rural Area*—Includes all of the territory of a State that is not within the outer boundary of any city or town having a population of 50,000 or more and the urbanized area contiguous and adjacent to such city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

*Rural Development*—A mission area within USDA consisting of the Office of Under Secretary for Rural Development, Rural Development Business and Cooperative Programs, Rural Development Housing Programs, and Rural Development Utilities Programs and their successors.

*State*—Includes each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, as may be determined by the Secretary to be feasible, appropriate and lawful, the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau.

*Technical Assistance*—An advisory service performed for the benefit of a small, minority agricultural producer such as market research; product and/or service improvement; legal advice and assistance; feasibility study, business plan, and marketing plan development; and training. Technical assistance does not include the operating costs of a cooperative being assisted.

**II. Award Information**

*Type of Award:* Grant.

*Fiscal Year Funds:* FY 2008.

*Approximate Total Funding:* $1.463 million.

*Approximate Number of Awards:* 8.

*Approximate Average Award:* $175,000.

*Floor of Award Range:* None.

*Ceiling of Award Range:* $175,000.

*Anticipated Award Date:* September 1, 2008.

*Budget Period Length:* 12 months.

*Project Period Length:* 12 months.

**III. Eligibility Information**

*A. Eligible Applicants*

Applicants must be a minority cooperative or a minority association of cooperatives as defined in this Notice, and must be able to verify their legal structure as a cooperative in the State in which they are incorporated. Individuals are not eligible for this program.

*B. Cost Sharing or Matching*

No matching funds are required.

*C. Other Eligibility Requirements*

*Use of Funds:* Funds may only be used for technical assistance projects as defined in this notice.

*Project Area Eligibility:* The Project proposed must take place in a rural area.

*Grant Period Eligibility:* If awarded, funds must be expended in 1 year. Applications must have a time frame of no more than 365 days with the time period beginning no earlier than October 1, 2008 and ending no later than December 31, 2009. Projects must be completed within the 1-year time frame. The Agency will not approve requests to extend the grant period. Applications that request funds for a time period ending after December 31, 2009, will not be considered for funding.

*Completeness Eligibility:* Applications lacking sufficient information to determine eligibility and scoring will be considered ineligible. Applications that are non-responsive to this notice will be considered ineligible.

*Multiple Grant Eligibility:* An applicant may not submit more than one

grant application in any one funding cycle.

*Activity Eligibility:* Applications must propose technical assistance, as defined in this notice, to benefit their members or other small minority agricultural producers who are not members, in order to be considered for funding. Applications having ineligible costs equaling more than 10 percent of total project costs will be determined ineligible and will not be considered for funding. Applications having ineligible costs of 10 percent or less of total project costs and which are selected for funding, must remove all ineligible costs from the budget and replace them with eligible activities or the amount of the grant award will be reduced accordingly. Applicants may not submit applications that duplicate current activities or activities paid for by other federally funded grant programs.

## IV. Application and Submission Information

### *A. Address to Request Application Package*

The application package for applying on paper for this funding opportunity can be obtained at *http://www.rurdev.usda.gov/rbs/coops/smpg/smpg.htm.* Alternatively, applicants may contact their USDA Rural Development State Office using the above list. For electronic applications, applicants must visit *http://www.grants.gov* and follow the instructions.

### *B. Content and Form of Submission*

Applications must be submitted on paper or electronically. An application guide may be viewed at *http://www.rurdev.usda.gov/rbs/coops/smpg/smpg.htm.* It is recommended that applicants use the template provided on the Web site. The template can be filled out electronically and printed out for submission with the required forms for paper submission or it can be filled out electronically and submitted as an attachment through *http://www.grants.gov.*

If the application is submitted electronically, the applicant must follow the instructions given at the Internet address: *http://www.grants.gov.* Applicants are advised to visit the site well in advance of the application deadline if they plan to apply electronically to ensure that they have obtained the proper authentication and have sufficient computer resources to complete the application.

Applicants must complete and submit the following elements. The Agency will screen all applications for eligibility and to determine whether the application is complete and sufficiently responsive to the requirements set forth in this notice to allow for an informed review. Information submitted as part of the application will be protected to the extent permitted by law.

1. *Form SF–424,* ''Application for Federal Assistance.'' The form must be completed, signed and submitted as part of the application package.

Please note that applicants are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. There is no charge. To obtain a DUNS number, access *http://www.dnb.com/us/* or call 866–705–5711. For more information, see the SMPG Web site at *http://www.rurdev.usda.gov/rbs/coops/smpg/smpg.htm* or by contacting the applicant's USDA Rural Development State Office. In addition to the DUNS number, an applicant must provide a legal Employment Identification Number.

2. *Form SF–424A,* ''Budget Information-Non-Construction Programs.'' This form must be completed and submitted as part of the application package.

3. *Form SF–424B,* ''Assurances—Non-Construction Programs.'' This form must be completed, signed, and submitted as part of the application package.

4. *Table of Contents.* For ease of locating information, each application must contain a detailed Table of Contents (TOC) immediately following the SF–424B. The TOC must include page numbers for each component of the application. Pagination should begin immediately following the TOC.

5. *Executive Summary:* A summary of the proposal, not to exceed one page, must briefly describe the project, tasks to be completed and other relevant information that provides a general overview of the project.

6. *Eligibility Discussion:* A detailed discussion, not to exceed four pages, must describe how the applicant meets the following requirements.

(i) *Applicant Eligibility:* Applicants must be minority cooperatives or minority associations of cooperatives and must describe how they meet the definition of a ''minority cooperative'' or ''minority association of cooperative'' as defined in the Definitions section of this Notice. Applicant must also verify their incorporation as a cooperative or an association of cooperatives in the State they have applied by providing the State's Certificate of Good Standing, and their Articles of Incorporation and By-Laws. The applicant must apply as only one type of applicant.

(ii) *Use of Funds:* The applicant must provide a detailed discussion on how the proposed project activities meet the definition of technical assistance.

(iii) *Project Area:* The applicant must provide specific information on where the projects are planned to be located and that the areas meet the definition of ''rural area.''

(iv) *Grant Period:* The applicant must provide a time frame for the proposed project and discuss how the project will be completed within that time frame.

7. *Budget/Work plan:* The applicant must describe, in detail not to exceed four pages, the purpose of the grant, what type of assistance will be provided, and the total amount of funds needed to assist for each project. The budget must also present a breakdown of estimated costs associated with each task/activity for each project. The amount of grant funds requested will be adjusted if the applicant does not have justification for all costs.

8. *Evaluation Criteria:* Each of the evaluation criteria referenced in this notice must be addressed, specifically and individually on separate pages, in narrative form, not to exceed a total of two pages for each evaluation criteria. Failure to address each evaluation criteria will result in the application being determined ineligible.

### *C. Submission Dates and Times*

*Application Deadline Date:* April 8, 2008.

Explanation of Deadlines: Paper applications must be postmarked and mailed, shipped, or sent overnight by the deadline date (see Section IV.F. for the address). Electronic applications must be received by *http://www.grants.gov* by the deadline date. Courier applications must be delivered by the deadline date. If the Applicant's application does not meet the deadline, it will not be considered for funding. Applicants will be notified if their application did not meet the submission deadline.

### *D. Intergovernmental Review of Applications*

Executive Order (EO) 12372, Intergovernmental Review of Federal Programs, applies to this program. This EO requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many states have established a Single Point of Contact (SPOC) to facilitate this consultation. A list of States that maintain an SPOC may be obtained at *http://www.whitehouse.gov/omb/grants/*

*spoc.html.* If your State has an SPOC, you may submit your application directly for review. Any comments obtained through the SPOC must be provided to Rural Development for consideration as part of your application. If your State has not established an SPOC or you do not want to submit your application, Rural Development will submit your application to the SPOC or other appropriate agency or agencies.

You are also encouraged to contact Cooperative Programs at 202–720–7558 or *cpgrants@wdc.usda.gov* if you have questions about this process.

*E. Funding Restrictions*

Grant funds must be used for technical assistance. No funds made available under this solicitation shall be used to:

1. Plan, repair, rehabilitate, acquire, or construct a building or facility, including a processing facility;
2. Purchase, rent, or install fixed equipment, including processing equipment;
3. Purchase vehicles, including boats;
4. Pay for the preparation of the grant application;
5. Pay expenses not directly related to the funded project;
6. Fund political or lobbying activities;
7. Fund any activities prohibited by 7 CFR parts 3015 and 3019;
8. Fund architectural or engineering design work for a specific physical facility;
9. Fund any direct expenses for the production of any commodity or product to which value will be added, including seed, rootstock, labor for harvesting the crop, and delivery of the commodity to a processing facility;
10. Fund research and development;
11. Purchase land;
12. Duplicate current services or replace or substitute support previously provided;
13. Pay costs of the project incurred prior to the date of grant approval;
14. Pay for assistance to any private business enterprise, which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;
15. Pay any judgment or debt owed to the United States;
16. Pay the operating costs of cooperative and/or association of cooperatives; or
17. Pay expenses for applicant employee training.

*F. Other Submission Requirements*

Applicants may submit their paper application for a grant to their Rural Development State Office listed under the **ADDRESSES** section. Applicants may submit their application electronically at *http://www.grants.gov.* Applications may not be submitted by electronic mail, facsimile, or hand-delivery. Each application submission must contain all required documents in one envelope, if sent by mail or express delivery service.

## V. Application Scoring Criteria Review Information

*A. Criteria*

All eligible and complete applications will be evaluated based upon the following criteria. Failure to address any one of the following criteria by the application deadline will result in the application being determined ineligible and the application will not be considered for funding. The total points possible for the criteria are 50. Any application receiving less than 30 total points will not be funded.

1. *Technical Assistance.* (0–15 points) The application will be evaluated to determine the applicant's ability to assess the needs of small minority producers, plan and conduct appropriate and effective assistance, and identify the expected outcomes of that assistance.

(i) 0 points will be awarded if the applicant does not substantively address this criterion.

(ii) 1–4 points will be awarded if the applicant demonstrates weakness in addressing this criterion.

(iii) 5–10 points will be awarded if the applicant demonstrates they meet part but not all of the criterion.

(iv) 15 points will be awarded if the applicant identifies specific needs of the minority producers to be assisted; clearly articulates a logical and detailed plan of assistance for addressing those needs; and discusses realistic outcomes of planned assistance.

2. *Experience.* (0–15 points) Points will be awarded based upon length of experience of identified staff or consultants in providing technical assistance, as defined in this notice. Applicants must describe the specific type of technical assistance experience for each identified staff member or consultant, as well as years of experience in providing that assistance. In addition, resumes for each individual staff member or consultant must be included as an attachment, listing their experience for the type of technical assistance proposed. The attachments will not count toward the maximum page total. The Agency will compare the described experience to the work plan to determine relevance of experience.

(i) 0 points will be awarded if the staff or consultants demonstrate no relevant experience in providing technical assistance;

(ii) 5 points will be awarded if at least one of the identified staff or consultants demonstrates more than two years of experience in providing relevant technical assistance;

(iii) 10 points will be awarded if at least one of the identified staff or consultants demonstrates 5 or more years of experience in providing relevant technical assistance; or

(iv) 15 points will be awarded if all of the identified staff or consultants demonstrate 5 or more years of experience in providing relevant technical assistance.

3. *Commitment.* (0–15 points) The Agency will evaluate the applicant's commitment to providing technical assistance to minority producers in rural areas. Points will be awarded based upon the number of agricultural, minority producers being assisted. Applicants must list the number and location of small, minority agricultural producers that will directly benefit from the assistance provided.

(i) 0 points will be awarded if the applicant does not substantively address this criterion.

(ii) 5 points will be awarded if the proposed project will benefit 1–10 producers;

(iii) 10 points will be awarded if the proposed project will benefit 11–50 producers; or

(iv) 15 points will be awarded if the proposed project will benefit more than 50 producers.

4. *Local support.* (0–5 points) Applications will be reviewed for local support for the technical assistance activities of the cooperative. Applicants that demonstrate strong support from potential beneficiaries and other developmental organizations will receive more points than those not evidencing such support.

(i) 0 points will be awarded if the applicant does not substantively address this criterion.

(ii) 1 point will be awarded if the applicant provides or references 2–3 support letters that demonstrate substantive support from potential beneficiaries and/or support from local organizations.

(iii) 2 points will be awarded if the applicant provides or references 4–5 support letters that demonstrate substantive support from potential beneficiaries and/or support from local organizations.

(iv) 3 points will be awarded if the applicant provides or references 6–7 support letters that demonstrate substantive support from potential beneficiaries and/or support from local organizations.

(v) 4 points will be awarded if the applicant provides or references 8–9 support letters that demonstrate substantive support from potential beneficiaries and/or support from local organizations.

(vi) 5 points will be awarded if the applicant provides or references 10 support letters that demonstrate substantive support from potential beneficiaries and/or support from local organizations.

The applicant may submit a maximum of 10 letters of support. These letters should be included as an attachment to the application and will not count against the maximum page total. Additional letters from industry groups, commodity groups, local and state government, and similar organizations should be referenced, but not included in the application package. When referencing these letters, provide the name of the organization, date of the letter, the nature of the support, and the name and title of the person signing the letter.

*B. Review and Selection Process*

The Agency will screen all proposals to determine whether the application is eligible and sufficiently responsive to the requirements set forth in this notice to allow for an informed review. Applications will be screened for eligibility and scored by the State Offices, then submitted to the National Office for review and ranking. The National Office will review the scores based upon the point allocation specified in this notice. Applications will be funded in scoring rank order and will be submitted to the Administrator in rank order with funding level recommendations. The Administrator will break scoring ties based on Agency priorities.

*C. Anticipated Announcement and Award Dates*

*Award Date:* The announcement of award selections is expected to occur on or about September 1, 2008.

## VI. Award Administration Information

*A. Award Notices*

Successful applicants will receive a notification of tentative selection for funding from Rural Development. Applicants must comply with all applicable statutes, regulations, and this notice before the grant award will receive final approval.

Unsuccessful applicants will receive notification, including appeal rights, by mail.

*B. Administrative and National Policy Requirements*

7 CFR parts 3015, 3019, and subparts A and F of part 7 CFR 4284 are applicable to grants made under this notice. These regulations may be obtained at *http://www.gpoaccess.gov/cfr/index.html.*

The following additional requirements apply to grantees selected for this program:

- Agency approved Grant Agreement.
- Letter of Conditions.
- Form RD 1940–1, ''Request for Obligation of Funds.''
- Form RD 1942–46, ''Letter of Intent to Meet Conditions.''
- Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.''
- Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.''
- Form AD–1049, ''Certification Regarding a Drug-Free Workplace Requirements (Grants).''
- Form RD 400–4, ''Assurance Agreement.''

Additional information on these requirements can be found at *http://www.rurdev.usda.gov/rbs/coops/smpg/smpg.htm.*

Fund Disbursement: The Agency will determine, based on 7 CFR Parts 3015, 3016 and 3019, as applicable, whether disbursement of a grant will be by advance or reimbursement. As needed, but not more frequently than once every 30 days, an original of SF–270, ''Request for Advance or Reimbursement,'' may be submitted to Rural Development. Recipient's request for advance shall not be made in excess of reasonable outlays for the month covered.

Reporting Requirements: Grantees must provide Rural Development with an original or an electronic copy that includes all required signatures of the following reports. The reports should be submitted to the Agency contact listed on the Grant Agreement and Letter of Conditions. Failure to submit satisfactory reports on time may result in suspension or termination of the grant. Grantees will submit:

1. *Form SF–269 or SF–269A.* A ''Financial Status Report,'' listing expenditures according to agreed upon budget categories, on a semi-annual basis. Reporting periods end each March 31 and September 30. Reports are due 30 days after the reporting period ends.

2. Semi-annual performance reports comparing accomplishments to the objectives stated in the proposal, identifying all tasks completed to date and providing documentation supporting the reported results. If the original schedule provided in the work plan is not being met, the report should discuss the problems or delays that may affect completion of the Project. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds must be discussed. Reports are due as provided in paragraph (1) of this section. Supporting documentation must also be submitted for completed tasks. The supporting documentation for completed tasks includes, but is not limited to, feasibility studies, marketing plans, business plans, articles of incorporation, and bylaws as they relate to the assistance provided.

3. Final project performance reports comparing accomplishments to the objectives stated in the proposal, identifying all tasks completed, and providing documentation supporting the reported results. If the original schedule provided in the work plan was not met, the report must discuss the problems or delays that affected completion of the project. Compliance with any special condition on the use of award funds must be discussed. Supporting documentation for completed tasks must also be submitted. The supporting documentation for completed tasks includes, but is not limited to, feasibility studies, marketing plans, business plans, articles of incorporation, and bylaws as they relate to the assistance provided. The final performance report is due within 90 days of the completion of the project. The report must also include a summary at the end of the report with the number of small minority agricultural producers assisted to assist in documenting the annual performance goals of the SMPG program for Congress.

## VII. Agency Contacts

For general questions about this announcement and for program technical assistance, please contact the appropriate State Office as indicated in the **ADDRESSES** section of this notice.

## VIII. Non-Discrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, martial status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all

prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider and employer.

Dated: January 31, 2008.

**Ben Anderson,**

*Administrator, Rural Business-Cooperative Service.*

[FR Doc. E8–2327 Filed 2–7–08; 8:45 am]

BILLING CODE 3410–XY–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to the Procurement List.

**SUMMARY:** This action adds to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**DATES:** *Effective Date:* March 9, 2008.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

**SUPPLEMENTARY INFORMATION:** On December 7 and December 14, 2007, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 69181; 71114) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

**Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

**End of Certification**

Accordingly, the following products and service are added to the Procurement List:

*Products*

Brush, Dish, Ergo, Soap Squirting & Refill
*NSN:* M.R. 871
*NSN:* M.R. 872
*NPA:* Cincinnati Association for the Blind, Cincinnati, OH
*Coverage:* C-List for the requirements of the Defense Commissary Agency, Fort Lee, VA
*Contracting Activity:* Defense Commissary Agency (DeCA), Fort Lee, VA

Liner, Low Density, Linear
*NSN:* 8105–00–NIB–1292
*NPA:* Envision, Inc., Wichita, KS
*Coverage:* C-List for the requirements of the Defense Commissary Agency, Fort Lee, VA
*Contracting Activity:* Defense Commissary Agency (DeCA), Fort Lee, VA

Folder, Classification, Pressboard
*NSN:* 7530–00–NIB–0824—Legal Size—1 Divider/4 Part—Earth Red.
*NSN:* 7530–00–NIB–0825—Legal Size—1 Divider/4 Part—Light Green.
*NPA:* Georgia Industries for the Blind, Bainbridge, GA.
*Coverage:* A-List for the total Government requirements as specified by the General Services Administration.
*Contracting Activity:* General Services Administration, Office Supplies & Paper Products Acquisition Ctr, New York, NY.

*Service*

*Service Type/Location:* Custodial Services, National Institute of Standards and Technology (NIST), Facility-Wide, Gaithersburg, MD.
*NPA:* Didlake, Inc., Manassas, VA.
*Contracting Activity:* National Institutes of Standards & Technology, Gaithersburg, VA.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

**Kimberly M. Zeich,**

*Director, Program Operations.*

[FR Doc. E8–2367 Filed 2–7–08; 8:45 am]

BILLING CODE 6353–01–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed additions and deletions

**ACTION:** Proposed additions to and deletions from the Procurement List.

**SUMMARY:** The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products and a service previously furnished by such agencies.

*Comments Must be Received On or Before:* March 9, 2008.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

**SUPPLEMENTARY INFORMATION:**

This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

*Additions:*

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

**Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

**End of Certification**

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

*Services:*

*Service Type/Location:* Custodial Services Air National Guard, 1401 Robert B. Miller Jr. Drive, Garden City, GA
*NPA:* Trace, Inc., Boise, ID.
*Contracting Activity:* Air National Guard, 165th Air Wing, Garden City, GA
*Service Type/Location:* Janitorial/Custodial Services, U.S. Coast Guard, Integrated Support Command (ISC), San Pedro Terminal Station, San Pedro, CA
*NPA:* Elwyn, Inc., Aston, PA.
*Contracting Activity:* U.S. Coast Guard -Alameda, Alameda, CA
*Service Type/Location:* Laundry Services, Blanchfield Army Community Hospital (BACH), Fort Campbell, KY
*NPA:* Lakeview Center, Inc., Pensacola, FL.
*Contracting Activity:* Department of the Army, Southeast Regional Contracting Office (SERCO), Fort Gordon, GA
*Service Type/Location:* Laundry Services, Fort Campbell, Fort Campbell, KY
*NPA:* Lakeview Center, Inc., Pensacola, FL.
*Contracting Activity:* Department of the Army, Army Contracting Agency, Directorate of Contracting, Fort Campbell, KY
*Service Type/Location:* Laundry Services, Air National Guard-Sioux City, 185th Air Refeuling Wing, 2920 Headquarters Avenue, Sioux City, IA
*NPA:* Genesis Development, Jefferson, IA.
*Contracting Activity:* Iowa Air National Guard, Sioux City, IA.

*Deletions:*

**Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action should not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for deletion from the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

**End of Certification**

The following products and service are proposed for deletion from the Procurement List:

*Products:*

*Clocks, Atomic Standard, Thermometer*

NSN: 6645–01–491–9837
NSN: 6645–01–491–9840
NSN: 6645–01–491–9841
NSN: 6645–01–491–9844
NSN: 6685–01–492–0910

*NPA:* The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, IL
*Contracting Activity:* General Services Administration, Office Supplies & Paper Products Acquisition Ctr, New York, NY

*Wrapper, Sterilization*

NSN: 6530–00–197–9223
NSN: 6530–00–926–4902
NSN: 6530–00–926–4903
NSN: 6530–00–926–4904
NSN: 6530–00–926–4905
NSN: 6530–00–197–9283
*NPA:* Alabama Industries for the Blind, Talladega, AL
*NPA:* Blind Industries & Services of Maryland, Baltimore, MD
*NPA:* Mississippi Industries for the Blind, Jackson, MS

NSN: 6530–00–197–9228
*NPA:* Alabama Industries for the Blind, Talladega, AL
*NPA:* Arizona Industries for the Blind, Phoenix, AZ
*NPA:* Blind Industries & Services of Maryland, Baltimore, MD
*NPA:* Mississippi Industries for the Blind, Jackson, MS

*Contracting Activity:* Veterans Affairs National Acquisition Center, Hines, IL
NSN: 6530–01–036–0398
*NPA:* Unknown
NSN: 6530–01–244–2776
NSN: 6530–01–244–9946
NSN: 6530–01–246–0156
NSN: 6530–01–246–1935
NSN: 6530–01–248–4813
*NPA:* Alabama Industries for the Blind, Talladega, AL
*NPA:* Arizona Industries for the Blind, Phoenix, AZ
*NPA:* Blind Industries & Services of Maryland, Baltimore, MD
*NPA:* Mississippi Industries for the Blind, Jackson, MS

*Contracting Activity:* Defense Supply Center Philadelphia, Philadelphia, PA
NSN: 6530–00–299–9603
*NPA:* Alabama Industries for the Blind, Talladega, AL
*NPA:* Arizona Industries for the Blind, Phoenix, AZ
*NPA:* Blind Industries & Services of Maryland, Baltimore, MD
*NPA:* Mississippi Industries for the Blind, Jackson, MS

*Contracting Activity:* Defense Supply Center Philadelphia, Philadelphia, PA
*Contracting Activity:* Veterans Affairs National Acquisition Center, Hines, IL

*Service:*

*Service Type/Location:* Commissary Shelf Stocking & Custodial, Fort Stewart, GA

*NPA:* Unknown

*Contracting Activity:* Defense Commissary Agency (DeCA), Fort Lee, VA

**Kimberly M. Zeich,**

*Director, Program Operations.*

[FR Doc. E8–2366 Filed 2–7–08; 8:45 am]

BILLING CODE 6353–01–P

## DEPARTMENT OF COMMERCE

## Bureau of the Census

**[Docket Number 070111009–7786–02]**

## Census County Division and Equivalent Entities Program for the 2010 Census-Final Criteria

**AGENCY:** Bureau of the Census, Commerce.

**ACTION:** Notice of final criteria and program implementation.

**SUMMARY:** This Notice announces the Bureau of the Census' (Census Bureau's) final criteria for defining census county divisions (CCDs) and equivalent entities for the 2010 Census. Based on responses to the request for comments on proposed criteria published in the **Federal Register** of April 6, 2007 (72 FR 17324), the Census Bureau will retain CCDs as a statistical geographic entity for use in tabulating and presenting data from the decennial census, the American Community Survey (ACS), and, as appropriate, other censuses and surveys.

CCDs and equivalent entities are statistical geographic entities established cooperatively by the Census Bureau and officials of state and local governments in 22 states [1] where minor civil divisions (MCDs) either do not exist or have been unsatisfactory for reporting census data. The primary goal of the CCD program has been to establish and maintain a set of

[1] In Alaska, census subareas are equivalents of CCDs. For purposes of this notice, the term ''CCD'' will also refer to census subareas in Alaska.

subcounty [2] units that have stable boundaries and recognizable names.

In addition to providing final criteria for CCDs, this notice also contains a summary of comments received in response to proposed criteria published in the April 6, 2007, **Federal Register** (72 FR 17324), as well as both the Census Bureau's response to those comments and a description of the changes made to the criteria.

**DATES:** This notice's final criteria will be effective on February 8, 2008.

**FOR FURTHER INFORMATION CONTACT:** The Geographic Standards and Criteria Branch, Geography Division, U.S. Census Bureau, via e-mail at *geo.psap.list@census.gov* or telephone at (301) 763–3056.

**SUPPLEMENTARY INFORMATION:**

## I. History

When CCDs were introduced prior to the 1950 Census, few alternatives were available for the provision of statistical data related to relatively stable, subcounty geographic units. Census tracts were defined in only a subset of metropolitan area counties. MCDs existed in all counties, but in some states, MCD boundaries changed frequently enough that they were not useful for comparing statistical data from one decade to another.

For much of the period from the 1950 Census through the 1980 Census, county subdivisions (MCDs and CCDs) provided the only subcounty unit of geography at which data users could obtain statistical data for complete coverage of counties nationwide. The introduction of block numbering areas (BNAs) in counties without census tracts for the 1990 Census offered an alternate subcounty entity for which data could be tabulated. For Census 2000, the Census Bureau introduced census tracts nationwide (in many counties, BNAs were simply relabeled as ''census tracts'') and the greater dissemination of, and ability to analyze, data at the census tract level made CCDs less necessary as statistical reporting units.

## II. Summary of Comments Received in Response to the Proposed Criteria

The April 6, 2007, **Federal Register** (72 FR 17324) notice requested comment on proposed criteria for CCDs. In addition, the Census Bureau sought comment regarding the continued identification and use of CCDs as statistical geographic areas for the tabulation, presentation, and analysis of statistical data. In raising the question of continued identification of CCDs, the Census Bureau sought to ascertain the extent to which data users still found CCDs to be useful geographic areas given that census tracts are defined nationwide, and that census tract-level statistical data are widely available and more easily manipulated using prevailing spreadsheet, database, and geographic information system software. The Census Bureau noted that it would consider eliminating CCDs as a census geographic area if commenters no longer found them to be useful for data presentation and analysis. If comments indicated continued relevance, the Census Bureau would retain CCDs.

The Census Bureau received 172 comments in response to the proposed criteria, all specifically in response to the issue of whether to retain or eliminate CCDs. Commenters represented a broad range of data users, including individual data users; local, state, and federal government agencies; nonprofit and nongovernmental organizations; and private sector organizations and companies.

The Census Bureau received 164 comments in favor of retaining CCDs, noting their continued relevance as geographic areas for data presentation and analysis. Of these, 154 comments related specifically to retaining the San Fernando Valley CCD in Los Angeles County, California. Of the other comments in favor of retaining CCDs, six were received from state departments of health, noting that data for CCDs are used for analysis and program implementation, particularly in less populated counties in which CCDs subdivide census tracts and, therefore, provide data for smaller geographic areas and populations.

Of the remaining eight comments, four were in response to a survey conducted in the San Fernando Valley, with three in favor of eliminating CCDs and one undecided. Two commenters (a national trade association and a nongovernmental policy research organization) favored elimination of CCDs, stating that as a result of nationwide availability of data for census tracts, they no longer analyzed data by CCD.

The Tennessee Office of Information Resources requested replacement of CCDs in Tennessee with county commissioner districts, commenting that the latter were more relevant to the ongoing planning and policy analysis needs of local and state government agencies. County commissioner districts in Tennessee are legal entities defined for the purpose of electing county commissioners, and are a type of legal, administrative MCD. They are redefined after each decennial census, and their boundaries generally remain stable and unchanged through the decade. When considering this request, the Census Bureau sought additional comment from data users in Tennessee, working through the Tennessee State Data Center (SDC) and its network of affiliates. Responses to the Tennessee SDC's request for comment generally favored adoption of county commissioner districts as the county subdivision type for use in tabulating and presenting Census Bureau data, and concurred with the Office of Information Resources request to replace CCDs with county commissioner districts.

In accepting Tennessee's request to switch from CCDs to county commissioner districts (a type of MCD), the Census Bureau also offers other CCD states the opportunity to replace CCDs with MCDs, provided the following conditions are met:

1. There is demonstrated support from a wide range of data users within the state for the switch from current CCDs to a legally existing county subdivision;
2. The type of MCD selected for adoption exists in all counties throughout the state and is well known or easily identifiable by data users; and
3. The type of MCD selected has relatively stable boundaries, with changes generally limited to updates or redistricting once following each census, but stable through the remainder of the decade.

The Census Bureau will consider requests from the other 21 CCD states to replace CCDs with a type of MCD, based on the conditions stated above. If the MCDs are to be used for the tabulation of data from the 2010 Census, requests must be received in writing by April 15, 2008, to provide the Census Bureau sufficient time to consult with data users in the state through the State Data Center and its network of affiliates, prepare geographic update materials, and process boundary submissions.

### Changes to the Criteria From the Proposed Rule

The changes made to the final criteria (from the proposed criteria) in ''Section III, General principles and criteria for CCDs for the 2010 Census'' are as follows:

1. Paragraph 1 in this section appeared in Section C, ''CCD Criteria for the 2010 Census,'' in the previous

[2] For Census Bureau purposes, the term ''county'' includes parishes in Louisiana; boroughs, city and boroughs, municipalities, and census areas in Alaska; independent cities in Maryland, Missouri, Nevada, and Virginia; districts and islands in American Samoa, and districts in the U.S. Virgin Islands; municipalities in the Commonwealth of the Northern Mariana Islands; municipios in Puerto Rico; and the areas constituting the District of Columbia and Guam. This notice will refer to all of these entities collectively as ''counties.''

**Federal Register** notice (April 6, 2007; 72 FR 17324). We have moved it to the beginning of Section III in the final criteria because the wording applies to both the general principles and delineation criteria. We removed the reference to American Indian reservations and off-reservation trust lands because these areas are, by definition, within the United States.

2. Section A, ''General principles,'' paragraph 3, reworded several sentences to provide greater clarity regarding the relationship between CCDs and census tracts.

3. Section A, ''General principles,'' paragraph 4, added three sentences to clarify North Dakota's and Tennessee's requests to use MCDs rather than CCDs for tabulating data. We made this change to note Tennessee's recent request in response to the April 6, 2007, **Federal Register** (72 FR 17234). The reference to North Dakota's request for the 1970 Census was added to provide an example of a state that had shifted from CCDs to MCDs.

4. Section B, ''CCD Criteria for the 2010 Census,'' added the first paragraph, summarizing the criteria that follow in more detail.

5. Section B, ''CCD Criteria for the 2010 Census,'' criteria relating to community orientation, added the words ''together form a cohesive community area'' to provide greater clarity.

6. Section B, ''CCD Criteria for the 2010 Census,'' criteria relating to visible and/or stable boundaries, changed wording in the last sentence from ''permits'' to ''requires'' that CCDs follow state, county, and census tract boundaries. This change in wording is consistent with wording elsewhere in the criteria, with the stated intent of the CCD program, and with past practice. Additional wording changes were made to improve clarity.

7. Section B, ''CCD Criteria for the 2010 Census,'' criteria relating to census tract boundaries, removed the reference to the Puerto Rico Community Survey because CCDs are not defined in Puerto Rico. We also deleted the requirement that new CCDs must have a minimum population of 1,200 (the minimum threshold for a census tract) because population thresholds and requirements are not consistent with the general concept of a CCD.

8. Section B, ''CCD Criteria for the 2010 Census,'' criteria relating to name identification, we added a requirement that the name of an existing CCD may not be changed unless a compelling reason is provided. This addition is intended to promote consistency and continuity from one census to another and avoid needless changes that may result in confusion among data users.

## III. General Principles and Criteria for CCDs for the 2010 Census

The criteria outlined herein apply to the United States,[3] Puerto Rico, and the Island Areas.[4] In accordance with the final criteria, the Census Bureau may modify and, if necessary, reject any proposals for CCDs that do not meet the established criteria. In addition, the Census Bureau reserves the right to modify the boundaries and attributes of CCDs as required to maintain established geographic relationships before the final tabulation geography is set for the 2010 Census.

### *A. General Principles*

1. The primary goal of the CCD program is to establish and maintain a set of subcounty units that have stable boundaries and recognizable names. The boundaries of CCDs usually coincide with visible features or stable, significant legal boundaries, such as the boundary of an American Indian reservation, federally managed land, or conjoint incorporated places. CCDs have no legal status as statistical geographic entities and are defined only for the tabulation and presentation of statistical data.

2. A CCD usually represents a single contiguous area consisting of one or more communities, trading centers, or, in some instances, major land uses that are relatively compact in shape.

3. A CCD shall have a relationship to existing census tracts, either encompassing one or more census tracts or having two or more CCDs nest within a single census tract. The boundaries of a CCD, or combination of nested CCDs, align with census tract boundaries. Note that a county with a population less than the optimum population for a census tract (less than 4,000 people) may contain more CCDs than census tracts. For example, McCone County, Montana, which has a 2006 estimated population of 1,760, contains only one census tract, but is divided into two CCDs.

4. Since the 1950s, the Census Bureau has worked with state and local officials to replace MCDs with CCDs for the collection, presentation, and analysis of Census Bureau data, particularly in states in which MCDs do not provide governmental services and functions, and in which MCD boundaries tend to change between decennial censuses. As of Census 2000, CCDs were defined in 22 states: Alabama, Alaska, Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Kentucky, Montana, Nevada, New Mexico, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Utah, Washington, and Wyoming. North Dakota adopted CCDs for use in tabulating and presenting data from the 1970 Census. Following the 1970 Census, North Dakota requested that the Census Bureau again use MCDs to tabulate and present statistical data. For the 2010 Census, Tennessee has requested that the Census Bureau replace its CCDs with county commissioner districts, a type of legal, administrative MCD.

### *B. CCD Criteria for the 2010 Census*

CCDs must (1) have community orientation, (2) have visible and/or stable boundaries, (3) conform to census tract boundaries, and (4) have recognizable names.

#### 1. Community Orientation

Each CCD should center on one or more places and encompass additional surrounding territory that together form a cohesive community area. The definition of community should take into account factors such as production, marketing, consumption, and the integrating factor of local institutions.

The locality on which a CCD is centered usually is an incorporated place or an unincorporated community, which might be identified as a census designated place. In some cases, the CCD may center on a major area of significantly different topography, land use, or ownership, such as a large military installation or American Indian reservation. A CCD should always comprise a reasonably compact, continuous land area, generally with road access to all areas within the CCD.

#### 2. Visible and/or Stable Boundaries

To make the location of CCD boundaries less ambiguous, the boundaries should follow, wherever possible, visible and identifiable features. The use of visible features makes it easier to locate and identify CCD boundaries over time, as the locations of most visible features in the landscape change infrequently, making data collection easier and more reliable, while reducing the possibility for data allocation errors. The Census Bureau requires that CCDs follow state and county boundaries, conform to census

[3] For Census Bureau purposes, the United States includes the 50 states and the District of Columbia.

[4] For Census Bureau purposes, the Island Areas include American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the U.S. Virgin Islands, and the U.S. Minor Outlying Islands. The U.S. Minor Outlying Islands are an aggregation of nine U.S. territories: Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, the Midway Islands, Navassa Island, Palmyra Atoll, and Wake Island.

tract boundaries, and allows CCDs to follow the boundaries of federally recognized American Indian reservations, and federal-, state-, or locally-managed land.

The following features are acceptable:

a. County boundaries (always a CCD boundary);

b. Census tract boundaries, which usually follow visible, perennial, natural, and cultural features, such as roads, rivers, canals, railroads, or above-ground, high-tension power lines;

c. Legally defined, federally recognized American Indian reservation boundaries;

d. The boundaries of federal-, state-, or locally-managed land, such as National Parks, National Monuments, National Forests, other types of large parks or forests, airports, marine ports, prisons, military installations, or other facilities; and

e. Conjoint city limits (in certain situations, such as city limits that change infrequently).

f. When the above types of features are not available for use as CCD boundaries, the Census Bureau may, at its discretion, approve other nonstandard, visible features, such as ridge lines, above-ground pipelines, streams, or fence lines. The Census Bureau may also accept, on a case-by-case basis, the boundaries of selected nonstandard and potentially nonvisible features, such as the boundaries of cemeteries, golf courses, glaciers, or the straight-line extensions of visible features and other lines-of-sight.

3. Census Tract Boundaries; Population Size

Whenever possible, a CCD should encompass one or more contiguous census tracts, or multiple CCDs should constitute a single census tract. Therefore, CCD boundaries should be consistent with census tract boundaries. Population size is not as important a consideration with CCDs as it is with census tracts. Historically, CCDs have ranged from a few hundred people (in selected situations) to more than one million. However, data quality and availability may be factors that local governments and planners should consider in defining statistical geographic areas. As a general rule, period estimates of demographic characteristics of small population areas from the ACS will be subject to higher variances than comparable period estimates for areas with larger populations. In addition, the Census Bureau's disclosure rules may have the effect of restricting the availability and amount of data for areas with small populations.

4. Name Identification

- The names of existing CCDs shall not be changed unless a compelling reason is provided, such as when the name from which the CCD was derived has changed, as in the case of Bainbridge Island, Washington, when the name of the city (Winslow) changed.
- A new CCD usually is named after the largest population center or historically central place within it (e.g., Taos, Chimayo, or Ohkay Owingeh, New Mexico).
- Where a CCD contains multiple centers with relatively equal importance, a CCD name may represent the two or three centers (e.g., Mount Pleasant-Moroni, Utah).
- A CCD may be named after the American Indian Reservation (e.g., Hualapai, Arizona or Nez Perce, Idaho) or a prominent land use area (e.g., Federal Reservation, Washington or Yellowstone National Park, Wyoming) in which it is partially or wholly located.
- A CCD may be named after a prominent physical feature (e.g., Mount Rainier, Washington) or a distinctive region within the county (e.g., Death Valley, California; Everglades and Lower Keys, Florida).
- If there is no clear cultural focus or topographic name that can be applied, a CCD name shall consist of the county name and a compass direction to indicate the portion of the county in the CCD or a place name and a compass direction to give the CCD location relative to the place. The directional indicator precedes a county name (e.g., Northeast Cobb, Georgia). If a place name is used, the directional indicator follows it (e.g., Del Rio Northwest, Texas).

In all cases, the objective is to clearly identify the extent of the CCD by means of an area name since CCD names always should be meaningful to data users. Any name used as a CCD name must also be recognized by the Board on Geographic Names for federal use and appear in the Geographic Names Information System maintained by the U.S. Geological Survey. This includes any individual names combined to make a hyphenated CCD name.

## IV. Definitions of Key Terms

*American Indian reservation*—A federally recognized American Indian land area with boundaries established by final treaty, statute, executive order, and/or court order, and over which a federally recognized American Indian tribal government has governmental authority. Along with reservations, designations such as colonies, communities, pueblos, rancherias, and reserves apply to American Indian reservations.

*Block group*—A statistical subdivision of a census tract consisting of all census blocks whose numbers begin with the same digit in a census tract. A block group is the smallest geographic entity for which the Census Bureau normally tabulates sample data.

*Census block*—A geographic area bounded by visible and/or nonvisible features in the Census Bureau's Master Address File/Topologically Integrated Geographic Encoding and Referencing database. A block is the smallest geographic entity for which the Census Bureau tabulates decennial census data.

*Census designated place*—A statistical geographic entity with a concentration of population, housing, and commercial structures that is identifiable by name, but is not within an incorporated place.

*Census tract*—A small, relatively permanent statistical geographic division of a county defined for the tabulation and publication of Census Bureau data. The primary goal of the census tract program is to provide a set of nationally consistent small, statistical geographic units, with stable boundaries that facilitate analysis of data across time.

*Conjoint*—A description of a boundary shared by two adjacent geographic areas.

*Contiguous*—A description of a geographic entity having an uninterrupted outer boundary, such that it forms a single, connected piece of territory. Noncontiguous areas form separate, disconnected pieces.

*Federally managed land*—Territory that is federally owned and/or administered by an agency of the U.S. federal government, such as the National Park Service, Bureau of Land Management, or Department of Defense.

*Incorporated place*—A type of governmental unit, incorporated under state law as a city, town (except in New England, New York, and Wisconsin), borough (except in Alaska and New York), or village, generally to provide specific governmental services for a concentration of people within legally prescribed boundaries.

*Minor civil division*—The primary governmental or administrative division of a county in 28 states, Puerto Rico, and the Island Areas having legal boundaries, names, and descriptions. MCDs represent many different types of legal entities with a wide variety of characteristics, powers, and functions depending on the state and type of MCD. In some states, some or all of the

incorporated places also constitute MCDs.

*Nonvisible feature*—A map feature that is not visible on the ground, such as a city or county boundary through space, a property line running through space, a short line-of-sight extension of a road to another visible feature, or a point-to-point line of sight.

*Visible feature*—A map feature that can be seen on the ground, such as a road, railroad track, major above-ground transmission line or pipeline, river or stream, shoreline, fence, sharply defined mountain ridge, or cliff. A nonstandard visible feature is a feature that may not be clearly defined on the ground (such as a ridge), may be seasonal (such as an intermittent stream), or may be relatively impermanent (such as a fence). The Census Bureau generally requests verification that nonstandard features pose no problem in their location during fieldwork by Census Bureau staff.

**Executive Order 12866**

This notice has been determined to be not significant under Executive Order 12866.

**Paperwork Reduction Act**

This program notice does not represent a collection of information subject to the requirements of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

Dated: February 5, 2008.

**Steve H. Murdock,**

*Director, Bureau of the Census.*

[FR Doc. E8–2348 Filed 2–7–08; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### Bureau of Economic Analysis

### Submission for OMB Review; Comment Request; Correction

**AGENCY:** Bureau of Economic Analysis (BEA), Department of Commerce.

This notice corrects the notice published on February 1, 2008, Volume 73, Number 22, page 6114. The following items are corrected and replaced—

*Title:* Biomedical Research and Development Price Index (BRDPI) Survey.

*OMB Control Number:* 0608–0069.

All other information stated in the February 1, 2008 notice remains effective.

Dated: February 5, 2008.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E8–2373 Filed 2–7–08; 8:45 am]

BILLING CODE 3510–06–P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Action Affecting Export Privileges: AR–AM Medical Services LLC; In the Matter of AR–AM Medical Services LLC; Case No. 06–08

**Order**

The Office of Antiboycott Compliance, Bureau of Industry and Security, U.S. Department of Commerce (''BIS''), having determined to initiate an administrative proceeding pursuant to Section 11(c) of the Export Administration Act of 1979, as amended (50 U.S.C. 2401–2420 (2000)) (the ''Act'') [1] and the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (2007) (the ''Regulations''), against AR–AM Medical Services LLC (''AR–AM''), a domestic concern, based on allegations set forth in the Proposed Charging Letter, dated April 17, 2006, that alleged that AR–AM committed three violations of the Regulations;

* * * * *

Specifically, the charges are:

1. *Three Violations of 15 CFR 760.2(d)—Furnishing Information about Business Relationships With Boycotted Countries or Blacklisted Persons:* During the years 2001 and 2002, AR–AM engaged in transaction(s) involving the sale and/or transfer of goods or services (including information) from the United States to Syria. In connection with these activities, on three occasions, AR–AM, with intent to comply with, further or support an unsanctioned foreign boycott, furnished information concerning its or another person's business relationships with or in a boycotted country, an activity prohibited by Section 760.2(d) of the Regulations, and not excepted.

BIS and AR–AM having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby the parties have agreed to settle this matter in accordance with the terms and conditions set forth therein and the terms of the Settlement Agreement having been approved by me;

*It is therefore ordered that:*

First, a civil penalty of $7,200 is assessed against AR–AM. Payment shall be suspended for a period of two years from the date of entry of this Order and thereafter shall be waived, provided that, during the period of suspension, AR–AM has committed no violation of the Act and Regulations or any order issued thereunder.

Second, for a period of two years from the date of entry of this Order, AR–AM Medical Services LLC (Great Neck, New York) (''Denied Person'') may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (collectively, ''item'') exported or to be exported from the United States to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates or the Republic of Yemen (collectively, the ''Territory'') that is subject to the Regulations, or in any other activity relating to the Territory that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document, relating to the Territory;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported fro the United States to the Territory that is subject to the Regulations, or in any other activity relating to the Territory subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States to the Territory that is subject to the Regulations, or in any other activity relating to the Territory subject to the Regulations.

Third, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations from the United States to the Territory;

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized by Pub. L. 106–508 (114 Stat. 2360 (2000)) and remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse. Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp 783 (2002)), which has been extended by successive Presidential Notices, the most recent of which was August 15, 2007 (72 FR 46137 (August 16, 2007)), continues the Regulations in effect under IEEPA.

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession or control of any item subject to the Regulations that has been or will be exported from the United States to the Territory, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States to the Territory;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States to the Territory; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States to the Territory, and which is owned, possessed or controlled by the Denied Person or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States to the Territory. For the purposes of this paragraph, service means installation, maintenance, repair, modification or testing.

Fourth, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation or business organization related to the Denied Person by affiliation, ownership, control or position of responsibility in the conduct or trade or related services may also be made subject to the provisions of this Order.

Fifth, this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of the U.S.-origin technology.

Sixth, the Proposed Charging Letter, the Settlement Agreement and this Order shall be made available to the public, and a copy of this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 14th day of January, 2008.

**Darryl W. Jackson,**

*Assistant Secretary of Commerce for Export Enforcement.*

[FR Doc. 08–522 Filed 2–7–08; 8:45 am]

**BILLING CODE 3510–DT–M**

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Action Affecting Export Privileges: DMA Med-Chem Corporation; In the Matter of DMA Med-Chem Corporation, Case No. 02–10

### Order

The Office of Antiboycott Compliance, Bureau of Industry and Security, U.S. Department of Commerce (''BIS''), having determined to initiate an administrative proceeding pursuant to Section 11(c) of the Export Administration Act of 1979, as amended (50 U.S.C. 2401–2420 (2000)) (the ''Act'') [1] and the Export Administration Regulations (currently codified as 15 CFR Parts 730–774 (2007)) (the ''Regulations''), against DMA Med-Chem Corporation (''DMA''), a domestic concern, based on allegations set forth in the Proposed Charging Letter, dated April 17, 2006, that alleged that DMA committed one violation of the Regulations;

Specifically, the charge is:

1. *One Violation of 15 CFR 760.2(d)—Furnishing Information about Business Relationships with Boycotted Countries or Blacklisted Persons:* During the year 2001, DMA engaged in a transaction involving the sale and/or transfer of goods or services (including information) from the United States to Syria. In connection with these activities, on one occasion, DMA, with intent to comply with, further or support an unsanctioned foreign boycott, furnished information concerning its or another person's business relationships with or in a boycotted country, an activity prohibited by Section 760.2(d) of the Regulations, and not excepted.

BIS and DMA having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby the parties have agreed to settle this matter in accordance with the terms and conditions set forth therein and the terms of the Settlement Agreement having been approved by me;

*It is therefore ordered that:*

First, a civil penalty of $2,400 is assessed against DMA. Payment shall be suspended for a period of two years from the date of entry of this Order and thereafter shall be waived, provided that, during the period of suspension, DMA has committed no violation of the Act and Regulations or any order issued thereunder.

Second, for a period of two years from the date of entry of this Order, DMA Med-Chem Corporation (Great Neck, New York) (''Denied Person'') may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (collectively, ''item'') exported or to be exported from the United States to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates or the Republic of Yemen (collectively, the ''Territory'') that is subject to the Regulations, or in any other activity relating to the Territory that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document, relating to the Territory.

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, other otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States to the Territory that is subject to the Regulations, or in any other activity relating to the Territory subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States to the Territory that is subject to the Regulations, or in any other activity relating to the Territory subject to the Regulations.

Third, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations from the United States to the Territory;

B. Take any action that facilitates the acquisition or attempted acquisition by

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the Internal Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (IEEPA). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106–508 (114 Stat. 2360 (2000)) and remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse. Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp 783 (2002)), which has been extended by successive Presidential Notices, the most recent of which was August 15, 2007 (72 FR 46137 (August 16, 2007)), continues the Regulations in effect under IEEPA.

the Denied Person of the ownership, possession or control of any item subject to the Regulations that has been or will be exported from the United States to the Territory, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States to the Territory;

D. Obtain from the Denied Person in the Untied States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States to the Territory; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States to the Territory, and which is owned, possessed or controlled by the Denied Person or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States to the Territory. For purposes of this paragraph, service means installation, maintenance, repair, modification or testing.

Fourth, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation or business organization related to the Denied person by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fifth, this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the regulations are the foreign-produced direct product of U.S.-origin technology.

Sixth, the Proposed Charging Letter, the Settlement Agreement and this order shall be made available to the public, and a a copy of this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 14th day of January, 2008.

**Darryl W. Jackson,**

*Assistant Secretary of Commerce for Export Enforcement.*

[FR Doc. 08–521 Filed 2–7–08; 8:45 am]

BILLING CODE 3510–DT–M

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet on February 21, 2008, 10 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

**Agenda**

*Public Session*

1. Opening Remarks and Introduction.
2. Report of Composite Working group and ECCN review subgroup.
3. Change of date of Australia Group Plenary to mid April 2008.
4. Export Control Directive issued by President George W. Bush on January 22, 2008.
5. Public comments from teleconference and physical attendees.
6. Any other business.
7. Comments from Teleconferences.

*Closed Session*

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than February 14, 2008.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 22, 2008, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the portion of the meeting dealing with matters the premature disclosure of which would likely frustrate the implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: February 5, 2008.

**Yvette Springer,**

*Committee Liaison Officer.*

[FR Doc. E8–2370 Filed 2–7–08; 8:45 am]

BILLING CODE 3510–JT–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[FA–437–804, A–471–806, C–437–805]**

### Sulfanilic Acid From Hungary and Portugal: Final Results of Sunset Reviews and Revocation of Orders

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On October 1, 2007, the Department of Commerce (''the Department'') published in the **Federal Register** the notice of initiation of the five-year sunset reviews of the antidumping duty orders on sulfanilic acid from Hungary and Portugal and the countervailing duty order on sulfanilic acid from Hungary, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). Because the domestic interested party has withdrawn its participation and substantive responses in these sunset reviews, the Department is revoking these antidumping and countervailing duty orders.

**DATES:** *Effective Date:* November 8, 2007.

**FOR FURTHER INFORMATION CONTACT:** Devta Ohri or Brandon Farlander, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3853 or (202) 482–0182, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On November 8, 2002, the Department issued antidumping duty orders on sulfanilic acid from Hungary and Portugal (67 FR 68100) and a countervailing duty order on sulfanilic acid from Hungary (67 FR 68101). On October 1, 2007, the Department

initiated sunset reviews of these orders. *See Initiation of Five-year (Sunset) Reviews*, 72 FR 55742 (October 1, 2007).

On October 12, 2007, and October 31, 2007, we received notices of intent to participate and substantive responses, respectively, in these sunset reviews from a domestic interested party. Based on this information, on October 23, 2007, we informed the U.S. International Trade Commission (''ITC'') that there was domestic interest in continuation of these orders. Also, on November 21, 2007, we informed the ITC that we did not receive adequate substantive responses from any respondent parties and, as a result, we would be conducting expedited sunset reviews of these orders.

On January 28, 2008, we received a letter from the domestic interested party that it was withdrawing its notices of intent to participate in these sunset reviews and that it was no longer interested in continuation of these orders. In addition, on January 29, 2008, the domestic interested party filed a letter withdrawing its substantive response from the records of these sunset reviews. Because the Department has not expended substantial resources in conducting these expedited sunset reviews, we are accepting the domestic interested party's withdrawal of its notices of intent to participate and substantive responses. Therefore, the Department determines that there is no domestic participation or adequate substantive responses from a domestic interested party.

**Scope of the Order**

Imports covered by this order are all grades of sulfanilic acid (''sulfanilic acid'' or ''subject merchandise''), which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid, and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline and sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powers.

Technical sulfanilic acid, currently classifiable under the subheading 2921.42.22 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also currently classifiable under 2921.42.22 of the HTSUS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), currently classifiable under the HTSUS subheading 2921.42.90, is a powder, granular, or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

**Determination to Revoke**

Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.218(d)(1)(iii)(B)(3), if no domestic interested party files a notice of intent to participate, the Department shall, within 90 days after the initiation of the review, issue a final determination revoking the order. None of the respondent interested parties responded to the notices of initiation. Further, because the domestic interested party has withdrawn its notices of intent to participate and its substantive responses in these sunset reviews, the Department finds that no domestic interested part is participating in these sunset reviews.[1] Therefore, consistent with 19 CFR 351.222(i)(1)(i) and section 751(c)(3) of the Act, we are revoking these antidumping and countervailing duty orders. The effective date of revocation is November 8, 2007, the fifth anniversary of the date of the Department published these antidumping duty orders and the countervailing duty order. *See* 19 CFR 351.222(i)(2)(i).

**Effective Date of Revocation**

Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.222(i)(2)(i), the Department will instruct U.S. Customs and Border Protection to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after November 8, 2007. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping and countervailing duty deposit requirements. The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

These five-year (sunset) reviews and notice are in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: January 29, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. 08–538 Filed 2–7–08; 8:45 am]

BILLING CODE 3510–05–M

[1] The statue requires revocation of an order within 90 days of initiating a sunset review when no party responds to the notice of initiation. *See* section 751(c)(3)(A) of the Act. However, in this case, even though the domestic interested party withdrew its participation after the 90-day period had expired, we find no basis to continue the orders.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket No. 070817470–8113–04]**

**RIN 0648–ZB55**

### Availability of Grant Funds for Fiscal Year 2008

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice.

**SUMMARY:** NOAA publishes this notice to supplement the agency's solicitation for applications published on July 2, 2007 in an action entitled ''Availability of Grant Funds for Fiscal Year 2008'' (72 FR 36244). This notice announces 3 additional programs that are soliciting applications for FY 08 funding. In addition, NOAA publishes this notice to change the funding years associated with awards for the solicitation ''FY 2008 Implementation of Regional Integrated Ocean Observing Systems'' announced in the **Federal Register** on July 2, 2007 (72 FR 36244, 36263) and amended on November 15, 2007 (72 FR 64047).

**DATES:** Proposals must be received by the date and time specified under each program listed in the **SUPPLEMENTARY INFORMATION** section of this document.

**ADDRESSES:** Proposals must be submitted to the program address listed in the **SUPPLEMENTARY INFORMATION** section of this document. NOAA's discretionary grant fund notices may be found on the internet at Grants.gov. The URL for Grants.gov is *http://www.grants.gov*.

**FOR FURTHER INFORMATION CONTACT:** For those without Internet access request a

copy of the full funding opportunity announcement and/or application kit, from the person listed as the information contact under each program.

**SUPPLEMENTARY INFORMATION:** Applicants must comply with all requirements contained in the Federal Funding Opportunity announcement for each of the programs listed in this omnibus notice. These Federal Funding Opportunities are available at *http://www.grants.gov*.

The list of grant opportunities under NOAA Project Competitions (below) describe the basic information and requirements for the competitive grant/cooperative agreement programs offered by NOAA. These programs are open to anyone who meets the eligibility criteria specified under each grant. To be considered for an award in a competitive grant/cooperative agreement program, eligible applicants must submit a complete and responsive application to the appropriate address by the deadline specified in this notice. An award is made upon conclusion of the evaluation and selection process for the respective program.

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*1. Protect, Restore and Manage the Use of Coastal and Ocean Resources Through Ecosystem-Based Management*

Coastal areas are among the most developed in the Nation. More than half the population lives on less than one-fifth of the land in the contiguous United States. Furthermore, employment in near shore areas is growing three times faster than population. Coastal and marine waters support over 28 million jobs and provide a tourism destination for nearly 90 million Americans a year. The value of the ocean economy to the United States is over $115 billion. The value added annually to the national economy by the commercial and recreational fishing industry alone is over $48 billion. U.S. aquaculture sales total almost $1 billion annually. With its Exclusive Economic Zone of 3.4 million square miles, the United States manages the largest marine territory of any nation in the world.

Funded proposals should help achieve the following outcomes:

1. Healthy and productive coastal and marine ecosystems that benefit society
2. A well-informed public that acts as a steward of coastal and marine ecosystems

Program Names:

1. 2009 Mid-Atlantic Research Set-Aside Program
2. Pacific Coastal Salmon Recovery Fund

*2. Serve Society's Needs for Weather and Water Information*

Floods, droughts, hurricanes, tornadoes, tsunamis, wildfires, and other severe weather events cause $11 billion in damages each year in the United States. Weather is directly linked to public health and safety, and nearly one-third of the U.S. economy (about $3 trillion) is sensitive to weather and climate. With so much at stake, NOAA's role in understanding, observing, forecasting, and warning of environmental events is expanding. With our partners, we seek to provide decision makers with key observations, analyses, predictions, and warnings for a range of weather and water conditions, including those related to water supply, air quality, space weather, and wildfires. Businesses, governments, and nongovernmental organizations are getting more sophisticated about how to use this weather and water information to improve operational efficiencies, to manage environmental resources, and to create a better quality of life. On average, hurricanes, tornadoes, tsunamis, and other severe weather events cause $11 billion in damages per year. Weather, including space weather, is directly linked to public safety and about one-third of the U.S. economy (about $3 trillion) is weather sensitive. With so much at stake, NOAA's role in observing, forecasting, and warning of environmental events is expanding, while economic sectors and its public are becoming increasingly sophisticated at using NOAA's weather, air quality, and water information to improve their operational efficiencies and their management of environmental resources, and quality of life.

Funded proposals should help achieve the following outcomes:

1. Reduced loss of life, injury, and damage to the economy
2. Better, quicker, and more valuable weather and water information to support improved decisions
3. Increased customer satisfaction with weather and water information and services

Program Names:

1. Remote Community Alert Systems Program

*3. Understand Climate Variability and Change To Enhance Society's Ability To Plan and Respond*

Climate shapes the environment, natural resources, economies, and social systems that people depend upon worldwide. While humanity has learned to contend with some aspects of climate's natural variability, major climatic events, combined with the stresses of population growth, economic growth, public health concerns, and land-use practices, can impose serious consequences on society. The 1997–98 El Nino, for example, had a $25 billion impact on the U.S. economy-property losses were $2.6 billion and crop losses approached $2 billion. Long-term drought leads to increased and competing demands for fresh water with related effects on terrestrial and marine ecosystems, agricultural productivity, and even the spread of infectious diseases. Decisions about mitigating climate change also can alter economic and social structures on a global scale. We can deliver reliable climate information in useful ways to help minimize risks and maximize opportunities for decisions in agriculture, public policy, natural resources, water and energy use, and public health. We continue to move toward developing a seamless suite of weather and climate products. The Climate Goal addresses predictions on time scales of up to decades or longer.

Funded proposals should help achieve the following outcomes:

1. A predictive understanding of the global climate system on time scales of weeks to decades with quantified uncertainties sufficient for making informed and reasoned decisions
2. Climate-sensitive sectors and the climate-literate public effectively incorporating NOAA's climate products into their plans and decisions

Program Names:

No Programs are currently soliciting applications for this mission goal.

*4. Support the Nation's Commerce With Information for Safe, Efficient, and Environmentally Sound Transportation*

Safe and efficient transportation systems are crucial to the U.S. economy.

The U.S. marine transportation system ships over 95 percent of the tonnage and more than 20 percent by value of foreign trade through U.S. ports, including 48 percent of the oil needed to meet America's energy demands. At least $4 billion is lost annually due to economic inefficiencies resulting from weatherrelated air-traffic delays. Improved surface weather forecasts and specific user warnings would reduce the 7,000 weather related fatalities and 800,000 injuries that occur annually from crashes on roads and highways. The injuries, loss of life, and property damage from weather-related crashes cost an average of $42 billion annually. We provide information, services, and products for transportation safety and for increased commerce on roads, rails, and waterways. We will improve the accuracy of our information for marine, aviation, and surface weather forecasts, the availability of accurate and advanced electronic navigational charts, and the delivery of real-time oceanographic information. We seek to provide consistent, accurate, and timely positioning information that is critical for air, sea, and surface transportation. We will respond to hazardous material spills and provide search and rescue routinely to save lives and money and to protect the coastal environment. We will work with port and coastal communities and with Federal and state partners to ensure that port operations and development proceed efficiently and in an environmentally sound manner. We will work with the Federal Aviation Administration and the private sector to reduce the negative impacts of weather on aviation without compromising safety. Because of increased interest by the public and private sectors, we also will expand weather information for marine and surface transportation to enhance safety and efficiency.

Funded proposals should help achieve the following outcomes:

1. Safe, secure, efficient, and seamless movement of goods and people in the U.S. transportation system
2. Environmentally sound development and use of the U.S. transportation system.

Program Names:

No programs are currently soliciting applications for this mission goal.

*5. Provide Critical Support for NOAA's Mission*

Strong, effective, and efficient support activities are necessary for us to achieve our Mission Goals. Our facilities, ships, aircraft, environmental satellites, data processing systems, computing and communication systems, and our approach to management provide the foundation of support for all of our programs. This critical foundation must adapt to evolving mission needs and, therefore, is an integral part of our strategic planning. It also must support U.S. homeland security by maintaining continuity of operations and by providing NOAA services, such as civil alert relays through NOAA Weather Radio and air dispersion forecasts, in response to national emergencies. NOAA ships, aircraft, and environmental satellites are the backbone of the global Earth observing system and provide many critical mission support services. To keep this capability strong and current with our Mission Goals, we will ensure that NOAA has adequate access to safe and efficient ships and aircraft through the use of both NOAA platforms and those of other agency, academic, and commercial partners. We will work with academia and partners in the public and private sectors to ensure that future satellite systems are designed, developed, and operated with the latest technology. Leadership development and program support are essential for achieving our Mission Goals. We must also commit to organizational excellence through management and leadership across a ''corporate'' NOAA. We must continue our commitment to valuing NOAA's diverse workforce, including effective workforce planning strategies designed to attract, retain and develop competencies at all levels of our workforce. Through the use of business process re-engineering, we will strive for state-of-the-art, value-added financial and administrative processes. NOAA will ensure state-of-the-art and secure information technology and systems. By developing long-range, comprehensive facility planning processes, NOAA will be able to ensure right-sized, cost-effective, and safe facilities

Funded proposals should help achieve the following outcomes:

1. A dynamic workforce with competencies that support NOAA's mission today and in the future.

Program Names:

No programs are currently soliciting applictions for this mission goal.

## I. Background

In this notice, NOAA announces that 3 programs are making funds available for financial assistance awards. Each entry for the following grant opportunities provides: a description of the program, funding availability, statutory authority, catalog of federal domestic assistance (CFDA) number, application deadline, address for submitting proposals, information contacts, eligibility requirements, cost sharing requirements, and intergovernmental review under Executive Order 12372. Interested applicants should consult the July 2, 2007 **Federal Register** Notice entitled ''Availability of Grant Funds for Fiscal Year 2008'' (72 FR 36244) notice for the selection criteria, evaluation criteria, and other requirements for submitting an application.

In addition, NOAA publishes this notice to change the funding years associated with awards for the solicitation ''FY 2008 Implementation of Regional Integrated Ocean Observing Systems'' announced in the **Federal Register** on July 2, 2007 (72 FR 36263) and amended on November 15, 2007 (72 FR 64047). Total anticipated funding for all awards is approximately $25,000,000 and is subject to the availability of FY 2008 and/or FY 2009 appropriations. The previous announcement indicated that awards were subject to the availability of FY 2008 appropriations only, however, this amendment changes this process to allow FY 2008 and/or FY 2009 appropriations to be used. This notice applies to all applicants who have previously submitted a full proposal under this announcement. All other requirements for this solicitation remain the same.

## II. NOAA Project Competitions

*National Marine Fisheries Service (NMFS)*

1. 2009 Mid-Atlantic Research Set-Aside Program

*Summary Description:* NMFS announces that, for fishing year 2009 (January 1–December 31, 2009), the Mid-Atlantic Fishery Management Council (Council) may set aside up to 3 percent of the total allowable landings (TAL) in certain Mid-Atlantic fisheries to be used for research endeavors under a research set-aside (RSA) program. The RSA program provides a mechanism to fund research and compensate vessel owners through the sale of fish harvested under the research quota. Vessels participating in an approved research project may be authorized by the Northeast Regional Administrator, NMFS, to harvest and land fish in excess of any imposed trip limit or during fishery closures. Landings from such trips are sold to generate funds that help defray the costs associated with the approved research projects. No Federal funds are provided for research under this notification. NMFS is soliciting proposals for research activities

concerning the summer flounder, scup, black sea bass, Loligo squid, Illex squid, Atlantic mackerel, butterfish, Atlantic bluefish, and tilefish fisheries. NMFS and the Council will give priority to funding proposals addressing the research needs as follows: Loligo Squid and Butterfish Interactions: Mesh selectivity study of butterfish and secondarily for other species caught in Loligo nets during winter and summer/early fall; Test gear modifications in the Loligo squid fishery to reduce bycatch of butterfish and other species. Illex Squid: Determine size and age-at-maturity and growth parameters for Illex squid. Summer Flounder: Define distinctions between regulatory discards and bycatch attributed to gear, including mesh selectivity and/or overall gear design in the summer flounder fishery; Evaluate mortality of large fish released in the summer flounder offshore trawl fishery; Evaluate size and bag limits in the recreational fishery for summer flounder. Black Sea Bass: Estimate black sea bass mortality when left in pots (moderate priority); Develop indices for black sea bass recruitment (proof of concept); Verify age structure of black sea bass. Scup: Estimate the components of scup total annual mortality (natural, commercial landings, recreational landings, commercial discards, & recreational discards); Develop indices for scup recruitment (proof of concept). Bluefish: Develop bluefish index surveys (proof of concept).

*Funding Availability:* No Federal funds are provided for research under this notification, this program offers the opportunity to fish and to sell the catch to generate income. The Federal Government may issue an Exempted Fishing Permit (EFP) or Letter of Acknowledgment (LOA), as applicable, which may provide special fishing privileges in response to research proposals selected under this program. Funds generated from the RSA landings shall be used to cover the cost of the research activities, including vessel costs, and to compensate boats for expenses incurred during the collection of the set-aside species. For example, the funds may be used to pay for gear modifications, monitoring equipment, additional provisions (e.g., fuel, ice, food for scientists), or the salaries of research personnel. The Federal Government is not liable for any costs incurred by the researcher or vesse lowner. Any additional funds, generated through the sale of fish harvested under the research quota, above the cost of the research activities shall be retained by the vessel owner as compensation for the use of his/her vessel. In the past, two to five awards have been issued per year. During the 2007 fishing year, four awards were approved distributing a total of 2,218,146 lbs of TAL. The Council, in consultation with the Commission, will incorporate the level of RSA (amounts or percentages) for each of the set-aside species for the 2009 fishing year into the Council's recommendations for annual quota specifications. NMFS will consider the recommended level of RSA as part of the associated rulemaking process. The actual level of RSA quota available to applicants for the 2009 fishing year will depend on the TAL level specified by the Council at its quota-setting meetings in June and August 2008, and the percentage (0 to 3 percent) of the TAL recommended by the Council and approved by NMFS as the level of RSA available for 2009. To help researchers develop proposals for the 2009 fishing year, the examples below provide some guidance on the general magnitude of RSA and estimated values that a researcher might expect to be available for fishing year 2009. The examples are based on proposed RSA levels available and the actual allocated RSA amounts for these fisheries for the 2008 fishing year. The examples are intended only as a guide to be used when developing research proposals for the 2009 fishing year; it does not necessarily reflect the actual RSA quota that will be allocated for fishing year 2009. Based on Council recommendations, NMFS may choose to adopt less than 3 percent of TAL as a set-aside, or decide not to adopt any set-aside for a given fishery. The estimated values of the set-aside allocations will vary depending on market considerations prevailing at the time the research trips are conducted. Examples of RSA amounts based on 2008 proposed FMP Specifications in the following format is as follows: Allocation Species/Amount Available (lbs)/2008 RSA Amount (lbs)/2008 RSA Estimated Value, Summer Flounder/$349,200/233,192/$478,044, Scup/220,200/214,000/$196,880, Black Sea Bass/243,000/85,790,$211,901, Loligo Squid/1,124,356/50,000/$39,500, Illex Squid/None requested, Atlantic Mackerel/None requested, Butterfish/None requested, Bluefish/743,965/50,000/$18,000, Tilefish/None requested. The amount available was based 3 percent TAC in proposed FMP specifications.

*Statutory Authority:* Statutory authority for this program is provided under sections 303(b)(11), 402(e), and 404(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1853(b)(11), 16 U.S.C. 1881a(e), and 16 U.S.C. 1881(c), respectively. Statutory authority for entering into cooperative agreements and other financial agreements with nonprofit organizations is found at 15 U.S.C. 1540. The award of a set-aside from the TAL of selected species resulted from the approval of Framework 1 to the Atlantic Mackerel, Squid, and Butterfish; Summer Flounder, Scrup, and Black Sea Bass; and Atlantic Bluefish Fishery Management Plans (FMP); and the RSA provisions of the Tilefish FMP. Framework 1 established a procedure through which RSA amounts are set annually as part of the Council quota-setting process (66 FR 42156, August 10, 2001), and codified in regulations at 50 CFR 648.21(g).

*Catalog of Federal Domestic Assistance (CFDA) Number:* 11.454, Unallied Management Projects

*Application Deadline:* Applications must be received on or before 5 p.m. EST on March 24, 2008.

*Address for Submitting Proposals:* To apply for this NOAA Federal funding opportunity, please submit applications to *http://www.grants.gov* and use the following funding opportunity number NMFS-NEFSC–2009–2001252. Applicants who do not have Internet access may submit their application to Cheryl A. Corbett, NMFS, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543, or by phone at 508–495–2070, or fax at 508–495–2004, or via e-mail at *cheryl.corbett@noaa.gov*.

*Information Contacts:* Information may be obtained from Clay Heaton, Fishery Management Specialist, Mid-Atlantic Fishery Management Council, by phone 302–674–2331 ext. 13, or via email at *cheaton@mafmc.org*; or Cheryl A. Corbett, Cooperative Programs Specialist, NMFS, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543, or by phone at 508–495–2070, or fax at 508–495–2004, or via e-mail at *cheryl.corbett@noaa.gov*.

*Eligibility:* Eligible applicants include institutions of higher education, hospitals, other nonprofits, commercial organizations, individuals, and state, local, and Native American tribal governments. Federal agencies and institutions are not eligible to receive Federal assistance under this notice. Additionally, employees of any Federal agency or Regional Fishery Management Council are ineligible to submit an application under this program. However, Council members who are not Federal employees may submit an application. DOC/NOAA supports cultural and gender diversity and encourages women and minority individuals and groups to submit

applications to the RSA program. In addition, DOC/NOAA is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that work in underserved areas. DOC/NOAA encourages proposals involving any of the above institutions. DOC/NOAA encourages applications from members of the fishing community and applications that involve fishing community cooperation and participation.

*Cost Sharing Requirements:* No cost sharing is required under this program.

*Intergovernmental Review:* Applicants will need to determine if their state participates in the intergovernmental review processs. This information can be found at the following website: *http://www.whitehouse.gov/omb/grants/spoc.html*. This information will assist applicants in providing either a Yes or No response to Item 16 of the Application Form, SF–424, entitled ''Application for Federal Assistance.''

2. Pacific Coastal Salmon Recovery Fund

*Summary Description:* NOAA announces the availability of Pacific Coastal Salmon Recovery Funds (PCSRF), as authorized in the Northern Boundary and Transboundary Rivers Restoration and Enhancement Fund and Southern Boundary Restoration and Enhancement Fund (16 U.S.C. 3645 *et seq.*), to support the restoration and conservation of Pacific salmon and steelhead populations and their habitat. The program provides funding to the States of Alaska, Washington, Oregon, Idaho and California for salmon habitat restoration, salmon stock enhancement, sustainable salmon fisheries and salmon research. It also provides funding to the Pacific Coastal tribes and the Columbia River tribes as authorized in 16 U.S.C. 3645(d)(2)(B) for salmon habitat restoration, salmon stock enhancement, salmon research and supplementation activities.

*Funding Availability:* Up to $67,000,000 may be available in fiscal year (FY) 2008 for projects as authorized under 16 U.S.C. 3645 (d)(2). There are no restrictions on minimum funding request, but there is a limit of $25,000,000 on a maximum amount requested by any recipient. Award periods may be up to a maximum of 5 years. Actual funding availability for this program is contingent upon FY 2008 Congressional appropriations.

*Statutory Authority:* 16 U.S.C. 3645 (d)(2)

*Catalog of Federal Domestic Assistance (CFDA) Number:* 11.438, Pacific Coast Salmon Recovery - Pacific Salmon Treaty Program

*Application Deadline:* Applications should be submitted via *www.grants.gov* and must be received no later than 11:59 pm PST on March 24, 2008. No facsimile or electronic mail applications will be accepted. Paper applications must be postmarked by March 24, 2008. Any application transmitted or postmarked, as the case may be, after the deadline will be considered non-responsive and will not be considered for funding in this competition.

*Address for Submitting Proposals:* If an applicant does not have internet access, applications can be submitted to the following address: Nicolle Hill, NMFS Northwest Region Building #1, 7600 Sand Point Way, Seattle, WA 98115. NMFS' Internet website at *www.nwr.noaa.gov* contains additional information on PCSRF.

*Information Contacts:* For further information on PCSRF, please contact Barry Thom, NMFS Northwest Region Deputy Regional Administrator, at (503) 231–6266. Questions regarding this announcement should be directed to Nicolle Hill, NMFS Northwest Region PCSRF Federal Program Officer, at (206) 526–4358 or *Nicolle.Hill@noaa.gov*.

*Eligibility:* Eligible state applicants are the States of Alaska, Washington, Oregon, Idaho and California. Eligible tribal applicants are any federally recognized Pacific Coastal or Columbia River tribes in Washington, Oregon, California or Idaho.

*Cost Sharing Requirements:* Applicants are required to provide 33 percent of received Federal funds. Indian tribes are exempt from any cost share requirement.

*Intergovernmental Review:* Applications under this program from state or local governments are subject to the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

*National Weather Service (NWS)*

1. Remote Community Alert Systems Program

*Summary Description:* The Remote Community Alert Systems Program represents an NOAA/NWS effort to provide for outdoor alerting technologies in remote communities effectively underserved by commercial mobile service for the purpose of enabling residents of those communities to receive emergency messages. These activities will engage the private sector, academia, and States in opportunities and technologies to further disseminate emergency messages. This program is a contributing element of the Warning, Alert, and Response Network (WARN) Act. NOAA's program is designed to complement other agency contributions to that national effort. The Federal Communications Commission has defined a remote area to consist of a county with a population density of 100 persons per square mile or less, based on the most recently available Census data. Also, commercial mobile service means those services that are required to provide E911 services in accordance with Section 20.18 of the Commissions rules. Effectively underserved identifies remote communities that do not receive commercial mobile service as demonstrated by coverage maps, technical analyses, field tests, or any other reasonable means.

*Funding Availability:* The total funding amount available for proposals is anticipated to be approximately $5,000,000. We anticipate making multiple awards approximately 50 ranging from $50,000 to $250,000.

*Statutory Authority:* Authority for the Remote Community Alert Systems Program is provided by: 47 U.S.C. 1204.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 11.468, Applied Meteorological Research

*Application Deadline:* Proposals must be received by NOAA/NWS no later than 5 p.m., April 11, 2008. Proposals should be submitted through *www.grants.gov*. For those organizations without internet access, proposals may be sent to Craig Hodan, NOAA/NWS, 1325 East-West Highway, Room 3348, Silver Spring, Maryland 20910, Phone: 301–713–9480 x 187, email: *craig.hodan@noaa.gov*. Email and fax submissions will not be accepted.

*Information Contacts:* Craig Hodan, NOAA/NWS, 1325 East-West Highway, Room 3348, Silver Spring, Maryland 20910, Phone: 301–713–9480 x 187, email: *craig.hodan@noaa.gov*.

*Eligibility:* Eligible applicants are States and Tribal Communities. This restriction is needed due to the potential number of applications.

*Cost Sharing Requirements:* No cost sharing is required under this program.

*Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

## III. Classification

*Limitation of Liability*

Funding for potential projects in this notice is contingent upon the availability of Fiscal year 2008 appropriations. Applicants are hereby

given notice that funds have not yet been appropriated for any proposed activities in this notice. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

*Universal Identifier*

For programs that have deadline dates on or after October 1, 2003, applicants should be aware that they may be required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 **Federal Register**, (67 FR 661770 for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the internet (*http://www.dunandbradstreet.com*).

*National Environmental Policy Act (NEPA)*

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216--6--TOC.pdf*, NEPA Questionnaire, *http://www.nepa.noaa.gov/questionnaire.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc--ceq.htm*. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

*Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations*

a. This section applies to the extent that this BAA results in financial assistance awardsinvolving access to export-controlled information or technology.

b. In performing a financial assistance award, the recipient may gain access to export-controlled information or technology. The recipient will then be responsible for compliance with all applicable laws and regulations regarding export-controlled information and technology, including deemed exports. The recipient shall establish and maintain throughout performance of the financial assistance award effective export compliance procedures at non-NOAA facilities. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled information and technology.

c. Definitions

1. Deemed export. The Export Administration Regulations (EAR) define a deemed export as any release of technology or source code subject to the EAR to a foreign national, both in the United States and abroad. Such release is ''deemed'' to be an export to the home country of the foreign national. 15 CFR 734.2(b)(2)(ii).

2. Export-controlled information and technology. Export-controlled information and technology is information and technology subject to the EAR (15 CFR parts 730 *et seq.*), implemented by the DOC Bureau of Industry and Security, or the International Traffic Arms Regulations (ITAR) (22 CFR parts 120–130), implemented by the Department of State, respectively. This includes, but is not limited to, dual-us items, defense articles and any related assistance, services, software or technical data as defined in the EAR and ITAR.

d. The recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of a financial assistance award, to ensure that access is restricted, or licensed, as required by applicable Federal laws, Executive Orders, and/or regulations.

e. Nothing in the terms of this section is intended to change, supersede, or waive any of the requirements of applicable Federal laws, Executive Orders or regulations.

f. The recipient shall include this clause, including this paragraph (f), in all lower tier transactions (subawards, contracts, and subcontracts) under the financial assistance award that may involve access to export-controlled information technology.

*NOAA implementation of Homeland Security Presidential Directive - 12*

If the performance of a financial assistance award, if approved by NOAA, requires recipients to have physical access to Federal premises for more than 180 days or access to a Federal information system, any items or services delivered under a financial assistance award shall comply with the Department of Commerce personal identity verification procedures that implement Homeland Security Presidential Directive -12, FIPS PUB 201, and the Office of Management and Budget Memorandum M–05–24. The recipient shall insert this clause in all subawards or contracts when the subaward recipient or contractor is required to have physical access to a Federally controlled facility or access to a Federal information system.

*The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements*

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) are applicable to this solicitation.

*Paperwork Reduction Act*

This document contains collection-of-information requirements subject to thePaperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF LLL, CD–346, SF 424 Research and Related Family, SF 424 Short Organizational Family, SF 424 Individual Form family has been approved by the Office of Management and Budget (OMB) under the respective control numbers 4040–0004, 0348–0044, 0348–0040, 0348–0046, 0605–0001, 4040–0001, 4040–0003, and 4040–0005.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

*Executive Order 12866*

This notice has been determined to be not significant for purposes of Executive Order 12866.

*Executive Order 13132 (Federalism)*

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

*Administrative Procedure Act/ Regulatory Flexibility Act*

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: February 4, 2008.

**Helen Hurcombe**

*Director, Acquisition and Grants Office, National Oceanic and Atmospheric Administration.*

[FR Doc. E8–2350 Filed 2–7–08; 8:45 am]

BILLING CODE 3510–PJ–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Federal Consistency Appeal by AES Sparrows Point LNG, LLC and Mid-Atlantic Express, L.L.C.

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

**ACTION:** Notice of Appeal

**SUMMARY:** This announcement provides notice that AES Sparrows Point LNG, LLC and Mid-Atlantic Express, L.L.C. (collectively, ''AES'') have filed a second administrative appeal with the Department of Commerce asking that the Secretary override the State of Maryland's objection to AES's proposed LNG terminal in Baltimore County, Maryland.

**ADDRESSES:** Materials from the appeal record will be available at the NOAA Office of the General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910 and on the following Web site: *http://www.ogc.doc.gov/czma.htm.*

**FOR FURTHER INFORMATION CONTACT:** Odin Smith, Attorney-Advisor, NOAA Office of the General Counsel, 301–713–7392.

**SUPPLEMENTARY INFORMATION:**

### I. Notice of Appeal

AES has filed a notice of appeal with the Secretary of Commerce pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.*, and implementing regulations found at 15 CFR part 930, subpart H. AES appeals an objection, filed by the State of Maryland, to a consistency determination prepared by AES related to its proposed LNG terminal project in Baltimore County, Maryland. AES previously filed an appeal with regard to this same project on August 8, 2007. *See http://www.ogc.doc.gov/czma.htm.*

Under the CZMA, the Secretary may override the State's objection on grounds that the project is consistent with the objectives or purposes of the CZMA, or necessary in the interest of national security. To make the determination that the proposed activity is ''consistent with the objectives or purposes'' of the CZMA, the Secretary must find that: (1) The proposed activity furthers the national interest as articulated in sections 302 or 303 of the CZMA, in a significant or substantial manner; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with enforceable policies of the State's coastal management program. 15 CFR 930.121. To make the determination that the proposed activity is ''necessary in the interest of national security,'' the Secretary must find that a national defense or other national security interest would be significantly impaired were the proposed activity not permitted to go forward as proposed. 15 CFR 930.122.

### II. Appeal Documents

NOAA intends to provide the public with access to all publicly available materials and related documents comprising the appeal record during business hours, at the NOAA Office of the General Counsel for Ocean Services.

For additional information about this appeal contact Odin Smith, 301–713–7392.

Dated: February 4, 2008.

**Joel La Bissonniere,**

*Assistant General Counsel for Ocean Services.*

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

[FR Doc. E8–2326 Filed 2–7–08; 8:45 am]

BILLING CODE 3510–08–P

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Intent To Grant an Exclusive Patent License

**AGENCY:** Department of the Air Force.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, as amended, the Department of the Air Force announces its intention to grant Alexium Ltd., a business entity of Cyprus, having a place of business at 2 Sophouli Street, 8th Floor Chanteclair House, 1096-Nicosia, Cyprus, an exclusive license in any right, title and interest the Air Force has in: U.S. Patent Application No. 11/527,662 filed September 15, 2006, entitled ''Method for Attachment of Silicon-Containing Compounds to a Surface and for Synthesis of Hypervalent Silicon-Compounds'' by Jeffrey R. Owens, as well as other related know how. A license for this patent and related know how will be granted unless a written objection is filed within fifteen (15) days from the date of publication of this Notice.

**FOR FURTHER INFORMATION CONTACT:** Contact Jeffrey R. Moore, Attorney, Air Force Materiel Command Law Office, AFMCLO/JAZ, Building 11, Suite 100, 2240 B Street, Wright-Patterson AFB OH 45433–7109. Telephone: (937) 904–5088; Facsimile (937) 255–3733.

**Bao-Anh Trinh,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. E8–2287 Filed 2–7–08; 8:45 am]

BILLING CODE 5001–05–P

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Notice of Intent to Grant Partially Exclusive License of U.S. Patent Application No. 11/82,432 Entitled ''A Method and System for Treating Metal-Containing Fluid Emissions'' and U.S. Patent Application No. 10/931,232 ''Perlite Sorbents for Vapor Phase Metals and Metals Compounds'' to Bouldin & Lawson, LLC

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice; correction.

**SUMMARY:** The notice published in the **Federal Register** on January 25, 2008 (73 FR 4544) was missing the corporation name. The partially exclusive license will be granted to Bouldin & Lawson, LLC., 70 Easy Street, McMinnville, TN 37110.

**FOR FURTHER INFORMATION CONTACT:** Ms. Bea Shahin, (217) 373–7234, Fax (217) 373–7210; Internet: *Bea.S.Shahin@usace.army.mil*.

**SUPPLEMENTARY INFORMATION:** None.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. E8–2358 Filed 2–7–08; 8:45 am]

**BILLING CODE 3710–92–P**

## DEPARTMENT OF EDUCATION

### Office of Postsecondary Education; Overview Information; Fund for the Improvement of Postsecondary Education (FIPSE)—Special Focus Competition: Program for North American Mobility in Higher Education; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.116N.

*DATES:*

*Applications Available:* February 8, 2008.

*Deadline for Transmittal of Applications:* April 11, 2008.

*Deadline for Intergovernmental Review:* June 11, 2008.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* To provide grants for or enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas or improvement approaches in postsecondary education.

*Priority:* Under this competition we are particularly interested in applications that address the following priority.

*Invitational Priority:* For FY 2008, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

This priority is designed to support the formation of educational consortia of American, Canadian, and Mexican institutions to encourage cooperation in the coordination of curricula, the exchange of students, and the opening of educational opportunities among the United States (U.S.), Canada, and Mexico. The invitational priority is issued in cooperation with Canada and Mexico. These awards support only the participation of U.S. institutions and students in these consortia of American, Canadian, and Mexican institutions. Canadian and Mexican institutions participating in any consortium proposal responding to the invitational priority may apply, respectively, to Human Resources and Social Development Canada (HRSDC) or the Mexican Secretariat for Public Education (SEP), for additional funding under separate but parallel Canadian and Mexican competitions.

*Program Authority:* 20 U.S.C. 1138–1138d.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to Institutions of Higher Education (IHEs) only.

**II. Award Information**

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $300,000.

*Estimated Average Size of Awards:* Any FY 2008 application that is funded will be awarded $180,000 for a four-year grant. The estimated award for the first year is $30,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $100,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

*Estimated Number of Awards:* 10.

**Note:** The Department is not bound by any estimates in this notice

**Note:** We do not anticipate holding another competition for this program until FY 2010.

*Project Period:* Up to 48 months.

**III. Eligibility Information**

1. *Eligible Applicants:* IHEs or combinations of IHEs and other public and private nonprofit institutions and agencies.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

**IV. Application and Submission Information**

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.116N.

Individuals with disabilities can obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the person listed under *Alternative Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

*Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to the equivalent of no more than 20 pages, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times

Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit; or you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

*Applications Available:* February 8, 2008.

*Deadline for Transmittal of Applications:* April 11, 2008.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

*Deadline for Intergovernmental Review:* June 11, 2008.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:*

Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Program for North American Mobility in Higher Education, CFDA Number 84.116N, must be submitted electronically using the Government-wide Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Program for North American Mobility in Higher Education at *http://www.Grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.116, not 84.116N).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Education Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—

have replaced the ED 424 (Application for Federal Education Assistance).

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Frank Frankfort, U.S. Department of Education, 1990 K Street, NW., room 6154, Washington, DC 20006–8544. FAX: (202) 502–7877.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

*By mail through the U.S. Postal Service:* U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.116N), 400 Maryland Avenue, SW., Washington, DC 20202–4260, or

*By mail through a commercial carrier:* U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.116N), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.116N), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

*Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt

of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

**V. Application Review Information**

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 of EDGAR and are listed in the application package.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are applications that demonstrate a tri-lateral, innovative North American approach to training and education.

**VI. Award Administration Information**

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the following performance measures are used by the Department to assess the performance of the FIPSE program:

(1) The percentage of FIPSE grantees reporting project dissemination to others; and

(2) The percentage of FIPSE projects reporting institutionalization on their home campuses.

If funded, you will be asked to collect and report data on these measures in your project's annual performance report (EDGAR, 34 CFR 75.590). Applicants are also advised to consider these two measures in conceptualizing the design, implementation, and evaluation of the proposed project because of their importance in the application review process. Collection of data on these measures should be part of the project evaluation plan, along with any measures of progress on goals and objectives that are specific to your project.

**VII. Agency Contact**

**FOR FURTHER INFORMATION CONTACT:** Frank Frankfort, Fund for the Improvement of Postsecondary Education, Program for North American Mobility in Higher Education, 1990 K Street, NW., room 6154, Washington, DC 20006–8544. Telephone: (202) 502–7513.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

**VIII. Other Information**

*Alternative Format:* Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 5, 2008.

**Diane Auer Jones,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. E8–2372 Filed 2–7–08; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Agency Information Collection Extension

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice and Request for Comments.

**SUMMARY:** The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection request with the Office of Management and Budget (OMB). Comments are invited on: (a) Whether the extended 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, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Comments regarding this proposed information collection must be received on or before April 8, 2008. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

**ADDRESSES:** Written comments may be sent to Richard Langston by fax at 202–287–1345 or by e-mail to *richard.langston@hq.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Richard Langston at 202–287–1339 or by fax at 202–287–1345 or by e-mail at *richard.langston@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** This information collection request contains: (1) OMB No. 1910–4100; (2) Information Collection Request Title: Department of Energy Procurement Package; (3) Type of Review: Renewal; (4) Purpose: The procurement information is used by the

Department's program, financial and procurement personnel to evaluate proposals and administer contracts. These collections are used to exercise management oversight and control of the Department's management contractors operating the Department's major facilities and other contractors furnishing goods and services; (5) Respondents: 7,539; (6) Estimated Number of Burden Hours: 896,209.

*Statutory Authority:* Section 644 of the Department of Energy Organization Act, 42 U.S.C. 7254, and section 205(c) of the Federal Property and Administrative Services Act, 40 U.S.C. 486(c).

Issued in Washington, DC on February 1, 2008.

**Edward R. Simpson,**

*Director, Office of Procurement and Assistance Management.*

[FR Doc. E8–2341 Filed 2–7–08; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Bonneville Power Administration

### 2007 Supplemental Wholesale Power Rate Adjustment Proceeding, Public Hearings, and Opportunities for Public Review and Comment

**AGENCY:** Bonneville Power Administration (BPA), Department of Energy (DOE).

**ACTION:** Notice of Proposed Wholesale Power Rates (Notice). *BPA File No.:* WP–07.

**SUMMARY:** The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) provides that BPA must establish and periodically review and revise its rates so they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS) and other costs incurred by BPA. BPA is reopening its WP–07 wholesale power rate proceeding, which established power rates for Fiscal Years (FY) 2007–2009, in order to respond to recent decisions from the United States Court of Appeals for the Ninth Circuit (Ninth Circuit or Court) and to revise rates for FY 2009.

This 2007 Supplemental Wholesale Power Rate Adjustment Proceeding (WP–07 Supplemental Proceeding) responds to the Court's remand of BPA's WP–02 power rates for FY 2002–2006. This proceeding also responds to a separate Court decision that found BPA's 2000 Residential Exchange Program (REP) Settlement Agreements (REP Settlement Agreements) contrary to law. In response, BPA proposes to determine the amounts of REP settlement costs improperly included in FY 2002–2008 power rates, recover those amounts from investor owned utility customers (IOUs) over time and return improperly included amounts to preference customers. The WP–07 Supplemental Proceeding also includes proposed revisions to BPA's *Section 7(b)(2) Legal Interpretation and Section 7(b)(2) Implementation Methodology.*

Persons that previously intervened in BPA's WP–07 Wholesale Power Rate Adjustment Proceeding automatically continue their party status in the WP–07 Supplemental Proceeding. Other persons wishing to become a formal party to the proceeding must file a petition to intervene, notifying BPA in writing of their intention to do so in conformance with the requirements stated in this Notice.

**DATES:** Petitions to intervene must be received no later than 5 p.m., Pacific Standard Time, on February 18, 2008. Non-party participants may make written comments between February 8, 2008, and May 5, 2008. Comments must be received by 5 p.m., Pacific Daylight Savings Time, on May 5, 2008, in order to be considered in the Supplemental Record of Decision (Supplemental ROD). (See Part III (A) for more information.)

**ADDRESSES:** Petitions to intervene should be directed to Robert Welsh, Hearing Clerk, LP–7, Bonneville Power Administration, 905 NE 11th Avenue, Portland, OR 97232 or by *e-mail to: wp07rate@bpa.gov*. In addition, a copy of the petition must be served concurrently on BPA's General Counsel and directed to Kurt R. Casad, LP–7, Office of General Counsel, Bonneville Power Administration, 905 NE 11th Avenue, Portland, OR 97232 or by e-mail to: *krcasad@bpa.gov*. See Part III (A) for more information.) Written comments by non-party participants must be received by 5 p.m. Pacific Daylight Savings Time, on May 5, 2008, in order to be considered in the Supplemental Record of Decision (Supplemental ROD). Written comments may be made as follows: In person at the field hearings (see schedule and locations in Part I of this Notice), online at BPA's Web site: *http://www.bpa.gov/comment*, or by mail to: BPA Public Affairs, DKE–7, P.O. Box 14428, Portland, OR 97293–4428. Please identify written or electronic comments as ''WP–07 Supplemental Proceeding.'' The Supplemental ROD will consider and address the comments received.

The WP–07 Supplemental Proceeding will begin with a prehearing conference at 9 a.m., Pacific Standard Time, on February 19, 2008, held in the BPA Rates Hearing Room, 2nd Floor, 911 NE 11th Avenue, Portland, OR. Due to increased security requirements, attendees should allow additional time to enter the building and complete the required screening process. Photo identification will be required for entry. BPA will release its 2007 Supplemental Wholesale Power Rate Proposal (WP–07 Supplemental Proposal) and supporting documents at the prehearing conference. Compact discs (CDs) containing the WP–07 Supplemental Proposal will be provided to the parties at the prehearing conference. The WP–07 Supplemental Proposal will also be available on BPA's Web site at *http://www.bpa.gov/corporate/ratecase*.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Heidi Helwig, Public Affairs Specialist, Public Affairs Office, DKE–7, P.O. Box 3621, Portland, OR 97208. Interested persons may also call 503–230–3458 or 1–800–622–4519 (toll-free)

Ms. Leslie M. Dimitman, Paralegal Specialist, Office of General Counsel, LP–7, P.O. Box 3621, Portland, OR 97208. Interested persons may also call Ms. Dimitman at (503) 230–5515, or the general BPA toll-free numbers 1–800–282–3713 (answered Monday through Friday 6:30 a.m. to 5 p.m.) or 1–866–879–2303 (answered by voicemail)

Information also may be obtained from:

Mr. Raymond D. Bliven, Power Rates Manager—PFR–6, P.O. Box 3621, Portland, OR 97208

Ms. Suzanne B. Cooper, Power Policy and Rates Manager—PF–6, P.O. Box 3621, Portland, OR 97208

Ms. Elizabeth Evans, Policy Analysis Manager—PFB–6, P.O. Box 3621, Portland, OR 97208

Mr. Garry Thompson, Manager, Eastern Power Business Area; Mr. Ken Hustad, Senior Customer Account Executive; Ms. Carol Hustad, Customer Account Executive; Mr. Michael Normandeau, Customer Account Executive, Eastern Power Business Area—PSE, 707 W. Main, Suite 500, Spokane, WA 99201

Mr. Scott Coe, Manager, Western Power Business Area; Mr. Charles Forman, Customer Account Executive; Ms. Claire Hobson, Customer Account Executive; Ms. Tina Ko, Customer Account Executive; Ms. Theresa Rockwood, Customer Account

Executive; Western Power Business Area—PSW–6, P.O. Box 3621, Portland, OR 97208
Mr. Larry King, Customer Account Executive, 2700 Overland, Burley, ID 83318
Mr. C. T. Beede, Customer Account Executive, P.O. Box 40, Big Arm, MT 59910
Mr. Dan Bloyer, Customer Account Executive, 1011 SW Emkay Drive, Suite 211, Bend, OR 97702
Mr. Larry Felton, Senior Account Executive, Kootenai Building, Room 215, N. Power Plant Loop, Richland, WA 99352–0968
Mr. Stuart Clarke, Senior Customer Account Executive; Mr. George Reich, Senior Customer Account Executive; Ms. Shannon Greene, Customer Account Executive; Ms. R. Kirsten Watts, Customer Account Executive; 909 First Avenue, Suite 380, Seattle, WA 98104–3636

**SUPPLEMENTARY INFORMATION:**

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II. Policy Guidance and Scope of Hearing
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IV. Summary of WP–07 Supplemental Proposal and Major Studies
V. Section 7(b)(2) Legal Interpretation and Implementation Methodology
VI. Summary of Proposal To Respond to the Court's Opinions Regarding BPA's 2000 REP Settlement Agreements, WP–02 Rates, and by Extension, WP–07 Rates
VII. 2007 Supplemental Wholesale Power Rate Case Schedules (FY 2009) and 2007 Supplemental General Rate Schedule Provisions (FY 2009)

## Part I—Introduction and Procedural Background

### *A. Overview and Background to This Rate Filing*

BPA is proposing to conduct a WP–07 Supplemental Proceeding in order to: (1) Adjust BPA's FY 2009 power rates consistent with recent decisions of the Ninth Circuit regarding BPA's WP–02 power rates for FY 2002–2006; and (2) respond to the Court's decision finding BPA's REP Settlement Agreements contrary to the Northwest Power Act.

Due to the time it takes to conduct a general rate adjustment proceeding, BPA determined that its first opportunity to establish revised power rates to conform to the Court's opinions was prior to the one-year FY 2009 rate period. Because BPA's WP–07 rates (FY 2007–2009) are currently before the Federal Energy Regulatory Commission (FERC) for final approval, BPA asked FERC to stay its review until BPA was able to conduct a supplemental rate proceeding to address the issues noted above. This will permit FERC to review a single supplemented record supporting BPA's proposed rates for FYs 2007, 2008, and 2009.

In developing BPA's WP–02 power rates, BPA's revenue requirement included anticipated costs of REP Settlement Agreements with six regional IOUs. BPA allocated the majority of these settlement costs to the Priority Firm Power (PF) Preference rate. Following final approval of BPA's WP–02 rates by FERC, a number of parties challenged the WP–02 power rates in the Ninth Circuit. In *Golden NW Aluminum, Inc.* v. *Bonneville Power Admin.*, 501 F.3d 1037 (9th Cir. 2007) (*Golden NW*), the Court held BPA had improperly allocated REP Settlement Agreement costs to BPA's rates for preference customers. During the litigation of *Golden NW*, but prior to the Court's decision, BPA conducted a subsequent hearing (WP–07) to establish power rates for FY 2007–2009. In establishing these rates, BPA allocated REP settlement costs in the same manner as in BPA's WP–02 rates. Because the Court held in *Golden NW* that BPA's allocation of REP settlement costs in its WP–02 rates was improper, BPA's allocation of such costs in the WP–07 rates is similarly flawed.

In addition, the Court held that BPA's WP–02 fish and wildlife cost estimates, and by extension the rates set pursuant to those estimates, were not supported by substantial evidence. The Court indicated BPA relied on outdated assumptions and had not appropriately considered information presented regarding its fish and wildlife costs. BPA's subsequent approach to forecasting fish and wildlife costs in the development of its WP–07 rates differed from the approach BPA used in developing its WP–02 rates. Nonetheless, as described in more detail in Part II.A.5, BPA is taking steps to ensure that its final WP–07 Supplemental rates for FY 2009 are based on the most recent projections of fish and wildlife costs available at the time of rate development. In a procedural forum separate from the WP–07 Supplemental Proceeding, BPA will provide opportunities for fish and wildlife managers and others to provide input to BPA regarding BPA's fish and wildlife program costs for FY 2009. Decisions made based on the information gained from this separate program cost review forum will be used in the development of BPA's final WP–07 Supplemental rates.

In a companion case to *Golden NW*, the Court held that BPA's REP Settlement Agreements with the IOUs were contrary to the Northwest Power Act. *Portland General Elec. Co.* v. *Bonneville Power Admin.*, 501 F.3d 1009 (9th Cir. 2007) (PGE). Also, subsequent to the *Golden NW* and PGE decisions, the Court reviewed three petitions for review challenging Load Reduction Agreements (LRAs) BPA executed with two IOUs during the energy crisis of 2000–2001. The Court dismissed two of the petitions for lack of jurisdiction and one petition as moot. The Court also reviewed challenges to amendments to the REP Settlement Agreements signed in 2004. In *Public Utility Dist. No. 1 of Snohomish County, Wash.* v. *Bonneville Power Admin.*, 506 F.3d 1145 (9th Cir. 2007) (*Snohomish*), the Court remanded the amendments and a contract provision establishing a Reduction of Risk Discount to BPA. BPA must respond to the foregoing decisions. Because the ratemaking and REP issues are interrelated, BPA is proposing to address its response to the Court's decisions in the WP–07 Supplemental Proceeding.

In summary, this WP–07 Supplemental Proceeding is being held for four primary purposes: (1) To establish new power rates for FY 2009; (2) to determine the amount of benefits that BPA's IOU customers received, or would have received, from FY 2002 through FY 2008 under REP settlements; (3) to determine the amount of REP benefits the IOUs would have received in the absence of the REP settlements; and (4) to address any difference between these two amounts. Specifically, the revised power rates for FY 2009 include the PF Preference rate and the PF Exchange rate. The average PF Preference rate of $26.2/MWh, about a four percent (4%) reduction, results largely from the reduced REP costs. The revised PF Exchange rate is used to determine REP benefits in FY 2009 As part of this process, BPA is also proposing revisions to BPA's *Section 7(b)(2) Legal Interpretation and Section 7(b)(2) Implementation Methodology*. An introduction to BPA's WP–07 Supplemental Proposal is contained in Part IV of this Notice. A summary of BPA's proposal regarding the calculation of REP benefits for FY 2002–2008 is contained in Part VI.

### *B. Legal Requirements*

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that BPA's rates be established according to certain procedures. These procedures include, among other things: publication of a notice of the proposed rates in the **Federal Register**; one or more hearings conducted as expeditiously as practicable by a Hearing Officer; public opportunity to provide both oral and written views

related to the proposed rates; opportunity to offer refutation or rebuttal of submitted material; and a decision by the Administrator based on the record. This proceeding is governed by § 1010 of BPA's Rules of Procedure Governing Rate Hearings, 51 FR 7611 (1986) (BPA Hearing Procedures). These procedures implement the statutory section 7(i) requirements.

Section 1010.7 of the BPA Hearing Procedures prohibits ex parte communications. The *ex parte* rule applies to all BPA and DOE employees and contractors. Except as provided below, any outside communications with BPA and/or DOE personnel regarding BPA's rate case by other Executive Branch agencies, Congress, existing or potential BPA customers (including tribes), and nonprofit or public interest groups are considered outside communications and are subject to the *ex parte* rule. The general rule does not apply to communications relating to: (1) Matters of procedure only (the status of the rate case, for example); (2) exchanges of data in the course of business or under the Freedom of Information Act; (3) requests for factual information; (4) matters BPA is responsible for under statutes other than the ratemaking provisions; or (5) matters that all parties agree may be made on an *ex parte* basis. The *ex parte* rule remains in effect until the Administrator's Final ROD is issued, which is scheduled to occur on or about August 18, 2008.

The Bonneville Project Act, 16 U.S.C. 832, the Flood Control Act of 1944, 16 U.S.C. 825s, the Federal Columbia River Transmission System Act, 16 U.S.C. 838, and the Northwest Power Act, 16 U.S.C. 839, provide guidance regarding BPA ratemaking. The Northwest Power Act requires BPA to set rates that are sufficient to recover, in accordance with sound business principles, the cost of acquiring, conserving and transmitting electric power, including amortization of the Federal investment in the FCRPS over a reasonable period of years, and certain other costs and expenses incurred by the Administrator.

BPA's 2007 Supplemental Wholesale Power Rate Schedules (FY 2009) and 2007 Supplemental General Rate Schedule Provisions (GRSPs) (FY 2009), as well as the Section 7(b)(2) Legal Interpretation and Section 7(b)(2) Implementation Methodologye, are available for viewing and downloading on BPA's Web site at *http://www.bpa.gov/corporate/ratecase* as discussed in Part VII of this Notice. The studies addressing the factors used to develop these rates are listed in Part IV and will be available for examination beginning February 19, 2008, at BPA's Public Information Center, BPA Headquarters Building, 1st Floor, 905 NE 11th Avenue, Portland, Oregon, and will be provided to parties at the prehearing conference to be held on February 19, 2008, beginning at 9 a.m., Pacific Standard Time, Room 223, 911 NE 11th Avenue, Portland, Oregon.

Copies of the studies and documentation can be downloaded from BPA's Web site at *http://www.bpa.gov/corporate/ratecase* or can be requested (on a compact disc or hard copy) by calling BPA's document request line toll-free at: 1–800–622–4519.

A formal evidentiary rate hearing will be conducted that is open to rate case parties. Interested parties that did not previously intervene in BPA's WP–07 power rate proceeding must file petitions to intervene in order to take part in the WP–07 formal hearing. A proposed schedule for the WP–07 Supplemental Proceeding is stated below.

The Hearing Officer will establish a final schedule at the prehearing conference.

| | |
|---|---|
| Prehearing/BPA Direct Case | 02/19/08 |
| Clarification | 02/27/08–02/29/08 |
| Motions to Strike | 03/07/08 |
| Data Request Deadline | 03/07/08 |
| Answers to Motions to Strike | 03/14/08 |
| Data Response Deadline | 03/14/08 |
| Spokane, WA Field Hearing | 03/18/08 |
| Portland, OR Field Hearing | 03/20/08 |
| Parties file Direct Cases | 03/28/08 |
| Clarification | 04/07/08–04/09/08 |
| Motions to Strike | 04/11/08 |
| Data Request Deadline | 04/11/08 |
| Answers to Motions to Strike | 04/18/08 |
| Data Response Deadline | 04/18/08 |
| Litigants file Rebuttal | 05/05/08 |
| Close of Participant Comments | 05/05/08 |
| Clarification | 05/12/08–05/14/08 |
| Motions to Strike | 05/15/08 |
| Data Request Deadline | 05/15/08 |
| Answers to Motions to Strike | 05/22/08 |
| Data Response Deadline | 05/22/08 |
| Cross-Examination | 05/27/08–05/30/08 |
| Initial Briefs Filed | 06/09/08 |
| Oral Argument | 06/16/08–06/17/08 |
| Publish Draft ROD | 07/16/08 |
| Briefs on Exceptions | 07/28/08 |
| Publish Final ROD—Final Studies | 08/18/08 |

As noted above, BPA will conduct two public field hearings in the Pacific Northwest. Public field hearings are an opportunity for persons who are not parties in the formal rate hearing to have their views included in the official record. Written transcripts will be made at all of the field hearings. The field hearings have been scheduled to take place at the locations, dates, and times specified below. The hearing dates also will be posted on the BPA's Web site (*http://www.bpa.gov/corporate/ratecase*) and through announcements in local newspapers. Any changes to the scheduled public hearings will be available on the rate case Web site. The BPA Public Affairs Office also may be contacted for this information at the telephone number previously listed.

PUBLIC FIELD HEARINGS SCHEDULE

| | | |
|---|---|---|
| 03/18/08 ... | 6 p.m. .. | Spokane, Washington. |
| 03/20/08 ... | 6 p.m. .. | Portland, Oregon. |

**Part II—Policy Guidance and Scope of Hearing**

*A. Policy Guidance*

The following policies are foundational elements that guided the development of major components of this supplemental rate proposal.

1. BPA's Subscription Strategy

On December 21, 1998, BPA issued a Power Subscription Strategy and Record of Decision (Subscription Strategy). The Subscription Strategy reflected BPA's position on the equitable distribution of Federal power for FY 2002–2011. The Subscription Strategy was the culmination of a multi-year public process that established BPA's plan for the availability of Federal power post-2001, the products from which customers could choose, and an outline of the contracts and pricing framework for those products.

The Subscription Strategy provided a marketing framework for the WP–02 and WP–07 power rate cases. The WP–02 and WP–07 power rate cases developed the rate schedules necessary for the products and contracts that were developed through Subscription. The Subscription contracts, except for the REP Settlement Agreements, continue to be the basis for the contractual relationship between BPA and nearly all of its firm power customers. BPA is assuming for purposes of this WP–07 Supplemental Proceeding that the IOUs, except Idaho Power Company (Idaho Power), would have signed Residential Purchase and Sale Agreements (RPSAs) in the fall of 2000 instead of the 2000 REP Settlement Agreements.

2. Regional Dialogue and the Near-Term and Long-Term Policies

The Regional Dialogue process began in April 2002 when a group of BPA's Pacific Northwest electric utility customers submitted a ''joint customer proposal'' to BPA that addressed both near-term and long-term contract and rate issues. Since then, BPA, the Northwest Power and Conservation Council (Council), customers, and other interested parties have worked on these near- and long-term issues. Considering the depth and complexity of many of these issues, BPA concluded it was not practical to resolve all issues before the start of the WP–07 rate case. Therefore, BPA determined that it would address the issues in two phases. The first phase of the Regional Dialogue, referred to as the Near-Term Policy, addressed issues that had to be resolved in order to replace power rates that expired in September 2006. *See* Bonneville Power Administration's Policy for Power Supply Role for Fiscal Years 2007–2011 (February 2005). The issues in the second phase were addressed in BPA's Long-Term Regional Dialogue Final Policy and Record of Decision, which was published on July 19, 2007. The Long-Term Regional Dialogue Final Policy is expected to be implemented through new power sales contracts and a future rate case conducted before such contracts go into effect in FY 2012. The Long-Term Regional Dialogue Final Policy does not affect this WP–07 Supplemental Proceeding.

3. Service to Direct Service Industries (DSIs)

The Near-Term Policy established parameters for service to the DSIs that were further addressed in ''Bonneville Power Administration's Service to DSI Customers for Fiscal Years 2007–2011, Administrator's Record of Decision'' (DSI ROD) (June 30, 2005), and Supplement to Administrator's Record of Decision on Bonneville Power Administration's Service to Direct Service Industrial (DSI) Customers for Fiscal Years 2007–2011, Administrator's Record of Decision (May 31, 2006), (together the ''DSI RODs'').

In the DSI RODs, BPA determined to offer to aluminum company DSIs power sales contracts for an aggregate 560 aMW of benefits at a capped cost of $59 million. In addition, BPA offered a 17 aMW surplus firm power sales contract for Port Townsend Paper Company through the local public utility under the FPS rate (or the Industrial Firm Power (IP) rate, if viable) at a price approximately equivalent to, but in no case less than, its lowest-cost PF rate.

BPA decided to allocate a share of the 560 aMW of service benefits to each DSI aluminum company for purposes of making an initial offer of service. Because of the financial risks inherent in providing actual power and in order to meet the known and capped cost prerequisite, BPA determined that the delivery mechanism would be to monetize the value of the below-market power sales to provide service benefits through cash payments.

4. Power Function Review and Other Cost Reviews

In January 2005, BPA initiated an extensive process, known as the Power Function Review (PFR), to examine Power Services' (formerly known as Power Business Line or PBL) intended program spending levels. The PFR process consisted of two phases designed to give interested parties an opportunity to examine, understand and provide input on the cost projections that would form the basis for BPA's WP–07 Power Rate Proposal. The first phase concluded in June 2005 when BPA issued the PFR Final Report. At that time, BPA committed to re-examine the program levels prior to establishing power rates in BPA's final proposal. In early 2006, BPA conducted the second phase, known as PFR II, allowing interested parties an opportunity to review these program levels. Workshops were held during January through March, 2006 and in April of 2006, BPA issued a draft closeout report for comment. After the close of comment, BPA reviewed all comments and issued the PFR II Final Closeout Report documenting BPA's decisions on June 1, 2006. These updated program levels were then incorporated into BPA's WP–07 Final Proposal.

5. Mid-WP–07 Rate Period Cost Forecast Changes

For the WP–07 Supplemental Proceeding, BPA reviewed the FY 2009 program levels incorporated into the WP–07 Final Proposal that were developed through the PFR I and II processes. BPA then evaluated whether these forecasts remain reasonable in light of current projections. From this evaluation, BPA determined that adjustments were needed in certain program areas to address significant changes in forecast program levels. Specifically, these cost areas include: The Residential Exchange Program; Columbia Generating Station (CGS) operation and maintenance; interest; amortization; depreciation; renewables; energy efficiency; long-term generating projects; augmentation; purchased power; and fish and wildlife costs. BPA described the nature of the non-REP cost changes to interested persons in a public workshop on October 10, 2007.

In the October workshop, BPA notified attendees that it intended to initiate a separate public process to address possible changes to the fish and wildlife cost forecast for FY 2009, [1] costs of operating the CGS, and other cost changes identified that are relevant to the WP–07 Supplemental Proceeding. In

[1] Such changes could result from, for example, the issuance by NOAA Fisheries of a final Biological Opinion regarding the impacts of the mainstem Federal Columbia River Power System dams on threatened and endangered salmon and steelhead, and from any related commitments BPA may make in a long-term Memoranda of Agreement currently being discussed with some regional governmental entities.

this separate forum, BPA will provide interested persons an opportunity to review and comment on any adjustments to program levels. After the close of comment, BPA will issue a closeout report detailing any necessary adjustments to program levels. These forecast costs will then be incorporated into BPA's final rate proposal for FY 2009.

6. Post-2006 Conservation Program Structure Proposal

The Conservation Program Structure Proposal was finalized and issued June 28, 2005. It describes BPA's approach to offering conservation programs during FY 2007 through FY 2009. The decisions of this post-2006 proposal were used as inputs in the development of BPA's WP–07 Power Rate Case Final Proposal. BPA does not propose any changes in this area for the WP–07 Supplemental Proceeding.

7. Transmission Rate Case

BPA is committed to marketing its power and transmission services separately in a manner modeled after the regulatory initiatives adopted in 1996 by FERC to promote competition in wholesale power markets. FERC's initiatives in Orders 888 [2] and 889 [3] directed public utilities regulated under the Federal Power Act to separate their power merchant functions from their transmission reliability functions; unbundle transmission and ancillary services from wholesale power services; and set separate rates for wholesale generation, transmission, and ancillary services. Although BPA is not required by law to follow FERC's regulatory directives that promote competition and open access transmission service, BPA elected to separate its power and transmission operations and unbundle its rates in a manner consistent with the directives concerning open access transmission service. BPA develops its transmission rates in separate proceedings from its power rates.

On February 5, 2007, BPA's Transmission Services (formerly known as the Transmission Business Line or TBL) initiated a rate case to establish transmission rates for the FY 2008–2009 transmission rate period. Prior to the initiation of that rate case, Transmission Services held several public meetings with customers from July through November 2006 to discuss transmission costs, revenues, and rate design issues for the FY 2008–2009 rate period. Customers expressed interest in meeting with Transmission Services to develop a settlement for the FY 2008–2009 rate period. Transmission Services continued meetings with customers between October and November 2006, resulting in the 2008 Transmission Rate Case Settlement Agreement.

On April 23, 2007, BPA issued the ''Final Transmission Rate Proposal Administrator's Record of Decision'' which adopted the transmission and ancillary services rates reflected in the 2008 Transmission Rate Case Settlement Agreement. FERC granted interim approval to these rates on September 20, 2007. The Transmission Services rate case settlement established fixed rates for certain ancillary services and some transmission rates that incorporate ancillary services. The generation inputs that support the ancillary services and other control area services sold by Transmission Services are provided by Power Services. BPA is not proposing any changes to its generation input costs for FY 2009 except for the recognition of additional revenues expected from Transmission Services for Wind Integration.

*B. Scope of the WP–07 Supplemental Proceeding*

Many of the policies that guide BPA's power marketing decisions have been made or will be made in other public review processes. In addition, many decisions about BPA's financial commitments, including for example, what BPA plans to spend on meeting its fish and wildlife obligations, are made in forums other than the rate case. This section provides guidance to the Hearing Officer as to those matters that are within the scope of the rate case, and those that are outside the scope.

1. Program Level Expense Forecasts and Commitments

Section 7(i) rate proceedings establish the rates applicable to BPA's products and services at levels set to assure recovery of BPA's costs in total. The section 7(i) proceeding does not establish the program levels to be recovered during a rate period. Instead, program levels (including programmatic decisions and decisions regarding spending commitments) are decided in various forums outside the section 7(i) proceedings. Once set, however, program levels are taken into consideration when designing the rates proposed in a section 7(i) proceeding to ensure such costs are recovered. As described in Part II.A.5, BPA evaluated whether updated forecasts of program levels were needed for this WP–07 Supplemental Proceeding, and determined that, except in a few instances, they were not. Therefore, except as noted above in Part II.A.5 and described below, this WP–07 Supplemental Proceeding will not revisit the previous forecasts of program levels for FY 2007–2009 made in the PFR I and II processes and incorporated into the WP–07 Final Proposal. Nor is this WP–07 Supplemental Proceeding the forum to revisit or seek new decisions regarding program spending commitments for this period.

To allow public review and input on program level forecasts that BPA has determined require updating, BPA will hold a separate process to address adjustments to the program level forecasts for FY 2009 associated with CGS costs, fish and wildlife costs and any other necessary program categories for which significant changes have or may occur before BPA's final rate proposal. This separate process will include an opportunity for entities, such as fish and wildlife managers, to engage BPA on the cost assumptions made and the appropriateness of any proposed adjustments in forecasts. Any adjustments adopted by BPA to the program level forecasts for FY 2009 as a result of this separate process will be incorporated into BPA's final rate proposal for FY 2009. Because discussions regarding spending commitments or discussions about adjustments in forecasts of costs in these program areas will occur in forums separate from this rate proceeding, pursuant to § 1010.3(f) of BPA Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record any materials attempted to be submitted or arguments attempted to be made in the proceeding that seek to address program spending commitment decisions, or address adjustments in the program level forecasts for FY 2009 for CGS costs, fish and wildlife costs, and any other program categories.

2. Near-Term Policy Decisions

As detailed above, BPA issued the Near-Term Policy on February 4, 2005. The Policy resolved a number of policy decisions that affect BPA's WP–07 Supplemental Proposal. Those issues include, but are not limited to, decisions on the availability of the lowest cost PF rate to public agency customers; the term of the rate period; DSI service options; and the availability of products for new or existing customers. Pursuant to § 1010.3(f) of the BPA Hearing

[2] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities Reg-Preamble, FERC Stats & Regs 1991–96, para. 31,036 (1996).

[3] Open Access Same-Time Information System (formerly Real-Time Information Networks) and Standards of Conduct, Reg-Preamble, FERC Stats & Regs 1991–96, para. 31,035 (1996).

Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record any materials attempted to be submitted or arguments attempted to be made in the proceeding that seek to in any way to revisit the appropriateness or reasonableness of BPA's decisions made in the Near-Term Policy ROD.

3. DSI Service

The DSI Service RODs established the manner in which BPA would provide service and benefits to its DSI customers during FY 2007–2011. Pursuant to § 1010.3(f) of the BPA Hearing Procedures, the Administrator directs the Hearing Officer to exclude from the record any materials attempted to be submitted or arguments attempted to be made in the proceeding that seek to in any way to revisit the appropriateness or reasonableness of BPA's decisions made in the DSI RODs.

4. Transmission Acquisition Expense

In the PFR I and II processes, BPA reviewed with interested persons program levels related to Power Services' transmission acquisitions. These program levels represent the costs associated with services necessary to deliver energy from generating resources to markets and loads. These costs include: transmission expenses; ancillary services; real power losses; generation integration costs associated with BPA-owned transmission facilities; and metering and communication requirements. Pursuant to § 1010.3(f) of BPA Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record any materials attempted to be submitted or arguments attempted to be made in the hearing that seek to in any way revisit the appropriateness or reasonableness of BPA's transmission acquisition program level estimates.

5. Other Transmission Issues

a. Generation Inputs

Power Services provides a portion of the FCRPS's available generation to Transmission Services to enable Transmission Services to meet its various transmission and control area requirements. Transmission Services uses the generation inputs to provide ancillary and control area services. To recover the costs associated with providing these generation inputs, Power Services develops charges based on relevant FCRPS costs that are assessed the transmission function. The costs Power Services are proposing to use to determine the generation input costs and associated unit costs to Transmission Services were addressed in the BPA's WP–07 Final Proposal. Based on updated information, the WP–07 Supplemental Proposal will include revised charges for some generation inputs and these revisions are included within the scope of this rate proceeding. Pursuant to § 1010.3(f) of BPA's Hearing Procedures, the Administrator directs the Hearing Officer to exclude from the record any materials attempted to be submitted or arguments attempted to be made in the proceeding that seek in any way to revisit the appropriateness or reasonableness of any issues, other than the charges, related to the generation inputs. This exclusion includes, but is not limited to, issues regarding the level or quality of the generation inputs that Transmission Services requests from Power Services. These determinations are generally made by Transmission Services in accordance with industry, reliability, and other compliance standards and criteria, and are not matters appropriate for the WP–07 Supplemental Proceeding.

In addition, BPA will conduct a section 7(i) process related to within-hour balancing capacity for wind generation. Pursuant to § 1010.3(f) of BPA's Hearing Procedures, the Administrator directs the Hearing Officer to exclude from the record any materials attempted to be submitted or arguments attempted to be made in the WP–07 Supplemental Proceeding that seek in any way to address the issues contained within the scope of the within-hour balancing capacity for wind generation rate proceeding (Proposed Wind Integration—Within-Hour Balancing Service Rate (WI–09)), except that the appropriate treatment of the additional revenue resulting from this proceeding is a matter that is included within the scope of the WP–07 Supplemental Proceeding.

b. Transmission Rate Case

On April 23, 2007, BPA issued the 2008 ''Final Transmission Proposal-Administrator's Record of Decision'' that adopted the transmission and ancillary services rates as reflected in the 2008 Transmission Rate Case Settlement Agreement. FERC granted interim approval to these transmission rates on September 20, 2007. Pursuant to § 1010.3(f) of BPA Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record any materials attempted to be submitted or arguments attempted to be made in the hearing which seek in any way to revisit the appropriateness or reasonableness of issues determined in the transmission rate case. That proceeding addressed, among other things, transmission and ancillary service rate levels, redispatch costs between Transmission Services and Power Services related to Attachment K redispatch for FY 2008–2009, and the level of the GTA Delivery Charge for FY 2009.

6. Post-2006 Conservation Program Structure Proposal

Through the post-2006 workgroup collaboration, customers and constituents provided input on the development of BPA's post-2006 conservation approach. Pursuant to § 1010.3(f) of BPA Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record any materials attempted to be submitted or arguments attempted to be made in the hearing that seek to in any way revisit the appropriateness or reasonableness of BPA's conservation programs and establishment of their associated expense levels through the Post-2006 Conservation Program Structure Proposal dated June 28, 2005. The Hearing Officer is also directed to exclude from the scope of this proceeding evidence regarding BPA's portfolio of conservation programs, as well as their expenses, that BPA intends to pursue during FY 2009.

7. Federal and Non-Federal Debt Service and Debt Management

During the PFR, and in other forums, BPA has provided background information on its internal Federal and non-Federal debt management policies and practices. The discussions of these topics in the PFR and other forums were not intended to seek input from customers and constituents regarding BPA's debt management policies and practices. Rather, these discussions were intended to merely inform interested parties about these matters so that they would better understand BPA's debt structure. Although the PFR closeout letter did not make any decisions regarding BPA's debt management policies and practices, these remain outside the scope of the rate case. Therefore, pursuant to § 1010.3(f) of BPA Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record any materials attempted to be submitted or arguments attempted to be made in the hearing which seek to in any way visit the appropriateness or reasonableness of BPA's debt management policies and practices.

8. Average System Cost Methodology

Concurrent with the publication of this notice, BPA is publishing a separate notice in the **Federal Register** to commence a consultation proceeding to

develop a new Average System Cost (ASC) Methodology. Section 5(c) of the Northwest Power Act established the REP, which provides benefits to residential consumers of Pacific Northwest utilities based, in part, on a utility's ''average system cost'' of resources. Section 5(c)(7) of the Act authorizes the Administrator to consult with regional interests to develop an ASC methodology. The ASC Methodology prescribes which costs are included and excluded from a utility's ASC, as well as the procedural rules for filing proposed ASCs with BPA. Comments on BPA's proposed ASC Methodology will be submitted, reviewed and addressed solely in the separate consultation proceeding. For this reason, issues related to the proposed ASC Methodology are not within the scope of this proceeding. Therefore, pursuant to § 1010.3(f) of BPA Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record any materials attempted to be submitted or arguments attempted to be made in the hearing that seek to in any way visit the appropriateness or reasonableness of the proposed ASC Methodology.

9. Potential Environmental Impacts

For the reasons stated in Section C below, the Administrator directs the Hearing Officer to exclude from the record all evidence and arguments that seek in any way to address the potential environmental impacts of the rates being developed in the WP–07 Supplemental Proceeding. Any such evidence and arguments submitted will be considered and addressed in the separate, concurrent process described in the next section.

*C. The National Environmental Policy Act*

BPA is in the process of assessing the potential environmental effects of its WP–07 Supplemental Proposal, consistent with the National Environmental Policy Act (NEPA). BPA's Business Plan Environmental Impact Statement (Business Plan EIS), completed in June 1995, evaluated the environmental impacts of a range of business plan alternatives that could be varied by applying policy modules, including one for rates. Any combination of alternative policy modules should allow BPA to balance its costs and revenues. The Business Plan EIS also addressed response strategies, including adjusting rates, that BPA could pursue if BPA's costs exceeded its revenues. In August 1995, the BPA Administrator issued a Record of Decision (Business Plan ROD) that adopted the Market-Driven Alternative from the Business Plan EIS. This alternative was selected because, among other reasons, it allows BPA to: (1) Recover costs through rates; (2) competitively market BPA's products and services; (3) develop rates that meet customer needs for clarity and simplicity; (4) continue to meet BPA's legal mandates; and (5) avoid adverse environmental impacts. BPA also committed to apply as many response strategies as necessary when BPA's costs and revenues do not balance. In April 2007, BPA completed and issued a Supplemental Analysis to the Business Plan EIS. The Supplemental Analysis found that the Business Plan EIS's relationship-based and policy-level analysis of potential environmental impacts from BPA's business practices remains valid, and that BPA's current business practices are still consistent with BPA's Market-Driven approach. The Business Plan EIS and ROD thus continue to provide a sound basis for making determinations under NEPA concerning BPA's policy-level decisions.

Because the WP–07 Supplemental Proposal likely would assist BPA in accomplishing the goals identified in the Business Plan ROD, the proposal appears consistent with these aspects of the Market-Driven Alternative. In addition, this rate proposal is similar to the type of rate designs evaluated in the Business Plan EIS; thus, implementation of this rate proposal would not be expected to result in significantly different environmental impacts from those examined in the Business Plan EIS. Therefore, BPA expects that this WP–07 Supplemental Proposal will fall within the scope of the Market-Driven Alternative that was evaluated in the Business Plan EIS and adopted in the Business Plan ROD.

As part of the Administrator's Supplemental ROD that will be prepared for the FY 2007 Supplemental Wholesale Power Rate Proposal, BPA may tier its decision under NEPA to the Business Plan ROD. However, depending upon the ongoing environmental review, BPA may, instead, issue another appropriate NEPA document. During the public review and comment period for the WP–07 Supplemental Proposal, persons interested in submitting comments regarding its potential environmental effects may do so by submitting comments to Katherine Pierce, NEPA Compliance Officer, KEC–4, Bonneville Power Administration, 905 NE 11th Avenue, Portland, OR 97232. Any such comments received by the comment deadline identified in Part I will be considered by BPA's NEPA compliance staff in the NEPA process that will be conducted for this Proposal.

**Part III—Public Participation**

*A. Distinguishing Between ''Participants'' and ''Parties''*

BPA distinguishes between ''participants in'' and ''parties to'' the section 7(i) hearing process. Apart from the formal hearing process, BPA will accept comments, views, opinions, and information from ''participants,'' who are defined in the BPA Hearing Procedures as persons who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants' written and oral comments will be made a part of the official record and considered by the Administrator when making his decision. Participants are not entitled to participate in the prehearing conference; may not cross-examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties.

The views of participants are important to BPA. Written comments by participants will be included in the record if they are received by 5:00 p.m., Pacific Daylight Savings Time, on May 5, 2008. This date follows the anticipated submission of BPA's and all other parties' direct cases. Written views, supporting information, questions, and arguments should be submitted to BPA Public Affairs at the address listed in Paragraph 2 of the Summary. In addition, BPA will hold two field hearings in the Pacific Northwest region. Participants may appear at the field hearings and present verbal and written comments. The transcripts of these hearings will be part of the record upon which the Administrator makes his final rate decisions.

Persons who previously intervened in BPA's 2007 Wholesale Power Rate Adjustment Proceeding automatically continue their party status in the 2007 Supplemental Proceeding. Other persons wishing to become a party to BPA's rate proceeding must notify BPA in writing and file a Petition to Intervene with the Hearing Officer. Petitioners may designate no more than two representatives upon whom service of documents will be made. Petitions to Intervene must state the name and address of the person requesting party status and the person's interest in the hearing.

Petitions to Intervene as parties in the rate proceeding are due to the Hearing

Officer by 5 p.m., Pacific Standard Time, on February 18, 2008. The petitions should be directed as stated below or may be e-mailed to *wp07rate@bpa.gov:* Robert Welsh, Hearing Clerk–LP–7, Bonneville Power Administration, 905 NE 11th Avenue, P.O. Box 3621, Portland, OR 97208–3621.

Petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the proceeding. Pursuant to § 1010.1(d) of BPA Hearing Procedures, BPA waives the requirement in § 1010.4(d) that an opposition to an intervention petition must be filed and served 24 hours before the February 19, 2008, prehearing conference. Any opposition to an intervention petition may instead be made at the prehearing conference. Any party, including BPA, may oppose a petition for intervention. Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored.

*B. Developing the Record*

The record will comprise, among other things, verbal and written comments made by participants, including the transcripts of all hearings, any written materials submitted by the parties, documents developed by BPA staff, and other materials accepted into the record by the Hearing Officer. Written comments by participants will be included in the record if they are received by 5 p.m., Pacific Daylight Savings Time, on May 5, 2008. The Hearing Officer will then review the record, supplement it if necessary, and will certify the record to the Administrator for decision.

The Administrator will develop final proposed rates for FY 2009 based on the entire record, which includes the record certified by the Hearing Officer, as described above. The basis for the final proposed rates first will be expressed in the Administrator's Draft Supplemental ROD. Parties will have an opportunity to respond to the Draft Supplemental ROD as provided in the BPA Hearing Procedures. The Administrator will serve copies of the Final Supplemental ROD on all parties. At the conclusion of the rate proceeding, BPA will file the supplemental rate case record and rates for FY 2009 in a timely manner to receive FERC confirmation and approval effective October 1, 2008.

BPA must continue to meet with customers in the ordinary course of business during the rate case. To comport with the rate case procedural rule prohibiting ex parte communications, BPA will provide the prescribed notice of meetings involving rate case issues in order to permit the opportunity for participation by all rate case parties. These meetings may be held on very short notice. Consequently, parties should be prepared to devote the necessary resources to participate fully in every aspect of the rate proceeding and attend meetings any day during the course of the rate case.

**Part IV—Summary of WP–07 Supplemental Proposal and Major Studies**

*A. Summary of Proposed 2009 Wholesale Power Rate Structure*

1. List of Proposed 2009 Wholesale Power Rates

BPA is proposing to revise several rate schedules for its 2007 Supplemental Wholesale Power Rates to respond to the Court's recent opinions. The rate schedules and the GRSPs are available for viewing and downloading on BPA's Web site at *http://www.bpa.gov/corporate/ratecase* as discussed in Part VII of this Notice.

a. PF–07R Priority Firm Power Rate

The PF rate schedule is comprised of two rates: the PF Preference rate and the PF Exchange rate.

The PF Preference rate applies to BPA's firm power sales to public bodies, cooperatives, and Federal agencies for resale to their regional consumers. This power is guaranteed to be continuously available. The proposed average PF Preference rate is $26.2/MWh. The rate applies to the following products:

Full Service Product
Actual Partial Service Product—Simple
Actual Partial Service Product—Complex
Block Product
Block Product with Factoring
Block Product with Shaping Capacity
Slice Product

The PF Exchange rate applies to sales of power to regional utilities that participate in the Residential Exchange Program established under section 5(c) of the Northwest Power Act. 16 U.S.C. 839c(c). BPA is proposing to revise the PF Exchange rate to remove the demand and energy rates and substitute a single annual rate. In addition, BPA is proposing to include utility-specific supplemental rate charges, consistent with section 7(b)(3) of the Northwest Power Act. 16 U.S.C. 839e(b)(3). These PF Exchange rates are used in determining REP benefits in FY 2009.

b. NR–07R New Resource Firm Power Rate

The New Resource Firm Power (NR) rate applies to net requirements power sales to IOUs for resale to ultimate consumers for direct consumption, construction, test and start-up, and for station service. NR–07R firm power is also available to public utility customers for serving New Large Single Loads. This rate applies to the following products:

New Large Single Loads
Full Service Product
Actual Partial Service Product—Simple
Actual Partial Service Product—Complex
Block Product
Block Product with Factoring
Block Product with Shaping Capacity

c. IP–07R Industrial Firm Power Rate

The IP rate is available for discretionary firm power sales to DSI customers authorized by section (5)(d)(1)(A) of the Northwest Power Act. 16 U.S.C 839c(d)(1)(A).

d. FPS–07R Firm Power Products and Services Rate

The FPS rate schedule is available for the purchase of Firm Power, Capacity Without Energy, Supplemental Control Area Services, Shaping Services, and Reservation and Rights to Change Services for use inside and outside the Pacific Northwest. The rates for these products are posted and/or negotiated. BPA is proposing only minor changes to this rate schedule for FY 2009.

e. GTA–07R General Transfer Agreement Delivery Charge

The GTA Delivery Charge applies to customers who purchase Federal power that is delivered over non-Federal low voltage transmission facilities. This rate was originally set in the 2006 Transmission Services Rate Case Settlement to mirror the Utility Delivery rate from October 1, 2005, through September 30, 2007. BPA's 2007 Power Rate Case determined that the GTA Delivery Charge would continue to mirror the Utility Delivery rate, which is $1.119 per kilowatt through September 30, 2009. For FY 2009, Power Services is proposing to continue to set the GTA Delivery Charge to the same rate as Transmission Services' posted monthly Utility Delivery rate, which is $1.119 per kilowatt.

2. Significant Rate Development Issues

a. Residential Exchange Program Costs

For FY 2009, BPA expects qualifying regional utilities to participate in the REP. BPA is concurrently developing a new ASC Methodology in a separate proceeding and will be offering new RPSAs to requesting utilities. In order to include the costs of an REP in BPA's FY 2009 rates, BPA is forecasting the ASCs of utilities expected to participate in the program. In addition, BPA is forecasting the expected utilities' system and exchangeable residential and small farm loads. However, the ASC Methodology being revised in a concurrent process will be used to conduct an expedited review of utilities' ASCs outside of this WP–07 Supplemental Proceeding. This review will determine the actual ASCs for eligible utilities for FY 2009. Those ASC determinations, when complete, will be incorporated into the final rate proposal and used to determine REP costs in FY 2009 rates.

b. Inter-Function Costs and Credits

BPA is not proposing any changes to its inter-function generation input unit charges for FY 2009. The forecast of revenues for FY 2009 in the WP–07 Final Proposal will continue to be used. However, BPA will adjust the inter-function revenue credit to reflect the additional revenues that Power Services expects to receive from Transmission Services based on the proposed Wind Integration—Within-Hour Balancing Service Rate Proceeding (WI–09). Therefore, BPA is proposing to incorporate the forecast revenues determined in the Wind Integration rate case into the final rates of this proceeding.

c. DSI Service FY 2007–2011

BPA continues to forecast no direct service sales under the IP rate to its DSI customers. Instead, BPA provides the DSI aluminum smelters 560 aMW of surplus firm power service benefits for the FY 2007–2011 period at a capped cost of $59 million per year. Benefits have been monetized under the contacts with these companies. In addition, BPA provides a 17 aMW surplus firm power sales contract for Port Townsend Paper Company through the local public utility under the FPS rate schedule at a rate that is approximately equivalent to BPA's lowest-cost PF rate.

3. Rate Design and Rate Adjustments

Consistent with the Partial Resolution of Issues negotiated between BPA and rate case parties before the WP–07 Final Proposal, BPA is generally continuing its existing WP–07 rate design for its FY 2009 rates, with only minor modifications listed below. In addition, BPA is generally continuing its existing set of rate adjustments for its FY 2009 rates, also described below.

a. Conservation Rate Credit (CRC)

BPA is not proposing any changes from its WP–07 Final Proposal for the CRC.

b. Risk Mitigation Tools

Other than resetting the cap for the FY 2009 Cost Recovery Adjustment Clause (CRAC) and the thresholds for the FY 2009 CRAC and Dividend Distribution Clause (DDC), BPA is proposing no other changes to the CRAC or DDC in the WP–07 Supplemental Proposal. BPA will use the same technical methodology to assess risks and intends to employ the same risk mitigation measures as presented in the WP–07 Final [4] Proposal.

TABLE 1.—CRAC CAP AND CRAC AND DDC ANNUAL THRESHOLDS FOR FY 2009

[Millions of dollars]

| | AMNR calculated at end of fiscal year | CRAC or DDC applied to fiscal year | CRAC or DDC threshold in AMNR [4] | Approx. threshold as measured in power services' reserves | Maximum CRAC recovery amount (cap) |
|---|---|---|---|---|---|
| CRAC | 2008 | 2009 | ($81.4) | $750 | $36 |
| DDC | 2008 | 2009 | 218.6 | 1,050 | n/a |

BPA proposes to continue the National Marine Fisheries Service (NMFS) Federal FCRPS Biological Opinion (NFB) Adjustment and the Emergency NFB Surcharge. Although BPA expects to include the forecast cost of implementing the final Biological Opinion for the FCRPS in its final supplemental rates, litigation regarding the Biological Opinion may continue, so the Emergency NFB Surcharge and the NFB Adjustment remain appropriate. In order to balance the need to cover risk with overall rate levels, BPA proposes to meet its Treasury Payment Probability (TPP) standard through a combination of financial reserves, the CRAC, the NFB Adjustment, the Emergency NFB Surcharge, and the Flexible PF Rate Program. *See* Part IV.A.4.

c. Excess Factoring Charge

This is a charge that applies to purchasers of the Complex Actual Partial Service Product under the PF rate schedule. BPA is proposing no changes to this charge as established in the WP–07 Final Proposal.

d. Green Energy Premium (GEP)

BPA is proposing no changes to the GEP in this Supplemental Proposal. The proposed GEP continues to range from zero to 40 mills per kWh depending on the specific products and associated costs selected by each customer. BPA forecasts an average of $3 million of annual revenue from the GEP for FY 2009, which is an increase from the WP–07 Final Proposal. A portion of revenues from the GEP will support BPA's renewable-related research, development and demonstration projects.

e. Load Variance Charge

Except for a change in its level, consistent with the Partial Resolution of Issues, BPA is proposing no other changes to the Load Variance Charge. This proposed charge of $0.45/MWh covers BPA's cost of meeting customers' load growth for reasons other than annexation or retail access load gain or loss. In addition, it provides Full and Partial Service purchasers the right to deviate from their monthly forecast of BPA purchases due to weather, economic business cycles, plant energy consumptions and other reasons.

f. Low Density Discount (LDD)

BPA is proposing no changes to the LDD as established in the WP–07 Final

[4] Accumulated Modified Net Revenue

Proposal and as agreed to in the Partial Resolution of Issues.

g. Monthly Demand and Energy Charges

BPA is proposing no changes to the methodology for calculating demand and energy charges. There will be two diurnal periods, Heavy Load Hour (HLH) and Light Load Hours (LLH), for each month. BPA continues to adopt slight changes to the definitions of HLH and LLH to be consistent with NERC definitions. The proposed demand and energy charges will be updated consistent with the Partial Resolution of Issues.

h. PF Targeted Adjustment Charge (PF TAC)

BPA is proposing no changes to the Targeted Adjustment Charge from that established in the WP–07 Final Proposal.

i. Unauthorized Increase Charges (UAI) for Power Sales

These are penalty charges for Unauthorized Increases in Energy and Unauthorized Increases in Demand for deliveries that exceed contractual entitlements for energy and demand, respectively. BPA is proposing no changes relative to the WP–07 Final Proposal.

j. Demand Adjuster

This is an adjustment that is made to the demand billing factor for certain requirements products. BPA is proposing no changes relative to the WP–07 Final Proposal.

k. Flexible PF and NR

These are rate options available, at BPA's discretion, to purchasers under the PF and NR rate schedules. BPA is proposing no changes relative to the WP–07 Final Proposal.

l. Slice True-Up Adjustment

BPA is proposing changes to the Slice True-up Adjustment process that are consistent with the (Slice Mediation) Settlement Agreement that was signed after the WP–07 Final Proposal was published. This Settlement Agreement provided for the Slice True-Up Adjustment Charge to be calculated using the average Slice Revenue Requirement for the rate period instead of the Slice Revenue Requirement for each individual year. In addition, this Settlement Agreement provided for changes in the treatment of certain expenses, which are incorporated in this proposal.

m. Value of Reserves

Section 7(c)(3) of the Northwest Power Act, 16 U.S.C. 839e(c)(3), provides that the Administrator shall adjust rates to the DSI customers ''to take into account the value of power system reserves made available to the Administrator through his rights to interrupt or curtail service to such direct service industrial customers.'' The DSIs may provide two types of reserves: Supplemental Contingency Reserves and Stability Reserves. The WP–07 Supplemental Proposal reflects Stability Reserves being purchased by Transmission Services and addressed in Transmission Services' transmission rate case. BPA is proposing no changes relative to the WP–07 Final Proposal.

n. Development of IP and NR Rates

Other than the level of the rates, BPA is proposing no changes to the NR or IP rates relative to the WP–07 Final Proposal.

4. Rate Methodology for FY 2009

a. Risk Mitigation Package

Power Services is proposing to rely on a number of elements for its risk mitigation package in the WP–07 Supplemental Proposal. These include a CRAC, with the NFB Adjustment and Emergency NFB Surcharge, and a DDC, as well as the following:

(1) *Starting Reserves Available for Risk.* The financial reserves available for risk that are attributable to Power Services at the start of the rate period provide some protection against financial uncertainties. Starting financial reserves available for risk include portions attributed to the generation function of cash in the BPA Fund and the deferred borrowing balance that are attributed to the generation function. Projections of Power Services' reserves available for risk at the beginning of FY 2009 range from $50 million to $2.7 billion, with an expected value of $1.03 billion. These amounts do not include cash that has accumulated as a result of the suspension of payments under the REP Settlement Agreements.

(2) *Planned Net Revenues for Risk (PNRR).* PNRR is a dollar amount in the generation revenue requirement that generates additional revenue in order to increase the generation function reserves. The anticipated generation function reserves available for risk, with the tools noted above, are sufficient for the agency to meet its financial objective of a 97.5 percent one-year TPP for FY 2009. As a result, BPA's proposed risk mitigation package will not include any PNRR.

(3) *Flexible PF Rate Program.* This program is designed to provide $193 million of liquidity cash through an accelerated payment of certain participating public utilities' power bills. This accelerated payment will be triggered at BPA's sole discretion should the probability of reserves falling below a certain reserve threshold be greater than the acceptable probability, as decided prior to a cash crisis.

b. Rates Analysis Model (RAM)

The RAM2009 model is a large Excel spreadsheet model that is automated with Visual Basic macros. RAM2009 has two main steps: a Rate Design Step and a Slice Separation Step. The RAM2009 Rate Design Step implements BPA's rate directives by modifying the costs associated with the three resource pools (Federal Base System, Residential Exchange, and New Resources) used to serve three rate pools (7(b) loads, 7(c) loads, and 7(f) and surplus loads) as developed in the Cost of Service Analysis (COSA). After the initial allocation of costs, the Northwest Power Act requires that some rate adjustments be made, such as those described in section 7(b) and section 7(c) of the Northwest Power Act. The RAM2009 performs these rate adjustments, and several others, including the 7(b)(2) rate test, in its Rate Design Step. The Rate Design Step of RAM2009 concludes with the calculation of proposed power rates. The Slice Separation Step then separates the PF Slice product costs and firm loads from the overall PF Preference rate pool, leaving the costs that must be covered by the remaining non-Slice product PF Preference load.

*B. Major Studies in Support of WP–07 Supplemental Proposal for FY 2009 Rates*

Because this proceeding reopens the WP–07 docket, all material already filed on the record remains on the record and is available to all parties. BPA's WP–07 Final Proposal Studies constitute the foundation on which the Supplemental Proposal is built. However, certain new information will be incorporated to form the Supplemental Proposal. BPA will explain and document the revisions that are incorporated in the Supplemental Proposal in a new set of studies. The studies that have been prepared to support BPA's WP–07 Supplemental Wholesale Power Rate Proposal are described in detail in this section:

Supplemental Load Resource Study and Documentation;

Supplemental Revenue Requirement Study and Documentation;

Supplemental Market Price Forecast Study and Documentation;

Supplemental Risk Analysis Study and Documentation;

Supplemental Wholesale Power Rate Development Study and Documentation;

Supplemental Section 7(b)(2) Rate Test Study and Documentation; and

Lookback Study and Documentation for FY 2002–2008.

1. Supplemental Load Resource Study

The Load Resource Study represents the compilation of the load and resource data necessary for developing BPA's wholesale power rates. The Study has three major interrelated components: (a) BPA's Federal system load forecast; (b) BPA's Federal system resource forecast; and (c) the Federal system load and resource balances.

Since publication of the WP–07 Final Proposal, only a few minor changes have occurred. The Supplemental Load Resource Study documents the increase in load BPA is currently forecasting for FY 2009 relative to the WP–07 Final Proposal. It also recognizes some changes in Federal resource output for FY 2009 resulting from recent BPA acquisitions and contract purchases, updated assumptions for the CGS maintenance schedule, and revisions to BPA's hydro efficiency improvement estimates.

2. Supplemental Revenue Requirement Study

The purpose of the Revenue Requirement Study is to establish the level of revenues from wholesale power rates necessary to recover, in accordance with sound business principles, the FCRPS costs associated with the production, acquisition, marketing, and conservation of electric power. Generation revenue requirements include: Recovery of the Federal investments in hydro generation; recovery of fish and wildlife costs and energy conservation; Federal agencies' operations and maintenance expenses allocated to power; capitalized contract expenses associated with such non-Federal power suppliers as Energy Northwest; other purchase power expenses, such as short-term power purchases; power marketing expenses; cost of transmission services necessary for the sale and delivery of FCRPS power; and all other power-related costs incurred by the Administrator pursuant to law.

For FY 2009, BPA is forecasting that most power-related costs will remain at the same levels as in the WP–07 Final Proposal, with the exception of the costs associated with the REP. A limited number of additional changes is proposed for the Supplemental Proposal. Forecasts of operating costs for the CGS show an increase as do the costs related to system augmentation. Depreciation, amortization, Federal interest and non-Federal debt service will be updated. The proposed changes are presented in Table 2.

TABLE 2.—DIFFERENCES IN MAJOR COST CATEGORIES BETWEEN THE WP–07 FINAL PROPOSAL AND THE WP–07 SUPPLEMENTAL PROPOSAL FY 2009 (EXCLUDING REP COST CHANGES)

[Millions of dollars]

| Cost category | Changes from WP–07 final proposal |
|---|---|
| Operating Generation: | |
| CGS | 31 |
| Long-term Projects | 6 |
| Contracted Power Purchases: | |
| DSI Monetized Power Sale | (4) |
| Other Power Purchases (Short-term) | 11 |
| Augmentation Power Purchases | 17 |
| Renewable Generation | 11 |
| Energy Efficiency | 9 |
| Transmission Acquisition/Ancillary Services | (5) |
| EN Debt Service | 1 |
| Depreciation | (7) |
| Amortization | (8) |
| Net Federal Interest | (27) |
| Minimum Required Net Revenues | (35) |
| Planned Net Revenues for Risk | (11) |
| Total Change from WP–07 Final Proposal | (10) |

BPA also expects changes to the costs of its fish and wildlife commitments, particularly from the final FCRPS Biological Opinion, now expected on March 18, 2008. For reasons of efficiency and to ensure the most up-to-date information, BPA prefers to estimate those changes when the Biological Opinion is issued. If the Opinion is delayed, BPA will forecast those costs using the best available information. As noted above, BPA does not establish program levels in rate cases. BPA will conduct a review of changes to the power-related costs from the WP–07 Final Proposal in a forum external to this proceeding. The results of that review will be incorporated into the final studies of this WP–07 Supplemental Proceeding.

3. Supplemental Market Price Forecast Study

The Market Price Forecast Study estimates the variable hourly cost of the marginal resource for transactions in the wholesale energy market. The specific market used in this analysis is the Mid-Columbia trading hub in the State of Washington. For the WP–07 Supplemental Proposal, BPA does not propose to change the price forecast from the WP–07 Final Proposal.

4. Supplemental Risk Analysis Study

The Risk Analysis Study focuses upon two types of risks and their impacts on BPA's revenues and expenses. The first type of risks is comprised of operating risks such as variations in economic conditions, load, and generation resource capability. These operating risks include the impacts of water supply conditions and market prices on net revenues. The second type of risks comprises non-operating risks—all the risks included in the rate case risk modeling other than operating risks. This type of non-operating risks also includes uncertainty in achieving cost

reductions identified in the Power Function Review.

BPA subsequently evaluates the impact that different risk mitigation measures have on reducing net revenue risk by calculating the TPP. The TPP is a measure of the probability that BPA will make each Treasury payment on time and in full. If the TPP is below BPA's one-year 97.5 percent standard, the combination of risk mitigation tools (e.g., Cost Recovery Adjustment Clause, NFB Adjustment, Emergency NFB Surcharge, Dividend Distribution Clause) is modified to meet the TPP standard.

BPA is proposing no changes in the form or methodology of the risk analysis. The Supplemental Proposal risk analysis will be updated for changes to input data that account for changes in BPA's loads, resources, costs, and financial position.

5. Supplemental Wholesale Power Rate Development Study

The Wholesale Power Rate Development Study (WPRDS) is the primary source for details concerning the development of BPA's power rates. It reflects the results of all of the other studies and calculates the rates for BPA's wholesale power products and services. The WPRDS documents the allocation and recovery of Federal power costs; development of the Slice cost table; the development and forecast of inter-function revenues and expenses; the development of diurnal energy rates; the development of rates for demand, load variance, unauthorized increase usage, and excess load factoring; and other rate provisions (e.g., the Low Density Discount, Conservation Rate Credit, and irrigation rate mitigation). The results of the WPRDS are reflected in the wholesale power rate schedules.

Because of the Ninth Circuit's decisions on the allocation of the costs of the REP Settlement Agreements, most of the changes in the Supplemental Proposal are focused on the WPRDS. With the exception of certain auxiliary rate provisions, the WPRDS will be reproduced to document fully the development of BPA's power rates for the WP–07 Supplemental Proposal.

6. Supplemental Section 7(b)(2) Rate Test Study

The 7(b)(2) rate test is explained below in Part V. The Section 7(b)(2) Rate Test Study describes the application and results of the *Section 7(b)(2) Legal Interpretation (Legal Interpretation)* and *Section 7(b)(2) Implementation Methodology (Implementation Methodology).* BPA is proposing revisions to the *Legal Interpretation and Implementation Methodology* in the WP–07 Supplemental Proceeding. *See* Part V below.

The 7(b)(2) rate test triggers in this proposal, causing costs to be reallocated in the test period. The PF Preference rate applied to the general requirements of the 7(b)(2) Customers has been reduced by the 7(b)(3) amount. Other rates, the PF Exchange rate and the NR and IP rates, have been increased by an allocation of the 7(b)(3) amount.

Because of the proposed changes to the *Legal Interpretation* and *Implementation Methodology*, the Section 7(b)(2) Rate Test Study is being fully reproduced to document the changes to the rate test and its inputs and assumptions.

7. Lookback Study for FY 2002–2008

The Lookback Study for FY 2002–2008 quantifies the amounts of REP settlement costs improperly included in FY 2002–2008 power rates (Lookback Amounts) and describes how these amounts will be recovered over time from IOUs and returned to preference customers. These are not simple calculations for each year of the lookback period because of the need to account for Load Reduction Agreements and existing deemer balances. *See* Part VI.D. The differences are referred to as Lookback Amounts for FY 2002–2008. The calculation of Lookback Amounts is described and documented in the Lookback Study.

## Part V—Section 7(b)(2) Legal Interpretation and Implementation Methodology

### *A. Background*

As explained above, section 7(b)(2) of the Northwest Power Act directs BPA to conduct a rate test to assure that the wholesale power rates for 7(b)(2) customers are no higher than the costs of power would be to those customers for the same time period if specified assumptions are made. The rate test is conducted in conformance with the *Section 7(b)(2) Legal Interpretation* and *Section 7(b)(2) Implementation Methodology.*

Issues requiring interpretation of Section 7(b)(2) of the Northwest Power Act were initially resolved in the *Legal Interpretation of Section 7(b)(2) of the Pacific Northwest Electric Power Planning and Conservation Act.* 49 FR 23,998 (June 8, 1984). The *Legal Interpretation* was developed in a public comment process.

The methodology to implement section 7(b)(2) was developed in a section 7(i) proceeding that preceded BPA's 1985 rate case. The 7(i) process culminated in the *Section 7(b)(2) Implementation Methodology Record of Decision* (b–2–84–F–02). The 7(i) process conducted to develop the *Implementation Methodology* for section 7(b)(2) was designated as the first phase of BPA's 1985 rate filing. The *Implementation Methodology* prescribes in detail how the 7(b)(2) rate test is to be conducted. The *Implementation Methodology* and its ROD address the major issues involving the implementation of section 7(b)(2), including reserve benefits, financing benefits, natural consequences, and the rate test trigger.

BPA is proposing revisions to the *Implementation Methodology* and the *Legal Interpretation* in the WP–07 Supplemental Proposal. Proposed changes to the *Implementation Methodology* will be explained in BPA's Supplemental Proposal testimony. Proposed changes to the *Legal Interpretation* are contained in the *Legal Interpretation* attached to this Notice. Legal arguments concerning the *Legal Interpretation* will be addressed by BPA in the WP–07 Supplemental Proposal Draft and Final Records of Decision. BPA expects parties to have the opportunity to file legal briefs or memoranda to accompany and support their rate test testimonies in order that their legal arguments can be reviewed by BPA prior to receiving the parties' initial briefs.

In preparing for the WP–07 Supplemental Proceeding, BPA and interested parties explored various issues regarding the *Legal Interpretation* and *Implementation Methodology* through several workshops. In order to bring greater clarity and certainty to the conduct of the rate test, BPA is proposing a number of modifications to the *Legal Interpretation and Implementation Methodology.* The major modifications are listed below.

### *A. Treatment of Preference Customer Resources Used To Serve Requirements Loads*

The current *Legal Interpretation* and *Implementation Methodology* provide that preference customers' resources dedicated to serving their own firm loads under section 5(b) of the Northwest Power Act are not available to BPA in the 7(b)(2)(D) resource stack to serve 7(b)(2) Customer load. BPA proposes to clarify its interpretation of section 7(b)(2)(D) to provide that preference customer resources that are used to serve any utility's section 5(b) load are not available in the 7(b)(2) Case resource stack.

*B. Treatment of BPA-Acquired Conservation*

The current *Implementation Methodology* provides that BPA-acquired conservation will be included in the section 7(b)(2)(D) resource stack and that 7(b)(2) Customer loads will be adjusted to remove the effects of the conservation. The *Implementation Methodology* made no provision for conservation that is no longer effective in reducing loads. BPA is proposing to revise the *Methodology* to remove past conservation that is no longer effective.

*C. Identification and Use of Natural Consequences*

The current *Legal Interpretation* and *Implementation Methodology* provide that three natural consequences will be reflected in the rate test: demand elasticities amount of surplus firm power available, and size of nonfirm energy markets. The surplus and nonfirm consequences are the results of reasonable mathematical computations stemming from differing assumptions between the two rate test cases. Demand elasticities are not necessarily the result of reasonable mathematical computations. BPA is proposing to remove demand elasticities from the natural consequences listed in the *Implementation Methodology.*

*D. Treatment of Specified 7(g) Costs*

The current *Legal Interpretation* provides that specified 7(g) costs will be removed from the Program Case, but not from the 7(b)(2) Case. However, this language does not conform to BPA's past practices in conducting the rate test. BPA proposes to change this language to specify that the 7(g) cost exclusion applies to both cases prior to the incorporation of the assumptions specified in section 7(b)(2).

*E. Identification and Treatment of Resources in the 7(b)(2)(D) Resource Stack*

The current *Implementation Methodology* provides that certain resources taken from the resource stack would be added in discrete lumps. BPA proposes to remove the effects of the discrete lumps on the rate test by selling excess resources at the cost of the excess resources.

*F. Treatment of REP Settlement Costs in the Rate Test*

Neither the current *Legal Interpretation* nor *Implementation Methodology* addresses the treatment of REP settlement costs. BPA proposes to add language that clarifies that REP settlement costs are costs that should be excluded from the 7(b)(2) Case pursuant to section 7(b)(2)(C).

**Part VI. Summary of Proposal to Respond To the Court's Opinions Regarding BPA's 2000 REP Settlement Agreements, WP–02 Rates, and by Extension, WP–07 Rates**

*A. Introduction*

Although BPA is proposing an approach to address the Court's decisions, as described in greater detail below, BPA recognizes there are several ways to approach this matter. For example, one element of BPA's proposal for calculating the Lookback Amounts limits the amounts retained by IOUs to the lesser of an IOU's REP settlement benefits or the amount the IOU would have received under the REP. The proposed FY 2009 REP benefits to the IOUs would be significantly higher if, instead of proposing to limit the amounts the IOUs were entitled to in FY 2007 and FY 2008 to the amounts they would have received under the REP settlements, BPA had instead proposed that the IOUs were entitled to the recalculated REP benefits for those years. BPA encourages parties to propose alternative approaches to this or other elements of BPA's proposal to address the Court's decisions for the agency to consider.

This section describes, in general, BPA's proposal for responding to recent decisions of the Ninth Circuit noted previously. In *PGE,* the Court held that BPA's REP Settlement Agreements were inconsistent with the Northwest Power Act. In a companion opinion, *Golden NW,* the Court held that BPA improperly allocated REP Settlement Agreement costs to BPA's preference customers in its WP–02 power rates and remanded the rates to BPA. Although the Ninth Circuit in *Golden NW* also found infirmities in BPA's estimates of fish and wildlife costs for the WP–02 rates, the rates nevertheless recovered all of the costs of BPA's fish and wildlife commitments for FY 2002–2006. BPA acknowledges that entities may continue to assert that BPA had not committed enough funding to fish and wildlife activities during this period, but as the Court notes, that is not a matter determined in a rate proceeding. As a result, BPA is not proposing any changes in the WP–07 Supplemental Proceeding to its fish and wildlife commitments for FY 2002–2006. As discussed elsewhere, BPA is proposing a specific process, external to the rate case, to ensure its forecasts for fish and wildlife costs are as up-to-date as possible for purposes of establishing rates for FY 2009.

In a subsequent opinion, *Snohomish,* the Court remanded amendments to the REP Settlement Agreements and a provision regarding a Reduction of Risk discount the Court found was based on such Agreements. Three memorandum opinions, released at the same time as *Snohomish,* dismissed challenges to BPA's 2001 LRAs with PacifiCorp and Puget Sound Energy.

BPA is proposing to respond to the Court's decisions by: (1) Determining Lookback Amounts, which are the costs associated with the REP settlements that were improperly included in FY 2002–2008 rates and therefore should be recovered from IOUs and returned to preference customers; (2) recovering Lookback Amounts over time by reducing future REP benefits due to IOUs; and (3) concomitantly reducing preference customers' rates to reflect the lower REP benefit payments. Because BPA allocated REP settlement costs in its WP–07 power rates in the same manner as BPA allocated such costs in its WP–02 rates, BPA has reopened its WP–07 power rate proceeding to revise its power rates for FY 2009.

1. REP Settlement Agreement Background

In 1998, BPA's Subscription Strategy proposed offering BPA's regional IOU customers the option of signing RPSAs to participate in a traditional REP or signing REP Settlement Agreements for FY 2002–2011. The REP Settlement Agreements were to provide power and monetary benefits to the IOUs' residential and small farm consumers in order to resolve disputes arising under BPA's implementation of the REP. Prior to the development of the RPSAs and REP Settlement Agreements in 2000, the IOUs submitted letters to BPA stating their intent to participate in the REP. Through negotiations and a public notice and comment administrative proceeding, BPA developed prototype RPSAs and REP Settlement Agreements. BPA issued respective records of decision on October 4, 2000, for the RPSAs and REP Settlement Agreements. BPA then offered the RPSAs and REP Settlement Agreements to the IOUs.

All of the IOUs elected to execute the REP Settlement Agreements. For FY 2002–2006, the Settlement Agreements included 900 aMW of financial benefits and 1000 aMW of power at a cost-based rate, consistent with the Subscription Strategy. Subsequent to the execution of the REP Settlement Agreements, BPA entered into LRAs with PacifiCorp and Puget Sound Energy whereby BPA bought back the power component of the utilities' REP Settlement Agreements as part of BPA's strategy to limit the

financial impacts of the West Coast energy crisis. Through amendments to the REP Settlement Agreements signed in 2004, benefits for FY 2007–2011 were set at 2200 aMW of financial benefits.

BPA conducted the WP–02 rate proceeding to establish power rates for FY 2002–2006. BPA allocated the costs of the REP settlements to the PF Preference rate. A cost recovery adjustment clause captured the costs of the LRAs with PacifiCorp and Puget Sound Energy. A number of parties subsequently filed separate challenges to BPA's REP Settlement Agreements and BPA's WP–02 power rates in the Ninth Circuit. On May 3, 2007, the Court issued the *PGE* and *Golden NW* opinions noted above.

2. Overview of Proposal

a. FY 2002–2006 Rate Period

Together with the Court's decision in PGE, BPA interprets the Court's remand in *Golden NW* as requiring BPA to remove the cost of the REP settlements from the PF Preference rate. In removing these costs, however, the Court's decisions do not require BPA to ignore the fact that, in the absence of the REP Settlement Agreements, the IOUs would have received benefits during the FY 2002–2006 rate period under the traditional REP. As noted previously, prior to the development of the RPSAs and REP Settlement Agreements, the IOUs submitted letters to BPA stating their intent to participate in the REP. Consequently, absent BPA's offer of REP Settlement Agreements, BPA assumes that all IOUs except Idaho Power would have participated in the REP, the costs of which would have been reflected in setting BPA's power rates.

In response to the Court's decisions, BPA proposes to determine the amount of benefits provided to each IOU under the REP settlements. BPA also proposes to calculate the amount of REP benefits each IOU would have received from BPA during the FY 2002–2006 rate period in the absence of the REP Settlement Agreements. In order to calculate such REP benefits, BPA proposes to remove the REP settlement costs from BPA's WP–02 power rates and replace them with costs associated with a traditional REP. This change will establish the PF Exchange rate that would have been used to implement the REP during the rate period. This approach requires BPA to review and decide a number of issues in the WP–02 Final Proposal that were undecided or rendered moot by the presence of the REP Settlement Agreements. Failure to allow parties to address these issues on the merits would be inequitable. In addition, BPA must estimate the IOUs' respective ASCs for the rate period, which are used in conjunction with the PF Exchange rate and the IOUs' residential and small farm loads to determine each IOU's respective REP benefits. BPA proposes to compare each IOU's REP benefits with the actual payments made to that IOU under the REP settlements.

Based on the resulting differences between these two amounts, BPA will determine the Lookback Amounts to be recovered from each IOU and returned to preference customers via lower rates, as described in Section D below. Section E describes BPA's proposal for how the Lookback Amounts will be recovered over time. This approach responds to the Court's remand of the WP–02 rates by effectively reimbursing, through lower rates over time, preference customers for costs that should not have been included in the WP–02 preference rates during the FY 2002–2006 rate period.

In constructing this approach, BPA is not proposing to recalculate any rates other than the PF Exchange rate for the FY 2002–2006 period. BPA is proposing to recalculate only the PF Exchange rate for this period because this is the rate necessary to calculate the REP benefits the IOUs would have received. Consequently, this approach does not require BPA to recalculate any other rates for this period.

The determination of utility-specific Lookback Amounts is complex. In addition to the REP Settlement Agreements, BPA must also account for the Court's decision in *Snohomish,* which remanded to BPA the 2004 amendments to the REP Settlement Agreements and the Reduction of Risk discount that the Court found was based on those Agreements. BPA also must consider three memorandum opinions that dismissed challenges to the LRAs. In addition, the operation of the REP would have accounted for existing deemer balances, that is, amounts accrued by exchanging utilities and owed to BPA that must be eliminated before REP benefits can be paid.

b. FY 2007–2008

BPA is proposing to adopt a similar approach to that used for FY 2002–2006 to address BPA's WP–07 rates for FY 2007 and FY 2008. The rates charged in these years, like the WP–02 rates, included REP settlement costs. Although the Ninth Circuit has not ruled on the validity of BPA's WP–07 rates, the Court's holdings in *PGE, Golden NW,* and *Snohomish* implicate the validity of the rates BPA established for these years. Rather than wait for the Court to remand these rates to BPA in a subsequent case, BPA proposes to remedy these problems now. BPA's specific proposal is to adopt a remedy similar to that described above; that is, BPA proposes to remove the REP settlement costs from power rates and replace such costs with the costs of providing benefits to IOUs under the REP in FY 2007 and FY 2008. BPA will then compare the benefits under the REP to the payments each IOU received, or would have received, under the REP settlements for these years, determine the appropriate difference, and propose how this difference should be returned to preference customers.

Once again, in constructing this approach, BPA is not proposing to recalculate any rates other than the PF Exchange rate for the FY 2007–2008 period. BPA is proposing to recalculate only the PF Exchange rate for this period because this is the rate necessary to calculate the REP benefits the IOUs would have received. Consequently, this approach does not require BPA to recalculate any other rates for this period.

*B. REP Settlement Agreement Benefits Paid During FY 2002–2008*

The first step in responding to the *PGE, Golden NW,* and *Snohomish* decisions is to calculate the amount of benefits paid to each IOU under the REP settlements during FY 2002–2008. These benefits include, for example, the Conservation and Renewables Discount (C&RD) and Conservation Rate Credit (CRC), and a power sale to PGE. BPA reviewed its accounting records and determined the amounts paid to each IOU as well as the amounts that would have been paid had payments to the IOUs not been suspended. These amounts are detailed in the Lookback Study. This determination also identifies the source of the payments, i.e., the portion of the payments made under the REP Settlement Agreements, LRAs, etc. The total benefits paid were approximately $1.96 billion for FY 2002–2006 and $168 million for FY 2007. Benefits that would have been paid in the latter half of FY 2007 and in FY 2008 after the suspension of payments subsequent to the Court's rulings in May 2007 would have totaled $505 million.

*C. Proposal for Determining REP Benefits for FY 2002–2008*

As previously described, BPA proposes to determine the amount of REP benefits that would have been paid to each IOU in the absence of the REP settlements. These costs would have been included in the WP–02 and WP–

07 power rates for FY 2002–2008 instead of the costs of the REP settlements. In order to make this determination, BPA must evaluate two key elements of the REP: (1) The WP–02 and WP–07 PF Exchange rates and (2) the IOUs' respective ASCs during FY 2002–2008. BPA's proposals for these two rate periods are described below.

1. BPA's Proposal for Calculating REP Benefits for FY 2002–2006

a. The PF Exchange Rate for FY 2002–2006

BPA proposes to recalculate the PF Exchange rate for FY 2002–2006 assuming that all IOUs except Idaho Power would have participated in the REP in the absence of the REP Settlement Agreements. To develop this rate, BPA proposes to return to its WP–02 Supplemental Rate Proposal and revise its base rates with altered input assumptions consistent with information available at that time and with reconsideration of section 7(b)(2) rate test issues that were previously undecided or rendered moot. The resulting PF Exchange rate is the rate that would have been used by BPA to calculate benefits under the traditional REP during FY 2002–2006.

b. IOU Average System Costs (ASC) for FY 2002–2006

Although BPA's PF Exchange rate is a critical element of the REP, actual REP benefits paid to each IOU are not determined in BPA's rate cases. BPA's rate cases only forecast the expected levels of REP benefits, which comprise the expected costs that will be included in rates for the rate period. The actual level of REP benefits a utility receives is determined during the rate period as the REP is implemented and is based on a comparison of the PF Exchange rate and a utility's filed ASC, multiplied by the utility's residential and small farm loads. To calculate REP payments for FY 2002–2006, BPA would normally use filed ASCs. The IOUs, however, did not make ASC filings with BPA during the WP–02 period because the REP Settlement Agreements did not require such filings. Consequently, to calculate the REP benefits that would have been paid during the WP–02 rate period, BPA proposes to determine annual ASC for each IOU during the rate period.

To determine these annual ASCs, BPA proposes to look to FERC Form 1 data filed by each IOU with FERC for FY 2002–2006. From these historical data, BPA proposes to calculate an annual ASC for each utility by following the functionalization rules as set forth in the 1984 ASC Methodology. Relying on the 1984 Methodology is a conservative assumption given that BPA would likely have re-opened the ASC Methodology had the IOUs not executed the REP Settlement Agreements. The imputed ASCs, in conjunction with the reconstituted PF Exchange rate and actual exchange loads, are used to calculate utility-specific amounts of REP benefits that would have been paid during the WP–02 rate period.

2. BPA's Proposal for Calculating REP Benefits for FY 2007–2008

Similar to the FY 2002–2006 period, BPA's PF Preference rate for FY 2007–2008 included REP settlement costs. To remedy this infirmity, BPA proposes to use a similar construct as described previously to determine the REP benefits the IOUs would have received for FY 2007–2008; that is, BPA proposes to recalculate the PF Exchange rate for FY 2007–2008 assuming an REP, and then impute annual ASCs for each IOU customer for FY 2007–2008 to determine the REP benefits that would have been paid during this period.

a. BPA's PF Exchange Rate for FY 2007–2008

BPA is proposing to conduct the section 7(b)(2) rate test in this Supplemental Proposal in a manner consistent with the rate test used in the reformulation of the PF Exchange rate for FY 2002–2006. The results of the rate test, in conjunction with all other assumptions used in setting rates during the WP–07 rate proceeding, will be used in recalculating the PF Exchange rate for FY 2007–2008.

b. IOU Average System Costs for FY 2007–2008

Consistent with BPA's proposal to determine the REP benefits IOUs would have received in FY 2002–2006, BPA proposes to determine IOU ASCs for FY 2007–2008 relying on BPA's 1984 ASC Methodology. BPA is proposing to use FERC Form 1 data from 2006 and a trend analysis to project ASCs for FY 2007–2008. BPA believes this approach approximates what the actual ASCs would be for FY 2007–2008. As with the FY 2002–2006 rate period, these imputed ASCs, in conjunction with the reconstituted PF Exchange rate and actual and forecast exchange loads, are used to calculate a utility-specific amount of REP benefits that would have been paid for FY 2007–2008.

*D. Determination of Lookback Amounts*

Determining the Lookback Amounts is not a simple proposition. A number of factors affect the amount of settlement benefits received by the IOUs and, more importantly, whether the IOUs are entitled to retain such benefits in the absence of the REP Settlement Agreements. For example, although the Court found the REP Settlement Agreements unlawful, the Court remanded the 2004 amendments to BPA. The Court also remanded the Reduction of Risk discount, also called the ''litigation penalty'' by some preference customers, to BPA. In addition, the Court issued three memorandum opinions dismissing challenges to the LRAs.

As a result, BPA cannot simply subtract the REP benefits otherwise due the IOUs from the benefits paid under the REP Settlement Agreements, 2004 amendments, and LRAs to calculate the amount to be recovered from the IOUs. In addition, implementation of the traditional REP would have meant that the deemer balances for certain IOUs would have to be considered in determining the REP benefits that would have been paid absent the REP Settlement Agreements. This section describes BPA's proposal for determining the Lookback Amounts.

1. Treatment of Deemer Amounts

RPSAs are the contracts that implement the REP. BPA's 1981 RPSA established what was called a ''deemer account.'' In the event that an exchanging utility's ASC fell below the PF Exchange rate, rather than pay BPA, the utility would accumulate a balance in a deemer account based on the difference between its ASC and the PF Exchange rate multiplied by the utility's eligible exchange load. The 1981 RPSA provided that any obligations incurred under that RPSA would continue until satisfied, even if the RPSA expired. The RPSA also provided that the utility must repay its deemer balance before receiving any positive REP benefits. Idaho Power, Northwestern Energy, and Avista Corporation (Avista) all have extant deemer balances.

BPA proposes that its determination of the amount of REP benefits that would have been provided to the IOUs should account for utilities' deemer balances. Therefore, BPA proposes that any REP benefits calculated for an IOU with a deemer balance will first be used to extinguish its deemer balance before being compared to the REP settlement payments to establish a Lookback Amount for that IOU. Under BPA's proposal, Northwestern Energy and Avista exhaust their deemer balances in FY 2005 and FY 2007, respectively. Under BPA's determination of REP benefits, absent the REP settlements, Idaho Power does not qualify for REP benefits during the FY 2002–2008

period so there are no reductions to its deemer balance and its Lookback Amount is equal to the REP settlement benefits it received.

2. Cap on REP Benefits Credited Against Settlement Payments

BPA proposes a second condition on the calculation of the amount to be recovered from each IOU for FY 2002–2008. In calculating this Lookback Amount for each utility, BPA proposes that REP benefits that exceed the REP settlement benefits shall not be credited to the Lookback Amount. Said another way, an IOU cannot receive more benefits under the REP than it received, or would have received, under the REP settlements. This condition is applied each year for FY 2002–2008.

3. Treatment of Reduction of Risk Discount and Load Reduction Agreements

As previously mentioned, the LRAs with PacifiCorp and Puget Sound Energy are contracts wherein BPA bought back power from these two IOUs to limit exposure to the high and volatile market prices of the West Coast energy crisis. No party filed a challenge to the LRAs within the Northwest Power Act's 90-day statute of limitations. Two petitions for review were filed with the Ninth Circuit challenging BPA's unsuccessful attempts to develop a broad settlement of all outstanding litigation against BPA. The Court noted that the petitions were challenging actions that never occurred and dismissed the petitions for lack of jurisdiction. Another petition was filed that challenged the LRAs, but it was filed two and one half years after expiration of the 90-day statute of limitations. The Court noted that the only issue raised in the petition concerned the Reduction of Risk Discount provision of the LRAs. Having dealt with the Reduction of Risk Discount in *Snohomish*, the Court dismissed the petition challenging the LRAs as moot.

In light of the Court's actions, BPA proposes to treat the LRA payments to PacifiCorp and Puget Sound Energy in the following manner. First, BPA will assume that the total REP settlement benefits paid to these two IOUs include the REP Settlement Agreement benefits, the LRA payments, and the C&RD/CRC benefits. BPA proposes that PacifiCorp and Puget Sound Energy (Puget) keep the lesser of the REP settlement benefits or the REP benefits the utilities would have received in the absence of the REP Settlement Agreements, but not less than the amount of the LRA payments. This proposal effectively treats the LRA payments to PacificCorp and Puget Sound Energy as ''protected'' payments that are not subject to recovery as part of their Lookback Amounts.

In *Snohomish*, the Court held that the Reduction of Risk Discount was founded on the original REP Settlement Agreements and remanded the issue to BPA. Therefore, BPA proposes to treat the Reduction of Risk discount payments as suffering the same fate as the REP Settlement Agreement payments. Any amount paid to PacifiCorp and Puget for the Reduction of Risk Discount will be included in their REP Settlement Agreement benefits and will therefore be subject to recovery through the lookback process.

4. Results

The application of the previous three sections results in annual Lookback Amounts for each IOU. BPA is proposing to escalate the annual Lookback Amounts for FY 2002–2006 to 2007 dollars to adjust for the effects of inflation. The resulting cumulative Lookback Amounts for each IOU, in 2007 dollars for FY 2002–2007 are provided in Table 3.

TABLE 3.—PROPOSED CUMULATIVE LOOKBACK AMOUNTS

[Millions of 2007 dollars]

| Utility name | Proposed lookback amounts |
|---|---|
| Avista | $62.1 |
| Idaho Power | 96.6 |
| Northwestern Energy | 7.7 |
| PacifiCorp | 239.4 |
| Portland General Electric | 64.1 |
| Puget Sound Energy | 150.5 |
| Total | 620.4 |

The Lookback Amounts in Table 3 assume that BPA offers, and the IOUs sign, the Interim Agreements. In the absence of Interim Agreements, no REP benefits will be paid in FY 2008, creating an amount of REP benefits otherwise due to the IOUs for that year, which will be used to reduce accumulated Lookback Amounts by $189 million.

*E. Application of the Results of the Lookback Analysis*

Because the IOUs have already passed REP Settlement and LRA benefits on to their residential and small farm customers for FY 2002–2006 and part of FY 2007, BPA proposes to recover Lookback Amounts from the IOUs by reducing future REP benefits determined to be otherwise due them. The amount of the reduction in benefits due will be determined by the Administrator in each rate case. The reduced REP payments to IOUs will result in lower PF Preference rates for FY 2009 and beyond until Lookback Amounts are fully amortized. These lower PF rates constitute a portion of the compensation to preference customers for the amounts they overpaid in FY 2002–2008 power rates.

An additional portion of the compensation may occur as provided in Standstill Payment Agreements, if offered, for those preference customers that sign such agreements or via customer-specific credits on FY 2009 power bills if such agreements are not signed.

The reduction in the amounts of REP benefits that would have otherwise been due will be credited against each IOU's Lookback Amount. This practice will continue as needed each rate period until each IOU has amortized its total Lookback Amount, including interest. BPA proposes that unamortized Lookback balances will accrue interest. The proposed reduction in REP benefits for FY 2009 is an amount that is expected to amortize each IOU's Lookback Amount plus accrued interest within 20 years, with the exception of Idaho Power. The assumptions and proposal with regard to Idaho Power are described in more detail below.

BPA expects that all IOUs except Idaho Power will amortize their respective Lookback Amounts, including interest, within 20 years based on a set of simple assumptions regarding the future. These assumptions are:

1. The FY 2009 individual IOU REP benefits paid continue in future rate periods until such time each IOU fully amortizes its Lookback Amount;

2. Each IOU's FY 2009 REP benefits amount (before reductions applied for Lookback Amounts) increases by 2.5 percent per year (as a consequence of growth in eligible exchange loads and/or increases in IOU ASCs and/or changes in PF Exchange rates, none of which is specifically forecasted or otherwise modeled); and

3. Interest accrues on unamortized Lookback balances at the rate of 5.03 percent per year.

BPA proposes to proportionally reduce each IOU's benefits due for FY 2009 such that the aggregate benefit paid, before consideration of any deemer obligations, for all IOUs is 210 million. This amount represents a balance between ensuring that regional residential and small farm consumers receive benefits from the Residential Exchange Program while returning to preference customers the overpayments

to IOUs that occurred under the REP settlements. This aggregate benefit is in the middle of the $200 million to $220 million range contained in the Recommendations of Representatives of the Investor-Owned and Certain Consumer-Owned Utilities Regarding the Residential Exchange Benefits for Customers Served by the Pacific Northwest Investor-Owned Utilities dated November 7, 2007. BPA understands that this document enjoys broad, albeit not universal, customer support. BPA views such support as a measure of the reasonableness of its approach to recovering the Lookback Amounts over time.

Table 4 shows FY 2009 REP benefits due and REP benefits paid before consideration of any deemer obligations.

TABLE 4.—FY 2009 REP BENEFITS DUE AND BENEFITS PAID BEFORE DEEMER ADJUSTMENT

[Millions of dollars]

| Utility name | FY 2009 REP benefits due | FY 2009 REP benefits paid |
|---|---|---|
| Avista | $27.8 | $23.3 |
| Idaho Power | 9.2 | 7.7 |
| Northwestern Energy | 7.6 | 6.4 |
| PacifiCorp | 50.8 | 42.7 |
| Portland General Electric | 54.6 | 45.8 |
| Puget Sound Energy | 100.2 | 84.1 |
| Total | 250.2 | 210.0 |

BPA maintains the position that Idaho Power has a substantial deemer balance at the end of FY 2008. BPA is proposing to apply the same treatment to Idaho Power's deemer balance for FY 2009 that was applied when determining the Lookback Amounts for FY 2002–2008. Specifically, REP benefits will first be applied toward deemer balances. Only when Idaho Power's deemer balance is extinguished would REP benefits be available to apply against Lookback Amounts and to provide positive REP benefits to Idaho Power. Based on Idaho Power's current deemer balance and reasonable expectations of future REP benefits, Idaho Power is not expected to amortize its Lookback Amount by 2028. BPA acknowledges that Idaho Power disputes its current deemer balance and has requested to explore with BPA the possibility of settling this dispute.

*F. Summary*

In summary, BPA's proposal responds to the Court's rulings in several ways to remedy the improper allocation of REP settlement costs to the PF Preference rate. First, the WP–07 Supplemental Proposal results in an average PF Preference rate of $26.2/MWh—about a four percent (4%) reduction from current rates. This proposed reduction results from several changes or revisions to the WP–07 Final Studies. The most significant change is a reduction in the costs of the REP for FY 2009 from about $336 million to $202 million, which includes $39 million of the Lookback Amount.

Second, BPA is determining the magnitude of the Lookback Amounts for FY 2002–2007 that need to be recovered from the region's IOUs and returned to public utilities. BPA proposes to recover this total, approximately $620 million, out of future REP benefits, starting with the $39 million for FY 2009 noted above. BPA proposes that the amount of future Lookback Amounts recovered, and by extension the associated PF rate reduction, will be decided in each subsequent rate case.

Lastly, BPA is proposing to provide public utilities with either a one-time payment or a credit on their power bills for the difference between the REP settlements costs in power rates for FY 2007–2008, and the amount of FY 2007–2008 REP benefits the IOUs would be paid under BPA's proposal. If BPA offers, and preference customers sign, Standstill Payment Agreements, they will receive a portion of this credit in FY 2008 and the remainder in FY 2009. If they do not sign Standstill Payment Agreements, or the agreements are not offered, preference customers will receive the credit in FY 2009. BPA has the financial reserves to provide this FY 2008–2009 payment or credit of about $315 million because BPA has been collecting REP settlement costs in the PF Preference rate but has not been paying benefits to the IOUs since the Court's May, 2007, rulings.

**Part VII—2007 Supplemental Wholesale Power Rate Schedules (FY 2009) and 2007 Supplemental General Rate Schedule Provisions (GRSPs) (FY 2009)**

BPA's proposed 2007 Supplemental Wholesale Power Rate Schedules and GRSPs, as well as the *Section 7(b)(2) Legal Interpretation and Section 7(b)(2) Implementation Methodology*, incorporated by reference as a part of this Notice, are available for viewing and downloading on BPA's Web site at *http://www.bpa.gov/corporate/ratecase*. A copy of the proposed rate schedules and GRSPs are also available for viewing in BPA's Public Reference Room at the BPA Headquarters, 1st Floor, 905 NE 11th Avenue, Portland, OR.

Issued this 1st day of February, 2008.

**Stephen J. Wright,**

*Administrator and Chief Executive Officer.*

[FR Doc. E8–2339 Filed 2–7–08; 8:45 am]

BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6695–7]**

## Environmental Impacts Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*

Weekly receipt of Environmental Impact Statements

Filed 01/28/2008 through 02/01/2008

Pursuant to 40 CFR 1506.9

EIS No. 20080035, Draft EIS, IBR, WA, Yakima River Basin Water Storage Feasibility Study, Create Additional Water Storage, Benton, Yakima, Kittitas Counties, WA, Comment Period Ends: 03/31/2008, Contact: David Kaumheimer 509–575–5848 Ext. 612.

EIS No. 20080036, Final EIS, GSA, CO, Denver Federal Central Site Plan Study, Master Site Plan, Implementation, City of Lakewood, Jefferson County, CO, Wait Period Ends: 03/10/2008, Contact: Lisa D. Morpurgo 303–236–8000 Ext. 5039.

EIS No. 20080037, Draft EIS, AFS, ID, Yakus Creek Project, Proposes Timber Harvest, Watershed Improvement, and Access Management Activities, Lochsa Ranger District, Clearwater National Forest, Idaho County, ID, Comment Period Ends: 03/24/2008, Contact: Craig Trulock 208–926–4274.

EIS No. 20080038, Draft EIS, BLM, WY, West Antelope Coal Lease Application (Federal Coal Lease Application WYW163340), Implementation, Converse and Campbell Counties, WY, Comment Period Ends: 04/08/2008, Contact: Sarah Bucklin 307–261–7587.

EIS No. 20080039, Final EIS, BLM, NV, Kane Springs Valley Groundwater Development Project, To Construct Infrastructure Required to Pump and Convey Groundwater Resources, Right-of-Way Application, Lincoln County Water District, Lincoln County, NV, Wait Period Ends: 03/10/2008, Contact: Penny Wood 775–861–6466.

EIS No. 20080040, Draft EIS, IBR, NV, Folsam Lake State Recreation Area & Folsam Powerhouse State Historic Park, General Plan/Resource Management Plan, Implementation, El

Dorado County, NV, Comment Period Ends: 03/24/2008, Contact: Laura Cabollero 916–989–7172.

EIS No. 20080041, Final Supplement, AFS, 00, Southwest Idaho Ecogroup Land and Resource Management Plan, Supplements the Rangeland Resource Section of the 2003 FEIS Concerning Terrestrial Management Indicator Species (MIS), Boise National Forest, Payette National Forest and Sawtooth National Forest, Forest Plan Revision, Implementation, Several Counties, ID; Malhaur County, OR and Box Elder County, UT, Wait Period Ends: 03/10/2008, Contact: Sharon LaBrecque 208–737–3277.

EIS No. 20080042, Draft EIS, AFS, MT, Debaugan Fuels Reduction Project, Proposed Fuels Reduction Activities, Lolo National Forest, Superior Ranger District, Mineral County, MT, Comment Period Ends: 03/24/2008, Contact: Sharon Sweeney 406–822–4233.

EIS No. 20080043, Draft EIS, FTA, HI, Lahaina Small Boat Harbor Ferry Pier Project, To Build a New Interisland Ferry Pier, Maui, HI, Comment Period Ends: 03/24/2008, Contact: Ted Matley 415–744–2737.

**Amended Notices**

EIS No. 20070526, Draft EIS, AFS, WY, Thunder Basin National Grassland Prairie Dog Management Strategy, Land and Resource Management Plan Amendment #3, Proposes to Implement a Site-Specific Strategy to Manage Black-Trailed Prairie Dogs, Douglas Ranger District, Medicine Bow-Routt National Forests and Thunder Basin National Grassland, Campbell, Converse, Niobrara and Weston Counties, WY, Comment Period Ends: 03/24/2008, Contact: Misty Hays 307–358–4690, Revision of FR Notice Published 12/21/2007: Extending Comment Period from 02/04/2008 to 03/24/2008.

Dated: February 5, 2008.

**Robert W. Hargrove,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 08–576 Filed 2–7–08; 8:45 am]

**BILLING CODE 6560–50–M**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6695–8]**

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2007 (72 FR 17156).

**Draft EISs**

EIS No. 20070559, ERP No. D1–DOE–A06181–00, Rail Alignment for the Construction and Operation of a Railroad in Nevada to a Geologic Repository (DOE/EIS–0369D) at Yucca Mountain, Nye County, NV.

*Summary:* EPA expressed environmental concerns about the preferred alignment (the Caliente rail alignment) because it could require the filling of up to 81 acres of waters of the U.S., including wetlands associated with the Meadow Valley Wash and Clover Creek. EPA also expressed concerns about the limited analysis regarding the hydrologic effects of the rail line construction to the Meadow Valley Wash area. Rating EC2.

EIS No. 20070419, ERP No. D–BLM–J65493–UT, Kanab Field Office Resource Management Plan, Implementation, Portions of Kane and Garfield Counties, UT.

*Summary:* EPA expressed environmental concerns about potential adverse impacts to water quality, aquatic resources, air quality, and sensitive/rare wildlife and their habitat. Rating EC2.

EIS No. 20070440, ERP No. D–FHW–J40178–UT, Mountain View Corridor (MVC) Project, Proposed Transportation Improvement 2030 Travel Demand in Western Salt Lake County south of I–80 and west of Bangerter Highway and in northwestern Utah County of I–15, south of the Salt Lake County Line, and north of Utah Lake, Salt Lake and Utah County, UT.

*Summary:* EPA has environmental concerns about the potential impairment of water quality in the Jordan River. Rating EC1.

EIS No. 20070469, ERP No. D–NOA–E91021–00, Snapper Grouper Amendment 15B, Fishery Management Plan, To Analyze the Effects of Updating Management Reference Points for Golden Tilefish (Lopholatilus chamaeleonticeps); Define Allocations for Snowy Grouper (Epinephelus niveatus) and Red Porgy (Pagrus pagrus), NC, SC, FL and GA.

*Summary:* EPA does not object to the proposed action. Rating LO.

EIS No. 20070484, ERP No. D–FHW–F40818–00, Interstate–94, I–43, I–894, and WI–119 (Airport Spur) I–94/USH 41 Interchange to Howard Avenue, To Address Freeway System's Deteriorated Conditions, Funding and U.S. Army COE Section 404 Permit, Kenosha, Racine and Milwaukee Counties, WI and Lake County, IL.

*Summary:* EPA expressed environmental concerns about the impacts to wetlands, and has requested further analysis regarding mobile source air toxics and suggests air quality mitigation strategies that should be considered. Rating EC2.

EIS No. 20070498, ERP No. D–FHW–J40181–UT, I–15 Corridor Project, Transportation Improvement from Utah County to Salt Lake County, UT.

*Summary:* EPA expressed environmental concerns about the potential increases in PM 2.5 as well as the project's contribution of total dissolved solids to impaired the Jordan River. Rating EC1.

EIS No. 20070517, ERP No. D–USN–D11043–MD, National Naval Medical Center, Activities to Implement 2005 Base Realignment and Closure Actions, Construction and Operation of New Facilities for Walter Reed National Military Medical Center, Bethesda, MD.

*Summary:* EPA expressed concern about potential wetland and historic resource impacts. Rating EC2.

EIS No. 20070519, ERP No. D–AFS–J65502–MT, Cooney McKay Forest Health and Fuels Reduction Project, Proposed to Restore Desirable Vegetative Conditions, Swan Valley near Condon, Swan Lake Ranger District, Flathead National Forest, Lake and Missoula Counties, MT.

*Summary:* EPA supports activities to reduce hazardous fuels and fire risk in wildland urban interface areas, but expressed environmental concerns about adverse impacts from logging and road construction on water quality. EPA also identified the need for consistency with the downstream Swan Lake TMDL. Rating EC2.

EIS No. 20070428, ERP No. DA–DOE–A06181–00, Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada—Nevada Rail Transportation Corridor (DOE/EIS–0250F–S2D), Railroad Construction and Operation within the Mina Rail Corridor to connect Yucca Mountain Repository to Rail Line near Wabusha, NV.

*Summary:* EPA does not object to the proposed action. Rating LO.

EIS No. 20070429, ERP No. DB–DOE–A06181–00, Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste, Construction, Operation, Monitoring and Eventually Closing a Geologic Repository (DOE/EIS–0250F–S1D) at Yucca Mountain, Nye County, NV.

*Summary:* EPA expressed environmental concerns about regional seismic activity and questions that have been raised regarding the differences in observed strain rates in the area versus forecasted rates and whether these rates have been underestimated. EPA recommended that the final SEIS explain the appropriate strain rates will be determined and reflected in the project's conceptual seismic model. Rating EC2.

EIS No. 20070441, ERP No. DS–IBR–K39079–CA, Environmental Water Account (EWA) Project, Updated Information to Provide an Evaluation of 2004 Final EIS/EIR Environmental Water Account (EWA) and Effects Associated with Extending the Current EWA's through 2011, CA.

*Summary:* EPA expressed environmental concerns about potential impacts to fisheries and water quality, and recommended that the Final Supplemental EIS/EIR include additional information regarding EWA fisheries benefits, water quality conditions and management, and project funding. Rating EC2.

EIS No. 20070470, ERP No. DS–AFS–L65453–ID, North Sheep Allotments—Sheep and Goat Allotment Management Plans, Additional Information on Analyses Concerning Management Indicator Species, Capable and Suitable Grazing Lands, and Adaptive Management Strategies, Authorization of Continued Sheep Grazing for Fisher Creek, Smiley Creek, North Fork-Boulder and Baker Creek Sheep and Goat Grazing Allotments, Sawtooth National Forest, Ketchum Ranger District, Sawtooth National Recreation Area, Blaine and Custer Counties, ID.

*Summary:* This supplemental EIS has included additional analysis and information on grazing land status, adaptive management and species of concern. However, EPA continues to have environmental concerns about adverse impacts to water quality and riparian areas from grazing, and cumulative effects to sensitive areas and aquatic resources from multiple uses. EPA recommended more emphasis on water quality restoration and monitoring, restoring riparian and sage grouse habitats, and consideration of a hybrid alternative which is based on available resources. Rating EC2.

EIS No. 20070521, ERP No. DS–NOA–G64007–00, Reef Fish Amendment 30A: Greater Amberjack—Revise Rebuilding Plan, Accountability Measures: Gray Triggerfish-Establish Rebuilding Plan, End Overfishing, Accountability Measures, Regional Management, Management Thresholds and Benchmarks, Gulf of Mexico.

*Summary:* EPA does not object to the preferred alternative. Rating LO.

**Final EISs**

EIS No. 20070464, ERP No. F–FHW–D40335–VA, Harrisonburg Southeast Connector Location Study, Transportation Improvements from U.S. Route 11 to U.S. Route 33, Funding and U.S. Army COE Section 404 Permit, City of Harrisonburg, Rockingham County, VA.

*Summary:* EPA does not object to the preferred alternative.

EIS No. 20070465, ERP No. F–FRA–K59004–CA, Los Angeles to San Diego (LOSSAN) Rail Corridor, Proposed Rail Corridor Improvement Studies, Increase of Intercity Travel for Faster, Safer, and Reliable Passenger Rail System, Los Angeles, Orange, and San Diego Counties, CA.

*Summary:* EPA expressed environmental concerns about the direct, indirect, and cumulative impacts to aquatic and biological resources and impacts to sensitive lagoon ecosystems.

EIS No. 20070531, ERP No. F–AFS–J65481–MT, Lolo National Forest Integrated Weed Management, To Establish Beneficial Vegetation and Weed Resistant Plant Communities, Missoula, Mineral, Sanders, Granite, Powell, Lewis and Clark, Flathead, Ravalli and Lake Counties, MT.

*Summary:* EPA supports the Forest Service's efforts in managing the great threats from noxious weeds. The final EIS addressed our comments on prioritizing a full range of weed management activities. Because of the potential for unintended transport of herbicides to surface and ground water, EPA encouraged continued water quality monitoring to validate design criteria and monitoring mitigation measures.

EIS No. 20070490, ERP No. FS–COE–J28021–CO, Rueter-Hess Reservoir Expansion Project, Enlarges Reservoir to Provide Storage of Denver Basin Groundwater for Meeting Peak Municipal Water Supply, U.S. Army COE Section 404 Permit, Town of Parker, Douglas County, CO.

*Summary:* EPA expressed environmental concerns about the lack of information regarding the uncertainty of future water supplies for all of the four service areas. EPA also expressed concerns with potential impacts to Cherry Creek's adjacent wetland and riparian habitat, and recommended that the Corps include a monitoring plan to detect whether any adverse impacts to aquatic ecosystems adjacent to Cherry Creek occur as a result of the proposed project.

Dated: February 5, 2008.

**Robert W. Hargrove,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E8–2371 Filed 2–7–08; 8:45 am]

BILLING CODE 6560–50–P

## FARM CREDIT ADMINISTRATION

### Farm Credit Administration Board; Regular Meeting

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on February 14, 2008, from 9 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

**Open Session**

*A. Approval of Minutes*

- January 10, 2008

*B. New Business*

- Consideration and Referral of Supervisory Strategies and Enforcement Actions
- Merger of Sacramento Valley Farm Credit ACA into Farm Credit West ACA

- Bookletter BL–055—Floor Nomination Procedures for System Associations and Banks

*C. Reports*

- Funding Approval Report
- Office of Management Services Quarterly Report

Dated: February 6, 2008.

**Roland E. Smith,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 08–605 Filed 2–6–08; 2:53 pm]

BILLING CODE 6705–01–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10 a.m. on Tuesday, February 12, 2008, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to section 552b(c)(4), (c)(6), (c)(8), and (9)(A)(ii) of Title 5, United States Code, to consider matters relating to the Corporation's supervisory and corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7122.

Dated: February 5, 2008.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. E8–2340 Filed 2–7–08; 8:45 am]

BILLING CODE 6714–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 4, 2008.

**A. Federal Reserve Bank of Minneapolis** (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

*1. Mills Financial Services, Inc.*, Brainerd, Minnesota; to become a bank holding company by acquiring 100 percent of First Security Bank – Sanborn, Sanborn, Minnesota.

Board of Governors of the Federal Reserve System, February 4, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E8–2284 Filed 2–7–08; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 6, 2008.

**A. Federal Reserve Bank of Kansas City** (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

*1. United Bancshares, Inc.*; to become a bank holding company by acquiring 100 percent of the voting shares of Garden City State Bank, both of Garden City, Kansas.

Board of Governors of the Federal Reserve System, February 5, 2008.

**Margaret McCloskey Shanks,**

*Associate Secretary of the Board.*

[FR Doc. E8–2337 Filed 2–7–08; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Consumer Advisory Council

**ACTION:** Notice of Meeting of the Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, March 6, 2008. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, D.C., in Dining Room E on the Terrace Level of the Martin Building. Anyone planning to attend the meeting should, for security purposes, register no later than Tuesday, March 4, by completing the form found online at: https://www.federalreserve.gov/secure/forms/cacregistration.cfm

Additionally, attendees must present photo identification to enter the building.

The meeting will begin at 9:00 a.m. and is expected to conclude at 1:00 p.m. The Martin Building is located on C Street, NW, between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's

responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

• Proposed rules for residential mortgage transactions

Members will discuss the Board's proposal to establish new regulatory protections for consumers in the residential mortgage market through amendments to Regulation Z, which implements the Truth in Lending Act and the Home Ownership and Equity Protection Act. The proposal addresses unfair, abusive, or deceptive lending and servicing practices and mortgage advertising practices, and would also require creditors to provide consumers with transaction–specific cost disclosures earlier.

• Foreclosure issues

Members will discuss issues related to home foreclosures, such as loss–mitigation strategies and counseling initiatives.

Reports by committees and other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Jennifer Kerslake, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Information about this meeting may be obtained from Ms. Kerslake, 202–452–6470.

Board of Governors of the Federal Reserve System, February 5, 2008.

**Margaret McCloskey Shanks**

*Associate Secretary of the Board*

[FR Doc. E8–2335 Filed 2–7–08; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

| Trans No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| **Transactions Granted Early Termination—01/14/2008** | | | |
| 20080479 | Amazon.com, Inc | Bill Me Later, Inc | Bill Me Later, Inc. |
| 20080494 | Duke Energy Corporation | Saluda River Electric Cooperative, Inc. | Saluda River Electric Cooperative, Inc. |
| 20080569 | CML Healthcare Income Fund | ARS Holding, Inc | ARS Holding Inc. |
| **Transactions Granted Early Termination—01/15/2008** | | | |
| 20080462 | Ms. Esther Koplowitz Romero de Juseu. | Siemens Aktiengesellschaft | Hydrocarbon Recovery Services, Inc., International Petroleum Corp. of Delaware. |
| 20080469 | Teradyne, Inc | Nextest Systems Corporation | Nextest Systems Corporation. |
| 20080522 | Providence Equity Partners IV L.P | William L. Adamany | AGT Enterprises, Inc., Star-Iowa, LLC. |
| **Transactions Granted Early Termination—01/16/2008** | | | |
| 20080470 | Eisai Co., Ltd | MGI Pharma, Inc | MGI Pharma, Inc. |
| **Transactions Granted Early Termination—01/17/2008** | | | |
| 20080495 | KASLION S.a.r.L | Atlantic Bridge Ventures Holdings Limited. | GloNav Inc. |
| 20080519 | Apollo Investment Fund VI, L.P | GA Industries, Inc | GA Industries, Inc. |
| 20080586 | Pfizer Inc | The Biotech Settlement | CovX Research LLC, CovX Technologies Ireland Limited. |
| **Transactions Granted Early Termination—01/18/2008** | | | |
| 20080537 | Financiere Asteel S.A | Flash Electronics International | Flash Electronics Holding. |
| 20080564 | Eli Lilly and Company | BioMS Medical Corp | BioMS Medical Corp. |
| 20080587 | Alfa Mutual Insurance Company | Alfa Corporation | Alfa Corporation. |
| 20080588 | Alfa Mutual Fire Insurance Company | Alfa Corporation | Alfa Corporation. |
| 20080590 | Long Point Capital Fund, II, L.P | Avadhesh and Umarani Agarwal | UMA Enterprises, Inc. |
| 20080598 | Gryphon Partners III, L.P | Accelerated Health Systems, LLC | Accelerated Health Systems, LLC. |
| 20080606 | Lake Capital Partners II LP | Gary L. Fish | FishNet Security Holdings, Inc. |
| 20080608 | Epicor Software Corporation | NSB Retail Systems PLC | NSB Retail Systems PLC. |
| **Transactions Granted Early Termination—01/22/2008** | | | |
| 20080522 | JANA Offshore Partners, Ltd | CNET Networks, Inc | CNET Networks, Inc. |

| Trans No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 20080563 | WuXi PharmaTech (Cayman) Inc | AppTec Laboratory Services, Inc | AppTec Laboratory Services, Inc. |
| 20080568 | BlueScope Steel Ltd | San Faustin N.V | Imsa Steel Corp. |
| 20080591 | IFM Infrastructure Funds | Consolidated Edison, Inc | CED Generation Holding Company, LLC, CED Rock Springs, LLC, Consolidated Edison Energy, Massachusetts, LLC, Newington Energy, LLC, Ocean Peaking Power, LLC. |
| 20080595 | Murat Ulker | Campbell Soup Company | Godiva Chocolatier, Inc. |
| 20080597 | Oak Hill Capital Partners III, L.P | News Corporation | Fox Television Stations, Inc., New world Communications of Kansas City, Inc. |
| 20080602 | Oracle Healthcare Acquisition Corp | Precision Therapeutics, Inc | Precision Therapeutics, Inc. |
| 20080611 | Linn Energy, LLC | Gary W. and Constance S. Lewis | Lamamco Drilling Company. |
| 20080612 | Linn Energy, LLC | Stanley and Sabrina L. Miller | Lamamco Drilling Company. |
| **Transactions Granted Early Termination—01/23/2008** | | | |
| 20080609 | Intuit Inc | Electronic Clearing House, Inc | Electronic Clearing House, Inc. |
| **Transactions Granted Early Termination—01/24/2008** | | | |
| 20080576 | American Securities Partners IV, L.P | Horizon Global Technology, Inc | Horizon Global Technology, Inc. |
| 20080578 | MHR Institutional Partners III LP | Leap Wireless International, Inc | Leap Wireless International, Inc. |
| 20080582 | Owl Creek Overseas Fund, Ltd | Leap Wireless International, Inc | Leap Wireless International, Inc. |
| 20080600 | Jose Maria Rubiralta | Inova Diagnostics, Inc | Inova Diagnostics, Inc. |
| 20080603 | Quik-Way Retail Associates Holdings II, Ltd. | Royal Dutch Shell plc | Motiva Enterprises LLC. |
| 20080604 | Quik-Way Retail Associates Holdings II, Ltd. | Aramco Services Company | Motiva Enterprises LLC. |
| 20080625 | Rock-Tenn Company | Steven Grossman | Southern Container Corporation. |
| **Transactions Granted Early Termination—01/25/2008** | | | |
| 20080571 | Leucadia National Corporation | AmeriCredit Corp | AmeriCredit Corp. |
| 20080580 | Brush Engineered Materials, Inc | Techni-Met, Inc | Techni-Met, Inc. |
| 20080607 | U.S. Bancorp | Gary M. Eng | Southern DataComm, Inc. |

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay, Contact Representative or Renee Hallman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 08–524 Filed 2–7–08; 8:45 am]

**BILLING CODE 6750–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–1771, CMS–10145 and CMS–10204]**

### Agency Information Collection Activities: Proposed Collection; 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) 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 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.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Attending Physicians Statement and Documentation of Medicare Emergency and Supporting Regulations in 42 CFR 424.103; *Use:* 42 CFR 424.103(b) requires that before a nonparticipating hospital may be paid for emergency services rendered to a Medicare beneficiary, a statement must be submitted that is sufficiently comprehensive to support that an emergency existed. Form CMS–1771 contains a series of questions relating to the medical necessity of the emergency. The attending physician must attest that the hospitalization was required under the regulatory emergency definition (42 CFR 424.101) and give clinical documentation to support the claim. *Form Number:* CMS–1771 (OMB# 0938–0023); *Frequency:* Yearly; *Affected Public:* Private sector—business or other for-profit and not-for-profit institutions; *Number of Respondents:* 100; *Total Annual Responses:* 200; *Total Annual Hours:* 50.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Part B Drug and Biological Competitive Acquisition Program and Supporting Regulations in 42 CFR Sections 414.906, 414.908, 414.910, 414.914, 414.916, and 414.917; *Use:* Section 303(d) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) provides an alternative

payment methodology for Part B covered drugs that are not paid on a cost or prospective payment basis. In particular, section 303(d) of the MMA amends Title XVIII of the Social Security Act by adding a new section 1847(B), which establishes a competitive acquisition program for the acquisition of and payment for Part B covered drugs and biologicals furnished on or after January 1, 2006. Since its inception, additional legislation has augmented the CAP. Section 108 of the Medicare Improvements and Extension Act under Division B, Title I of the Tax Relief Health Care Act of 2006 (MIEA–TRHCA) amended section 1847b(a)(3) of the Social Security Act and requires that CAP implement a post payment review process. This procedure is done to assure that payment is made for a drug or biological under this section only if the drug or biological has been administered to a beneficiary. *Form Number:* CMS–10145 (OMB# 0938–0945); *Frequency:* Weekly; *Affected Public:* Private sector—business or other for-profit and not-for-profit institutions; *Number of Respondents:* 3,000; *Total Annual Responses:* 156,000; *Total Annual Hours:* 31,188.

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Evaluation of the Medical Adult Day Care Services Demonstration; *Use:* Section 703 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Pub. L. 108–173) authorizes a three-year demonstration to conduct an evaluation of the clinical and cost-effectiveness of providing medical adult day-care services as a substitute for a portion of home health services that would otherwise be provided in the beneficiary's home. Delivering home health services in the adult day-care setting represents an expansion of coverage under the home health benefit under Medicare. The Demonstration aims to evaluate both the costs and the benefits of delivering home health services in the adult day-care setting. The evaluation will examine the achievements as well as the difficulties inherent in demonstration implementation.

Telephone survey data from Medicare beneficiary's interviews are to be completed during Phase II of the Evaluation of the Medical Adult Day-Care Services Demonstration. The survey was developed based on collection of data from face-to-face interviews with beneficiaries from Phase I of the Demonstration evaluation. *Form Number:* CMS–10204 (OMB# 0938–1017); *Frequency:* Once; *Affected Public:* Individuals or households; *Number of Respondents:* 900; *Total Annual Responses:* 900; *Total Annual Hours:* 150.

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*, or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by April 8, 2008.

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number____ , Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 30, 2008.

**Michelle Shortt,**

*Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. E8–2064 Filed 2–7–08; 8:45 am]

BILLING CODE 4120–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–2552–96 and CMS–10008]**

### 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:* Hospital and Health Care Complexes Cost Report and supporting Regulations in 42 CFR 413.20 and 413.24; *Use:* This Cost Report Form is filed annually by freestanding providers participating in the Medicare program to effect year end cost settlement for providing services to Medicare beneficiaries. The CMS–2552–96 cost report is needed to determine the amount of reimbursable cost, based upon the cost limits, that is due these providers furnishing medical services to Medicare beneficiaries. *Form Number:* CMS–2552–96 (OMB#: 0938–0050); *Frequency:* Yearly; *Affected Public:* Private sector—business or other for-profit and not-for-profit institutions; *Number of Respondents:* 6,175; *Total Annual Responses:* 6,175; Total Annual Hours: 4,090,474.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Process and Information Required to Determine Eligibility of Drugs, Biologicals, and Radiopharmaceutical Agents for Transitional Pass-Through Status Under the Hospital Outpatient Prospective Payment System (OPPS); *Use:* Section 1833(t)(6) of the Social Security Act provides for temporary additional payments or ''transitional pass-through payments'' for certain drugs and biological agents. Interested parties such as hospitals, pharmaceutical companies, and physicians can apply for transitional pass-through payment for drugs and biologicals used with services covered under the OPPS. CMS uses this information to determine if the criteria for making a transitional pass-through payment are met and if an interim Healthcare Common Procedure Coding System (HCPCS) code for a new drug or biological is necessary. *Form Number:*

CMS–10008 (OMB#: 0938–0802); *Frequency:* Once; *Affected Public:* Private sector—Business or other for-profit; *Number of Respondents:* 10; *Total Annual Responses:* 10; Total Annual Hours: 160.

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*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on March 10, 2008. OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: January 30, 2008.

**Michelle Shortt,**

*Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. E8–2066 Filed 2–7–08; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Proposed Project:*

*Title:* Building Strong Families (BSF) Demonstration and Evaluation—Impact Study Second Follow-up

*OMB No.:* New Collection.

*Description:* The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing a data collection activity as part of the Building Strong Families (BSF) Demonstration and Evaluation. The proposed collection will consist of two elements: (1) A telephone survey to be administered to both partners in couples enrolled in the BSF research sample about 36 months after enrollment, and (2) observational assessments of BSF families and their children.

These data collections are part of the BSF evaluation, which is an important opportunity to learn if well-designed interventions can help low-income couples develop the knowledge and relationship skills that research has shown are associated with healthy marriages. BSF programs provide instruction and support to improve marriage and relationship skills and enhance couples' understanding of marriage. In addition, BSF programs provide links to a variety of other services that could help couples sustain a healthy relationship (e.g., employment assistance). The BSF evaluation uses an experimental design that randomly assigns couples who volunteer to participate in BSF programs to a program or to a control group.

The 36-month data collection effort draws heavily from the 15-month survey conducted in BSF sites. Materials for the 15-month data collection effort were previously submitted to OMB and were approved under OMB Control No. 0970–0304.

*Respondents:* The respondents for the telephone questionnaire will be all couples in the BSF evaluation. The respondents for the observational assessments will be a sub-sample of children of the couples.

ANNUAL BURDEN ESTIMATES

| Instrument | Annual number of respondents | Number of responses per respondent | Average burden hours per response | Estimated annual burden hours |
|---|---|---|---|---|
| 36-month telephone survey (female partner) | 2,099 | 1 | .9166666 (55 minutes) | 1,924 |
| 36-month telephone survey (male partner) | 1,978 | 1 | .8333333 (50 minutes) | 1,648 |
| Child/family observations | 1,125 | 1 | .6666666 (40 minutes) | 750 |

Estimated Total Annual Burden Hours: 4,322

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

*OMB Comment:* OMB is required to made a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, FAX: 202–395–6974, Attn: Desk Officer for ACF.

Dated: February 1, 2008.

**Brendan Kelly,**

*Reports Clearance Officer.*

[FR Doc. 08–555 Filed 2–7–08; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Voluntary Establishment of Paternity.

*OMB No.:* 0970–0175.

*Description:* Section 466(a)(5)(C) of the Social Security Act requires States to pass laws ensuring a simple civil process for voluntarily acknowledging paternity under which the State must provide that the mother and putative father must be given notice, orally and in writing, of the benefits and legal

responsibilities and consequences of acknowledging paternity. The information is to be used by hospitals, birth record agencies, and other entities participating in the voluntary paternity establishment program.

*Respondents:* State and Tribal IV–D agencies.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| None | 1,025,521 | (1) | .166 | 170,236 |

[1] Variable.

*Estimated Total Annual Burden Hours:* 170,236.

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov*.

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: February 4, 2008.

**Janean Chambers,**

*Reports Clearance Officer.*

[FR Doc. 08–556 Filed 2–7–08; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

*Proposed Projects*

*Title:* Child Care and Development Fund Tribal Plan (Form ACF–118–A).

*OMB No.:* 0970–0198.

*Description:* The Child Care and Development Fund (CCDF) Tribal Plan serves as the agreement between the applicant (Indian tribes, tribal consortia and tribal organizations) and the Federal government that describes how tribal applicants will operate CCDF Block Grant programs. The Tribal Plan provides assurances that the CCDF funds will be administered in conformance with legislative requirements, federal regulations at 45 CFR parts 98 and 99 and other applicable instructions or guidelines issued by the Administration for Children and Families (ACF). Tribes must submit a new CCDF Tribal Plan every two years in accordance with 45 CFR 98.17.

*Respondents:* Tribal CCDF Programs (259 in total).

ANNUAL BURDEN ESTIMATES

| Instruments | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| CCDF Tribal Plan | 259 | 1 | 17.5 | 4,532.5 |
| CCDF Tribal Plan Amendments | 259 | 1 | 1.5 | 388.5 |

*Estimated Total Annual Burden Hours:* 4,921.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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 within 60 days of this publication.

Dated: February 4, 2008.

**Janean Chambers,**

*Reports Clearance Officer.*

[FR Doc. 08–557 Filed 2–7–08; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–N–0056] (formerly Docket No. 2007N–0444)**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Recordkeeping and Records Access Requirements for Food Facilities

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by March 10, 2008.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0560. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Recordkeeping and Records Access Requirements for Food Facilities—21 CFR 1.337, 1.345, and 1.352 (OMB Control Number 0910–0560)—Extension

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) added section 414 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350c), which requires that persons who manufacture, process, pack, hold, receive, distribute, transport, or import food in the United States establish and maintain records identifying the immediate previous sources and immediate subsequent recipients of food. Sections 1.326 through 1.363 (21 CFR 1.326 through 1.363) of FDA's regulations set forth the requirements for recordkeeping and records access. The requirement to establish and maintain records improves FDA's ability to respond to, and further contain, threats of serious adverse health consequences or death to humans or animals from accidental or deliberate contamination of food.

Description of Respondents: Persons that manufacture, process, pack, hold, receive, distribute, transport, or import food in the United States are required to establish and maintain records, including persons that engage in both interstate and intrastate commerce.

FDA's regulations require that records for non-transporters include the name and full contact information of sources, recipients, and transporters, an adequate description of the food including the quantity and packaging, and the receipt and shipping dates §§ 1.337 and 1.345). Required records for transporters include the names of consignor and consignee, points of origin and destination, date of shipment, number of packages, description of freight, route of movement and name of each carrier participating in the transportation, and transfer points through which shipment moved (§ 1.352). Existing records may be used if they contain all of the required information and are retained for the required time period.

In the **Federal Register** of November 19, 2007 (72 FR 65033), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Record | Total Hours |
|---|---|---|---|---|---|
| 1.337, 1.345, and 1.352 (records maintenance) | 379,493 | 1 | 379,493 | 13.228 | 5,020,000 |
| 1.337, 1.345, and 1.352 (learning for new firms) | 18,975 | 1 | 18,975 | 4.790 | 90,890 |
| Total | | | | | 5,110,890 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on FDA's estimate of the number of facilities affected by the final rule entitled ''Establishment and Maintenance of Records Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002,'' published in the **Federal Register** of December 9, 2004 (69 FR 71562 at 71630). With regard to records maintenance, FDA estimates that approximately 379,493 facilities will spend 13.228 hours collecting, recording, and checking for accuracy of the limited amount of additional information required by the regulations, for a total of 5,020,000 hours annually. In addition, FDA estimates that new firms entering the affected businesses will incur a burden from learning the regulatory requirements and understanding the records required for compliance. In this regard, the agency estimates the number of new firms entering the affected businesses to be 5 percent (5%) of 379,493, or 18,975 firms. Thus, FDA estimates that approximately 18,975 facilities will spend 4.790 hours learning about the recordkeeping and records access requirements, for a total of 90,890 hours annually. Therefore, the total annual recordkeeping burden is estimated to be 5,110,890 hours.

Dated: January 30, 2008.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E8–2324 Filed 2–7–08; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–N–0014]**

## Drug Products Containing Colchicine for Injection; Enforcement Action Dates

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its intention to take enforcement action, as described in this notice, against unapproved drug products containing colchicine for injection (hereinafter ''colchicine for injection products''), and persons who manufacture or cause the manufacture of such products or their shipment in interstate commerce. All colchicine for injection products are administered intravenously. Colchicine is associated with a variety of serious adverse events, some of them potentially fatal. Furthermore, a narrow margin of safety exists between a therapeutic dose of colchicine and a toxic dose of the drug. Colchicine for injection products are new drugs that require approved applications because they are not generally recognized as safe and effective. Manufacturers who wish to market a colchicine for injection product must obtain FDA approval of a new drug application (NDA).

**DATES:** Effective February 8, 2008. For information about enforcement dates, please see the **SUPPLEMENTARY INFORMATION** section.

**ADDRESSES:** All communications in response to this notice should be identified with Docket No. FDA–2008–N–0014 and directed to the appropriate office listed as follows:

*Regarding applications under section 505(b) of the act (21 U.S.C. 355(b))*: Parinda Jani, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Silver Spring, MD 20993–0002, 301–796–1232, Parinda.Jani@fda.hhs.gov.

*All other communications*: See the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Devine, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–8965, e-mail: *Jennifer.Devine@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Enforcement Dates

FDA intends to take enforcement action to enforce section 505(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 255(a)) against any unapproved colchicine for injection product that does not have a National Drug Code (NDC) number listed with FDA in full compliance with section 510 of the act (21 U.S.C. 360) before February 6, 2008, that is manufactured, shipped, or otherwise introduced or delivered for introduction into interstate commerce by any person[1] on or after February 8, 2008, or against any colchicine for injection product that has an NDC number listed with FDA and is not commercially used or sold in the United States before February 6, 2008, but is manufactured, shipped, or otherwise introduced or delivered for introduction into interstate commerce by any person on or after February 8, 2008.

However, for unapproved colchicine for injection products that are commercially used or sold in the United States and have an NDC number listed with FDA in full compliance with section 510 of the act before February 6, 2008 (''currently marketed and listed''), the agency intends to exercise its enforcement discretion after as identified elsewhere in this document. FDA intends to initiate enforcement action against any currently marketed and listed colchicine for injection product that is manufactured on or after March 10, 2008, or that is shipped, introduced, or delivered for introduction (''shipped'') on or after August 6, 2008. Further, FDA intends to take enforcement action against any person who manufactures or ships such products after the dates set forth previously. Any person who submits a new drug application (NDA) for a colchicine for injection product but has not received approval must comply with this notice. Unapproved colchicine for injection products that are not currently marketed, or that are currently marketed but are not listed with the agency before February 6, 2008 must, as of the date of this notice, have approved applications prior to their introduction or delivery for introduction into interstate commerce.

### II. Background

Colchicine is an alkaloid of the *colchicum autumnale* plant, also known as autumn crocus or meadow saffron. Colchicum was initially described in the 1st century A.D. by Dioscorides in the *Materia Medica*. Medical use of colchicum for gout pain dates back to the 6th century. It was used for several centuries, but the use of colchicum in the treatment of gout substantially declined by the 15th century because of its toxicity. Colchicum was reintroduced as a treatment for acute gout beginning in 1763. Colchicine was first isolated from colchicum in 1820 and made available in oral dosage form during the 19th century. Colchicine in oral dosage form is currently available in both as a single ingredient and in combination with probenecid, but these products are not covered by this notice. Colchicine for injection has been available in the United States since the 1950s and has been administered intravenously for the treatment of acute attacks of gout. Because of toxicities associated with the use of intravenous (IV) colchicine and the emergence of safer alternative therapies, IV colchicine is rarely used in current practice for acute gout treatment.

### III. Current Status of Colchicine for Injection Products

There are currently no approved applications for colchicine for injection products. FDA is aware of only one manufacturer of a currently marketed unapproved colchicine for injection product. This manufacturer has notified the agency that it has ceased manufacturing colchicine for injection.

### IV. Safety Issues in Use of Colchicine for Injection Products

Serious safety concerns, including fatalities, associated with colchicine for injection products are well documented in the literature and in adverse drug events reported to the agency. Many of these adverse events are caused by colchicine toxicity, which typically occurs in three phases. The initial phase, occurring within 24 hours of administration of a toxic dose of colchicine, is characterized by abdominal pain, anorexia, nausea, vomiting, diarrhea, leukocytosis, hypovolemia, and electrolyte imbalance. The second phase, 2 to 7 days after colchicine administration, involves bone marrow aplasia, coagulopathies, cardiac arrhythmia, renal failure, rhabdomyolysis, seizures, peripheral neuropathy with ascending paralysis, and respiratory distress. If the patient survives, the third phase is a recovery phase involving leukocytosis and alopecia. Overall, FDA is aware of 50 reports of adverse events associated with IV colchicine use, including 23

[1] A ''person'' includes individuals, partnerships, corporations, or associations (21 U.S.C. 321(e)).

deaths, through June 2007.[2] Three of these deaths occurred in March and April of 2007 and were associated with the use of compounded IV colchicine. Among the commonly reported events (n=50) that had medical significance were neutropenia, acute renal failure, thrombocytopenia, congestive heart failure, and pancytopenia.

Compared to oral administration of colchicine, there is an increased likelihood of colchicine toxicity when the drug is administered intravenously. For oral dosing in the treatment of acute gout, the dose is usually titrated by administering the drug over time until symptoms resolve or the patient begins to experience side effects, which are typically gastrointestinal. This emergence of side effects during oral dosing provides a margin of safety that often prevents serious and fatal overdoses. In the case of IV administration, side effects are generally not experienced until the patient has already received toxic levels of colchicine. Therefore, extreme care must be exercised when colchicine is administered by this route.

Colchicine is also known to have a narrow therapeutic index, with a narrow margin of safety between doses that are therapeutic in the treatment of gout and doses that are toxic. Many of the adverse events associated with colchicine are dose-related. Overdosing of colchicine, as discussed previously, can result in bone marrow suppression, organ failure, and death. The rate of clearance of colchicine tends to decline in persons with diminished renal or hepatic function. This means that the blood level of colchicine in persons with diminished renal or hepatic function tends to be higher for a longer period of time for a given dose compared to persons with normal renal or hepatic function. The frequency and severity of adverse effects, including colchicine toxicity, may also be greater in these populations.

FDA is generally aware of the use of IV colchicine as a treatment for back pain and that compounding pharmacies often produce colchicine for injection products that are administered intravenously for back pain treatment. FDA has not approved colchicine in any dosage form for the treatment of back pain. FDA's policy regarding the practice of pharmacy compounding is articulated in the Agency's Compliance Policy Guide Sec. 460.200 on Pharmacy Compounding (Pharmacy Compounding CPG). This notice does not affect the applicability or interpretation of the Pharmacy Compounding CPG.

FDA wants to underscore that there are serious risks associated with IV colchicine products, because there is a limited margin of safety due to both the narrow therapeutic index and serious toxicity of colchicine. Any dosing errors with the administration of IV colchicine could have potentially serious and fatal consequences.

## V. Legal Status

### *A. Colchicine Products for Injection Are New Drugs Requiring Approved Applications*

Based on the safety considerations described previously, colchicine for injection products are not generally recognized as safe and effective under section 201(p) of the act (21 U.S.C. 321(p)) for the treatment or prevention of gout or any other condition. Therefore, an injectable drug product containing colchicine, alone or in combination with other drugs, is regarded as a new drug as defined in section 201(p) of the act and is subject to the requirements of section 505 of the act. As set forth in this notice, approval of an NDA or an abbreviated new drug application under section 505 of the act is required as a condition for manufacturing or marketing all colchicine for injection products. After the dates identified in this notice, FDA intends to take enforcement action as described in this notice against any person who is marketing or shipping unapproved colchicine for injection products. Any person who submits an NDA for a colchicine for injection product but has not received approval must comply with this notice. Furthermore, this notice does not affect the applicability or interpretation of the Pharmacy Compounding CPG.

This notice does not affect the legal status of products containing colchicine in oral dosage forms, which FDA intends to address at a later date.

### *B. Notice of Enforcement Action*

Although not required to do so by the Administrative Procedure Act, the act, or any rules issued under its authority, or for any other legal reason, FDA is providing this notice to persons who are marketing unapproved colchicine for injection products that the agency intends to take enforcement action against such products and those who market them or cause them to be marketed or shipped in interstate commerce. Consistent with the priorities identified in the agency's CPG Sec. 440.100 entitled ''Marketed Unapproved Drugs--Compliance Policy Guide'' (Marketed Unapproved Drugs CPG), the agency is taking action at this time against unapproved colchicine for injection products because, as described in section III of this notice, colchicine for injection is a drug with significant safety risks.

Manufacturing or shipping unapproved colchicine for injection products can result in enforcement action, including seizure, injunction, or other judicial or administrative proceeding. Consistent with policies described in the Marketed Unapproved Drugs CPG, the agency does not expect to issue a warning letter or any other further warning to firms marketing unapproved colchicine for injection products prior to taking enforcement action. The agency also reminds firms that, as stated in the Marketed Unapproved Drugs CPG, any unapproved drug marketed without a required approved drug application is subject to agency enforcement action at any time. The issuance of this notice does not in any way obligate the agency to issue similar notices or any notice in the future regarding marketed unapproved drugs.[3]

As described in the Marketed Unapproved Drugs CPG, the agency may, at its discretion, identify a period of time during which the agency does not intend to initiate an enforcement action against a currently marketed unapproved drug solely on the grounds that it lacks an approved application under section 505 of the act. With respect to unapproved colchicine for injection products, the agency intends to exercise its enforcement discretion for only a limited period of time for the following reasons: (1) Colchicine for injection is a drug with significant safety risks, (2) colchicine is available in an oral dosage form for those patients for whom use of the drug is medically necessary, and (3) colchicine in combination with probenecid as an oral tablet has FDA approval and is indicated for the treatment of gout. Therefore, the agency intends to implement this notice as identified elsewhere in this document.

FDA intends to take enforcement action to enforce section 505(a) of the act against any unapproved colchicine for injection product that is not listed in full compliance with section 510 of the act before February 6, 2008, that is

[2]Data in the current system adverse event reporting system (AERS) dates back to when the AES was first implemented in 1969.

[3]The agency's general approach in dealing with these products in an orderly manner is spelled out in the Marketed Unapproved Drugs CPG. That CPG, however, provides notice that any product that is being marketed illegally, and the persons responsible for causing the illegal marketing of the product, are subject to FDA enforcement action at any time.

manufactured, shipped, or otherwise introduced or delivered for introduction into interstate commerce by any person on or after February 8, 2008, or is not currently marketed but is subsequently manufactured, shipped, or otherwise introduced or delivered for introduction into interstate commerce by any person on or after February 8, 2008.

However, for currently marketed and listed unapproved colchicine for injection products, the agency intends to exercise its enforcement discretion after February 8, 2008, as identified elsewhere in this document. FDA intends to initiate enforcement action against any currently marketed and listed colchicine for injection product that is manufactured on or after March 10, 2008, or that is shipped on or after August 6, 2008[4]. Further, FDA intends to take enforcement action against any person who manufactures or ships such products after the dates set forth previously. Any person who submits an NDA for a colchicine for injection product but has not received approval must comply with this notice.

The agency, however, does not intend to exercise its enforcement discretion as outlined previously if the following apply: (1) A manufacturer or distributor of an unapproved injectable colchicine product covered by this notice is violating other provisions of the act, including but not limited to, violations related to FDA's current good manufacturing practices, adverse drug event reporting, misbranding, or other violations, or (2) it appears that a firm, in response to this notice, increases its manufacture or interstate shipment of injectable colchicine drug products above its usual volume during these periods.

Nothing in this notice, including FDA's intent to exercise its enforcement discretion, alters any person's liability or obligations in any other enforcement action, or precludes the agency from initiating or proceeding with enforcement action in connection with any other alleged violation of the act, whether or not related to an unapproved drug product covered by this notice.

[4]If FDA finds it necessary to take enforcement action against a product covered by this notice, the agency may take action relating to all of the defendent's other violations of the act at the same time. For example, if a firm continues to manufacture or market a product covered by this notice after the applicable enforement date has passed, to preserve limited agency resources, FDA may take enforcement action relating to all of the firm's unapproved drugs that require applications at the same time (see e.g. *United States v. Sage Phamaceuticals*, 210 F3d 475, 479-480 (5th Cir. 2000) (permitting the agency to combine all violations of the act in one proceeding, rather than taking action against multiple violations of the act in ''piecemeal fashion'')).

Similarly, a person who is or becomes enjoined from marketing unapproved drugs may not resume marketing of unapproved injectable colchicine products based on FDA's exercise of enforcement discretion as set forth in this notice.

Drug manufacturers and distributors should be aware that the agency is exercising its enforcement discretion as described previously only in regard to colchicine for injection products that are marketed under an NDC number listed with the agency before February 6, 2008. As previously stated, unapproved colchicine for injection products that are currently marketed and not listed with the agency on the date of this notice must, as of the effective date of this notice, have approved applications prior to their shipment in interstate commerce. Moreover, any person or firm that submits an NDA but has yet to receive approval for such products is still responsible for full compliance with this notice.

*C. Discontinued Products*

Some firms may have previously discontinued the manufacturing or distribution of products covered by this notice without removing them from the listing of their products under section 510(j) of the act. Other firms may discontinue manufacturing or marketing listed products in response to this notice. Firms that wish to notify the agency of product discontinuation should send a letter, signed by the firm's chief executive officer, fully identifying the discontinued product(s), including NDC number(s), and stating that the product(s) has (have) been discontinued and will not be marketed again without FDA approval. The letter should be sent to Jennifer Devine, (see **ADDRESSES**). Firms should also update the listing of their products under section 510(j) of the act to reflect discontinuation of unapproved colchicine for injection products. FDA plans to rely on its existing records, the results of a subsequent inspection, or other available information when it initiates enforcement action.

This notice is issued under the act (sections 502 (21 U.S.C. 352)) and 505 and under authority delegated to the Deputy Commissioner for Policy under section 1410.10 of the FDA Staff Manual Guide.

Dated: January 29, 2008.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 08–564 Filed 2–6–08; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Risk Communication 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 Committee*: Risk Communication Advisory Committee

*General Function of the Committee*: To provide advice and recommendations to the agency on effective risk communication.

*Date and Time*: The meeting will be held on February 28, 2008, from 8 a.m. to 5 p.m. and February 29, 2008, from 8 a.m. to 4 p.m.

*Location*: Washington DC North/ Gaithersburg Hilton, 620 Perry Pkwy., Gaithersburg, MD 20877, Salons A, B, C, and D.

*Contact Person*: Lee L. Zwanziger, Office of the Commissioner, Office of Planning (HFP–60), Food and Drug Administration, 5600 Fishers Lane, rm.15–22, Rockville, MD, 20857, 301–827–2895, Fax: 301–827–5340, Food and Drug Administration, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732112560. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that affect 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*: On February 28, 2008, the committee will meet for the first time, for presentations and discussion of the relation of FDA's risk communication programs and FDA's responsibilities. On February 29, 2008, the meeting will continue with presentations and discussion of FDA's proposed template for press releases announcing product recalls with a view to incorporating best practices of risk communication.

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 2008 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 February 20, 2008. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on February 28th and 11:15 to 12:15 on February 29th. 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 February 11, 2008. 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 February 12, 2008.

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 Lee L. Zwanziger 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: February 3, 2008.

**Randall W. Lutter,**

*Deputy Commissioner for Policy.*

[FR Doc. 08–588 Filed 2–5–08; 3:58 pm]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Office of Inspector General

### Statement of Organization, Functions, and Delegations of Authority

This notice amends Part A (Office of the Secretary), chapter AF of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (HHS) to reflect title changes and responsibilities within the Office of Inspector General's (OIG) Office of Investigations (OI). The statement of organization, functions, and delegations of authority conforms to and carries out the statutory requirements for operating OIG. These organizational changes are primarily to balance investigative operations and investigative support functions within OI, more clearly delineate responsibilities for the activities within this office, and facilitate the most efficient and effective health care fraud investigations. Chapter AF was last amended on December 21, 2006 (71 FR 76676).

As amended, sections AFJ.00, AFJ.10, and AFJ.20 of Chapter AF now read as follows:

* * * * *

**Section AFJ.00, Office of Investigations—Mission**

The Office of Investigations (OI) is responsible for conducting and coordinating investigative activities related to fraud, waste, abuse, and mismanagement in HHS programs and operations, including wrongdoing by applicants, grantees, and contractors, or by HHS employees in the performance of their official duties. The office serves as OIG liaison to Department of Justice on all matters relating to investigations of HHS programs and personnel, and reports to the Attorney General when OIG has reasonable grounds to believe Federal criminal law has been violated. The office serves as a liaison to CMS, State licensing boards, and other outside organizations and entities with regard to exclusion, compliance, and enforcement activities. OI works with other investigative agencies and organizations on special projects and assignments. In support of its mission, the office carries out and maintains an internal quality assurance system. The system includes quality assessment studies and quality control reviews of OI processes and products to ensure that policies and procedures are followed effectively, and are functioning as intended.

**Section AFJ.10, Office of Investigations—Organization**

This office is comprised of the following components:

A. Immediate Office
B. Investigations Division 1
C. Investigations Division 2

**Section AFJ.20, Office of Investigations—Functions**

*A. Immediate Office of the Deputy Inspector General for Investigations*

This office is directed by the Deputy Inspector General for Investigations (DIGI), who is responsible for the functions designated in the law for the position Assistant Inspector General for Investigations. The DIGI supervises the Assistant Inspector General for Investigations Division 1, the Assistant Inspector General for Investigations Division 2, and the Special Advisor who heads the offices described below.

The DIGI is responsible to the Inspector General for carrying out the investigative mission of OIG and for providing and leading general supervision to the OIG investigative component. The Immediate Office provides broad guidance and instruction to staff and serves as the focal point for interaction within OIG. The Immediate Office handles all investigative and management advisory services for the DIGI, ensuring that the DIGI is briefed on all complex, sensitive, and precedent setting program and administrative issues that may significantly impact on OI management and the investigative program nationwide. The Special Advisor to the DIGI will supervise the Special Investigations Unit (SIU) Director and a group of inspectors. The SIU will conduct investigations concerning alleged electronic and computer-related violations, as well as conduct sensitive and complex investigations concerning alleged misconduct by OIG and some Department employees. Separately, the inspectors who report directly to the Special Advisor will conduct the most sensitive investigations involving senior officials, political appointees, national security issues, and subjects of high media interest. Additionally, those inspectors will coordinate special projects as assigned by the Special Advisor and investigations involving Congress and top echelon Executive Branch Officials.

*B. Investigations Division 1*

This office is directed by an Assistant Inspector General for Investigations who supervises a headquarters staff and Special Agents in Charge.

1. The headquarters staff assists the Deputy Inspector General for Investigations in establishing investigative priorities, evaluating the progress of investigations, and reporting to the Inspector General on the effectiveness of investigative efforts. It develops and implements investigative techniques, programs, guidelines, and policies. It provides programmatic expertise and issues information on new programs, regulations and statutes. It directs and coordinates the regional investigative offices.

2. The headquarters staff identifies systemic and programmatic vulnerabilities in the Department's operations and makes recommendations for change to the appropriate managers.

3. This office manages the human and financial resources of OI, including developing staffing allocation plans and issuing policy for coordination and monitoring all budget, staffing and recruiting.

4. This office coordinates the general management processes, and implements policies and procedures published in the OI Policies and Procedures Manual and OI Administrative Manual. It also coordinates a national inspection program to ensure compliance with the Federal Managers Financial Integrity Act, the President's Council on Integrity and Efficiency, and Attorney General guidelines.

5. This office coordinates with the other OIG components in developing the Work Plan and provides input to the Office of Inspector General Semiannual Report to the Congress.

6. This office develops all derivative mandatory and permissive program exclusions, and ensures enforcement of exclusions imposed through liaison with CMS, DOJ and other governmental and private sector entities. It is responsible for developing, improving and maintaining a comprehensive and coordinated OIG database on all OIG exclusion actions, and promptly and accurately reports all exclusion actions within its authority to the database. It informs appropriate regulatory agencies, health care providers and the general public of all OIG exclusion actions, and is responsible for improving public access to information on these exclusion actions to ensure that excluded individuals and entities are effectively barred from program participation.

7. This office provides advisory services and assistance to CMS officials, HHS officials, and OIG senior managers through liaison activity. It is responsible for providing program and policy direction necessary to accomplish all CMS work requirements, and to direct other activities in compliance with all legal requirements, OI policies and procedures.

8. The regional offices within this Investigations Division conduct investigations of allegations of fraud, waste, abuse, mismanagement and violations of standards of conduct within the jurisdiction of OIG in their assigned geographic areas. They coordinate investigations and confer with HHS operating divisions, staff divisions, OIG counterparts and other investigative and law enforcement agencies. They prepare investigative and management improvement reports.

*C. Investigations Division 2*

This office is directed by an Assistant Inspector General for Investigations who supervises a headquarters staff and Special Agents in Charge.

1. This office plans, develops, implements and evaluates all levels of employee training for investigators, managers, support staff and other personnel. It oversees a law enforcement techniques and equipment program.

2. The staff provides for the personal protection of the Secretary, and all emergency operations preparedness and response.

3. The office promotes and coordinates the adoption of advanced information technology forensics in the prevention and detection of fraud and provides general and specific coordination of programs to retrieve and analyze computer-based forensic evidence.

4. The office operates a toll-free hotline for OIG to permit individuals to call in suspected fraud, waste, or abuse; refers the calls for appropriate action by HHS agencies or other OIG components; and analyzes the body of calls to identify trends and patterns of fraud and abuse needing attention.

5. The office maintains an automated data and management information system used by all OI managers and investigators. It provides technical expertise on computer applications for investigations and coordinates and approves investigative computer matches with other agencies.

6. The regional offices within this Investigations Division conduct investigations of allegations of fraud, waste, abuse, mismanagement and violations of standards of conduct within the jurisdiction of OIG in their assigned geographic areas. They coordinate investigations and confer with HHS operating divisions, staff divisions, OIG counterparts and other investigative and law enforcement agencies. They prepare investigative and management implication reports.

Dated: February 1, 2008.

**Daniel R. Levinson,**

*Inspector General.*

[FR Doc. E8–2390 Filed 2–7–08; 8:45 am]

BILLING CODE 4152–01–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice; 30-day notice and request for comments; Collection Type Extension, without change, of a currently approved collection, OMB: 1660–0010, Form Number(s): No form numbers associated with this collection.

**SUMMARY:** The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed continuing information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the information collection outlined in 44 CFR part 71, as it pertains to application for National Flood Insurance Program (NFIP) insurance for buildings located in Coastal Barrier Resource System (CBRS) communities.

*Title:* Implementation of Coastal Barrier Resources Act.

*OMB Number:* 1660–0010.

*Abstract:* When an application for flood insurance is submitted for buildings located in CBRS communities, one of the following types of documentation must be submitted as evidence of eligibility: (a) Certification from a community official stating the building is not located in a designated CBRS area, (b) A legally valid building permit or certification from a community official stating that the building's start of construction date preceded the date that the community was identified in the system or c) Certification from the governmental body overseeing the area indicating that the building is used in a manner consistent with the purpose for which the area is protected.

*Affected Public:* Individuals or households; businesses or other for profits; not-for-profit institutions; farms; Federal Government; and State, local or tribal governments.

*Number of Respondents:* 60.

*Estimated Time per Respondent:* 1.5 hours.

*Estimated Total Annual Burden Hours:* 90.

*Frequency of Response:* One time.

*Comments:* Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before March 10, 2008.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, 1800 S. Bell Street, Arlington, VA 22202, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

Dated: January 28, 2008.

**John A. Sharetts-Sullivan,**

*Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. E8–2377 Filed 2–7–08; 8:45 am]

**BILLING CODE 9110–12–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1740–DR]**

### Indiana; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA–1740–DR), dated January 30, 2008, and related determinations.

**DATES:** *Effective Date:* January 30, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated January 30, 2008, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Indiana resulting from severe storms and flooding beginning on January 7, 2008, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Indiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael H. Smith, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Indiana have been designated as adversely affected by this declared major disaster:

Carroll, Cass, Elkhart, Fulton, Jasper, Marshall, Pulaski, Tippecanoe, and White Counties for Individual Assistance.

All counties within the State of Indiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–2382 Filed 2–7–08; 8:45 am]

**BILLING CODE 9110–10–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1741–DR]**

### Kansas; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–1741–DR), dated February 1, 2008, and related determinations.

**DATES:** *Effective Date:* February 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated February 1, 2008, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Kansas resulting from severe winter storms during the period of December 6–19, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas A. Hall, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Kansas have been designated as adversely affected by this declared major disaster:

Atchison, Barber, Barton, Brown, Butler, Chase, Cherokee, Clark, Clay, Cloud, Comanche, Crawford, Dickinson, Doniphan, Edwards, Ellis, Ellsworth, Ford, Geary, Graham, Harvey, Hodgeman, Jackson, Jefferson, Jewell, Kingman, Kiowa, Labette, Leavenworth, Lincoln, Lyon, Marion, Marshall, McPherson, Miami, Mitchell, Morris, Nemaha, Osage, Osborne, Ottawa, Pawnee, Phillips, Pottawatomie, Pratt, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Sedgwick, Shawnee, Smith, Stafford, Wabaunsee, Washington, and Woodson Counties for Public Assistance. Direct Federal assistance is authorized.

All counties within the State of Kansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs, 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–2383 Filed 2–7–08; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of AMSPEC Services LLC, as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Amspec Services LLC, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Amspec Services LLC, 12154 B River Road, St. Rose, LA 70087, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

**DATES:** The accreditation and approval of Amspec Services LLC, as commercial gauger and laboratory became effective on May 6, 2005. The next triennial inspection date will be scheduled for May 2008.

**FOR FURTHER INFORMATION CONTACT:** Commercial Gauger Laboratory Program Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 31, 2008.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. E8–2318 Filed 2–7–08; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Camin Cargo Control, Inc., as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Camin Cargo Control, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Camin Cargo Control, Inc., 31 Fulton Street—Unit A, New Haven, CT 06513, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

**DATES:** The accreditation and approval of Camin Cargo Control, Inc., as commercial gauger and laboratory became effective on December 14, 2005. The next triennial inspection date will be scheduled for December 2008.

**FOR FURTHER INFORMATION CONTACT:** Commercial Gauger Laboratory Program Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, (202) 344–1060.

Dated: January 31, 2008.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. E8–2297 Filed 2–7–08; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 12211 Port Road, Operations Blvd., Seabrook, TX 77586, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

*http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

**DATES:** The accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory became effective on September 8, 2006. The next triennial inspection date will be scheduled for September 2009.

**FOR FURTHER INFORMATION CONTACT:** Commercial Gauger Laboratory Program Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 31, 2008.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. E8–2319 Filed 2–7–08; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 230 Crescent Ave., Chelsea, MA 02150, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

**DATES:** The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on August 23, 2006. The next triennial inspection date will be scheduled for August 2009.

**FOR FURTHER INFORMATION CONTACT:** Commercial Gauger Laboratory Program Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 31, 2008.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. E8–2302 Filed 2–7–08; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 3735 W. Airline Hwy., Reserve, LA 70084, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

**DATES:** The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on May 5, 2005. The next triennial inspection date will be scheduled for May 2008.

**FOR FURTHER INFORMATION CONTACT:** Commercial Gauger Laboratory Program Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, (202) 344–1060.

Dated: January 31, 2008.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. E8–2299 Filed 2–7–08; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 1448 Texas Ave., Texas City, TX 77590, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

**DATES:** The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on September 26, 2006. The next triennial inspection date will be scheduled for September 2009.

**FOR FURTHER INFORMATION CONTACT:** Commercial Gauger Laboratory Program Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, (202) 344–1060.

Dated: January 31, 2008.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. E8–2300 Filed 2–7–08; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 11729 Port Road, Seabrook, TX 77586, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

**DATES:** The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on September 26, 2006. The next triennial inspection date will be scheduled for September 2009.

**FOR FURTHER INFORMATION CONTACT:** Commercial Gauger Laboratory Program Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 31, 2008.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. E8–2303 Filed 2–7–08; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 300 George Street, East Alton, IL 62024, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

*http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

**DATES:** The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on June 13, 2006. The next triennial inspection date will be scheduled for June 2009.

**FOR FURTHER INFORMATION CONTACT:** Commercial Gauger Laboratory Program Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 31, 2008.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. E8–2317 Filed 2–7–08; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 324 Marginal Street, Chelsea, MA 02150, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

*http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

**DATES:** The accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory became effective on August 24, 2006. The next triennial inspection date will be scheduled for August 2009.

**FOR FURTHER INFORMATION CONTACT:** Commercial Gauger Laboratory Program Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 31, 2008.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. E8–2320 Filed 2–7–08; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Approval of SGS North America, Inc., as a Commercial Gauger

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of approval of SGS North America, Inc., as a commercial gauger.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.13, SGS North America, Inc., 6624 Langley Dr., Baton Rouge, LA 70809, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

**DATES:** The approval of SGS North America, Inc., as commercial gauger became effective on May 2, 2005. The next triennial inspection date will be scheduled for May 2008.

**FOR FURTHER INFORMATION CONTACT:** Commercial Gauger Laboratory Program Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 31, 2008.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. E8–2301 Filed 2–7–08; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5187–N–03]**

### Tribal Colleges and Universities Program

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Grants to assist Tribal Colleges and Universities (TCU) to build, expand, renovate, and equip their own facilities, and to expand the role of the TCUs into the community through the provision of needed services such as health programs, job training, and economic development activities.

**DATES:** *Comments Due Date:* March 10, 2008.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0215) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to

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

This notice also lists the following information:

*Title of Proposal:* Tribal Colleges and Universities Program.

*OMB Approval Number:* 2528–0215.

*Form Numbers:* SF–424, SF–424–Supplement, HUD–424–CB, SFLL, HUD–27300, HUD–2880, HUD–2990, HUD–2993, HUD–2944–A, HUD–96010, HUD–96011.

*Description of the Need for the Information and Its Proposed Use:* Grants to assist Tribal Collection and Universities (TCU) to build, expand, renovate, and equip their own facilities, and to expand the role of the TCUs into the community through the provision of needed services such as health programs, job training, and economic development activities.

*Frequency of Submission:* On occasion, quarterly, annually.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting Burden | 24 | 3.70 | | 19.2 | | 1710 |

*Total Estimated Burden Hours:* 1710.

*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 1, 2008.

**Lillian L. Deitzer,**

*Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.*

[FR Doc. E8–2288 Filed 2–7–08; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5194–N–02]**

## Notice of Proposed Information Collection: Comment Request Management Review for Public Housing Projects

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of proposed information collection.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* April 8, 2008.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and should be sent to: Lillian L. Deitzer, Department Reports Management Officer, ODAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000; telephone: 202–708–2374, (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian_L._Deitzer@HUD.gov* for a copy of the proposed form and other available information.

**FOR FURTHER INFORMATION CONTACT:** Mary Schulhof, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: 202–708–0713, (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Management Review of Public Housing Projects.

*OMB Control Number:* 2577—Pending.

*Description of the need for the information and proposed use:* On September 19, 2005 (70 FR 54983), HUD published a final rule amending the regulations of the Public Housing Operating Fund Program at 24 CFR part 990, which was developed through negotiated rulemaking. Part 990 provides a new formula for distributing operating subsidy to public housing agencies (PHAs) and establishes requirements for PHAs to convert to asset management.

Subpart H of the part 990 regulations (§§ 990.255 to 990.290) establishes the requirements regarding asset management. Under § 990.260(a), PHAs that own and operate 250 or more dwelling rental units must operate using an asset management model consistent with the subpart H regulations. However, for the current fiscal year, that regulation is superseded by section 225 of Title II of Division K of the Consolidated Appropriations Act, 2008, Public Law 110–161 (approved December 26, 2007). Under that law, PHAs that own or operate 400 or fewer units may elect to transition to asset management, but they are not required to do so.

To support the transition to asset management and align HUD oversight with asset management, a new management review format is required to review PHAs on a project level, rather than PHA-wide. The forms are modeled after the asset management model consistent with the management norms in the broader multifamily industry.

*Agency form numbers:* Forms HUD–5834, HUD–5834–A, and HUD–5834–B.

*Members of affected public:* Public housing agencies.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents:* For form HUD–5834, Management Review of Public Housing Projects, there are 3,282 respondents annually with one response per respondent. Average time per response is .95 hours and the total burden hours are 3,118 hours. For form HUD–5834–A, Tenant File Review, there are 821 respondents annually with one response per respondent. Average time per response is .50 hours and the total

burden hours are 410.50 hours. For form HUD–5834–B, Upfront Income Verification Review, there are 821 respondents annually with one response per respondent. Average time per response is .50 hours and the total burden hours are 410.50 hours.

*Status of the proposed information collection:* New collection.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 30, 2008.

**Bessy Kong,**

*Deputy Assistant Secretary For Policy, Programs and Legislative Initiatives.*

[FR Doc. E8–2289 Filed 2–7–08; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. 5189–N–01]**

## Notice of Proposed Information Collection Comment Request; Certification and Funding of State and Local Fair Housing Enforcement Agencies

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement concerning the certification and funding of State and local fair housing enforcement agencies will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* April 8, 2008.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian L. Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410, telephone (202) 402–8048 (this is not a toll-free number) for copies of the proposed forms and other available information.

**FOR FURTHER INFORMATION CONTACT:** Kenneth J. Carroll, Director, Fair Housing Assistance Program, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW., Room 5222, Washington, DC 20410, telephone (202) 402–7044. (This is not a toll-free number). Hearing or speech-impaired individuals may access this number TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8399.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 34, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Enhance the certification and funding of State and local fair housing enforcement agencies, (2) Enhance the quality, utility, and clarity of the information to be collected; and (3) Minimize the burden of the collection of information on those who respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

### Notice of Submission of Proposed Information Collection to OMB

*Title of Proposal:* Certification and Funding of State and Local Fair Housing Enforcement Agencies.

*Office:* Fair Housing and Equal Opportunity.

*OMB Control Number:* 2529–0005.

*Description of the need for the information and proposed use:*

*A. Request for Substantial Equivalence*

State and local fair housing enforcement agencies that are seeking certification in accordance with Section 810(f) of the federal Fair Housing Act (the FHA) submit a request to the Assistant Secretary for Fair Housing and Equal Opportunity. The request must be supported by the text of the jurisdiction's fair housing law, the law creating and empowering the agency, all laws referenced in the jurisdiction's fair housing law, any regulations and directives issued under the law, and any formal opinions of the State Attorney General or the chief legal officer of the jurisdiction that pertain to the jurisdiction's fair housing law. A request shall also include organizational information of the agency responsible for administering and enforcing the law.

*B. Information Related to Agency Performance*

Once agencies are participating in the FHAP, HUD collects sufficient information to monitor agency performance in accordance with 24 CFR 115.206, which sets forth the performance standards for agencies participating in the FHAP. These standards are meant to ensure that the state or local law, both ''on its face'' and ''in operation,'' provides substantive rights, procedures, remedies, and judicial review procedures for alleged discriminatory housing practices that are substantially equivalent to those provided in the FHA. In addition, HUD collects sufficient information to monitor agency compliance with 24 CFR 115.307 and 24 CFR 115.308, which set forth requirements for FHAP participation and reporting and record keeping requirements including, but not limited to, the requirement that FHAP agencies use HUD's official complaint data information system, and input complaint processing information into that system in a timely manner.

*Frequency of Submission:* The Department estimates that requests for substantial equivalence will have the following reporting burdens:

| | Number of respondents | × | Annual responses | × | Hours of response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Reporting Burden | 40 | | 4 | | 10 | | 1,600 |

The Department estimates that reporting information related to agency performance will have the following reporting burdens:

| | Number of respondents | × | Annual responses | × | Hours of response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Reporting Burden | 106 | | 33 | | 20 | | 69,960 |

*Total Estimated Burden Hours:* 71,560.

*Status:* Extension of currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 5, 2008.

**Lynn M. Grosso,**

*Director, Office of Enforcement, Office of Fair Housing and Equal Opportunity.*

[FR Doc. E8–2386 Filed 2–7–08; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5194–N–04]**

## Notice of Proposed Information Collection: Comment Request; Indian Housing Block Grant Survey

**AGENCY:** Office of Public and Indian Housing; Office of Native American Programs, HUD.

**ACTION:** Notice of proposed information collection.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* April 8, 2008.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Lillian L. Deitzer, Department Reports Management Officer, ODAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000; telephone: 202–708–2374, (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian_I._Deitzer@HUD.gov* for a copy of the proposed form and other available information.

**FOR FURTHER INFORMATION CONTACT:** Mary Schulhof, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: 202–708–0713, (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Evaluation of the Indian Housing Block Grant.

*OMB Control Number:* 2577—Pending.

*Description of the need for the information and proposed use:* The Department is conducting, under contract to ACKCO Inc. and its subcontractor, Abt Associates Inc., an evaluation of the Indian Housing Block Grant (IHBG). This evaluation will provide HUD with information it needs to help determine the performance of the IHBG program for policy and program purposes. It will also provide information that HUD can submit to the Office of Management and Budget (OMB) as part of the Performance Assessment Rating Tool (PART) progress. Key issues to be addressed through the data collection are: Housing conditions for IHBG beneficiaries, rent burden, and whether overcrowding has been reduced.

*Agency form numbers:*

*Members of affected public:* Residents sampled in 30 Native American communities that are selected for the study.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents:* The researchers will administer a one-time questionnaire to 650 residents. The interviews are expected to last ten minutes for a burden time of 108 hours. An additional 100 hours has been included in the event additional information or follow-up information is required. The total burden hour estimate is 208 hours.

*Status of the proposed information collection:* New collection, pending OMB approval.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 1, 2008.

**Bessy Kong,**

*Deputy Assistant Secretary for Policy, Programs and Legislative Initiatives.*

[FR Doc. E8–2387 Filed 2–7–08; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5194–N–03]**

## Notice of Submission of Proposed Information Collection: Section 5(h) Homeownership Program for Public Housing: Submission of Plan and Reporting

**AGENCY:** Office of Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* April 8, 2008.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0201) and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents may be obtained from Ms. Deitzer

**FOR FURTHER INFORMATION CONTACT:** Mary Schulhof, Office of Policy, Progams and Legislative Initiatives (PIH, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone 202–708–0713, (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies

concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Section 5(h) Homeownership: Data Collection.

*OMB Control Number:* 2577–0201.

*Description of the need for the information and proposed use:* 24 CFR Part 906—Section 5(h) Homeownership Program is authorized by Sections 5(h) and 6(c)(4)(D) of the U.S. Housing Act of 1937 (Act). This program was replaced by Section 32 of the Act through enactment of the Quality Housing and Work Responsibility Act of 1998. The data collection is only for gathering information for the ongoing implementation of programs approved under the former 5(h) authority. Public Housing Agencies (PHAs) are required to submit to HUD the dates on which each public housing unit number/address approved under Section 5(h) is sold. The information is currently collected electronically in the Public and Indian Housing Information Center (PIC). The sections in the regulation that impose information collection requirements are as follows: 24 CFR 906.17, which requires PHAs to maintain records (including sales and financial records) for all activities incident to implementation of the HUD-approved homeownership plan. Applicable portions of the regulations are attached.

For HUD-approved homeownership plans, PHAs will maintain records which may be subject to audit by HUD and the Government Accounting Office (GAO).

*Agency form number:* None.

*Members of affected public:* Public Housing Agencies currently implementing an approved Section 5(h) Homeownership Plan.

Estimation of the total number of hours needed to prepare the information collection including number of respondents:

| Estimated annual burden | Reference | Number of respondents | Frequency of response | Estimated average response time | Total annual burden |
|---|---|---|---|---|---|
| 219 | 24 CFR 906.17 | 73 | 10 | .3 | 219 |

*Status of the proposed information collection:* Extension of currently approved collection.

The information is currently collected electronically in the Public and Indian Housing Information Center (PIC). Statutory mandates and Federal program requirements would not be met if the collection is not conducted, or is conducted less frequently.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 1, 2008.

**Bessy Kong,**

*Deputy Assistant Secretary for Policy, Program, and Legislative Initiatives.*

[FR Doc. E8–2388 Filed 2–7–08; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5186–N–06]**

## Federal Property Suitable as Facilities to Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to John Hicks, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Army:* Ms. Veronica Rines, Headquarters, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–ZS, Rm 8536, 2511 Jefferson Davis Hwy., Arlington, VA 22202; (703) 601–2545; *Coast Guard:* Commandant, United States Coast Guard, Attn: Teresa Sheinberg, 2100 Second St., SW., Rm 6109, Washington, DC 20593–0001; (202) 267–6142; *Commerce:* Mr. Lance Feiner, Acting Director, Department of Commerce, Office of Real Estate, 14th & Constitution Ave., NW., Rm. 1036, Washington, DC 20230; (202) 482–3580; *Energy:* Mr. John Watson, Department of Energy, Office of Engineering & Construction Management, ME–90, 1000 Independence Ave., SW., Washington, DC 20585: (202) 586–0072; *GSA:* Mr. John Smith, Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; *Navy:* Mrs. Mary Arndt, Acting Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305; (These are not toll-free numbers).

Dated: January 31 2008.

**Mark R. Johnston,**

*Deputy Assistant Secretary for Special Needs.*

**Title V, Federal Surplus Property Program Federal Register Report for 02/08/2008**

**Suitable/Available Properties**

*Building*

Georgia

Bldg. 0297
Ft. Benning
Chattahoochie, GA 31905
Landholding Agency: Army
Property Number: 21200810045
Status: Excess
Comments: 4839 sq. ft., most recent use—riding stable, off-site use only

Bldg. 3819
Ft. Benning
Chattahoochie, GA 31905
Landholding Agency: Army
Property Number: 21200810046
Status: Excess
Comments: 4241 sq. ft., most recent use—training, off-site use only

Bldg. 10802
Ft. Benning
Chattahoochie GA 31905
Landholding Agency: Army
Property Number: 21200810047
Status: Excess
Comments: 3182 sq. ft., most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Texas

4 Bldgs.
Fort Hood
Bell, TX 76544
Landholding Agency: Army
Property Number: 21200810048
Status: Unutilized
Directions: 00229, 00230, 00231, 00232
Comments: Various sq. ft., presence of asbestos, most recent use—training aids center, off-site use only

Bldg. 00324
Fort Hood
Bell, TX 76544
Landholding Agency: Army
Property Number: 21200810049
Status: Unutilized
Comments: 13,319 sq. ft., most recent use—roller skating rink, off-site use only

Bldgs. 00710, 00739, 00741
Fort Hood
Bell, TX 76544
Landholding Agency: Army
Property Number: 21200810050
Status: Unutilized
Comments: Various sq. ft., presence of asbestos, most recent use—repair shop, off-site use only

**Suitable/Available Properties**

*Building*

Texas

5 Bldgs.
Fort Hood
Bell, TX 76544
Landholding Agency: Army
Property Number: 21200810051
Status: Unutilized
Directions: 00711, 00712, 02219, 02612, 05780
Comments: Various sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 00713
Fort Hood
Bell, TX 76544
Landholding Agency: Army
Property Number: 21200810052
Status: Unutilized
Comments: 3200 sq. ft., presence of asbestos, most recent use—hdqts. bldg., off-site use only

Bldgs. 1938, 04229
Fort Hood
Bell, TX 76544
Landholding Agency: Army
Property Number: 21200810053
Status: Unutilized
Comments: 2736/9000 sq. ft., presence of asbestos, most recent use—admin., off-site use only

**Suitable/Available Properties**

*Building*

Texas

Bldgs. 02218, 02220
Fort Hood
Bell, TX 76544
Landholding Agency: Army
Property Number: 21200810054
Status: Unutilized
Comments: 7289/1456 sq. ft., presence of asbestos, most recent use—museum, off-site use only

Bldg. 0350
Fort Hood
Bell, TX 76544
Landholding Agency: Army
Property Number: 21200810055
Status: Unutilized
Comments: 28,290 sq. ft., presence of asbestos, most recent use—veh. maint. shop, off-site use only

Bldg. 04449
Fort Hood
Bell, TX 76544
Landholding Agency: Army
Property Number: 21200810056
Status: Unutilized
Comments: 3822 sq. ft., most recent use—police station, off-site use only

**Suitable/Available Properties**

*Building*

Texas

Bldg. 91077
Fort Hood
Bell, TX 76544
Landholding Agency: Army
Property Number: 2120081005
Status: Unutilized
Comments: 3200 sq. ft., presence of asbestos, most recent use—educational facility, off-site use only

**Summary for Suitable/Available Properties**

*Total number of Properties = 24*

**Unsuitable Properties**

*Building*

Alabama

Bldg. 01407
Redstone Arsenal
Madison, AL 35898
Landholding Agency: Army
Property Number: 21200810002
Status: Unutilized
Reasons: Extensive deterioration

**Unsuitable Properties**

*Building*

California

March Water Annex 2
Perris, CA
Landholding Agency: GSA
Property Number: 54200810004
Status: Excess
GSA Number: 9–D–CA–1211
Reasons: Within airport runway clear zone

4 Bldgs.
Marine Corps Base
41312, 53426, 53427, 53430
Camp Pendleton, CA 92055
Landholding Agency: Navy
Property Number: 77200810008
Status: Excess
Reasons: Extensive deterioration. Secured Area.

Florida

Bldgs. C5, A329
Naval Air Station
Key West, FL 33040
Landholding Agency: Navy
Property Number: 77200810007
Status: Excess
Reasons: Extensive deterioration. Secured Area

**Unsuitable Properties**

*Building*

Georgia

Bldg. 00902
Fort Gillem
Forest Park, GA
Landholding Agency: Army
Property Number: 21200810003
Status: Unutilized
Reasons: Secured Area

Hawaii

Bldg. 2132
Schofield Barracks
Wahiawa, HI 96786
Landholding Agency: Army
Property Number: 21200810004
Status: Underutilized
Reasons: Secured Area

Bldgs. B2132, C2132, 02142
Schofield Barracks
Wahiawa, HI 96786
Landholding Agency: Army
Property Number: 21200810005
Status: Underutilized
Reasons: Secured Area

Bldgs. 02138, 02140, A2144
Schofield Barracks
Wahiawa, HI 96786
Landholding Agency: Army
Property Number: 21200810006
Status: Underutilized
Reasons: Secured Area

**Unsuitable Properties**

*Building*

Idaho

Bldg. 00110
Wilder
Canyon, ID 83676
Landholding Agency: Army
Property Number: 21200810009
Status: Unutilized
Reasons: Secured Area

Iowa

Bldgs. 00013, C0847
Iowa Army Ammo Plant
Middletown, IA 52601
Landholding Agency: Army
Property Number: 21200810008
Status: Unutilized
Reasons: Secured Area. Within 2000 ft. of flammable or explosive material

Kentucky

4 Bldgs.
Fort Campbell
Christian, KY 42223
Landholding Agency: Army
Property Number: 21200810010
Status: Underutilized
Directions: 06256, 06258, 06266, 06268
Reasons: Secured Area

**Unsuitable Properties**

*Building*

Maryland

Bldgs. 00505, 01047
Aberdeen Proving Ground
Harford, MD 21005
Landholding Agency: Army
Property Number: 21200810011
Status: Unutilized
Reasons: Secured Area

Bldgs. E1407, E1417, E1452
Aberdeen Proving Ground
Harford, MD 21005
Landholding Agency: Army
Property Number: 21200810012
Status: Unutilized
Reasons: Secured Area

7 Bldgs.
Aberdeen Proving Ground
Harford, MD 21005
Landholding Agency: Army
Property Number: 21200810013
Status: Unutilized
Directions: E3007, E3221, E3222, E3223, E3224, E3226, E3228
Reasons: Secured Area

**Unsuitable Properties**

*Building*

Maryland

Bldgs. E3236, E3268, E3850
Aberdeen Proving Ground
Harford, MD 21005
Landholding Agency: Army
Property Number: 21200810014
Status: Unutilized
Reasons: Secured Area

Bldgs. E4060, E4440
Aberdeen Proving Ground
Harford, MD 21005
Landholding Agency: Army
Property Number: 21200810015
Status: Unutilized
Reasons: Secured Area

6 Bldgs.
Aberdeen Proving Ground
Harford, MD 21005
Landholding Agency: Army
Property Number: 21200810016
Status: Unutilized
Directions: E5695, E5770, E5771, E5772, E5774, E5778
Reasons: Secured Area

**Unsuitable Properties**

*Building*

Maryland

Bldgs. E5897, E5913, E5914
Aberdeen Proving Ground
Harford, MD 21005
Landholding Agency: Army
Property Number: 21200810017
Status: Unutilized
Reasons: Secured Area

Bldgs. E6892, E7012, E7822
Aberdeen Proving Ground
Harford, MD 21005
Landholding Agency: Army
Property Number: 21200810018
Status: Unutilized
Reasons: Secured Area

Bldg. 00940
Fort Detrick
Frederick, MD 21702
Landholding Agency: Army
Property Number: 21200810019
Status: Unutilized
Reasons: Secured Area

**Unsuitable Properties**

*Building*

New Jersey

Bldg. 448
Picatinny Arsenal
Dover, NJ 07806
Landholding Agency: Army
Property Number: 21200810020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material. Secured Area

Bldg. 0690
Fort Dix
Burlington, NJ 08640
Landholding Agency: Army
Property Number: 21200810021
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. S3132, S3133, S3134
Fort Dix
Burlington, NJ 08640
Landholding Agency: Army
Property Number: 21200810022
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 7427
Fort Dix
Burlington, NJ 08640
Landholding Agency: Army
Property Number: 21200810023
Status: Unutilized
Reasons: Extensive deterioration

**Unsuitable Properties**

*Building*

New Jersey

Tower (TS1)
USCG Station
Atlantic City, NJ 08401
Landholding Agency: Coast Guard
Property Number: 88200810001
Status: Unutilized
Reasons: Secured Area. Extensive deterioration

New Mexico

Bldgs. 00122, 00160
White Sands Missile Range
Dona Ana, NM 88002
Landholding Agency: Army
Property Number: 21200810024
Status: Excess
Reasons: Secured Area. Extensive deterioration

4 Bldgs.
White Sands Missile Range
Dona Ana, NM 88002
Landholding Agency: Army
Property Number: 21200810025
Status: Excess
Directions: 00360, 00362, 00364, 00368
Reasons: Extensive deterioration. Secured Area

**Unsuitable Properties**

*Building*

New Mexico

Bldg. 00421
White Sands Missile Range
Dona Ana, NM 88002
Landholding Agency: Army
Property Number: 21200810026
Status: Excess
Reasons: Extensive deterioration. Secured Area

5 Bldgs.
White Sands Missile Range
Dona Ana, NM 88002
Landholding Agency: Army
Property Number: 21200810027
Status: Excess
Directions: 20552, 20854, 21610, 21860, 21862
Reasons: Extensive deterioration. Secured Area

Bldgs. 23680, 24064, 26117
White Sands Missile Range
Dona Ana, NM 88002
Landholding Agency: Army
Property Number: 21200810028
Status: Excess
Reasons: Secured Area. Extensive deterioration

**Unsuitable Properties**

*Building*

New Mexico

Bldgs. 30722, 30724, 30735
White Sands Missile Range
Dona Ana, NM 88002
Landholding Agency: Army
Property Number: 21200810029
Status: Excess
Reasons: Extensive deterioration. Secured Area

Bldg. 6502
Sandia National Lab
Albuquerque, NM 87185
Landholding Agency: Energy
Property Number: 41200810002
Status: Unutilized
Reasons: Secured Area. Extensive deterioration

New York

Bldgs. 01243, 01276
U.S. Army Garrison
Orange, NY 10996
Landholding Agency: Army
Property Number: 21200810030
Status: Unutilized
Reasons: Extensive deterioration

**Unsuitable Properties**

*Building*

North Carolina

Bldg/1150 sq. ft.
Natl Ocean Service Center
Beaufort, NC 28516
Landholding Agency: Commerce
Property Number: 27200810001
Status: Unutilized
Reasons: Extensive deterioration. Floodway

Bldg/988 sq. ft.
Natl Ocean Service Center
Beaufort, NC 28516
Landholding Agency: Commerce
Property Number: 27200810002
Status: Unutilized
Reasons: Extensive deterioration. Floodway

Samoa

Bldg. 00002
Army Reserve Center
Pago Pago, AQ 96799
Landholding Agency: Army
Property Number: 21200810001
Status: Unutilized
Reasons: Floodway. Secured Area

**Unsuitable Properties**

*Building*

South Carolina

Bldg. M2617
Fort Jackson
Richland, SC 29207
Landholding Agency: Army
Property Number: 21200810031
Status: Unutilized
Reasons: Secured Area

Texas

6 Bldgs.
Fort Bliss
El Paso, TX 79916
Landholding Agency: Army
Property Number: 21200810032
Status: Unutilized
Directions: 2031, 2034, 9906, 9907, 11200, 11201
Reasons: Extensive deterioration

Bldgs. 56145, 56208, 56220
Fort Hood
Bell, TX 76544
Landholding Agency: Army
Property Number: 21200810033
Status: Excess
Reasons: Extensive deterioration

**Unsuitable Properties**

*Building*

Texas

Bldg. 00002
Denton
Lewisville, TX 76102
Landholding Agency: Army
Property Number: 21200810034
Status: Unutilized
Reasons: Extensive deterioration

Virginia

Bldgs. P3510, P3515
Fort Eustis
Ft. Eustis, VA 23604
Landholding Agency: Army
Property Number: 21200810035
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 412
Fort Myer
Ft. Myer, VA 22211
Landholding Agency: Army
Property Number: 21200810036
Status: Excess
Reasons: Secured Area

**Unsuitable Properties**

*Building*

Virginia

4 Bldgs.
Fort Story
Ft. Story, VA 23459
Landholding Agency: Army
Property Number: 21200810037
Status: Unutilized
Directions: T0540, T0750, T0753, T0762
Reasons: Extensive deterioration

Bldg. 01335
Fort A.P. Hill
Bowling Green, VA 22427
Landholding Agency: Army
Property Number: 21200810038
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 6259, 6287
Fort Lee
Prince George, VA 23801
Landholding Agency: Army
Property Number: 21200810039
Status: Unutilized
Reasons: Extensive deterioration

**Unsuitable Properties**

*Building*

Virginia

4 Bldgs.
Fort Lee
7015, 7016, 7017, 7118
Prince George, VA 23801
Landholding Agency: Army
Property Number: 21200810040
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 00051
Defense Supply Center
Richmond, VA 23297
Landholding Agency: Army
Property Number: 21200810041
Status: Unutilized
Reasons: Extensive deterioration. Secured Area

Bldgs. 01140, 01154

Fort Belvoir
Fairfax, VA 22060
Landholding Agency: Army
Property Number: 21200810042
Status: Unutilized
Reasons: Extensive deterioration

**Unsuitable Properties**

*Building*

Virginia

Bldgs. 05015, 05021
Fort Belvoir
Fairfax, VA 22060
Landholding Agency: Army
Property Number: 21200810043
Status: Unutilized
Reasons: Extensive deterioration

Wisconsin

Bldg. 05007
Fort McCoy
Monroe, WI 54656
Landholding Agency: Army
Property Number: 21200810044
Status: Unutilized
Reasons: Extensive deterioration.

[FR Doc. E8–2090 Filed 2–7–08; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## Proclaiming Certain Lands, Mt. Taylor Property, as an Addition to the Pueblo of Laguna Reservation of New Mexico

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Reservation Proclamation.

**SUMMARY:** This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 6,883.54 acres, more or less, to be added to the Pueblo of Laguna Reservation (Laguna), New Mexico.

**FOR FURTHER INFORMATION CONTACT:** Ben Burshia, Bureau of Indian Affairs, Division of Real Estate Services, Mail Stop–4639–MIB, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208–7737.

**SUPPLEMENTARY INFORMATION:** This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the land described below. The land was proclaimed to be an addition to and part of the Laguna Reservation for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

**Pueblo of Laguna Indian Reservation**

*New Mexico Principal Meridian*

Cibola County, New Mexico

All of the following described tracts of land comprising a total area of 6,883.54 acres, more or less, consisting of TRACTS ONE and TWO as described below, situated within the Cebolleta Grant, in Cibola County, New Mexico, to wit:

Tract One

A tract of land situated within the exterior boundaries of the Cebolleta Grant (inside of which Grant the official U.S. Government surveys of the Public Land Survey System of Townships, Ranges, and Sections have never been established), in Cibola County, New Mexico, locally described as being within ''projected'' Section 18, Township 11 North, Range 6 West, New Mexico Principal Meridian, more particularly described as follows:

Beginning at the southwest corner of said Tract One, being identical with a corner of Tract Two, hereinafter described, which is a point locally described as being on the westerly line of ''projected'' Section 18, said line being the ''projected'' Range line common to Ranges 6 and 7 West, from which point the locally described southwest corner of ''projected'' Section 18, Township 11 North, Range 6 West, New Mexico Principal Meridian, bears S. 0°10′ W., 1348.82 feet distance, and running thence from said beginning point N. 0°10′ E., 3931.80 feet on the west boundary of Tract One, being identical with a portion of the east boundary of Tract Two, to the northwest corner of Tract One, being identical with a corner of Tract Two, said corner locally described as being the northwest corner of ''projected'' Section 18, Township 11 North, Range 6 West, New Mexico Principal Meridian; thence N. 88°35′ E., 3491.10 feet on the north boundary of Tract One, being identical with a portion of the south boundary of Tract Two, to the northeast corner of Tract One, said point being located on the south boundary of Tract Two and also locally described as being on the line common to ''projected'' Sections 7 and 18; thence S. 12°50′E., 458.10 feet; thence S. 10°19′ E., 257.70 feet; thence S. 13°46′30″ W., 336.15 feet; thence S. 27°20′40″ W., 104.15 feet; thence S. 25°00′40″ W., 161.00 feet; thence S. 45°46′20″ W., 184.25 feet; thence S. 26°06′20″ W., 614.35 feet; thence S. 33°46′20″ W., 301.65 feet; thence S. 18°42′40″ W., 625.30 feet; thence S. 5°54′20″ E., 189.10 feet; thence S. 9°49′20″ E., 141.20 feet; thence S. 13°47′20″ E., 343.85 feet to the southeast corner of Tract One; thence S. 86°53′10″ W., 764.0 feet; thence S. 78°33′30″ W., 858.6 feet; thence S. 79°23′30″ W., 177.1 feet; thence S. 55°51′20″ W., 450.0 feet; thence S. 83°47′ W., 661.3 feet to the southwest corner of Tract One and point of beginning; said Tract One containing 261.51 acres, more or less.

Tract Two

A tract of land situated within the exterior boundaries of the Cebolleta Grant (inside of which Grant the official U.S. Government surveys of the Public Land Survey System of Townships, Ranges, and Sections have never been established), in Cibola County, New Mexico, locally described as being within ''projected'' Townships 11 and 12 North, Ranges 6 and 7 West, New Mexico Principal Meridian, more particularly described as follows:

Beginning at the southwest corner of Tract Two, being a point on the west boundary of the Cebolleta Grant, being also a point on the east boundary of surveyed fractional Section 15 (outside the Grant), Township 11 North, Range 7 West, New Mexico Principal Meridian, from which point the southwest corner of the Cebolleta Grant bears S. 4°14′ W., 2185.00 feet distance, and running thence from said beginning point N. 89°35′ E., 3562.99 feet on the south boundary of Tract Two; thence S. 89°40′ E., 5267.37 feet; thence S. 89°53′ E., 2594.81 feet; thence N. 0°10′ E., 1348.82 feet; thence S. 89°53′ E., 2695.00 feet to a corner of Tract Two, being identical with the southwest corner of Tract One, hereinbefore described; thence N. 0°10′ E., 3931.80 feet on a portion of the east boundary of Tract Two, being identical with the west boundary of Tract One, to a corner of Tract Two, being identical with the northwest corner of Tract One; thence N. 88°35′ E., 3491.10 feet on a portion of the south boundary of Tract Two, being identical with the north boundary of Tract One, to the northeast corner of Tract One, being a point located on the south boundary of Tract Two; thence N. 88°35′ E., 1644.90 feet continuing on a portion of the south boundary of Tract Two, to a point on the east rim of Water Canyon; thence northerly along the east rim of Water Canyon by the following courses and distances: N. 26°33′ W., 362.9 feet; N. 6°03′ W., 793.92 feet; N. 17°40′ W., 646.25 feet; N. 33°30′ W., 516.80 feet; N. 48°36′ W., 576.70 feet; N. 55°29′ W., 441.21 feet; N. 37°27′ W., 230.03 feet; N. 85°54′ W., 527.15 feet; N. 50°55′ W., 917.96 feet; N. 8°51′ W., 503.30 feet; N. 18°15′ W., 1097.28 feet; N. 26°03′ W., 667.0 feet; N. 2°40′ W., 755.05 feet; N. 43°01′ W., 518.72 feet; N. 14°38′ E.,

378.53 feet; N. 6°59′ W., 744.3 feet; N. 11°36′ E., 428.34 feet; N. 15°06′ W., 481.23 feet; N. 27°20′ W., 578.32 feet; N. 25°36′ E., 1072.82 feet; N. 9°46′ E., 1104.33 feet; N. 27°01′ E., 365.8 feet; N. 18°32′ W., 408.2 feet; N. 35°48′ W., 1009.6 feet; N. 28°43′ W., 246.15 feet; N. 51°19′ W., 377.23 feet; N. 63°17′ W., 696.27 feet; N. 43°57′ W., 520.75 feet; N. 27°03′ W., 680.15 feet; N. 54°11′ W., 470.7 feet; N. 74°08′ W., 420.05 feet; N. 87°44′ W., 688.4 feet; N. 72°26′ W., 682.4 feet; S. 55°03′ W., 817.02 feet; N. 71°21′ W., 1241.18 feet; S. 82°41′ W., 2523.0 feet; N. 15°53′ W., 1538.02 feet; N. 25°48′ W., 265.05 feet; N. 65°36′ W., 2848.65 feet to the northwest corner of Tract Two (**Note:** The Mt. Taylor Development Company plat dated December 2, 1968, shows a tie of S. 48°39′ W., 3750.25 feet distance from the northwest corner of Tract Two to the Government brass cap marking the closing corner of Sections 27 and 34, Township 12 North, Range 7 West, New Mexico Principal Meridian, on the west boundary of the Cebolleta Grant. This brass cap has geographic coordinates, in NAD 83 (CORS96), of 35°13′55.312″ N. Latitude and 107°33′51.696 W. Longitude, as determined by the U.S. Bureau of Indian Affairs in 2004, using survey-grade Global Positioning System units. The above-described 1968 plat lists no surveyor and was never recorded in the records of Cibola or Valencia Counties, but has been recorded in the records of the U.S. Bureau of Indian Affairs, Albuquerque Land Titles and Records Office.); thence from the northwest corner of Tract Two, S. 1°15′ W., 5048.84 feet on the west boundary of Tract Two, crossing Water Canyon, to a corner of Tract Two, being identical with the northwest corner of Lot No. 6 of the Mt. Taylor Development Company, Water Canyon Stockholders' Lots, as indicated on the three Mt. Taylor Development Company plats dated August 1967, September 1, 1967, and December 2, 1968 (**Note:** These three plats list no surveyor and were never recorded in the records of Cibola or Valencia Counties, but have been recorded in the records of the U.S. Bureau of Indian Affairs, Albuquerque Land Titles and Records Office); thence S. 88°45′ E., 100 feet continuing on a portion of the west boundary of Tract Two, being identical with the north boundary of said Lot No. 6, to a corner of Tract Two, being identical with the northeast corner of said Lot No. 6, as shown on the above-described plat dated August 1967, which is titled ''Mt. Taylor Development Company, T. 12 N., R. 7 W., N.M.P.M., Water Canyon Stock Holder's Lots;'' thence S. 1°15′ W., 150 feet on a portion of the west boundary of Tract Two, being identical with the east boundary of said Lot No. 6, to a point on the west boundary of Tract Two, being identical with the southeast corner of said Lot No. 6, and also identical with the northeast corner of Lot No. 5 of the Mt. Taylor Development Company, Water Canyon Stockholders' Lots, as shown on the above-described plat dated August 1967; thence S. 1°15′ W., 150 feet on a portion of the west boundary of Tract Two, being identical with the east boundary of said Lot No. 5, to a corner of Tract Two, being identical with the southeast corner of said Lot No. 5, as shown on the above-described plat dated August 1967; thence N. 88°45′ W., 100 feet continuing on a portion of the west boundary of Tract Two, being identical with the south boundary of said Lot No. 5, to a corner on the west boundary of Tract Two, being identical with the southwest corner of said Lot No. 5, as shown on the above-described plat dated August 1967; thence S. 1°15′ W., 70.9 feet on the west boundary of Tract Two, to an iron pipe, as shown on the Mt. Taylor Development Company plats dated August 1967 and September 1, 1967 (**Note:** Both of these plats show a tie of N. 41°59′ W., 3956.2 feet distance from this iron pipe to the previously described Government brass cap marking the closing corner of Sections 27 and 34, Township 12 North, Range 7 West, New Mexico Principal Meridian, on the west boundary of the Cebolleta Grant. The September 1, 1967 plat also states that this iron pipe is located approximately 410 feet South of the Water Canyon Creek.); thence from said iron pipe, S. 1°15′ W., 4211.72 feet on the west boundary of Tract Two, continuing across Water Canyon, to a point near the east ridge of Timber Canyon; thence WEST, 2750.01 feet to a point on the west boundary of the Cebolleta Grant, being also a point on the east boundary of surveyed fractional Section 3 (outside the Grant), Township 11 North, Range 7 West, New Mexico Principal Meridian; thence on the west boundary of the Cebolleta Grant, being identical with the west boundary of Tract Two, as follows: S. 0°58′ W., 1043.54 feet to the true point for the 6 Mile Corner (**Note:** The official U.S. General Land Office plat and field note records for Township 11 North, Range 7 West, New Mexico Principal Meridian, approved May 13, 1935, which describe the 1930 resurvey of this portion of the west boundary of the Cebolleta Grant, indicate that a witness corner, monumented with an iron post with brass cap, was established 12 links (7.92 feet) S. 0°58′ W. from the true point for the 6 Mile Corner. These records are on file at the U.S. Bureau of Land Management, New Mexico State Office, in Santa Fe, New Mexico.); thence from the true point for the 6 Mile Corner, S. 0°58′ W., 4871.46 feet to the 7 Mile Corner; thence S. 5°34′ W., 5184.3 feet to the 8 Mile Corner; thence S. 4°14′ W., 2527.4 feet to the southwest corner of Tract Two and point of beginning; said Tract Two containing 6,622.03 acres, more or less. (**Note:** This total area for Tract Two includes the formerly designated Lots No. 1 through 4 and Lots No. 7 through 15 of the Mt. Taylor Development Company, Water Canyon Stockholders' Lots, as shown on the above-described plat dated August 1967, which are totally within and now a part of Tract Two, making it unnecessary to describe them herein as separate parcels.)

The above-described lands contain a total of 6,883.54 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: June 19, 2007.

**Carl J. Artman,**

*Assistant Secretary—Indian Affairs.*

**Editorial Note:** This document was received in the Office of the Federal Register on February 5, 2008.

[FR Doc. E8–2361 Filed 2–7–08; 8:45 am]

BILLING CODE 4310–W7–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Rate Adjustments for Indian Irrigation Projects

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of proposed rate adjustments.

**SUMMARY:** The Bureau of Indian Affairs (BIA) owns, or has an interest in, irrigation facilities located on various Indian reservations throughout the United States. We are required to establish rates to recover the costs to administer, operate, maintain, and rehabilitate those facilities. We request your comments on the proposed rate adjustments.

**DATES:** Interested parties may submit comments on the proposed rate adjustments on or before April 8, 2008.

**ADDRESSES:** All comments on the proposed rate adjustments must be in writing and addressed to: John Anevski, Chief, Division of Irrigation, Power and Safety of Dams, Office of Trust Services, Mail Stop 4655–MIB, 1849 C Street, NW., Washington, DC 20240, Telephone (202) 208–5480.

**FOR FURTHER INFORMATION CONTACT:** For details about a particular irrigation project, please use the tables in **SUPPLEMENTARY INFORMATION** section to contact the regional or local office where the project is located.

**SUPPLEMENTARY INFORMATION:** The tables in this notice list the irrigation project contacts where the BIA recovers its costs for local administration, operation, maintenance, and rehabilitation, the current irrigation assessment rates, and the proposed rates for the 2008 irrigation season and subsequent years where applicable.

**What are some of the terms I should know for this notice?**

The following are terms we use that may help you understand how we are applying this notice.

*Administrative costs* means all costs we incur to administer our irrigation projects at the local project level. Local project level does not normally include the Agency, Region, or Central Office costs unless we state otherwise in writing.

*Assessable acre* means lands designated by us to be served by one of our irrigation projects and to which we provide irrigation service and recover our costs. (See *Total assessable acres*.)

*BIA* means the Bureau of Indian Affairs.

*Bill* means our statement to you of the assessment charges and/or fees you owe the United States for administration, operation, maintenance, and/or rehabilitation. The date we mail or hand deliver your bill will be stated on it.

*Costs* mean the costs we incur for administration, operation, maintenance, and rehabilitation to provide direct support or benefit to an irrigation facility.

*Customer* means any person or entity that we provide irrigation service to.

*Due date* is the date on which your bill is due and payable. This date will be stated on your bill.

*I, me, my, you*, and *your* means all interested parties, especially persons or entities that we provide irrigation service to and receive beneficial use of our irrigation projects affected by this notice and our supporting policies, manuals, and handbooks.

*Irrigation project* means, for the purposes of this notice, the facility or portions thereof, that we own, or have an interest in, including all appurtenant works, for the delivery, diversion, and storage of irrigation water to provide irrigation service to customers for whom we assess periodic charges to recover our costs to administer, operate, maintain, and rehabilitate. These projects may be referred to as facilities, systems, or irrigation areas.

*Irrigation service* means the full range of services we provide customers of our irrigation projects, including, but not limited to, water delivery. This includes our activities to administer, operate, maintain, and rehabilitate our projects.

*Maintenance costs* means all costs we incur to maintain and repair our irrigation projects and equipment of our irrigation projects and is a cost factor included in calculating your operation and maintenance (O&M) assessment.

*Must* means an imperative or mandatory act or requirement.

*Operation and maintenance (O&M) assessment* means the periodic charge you must pay us to reimburse our costs.

*Operation or operating costs* means costs we incur to operate our irrigation projects and equipment and is a cost factor included in calculating your O&M assessment.

*Past due bill* means a bill that has not been paid by the close of business on the 30th day after the due date, as stated on the bill. Beginning on the 31st day after the due date we begin assessing additional charges accruing from the due date.

*Rehabilitation costs* means costs we incur to restore our irrigation projects or features to original operating condition or to the nearest state which can be achieved using current technology and is a cost factor included in calculating your O&M assessment.

*Total assessable acres* means the total acres served by one of our irrigation projects.

*Total O&M cost* means the total of all the allowable and allocatable costs we incur for administering, operating, maintaining, and rehabilitating our irrigation projects serving your farm unit.

*Water* means water we deliver at our projects for the general purpose of irrigation and other purposes we agree to in writing.

*Water delivery* is an activity that is part of the irrigation service we provide our customers when water is available.

*We, us*, and *our* means the United States Government, the Secretary of the Interior, the BIA, and all who are authorized to represent us in matters covered under this notice.

**Does this notice affect me?**

This notice affects you if you own or lease land within the assessable acreage of one of our irrigation projects, or you have a carriage agreement with one of our irrigation projects.

**Where can I get information on the regulatory and legal citations in this notice?**

You can contact the appropriate office(s) stated in the tables for the irrigation project that serves you, or you can use the Internet site for the Government Printing Office at *http://www.gpo.gov*.

**Why are you publishing this notice?**

We are publishing this notice to notify you that we propose to adjust one or more of our irrigation assessment rates. This notice is published in accordance with the BIA's regulations governing its operation and maintenance of irrigation projects, specifically, 25 CFR 171.1. These sections provide for the fixing and announcing of the rates for annual assessments and related information for our irrigation projects.

**What authorizes you to issue this notice?**

Our authority to issue this notice is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has in turn delegated this authority to the Assistant Secretary—Indian Affairs under Part 209, Chapter 8.1A, of the Department of the Interior's Departmental Manual.

**When will you put the rate adjustments into effect?**

We will put the rate adjustments into effect for the 2008 irrigation season and subsequent years where applicable.

**How do you calculate irrigation rates?**

We calculate irrigation assessment rates in accordance with 25 CFR 171.1(f) by estimating the cost of normal operation and maintenance at each of our irrigation projects. The cost of normal operation and maintenance means the expenses we incur to provide direct support or benefit for an irrigation project's activities for administration, operation, maintenance, and rehabilitation. These costs are then applied as stated in the rate table in this notice.

**What kinds of expenses do you include in determining the estimated cost of normal operation and maintenance?**

We include the following expenses:

(a) Personnel salary and benefits for the project engineer/manager and

project employees under their management control;

(b) Materials and supplies;

(c) Major and minor vehicle and equipment repairs;

(d) Equipment, including transportation, fuel, oil, grease, lease and replacement;

(e) Capitalization expenses;

(f) Acquisition expenses;

(g) Maintenance of a reserve fund available for contingencies or emergency costs needed for the reliable operation of the irrigation project;

(h) Rehabilitation costs; and

(i) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

**When should I pay my irrigation assessment?**

We will mail or hand deliver your bill notifying you of the amount you owe to the United States and when such amount is due. If we mail your bill, we will consider it as being delivered no later than 5 business days after the day we mail it. You should pay your bill no later than the close of business on the 30th day after the due date stated on the bill.

**What information must I provide for billing purposes?**

We must obtain certain information from you to ensure we can properly process, bill for, and collect money owed to the United States. We are required to collect the taxpayer identification number or social security number to properly bill the responsible party and service the account under the authority of, and as prescribed in, Public Law 104–143, the Debt Collection Improvement Act of 1996.

(a) At a minimum, this information is:

(1) Full legal name of person or entity responsible for paying the bill;

(2) Adequate and correct address for mailing or hand delivering our bill; and

(3) The taxpayer identification number or social security number of the person or entity responsible for paying the bill;

(b) It is your responsibility to ensure we have correct and accurate information for paragraph (a) of this section.

(c) If you are late paying your bill due to your failure to furnish such information or comply with paragraph (b) of this section, you cannot appeal your bill on this basis.

**What can happen if I do not provide the information required for billing purposes?**

We can refuse to provide you irrigation service.

**If I allow my bill to become past due, could this affect my water delivery?**

If we do not receive your payment before the close of business on the 30th day after the due date stated on your bill, we will send you a past due notice. Your bill will have additional information concerning your rights. We will consider your past due notice as delivered no later than 5 business days after the day we mail it. We have the right to refuse water delivery to any of your irrigated land on which the bill is past due. We can continue to refuse water delivery until you pay your bill or make payment arrangements that we agree to. Our authority to demand payment of your past due bill is 31 CFR 901.2, ''Demand for Payment.''

**Are there any additional charges if I am late paying my bill?**

Yes. We will assess you interest on the amount owed and use the rate of interest established annually by the Secretary of the United States Treasury (Treasury) to calculate what you will be assessed (31 CFR 901.9(b)). You will not be assessed this charge until your bill is past due. However, if you allow your bill to become past due, interest will accrue from the due date, not the past due date. Also, you will be charged an administrative fee of $12.50 for each time we try to collect your past due bill. If your bill becomes more than 90 days past due, you will be assessed a penalty charge of 6 percent per year and it will accrue from the date your bill initially became past due. Our authority to assess interest, penalties, and administration fees on past due bills is prescribed in 31 CFR 901.9, ''Interest, penalties, and costs.''

**What else can happen to my past due bill?**

If you do not pay your bill or make payment arrangements that we agree to, we are required to send your past due bill to the Treasury for further action. We must send your bill to Treasury no later than 180 days after the original due date of your irrigation assessment bill. The requirement for us to send your unpaid bill to Treasury is prescribed in 31 CFR 901.1, ''Aggressive agency collection activity.''

**Who can I contact for further information?**

The following tables are the regional and project/agency contacts for our irrigation facilities.

| Project name | Project/agency contacts |
|---|---|
| **Northwest Region Contacts** | |
| Stanley Speaks, Regional Director, Bureau of Indian Affairs, Northwest Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169, Telephone: (503) 231–6702. | |
| Flathead Irrigation Project | Debra DuMontier, Acting Superintendent, Flathead Agency Irrigation Division, P.O. Box 40, Pablo, MT 59855–0040, Telephone: (406) 675–2700. |
| Fort Hall Irrigation Project | Eric J. LaPointe, Superintendent, Alan Oliver, Supervisory General Engineer, Fort Hall Agency, P.O. Box 220, Fort Hall, ID 83203–0220, Telephone: (208) 238–2301. |
| Wapato Irrigation Project | Pierce Harrison, Project Administrator, Wapato Irrigation Project, P.O. Box 220, Wapato, WA 98951–0220, Telephone: (509) 877–3155. |
| **Rocky Mountain Region Contacts** | |
| Ed Parisian, Regional Director, Bureau of Indian Affairs, Rocky Mountain Regional Office, 316 North 26th Street, Billings, Montana 59101, Telephone: (406) 247–7943. | |
| Blackfeet Irrigation Project | Stephen Pollock, Superintendent, Ted Hall, Irrigation Project Manager, Box 880, Browning, MT 59417, Telephones: (406) 338–7544, Superintendent; (406) 338–7519, Irrigation Project Manager. |
| Crow Irrigation Project | George Grover, Superintendent, Karl Helvik, Irrigation Project Manager, P.O. Box 69, Crow Agency, MT 59022, Telephones: (406) 638–2672, Superintendent; (406) 638–2863, Irrigation Project Manager. |
| Fort Belknap Irrigation Project | Judy Gray, Superintendent, Ralph Leo, Irrigation Project Manager, R.R. 1, Box 980, Harlem, MT 59526, Telephones: (406) 353–2901, Superintendent; (406) 353–2905, Irrigation Project Manager. |

| Project name | Project/agency contacts |
|---|---|
| Fort Peck Irrigation Project | Florence White Eagle, Superintendent, P.O. Box 637, Poplar, MT 59255, Richard Kurtz, Irrigation Manager, 602 6th Avenue North, Wolf Point, MT 59201, Telephones: (406) 768–5312, Superintendent; (406) 653–1752, Irrigation Manager . |
| Wind River Irrigation Project | Ed Lone Flight, Superintendent, Ray Nation, Acting Irrigation Project Manager, P.O. Box 158, Fort Washakie, WY 82514, Telephones: (307) 332–7810, Superintendent; (307) 332–2596, Irrigation Project Manager. |
| **Southwest Region Contacts** | |
| Larry Morrin, Regional Director, Bureau of Indian Affairs, Southwest Regional Office, 1001 Indian School Road, Albuquerque, New Mexico 87104, Telephone: (505) 563–3100. | |
| Pine River Irrigation Project | Ross P. Denny, Superintendent, John Formea, Irrigation Engineer, P.O. Box 315, Ignacio, CO 81137–0315, Telephones: (970) 563–4511, Superintendent; (970) 563–9484, Irrigation Engineer. |
| **Western Region Contacts** | |
| Allen Anspach, Regional Director, Bureau of Indian Affairs, Western Regional Office, Two Arizona Center, 400 N. 5th Street, 12th Floor, Phoenix, AZ 85004, Telephone: (602) 379–6600. | |
| Colorado River Irrigation Project | Perry Baker, Superintendent, Ted Henry, Irrigation Project Manager, R.R. 1, Box 9–C, Parker, AZ 85344, Telephone: (928) 669–7111. |
| Duck Valley Irrigation Project | Robert Marchio, Acting Superintendent, 1555 Shoshone Circle, Elko, NV 89801, Telephone: (775) 738–0569. |
| Fort Yuma Irrigation Project | Vacant, Superintendent, P.O. Box 11000, Yuma, AZ 85366, Telephone: (520) 782–1202. |
| San Carlos Irrigation Project Joint Works. | Carl Christensen, Supervisory General Engineer, P.O. Box 250, Coolidge, AZ 85228, Telephone: (520) 723–6216. |
| San Carlos Irrigation Project Indian Works. | Joe Revak, Supervisory General Engineer, Pima Agency, Land Operations, Box 8, Sacaton, AZ 85247, Telephone: (520) 562–3372. |
| Uintah Irrigation Project | Lynn Hansen, Irrigation Manager, P.O. Box 130, Fort Duchesne, UT 84026, Telephone: (435) 722–4341. |
| Walker River Irrigation Project | Brenda Astor, Acting Superintendent, 311 E. Washington Street, Carson City, NV 89701, Telephone: (775) 887–3500. |

**What irrigation assessments or charges are proposed for adjustment by this notice?**

The rate table below contains the current rates for all of our irrigation projects where we recover our costs for operation and maintenance. The table also contains the proposed rates for the 2008 season and subsequent years where applicable. An asterisk immediately following the name of the project notes the irrigation projects where rates are proposed for adjustment.

| Project name | Rate category | Final 2007 rate | Proposed 2008 rate | Proposed 2009 rate |
|---|---|---|---|---|
| **Northwest Region Rate Table** | | | | |
| Flathead Irrigation Project (See Note #1) | Basic per acre—A | $23.45 | ** $23.45 | $23.45 |
| | Basic per acre—B | 10.75 | [a] 10.75 | 10.75 |
| | Minimum Charge per tract | 65.00 | [a] 65.00 | 65.00 |
| Fort Hall Irrigation Project * | Basic per acre | 27.00 | 31.00 | To be determined. |
| | Minimum Charge per tract | 25.00 | 27.00 | |
| Fort Hall Irrigation Project—Minor Units * | Basic per acre | 17.00 | 21.00 | |
| | Minimum Charge per tract | 25.00 | 27.00 | |
| Fort Hall Irrigation Project—Michaud * | Basic per acre | 35.75 | 39.75 | |
| | Pressure per acre | 50.00 | 55.50 | |
| | Minimum Charge per tract | 25.00 | 27.00 | |
| Wapato Irrigation Project—Toppenish/Simcoe Units * | Billing Charge per tract | 5.00 | 5.00 | 5.00 |
| | Minimum Charge for farm unit/land tracts up to one acre. | 14.00 | 14.00 | 15.00 |
| | Farm unit/land tracts over one acre—per acre. | 14.00 | 14.00 | 15.00 |
| Wapato Irrigation Project—Ahtanum Units * | Billing Charge per tract | 5.00 | 5.00 | 5.00 |
| | Minimum Charge for farm unit/land tracts up to one acre. | 14.00 | 14.00 | 15.00 |
| | Farm unit/land tracts over one acre—per acre. | 14.00 | 14.00 | 15.00 |
| Wapato Irrigation Project—Satus Unit * | Billing Charge per tract | 5.00 | 5.00 | 5.00 |
| | Minimum Charge for farm unit/land tracts up to one acre. | 55.00 | 55.00 | 58.00 |
| | "A" farm unit/land tracts over one acre—per acre. | 55.00 | 55.00 | 58.00 |
| | Additional Works farm unit/land tracts over one acre—per acre. | 60.00 | 60.00 | 63.00 |

| Project name | Rate category | Final 2007 rate | Proposed 2008 rate | Proposed 2009 rate |
|---|---|---|---|---|
| | "B" farm unit/land tracts over one acre—per acre. | 65.00 | 65.00 | 68.00 |
| | Water Rental Agreement Lands—per acre. | 67.00 | 67.00 | 70.00 |

| Project name | Rate category | Final 2007 rate | Proposed 2008 rate |
|---|---|---|---|
| **Rocky Mountain Region Rate Table** | | | |
| Blackfeet Irrigation Project* | Basic-per acre | $15.50 | $17.00 |
| Crow Irrigation Project—Willow* Creek O&M (includes Agency, Lodge Grass #1, Lodge Grass #2, Reno, Upper Little Horn, and Forty Mile Units). | Basic-per acre | 19.30 | 20.80 |
| Crow Irrigation Project—All* Others (includes Bighorn, Soap Creek, and Pryor Units). | Basic-per acre | 19.00 | 20.50 |
| Crow Irrigation Two Leggins Drainage District | Basic-per acre | 2.00 | 2.00 |
| Fort Belknap Irrigation Project* | Trust Land per acre | 13.88 | 20.00 |
| | non-Trust Land per acre | 18.50 | 20.00 |
| Fort Peck Irrigation Project* | Basic-per acre | 20.00 | 22.00 |
| Wind River Irrigation Project | Basic-per acre | 15.00 | 16.00 |
| Wind River Irrigation Project—LeClair District | Basic-per acre | 17.00 | 17.00 |
| **Southwest Region Rate Table** | | | |
| Pine River Irrigation Project | Minimum Charge per tract | 50.00 | 50.00 |
| | Basic-per acre | 15.00 | 15.00 |

| Project name | Rate category | Final 2007 rate | Proposed 2008 rate | Proposed 2009 rate | Proposed 2010 rate |
|---|---|---|---|---|---|
| **Western Region Rate Table** | | | | | |
| Colorado River Irrigation Project | Basic per acre up to 5.75 acre-feet. | $47.00 | $47.00 | To be determined | To be determined. |
| | Excess Water per acre-foot over 5.75 acre-feet. | 17.00 | 17.00 | | |
| Duck Valley Irrigation Project | Basic-per acre | 5.30 | 5.30 | | |
| Fort Yuma Irrigation Project (See Note #2). | Basic-per acre up to 5.0 acre-feet. | 72.00 | 77.00 | | |
| | Excess Water per acre-foot over 5.0 acre-feet. | 10.50 | 10.50 | | |
| San Carlos Irrigation Project* (Joint Works) (See Note #3). | Basic-per acre | 30.00 | [a] 21.00 | $21.00 [b] | To be determined (See Note #3). |
| San Carlos Irrigation Project* (Indian Works). | Basic-per acre | 77.00 | 57.00 | To be determined | To be determined. |
| Uintah Irrigation Project* (See Note #4) | Basic-per acre | 12.00 | 12.50 | | |
| | Minimum Bill | 25.00 | 25.00 | | |
| Walker River Irrigation Project* (See Note #5). | Indian per acre | 10.00 | 13.00 | 16.00. | |
| | non-Indian per acre | 16.00 | 16.00 | 16.00. | |

* Notes irrigation projects where rates are proposed for adjustment.

[a] Final 2008 rate.

[b] Final 2009 rate.

Note #1—The 2008 rate was established by final notice published in the **Federal Register** on April 20, 2007 (Vol. 72, No. 76, page 19954). The 2009 rate is to be determined.

Note #2—The O&M rate for the Fort Yuma Irrigation Project has two components. The first component is the O&M rate established by the Bureau of Reclamation (BOR), the owner and operator of the Project. The FY 2007 BOR rate of $65.00 was used in the development of the proposed 2008 rate; however, the BOR component is subject to change and is provided for informational purposes only. The second component is for the O&M rate established by the Bureau of Indian Affairs (BIA) to cover administrative costs, including billing and collections for the Project. Through this notice, it is proposed the BIA component of the rate remain unchanged at $7.00/acre. The BIA rate assessment covers approximately 50 percent of the accounting technician and 40 percent of the Natural Resource Officer at the BIA Fort Yuma Agency.

Note #3—The 2008 and 2009 rate was established by final notice published in the **Federal Register** on April 20, 2007 (Vol. 72, No. 76, page 19954). The 2010 rate is to be determined. The Arizona Water Settlement Act is expected to be effective December 31, 2007, and this circumstance may affect what the O&M rate should be for the SCIPJW in 2010.

Note #4—The proposed rate for 2008 is subject to change based upon final review of work accomplished under the Approved Annual Operating Plan for the 2007 irrigation season subject to the October 1, 2000 Cooperative Agreement between United States of America Department of the Interior and the Uintah Indian Irrigation Project Operation and Maintenance Company.

Note #5—The 2008 and 2009 irrigation rates are proposed through this notice.

**Consultation and Coordination With Tribal Governments (Executive Order 13175)**

The BIA irrigation projects are vital components of the local agriculture economy of the reservations on which they are located. To fulfill its responsibilities to the tribes, tribal organizations, water user organizations, and the individual water users, the BIA communicates, coordinates, and consults on a continuing basis with these entities on issues of water delivery, water availability, costs of administration, operation, maintenance, and rehabilitation. This is accomplished at the individual irrigation projects by Project, Agency, and Regional representatives, as appropriate, in accordance with local protocol and procedures. This notice is one component of the BIA's overall coordination and consultation process to provide notice and request comments from these entities on adjusting our irrigation rates.

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

The rate adjustments will have no adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies) should the proposed rate adjustments be implemented. This is a notice for rate adjustments at BIA owned and operated irrigation projects, except for the Fort Yuma Irrigation Project. The Fort Yuma Irrigation Project is owned and operated by the Bureau of Reclamation with a portion serving the Fort Yuma Reservation.

**Regulatory Planning and Review (Executive Order 12866)**

These rate adjustments are not a significant regulatory action and do not need to be reviewed by the Office of Management and Budget under Executive Order 12866.

**Regulatory Flexibility Act**

This rate making is not a rule for the purposes of the Regulatory Flexibility Act because it is ''a rule of particular applicability relating to rates.'' 5 U.S.C. 601(2).

**Unfunded Mandates Act of 1995**

These rate adjustments impose no unfunded mandates on any governmental or private entity and are in compliance with the provisions of the Unfunded Mandates Act of 1995.

**Takings (Executive Order 12630)**

The Department has determined that these rate adjustments do not have significant ''takings'' implications. The rate adjustments do not deprive the public, state, or local governments of rights or property.

**Federalism (Executive Order 13132)**

The Department has determined that these rate adjustments do not have significant Federalism effects because they pertain solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

**Civil Justice Reform (Executive Order 12988)**

This notice complies with the requirements of Executive Order 12988. Specifically, this notice does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

**Paperwork Reduction Act of 1995**

These rate adjustments do not affect the collections of information which have been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget, under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076–0141 and expires August 31, 2009.

**National Environmental Policy Act**

The Department has determined that these rate adjustments do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(d)).

**Data Quality Act**

In developing this notice, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

Dated: January 16, 2008.

**Carl J. Artman,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. E8–2304 Filed 2–7–08; 8:45 am]

BILLING CODE 4310–W7–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–070–1990–EX]**

### Notice of Availability of Draft Environmental Impact Statement for the Proposed ''M'' Pit Mine Expansion at Montana Tunnels Mine, Jefferson County, Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*), a Draft Environmental Impact Statement (DEIS) has been prepared for the Montana Tunnels Mine ''M'' Pit Mine Expansion administered by the Bureau of Land Management's Butte Field Office (BLM) and the Montana Department of Environmental Quality (DEQ). Operations on public lands are on mining claims located in accordance with the General Mining Law of 1872, as amended (30 U.S.C. 22 *et seq.*). The public is invited to review and comment on the range and adequacy of the draft alternatives and associated environmental effects. For comments to be most helpful, they should relate to specific concerns or conflicts that are within the legal responsibilities of the BLM and DEQ. The DEIS addresses alternatives associated with Montana Tunnels Mine ''M'' Pit Mine Expansion.

**DATES:** We will accept written comments on the Draft EIS for 60 days following the date the Environmental Protection Agency (EPA) publishes its Notice of Availability in the **Federal Register**. The last day of the written comment period may be identified at the Internet address below, after publication of the EPA Notice of Availability in the **Federal Register**. We will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media new releases, and/or mailings. The Draft EIS will be posted on the Montana DEQ Web site *http://www.deq.state.mt.us.*

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

- *E-mail: ghallsten@state.mt.us.*
- *Mail:* Send written comments to ''M'' Pit Mine Expansion at Montana Tunnels Mine EIS, Greg Hallsten, Montana Department of Environmental Quality, Director's Office, PO Box 200901, Helena, MT 59620–0901.

• *Fax:* (406) 444–4386.

**FOR FURTHER INFORMATION CONTACT:** For further information and/or to request a copy of the document, contact: Greg Hallsten, Montana Department of Environmental Quality, PO Box 200901, Helena, MT 59620–0901 or David Williams, Bureau of Land Management, Butte Field Office, 106 N. Parkmont, Butte, MT 59701.

Documents related to this EIS, including public comments, will be posted on the Montana DEQ Web site (*http://www.deq.state.mt.us*) and may be published as part of the final EIS.

**SUPPLEMENTARY INFORMATION:** 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. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Dated: December 6, 2007.

**Richard M. Hotaling,**

*Field Manager.*

[FR Doc. E8–2242 Filed 2–7–08; 8:45 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–040–5101–ER–F851; N–79742; 8–08807]**

### Notice of Availability of the Final Environmental Impact Statement for the Kane Springs Valley Groundwater Development Project, Nevada

**AGENCY:** Lead Agency—Bureau of Land Management, Interior; Cooperating Agencies—U.S. Fish and Wildlife Service, Interior; State of Nevada Department of Wildlife; Moapa Valley Water District, Nevada.

**ACTION:** Notice of Availability.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (FEIS) that analyzes a proposed right-of-way for groundwater and conveyance facilities in Lincoln County. This notice initiates the public review process on the FEIS.

**DATES:** The Kane Springs Valley Groundwater Development Project FEIS will be available for review and comment for 30 days following the date the Environmental Protection Agency publishes their Notice of Availability in the **Federal Register**.

**ADDRESSES:** Submit written comments on the FEIS using any of the following methods:

• *Mail:* Penny Woods, Project Manager, P.O. Box 12000, Reno, NV 89520.

• *Fax:* 775–861–6689 (Attn: Penny Woods, Project Manager).

• *E-mail: nvgwprojects@blm.gov.*

**FOR FURTHER INFORMATION CONTACT:** Penny Woods, BLM Project Manager, P.O. Box 12000, Reno, NV 89520, telephone 775–861–6466, or e-mail: *nvgwprojects@blm.gov* with ''Kane Springs Information Request'' in the subject line.

**SUPPLEMENTARY INFORMATION:** The FEIS describes and analyzes a proposal for groundwater facilities in the Kane Springs Valley submitted by the Lincoln County Water District (LCWD). The FEIS addresses the proposal submitted by LCWD, an alternative alignment, and a no action alternative. Under the Proposed Action, the LCWD would develop and convey groundwater in Kane Springs Valley to private land for community development purposes in Coyote Springs Valley. The volume of water to be transported through the proposed facilities could be up to 5,000 acre-feet per year.

The proposed project would be located in unincorporated portions of southwestern Lincoln County, Nevada, and would consist of a 13.2 mile pipeline, seven production wells, water storage tanks, a 12.5 kV transmission line, and a fiber optic line.

On June 22, 2007, the BLM published the Notice of Availability for the Draft EIS for this project in the **Federal Register**. Nineteen comments were received from individuals, organizations, agencies and a tribal band. Specific comment responses are provided in the FEIS, and issues and concerns raised during the review are addressed in the FEIS.

Copies of the FEIS will be mailed to individuals, agencies, or companies who previously requested copies or who responded to the BLM on the Draft EIS. Copies of the FEIS are available on request from the BLM Nevada State Office, 1340 Financial Blvd., P.O. Box 12000, Reno, NV 89520, phone 775–861–6681 or e-mail to: *nvgwprojects@blm.gov.* You may request a hard copy or a computer disc (CD). The document will be available electronically at: *http://www.blm.gov/nv/.* Copies of the FEIS will be available for review at the following locations:

• Bureau of Land Management, Nevada State Office, 1340 Financial Blvd., Reno, Nevada.

• Bureau of Land Management, Ely Field Office, 702 North Industrial Way, Ely, Nevada.

All comment submittals to this FEIS must include the commenter's name and street address. Comments, including the names and street addresses of respondents, will be available for public review at the Nevada State Office during regular business hours (9 a.m. to 4:30 p.m., Monday through Friday except for Federal holidays). Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

**Ron Wenker,**

*Nevada State Director.*

[FR Doc. E8–2231 Filed 2–7–08; 8:45 am]

BILLING CODE 4310–HC–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[Docket No. AZ–910–0777–XP–241A]**

### State of Arizona Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Arizona Resource Advisory Council Meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Arizona Resource Advisory Council (RAC), will meet on March 6, 2008, in Phoenix, Arizona, at the BLM National Training Center located at 9828 North 31st Avenue in Phoenix from 8 a.m. and conclude at 4:30 p.m. Morning agenda items include: Review of the December 6, 2007, meeting minutes for RAC and Recreation Resource Advisory Council (RRAC) business; BLM State Director's update on statewide issues;

presentations on BLM Route Evaluation and Designation Process; Healthy Lands Initiative; and the National Landscape Conservation System; Discussion on the 2008 RAC Annual Work Plan; RAC questions on BLM Field Managers Rangeland Resource Team proposals; and, reports by RAC working groups. A public comment period will be provided at 11:30 a.m. on March 6, 2007, for any interested persons who wish to address the Council on BLM programs and business.

Under the Federal Lands Recreation Enhancement Act, the RAC has been designated the RRAC, and has the authority to review all BLM and Forest Services (FS) recreation fee proposals in Arizona. The afternoon meeting agenda on March 6 will include review and discussion of the Recreation Enhancement Act (REA) Working Group Report, REA Work Group meeting schedule and future BLM/FS recreation fee proposals. In addition, the following FS fee proposal will be discussed:

(1) Kentucky Camp Headquarters Building (Coronado National Forest)—The Forest Service is considering a change in permit fees for rental of historic structures at Kentucky Camp. The current fee is $75/night to rent the small restored cabin, which accommodates up to 5 people. The proposed fee increase of $200 will include 2-nights' rental of the cabin and 1-day-use rental of the restored Headquarters building, accommodating up to 50 people. The proposed fees are in line with those charged by the nearest private enterprise offering similar facilities.

After completing their RRAC business, the BLM RAC will provide recommendations to the RAC Designated Federal Official on the fee proposal and discuss future RAC meetings and locations.

**DATES:** *Effective Date:* March 6, 2008.

**FOR FURTHER INFORMATION CONTACT:** Deborah Stevens, Bureau of Land Management, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427, 602–417–9504.

**Helen M. Hankins,**

*Associate State Director*

[FR Doc. 08–550 Filed 2–7–08; 8:45 am]

**BILLING CODE 4310–32–M**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 731–TA–1114 and 1115 (Final)]**

## Certain Steel Nails From China and the United Arab Emirates

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of the final phase of antidumping investigations.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation Nos. 731–TA–1114 and 1115 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China and the United Arab Emirates of certain steel nails, provided for in subheadings 7317.00.55, 7317.00.65, and 7317.00.75 of the Harmonized Tariff Schedule of the United States (HTSUS).[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**DATES:** *Effective Date:* January 23, 2008.

**FOR FURTHER INFORMATION CONTACT:** Fred Ruggles (202–205–3187/ *fred.ruggles@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.* The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of certain steel nails from China and the United Arab Emirates are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). These investigations were requested in a petition filed on May 29, 2007, by Davis Wire Corporation (Irwindale, CA), Gerdau Ameristeel Corporation (Tampa, FL), Maze Nails (Peru, IL), Mid Continent Nail Corporation (Poplar Bluff, MO), and Treasure Coast Fasteners, Incorporated (Fort Pierce, FL).

*Participation in the investigations and public service list.* Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as ''certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot-dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Finished nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire. Certain steel nails subject to this proceeding are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55, 7317.00.65 and 7317.00.75. Excluded from the scope of this proceeding are roofing nails of all lengths and diameter, whether collated or in bulk, and whether or not galvanized. Steel roofing nails are specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails. Also excluded from the scope of this proceeding are corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side. Also excluded from the scope of this proceeding are fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30. Also excluded from the scope of this proceeding are thumb tacks, which are currently classified under HTSUS 7317.00.10.00. Also excluded from the scope of this proceeding are certain brads and finish nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.''

rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.* Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report.* The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on May 27, 2008, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

*Hearing.* The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on June 10, 2008, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 3, 2008. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 4, 2008, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

*Written submissions.*—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is June 3, 2008. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is June 17, 2008; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before June 17, 2008. On July 1, 2008, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 3, 2008, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: February 4, 2008.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8–2333 Filed 2–7–08; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Shipbuilding Research Program (''NSRP'')

Notice is hereby given that, on December 20, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Shipbuilding Research Program (''NSRP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Manitowoc Marine Group, Marinette, WI has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NSRP intends to file additional written notification disclosing all changes in membership.

On March 13, 1998, NSRP filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 29, 1999 (64 FR 4708).

The last notification was filed with the Department on February 17, 2004. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 2004 (69 FR 10263).

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 08–563 Filed 2–7–08; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—NanoCable ATP Project No. 70NANB7H7043

Notice is hereby given that, on November 15, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), NanoCable ATP Project No. 70NANB7H7043 has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identifies of the parties to the venture are: NanoRidge Materials, Inc., Houston, TX; and The Boeing Company, Huntington Beach, CA. The general area of planned activity for NanoCable ATP Project No. 70NANB7H7043 is to develop a lightweight electrically conductive wire/cable utilizing conductive carbon nanotubes embedded in a polymer matrix.

The activities of this venture project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, U.S. Department of Commerce.

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 08–559 Filed 2–7–08; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on January 10, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Capella University, Minneapolis, MN; John Wiley & Sons, Higher Education, Hoboken, NJ; The Pennsylvania State University, University Park, PA; Tele-Universite, Montreal, Quebec, Canada; Tennessee Board of Regents—Campus Collective, Nashville, TN; University of North Carolina—Wilmington, Wilmington, NC; and University of Toronto, Toronto, Ontario, Canada have been added as parties to this venture. Also, Indiana University Purdue University Indianapolis, Indianapolis, IN; and Committee on Institutional Cooperation, University Park, PA have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on October 18, 2007. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 3, 2007 (72 FR 67965).

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 08–560 Filed 2–7–08; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

A notice is hereby given that, on December 21, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Santa Barbara Infrared, Santa Barbara, CA has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of ther group research project. Membership in this group research project remains open, and Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notifications disclosing all ahcanges in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on October 10, 2007. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 7, 2007 (72 FR 6265).

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 08–561 Filed 2–7–08; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on January 8, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Network Centric Operations Industry Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Themis Computer, Fremont, CA; Wind River Systems, Alameda, CA; SteelCloud, Herndon, VA; SGI, Mountain View, CA; and S.C. SIVECO Romania S.A., Bucharest, Romania have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned

activity of the group research project. Membership in this group research project remains open, and Network Centric Operations Industry Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 19, 2004, Network Centric Operations Industry Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on October 12, 2007. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 7, 2007 (72 FR 62866).

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 08–562 Filed 2–7–08; 8:45 am]

**BILLING CODE 4410–11–M**

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States v. Pearson PLC, Pearson Education Inc., Reed Elsevier PLC, Reed Elsevier NV, and Harcourt Assessment Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Pearson plc, Pearson Education Inc., Reed Elsevier PLC, Reed Elsevier NV, and Harcourt Assessment Inc.*, Civil Action No. 1:08–cv–00143. On January 24, 2008, the United States filed a Complaint to enjoin the proposed acquisition by Pearson plc and Pearson Education Inc. (collectively ''Pearson''), of Harcourt Assessment Inc. (''Harcourt''), a wholly-owned subsidiary of Reed Elsevier PLC and Reed Elsevier, NV, and to obtain equitable and other relief. The Complaint alleges that Pearson's acquisition of Harcourt would substantially lessen competition in the markets for adaptive behavior, speech and language, and adult abnormal personality clinical tests in violation of section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Pearson to divest: (1) Harcourt's adaptive behavior clinical test, the Adaptive Behavior Assessment System; (2) Harcourt's adult abnormal personality clinical test, the Emotional Assessment System, which is under development; and (3) in the speech and language clinical test market, either Pearson's Comprehensive Assessment of Spoken Language and the Oral and Written Language Scales or Harcourt's Clinical Evaluation of Language Fundamentals.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the United States Department of Justice, Antitrust Division, Antitrust Documents Group, 325 7th Street, NW., Room 215, Washington, DC 20530 (telephone: 202–514–2481), on the United States Department of Justice's Web site at *http://www.usdoj.gov/atr*, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by United States Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to James J. Tierney, Chief, Networks and Technology Enforcement Section, Antitrust Division, United States Department of Justice, 600 E Street, NW., Suite 9500, Washington, DC 20530 (telephone: 202–307–6200).

**Patricia A. Brink,**

*Deputy Director of Operations.*

UNITED STATES OF AMERICA Department of Justice, Antitrust Division, 600 E Street, NW., Suite 9500, Washington, DC 20530, Plaintiff, v. Pearson PLC, 80 Strand WC2R 0RL London, England; Pearson Education Inc., One Lake Street, Upper Saddle River, New Jersey 07458; Reed Elsevier PLC, 1–3 Strand WC2N 5JR London, England; Reed Elsevier NV, Radarweg 29, 1043 NX Amsterdam, The Netherlands; Harcourt Assessment Inc., 14500 Bulverde Road, San Antonio, Texas 78259, Defendants.

[Case No.: 1:08–cv–00143, Judge: Kollar-Kotelly, Colleen, Deck Type: Antitrust, Date Stamp: 1/24/2008]

### Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to enjoin the proposed acquisition by Pearson plc and Pearson Education Inc. (collectively ''Pearson''), of Harcourt Assessment Inc. (hereafter ''Harcourt''), a wholly-owned subsidiary of Reed Elsevier PLC and Reed Elsevier, NV (collectively ''Reed Elsevier''), and to obtain equitable and other relief. The United States complains and alleges as follows:

### I. Nature of the Action

1. On or about May 4, 2007, and amended on May 21, 2007, Pearson and Reed Elsevier signed a sale and purchase agreement for Pearson to acquire all of the outstanding voting securities of Harcourt, as well as additional Reed Elsevier assets, for approximately $950 million in cash.

2. Pearson and Harcourt both develop, publish, market, sell, and distribute individually-administered standardized norm-referenced comprehensive clinical tests (hereafter ''clinical tests''), including adaptive behavior and speech and language clinical tests. Pearson's proposed acquisition of Harcourt would combine the two largest publishers of such tests in the United States. Pearson also develops, publishes, markets, sells, and distributes market-leading adult abnormal personality clinical tests. Harcourt has invested substantial resources in the development of a new adult abnormal personality clinical test and plans to enter the market for such tests within the next year.

3. The markets for adaptive behavior, speech and language, and adult abnormal personality clinical tests are highly concentrated and there are high barriers to enter these markets. Pearson's proposed acquisition of Harcourt will eliminate competition between Pearson and Harcourt in these markets.

4. The United States brings this action to prevent Pearson's proposed acquisition of Harcourt because it would substantially lessen competition in the markets for adaptive behavior, speech and language, and adult abnormal personality clinical tests in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

### II. Parties to the Proposed Acquisition

5. Pearson plc, a U.K. corporation with its headquarters in London, England, operates businesses in educational publishing, business information, and consumer publishing. Pearson Education Inc. (hereafter ''Pearson Education''), a wholly-owned subsidiary of Pearson plc, is a Delaware corporation with its headquarters in Upper Saddle River, New Jersey. Pearson Education develops, markets, sells, and distributes clinical tests throughout the United States.

6. Reed Elsevier PLC; a U. K. corporation with its headquarters located in London, England, and Reed Elsevier NV, a Dutch corporation with

its headquarters located in Amsterdam, Netherlands, jointly own Harcourt. Harcourt, a New York corporation with its headquarters located in San Antonio, Texas, develops, markets, sells, and distributes clinical tests throughout the United States.

**III. Jurisdiction and Venue**

7. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain the Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

8. Defendants develop, market, sell, and distribute clinical tests in the flow of interstate commerce. Defendants' activities in developing, marketing, selling, and distributing these products substantially affect interstate commerce. This Court has subject matter jurisdiction over this action pursuant to Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1331, 1337(a), and 1345.

9. Defendants have consented to venue and personal jurisdiction in this judicial district and venue is proper under 28 U.S.C. 1391 (d).

**IV. Trade and Commerce**

*A. Clinical Tests Generally*

10. Psychologists and clinicians, among others, use a variety of clinical tests to test for, and diagnose individuals with, certain disorders or disabilities, as well as to identify individuals at risk for such disorders or disabilities. Clinical tests can also be used to develop and provide intervention strategies for, and to monitor the progress of treatments for, such disorders or disabilities.

11. Publishers, including the Defendants, develop, edit, standardize, norm-reference, market, and distribute clinical tests for a wide range of disorders and disabilities that have been designed and authored by leading experts in such disciplines.

12. Standardization is the process of developing a test that reliably, validly, and consistently assesses a specific discipline. Standardized tests are authored, designed, and developed so that the test materials, test procedures, and test scoring are consistent across each test administration. Standardized test scores can then be documented empirically and compared across test administrations.

13. Norm-referencing is the process of determining average test scores across demographics. Publishers norm-reference a standardized test by administering the test to a representative sample of individuals and then determining an average test score. Norm-referenced tests can then be used to compare an individual's test score to an average test score of similarly-situated individuals.

14. Comprehensive tests are tests that fully assess the subject area being tested, as well as its various domains and degrees of affliction. By contrast, non-comprehensive tests, often termed ''screeners,'' are far less thorough and may be designed simply to indicate the likely presence or absence of a disorder or disability.

15. In addition to clinical tests, non-standardized, non-norm-referenced assessments (e.g., charts published in books or journals, single-scale tests, and free material available on the internet) are available to school psychologists and clinicians. However, such test materials are inferior to clinical tests because they do not provide the same levels of validity and reliability, nor can they be used in many situations in which a clinical test is required, for example, where such tests must be administered before a certain diagnosis or classification can be made in order for an individual to qualify for special services, such as special education or speech and language instruction.

*B. Relevant Product Markets*

1. Adaptive Behavior Clinical Tests

16. Pearson and Harcourt each publish the market-leading adaptive behavior clinical tests. Pearson publishes the Vineland Adaptive Behavior Scales, which is currently in its second edition, and Harcourt publishes the Adaptive Behavior Assessment System, which is currently in its second edition.

17. School psychologists and clinicians, among others, use adaptive behavior clinical tests to assess an individual's competence in meeting their independent needs and satisfying the social demands of their environment. Generally, adaptive behavior tests assess three broad domains of adaptive behavior: conceptual (*e.g.*, communication, functional academics, self-direction, and health and safety), social (*e.g.*, social skills and leisure), and practical (*e.g.*, self-care, home living, community use, and work).

18. Non-comprehensive adaptive behavior tests, such as those that only assess narrow adaptive behavior domains, are not substitutes for adaptive behavior clinical tests because such tests are not sufficiently broad to assess all relevant areas of adaptive behavior. Other adaptive behavior assessment scales, such as neuropsychological behavioral or emotional scales, do not assess the same domains as do adaptive behavior clinical tests. Moreover, non-standardized, non-norm-referenced adaptive behavior tests are not substitutes for adaptive behavior clinical tests because they do not provide the same levels of validity or reliability as clinical tests.

19. A small but significant post-acquisition increase in the price of adaptive behavior clinical tests would not cause customers to substitute other types of tests, or to otherwise reduce their purchases of adaptive behavior clinical tests, in sufficient quantities so as to make such a price increase unprofitable.

20. Accordingly, the development, marketing, sale, and distribution of adaptive behavior clinical tests constitutes a line of commerce and a relevant product market pursuant to Section 7 of the Clayton Act.

2. Speech and Language Clinical Tests

21. Pearson and Harcourt each publish market-leading speech and language clinical tests. Pearson publishes two such tests known as the Comprehensive Assessment of Spoken Language and the Oral and Written Language Scales, each of which is in its first edition. Harcourt publishes a speech and language clinical test known as the Clinical Evaluation of Language Fundamentals, which is currently in its fourth edition.

22. Speech-language pathologists, among others, use speech and language clinical tests to diagnose individuals having difficulties with understanding others, expressing thoughts and ideas, producing speech sounds, as well as other related difficulties. Speech and language clinical tests assess various domains, including receptive and expressive language.

23. Non-comprehensive speech and language tests, such as those that only assess narrow speech and language domains, are not substitutes for speech and language clinical tests because such tests are not sufficiently broad to assess all relevant areas of speech and language. Moreover, non-standardized, non-norm-referenced speech and language tests are not substitutes for speech and language clinical tests because they do not provide the same levels of validity or reliability as clinical tests.

24. A small but significant post-acquisition increase in the price of speech and language clinical tests would not cause customers to substitute other types of tests, or to otherwise reduce their purchases of speech and language clinical tests, in sufficient

quantities so as to make such a price increase unprofitable.

25. Accordingly, the development, marketing, sale, and distribution of speech and language clinical tests constitutes a line of commerce and a relevant product market pursuant to Section 7 of the Clayton Act.

3. Adult Abnormal Adult Personality Clinical Tests

26. Pearson publishes two series of adult abnormal personality clinical tests known as the Minnesota Multiphasic Personality Inventories, which are currently in their second edition, and the Millon Clinical Multiaxial Inventories, which are currently in their third edition. Harcourt is developing an adult abnormal personality clinical test known as the Emotional Assessment System that it expects to make commercially available in late 2008.

27. Adult abnormal personality tests are generally used by clinicians and psychologists to diagnose and assess chronic, inflexible, and maladaptive patterns of perceiving, thinking, and behaving that seriously impair an individual's ability to function in social settings. Such disorders include clinical disorders, such as anxiety, as well as personality disorders, such as paranoia. Many clinicians employ adult abnormal personality clinical tests to obtain comprehensive diagnoses of both kinds.

28. Other methods of assessing abnormal personality, such as using structured interviews or non-standardized tests (including developing one's own tests), are inferior to adult abnormal personality clinical tests because they do not have the same degree of reliability, and because interpreting one's own tests would introduce subjective elements into the analysis not present with the use of clinical tests. In addition, in some locations, for some applications, clinical tests are required by law and other methods of assessment cannot be used.

29. Non-comprehensive adult abnormal personality tests, such as those that only assess certain clinical or personality disorders, are not substitutes for adult abnormal personality clinical tests because such tests are not sufficiently broad to assess all relevant disorders of adult abnormal personality. Moreover, non-standardized, non-norm-referenced adult abnormal personality tests are not substitutes for adult abnormal personality clinical tests because they do not provide the same levels of validity or reliability as clinical tests.

30. A small but significant post-acquisition increase in the price of adult abnormal personality clinical tests would not cause customers to substitute other types of tests, or to otherwise reduce their purchases of adult abnormal personality clinical tests, in sufficient quantities so as to make such a price increase unprofitable.

31. Accordingly, the development, marketing, sale, and distribution of adult abnormal personality clinical tests constitutes a line of commerce and a relevant product market pursuant to Section 7 of the Clayton Act.

*C. Relevant Geographic Market*

32. The Defendants sell adaptive behavior, and speech and language clinical tests throughout the United States to psychologists, clinicians, speech-language pathologists, and others. Pearson also sells adult abnormal personality tests to psychologists, clinicians, and others in the United States. In the United States, customers would not purchase clinical tests published outside the United States because such tests have not been standardized or norm-referenced on samples of individuals located in the United States.

33. A small but significant post-acquisition increase in the price of adaptive behavior, speech and language, and adult abnormal personality clinical tests would not cause customers to turn to clinical tests published outside of the United States for the purchase of such tests.

34. Accordingly, the United States constitutes the relevant geographic market pursuant to Section 7 of the Clayton Act.

*D. Anticompetitive Effects: Reduced Price and Innovation Competition*

1. Adaptive Behavior Clinical Tests

35. The proposed acquisition will eliminate price and innovation competition between Pearson and Harcourt in the market for adaptive behavior clinical tests throughout the United States.

36. The adaptive behavior clinical test market is highly concentrated. Pearson and Harcourt's revenues currently account for approximately 66 percent and 26 percent of the revenues of the market, respectively. Pearson's proposed acquisition of Harcourt would therefore result in a post-merger share of approximately 92 percent of the adaptive behavior clinical test market.

37. The proposed acquisition will substantially increase the likelihood that Pearson will unilaterally increase the price, or reduce the number or quality, of adaptive behavior clinical tests published in the United States.

38. Any response of competing publishers of adaptive behavior clinical tests would not be sufficient to constrain the unilateral exercise of market power by Pearson after the acquisition. A significant number of customers regard Pearson and Harcourt as their first and second choices when purchasing adaptive behavior clinical tests, and consider such tests from other publishers to be a distant third choice. Therefore, an insufficient number of customers of adaptive behavior clinical tests would purchase a competing publisher's test to defeat an anti-competitive price increase by Pearson.

39. The proposed acquisition will therefore substantially lessen competition in the development, marketing, sale, and distribution of adaptive behavior clinical tests in the United States in violation of Section 7 of the Clayton Act.

2. Speech and Language Clinical Tests

40. The proposed acquisition will eliminate price and innovation competition between Pearson and Harcourt in the market for speech and language clinical tests throughout the United States.

41. The speech and language clinical test market is highly concentrated. Harcourt and Pearson's revenues currently account for approximately 64 percent and 26 percent ofthe revenues of the market, respectively. Pearson's proposed acquisition of Harcourt would therefore result in a post-merger share of approximately 90 percent of the speech and language clinical test market. Only one other firm in the United States develops, markets, and publishes a competing speech and language clinical test, and that test accounts for the remaining 10 percent of the market, on a revenue basis.

42. The proposed acquisition will substantially increase the likelihood that Pearson will unilaterally increase the price, or reduce the number or quality, of speech and language clinical tests published in the United States.

43. Any response of the competing publisher of speech and language clinical tests would not be sufficient to constrain the unilateral exercise of market power by Pearson after the acquisition because there are a significant number of customers who regard Pearson and Harcourt's speech and language clinical tests as their first and second choices, and consider the competing publisher's test to be a distant third. Therefore, an insufficient number of customers of speech and language clinical tests would purchase the competing publisher's test to defeat an anti-competitive price increase by Pearson.

44. The proposed acquisition will therefore substantially lessen competition in the development, marketing, sale, and distribution of speech and language clinical tests in the United States in violation of Section 7 of the Clayton Act.

3. Adult Abnormal Personality Clinical Tests

45. The proposed acquisition will eliminate price and innovation competition between Pearson and Harcourt in the market for adult abnormal personality clinical tests.

46. The adult abnormal personality clinical test market is highly concentrated and dominated by Pearson, which accounts for approximately 93 percent of the revenues for such tests. After many years of trying, only one other publisher in the United States has managed to obtain more than an insignificant share of this market. Customers prefer Pearson's tests and have made a significant investment in learning how to work with and use Pearson's tests. Such customers are committed to Pearson's tests and thus far have been unwilling to substitute another test. The small share that Pearson's only competitor has gained after many years is an indicator that customers consider the competitor's test to be a distant second choice to Pearson's tests.

47. Harcourt has invested substantial resources over a prolonged period of time in the development of a new computer-based adaptive adult abnormal personality clinical test that will utilize computer technology to reduce test administration time. Harcourt is in the standardization and norm-referencing phase of development and is in the process of collecting data from clinical and non-clinical examinees. Harcourt plans to enter the market for such tests to compete with Pearson in 2008. To date, no other publisher has formed plans to enter this market, and any potential entry by another publisher would require considerable lead time and development effort of the sort that Harcourt has already incurred.

48. Harcourt plans to enter the market with a new adult abnormal personality clinical test that will offer new features and functionality that customers desire. Such new features and functionality are not currently offered by either Pearson or the other competing publisher. Accordingly, Harcourt's entry would likely benefit clinicians and their patients through price and innovation competition for adult abnormal personality clinical tests.

49. The proposed acquisition will therefore substantially lessen competition in the development, marketing, sale, and distribution of adult abnormal personality clinical tests in the United States in violation of section 7 of the Clayton Act.

*E. Entry: New Entrants Will Not Defeat an Exercise of Market Power*

50. Successful entry into the markets for the development, marketing, sale, and distribution of adaptive behavior, speech and language, and adult abnormal personality clinical tests in the United States is difficult, time consuming, and costly.

51. Entry into such markets in the United States takes many years. A new entrant would need to contract with an author qualified to write a clinical test and then assemble a sophisticated editorial staff to develop the test. Clinical test development requires analyzing, editing, standardizing, and norm-referencing a new test, which takes two to four years to complete.

52. New entrants also would need to convince customers to switch from their current adaptive behavior, speech and language, or adult abnormal personality clinical test of choice to the entrant's new test.

53. Therefore, entry by any firm into the markets for the development, marketing, sale, and distribution of adaptive behavior, speech and language, and adult abnormal personality clinical tests would not be timely, likely, or sufficient to counter the anticompetitive effects of Pearson's proposed acquisition of Harcourt.

**V. Violations Alleged**

*Cause of Action*

(Violation of Section 7 of the Clayton Act)

54. The United States incorporates the allegations of paragraphs 1 through 53 above.

55. The proposed acquisition of Harcourt by Pearson would substantially lessen competition in interstate trade and commerce in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

56. Unless restrained, the acquisition will have the following anticompetitive effects, among others:

a. Competition in the adaptive behavior clinical test market in the United States will be lessened substantially;

b. Actual and potential competition between Pearson and Harcourt in the development, marketing, sale, and distribution of adaptive behavior clinical tests in the United States will be eliminated;

c. Prices for adaptive behavior clinical tests in the United States likely will increase, and innovation likely will decline;

d. Competition in the speech and language clinical test market in the United States will be lessened substantially;

e. Actual and potential competition between Pearson and Harcourt in the development, marketing, sale, and distribution of speech and language clinical tests in the United States will be eliminated;

f. Prices for speech and language clinical tests in the United States likely will increase, and innovation likely will decline;

g. Competition in the adult abnormal personality clinical test market in the United States will be lessened substantially;

h. Actual and potential competition between Pearson and Harcourt in the development, marketing, sale, and distribution of adult abnormal personality clinical tests in the United States will be eliminated; and

i. Potential decreases in prices for adult abnormal personality clinical tests in the United States likely will be eliminated, and innovation likely will decline.

**VI. Request for Relief**

57. The United States requests that this Court:

a. Adjudge and decree the proposed acquisition to violate section 7 of the Clayton Act, 15 U.S.C. 18;

b. Enjoin and restrain the Defendants and all persons acting on their behalf from consummating the proposed acquisition or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Pearson with the operations of Harcourt;

c. Award the United States its costs for this action; and

d. Grant the United States such other and further relief as the Court deems just and proper.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

_____/s/_____

Thomas O. Barnett (D.C. Bar #426840), *Assistant Attorney General, Antitrust Division.*

_____/s/_____

David L. Meyer (D.C. Bar #414420), *Deputy Assistant Attorney General, Antitrust Division.*

_____/s/_____

Patricia A. Brink,

*Deputy Director of Operations, Antitrust Division.*

_____/s/_____

James J. Tierney (D.C. Bar #434610), *Chief, Networks and Technology, Enforcement Section, Antitrust Division.*

_____/s/_____

Scott A. Scheele (D.C. Bar #429061), *Assistant Chief, Networks and Technology, Enforcement Section, Antitrust Division.*

_____/s/_____

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Dated: January 24, 2008.

**Final Judgment**

Whereas, Plaintiff, United States of America, filed its Complaint on January 24, 2008, and the United States and Defendants, Pearson plc and Pearson Education Inc. (collectively ''Pearson'') and Reed Elsevier PLC, Reed Elsevier NV, and Harcourt Assessment Inc. (collectively ''Reed Elsevier''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the Defendants to assure that competition is not substantially lessened;

And whereas, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, *it is ordered, adjudged and decreed:*

**I. Jurisdiction**

This Court has jurisdiction over the subject matter and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

**II. Definitions**

As used in this Final Judgment:

A. ''Pearson'' means Defendants Pearson plc, a U.K. corporation with its headquarters in London, England, and Pearson Education Inc., a Delaware corporation with its headquarters in Upper Saddle River, New Jersey, and includes their successors and assigns, and their subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''Reed Elsevier'' means Defendants Reed Elsevier PLC, a U.K. corporation with its headquarters in London, England, Reed Elsevier NV, a Dutch corporation with its headquarters in Amsterdam, Netherlands, and Harcourt Assessment Inc., (''Harcourt'') a New York corporation with its headquarters in San Antonio, Texas and includes their successors and assigns, and their subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''ABAS Assets'' means Reed Elsevier's Adaptive Behavior Assessment System (''ABAS'') first- and second-edition titles, incorporating the Downward Extension of the ABAS, and Reed Elsevier's ABAS Second Edition Intervention Planner.

D. ''Speech and Language Assets'' means (1) Pearson's Comprehensive Assessment of Spoken Language, (''CASL'') which is in its first edition (''CASL Assets'') and Pearson's Oral and Written Language Scales (''OWLS''), including the Oral Expression and Listening Comprehension Scales, the Written Expression Scale, and the OWLS second edition, which is under development (collectively ''OWLS Assets'') *or* (2) Reed Elsevier's Clinical Evaluation of Language Fundamentals (''CELF'') including the first-, second-, third-, and fourth-edition titles, the CELF Screener first-, second-, third-, and fourth-edition titles, the CELF Preschool first- and second-edition titles, the CELF Spanish first-, second-, third-, and fourth-edition titles, and the CELF Spanish Preschool, which is under development; excluding however, the Retained CMS and WMS Content (collectively ''CELF Assets'').

E. ''EAS Assets'' means Reed Elsevier's Emotional Assessment System (''EAS''), which is under development.

F. ''Divestiture Assets'' means: (1) the ABAS Assets; (2) the Speech and Language Assets; and (3) the EAS Assets.

The Divestiture Assets include:

1. All tangible assets that comprise each of the Divestiture Assets including, but not limited to, all historic and current research data and activities and development activities relating to the Divestiture Assets; all original and digital artwork, film plates and other reproductive materials relating to the Divestiture Assets including, but not limited to, all manuscripts, illustrations, any other content, and any revisions or revision plans thereof in print or digital form; all finished inventory of the Divestiture Assets including, but not limited to, all examination kits, manuals, test booklets, record forms, and response booklets; all contracts, agreements, commitments, certifications, and understandings relating to the Divestiture Assets, including, but not limited to, publishing agreements, author agreements, research agreements, author permissions and other similar agreements, supply and distribution agreements for the Divestiture Assets; all customer lists, contracts, accounts, and credit records or similar records of all sales and potential sales of the Divestiture Assets; all sales support and promotional materials, advertising materials, and production, sales and marketing files, and all other records relating to the Divestiture Assets;

2. All intangible assets used in the development, production, servicing, sale and distribution of each of the Divestiture Assets, including, but not limited to, all patents, licenses and sublicenses, adaptation licenses, intellectual property, copyrights, contract rights, trademarks (registered and unregistered), trade names, service marks, and service names relating to the Divestiture Assets, but excluding corporate-level trademarks of Pearson and Harcourt; all technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, scoring rules, scoring algorithms, and specifications for materials relating to the Divestiture Assets; all quality assurance and control procedures, design tools and simulation capability relating to the Divestiture Assets; all manuals and technical information used for any purpose relating to the Divestiture Assets or that Defendants provide to their own employees, customers, suppliers, agents or licensees for use in relation with the Divestiture Assets; and all other intangible research data concerning historic and current research and development efforts relating to the

Divestiture Assets, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments;

3. The OWLS Assets also specifically include all tangible assets relating to the development of the OWLS second-edition titles including, but not limited to, all research data and development activities; all tryout and standardization easels, administration materials, record forms, tryout data, standardization data, and data for reliability and validity studies;

4. The EAS Assets also specifically include all tangible and intangible assets relating to the development of the EAS including, but not limited to, all research data and development activities; all tryout and standardization easels, administration materials, record forms, tryout data, standardization data, and data for reliability and validity studies; and all algorithmic data including, but not limited to, data relating to item banking, continuous item rotation, item analysis, item calibration, norming, test equating, scale development, computer-based testing, and computer-adaptive testing; and all applications of Sampling Theory, the Generalized Graded Unfolding model, Generalizability Theory model, Structural Equation model, and other Item Response Theory models;

5. A royalty-free license to the Acquirer(s) of the ABAS Assets and CELF Assets to use the Harcourt corporate trademark and trade name for the sole and limited purpose of distributing finished inventory of the ABAS Assets and CELF Assets;

6. At the option of the Acquirer( s) of the ABAS Assets and CELF Assets, a non-exclusive license to distribute the Scoring Assistant Software for use with the ABAS Assets and CELF Assets; and in the event that the Acquirer exercises such option, the Defendants shall provide to the Acquirer(s) of the ABAS Assets and CELF Assets all technical information and support necessary for the distribution and administration of the Scoring Assistant Software;

7. A royalty-free license to the Acquirer of the CASL Assets and OWLS Assets to use the Pearson corporate trademark and trade name for the sole and limited purpose of distributing finished inventory of the CASL Assets and OWLS Assets;

8. At the option of the Acquirer of the CASL Assets and OWLS Assets, a non-exclusive license to distribute the ASSIST Software for use with the CASL Assets and OWLS Assets; and in the event that the Acquirer exercises such option, the Defendants shall provide to the Acquirer of the CASL Assets and OWLS Assets all technical information and support necessary for the distribution and administration of the ASSIST Software; and

A license to the Acquirer of the CELF Assets to use the Retained CMS and WMS Content to market, sell or distribute any tests produced by the CELF Assets.

G. ''Acquirer'' or ''Acquirers'' means the entity or entities to whom Defendants divest the Divestiture Assets.

H. ''Scoring Assistant Software'' means Reed Elsevier's software for computerized scoring of individually-administered standardized norm-referenced comprehensive clinical tests (''clinical tests'') to assist test administrators including, but not limited to, software related to scoring of test results; tracking test scores and test history; raw-to-derived score conversion; score interpretation; outcomes analysis and reporting capabilities; problem identification and eligibility determination; discrepancy analysis; and intervention recommendations.

1. ''ASSIST Software'' means Pearson's Automated System for Scoring and Interpreting Standardized Tests and encompasses software for computerized scoring of clinical tests to assist test administrators including, but not limited to, software related to scoring of test results; tracking test scores and test history; raw-to-derived score conversion; score interpretation; outcomes analysis and reporting capabilities; problem identification and eligibility determination; discrepancy analysis; and intervention recommendations.

J. ''Licensed-Back ABAS Content'' means the two hundred and forty one (241) ABAS items described in Exhibit A that, as of the filing of the Complaint in this matter, are also employed in the marketing, sale, and distribution of Reed Elsevier's Bayley Scales of Infant and Toddler Development second- and third-edition titles.

K. ''Retained CMS and WMS Content'' means the fifty (50) Children's Memory Scale (''CMS '') and Wechsler Memory Scale (''WMS '') items that, as of the filing of the Complaint in this matter, are also employed in the marketing, sale, and distribution of the CELF Assets appearing as the Number Repetition 1 (15 items) and Familiar Sequences 1 (12 items) subtests of the CELF–4, which are borrowed from the Numbers and Sequences CMS subtests, respectively, and Number Repetition 2 (15 items) and Familiar Sequences 2 (8 items) subtests of the CELF–4, which are borrowed from the Digit Span and Mental Control WMS subtests, respectively.

**III. Applicability**

A. This Final Judgment applies to Pearson and Reed Elsevier, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Sections IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer(s) of the Divestiture Assets pursuant to this Final Judgment.

**IV. Divestitures**

A. Defendants are ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to one or more Acquirers acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestitures ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer(s) and the United States the

identity of any personnel responsible for any editorial content of any Divestiture Asset, and any personnel responsible for the sale, development, production, design, layout, standardization, norming, analysis, or research relating to any of the Divestiture Assets, to enable the Acquirer(s) to make offers of employment. Defendants will not interfere with any negotiations or attempts by the Acquirer(s) to employ or contract with any persons responsible for any such activity related to any Divestiture Asset.

D. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel responsible for the Divestiture Assets; and to have access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall have the right to obtain, from the Acquirer of the ABAS assets, a license to use the Licensed-Back ABAS Content for a period of time no longer than is necessary for Defendants to market, sell or distribute Reed Elsevier's Bayley Scales of Infant and Toddler Development second- and third-edition titles; such license shall be subject to final review and approval by the United States.

F. To the extent Defendants receive any orders or inquiries for the ABAS, the CASL, the OWLS, or the CELF, and an Acquirer has obtained the Divestiture Assets relating to such test, Defendants shall forward such orders and inquiries to the respective Acquirer for a period of time not to exceed two (2) years.

G. Defendants shall warrant to the respective Acquirer or Acquirers of the ABAS Assets, the CASL Assets and OWLS Assets, and the CELF Assets, that the respective Divestiture Assets will be operational on the date of sale. Defendants shall warrant to the Acquirer of the EAS Assets that the EAS Assets have been developed in a manner no less vigorous than existing development plans, as of the filing of the Complaint in this matter, and maintained in a manner that has preserved the economic viability of the assets, and that, upon divestiture, Acquirer will receive good title to all the assets that comprise the EAS Assets as of the date of sale. Defendants shall warrant to the Acquirer or Acquirers that the Divestiture Assets they acquire have been maintained and operated separately in a manner as required under the Hold Separate Stipulation and Order (''Hold Separate'') filed simultaneously with the Court.

H. Nothing in this Final Judgment shall be construed to require the Acquirer or Acquirers as a condition of any license granted by or to Defendants pursuant to Sections II(F)(6), (8), and (9) and IV(E) to extend to Defendants the right to use any improvements made by the Acquirer or Acquirers to any software or content used in the marketing, sale or distribution of clinical tests.

I. Defendants shall not take any action that will impede in any way the operation or divestiture of the Divestiture Assets.

J. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer(s) as part of a viable, ongoing business of publishing clinical tests. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

(1) Shall be made to an Acquirer(s) that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of publishing clinical tests; and

(2) Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer(s) and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

**V. Appointment of Trustee**

A. If Defendants have not divested the Divestiture Assets within the time period specified in Section IV(A), Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer(s) acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestitures.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestitures.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth

the trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished the divestitures ordered under this Final Judgment within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

**VI. Notice of Proposed Divestitures**

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the trustee, whichever is then responsible for effecting the divestitures required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer(s), any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

**VII. Financing**

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

**VIII. Hold Separate**

Until the divestitures required by this Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate entered by this Court. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

**IX. Affidavits**

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have been completed under Section IV or V, Defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestitures have been completed.

**X. Compliance Inspection**

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be pennitted:

(1) Access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, Defendants' officers,

employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

**XI. No Reacquisition**

Pearson may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

**XII. Retention of Jurisdiction**

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

**XIII. Expiration of Final Judgment**

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

**XIV. Public Interest Determination**

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16

_____

United States District Judge

**Exhibit A**

The Licensed-Back ABAS Content includes all of the items appearing in the ABAS–II Parent/Primary Caregiver (Ages 0–5) that, as of the filing of the Complaint in this matter, also appear as the Adaptive Behavior Scale subtest in Reed Elsevier's Bayley Scales of Infant and Toddler Development (''Bayley-III''). Specifically, the shared content includes all items in the following scales: Communication, Community Use, Functional Pre-Academics, Home Living, Health and Safety, Leisure, Self-Care, Self-Direction, Social, and Motor.

In addition to the shared items, the shared content within the scales listed above also includes the following:

1. Administration instructions and sample items (appearing on pp. 4–5 of the Bayley-III Social-Emotional and Adaptive Behavior Questionnaire, or the ''record form'');

2. Record form summary page content and design, including the following tables: raw-score to scaled-score conversions, sum of scaled scores to composite-score conversions, skill area scaled score profile, composite score profile and supplemental analysis—discrepancy comparisons (appearing on page 14 of the Bayley-III Social Emotional and Adaptive Behavior Questionnaire);

3. Norms for the Bayley-III Adaptive Behavior subtest appearing in the Bayley-III Administration Manual, which include references describing the adaptive behavior scale, and administration and scoring instructions on pages 4, 30–39 and 173–176; and the following norms tables: A.3 Adaptive Behavior Skill Area Scales Scores by Age (p. 191–197), A.6 Sum of GAC and Adaptive Domain Scaled Scores Converted to Composite Scores and GAC and Adaptive Domain Percentile Ranks and Confidence Intervals (p. 200–209), B.3 Differences Between Adaptive Domain Composite Scores Required For Statistical Significance (p. 216), and B.4 Differences Between Adaptive Domain Composite Scores Obtained By Various Percentages (p. 217); and

4. Norms for the Bayley-III Adaptive Behavior subtest appearing in the Bayley-III Technical Manual, which include references describing the adaptive behavior scale, administration and scoring instructions, and technical information on pages 9, 10, 28, 45–53, 57–59, 61–62, 64–66, 70, 80–83, 97–98, and 116–119.

**Competitive Impact Statement**

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

**I. Nature and Purpose of the Proceeding**

The United States filed a civil antitrust Complaint on January 24, 2008, seeking to enjoin the proposed acquisition by Pearson plc and Pearson Education Inc. (collectively ''Pearson'') of Harcourt Assessment Inc. (hereafter ''Harcourt''), a wholly-owned subsidiary of Reed Elsevier PLC and Reed Elsevier NV (collectively ''Reed Elsevier''). The Complaint alleges that the likely effects of this acquisition would be to lessen competition substantially in the markets for individually-administered standardized norm-referenced comprehensive clinical tests (hereafter ''clinical tests'') in the subject areas of: (1) Adaptive behavior; (2) speech and language; and (3) adult abnormal personality, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The loss of competition caused by the acquisition will result in increased prices and decreased innovation for adaptive behavior and speech and language clinical tests in the United States. It will also eliminate likely reductions in prices for adult abnormal personality clinical tests and increased innovation for such tests that would otherwise result from Harcourt's impending entry into this market.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order (''Hold Separate'') and a proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed

Final Judgment, which is explained more fully below, the Defendants are required to divest certain adaptive behavior, speech and language, and adult abnormal personality clinical tests (hereafter ''Divestiture Assets''). Until the divestitures required by the Final Judgment have been accomplished, the Hold Separate requires Pearson and Harcourt to take steps to ensure that their clinical assessment businesses—Pearson Clinical Assessments (as defined in the Hold Separate) and Harcourt Clinical Assessments (as defined in the Hold Separate)—will continue to operate as separate, independent, economically viable, and ongoing competitive businesses; that the Divestiture Assets will be maintained and operated by Pearson Clinical Assessments and Harcourt Clinical Assessments as ongoing, economically viable, and active business concerns; and that competition is maintained during the pendency of the ordered divestitures.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

## II. Description of the Events Giving Rise to the Alleged Violations

### *A. The Defendants and the Proposed Transaction*

Pearson plc, a U.K. corporation with its headquarters in London, England, operates businesses in educational publishing, business information, and consumer publishing. Pearson Education Inc. (hereafter ''Pearson Education''), a wholly-owned subsidiary of Pearson plc, is a Delaware corporation with its headquarters in Upper Saddle River, New Jersey. Pearson Education develops, markets, sells, and distributes clinical tests throughout the United States.

Reed Elsevier PLC, a U.K. corporation with its headquarters located in London, England, and Reed Elsevier NV, a Dutch corporation with its headquarters located in Amsterdam, Netherlands, jointly own Harcourt. Harcourt, a New York corporation with its headquarters located in San Antonio, Texas, develops, markets, sells, and distributes clinical tests throughout the United States.

On or about May 4, 2007, and amended on May 21, 2007, Pearson and Reed Elsevier signed a sale and purchase agreement for Pearson to acquire all of the outstanding voting securities of Harcourt, as well as additional assets, for approximately $950 million in cash.

### *B. The Competitive Effects of the Transaction on Clinical Test Publishing*

#### 1. Clinical Test Publishing

Clinical tests are used to screen, diagnose, provide intervention strategies for, and to monitor progress of individuals with disabilities or individuals at risk for disabilities. These tests are individually administered and scored by trained clinicians such as psychologists or speech-language pathologists rather than being administered and scored on a mass scale like state-wide summative educational achievement tests. These tests are also standardized by publishers. Standardization is the process of developing a test that reliably, validly, and consistently assesses a specific discipline. Standardized tests are authored, designed, and developed so that the test materials, test procedures, and test scoring are consistent across each test administration. Standardized test scores can be documented empirically and compared across test administrations, and if normed, compared across populations and relative to others in similarly-situated groups. Norming is the expensive and time-consuming process of giving a standardized test to a representative sample of individuals in order to determine average (or normal) test scores. Norms can then be used to compare the scores of an individual with those of other individuals in the specified representative sample.

In addition to clinical tests, non-standardized, non-norm-referenced assessments (*e.g.*, charts published in books or journals, single-scale tests, and free material available on the internet) are available to school psychologists and clinicians. However, such test materials are inferior to clinical tests because they do not provide the same levels of validity and reliability, nor can they be used in many situations in which a clinical test is required, for example, where such tests must be administered before a certain diagnosis or classification can be made in order for an individual to qualify for special services, such as special education or speech and language instruction.

#### *2. Relevant Product Markets*

The Complaint alleges that the development and sale of adaptive behavior, speech and language, and adult abnormal personality clinical tests are relevant product markets pursuant to Section 7 of the Clayton Act.

##### a. Adaptive Behavior Clinical Tests

Pearson and Harcourt each publish the market-leading adaptive behavior clinical tests. Pearson publishes the Vineland Adaptive Behavior Scales, which is currently in its second edition, (''Vineland'') and Harcourt publishes the Adaptive Behavior Assessment System, which is currently in its second edition (''ABAS'').

Adaptive behavior generally reflects an individual's competence in meeting their independent needs and satisfying the social demands of their environment in three broad domains: conceptual (*i.e.*, communication, functional academics, self-direction, and health and safety), social (*i.e.*, social skills and leisure), and practical (*i.e.*, self-care, home living, community use, and work). School psychologists and clinicians, among others, use adaptive behavior clinical tests to assess an individual's ability to meet these needs and demands. Other adaptive behavior assessment scales, such as neuropsychological behavioral or emotional scales, do not assess the same domains as do adaptive behavior clinical tests. Moreover, non-standardized charts or scales for adaptive behavior provide inferior assessments of adaptive behavior and do not provide the same levels of validity and reliability as do clinical tests.

A small but significant post-acquisition increase in the price of adaptive behavior clinical tests would not cause customers to substitute other types of tests, charts, or scales, or to otherwise reduce their purchases of adaptive behavior clinical tests, in sufficient quantities so as to make such a price increase unprofitable. For these reasons, such other tests, charts, and scales are not in the same product market as adaptive behavior clinical tests. Accordingly, the development, marketing, sale, and distribution of adaptive behavior clinical tests constitutes a line of commerce and a relevant product market pursuant to Section 7 of the Clayton Act.

##### b. Speech and Language Clinical Tests

Pearson and Harcourt each publish market-leading speech and language clinical tests. Pearson publishes two such tests, known as the Comprehensive Assessment of Spoken Language (''CASL'') and the Oral and Written Language Scales (''OWLS''), which are each in their first edition. Harcourt publishes a speech and language clinical test known as the Clinical Evaluation of Language Fundamentals,

which is currently in its fourth edition (''CELF'').

Speech and language disorders generally refer to problems with understanding others, expressing thoughts and ideas, and producing speech sounds. Speech and language clinical tests may assess several areas such as vocabulary, grammar, receptive and expressive language, semantics, morphology, and pragmatics. Other speech and language assessments, such as those that only assess narrow areas like phonology or grammar, are not as broad as clinical tests. Moreover, non-standardized, non-norm-referenced comprehensive speech and language tests are inferior to clinical tests as they do not provide the same levels of validity or reliability as do clinical tests.

A small but significant post-acquisition increase in the price of speech and language clinical tests would not cause customers to substitute other types of tests or non-standardized, non-norm-referenced tests, or to otherwise reduce their purchases of speech and language clinical tests, in sufficient quantities so as to make such a price increase unprofitable. For these reasons, such other tests are not in the same product market as speech and language clinical tests. Accordingly, the development, marketing, sale, and distribution of speech and language clinical tests constitutes a line of commerce and a relevant product market pursuant to Section 7 of the Clayton Act.

c. Adult Abnormal Personality Clinical Tests

Pearson publishes two series of adult abnormal personality clinical tests known as the Minnesota Multiphasic Personality Inventories, which are currently in their second edition (''MMPI''), and the Millon Clinical Multiaxial Inventories, which are currently in their third edition (''MCMI''). Harcourt is developing an adult abnormal personality clinical test known as the Emotional Assessment System (''EAS'') that it expects to make commercially available in late 2008.

Generally, abnormal personality disorders are chronic, inflexible, maladaptive patterns of perceiving, thinking, and behaving that seriously impair an individual's ability to function in social settings. Adult abnormal personality disorders include: (1) Clinical disorders such as anxiety, and (2) personality disorders such as paranoia. Many clinicians employ adult abnormal personality clinical tests to obtain comprehensive diagnoses of both kinds. Other methods of assessing abnormal personality, such as using structured interviews or non-standardized tests (including developing one's own tests), are inferior to adult abnormal personality clinical tests because they do not have the same degree of reliability, and because interpreting one's own tests would introduce subjective elements into the analysis not present with the use of clinical tests. In addition, in some locations, for some applications, clinical tests are required by law and other methods of assessment cannot be used.

A small but significant post-acquisition increase in the price of adult abnormal personality clinical tests would not cause customers to substitute structured interviews or non-standardized tests, or to otherwise reduce their purchases of adult abnormal personality clinical tests, in sufficient quantities so as to make such a price increase unprofitable. For these reasons, structured interviews and non-standardized tests are not in the same product market as adult abnormal personality clinical tests. Accordingly, the development, marketing, sale, and distribution of adult abnormal personality clinical tests constitutes a line of commerce and a relevant product market pursuant to Section 7 of the Clayton Act.

3. Relevant Geographic Market

The Complaint alleges that the Defendants sell adaptive behavior and speech and language clinical tests throughout the United States, and that Pearson also sells adult abnormal personality clinical tests throughout the United States. United States customers of Defendants' clinical tests would not purchase other clinical tests published outside the United States because such other tests have not been standardized or norm-referenced on samples of individuals located in the United States. Because customers in the United States would not substitute other clinical tests published outside of the United States for the Defendants' clinical tests published in the United States, the United States constitutes the relevant geographic market for all three relevant products pursuant to Section 7 of the Clayton Act.

4. Anticompetitive Effects of the Acquisition

a. Adaptive Behavior and Speech and Language Clinical Test Markets

The proposed acquisition will eliminate competition between Pearson and Harcourt and substantially increase market concentration in the already highly-concentrated markets for adaptive behavior and speech and language clinical tests. In the adaptive behavior clinical test market, the proposed acquisition will result in Pearson controlling 92 percent of the market for such tests in which Pearson's Vineland and Harcourt's ABAS are considered to be the best substitutes for each other. In the speech and language clinical test market, the proposed acquisition will result in Pearson controlling 90 percent of the market for such tests where Pearson's CASL and OWLS are considered substitutes for Harcourt's CELF.

The loss of this head-to-head competition in these markets will make it likely that Pearson will unilaterally increase the price of, or reduce innovation with respect to, these clinical tests. The responses of other publishers of adaptive behavior and speech and language clinical tests would not be sufficient to constrain a unilateral exercise of market power by Pearson after the acquisition, and new entry would not be timely, likely, or sufficient to defeat the likely anticompetitive effects of Pearson's proposed acquisition of Harcourt. For all of these reasons, the proposed transaction would substantially lessen competition in the development, marketing, sale, and distribution of adaptive behavior and speech and language clinical tests in the United States in violation of Section 7 of the Clayton Act.

b. Adult Abnormal Personality Clinical Tests

Pearson is the dominant supplier of adult abnormal personality clinical tests, with its MMPI and MCMI having approximately 93 percent share of the market for such tests sold in the United States. Harcourt is developing a computer-based adaptive adult abnormal personality clinical test known as the EAS, which it plans to make commercially available in late 2008. Harcourt is in the standardization and norm-referencing phase of development and is in the process of collecting data from clinical and non-clinical examinees. The EAS will offer new, desirable features and functionality that are not currently offered by either Pearson or the other competitor. Harcourt plans to sell and market the EAS to Pearson's adult abnormal personality clinical test customers and projects that the EAS will achieve a significant market share within a number of years.

The proposed acquisition would eliminate Harcourt as a new supplier of adult abnormal personality clinical tests and thereby prevent the reduction in prices and greater innovation for such

tests that would have otherwise resulted from Harcourt's entry. Other new entry would not be timely, likely, or sufficient to defeat the likely anticompetitive effects of Pearson's proposed acquisition of Harcourt. For all of these reasons, the proposed transaction would substantially lessen actual and potential competition in the development, marketing, sale, and distribution of adult abnormal personality clinical tests in the United States in violation of Section 7 of the Clayton Act.

## III. Explanation of the Proposed Final Judgment

### *A. The Divestiture Assets*

The proposed Final Judgment requires that the Defendants divest all of its assets related to clinical tests in these markets where competition would otherwise be harmed. The divestitures provided for in the proposed Final Judgment will eliminate the anticompetitive effects of the proposed acquisition in the markets for adaptive behavior, speech and language, and adult abnormal personality clinical tests. The Divestiture Assets must be divested in such a way as to satisfy the United States in its sole discretion that they can and will be operated by the acquirer(s) as viable, ongoing clinical test publishing concerns that can compete effectively in their respective relevant markets; and the Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective acquirers.

Specifically, the Divestiture Assets include:

a. In the adaptive behavior clinical tests market, Harcourt's ABAS first- and second-edition titles, incorporating the Downward Extension of the ABAS, and Harcourt's ABAS Second Edition Intervention Planner (collectively ''ABAS Assets'');

b. In the speech and language clinical tests market, either:

(1) Pearson's CASL, which is in its first edition (''CASL Assets''); *and,* Pearson's OWLS, including the Oral Expression and Listening Comprehension Scales, the Written Expression Scale, and the OWLS second edition, which is under development (collectively ''OWLS Assets''); *or*

(2) Harcourt's CELF, including the first-, second-, third-, and fourth-edition titles, the CELF Screener first-, second-, third-, and fourth-edition titles, the CELF Preschool first-, and second-edition titles, the CELF Spanish first-, second-, third-, and fourth-edition titles, and the CELF Spanish Preschool, which is under development; excluding however, the Retained CMS and WMS Content (collectively ''CELF Assets''); and

c. In the adult abnormal personality clinical tests market, Harcourt's EAS, which is under development (''EAS Assets'').

The Divestiture Assets also include all tangible and intangible assets that comprise each of the above-listed Divestiture Assets; the OWLS Assets also include all tangible assets relating to the development of the OWLS second-edition titles; and the EAS Assets also include all tangible and intangible assets relating to the development of the EAS.

The sale of the Divestiture Assets according to the terms of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the markets for adaptive behavior, speech and language, and adult abnormal personality clinical tests. In each market, the divestitures will establish a new, independent, and economically viable competitor.

### *B. Selected Provisions of the Proposed Final Judgment*

In antitrust cases involving acquisitions in which the United States seeks a divestiture remedy, it requires completion of the divestiture within the shortest period of time reasonable under the circumstances. A quick divestiture has the benefits of restoring competition lost in the acquisition and reducing the possibility of dissipation of the value of the assets. Paragraph IV(A) of the proposed Final Judgment requires the Defendants to divest, as independent and economically viable ongoing clinical test publishing concerns, the Divestiture Assets within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later.[1] The Divestiture Assets must be divested in such a way as to satisfy the United States in its sole discretion that they can and will be operated by the acquirer(s) as viable, ongoing clinical test publishing concerns that can compete effectively in their respective relevant markets; and Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective acquirers.

Several provisions of the proposed Final Judgment address licenses needed to effectuate the divestitures or to tailor the proposed relief to the anticompetitive concerns without disrupting the Defendants' other businesses. For example, paragraph II(F)(5) provides that the acquirer(s) of the ABAS Assets and CELF Assets will obtain royalty-free licenses to use the Harcourt corporate trademark and trade name for the purpose of distributing finished inventory of the ABAS Assets and CELF Assets held by Harcourt. Similarly, paragraph II(F)(7) provides that the acquirer of the CASL Assets and OWLS Assets will obtain a royalty-free licenses to use the Pearson corporate trademark and trade name for the purpose of distributing finished inventory of the CASL Assets and OWLS Assets held by Pearson. These licenses will ensure that the acquirer(s) of the Divestiture Assets will not infringe the Defendants' intellectual property rights in the course of distributing the finished inventory of products sold by or under any of the Divestiture Assets.

Paragraphs II(F)(6) and II(F)(8) provide for licenses relating to Pearson and Harcourt's scoring software, which the Defendants currently distribute for use with products sold by or under the Divestiture Assets. Paragraph II(F)(6) provides that the acquirer(s) of the ABAS Assets and CELF Assets will have the option to obtain a non-exclusive license to distribute Harcourt's Scoring Assistant Software (as defined in the proposed Final Judgment) for use with the ABAS Assets and CELF Assets; if the acquirer(s) exercise this option, the Defendants shall provide to the acquirer(s) all technical information and support necessary for the distribution and administration of the Scoring Assistant Software. Similarly, paragraph II(F)(8) provides that the acquirer of the CASL Assets and OWLS Assets will have the option to obtain a non-exclusive license to distribute Pearson's ASSIST Software (as defined in the proposed Final Judgment) for use with the CASL Assets and OWLS Assets; if the acquirer exercises this option, the Defendants shall provide to the acquirer all technical information and support necessary for the distribution and administration of the ASSIST Software. These provisions assure the acquirer(s)' access to scoring software that may be needed to facilitate the future sale and marketing of products sold by or under the Divestiture Assets by the acquirer(s).

Paragraphs II(F)(9) and IV(E) provide for licenses relating to certain content of the Divestiture Assets that is also employed in the marketing, sale, and

[1] The proposed Final Judgment also provides that this ninety-(90) day time period may be extended by the United States in its sole discretion for a total period not exceeding sixty (60) calendar days, and that the Court will receive prior notice of any such extension.

distribution of other Harcourt tests that the proposed Final Judgment does not require the Defendants to divest. First, Harcourt's CELF employs certain content used in Harcourt's Children's Memory Scale (''CMS'') and Harcourt's Wechsler Memory Scale (''WMS''). Since the proposed Final Judgment does not require the Defendants to divest the CMS or WMS, paragraph II(F)(9) provides that the acquirer of the CELF Assets will obtain a license to use the Retained CMS and WMS Content (as defined in the proposed Final Judgment) to market, sell or distribute any tests produced by the CELF Assets. This license will permit the acquirer of the CELF Assets unfettered rights to use the Defendants' Retained CMS and WMS Content, and to do so without infringing the Defendants' intellectual property rights.

Second, Harcourt's Bayley Scales of Infant and Toddler Development (the ''Bayley''), another test that the proposed Final Judgment does not require the Defendants to divest, employs certain content used in the ABAS. That content will be divested to the acquirer, but paragraph IV(E) provides that the Defendants shall have the right to obtain from the acquirer a license to use the Licensed-Back ABAS Content (defined in the proposed Final Judgment) for a period of time no longer than is necessary for the Defendants to market, sell or distribute the Bayley, and that such license shall be subject to final review and approval by the United States. This license will permit the Defendants to continue to use the Licensed-Back ABAS Content without interfering with the acquirer's use of that content, and infringing intellectual property rights relating to the ABAS Assets that will be divested to the acquirer.

Paragraph IV(F) of the Proposed Final Judgment provides for an orderly transition of the Divestiture Assets to the acquirer(s). It addresses the possibility that customers might continue to place orders for the divested clinical tests with Pearson or Harcourt. To the extent that Defendants receive any purchase orders or inquiries for the ABAS, the CASL, the OWLS, or the CELF tests, and an acquirer has already purchased the Divestiture Assets relating to such test, Defendants shall forward such orders and inquiries to the respective acquirer. The Defendants' obligation under this provision shall not exceed two (2) years.

Paragraph V of the proposed Final Judgment provides that in the event the Defendants do not accomplish the divestitures within the periods prescribed in the proposed Final Judgment, the Court will appoint a trustee selected by the United States to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six (6) months, if the divestitures have not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

*C. The Hold Separate Stipulation and Order*

In order to help ensure that, pending the divestitures, competition between the Divestiture Assets and the competing assets retained by Defendants is preserved, the Divestiture Assets are maintained as ongoing, economically viable, and active business concerns, and Defendants will accomplish the divestitures required by the proposed Final Judgment, Defendants have entered into the Hold Separate filed simultaneously with the Court. The Hold Separate requires Pearson and Harcourt to take steps to ensure that their clinical assessment businesses—Pearson Clinical Assessments and Harcourt Clinical Assessments—will each continue to operate as separate, independent, economically viable, and ongoing competitive businesses with management, development, sales, and marketing held separate and apart from those of each other as well as those of Defendants' other operations; and that management of the Divestiture Assets by Pearson Clinical Assessments and Harcourt Clinical Assessments will not be influenced by Defendants. In order to help implement the Hold Separate obligations, Defendants will appoint a person or persons to oversee Pearson Clinical Assessments and Harcourt Clinical Assessments, and those persons will be responsible for Defendants' compliance with the provisions of the Hold Separate. The Hold Separate does not require the Defendants to operate separate and independent support and operational services relating to the Divestiture Assets. Such support and operational services include warehousing, printing, order processing, accounting, customer service, technical assistance, merchandising, distribution, and delivery and are used by numerous Pearson and Harcourt products that are not being divested. The Hold Separate requires the Defendants to provide support and operational services to the businesses being held separate, including the Divestiture Assets, and also requires them to maintain such services relating to the Divestiture Assets at 2007 or previously approved levels for 2008, whichever are higher.

**IV. Remedies Available to Potential Private Litigants**

Section 4 ofthe Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5( a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Defendants.

**V. Procedures Available for Modification of the Proposed Final Judgment**

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the

Court and published in the **Federal Register**.

Written comments should be submitted to: James J. Tierney, Chief, Networks and Technology Enforcement Section Antitrust Division, United States Department of Justice, 600 E Street, NW., Suite 9500, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the Defendants may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

## VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Pearson's acquisition of all of the outstanding voting securities of Harcourt, as well as additional assets, from Reed Elsevier. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the provision of clinical tests in the relevant markets identified by the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

## VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest'' *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act).[2]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

*Bechtel,* 648 F.2d at 666 (emphasis added) (citations omitted).[3] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1,6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that

[2] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. Compare 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(1) (2006); see also SBC Commc'ns, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[3] Cf BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). See generally Microsoft, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As this court recently confirmed in *SBC Communications*, courts ''cannot look beyond the complaint in making the public interest detennination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made dear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[4]

**VIII. Determinative Documents**

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: January 24, 2008.

Respectfully submitted,

_____/s/_____

Damon J. Kalt
Sanford M. Adler
John C. Filippini (D.C. Bar # 165159)
Danielle M. Ganzi
*Attorneys, United States Department of Justice, Antitrust Division, Networks and Technology Enforcement Section, 600 E Street, NW., Suite 9500, Washington, DC 20530, (202) 307–6200.*

[FR Doc. 08–532 Filed 2–7–08; 8:45 am]

BILLING CODE 4410–11–M

[4] *See United States* v. *Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.'').

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review: Comment Request

February 5, 2008

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number) / e-mail: *king.darrin@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: Bridget Dooling, OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316 / Fax: 202–395–6974 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Employment Standards Administration

*Type of Review:* Extension without change of currently approved collection

*Title:* Pre-Hearing Statement

*OMB Control Number:* 1215–0085

*Form Number:* LS–18

*Estimated Number of Respondents:* 5,400

*Total Estimated Annual Burden Hours:* 918

*Total Estimated Cost Burden:* $2,376

*Affected Public:* Individuals or households

*Description:* The Form LS–18 is used to refer cases to the Department's Office of Administrative Law Judges for formal hearing under the Longshore and Harbor Workers' Compensation Act [33 U.S. C. 901].

**Darrin A. King,**

*Acting Departmental Clearance Officer.*

[FR Doc. E8–2368 Filed 2–7–08; 8:45 am]

BILLING CODE 4510–CF–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Science, Technology, Engineering, and Mathematics (STEM) Opportunities in the Workforce System Initiative; Solicitation for Grant Applications (SGA) SGA/DFA PY 07–03, Amendment Number 1

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Amendment.

**SUMMARY:** The Employment and Training Administration published a document in the **Federal Register** of January 15, 2008, announcing the availability of funds and solicitation for grant applications for the Science, Technology, Engineering, and Mathematics (STEM) Opportunities in the Workforce System Initiative. This amendment will make changes to the January 15 document by clarifying and correcting this Solicitation.

**FOR FURTHER INFORMATION CONTACT:** Marsha Daniels, Grants Management Specialist, Telephone (202) 693–3504.

**Amendment**

In the **Federal Register** of January 15, 2008, in FR Volume 73, Number 10, the

solicitation is hereby amended with the following:

1. This amendment is to clarify the type of Workforce Investment Board that is an Eligible Applicant for this Solicitation. Where an individual Workforce Investment Board is cited in the Solicitation it will be defined as a State or Local Workforce Investment Board.

2. On page 2533, Part I.C. Use of Funds/Allowable Activities, remove the following text: Activities funded under this Solicitation must be focused on developing skills and competencies related to fields identified in the Attachment.

Replace with the following text: Activities funded under this Solicitation must be focused on developing skills and competencies related to the H–1B industries and occupations identified in the Attachment and further limited by the list of NSF-defined STEM fields on page 2531, center column.

3. On page 2542, the Attachment: H–1B Industry Sectors and Occupations, add the following text under the header: For the purposes of this Solicitation, this list is further limited by the NSF-defined STEM fields on page 2531.

4. A virtual Prospective Applicant Conference was held via webinar for this grant competition on January 25, 2008. A recorded version can be viewed at: *http://www.workforce3one.org/view.cfm?id=4776&info=1*

Signed at Washington, DC, this 4th day of February 2008.

**Eric Luetkenhaus,**

*Grant Officer, Employment & Training Administration.*

[FR Doc. E8–2336 Filed 2–7–08; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Proposed Collection, Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Report on Current Employment Statistics.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before April 8, 2008.

**ADDRESSES:** Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, 202–691–7628. (This is not a toll free number.)

**FOR FURTHER INFORMATION CONTACT:** Amy A. Hobby, BLS Clearance Officer, 202–691–7628. (See **ADDRESSES** section.)

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Current Employment Statistics (CES) program provides current monthly statistics on employment, hours, and earnings, by industry and geography. CES estimates are among the most visible and widely-used Principal Federal Economic Indicators (PFEIs). CES data also are among the timeliest of the PFEIs, with their release each month by the BLS in the *Employment Situation*, typically on the first Friday of each month. The statistics are fundamental inputs in economic decision processes at all levels of government, private enterprise, and organized labor.

The CES monthly estimates of employment, hours, and earnings are based on a sample of U.S. nonagricultural establishments. Information is derived from approximately 260,000 reports (representing about 150,000 Unemployment Insurance (UI) accounts and 390,000 individual worksites), as of January 2008. Each month, firms report their employment, payroll, and hours on forms identified as the BLS–790. The sample is collected under a probability based design. Puerto Rico and the Virgin Islands collect an additional 4,800 reports using a quota sample.

A list of all form types currently used is listed below in the Desired Focus of Comments section of this notice. Respondents receive variations of the basic collection forms, depending on their industry. The BLS is requesting approval through February 29, 2011.

The CES program is a voluntary program under Federal statute (29 U.S.C. 2). Reporting to the State agencies is voluntary in all but four States (Oregon, Washington, North Carolina, South Carolina), Puerto Rico, and the Virgin Islands. To our knowledge, the States that do have mandatory reporting rarely exercise their authority. The collection form's confidentiality statement cites the Confidential Information Protection and Statistical Efficiency Act of 2002 and mentions the State mandatory reporting authority.

### II. Current Action

Office of Management and Budget clearance is being sought for the Report on Current Employment Statistics.

Automated data collection methods are now used for most of the CES sample. Approximately 115,000 reports are received through Electronic Data Interchange and 56,100 reports are collected using Computer Assisted Telephone Interviewing, as of January 2008. Touchtone Data Entry is the third largest mode, accounting for 37,100 reports. In comparison, only 4,300 reports are collected by mail. Fax also is a significant collection mode, as 16,200 reports are collected via this method.

Web collection is rapidly increasing in importance as approximately 14,200 reports were collected as of January 2008. The balance of the sample is collected through other automated methods, including submission of tapes, diskettes, and e-mail.

The BLS has decided to significantly increase the use of Web for CES data collection. Web when compared to Touchtone Data Entry has higher response rates. The BLS also has decided to stop research on fax optical character recognition collection due to cost and technical considerations. Instead, firms are offered the opportunity to submit an Excel file in a standard format through the BLS Web site.

### III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

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

*Type of Review:* Extension, without change, of a currently approved collection.

*Agency:* Bureau of Labor Statistics.

*Title:* Report on Current Employment Statistics.

*OMB Number:* 1220–0011.

*Affected Public:* State or local governments; businesses or other for-profit; non-profit institutions; small businesses or organizations.

| Form | Reports | Minutes per report | Frequency of response | Annual responses | Annual burden hours |
|---|---|---|---|---|---|
| A—Natural Resources and Mining | 1,400 | 11 | 12 | 16,800 | 3,080 |
| B—Construction | 11,900 | 11 | 12 | 142,800 | 26,180 |
| C—Manufacturing | 12,600 | 11 | 12 | 151,200 | 27,720 |
| E—Service Providing Industries | 169,600 | 11 | 12 | 2,035,200 | 373,120 |
| G—Public Administration | 43,300 | 6 | 12 | 519,600 | 51,960 |
| S—Education | 9,100 | 6 | 12 | 109,200 | 10,920 |
| Private Fax form | 16,100 | 11 | 12 | 193,200 | 35,420 |
| Public Administration Fax Form | 300 | 6 | 12 | 3,600 | 360 |
| Education Fax Form | 400 | 6 | 12 | 4,800 | 480 |
| Total | 264,700 | ..... | ..... | 3,176,400 | 529,240 |

*Total Burden Cost (capital/startup):* $0

*Total Burden Cost (operating/maintenance):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 4th day of February 2008.

**Cathy Kazanowski,**

*Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. E8–2338 Filed 2–7–08; 8:45 am]

**BILLING CODE 4510–24–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before March 10, 2008. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

*Mail:* NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

*E-mail: requestschedule@nara.gov.*

*Fax:* 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:** Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this

public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

**Schedules Pending**

1. Department of Agriculture, Cooperative State Research, Education, and Extension Service (N1–540–07–6, 18 items, 14 temporary items). Records of the Office of Communications, including FOIA coordination records, working files, drafts, routine or internal photographs and media relations records, and web site content, management, and technical records. Proposed for permanent retention are recordkeeping copies of significant, mission-related publications, photographs, and films. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

2. Department of Energy, Bonneville Power Administration (N1–305–07–1, 94 items, 82 temporary items). Comprehensive agency-wide schedule covering the records of 21 agency functions, including power generation; power transmission; power sales and marketing; transmission load; agency management and policy development; law and litigation; human resources; training; procurement, billing, budget, and accounting; property asset management; facilities, equipment, and vehicles; environmental compliance; energy conservation; safety and risk management; security; document management and workflow; news releases and publications; digital systems maintenance; geographic information systems; computer assisted design; internet and intranet services; weather and stream-flow; and reference. Proposed for permanent retention are recordkeeping copies of policy and procedure decisions for new and advanced technologies and methodologies, environmental impact statements and supporting documentation, Office of Management and Budget and congressional budget requests with supporting documentation, agency organization files, significant litigation case files, wildlife agreements and mitigation plans that establish policy precedents, strategic infrastructure policy development files, significant environmental compliance documentation, policy and procedures governing the sale and conservation of energy that apply new and advanced technologies, publications, geographic information system data layers and metadata for maps, and computer assisted design drawings for mission-related equipment and structures. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium, except for certain geographic information system and computer assisted design records.

3. Department of Energy, Office of Scientific and Technical Information (N1–434–06–1, 4 items, 2 temporary items). Records relating to agency final reports of scientific and technical projects. Included are paper and microform copies of final reports. Proposed for permanent retention are electronic copies of final reports and a cumulative index.

4. Department of Health and Human Services, Food and Drug Administration (N1–88–04–4, 8 items, 6 temporary items). Public calendars, employee newsletters, publication approvals, materials used to respond to public inquiries, and annual FOIA Reports. Proposed for permanent retention are recordkeeping copies of press releases and publications. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

5. Department of Homeland Security, Science and Technology Directorate (N1–563–07–18, 1 item, 1 temporary item). Master file of an electronic information system used to assess the status of coordination and cooperation between emergency response agencies at the local, tribal, state and federal level.

6. Department of Homeland Security, U.S. Customs and Border Protection (N1–568–07–1, 1 item, 1 temporary item). Master file for an electronic information system used to track passengers departing for and arriving from the European Union.

7. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (N1–436–07–6, 2 items, 2 temporary items). Master file and outputs of the Online LEAD System which makes available to law enforcement agencies a copy of Firearms Tracing System data, which was previously approved as permanent.

8. Department of Justice, Federal Bureau of Investigation (N1–65–07–21, 12 items, 12 temporary items). Records of the Counterterrorism Division including inputs, master files, system documentation and backups associated with an electronic information system used to collect and disseminate information about terrorist related threats and suspicious activities. Also included are shift transition and security audit logs, briefing books, and summaries. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

9. Department of State, Overseas Buildings Operations (N1–59–07–8, 4 items, 4 temporary items.). Records documenting technical aspects of construction progress for the new U.S. embassy compound in Baghdad, Iraq. Records include digital images and hard copy printouts, weekly construction status reports, and quality assurance reports.

10. Department of State, Bureau of Population, Refugees, and Migration (N1–59–08–3, 4 items, 3 temporary items). Proposal process files and Worldwide Refugee Admissions Processing System (WRAPS) master file and outputs accumulated by the Office of Refugee Admission. Proposed for permanent retention are recordkeeping copies of voluntary agency and affiliate monitoring reports.

11. Department of State, All Foreign Service Posts (N1–84–08–2, 9 items, 9 temporary items). Refugee coordinator files, fiscal records, correspondence with voluntary agencies, voluntary agency employee case files, and refugee case files.

12. Department of the Treasury, Internal Revenue Service (N1–58–08–7, 1 item, 1 temporary item). Revenue Procedure 92–29 case project files and supporting documents relating to tax on common improvements to real estate.

13. Department of the Treasury, Office of Thrift Supervision (N1–483–08–1, 48 items, 48 temporary items). This schedule authorizes the agency to apply the existing disposition instructions to records series regardless of recordkeeping medium. The records include correspondence files, congressional requests and response files, disaster recovery files, subject files, chronological files, signature files and report files. Paper recordkeeping copies of these files were previously approved for disposal.

14. Environmental Protection Agency, Headquarters (N1–412–07–26, 1 item, 1 temporary item). This schedule authorizes the agency to apply existing disposition instructions to records

regardless of the recordkeeping medium. The records consist of certification statements and correspondence from importers of chemical substances or mixtures documenting receipt of shipment as well as certifying compliance with provisions of the Toxic Substances Control Act. Paper recordkeeping copies of these files were previously approved for disposal.

15. Environmental Protection Agency, Regional Offices (N1–412–07–32, 1 item, 1 temporary item). This schedule authorizes the agency to apply existing disposition instructions to records regardless of the recordkeeping medium. The records consist of regional toxic substance files related to monitoring and compliance activities under the Toxic Substances Control Act. Paper recordkeeping copies of these files were previously approved for disposal.

16. Social Security Administration, Office of Disability and Income Security Programs (N1–47–08–1, 11 items, 11 temporary items). Records related to eligibility for new or continuing benefits under Title XVIII of the Social Security Act. The records in this schedule were previously approved for disposal; this schedule revises the description and/or disposition for certain of these records. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

Dated: February 4, 2008.

**Michael J. Kurtz,**

*Assistant Archivist for Records Services—Washington, DC.*

[FR Doc. E8–2447 Filed 2–7–08; 8:45 am]

BILLING CODE 7515–01–P

## NATIONAL SCIENCE FOUNDATION

### Committee on Equal Opportunities in Science and Engineering (CEOSE); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Committee on Equal Opportunities in Science and Engineering (1173).

*Dates/Time:* February 25, 2008, 8:30 a.m.–5:30 p.m. and February 26, 2008, 8:30 a.m–2 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Building entry badges must be obtained at the above address; the meeting will be held in Room 1235 of the National Science Foundation Building located at 4201 Wilson Boulevard in Arlington, Virginia.

*Type of Meeting:* Open.

*Contact Person:* Dr. Margaret E.M. Tolbert, Senior Advisor and Executive Liaison, CEOSE, Office of Integrative Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–8040. *mtolbert@nsf.gov.*

*Minutes:* May be obtained from the Executive Liaison at the above address.

*Purpose of Meeting:* To provide advice and recommendations concerning broadening participation in science and engineering.

*Agenda:*

**Monday, February 25, 2008**

*Welcome and Opening Statement by the CEOSE Chair; Introductions*

*Presentations and Discussions:*

- Key Points of the Meeting between the CEOSE Chair and the Director of the National Science Foundation.
- NAS Committee on Underrepresented Groups and the Expansion of the Science and Engineering Workforce Pipeline.
- Discussion with the Director of the National Science Foundation.
- The NSF Budget and Its Implications for Broadening Participation and the CEOSE Path Forward.
- The America Competes Act.
- Reports on NSF Advisory Committee Meetings by CEOSE Liaisons.
- Report of the CEOSE *Ad Hoc* Subcommittee on Strategic Planning.
- Report of the CEOSE *Ad Hoc* Subcommittee on Broadening Participation.

**Tuesday, February 26, 2008**

*Opening Statement by the CEOSE Chair*

*Presentations and Discussions:*

- Report of the CEOSE *Ad Hoc* Subcommittee on Persons with Disabilities—Follow-up Actions pertinent to the Mini-Symposium Held on October 15, 2007.
- Report of the CEOSE *Ad Hoc* Subcommittee on Accountability, Evaluation, and Communications—''*Joining Forces to Broaden Participation in Science and Engineering Strategies for Inter-Agency Collaborations*'', the Multi-Federal Agency Study.
- Action Items and Recommendations.
- Completion of Unfinished Business.

Dated: February 5, 2008.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. E8–2334 Filed 2–7–08; 8:45 am]

BILLING CODE 7555–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Nuclear Waste and Materials; Revised

The 186th Advisory Committee on Nuclear Waste and Materials (ACNW&M) meeting scheduled to be held February 12–14, 2008, Room T–2B3, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland has been revised as noted below. Notice of this meeting was previously published in the **Federal Register** on Tuesday, January 29, 2008 (73 FR 5235–5236).

The discussion of the item listed as the *Semiannual Briefing by the Office of Nuclear Materials Safety and Safeguards,* scheduled between 10:05 a.m. and 11:30 a.m. on Tuesday, February 12, 2008, has been cancelled.

The discussion of *ACNW&M Letter Reports* previously scheduled between 11:30 a.m. and 12 p.m. on Tuesday, February 12, 2008, will be scheduled between 10:05 a.m. and 12 p.m. that same day.

The discussion of the item listed as *Draft Guidance on Preventing Legacy Sites,* scheduled between 1 p.m. and 2:30 p.m. on Tuesday, February 12, 2008, has been cancelled.

A new discussion listed as *International Commission on Radiological Protection (ICRP) Recommendations—Final Report 103* has been added for Tuesday, February 12, 2008, between 1 p.m. and 1:30 p.m.

The discussion of the item listed as *Corrosion of Waste Package and Spent Fuel Dissolution in a Repository Environment* previously scheduled between 2:45 p.m. and 4 p.m. on February 12, 2008, will be scheduled from 1:45 p.m. to 3 p.m. that same day.

The discussion of ACNW&M Letters and Reports previously scheduled between 4 p.m. and 5:30 p.m. on February 12, 2008, will be scheduled between 3 p.m. and 5:30 p.m. that same day.

For further information, contact Mr. Antonio L. Dias, (Telephone 301–415–6805), between 6:45 a.m. and 4:30 p.m., EST.

Dated: February 4, 2008.

**Andrew L. Bates,**

*Advisory Committee Management Office.*

[FR Doc. E8–2385 Filed 2–7–08; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 52–014 and 52–015]**

### Tennessee Valley Authority; Notice of Hearing and Opportunity To Petition for Leave To Intervene on a Combined License for Bellefonte Units 3 and 4

Pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,'' 10 CFR part 50, ''Domestic Licensing of

Production and Utilization Facilities,'' and 10 CFR part 52, ''Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Plants,'' notice is hereby given that a hearing will be held, at a time and place to be set in the future by the U.S. Nuclear Regulatory Commission (NRC, the Commission) or designated by the Atomic Safety and Licensing Board (Board). The hearing will consider the application dated October 30, 2007, filed by Tennessee Valley Authority, pursuant to subpart C of 10 CFR part 52, for a combined license (COL). The application, which was supplemented by letters dated November 2, 2007, January 8, 2008, and January 14, 2008, requests approval of a COL for Bellefonte Units 3 and 4 located near the town of Scottsboro in Jackson County, Alabama. The application was accepted for docketing on January 18, 2008. The docket numbers established for this application are 52–014 and 52–015.

The hearing will be conducted by a Board that will be designated by the Chairman of the Atomic Safety and Licensing Board Panel or by the Commission. Notice as to the membership of the Board will be published in the **Federal Register** at a later date. The NRC staff will complete a detailed technical review of the application and will document its findings in a safety evaluation report (SER). The Commission will refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS) in accordance with 10 CFR 52.87, ''Referral to the Advisory Committee on Reactor Safeguards (ACRS),'' and the ACRS will report on those portions of the application that concern safety.

Any person whose interest may be affected by this proceeding and desires to participate as a party to this proceeding must file a written petition for leave to intervene in accordance with 10 CFR 2.309. Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which was promulgated by the NRC on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *HearingDocket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding even in instances in which the petitioner/requestor (or its counsel or representative) already holds a NRC-issued digital ID certificate. Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Standard Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Standard Time, Monday through Friday. The help line number is (800) 397–4209 or, locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filing must be submitted no later than 11:59 p.m. Eastern Standard Time on the due date.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, the Atomic Safety and Licensing Board, or a presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in the filing. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filing and would constitute a Fair Use application, participants are requested

not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice in the **Federal Register**. Non-timely filings will not be entertained absent a determination by the Commission or Board designated to rule on the petition, pursuant to the requirements of 10 CFR 2.309(c)(1)(i)–(viii).

A person who is not a party may be permitted to make a limited appearance by making an oral or written statement of his position on the issues at any session of the hearing or any pre-hearing conference within the limits and conditions fixed by the presiding officer, but may not otherwise participate in the proceeding.

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, and will be accessible electronically through the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing 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*. The application is also available at *http://www.nrc.gov/reactors/new-licensing/col.html*. The ADAMS accession number for the application is ML073110527. The ADAMS accession numbers for the supplements to the application are ML073090428, ML080100104, ML080160252. Some of the supplements contain information that is sensitive and these supplements are not available to the public.

Dated at Rockville, Maryland, this 4th day of February 2008.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. E8–2384 Filed 2–7–08; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Comment Request for Review of a Revised Information Collection: OPM Online Form 1417

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for clearance of a revised information collection. OPM Online Form 1417, the Combined Federal Campaign (CFC) Information System form, collects information from the 277 local CFC campaigns to verify campaign results and collect contact information. Revisions to the form include clarifying edits to items numbered 2–6, 9 and 10 of the Campaign Results Total Page, the elimination of questions numbered 13–15 of the Campaign Results Total Page and the return of one question edited to collect pledge amounts designated specifically for federal emergency or disaster relief, if any, on the Campaign Results Total Page.

We estimate 277 Online OPM Forms 1417 are completed annually. Each form takes approximately 20 minutes to complete. The annual estimated burden is 101 hours.

Comments are particularly invited on: Whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the appropriate use of technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or E-mail to *mbtoomey@opm.gov*. Please be sure to include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 60 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—Cherlynn Stevens, Office of the Combined Federal Campaign, U.S. Office of Personnel Management, 1900 E Street, NW., Room 5450, Washington, DC 20415.

U.S. Office of Personnel Management.

**Howard Weizmann,**

*Deputy Director.*

[FR Doc. E8–2291 Filed 2–7–08; 8:45 am]

**BILLING CODE 6325–46–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 25–37

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 25–37, Evidence to Prove Dependency of a Child, is designed to collect sufficient information for OPM to determine whether the surviving child of a deceased federal employee is eligible to receive benefits as a dependent child.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

Approximately 250 forms are completed annually. We estimate it takes approximately 60 minutes to assemble the needed documentation. The annual estimated burden is 250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, Fax (202) 418–3251 or via E-mail to *MaryBeth.Smith-Toomey@opm.gov*. Please include your mailing address with your request.

**DATES:** Comments on this proposal should be received within 60 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—Ronald W. Melton, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

*For Information Regarding Administrative Coordination—Contact:* Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

Office of Personnel Management.

**Howard Weizmann,**

*Deputy Director.*

[FR Doc. E8–2315 Filed 2–7–08; 8:45 am]

**BILLING CODE 6325–38–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.

*New Information Collection:*

Study on the Impact of Companies' Compliance with the Requirements Implementing section 404 of the Sarbanes-Oxley Act of 2002; OMB Control No. 3235–xxxx; SEC File No. 270–575.

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 collection of information to the Office of Management and Budget for approval.

The Commission staff plans to undertake a study that will involve collecting and analyzing empirical data regarding the impact on public companies of compliance with the requirements implementing section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262). The study will consider whether recent actions by the Commission and the Public Company Accounting Oversight Board are having their intended effect of increasing efficiency and lowering compliance costs. Participation in the study will be voluntary. Participants in the study are expected to include companies subject to the reporting requirements under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 15 U.S.C. 78o(d)), as well as financial analysts, auditors, investors and other interested parties.

We plan to invite up to 10,000 respondents to participate in the study. If all of these respondents participate in the study at an average estimated 1 hour per response, the total annual burden will be 10,000 hours. In addition, we also plan to conduct a follow-up survey and in-depth interviews with up to 500 respondents, at an estimated two hours per response, for a total annual burden of approximately 1,000 hours. Therefore, the total aggregate burden associated with the study is an estimated 11,000 hours.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment 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*.

February 5, 2008.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–2345 Filed 2–7–08; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57268; File No. SR–Amex–2006–31]**

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, Relating to Annual Shareholder Meeting Requirements

February 4, 2008.

### I. Introduction

On April 7, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Section 704 (Annual Meetings) of the Amex *Company Guide*.[3] On December 13, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. On December 20, 2007, the Exchange filed Amendment No. 2 to the proposed rule change. The proposed rule change, as amended by Amendment Nos. 1 and 2 thereto, was published for comment in the **Federal Register** on December 28, 2007.[4] On January 4, 2008, the Exchange filed Amendment No. 3 to the proposed rule change.[5] The Commission received no comments regarding the proposal. This order approves the proposed rule change, as modified by Amendment Nos. 1, 2 and 3 thereto.

### II. Description of the Proposal

Amex seeks to amend its annual shareholder meeting requirement applicable to its listed issuers. Currently, Section 704 of the Amex *Company Guide* requires all listed companies to hold an annual meeting of their shareholders in accordance with such listed company's charter, by-laws, and applicable state or other laws. An annual meeting allows the equity owners of a company the opportunity to elect directors and meet with management to discuss company affairs. The Exchange believes, however, that this requirement is not necessary for certain issuers of specific types of securities because the holders of such securities do not directly participate as equity holders and vote in the election of directors. In addition, Amex seeks to clarify when an issuer should hold its annual meeting and remove the notice requirement for delayed annual meetings.

First, Amex proposes to amend Section 704 of its *Company Guide* to explicitly state that an issuer generally must hold an annual meeting within one year of the end of its fiscal year if it is subject to the annual shareholder meeting requirement. In addition, a new listing that was not previously subject to the requirement to hold an annual meeting would be required to hold its first annual shareholder meeting within one year of its fiscal year end following the date of listing. Amex proposes two exceptions to these general requirements: (1) An issuer is not required to hold an annual meeting if its fiscal year is less than twelve months long as a result of a change in its fiscal year end; and (2) an issuer does not have to hold an annual meeting in the same year in which it completes its initial public offering.

Amex also proposes to list a variety of securities, the issuers of which should not be subject to the foregoing general

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Section 704 of the Amex *Company Guide*.

[4] *See* Securities Exchange Act Release No. 57016 (December 20, 2007), 72 FR 73911.

[5] In Amendment No. 3, Amex made several minor typographical corrections to the proposed rule text of Exhibit 5 to accurately reflect the names of certain securities. Because Amendment No. 3 is technical in nature, it is not subject to notice and comment.

annual shareholder meeting requirement. For example, Amex proposes to exempt from the requirement issuers of a number of securities listed pursuant to Section 107 (Other Securities) of the *Company Guide* and certain other securities issued by various passive business organizations.[6] The Exchange states that these types of securities are typically not an issuer's primary equity security, and their holders have only limited economic interests or other rights, which do not include voting rights. Although many of these products are issued by operating companies with listed equity securities and are thus subject to an annual meeting requirement pursuant to the primary market's rules, the Exchange stated in its filing that the *Company Guide* should specifically exempt from such requirement those operating companies which do not issue common stock or voting preferred stock.[7]

Similarly, Amex proposes to exempt from the general annual meeting requirement portfolio depository receipts and index fund shares, which are securities issued by unit investment trusts (''UITs'') and open-end management investment companies, respectively (collectively, ''ETFs''), and typically organized as business trusts. ETFs, which are generally passive investment vehicles that seek to match the performance of an index, must obtain an exemptive order from the Commission before they offer securities. As a result, their operations are circumscribed by numerous representations and conditions contained in the applicable orders, and they do not typically experience the need for operational or other changes requiring a shareholder vote, and, by extension, a shareholder meeting.[8] In addition, UITs do not have boards of directors, which the UITs' unitholders would need to elect.[9] Accordingly, the Exchange submits that Section 704 of the Amex Company Guide should specifically exclude ETFs from the annual shareholder meeting requirement.

Amex further proposes to exempt from the annual meeting requirement issuers of a variety of trust issued receipts (''TIRs'')[10] based on securities, commodities, and currencies. Traditional TIRs (*i.e.*, HOLDRs) are securities issued by a trust that holds, but does not manage, specific securities on behalf of investors in the trust. Other types of TIRs also include Commodity-Based Trust Shares[11] and Currency Trust Shares.[12] The Exchange states that these trusts typically do not hold shareholder (or unitholder) meetings because the trusts have no board of directors and essentially serve as conduits for the investors' indirect investments in the underlying securities, commodities, and/or currencies of the trusts. Similarly, the Exchange lists Partnership Units, which are securities issued by a partnership that invests in a combination of futures contracts, options on futures contracts, forward contracts, commodities, and/or securities.[13] A holder of a Partnership Unit does not have the right of equity ownership of the partnership, but instead, obtains a beneficial interest in the partnership. Because the partnership is a conduit for the investment in the underlying assets, the operation and management of the partnership is performed by a general partner without holding annual meetings. Lastly, Paired Trust Shares (also known as MACROS) are securities designed to track either the positive or negative performance of a benchmark underlying asset.[14] The shares are issued by a trust in pairs, with the trust not holding the underlying asset, but instead holding only short-term U.S. Treasuries and cash equivalents. As the market price of the underlying asset fluctuates, U.S. Treasuries and cash are moved between the trusts. As indicated above in connection with TIRs, issuers of Paired Trust Shares typically do not hold shareholder (or unitholder) meetings because the trusts have no board of directors and essentially serve as conduits for the investors' indirect investments in the performance of the underlying benchmark asset. As a result, Amex believes that Section 704 of the Amex *Company Guide* should specifically exempt the issuers of TIRs, Commodity-Based Trust Shares, Currency Trust Share Shares, Partnership Units, and Paired Trust Shares from the annual shareholder meeting requirement.

For these reasons, Amex states that it has not generally required issuers of these securities to hold annual shareholder meetings in the past, consistent with their respective governance and organizational documents. However, in order to provide greater certainty and transparency for listed issuers, Amex believes it is appropriate to revise Section 704 of the *Company Guide* to clarify that only issuers of voting and non-voting common stock and voting preferred stock, and their equivalents (*e.g.*, callable common stock) are required to hold an annual shareholder meeting. With respect to the proposed list of securities, the issuers of which would be exempt from holding an annual meeting, if such issuers also list common stock or voting preferred stock, or their equivalent, such issuers must still hold an annual meeting for the holders of that common stock or voting preferred stock, or their equivalent.[15] In addition, the Exchange notes that the proposed annual meeting requirement and the listed exemptions from such requirement do not supplant any applicable state or Federal securities laws concerning annual shareholder meetings.

Finally, Amex proposes to remove the provision from Section 704 of the *Company Guide* that requires an issuer, who is unable to hold an annual shareholder meeting in a timely manner, to notify the Exchange and the stockholders of such issuer of the reasons for the delay, and then use good faith efforts to hold the meeting as soon as reasonably practicable in light of the

[6] The various types of securities which the Exchange believes should not be subject to the annual shareholder meeting requirement include: bonds and debentures; currency and index warrants; trust preferred securities; contingent value rights; equity-linked term notes; index-linked exchangeable notes; index-linked securities; commodity-linked securities; currency-linked securities; trust certificate securities; investment trusts based on securities of individual issuers, stock indexes, or debt instruments; equity derivatives; trust issued receipts; commodity-based trust shares; currency trust shares; certain partnership interests; and paired trust shares. Amex believes that the foregoing securities should be exempt because they do not entitle their respective holders to voting rights.

[7] The Commission notes that issuers of convertible bonds and/or debentures listed pursuant to Section 104 of the Amex *Company Guide* are not exempt from the annual shareholder meeting requirement because such issuers must hold annual shareholder meetings with respect to the underlying common stock. *See infra* note 15 and accompanying text.

[8] The Exchange states that ETFs are registered under, and remain subject to, the Investment Company Act of 1940, which already imposes various shareholder-voting requirements that may be applicable to the ETFs.

[9] The Exchange states that UITs are typically operated or administered by a corporate trustee, and the portfolio of a UIT, which generally consists of a fixed pool of securities, is not actively managed.

[10] A trust issued receipt is defined in Amex Rule 1200(b) as a security: (1) That is issued by a trust which holds specified securities deposited with the trust; (2) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (3) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.

[11] *See* Amex Rule 1200A.

[12] *See* Amex Rule 1200B.

[13] *See* Amex Rule 1500.

[14] *See* Amex Rule 1400.

[15] *See* proposed Commentary .01 to Section 704 of the Amex *Company Guide*. *See also supra* note 7.

circumstances causing the delay. Amex believes it is more appropriate to address annual meeting delays through its ''Continued Listing and Evaluation and Follow-Up'' procedures which are part of the rules governing suspension and delisting under Section 1009(a)(i) of the *Company Guide*.[16] Amex states that it currently does not rely on such notification required in Section 704 of the *Company Guide* to monitor compliance with the annual shareholder meeting requirement. Instead, the Exchange staff utilizes an electronic database supplemented by manual review of proxy statements and, in the case of issuers that do not file proxy statements, other Commission filings to determine compliance. The electronic database receives public filings on a real-time basis (*i.e.*, deemed to be within one business day) and generates alerts, which are investigated by analysts.

## III. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[18] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission believes that the Exchange's proposal relating to the annual shareholder meeting requirement for listed issuers is consistent with the Act. Specifically, the Commission believes that clarifying that the issuers of voting and non-voting common stock and voting preferred stock, and their equivalents (*e.g.*, callable common stock) are required to hold an annual shareholder meeting, the time frame within which such issuer is required to hold its annual shareholder meeting, and the general exceptions to this proposed rule will provide additional transparency and certainty to the annual shareholder meeting requirement.

In addition, with respect to the proposed list of securities, the issuers of which would be exempt under the Exchange's rules to hold an annual shareholder meeting, the Commission believes that the proposal furthers the removal of impediments to a free and open market while continuing to ensure the protection of investors and the public interest, two principles set forth in Section 6(b)(5) of the Act. The Commission believes the right of shareholders to vote at an annual meeting is an essential and important one. The Commission, however, agrees with Amex that the requirement to hold an annual shareholder meeting may not be necessary for certain issuers of specific types of securities because the holders of such securities do not directly participate as equity holders and vote in the election of directors or on the affairs, operations, or policies of the company. The Commission notes that, although many of the securities proposed to be exempt from the general requirement are issued by operating companies that have also issued listed equity securities and would nevertheless be subject to the annual shareholder meeting requirement, only those issuers which do not issue common stock or voting preferred stock or their equivalent would be exempt from the annual shareholder meeting requirement. The Commission further notes that the proposed annual shareholder meeting requirement and the listed exemptions from such requirement do not supplant any applicable state or federal securities laws concerning annual shareholder meetings.[19]

Finally, the Commission believes that Amex's proposal to remove the provisions relating to notification of a delayed annual shareholder meeting and the use of good faith efforts to hold such meeting as soon as reasonably practicable is consistent with the Act. The Exchange states that it does not rely on the notification requirement from issuers to monitor compliance of the annual shareholder meeting requirement, but, instead, actively utilizes a real-time electronic database and manual review of proxy statements or other Commission filings to determine compliance. It appears that Amex's notification procedures provide it with timely information to enforce compliance with the annual shareholder meeting requirement. Further, in the absence of a compelling regulatory concern, the Commission believes that it is a reasonable exercise of the Exchange's self-regulatory oversight to choose the means of best addressing compliance with its proposed annual shareholder meeting requirement. The Commission also notes that the proposal to remove the provision regarding the use of good faith efforts to hold the annual shareholder meeting as soon as reasonably practicable is similar to, and conforms with, the equivalent annual shareholder meeting rules of other national securities exchanges.[20] The Commission further notes that under the proposed rule change, companies will be required to hold their annual shareholder meeting within the specific time periods set forth in Section 704 of the Amex Company Guide. Thus, the new rule will require stricter adherence to the annual shareholder meeting requirement, in furtherance of the public interest and investor protection. Companies that do not comply with the annual shareholder meeting time periods will be in violation of the Exchange's new rules.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–Amex–2006–31), as modified by Amendment Nos. 1, 2, and 3 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–2347 Filed 2–7–08; 8:45 am]

**BILLING CODE 8011–01–P**

[16] *See* Section 1009(a) of the Amex *Company Guide.*

[17] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] The Commission submits that listed issuers that would be exempt under Section 704 of the Amex *Company Guide,* as proposed, would not be precluded from holding special meetings of holders of the relevant securities.

[20] *See, e.g.,* Rule IM–4350–8 (Shareholder Meetings) of The NASDAQ Stock Market LLC; Sections 302 and 401 of the Listed Company Manual of the New York Stock Exchange LLC.

[21] 15 U.S.C. 78s(b)(2).

[22] *See* 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57263; File No. SR–Phlx–2007–91]**

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc; Order Approving a Proposed Rule Change to Require a Non-Streaming Quote Trader Registered Option Traders (''non-SQT ROT'') to Submit a List of Options for Intended Assignment

February 4, 2008.

On December 12, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 1014(b)(ii)(C) to require ''non-SQT ROTs'' (as defined below) to submit to the Exchange a list of the options in which such non-SQT ROT intends to be assigned to make markets. The proposed rule change was published for comment in the **Federal Register** on December 31, 2007.[3] The Commission received no comments on the proposal.

PHLX proposes to amend Exchange Rule 1014(b)(ii)(C) to require ''non-SQT ROTs''[4] to notify the Exchange of each option, on an issue-by-issue basis, it intends to be assigned to make markets. Such notification would need to be made in writing on a form prescribed by the Exchange (an ''ROT Assignment Form''). Any change to the ROT Assignment Form would have to be made in writing by the non-SQT ROT prior to the end of the trading session in which the change is to take place. Receipt of the properly completed ROT Assignment Form from a qualified non-SQT ROT applicant would constitute acceptance by the Exchange of the non-SQT ROT's assignment in, or termination of assignment in (as indicated on the ROT Assignment Form), the options listed on such ROT Assignment Form. If a non-SQT ROT applicant failed to qualify as an ROT on the Exchange, such assignments would be rendered ineffective and would be terminated. The proposed rule change is designed to facilitate the Exchange's ability to track the activities of non-SQT ROTs.

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.[5] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[6] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed notification requirement will assist the Exchange in monitoring the activities of non-SQT ROTs and should contribute to the Exchange's efforts to enhance the fair and orderly operation of the Exchange's market.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–Phlx–2007–91) hereby is approved.

**Florence E. Harmon,**

*Deputy Secretary.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

[FR Doc. E8–2346 Filed 2–7–08; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57034 (December 21, 2007), 72 FR 74398.

[4] A Streaming Quote Trader (''SQT'') is a Registered Options Trader (''ROT'') that has received permission from the Exchange to generate and submit electronic option quotations electronically via an Exchange approved quoting device. *See* Exchange Rule 1014(b)(ii)(A). Non-SQT ROTs do not stream electronic quotations but make verbal markets upon request and have the ability to send limit orders to the limit order book via electronic interface with Phlx XL.

[5] In approving this proposal, the Commission considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57260; File No. SR–BSE–2008–06]**

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding a Proposed Combination Between the Montréal Exchange Inc. and TSX Group Inc.

February 1, 2008

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 2008, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by BSE. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is submitting the proposed rule change to the Commission to amend the Fifth Amended and Restated Operating Agreement, dated January 26, 2005, as may be amended from time to time (''BOX LLC Agreement''), of the Boston Options Exchange Group LLC (''BOX LLC''), in connection with the proposed business combination (the ''Combination'') of the Montréal Exchange Inc.,[5] a company incorporated in Québec, Canada (''MX''), and TSX Group Inc., a company incorporated in Ontario, Canada (''TSX Group''). The text of the rule proposal, including the proposed Instrument of Accession, is available on the Exchange's Web site (*http://www.bostonstock.com*), at the Exchange, 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, BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Montréal Exchange Inc. is also known in French as the Bourse de Montréal Inc.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On January 13, 2004, the Commission approved four BSE proposals that together established, through an operating agreement among its owners, a Delaware limited liability company, BOX LLC, to operate BOX as an options trading facility of the Exchange.[6] Currently, MX U.S. 2, Inc., a wholly owned U.S. subsidiary of MX (''MX US''), owns a 31.4% ownership interest in BOX LLC.

The Exchange is submitting the proposed rule change to the Commission to amend the BOX LLC Agreement pursuant to the proposed Instrument of Accession in connection with the Combination of MX, the largest derivatives exchange in Canada, and TSX Group, which, among other things, owns Canada's pre-eminent equity market. As a result of the Combination, MX will become a direct[7] subsidiary of TSX Group, a publicly traded Ontario corporation.[8]

The Combination will be effected through a series of amalgamations[9] involving intermediate holding companies, which will cease to exist following completion of the Combination. As a result of these transactions, MX will be amalgamated with a direct subsidiary of TSX Group. The amalgamated company also will be named Montréal Exchange Inc. and will be a Québec corporation. Consequently, MX U.S. (including MX US's 31.4% ownership interest in BOX LLC) will become an indirect, wholly owned subsidiary of TSX Group. The Combination is subject to the approval of the Autorité des marchés financiers (the securities regulator for the province of Québec, Canada) and the shareholders of MX, as well as other regulatory approvals.

Following the Combination, MX, MX US, and TSX Group will continue to operate their respective businesses in substantially the same manner as they had prior to the Combination, and MX and MX US senior management will remain under the stewardship of MX's current chief executive officer.[10] Additionally, the operations of each of MX and TSX Group will continue to be located in the same province in which it is currently located, and each will remain subject to its existing regulatory framework and oversight. Consequently, MX US's management of its ownership interest in BOX shall remain essentially unaffected by the Combination.

Pursuant to Section 8.4(g) of the BOX LLC Agreement, BOX LLC is required to amend the BOX LLC Agreement to make an Acquirer[11] a party to the LLC Agreement if such Acquirer acquires a Controlling Interest[12] in a BOX Member who holds a percentage interest in BOX LLC equal to or greater than 20%. Therefore, since TSX Group is acquiring a Controlling Interest in MX, whose wholly owned subsidiary, MX US, owns a 31.4% ownership interest in BOX LLC, TSX Group, as an Acquirer, is required to and will become a party to the BOX LLC Agreement pursuant to the proposed Instrument of Accession. As a result, TSX Group will agree to abide by all the provisions of the BOX LLC Agreement, including those provisions requiring submission to the jurisdiction of the Commission.[13]

For the reasons stated above, BSE is submitting to the Commission the proposed Instrument of Accession, which constitutes an amendment to the BOX LLC Agreement, as a rule change. The proposed rule change is subject to becoming effective and operative pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)[15] thereunder. BSE proposes to make this proposal operative upon the consummation of the Combination, currently anticipated in late February 2008.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(1),[17] in particular, in that it enables the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Act[18] in that it is designed to facilitate transactions in securities, 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

Additionally, the Exchange notes that the provisions of the BOX LLC Agreement, previously approved by the Commission, provide a framework for addressing the Combination. Accordingly, BSE believes the Combination does not present any novel

[6] *See* Securities Exchange Act Release Nos. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (establishing a fee schedule for the proposed BOX facility); 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (creating Boston Options Exchange Regulation LLC to which the BSE would delegate its self-regulatory functions with respect to the BOX facility); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (approving trading rules for the BOX facility); and 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (approving certain regulatory provisions of the operating agreement of BOX LLC).

[7] Certain non-voting preference shares of MX will be owned by TSX Inc., a direct, wholly owned subsidiary of TSX Group. The share interests of TSX Group and TSX Inc. will together represent the entire ownership interest, voting and non-voting, in MX.

[8] At its next shareholders' meeting after the effective date of the Combination, TSX Group will propose changing its name to TMX Group Inc.

[9] The term ''amalgamation'' refers to the combination of two or more business entities into a single entity pursuant to which the combined entity becomes the successor in interest, by operation of law, to the rights and obligations of the combining entities. Amalgamations are commonly used in Canada to effect business combinations and are similar to mergers in the United States.

[10] Organizational changes contemplated in connection with the Combination are described in the TSX Group registration statement separately filed with the Commission regarding the issuance of shares in connection with the Combination.

[11] An ''Acquirer'' is defined as ''a Person who, alone or together with any Affiliate of such Person, acquires a controlling interest in a Member.'' *See* BOX LLC Agreement, Section 8.4(g)(ii).

[12] A ''Controlling Interest'' is defined as ''the ownership by any Person, alone or together with any Affiliate of such Person, of a 25% or greater interest in a Member.'' *See* BOX LLC Agreement, Section 8.4(g)(i).

[13] The BOX LLC Agreement states, in part, that ''the Members, officers, directors, agents, and employees of Members irrevocably submit to the exclusive jurisdiction of the U.S. federal courts, U.S. Securities and Exchange Commission, and the Boston Stock Exchange, for the purposes of any suit, action or proceeding pursuant to U.S. federal securities laws, the rules or regulations thereunder, arising out of, or relating to, BOX activities or Article 19.6(a), (except that such jurisdictions shall also include Delaware for any such matter relating to the organization or internal affairs of BOX, provided that such matter is not related to trading on, or the regulation, of the BOX Market), and hereby waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the U.S. Securities and Exchange Commission, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter hereof may not be enforced in or by such courts or agency.'' *See* BOX LLC Agreement, Section 19.6.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(1).

[18] 15 U.S.C. 78f(b)(5).

issues that have not been anticipated and addressed by the BOX LLC Agreement.

*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**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20]

Normally, a proposed rule change filed under Rule 19b–4(f)(6) [21] may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [22] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. In its filing, the Exchange requested waiver of the 30-day operative delay because the MX shareholders are expected to approve the Combination on February 13, 2008 and subsequent thereto the Combination is expected to close in late February of 2008. Furthermore, BSE believes the Combination does not present any novel issues that have not been anticipated and addressed by the BOX LLC Agreement.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change will allow the Exchange to proceed with the Combination, without undue delay, in a manner consistent with the provisions of the BOX LLC Operating Agreement. Accordingly, consistent with the protection of investors and the public interest, the Commission designates the proposed rule change to be operative upon consummation of the Combination.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BSE–2008–06 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–2008–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2008–06 and should be submitted on or before February 29, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

**Florence E. Harmon,**

*Deputy Secretary.*

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BILLING CODE 8011–01–P

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that BSE has satisfied the five-day pre-filing notice requirement.

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57261; File No. SR–CBOE–2008–05]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 Thereto To Allow CBOE to List Up to Seven Expiration Months for Reduced-Value and Jumbo Options That Overlie Broad-Based Security Indexes for Which Full-Value Options are Used by CBOE To Calculate a Constant Three-Month Volatility Index

February 1, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 2008, the Chicago Board Options Exchange, Incorporated ( ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

substantially prepared by the Exchange. On January 31, 2008, CBOE filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice and order to solicit comments on the proposal, as amended, from interested persons and to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

CBOE proposes to amend Rule 24.9(a)(2), *Terms of Index Option Contracts*, to allow the Exchange to list up to seven expiration months for reduced-value and jumbo options that overlie broad-based security indexes for which full-value options are used by the Exchange to calculate a constant three-month volatility index. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Commission recently approved a rule change that allows the Exchange to list up to seven expiration months for broad-based security index options upon which the Exchange calculates a constant three-month volatility index.[3] This current proposal seeks to extend that provision to reduced-value and jumbo option contracts which overlie the same broad-based security index (*e.g.*, Jumbo DJX Index Options (''DXL''), CBOE Mini-NDX Index (''MNX''), Mini-Russell 2000 Index (''RMN''), and Mini-SPX Index Options (''XSP'')) as full-value option contracts.

In the prior proposal, the Exchange requested the ability to list up to seven expiration months in order to maintain four consecutive near term contract months and three quarterly cycle contract months. In order to maintain this structure, the Exchange noted that it would need to add a seventh contract month eight times a year.

Since the Commission issued the Seven Month Approval Order, the Exchange has had one occasion to utilize the new provision for S&P 500 Index (''SPX'') options.[4] Specifically after December 2007 expiration, the remaining SPX option series were: January 2008, February 2008, March 2008, June 2008, September 2008 and December 2008. In order to maintain four consecutive near term contract months, the Exchange added the April 2008 SPX option series on December 24, 2007.

In response to the addition of the seventh SPX option contract month after December 2007 expiration, the Exchange received inquiries from market participants who expressed interest about whether a seventh contract month would be added for XSP options. Under CBOE's current Rule 24.9, this is not permitted.

In order to provide consistent treatment across all like products and in response to customer demand, the Exchange is proposing to permit the addition of a seventh contract month for reduced-value and jumbo option contracts (*e.g.*, XSP and DLX options) that overlie broad-based security indexes for which full-value options are used by the Exchange to calculate a constant three-month volatility index. To effect this change, the Exchange is proposing to add the phrase ''including reduced-value and jumbo option contracts'' to Rule 24.9(a)(2).

In support of this proposal, the Exchange states it has always been the intention of the Exchange to list the same contract months for reduced-value options as for full-value options that overlie the same broad-based security index.[5] Because the Exchange currently only calculates one three-month volatility index, the current proposal would only apply to XSP options. If in the future, however, the Exchange calculates other constant three-month volatility indexes, the current proposal would permit the listing of seven contract months for reduced-value and jumbo contract options that overlie broad-based security indexes for which full-value options are used by the Exchange to calculate a constant three-month volatility index.

**Capacity**

CBOE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing of a seventh contract month for reduced-value and jumbo options that overlie broad-based security indexes for which full-value options are used by the Exchange to calculate a constant three-month volatility index.[6]

2. Statutory Basis

Because the increase in the number of expiration months is limited to options overlying broad based security indexes upon which the Exchange calculates a constant three-month volatility and because the series could be added without presenting capacity problems, the Exchange believes the rule proposal is consistent with Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[7] Specifically, the Exchange believes that the proposed rule change is consistent with the section 6(b)(5) Act[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

[3] *See* Securities Exchange Act Release No. 56821 (November 20, 2007), 72 FR 66210 (November 27, 2007) (SR–CBOE–2007–82) (''Seven Month Approval Order'').

[4] Currently, CBOE calculates only one three-month volatility index, the CBOE S&P 500 Three-Month Volatility Index (''VXV''), based on SPX options. Therefore, only SPX options are eligible for the addition of a seventh contract month in order to maintain four consecutive near term contract months and three quarterly cycle contract months.

[5] *See e.g.*, Securities Exchange Act Release No. 32893 (September 14, 1993), 58 FR 49070 (September 21, 1993) (''Consistent with Exchange Rule 24.9, 'Terms of Option Contracts,' the CBOE proposes to list reduced-value SPX options expiring in the same quarterly cycle as full-value SPX options and to list expirations in the current and next two succeeding calendar months.'').

[6] Because the Exchange currently only calculates one three-month volatility index (the CBOE S&P 500 Three-Month Volatility Index (''VXV'') based on SPX options) the current proposal would only apply to Mini-SPX Index (''XSP'') options.

[7] 15 U.S.C. 78f(b).

[8] 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*

The Exchange neither solicited nor received comments on the proposal.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-CBOE–2008–05 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-CBOE–2008–05. 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2008–05 and should be submitted on or before February 29, 2008.

**IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change**

After careful review, the Commission finds that CBOE's proposal to amend Rule 24.9(a)(2), *Terms of Index Option Contracts* to allow the Exchange to list up to seven expiration months for reduced-value and jumbo options that overlie broad-based security indexes for which full-value options are used by the Exchange to calculate a constant three-month volatility index is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [9] and, in particular, the requirements of section 6 of the Act [10] and the rules and regulations thereunder. The Commission believes that increasing, from six to seven, the number of expiration months for these options (to accomodate a fourth consecutive near-term month while maintaining the listing of three months on a quarterly expiration cycle) will result in a more consistent and predictable calculation in which the option series that bracket three months to expiration will always expire one month apart, thereby promoting just and equitable principles of trade while protecting investors and the public interest.

The Commission also notes CBOE's representations that it possesses the necessary systems capacity to handle the additional traffic associated with the additional listing of a seventh contract month for reduced-value and jumbo options that overlie broad-based security indexes for which full-value options are used by the Exchange to calculate a constant three-month volatility index.

The Exchange has requested accelerated approval of the proposed rule change. The Commission finds good cause, consistent with Section 19(b)(2) of the Act,[11] for approving this proposed rule change before the thirtieth day after the publication of notice thereof in the **Federal Register** because accelerating approval will enable CBOE to harmonize the contract month listings between full-value SPX options and reduced-value SPX options (i.e., XSP options) by listing a seventh expiration month (May 2008) in order to maintain four consecutive near term contract months and three quarterly cycle contracts months. The Commission notes that this proposed rule change does not raise any new regulatory issues from those raised in the rule filing which allowed CBOE to list add a seventh expiration month for full-value broad-based security index options.[12]

**V. Conclusion**

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CBOE–2008–05), as modified by Amendment No. 1, be, and it hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–2330 Filed 2–7–08; 8:45 am]

BILLING CODE 8011–01–P

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78s(b)(2).

[12] *See* supra Note 3.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57264; File No. SR–CHX–2007–27]**

## Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving a Proposed Rule Change To Eliminate a Requirement That a Participant Have a Formal Written Agreement To Use Another Participant's Give-Up

February 4, 2008.

On December 12, 2007, the Chicago Stock Exchange, Inc (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CHX Article 9, Rule 25 to eliminate the requirement that a participant have a formal written agreement to use another participant's give-up.[3] The proposed rule change was published for comment in the **Federal**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57036 (December 21, 2007), 72 FR 74381 (December 31, 2007) (''Notice'') at footnote 3 (defining a ''give-up'' as a multi-character symbol that identifies a CHX participant firm. In the context of this rule, if a participant executes a trade using another participant's give-up, the firm is identifying the other firm as a party to the trade and allocating the trade to the other firm's account for clearing).

**Register** on December 31, 2007.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

When the CHX adopted rules for its new trading model, it included a provision that requires a participant that executes a trade using another participant's give-up to have a written agreement authorizing the use of the give-up.[5] Soon after implementing its new trading model, the Exchange contemplated limiting the way in which the rule would apply to its institutional brokers by allowing institutional brokers to use other participants' give-ups in accordance with reasonable written order-handling procedures, without specifically requiring that a written agreement be in place.[6] The Exchange believed that the rule provided an appropriate general standard, but did not intend to require a potentially substantial change in the long-standing business practices of the Exchange's institutional brokers, who often execute a trade using another participant's give-up, pursuant to instructions from such participant or its customer.[7]

The Exchange now proposes to eliminate the ''give-up agreement'' rule altogether. The Exchange believes the rule sets a good business standard, but does not believe that it is appropriate to put a hard-and-fast rule to that effect in place because of its potential impact on the day-to-day business practices of some of its institutional brokers.[8]

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.[9] In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. Repealing this rule will permit the Exchange's members to execute trades using another CHX participant's give-up pursuant to instructions from either that participant or its customer without requiring that a written agreement first be in place between those participants, thereby providing greater flexibility for members to execute trades on the Exchange. The Commission notes, however, that participants may choose to continue entering into formal written give-up agreements as they consider appropriate.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CHX–2007–27) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–2331 Filed 2–7–08; 8:45 am]

**BILLING CODE 8011–01–P**

[4] *See id.*

[5] *See* Securities Exchange Act Release No. 54550 (September 29, 2006), 71 FR 59563 (October 10, 2006) (approval order for the new trading model).

[6] *See* File No. SR–CHX–2006–32. The Exchange withdrew that proposal on December 12, 2007.

[7] *See* Notice, *supra* note 3, at 74381.

[8] *See id.*

[9] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57265; File No. SR–Phlx–2007–68]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto Relating to Customized U.S. Dollar-Settled Foreign Currency Options

February 4, 2008.

### I. Introduction

On September 6, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to trading of individually tailored U.S. dollar-settled foreign currency options (''FCOs''). On December 18, 2007, the Exchange filed Amendment No. 1. The proposed rule change, as amended, was published for comment in the **Federal Register** on December 31, 2007.[3] The Commission received no comments on the proposal. On January 29, 2008, the Exchange filed Amendment No. 2.[4] This order approves the proposed rule change, as amended.

### II. Description of the Proposal

Individually tailored index and equity options currently may be traded pursuant to Rule 1079, FLEX Index and Equity Options.[5] Phlx proposes to amend Rule 1079[6] to permit trading of U.S. dollar-settled FCOs with individually tailored expiration dates and exercise prices (''FLEX currency options'').[7] Provisions of Rule 1079 that are not limited by their terms to FLEX index or equity options will be equally applicable to FLEX currency options.[8] The Options Clearing Corporation (''OCC'') will be the issuer and guarantor of these new options.

#### *A. Characteristics of FLEX Currency Options*

Pursuant to proposed Rule 1079(a)(3)(C), users will be able to individually tailor the strike prices of FLEX currency options. Strike prices need not be consistent with strike price intervals permissible for non-FLEX U.S. dollar-settled FCOs. The strike price may be specified in terms of a specific dollar amount rounded to the nearest ten thousandth of a dollar (expressed without reference to the first two decimal places) for FLEX currency options other than the Japanese yen currency option. FLEX options on the Japanese yen may be specified in terms of a specific dollar amount rounded to the nearest one millionth of a dollar (expressed without reference to the first four decimal places).[9]

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57018 (December 20, 2007), 72 FR 74392 (''Notice'').

[4] *See* Partial Amendment dated January 29, 2008 (''Amendment No. 2''). Amendment No. 2 made one technical correction to the rule text. This correction is not subject to notice and comment.

[5] *See* Securities Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998) (adopting SR–Phlx–96–38). The term ''FLEX'' is a trademark of the Chicago Board Options Exchange, Inc.

[6] The Exchange also proposes to amend Floor Procedure Advice F–28, Trading FLEX Index and Equity Options, to make corresponding changes to those being proposed to Rule 1079(b).

[7] Currently, a variety of customized physical delivery FCOs are traded on the Exchange pursuant to Rule 1069, Customized Foreign Currency Options. Users currently have the ability with respect to physical delivery FCOs to customize the strike price and quotation method and to choose underlying and base currency combinations from among various Exchange listed currencies, including the U.S. dollar. *See* Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1994). References in Exchange rules to ''FLEX currency options'' will apply only to U.S. dollar-settled FCOs and will not include customized physical delivery FCOs that trade pursuant to Phlx Rule 1069.

[8] Generally, like FLEX index and equity options, FLEX currency options will be traded in accordance with many existing options rules. Rule 1079 states that to the extent that the provisions of Rule 1079 are inconsistent with other applicable Exchange rules, Rule 1079 takes precedence with respect to FLEX options.

[9] FLEX currency options will be margined at the same levels as the Exchange's non-FLEX U.S. dollar-settled FCOs. *See* Phlx Rule 722.

Pursuant to proposed Rule 1079(a)(6), FLEX currency option contracts will be allowed to expire on any month, business day and year within two years,[10] provided that a FLEX currency option will not be permitted to expire on any day that falls on or within two business days prior or subsequent to an expiration day for a non-FLEX U.S. dollar-settled FCO on the same underlying currency or on any day on which the Federal Reserve Bank is not scheduled to publish its Noon Buying Rate.[11] All FLEX currency options with customized expiration dates will expire at 11:59 p.m. eastern time on their designated expiration date and cease trading at 10:15 a.m. eastern time that day.[12]

FLEX currency options will be quoted in terms of dollars per unit of underlying foreign currency, like the non-FLEX U.S. dollar settled FCOs.[13] FLEX currency options may be quoted and traded in the same minimum increments that are established for non-FLEX U.S. dollar settled FCOs.[14] FLEX currency options, like non-FLEX U.S. dollar-settled FCOs, will be limited to European exercise style only.[15]

Pursuant to proposed Rule 1079(a)(8), if there is no open interest in the particular FLEX currency option series when a request for a quote (''RFQ'') is submitted,[16] the minimum size of an RFQ for FLEX currency options will be 50 contracts. If there is open interest, the minimum size of the RFQ will be 25 contracts, or the remaining size on a closing transaction, whichever is less. The minimum value size for a responsive quote, other than a responsive quote of an assigned Registered Options Trader (''ROT'') or assigned Specialist, will be 50 contracts or the remaining size on a closing transaction, whichever is less. Assigned ROTs and assigned Specialists who respond to an RFQ[17] will be required to respond to each RFQ with at least 250 contracts or the size amount requested in the RFQ, whichever is less.[18]

Rule 1079(a)(9) is being amended to provide for settlement for FLEX currency options. The settlement value determination for FLEX currency options will be the same as for non-FLEX U.S. dollar-settled FCOs, except that the closing settlement value for FLEX currency options will be the Noon Buying Rate on the expiration date, whereas Rule 1057 bases the closing settlement value for non-FLEX U.S. dollar-settled FCO on the Noon Buying Rate on the business day prior to expiration.[19] FLEX currency options will be subject to the exercise-by-exception procedures of OCC.[20]

*B. Quoting and Trading of FLEX Options*

The Automated Options Market (''AUTOM'') system is not available for FLEX options.[21] All FLEX options must be quoted and traded in the trading crowd of the corresponding non-FLEX option. Quoting and trading in FLEX currency options will be subject to Rule 1079(b), which currently governs the quoting and trading of FLEX index and equity options. Rule 1079(c), which governs who may trade FLEX options, will apply to FLEX currency options in the same manner as FLEX index and equity options. In addition, crossing in FLEX currency options will be governed by Rule 1079(b)(6), which currently applies to crosses in FLEX index and equity options.

*C. Position Limits*

Proposed Rule 1079(d)(3) is unique to FLEX currency options and provides that positions in FLEX currency options will be aggregated with positions in non-FLEX U.S. dollar-settled FCO contracts, as well as physical delivery FCO contracts, for purposes of determining compliance with the position limits established by Phlx Rule 1001.[22]

*D. Trading Hours*

The Exchange has determined that, initially, FLEX currency options will have the same trading hours as non-FLEX U.S. dollar-settled FCOs. The Exchange will be able to establish other trading times for FLEX currency options within the regular trading hours for the non-FLEX U.S. dollar-settled FCOs, including reflecting any new trading hours for non-FLEX U.S. dollar-settled FCOs.[23]

*E. Surveillance and Customer Protection*

Exchange rules and regulations involving sales practice will be applicable to FLEX currency options. The Exchange also represents that it has adequate surveillance procedures for, and systems capacity to support, the trading of FLEX currency options.

## III. Commission Finding and Conclusions

After careful consideration, the Commission finds that the proposed

[10] U.S. dollar-settled FCO contracts currently may only be traded with expirations at one, two, three, six, nine and twelve months. *See* Phlx Rule 1012.

[11] *See* proposed amendment to Rule 1079(a)(6)(A). FLEX index and equity options also cannot expire on or within two business days prior to or subsequent to an expiration day for a non-FLEX index or equity option on the same underlying index or security, as applicable.

[12] *Id. See also* proposed amendment to Rule 1079(a)(9)(C).

[13] *See* proposed Rule 1079(a)(4)(B).

[14] *See* Phlx Rule 1034(a)(ii)(A).

[15] Currently, Rule 1079(a)(5) permits market participants to determine whether a FLEX index or equity option will have either an American or European exercise style. An American style option may be exercised at any time up to its expiration, while a European style option can only be exercised on its expiration day. *See* Phlx Rule 1000(b)(34) and (35).

[16] *See* Phlx Rule 1079(b) for a description of the RFQ procedure for FLEX options. This procedure will apply to FLEX currency options in the same way as to FLEX index and equity options.

[17] *See* Rule 1079(c)(1) regarding Assigned ROTs and Assigned Specialists. Rule 1079(c)(1) currently applies to all FLEX options and will apply to FLEX currency options as well.

[18] These minimum sizes are different from the minimum sizes applicable to FLEX index and equity options under existing Rule 1079(a)(8).

[19] The closing settlement value for FLEX options on the Canadian dollar, the Swiss franc and the Japanese yen will be an amount equal to one divided by the day's announced Noon Buying Rate, as determined by the Federal Reserve Bank of New York on the expiration date, rounded to the nearest .0001 (except in the case of the Japanese yen where the amount would be rounded to the nearest .000001). If the Noon Buying Rate is not announced by 5 p.m. eastern time on expiration day, the closing settlement value will be based upon the most recently announced Noon Buying Rate, unless the Exchange determined to apply an alternative closing settlement value as a result of extraordinary circumstances.

[20] *See* OCC Rule 805, which sets forth the expiration date exercise procedures for options cleared and settled by the OCC. The exercise-by-exception or ''Ex-by-Ex'' procedure employed by OCC in OCC Rule 805 allows an OCC Clearing Member to effect a choice not to exercise an option that is in the money by the exercise threshold amount or more, or to exercise an option which has not reached the exercise threshold amount.

[21] The term ''AUTOM'' is used interchangeably with the term ''Phlx XL,'' the Exchange's fully electronic trading platform for options. The Exchange intends to file a separate proposed rule change to update its rules to reflect that orders are now delivered electronically over Phlx XL.

[22] Like non-FLEX U.S. dollar-settled FCOs, (i) one British pound FLEX option contract will count as one-third of a contract, (ii) one Euro FLEX option contract will count as one-sixth of a contract, (iii) one Australian dollar FLEX option contract will count as one-fifth of a contract, (iv) one Canadian dollar FLEX option contract will count as one-fifth of a contract, (v) one Swiss Franc FLEX option contract will count as one-sixth of a contract, and (vi) one U.S. dollar-settled Japanese yen FLEX option contract will count as one-sixth of a contract. The counting of both FLEX and non-FLEX U.S. dollar-settled FCO contracts as less than one full contract reflects the fact that the size of the U.S. dollar-settled FCO contract is smaller than the Exchange's physical delivery contract on the same currencies. The position limit rules were originally adopted for the larger physical delivery contracts. In addition, the Exchange has amended Rule 1079(e), Exercise Limits, to include FLEX U.S. dollar-settled FCOs.

[23] Under this proposal, expanding and narrowing FLEX currency trading hours within the regular trading hours of the particular product would not require a proposed rule change pursuant to Section 19(b) of the Act. The Exchange, however, would notify its members, in advance, prior to making any such change. Any proposal to expand trading hours outside of established regular trading hours will be submitted as a proposed rule change to the Commission pursuant to Section 19(b) of the Act.

rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) and 11A of the Act.[24] Specifically, the Commission finds that Phlx's proposal is designed to provide investors with a tailored product that may be more suitable to their investment needs. Moreover, consistent with Section 11A, the proposal encourages fair competition among brokers and dealers and exchange markets, by allowing the Exchange to compete with the over-the-counter market in foreign currency options. Additionally, the Commission believes that the proposal will help promote the maintenance of fair and orderly markets because it will extend the benefits of a listed, exchange market to FCOs that are more flexible than currently listed FCOs.[25]

The proposed rule change will permit the trading of U.S. dollar-settled FCOs with individually tailored expiration dates and strike prices.[26] The Commission notes that it previously approved rules relating to the listing and trading of FLEX index and equity options on Phlx, which give investors and other market participants the ability to individually tailor, within specified limits, certain terms of those index and equity options.[27] The current proposal incorporates FLEX currency options into these existing rules and regulatory framework. The Commission finds that the Exchange's proposal to introduce the trading of FLEX currency options into the market in this manner, which will result in a substantially similar regulatory structure for all FLEX products traded on Phlx, is consistent with the Act.

Pursuant to the proposed rule change, the Exchange will be able to offer investors and other market participants the ability to trade FLEX currency options with an expiration date in any month, business day and year, subject to certain explicit restrictions as described above. The ability to customize expiration dates is designed to enable investors and other market participants to hedge their exchange rate exposure more accurately by trading a contract that expires on the date of their choice. The proposal also will permit investors and other market participants to individually tailor the strike prices of FLEX currency options. As the proposal makes clear, such strike prices need not be consistent with strike price intervals permissible for non-FLEX U.S. dollar-settled FCOs. This additional flexibility permits users of FLEX currency options to tailor the product according to their investment needs and objectives, and the Commission finds it consistent with the Act.

The Commission also believes that the Exchange has extended the application of existing rules regarding FLEX index and equity options, and non-FLEX U.S. dollar-settled FCOs, to FLEX currency options consistent with the Act. For example, like FLEX index and equity options, the expiration date for a FLEX currency option cannot fall on or within two business days prior or subsequent to an expiration date for a non-FLEX option on the same underlying currency. Further, the procedure for quoting and trading of FLEX currency options in Rule 1079(b) will be the same as the existing procedure for the quoting and trading of FLEX index and equity options. The proposal also sets minimum size requirements for RFQs and responses to RFQs, as it does for FLEX index and equity options. Similarly, the Exchange's proposal applies certain rules governing non-FLEX U.S. dollar-settled FCOs to FLEX currency options. For example, like non-FLEX U.S. dollar-settled FCOs, FLEX currency options will be quoted in terms of dollars per unit of underlying foreign currency, and may be quoted and traded in the same minimum increments that are established for non-FLEX U.S. dollar-settled FCOs. The settlement value determination for FLEX currency options also will be calculated in a manner that is substantially identical to the calculation of settlement value for non-FLEX U.S. dollar-settled FCOs, and FLEX currency options will have the same trading hours as non-FLEX U.S. dollar-settled FCOs.

In addition, the proposal requires the aggregation of positions in FLEX currency options with positions in non-FLEX U.S. dollar-settled FCOs and physical delivery FCOs for purposes of determining compliance with the Exchange's existing position limit rules in Rule 1001.[28] The Commission believes that such aggregation, which is designed to minimize concerns regarding manipulations or disruptions of the market for those and related products, is consistent with the Act.

Finally, the Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as FLEX currency options, can commence on a national securities exchange. Phlx has represented that Exchange rules and regulations involving sales practice will be applicable to FLEX currency options, and that the Exchange has adequate surveillance procedures for, and systems capacity to support, the trading of FLEX currency options. Thus, the Commission believes that the goal of ensuring adequate customer protection has been satisfied by the Exchange, consistent with the Act.

## IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. In addition, the Commission finds pursuant to Rule 9b–1 under the Act that FLEX currency options are standardized options for purposes of the options disclosure framework established under Rule 9b–1 of the Act.[29]

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–Phlx–2007–68), as amended, is approved.

*It is further ordered,* pursuant to Rule 9b–1(a)(4) under the Act,[31] that FLEX currency options are designated as standardized options.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–2332 Filed 2–7–08; 8:45 am]

**BILLING CODE 8011–01–P**

[24] 15 U.S.C. 78f(b)(5) and 78k–1.

[25] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[26] As noted above, OCC will be the issuer and guarantor of all FLEX currency options. The Commission is designating FLEX currency options as standardized options for purposes of the options disclosure framework established under Rule 9b–1 of the Act. *See* Securities Exchange Act Release Nos. 31910 (February 23, 1993), 58 FR 12056 (March 2, 1993); 34925 (November 1, 1994), 59 FR 55720 (November 8, 1994); and 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996).

[27] *See* Securities Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998).

[28] *See supra* note 22 and accompanying text.

[29] *See supra* note 26.

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 240.9b–1(a)(4).

[32] 17 CFR 200.30–3(a)(12) and 17 CFR 200.30–3(a)(51).

## SMALL BUSINESS ADMINISTRATION

### National Small Business Development Center Advisory Board; Public Meeting

Pursuant to the Federal Advisory Committee Act, Appendix 2 of Title 5, United States Code, Public Law 92–463,

notice is hereby given that the U.S. Small Business Administration (SBA), National Small Business Development Center Advisory Board will be hosting a public meeting via conference call to discuss such matters that may be presented by Board members, staff of the SBA and interested others. The conference call is scheduled for Tuesday, February 19, 2008, at 1 p.m. Eastern Standard Time. The purpose of this meeting is to discuss the upcoming ASBDC Spring Conference in March and other official SBDC business.

Anyone wishing to make an oral presentation to the Board must contact Alanna Falcone, Program Analyst, U.S. Small Business Administration, Office of Small Business Development Centers, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 619–1612 or fax (202) 481–0134.

**Cherylyn H. Lebon,**

*Committee Management Officer.*

[FR Doc. E8–2290 Filed 2–7–08; 8:45 am]

BILLING CODE 8025–01–P'

## DEPARTMENT OF STATE

**[Public Notice 6094]**

### Evaluation of the Intergovernmental Panel on Climate Change

**ACTION:** Request for public comment.

**SUMMARY:** The U.S. State Department, in its role as coordinator for the U.S. Government's role in the IPCC, requests public comment on the activities and process of the Intergovernmental Panel on Climate Change (IPCC) in order to facilitate the U.S. Government's effort to assess and enhance the IPCC's high-level of scientific credibility and relevance for the evolving needs of decision-maker.

The IPCC is a scientific intergovernmental body set up by the World Meteorological Organization (WMO) and the United Nations Environment Program (UNEP). The IPCC's role is to assess on a comprehensive, objective, open, and transparent basis the latest scientific, technical, and socio-economic literature produced worldwide. Consistent with this role, the IPCC does not conduct research, nor does it monitor climate related data or parameters.

In order to fulfill this role, the IPCC produces comprehensive assessment reports at regular intervals of the state of knowledge with respect to climate change science; impacts, vulnerability and adaptation; and mitigation. The most recent of these, the Fourth Assessment Report, was completed in November 2007. The First Assessment Report was completed in 1990, the Second Assessment Report in 1995, and the Third Assessment Report in 2001. These reports have been widely used as key references for the state of knowledge on climate change, including in international climate discussions under the United Nations Framework Convention on Climate Change (UNFCCC). The IPCC also issues periodic Special Reports on specific aspects of climate change. The most recent of these, on Carbon Dioxide Capture and Storage, was released in 2005. The United States has played a leading role in the IPCC since its inception, through official contributions and key leadership positions in IPCC report development, as well as through the contributions of many U.S. scientist and experts to the reports themselves.

All IPCC reports are developed in a manner that conforms to the IPCC Principles and Procedures, which were developed by participating governments of the IPCC. Consistent with these principles and procedures, IPCC reports should be neutral with respect to policy, although they need to deal objectively with policy relevant scientific, technical, and socio-economic factors.

Efforts are currently underway within the IPCC to initiate a dialogue regarding the scope and nature of IPCC activities in the coming years. In order to inform these discussions, the State Department is requesting public comment regarding aspects of the IPCC products and the processes used to develop them.

*Comments of particular value might focus on:*

—The value of comprehensive assessments vs. special reports;
—The structure, frequency and process for developing IPCC reports;
—Substantive areas that need stronger coverage and, if so, why;
—Relationship of the reports to the needs of decision-makers.

The public is also welcome to submit comment on other aspects of the IPCC as it sees fit. Further information about the activities of the IPCC, as well as IPCC reports can be found at *http://www.ipcc.ch.*

**DATES:** Comments must be received on or before February 29, 2008.

**ADDRESSES:** Send comments via e-mail to *IPCC-future@climatescience.gov* by the prescribed deadline. Append surname to title and to the attached word-processing file to facilitate processing and archival (e.g., ''*IPCC Future: Smith*'' and *IPCC-Smith.doc*), and include contact details (name, institution, physical address, phone, and e-mail).

All public comments will be made available on the U.S. Climate Change Science Program (CCSP) Web site at *http://www.climatescience.gov/Library/ipcc/ipcc-future.htm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** Trigg Talley, U.S. Department of State, Office of Global Change, at (202)647–3984.

**SUPPLEMENTARY INFORMATION:** IPCC assessments and special reports and other information about IPCC activities are available at *http://www.ipcc.ch.*

Dated: February 5, 2008.

**Donna L. Lee,**

*Foreign Affairs Officer, Department of State.*

[FR Doc. E8–2360 Filed 2–7–08; 8:45 am]

BILLING CODE 4710–09–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2008–02]**

### Petition for Exemption; Summary of Petition Received

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number involved and must be received on or before February 28, 2008.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2008–0053 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Judith Watson (781) 238–7196, FAA New England Region Headquarters, 12 New England Executive Park, Burlington, MA 01803 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 4, 2008.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

## Petition for Exemption

*Docket No.:* FAA–2008–0053.

*Petitioner:* McCauley Propeller Systems.

*Section of 14 CFR Affected:* § 21.231(a).

*Description of Relief Sought:* The petitioner seeks relief to permit the issuance of a delegation option authorization for type, production, and airworthiness certification of propellers manufactured for use on turbopropeller and reciprocating engines of not more than 1,650 brake horsepower.

[FR Doc. E8–2389 Filed 2–7–08; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Federal Aviation Administration

**[Docket No. FAA–2008–0036]**

**RIN 2120–AF90**

## Policy Regarding Airport Rates and Charges; Extension of Comment Period

**AGENCY:** Department of Transportation, Office of the Secretary and Federal Aviation Administration.

**ACTION:** Notice of proposed amendment to policy statement; extension of comment period.

**SUMMARY:** This action extends the comment period for a proposed amendment to the ''Policy Regarding the Establishment of Airport Rates and Charges'' that was published on January 17, 2008. In that document, the Department of Transportation (''Department'') and the Federal Aviation Administration (FAA) proposed to amend the ''Policy Regarding the Establishment of Airport Rates and Charges'' published in the **Federal Register** on June 21, 1996 (''1996 Rates and Charges Policy''). The Department and the FAA proposed three amendments to the 1996 Rates and Charges Policy (two modifications and one clarification). These amendments are intended to provide greater flexibility to operators of congested airports to use landing fees to provide incentives to air carriers to use the airport at less congested times or to use alternate airports to meet regional air service needs. Any charges imposed on international operations must also comply with the international obligations of the United States. This extension is a result of a request from the Air Transport Association of America, Inc., the Cargo Airline Association, the National Air Carrier Association, and the Regional Airline Association on behalf of their members, to extend the comment period for thirty days.

**DATES:** The comment period for the Notice of proposed amendment to Policy Regarding the Establishment of Airport Rates and Charges published on January 17, 2008 (73 FR 3310) was scheduled to close on March 3, 2008, and is extended until April 3, 2008.

**ADDRESSES:** You may send comments identified by Docket Number, *FAA–2008–0036* using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

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

• *Fax:* 1–202–493–2251.

• *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590; between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the notice and comment process, see the **SUPPLEMENTARY INFORMATION** section of this document.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to 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.

**FOR FURTHER INFORMATION CONTACT:** Charles Erhard, Manager, Airport Compliance Division, AAS–400, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3187; facsimile: (202) 267–5769; e-mail: *charles.erhard@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to join in this notice and comment process by filing written comments, data, or views. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with Department personnel about this proposal. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this document between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using

the Internet at the Web address in the **ADDRESSES** section.

*Privacy Act:* Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets. This includes the name of the individual sending the comment (or signing the comment for an association, business, labor union). 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://www.regulations.gov*.

Before acting on this proposal, we will consider all comments we receive on or before the closing the date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal because of the comments we receive.

**Proprietary or Confidential Business Information**

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35 (b), when we are aware or proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

**Availability of Documents**

You can get an electronic copy using the Internet by:

(1) Searching the Federal eRulemaking portal (*http://www.regulations.gov/search*);

(2) Visiting the FAA's Regulations and Policies Web page at (*http://www.faa/gov/regulations_policies*); or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identity the docket number, notice number, or amendment number of this proceeding.

**Authority for This Proceeding**

This notice is published under the authority described in Subtitle VII, Part B, Chapter 471, Section 47129 of Title 49 United States Code. Under subsection (b) of this section, the Secretary of Transportation is required to publish publishing policy statements establishing standards or guidelines the Secretary will use in determining the reasonableness of airport fees charged to airlines under Section 47129.

**Background**

On January 17, 2008, the Department of the FAA issued Notice of proposed amendment to the Policy Regarding the Establishment of Airport Rates and Charges Docket No. FAA–2008–0036, (73 FR 3310). Comments to that document were to be received on or before March 3, 2008.

By a letter dated January 30, 2008 the Air Transport Association of America, Inc. (ATA), the Cargo Airline Association (CAA), the National Air Carrier Association (NACA), and the Regional Airline Association (RAA), on behalf of their members, requested that the comment period for Docket 2008–0036 be extended until April 3, 2008. Industry trade groups expressed concern that critical pieces of information were missing from the January 17, 2008, notice that are essential to a full assessment of the impact of the proposed policy. The following information has been added to the docket: the list of secondary airports eligible for inclusion in the rate base (FAA Docket 2008–0036.0007.1); the list of congested airports (based on 1% of delays) (FAA Docket 2008–0036–0008.1); the list of airports from the Benchmark report (FAA Docket 2008–0036–0009.1). ATA, CAA, NACA and RAA requested an extension of the comment period by 30 days to provide sufficient time to more fully develop comments reflecting the views of the industry stakeholders.

The Department and the FAA concur with the petitioners' requests for an extension of the comment period on FAA Docket 2008–0036 and believe an additional 30 days should be adequate to provide more complete and meaningful comment.

**Extension of Comment Period**

In accordance with § 11.47(c) of title 14, Code of Federal Regulations, the Department of the FAA have reviewed the petitions made by the Air Transport Association of America, Inc. (ATA), the Cargo Airline Association (CAA), the National Air Carrier Association (NACA), and the Regional Airline Association (RAA), on behalf of their members, for extension of the comment period to FAA Docket 2008–0036. These petitioners have shown a substantive interest in the proposed amendment to the 1996 Policy Regarding Airport Rates and Charges and good cause for the extension. The Department and the FAA have determined that extension of the comment period is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for FAA Docket 2008–0036 is extended until April 3, 2008.

Issued in Washington, DC, on February 5, 2008.

**Rebecca MacPherson,**

*Assistant Chief Counsel for Regulations, Federal Aviation Administration.*

[FR Doc. 08–573 Filed 2–7–08; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration, DOT

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on November 28, 2007 (72 FR 67346–67347).

**DATES:** Comments must be submitted on or before March 10, 2008.

**FOR FURTHER INFORMATION CONTACT:** George Stevens, NHTSA, NVS–223, Washington, DC 20590, phone 202–366–5308.

**SUPPLEMENTARY INFORMATION:**

**National Highway Traffic Safety Administration**

*Title:* 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

*OMB Number:* 2127—0045.

*Type of Request:* Reinstatement, without change, of a previously approved collection which has expired.

*Abstract:* The National Highway Traffic Safety Administration's statute at 49 U.S.C. 30118, *Notification of Defects and Noncompliance*, and 49 U.S.C. 30120, *Remedies for Defects and Noncompliance*, generally requires manufacturers of motor vehicles and items of replacement equipment to conduct a notification and remedy campaign (recall) when their products are determined to contain a safety-related defect or a noncompliance with a Federal motor vehicle safety standard (FMVSS). Those sections require a manufacturer of motor vehicles or motor vehicle equipment to notify distributors, dealers, and purchasers if any of the manufacturer's products are determined to either contain a safety-related defect or fail to comply with an applicable FMVSS. The manufacturer is under a concomitant obligation to remedy such defect or noncompliance. Pursuant to 49 U.S.C. 30118(d) and 30120(h), *Exemptions*, a manufacturer may seek an exemption from these notification and remedy requirements on the basis that the defect or noncompliance is inconsequential as it relates to motor vehicle safety. NHTSA exercised this statutory authority to excuse inconsequential defects or noncompliances when it promulgated 49 CFR part 566, *Exemption for Inconsequential Defect or Noncompliance*. This regulation establishes the procedures for manufacturers to submit exemption petitions to the agency and the procedures the agency will use in evaluating those petitions. Part 556 allows the agency to ensure that inconsequentiality petitions are both properly substantiated and efficiently processed.

*Affected Public:* Businesses or other for-profit entities.

*Estimated Total Annual Burden:* 200.

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

*Comments Are Invited On:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; the accuracy of the Agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on: February 5, 2008.

**Daniel C. Smith,**

*Associate Administrator for Enforcement.*

[FR Doc. E8–2374 Filed 2–7–08; 8:45 am]

**BILLING CODE 4910–59–P**

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket Number PHMSA–2007–28119; Notice No. 07–9]**

### Proposed Recommended Practices for Bulk Loading and Unloading of Hazardous Materials in Transportation

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA).

**ACTION:** Notice; request for comments; extension of comment period.

**SUMMARY:** PHMSA is extending until March 14, 2008, the period for interested persons to submit comments on the agency's January 4, 2008 notice concerning proposed recommended practices for bulk loading and unloading of hazardous materials. The January 4, 2008 notice summarizes incident data related to bulk loading and unloading operations; discusses recommendations issued by the National Transportation Safety Board and the Chemical Safety and Hazard Investigation Board; provides an overview of current Federal regulations applicable to bulk loading and unloading operations; summarizes the results of a public workshop PHMSA hosted last year; and sets forth proposed recommended practices for bulk loading and unloading operations. Based on information and comments received, we plan to consider strategies for enhancing the safety of bulk loading and unloading operations, including whether additional regulatory requirements may be necessary.

**DATES:** Submit comments by March 14, 2008. To the extent possible, we will consider comments received after this date and consider strategies including additional regulatory requirements, as necessary.

**ADDRESSES:** You may submit comments identified by the docket number PHMSA–2007–28119; Notice No. 07–9 by any of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Web Site*: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax*: 1–202–493–2251.
- *Mail*: Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery*: To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

*Instructions*: All submissions must include the agency name and docket number for this notice at the beginning of the comment. Note that all comments received will be posted without change to the docket management system, including any personal information provided.

*Docket*: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or *http://dms.dot.gov* (until December 31, 2007) or DOT's Docket Operations Office (see **ADDRESSES**).

*Privacy Act*: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Rick Boyle, Office of Hazardous Materials Technology, (202) 366–4545 or Kurt Eichenlaub, Office of Hazardous Materials Standards, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration.

**SUPPLEMENTARY INFORMATION:** On January 4, 2008, the Pipeline and Hazardous Materials Safety Administration (PHMSA, we) published a notice (No. 07–9) under Docket PHMSA–2007–28119 soliciting information and comments on proposed recommended practices for loading and

unloading operations involving bulk packagings used to transport hazardous materials.

In the January 4, 2008 notice, we summarized incident data related to bulk loading and unloading operations; discussed recommendations issued by the National Transportation Safety Board and the Chemical Safety and Hazard Investigation Board; provided an overview of current Federal regulations applicable to bulk loading and unloading operations; summarized the results of a public workshop we hosted last year; and set forth proposed recommended practices for bulk loading and unloading operations. The comment period for the notice was to end on February 8, 2008.

The American Trucking Association (ATA) requests an additional 30 days in which to submit comments to the notice. ATA states additional time will allow its members to more fully understand and comment on the potential impact of the proposed recommended practices to the trucking industry. We agree that an extension of 30 days is in the public interest and, accordingly, we are extending the closing date of the comment period until March 14, 2008.

Issued in Washington, DC on February 5, 2008.

**Robert Richard,**

*Deputy Associate Administrator for Hazardous Materials Safety.*

[FR Doc. E8–2364 Filed 2–7–08; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Notice 2007–100

**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 2007–100, Transition Relief and Guidance on Corrections of Certain Failures of a Nonqualified Deferred Compensation Plan to Comply with section 409(a) in Operation.

**DATES:** Written comments should be received on or before April 8, 2008 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of notice should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Transition Relief and Guidance on Corrections of Certain Failures of a Nonqualified Deferred Compensation Plan to Comply with section 409(a) in Operation

*OMB Number:* 1545–2086.

*Notice Number:* Notice 2007–100.

*Abstract:* This notice sets forth the procedures to be followed by service recipients and service providers in order to correct certain operational failures of a nonqualified deferred compensation plan to comply with section 409A(a). It also describes the types of operational failures that can be corrected under the notice.

*Current Actions:* There are no changes being made to the notice at this time.

*Type of Review:* This is an extension of a currently approved collection.

*Affected Public:* Business or other for-profit institutions, not-for-profit institutions, and individuals or households.

*Estimated Number of Respondents:* 10,000.

*Estimated Average Time per Respondent:* 30 min.

*Estimated Total Annual Burden Hours:* 5,000.

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: February 1, 2008.

**Allan Hopkins,**

*IRS Reports Clearance Officer.*

[FR Doc. E8–2311 Filed 2–7–08; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8896

**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 8896, Low Sulfur Diesel Fuel Production Credit.

**DATES:** Written comments should be received on or before April 8, 2008 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for copies of the form and instructions should be directed to Allan Hopkins, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at *Allan.M.Hopkins@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Low Sulfur Diesel Fuel Production Credit.

*OMB Number:* 1545–1914.

*Form Number:* 8896.

*Abstract:* IRC section 45H allows small business refiners to claim a credit for the production of low sulfur diesel fuel. The American Jobs Creation Act of 2004 section 399 brought it into existence. Form 8896 will allow taxpayers to use a standardized format to claim this credit.

*Current Actions:* 14 lines and 1 attachment have been deleted, while 5 code references have been added.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 66.

*Estimated Time per Respondent:* 4 hours, 44 minutes.

*Estimated Total Annual Burden Hours:* 131.

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: February 1, 2008.

**Allan Hopkins,**

*IRS Reports Clearance Officer.*

[FR Doc. E8–2312 Filed 2–7–08; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–120168–97]**

### 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–120168–97 (TD 8798), Preparer Due Diligence Requirements for Determining Earned Income Credit Eligibility.

**DATES:** Written comments should be received on or before April 8, 2008 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@ors.gov*.

**SUPPLEMENTARY INFORMATION:** *Title:* Preparer Due Diligence Requirements for Determining Earned Income Credit Eligibility.

*OMB Number:* 1545–1570.

*Regulation Project Number:* REG–120168–97.

*Abstract:* Income tax return preparers who satisfy the due diligence requirements in this regulation will avoid the imposition of the penalty section 6695(g) of the Internal Revenue Code for returns or claims for refund due after December 31, 1997. The due diligence requirements include soliciting the information necessary to determine a taxpayer's eligibility for, and amount of, the Earned Income Tax Credit and the retention of this information.

*Current Actions:* There are no changes being made to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 100,000.

*Estimated Time per Respondent:* 5 hours, 4 minutes.

*Estimated Total Annual Burden Hours:* 507,136.

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: January 29, 2008.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E8–2313 Filed 2–7–08; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Season for Membership to the Electronic Tax Administration Advisory Committee (ETAAC)

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

**ACTION:** Notice.

**SUMMARY:** The Electronic Tax Administration Advisory Committee (ETAAC) was established to provide continued input into the development and implementation of the Internal Revenue Service (IRS) strategy for

electronic tax administration. The ETAAC provides an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members convey the public's perception of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs, and procedures, and suggest improvements. This document seeks applicants for selection as Committee members.

The Director, Electronic Tax Administration (ETA) and Refundable Credits will assure that the size and organizational representation of the ETAAC obtains balanced membership and includes representatives from various groups including: (1) Tax practitioners and preparers, (2) transmitters of electronic returns, (3) tax software developers, (4) large and small business, (5) employers and payroll service providers, (6) individual taxpayers, (7) financial industry (payers, payment options and best practices), (8) system integrators (technology providers), (9) academic (marketing, sales or technical perspectives), (10) trusts and estates, (11) tax exempt organizations, and (12) state and local governments. We are soliciting applicants from professional and public interest groups. Members serve a three-year term on the ETAAC to allow a change in membership. The change of members on the Committee ensures that different perspectives are represented. All travel expenses within government guidelines will be reimbursed. Potential candidates must pass an IRS tax compliance check and Federal Bureau of Investigation (FBI) background investigation.

**DATES:** Applications must be received no later than Tuesday, April 1, 2008.

**ADDRESSES:** Completed applications should be submitted by using one of the following methods:

- *E-Mail:* Send to *etaac@irs.gov*.
- *Mail:* Send to Internal Revenue Service, ETA & Refundable Credits, SE:W:ETARC:SS:RM, 5000 Ellin Road (M/Stop C4–470, Attn: Cassandra Daniels (C4–226), Lanham, Maryland 20706.
- *Fax:* Send via facsimile to (202) 283–2845 (not a toll-free number).

Application packages can be obtained by sending an e-mail to *etaac@irs.gov* or calling (202) 283–2178 (not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Cassandra Daniels, (202) 283–2178 or send an e-mail to *etaac@irs.gov*.

**SUPPLEMENTARY INFORMATION:** The ETAAC will also provide an annual report to Congress on IRS progress in meeting the Restructuring and Reform Act of 1998 goals for electronic filing of tax returns. This activity is based on the authority to administer the Internal Revenue laws conferred upon the Secretary of the Treasury by section 7801 of the Internal Revenue Code and delegated to the Commissioner of the Internal Revenue under section 7803 of the Internal Revenue Code. The ETAAC will research, analyze, consider, and make recommendations on a wide range of electronic tax administration issues and will provide input into the development of the strategic plan for electronic tax administration.

Applicants should describe and document their qualifications for membership to the Committee. Equal opportunity practices will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership will include, to the extent practicable, individuals, with demonstrated ability to represent minorities, women, and persons with disabilities. The Secretary of Treasury will review the recommended candidates and make final selections.

Dated: January 31, 2008.

**Phyllis Gattos,**

*Acting Executive Director, Strategic Services Division.*

[FR Doc. E8–2314 Filed 2–7–08; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

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

**ACTION:** Notice.

**SUMMARY:** This notice is provided in accordance with IRS section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending December 31, 2007.

| Last name | First name | Middle name/initials |
|---|---|---|
| DOAN | CHRISTINE | MARY |
| MONNIER | NICOLAS | BONAVENTURE |
| YANG | RAYMOND | HON-MUN |
| DIXON | DAVID | B |
| BAZIUK | NELSON | WILLIAM |
| MOKHTARZADEH | DEVIKA | WANEY |
| KAROZY | BRIAN | DAVID |
| LUE | ANNIE | SIU-TSUI |
| LUI | LAWRENCE | YUK-FAN |
| BAZIUK | PENNY | L |
| HOTTINGER | HENRI | JONATHON |
| ALVAREZ | MARISSA. | |
| YAO | JASON | BO |
| FREIBOTH | KATHRYN | MARIE |
| TOP | JEFFREY | R |
| FAN | LI | CUI |
| AIKEN | EVA | ELAINE |
| MATHRANI | RAJESH | LAKHMI |
| LANDEAU | MARC. | |
| MOMIN | ZAFAR | A |
| CHOY | LONG | YIN |
| D'SOUZA | Sr PETRONILLA. | |
| WEINER | RICHARD | HARVEY |

| Last name | First name | Middle name/initials |
|---|---|---|
| MARTI | ALBERTO. | |
| DIVI | NILIMA. | |
| NAN | CUNHUI. | |
| CAMPBELL | SILVANA | E |
| CAMPBELL | ANTHONY | E |
| TAM | HING | KEUNG |
| KIM | TAI-YOUNG | SIMON |
| EDWARDS | DANA | LEE |
| WANG | ZHIXUE. | |
| DAVID | MANFRED | LUDWIG |
| FISCHER–ZERNIN | STEPHANIE. | |
| FISCHER–ZERNIN | LORENZ. | |
| HAYLES | IAN | DAVE |
| KELEMEN | MURIEL | LULLIN |
| CONNELLY | WILLIAM | L |
| KIM | PETER | D |
| CECHANOWICZ | ALEX | MICHAEL |
| RIDDELL | ROGER | C |
| CHEUNG | CAREY | SEI-LOK |
| SOEDAL | SVEN | A |
| FLETCHER | ROGER | ANTHONY |
| SINDHWANI | SUDHIR | C |
| PHILLIPS | ROBERT | PHILIPP |
| CUNNYGHAM | ANNA | FLORENCE |
| CHILCO | CATHERINE | A |
| HORTE | ROBERT | VERNON |
| MACNEIL | ANDREW | IAN |
| DORION | MICHELLE. | |
| LOW | KIT | L |
| POON | ALWIN. | |
| ACKERMANN | SYLVIE | F |
| SCHWARZENBACH | FRANCISCA | S |
| NG | CHRISTINA | SHIEU–YEING |
| GUO | SHAOMU. | |
| LI | GEN | XIONG |
| MURPHY | PETER | STUART |
| KLINZ-ATTOLINI | DAGMAR. | |
| TAI | INJAY | W |
| HOPKINS | WALTER | PAINTER |
| WARREN | SUSAN | ELIZABETH |
| MISRA | RAJEEV. | |
| KING | GEOFFREY | CHANG-WEI |
| GOSWELL | ROWAN | H |
| CHORENGEL | SHARON. | |
| CHORENGEL | BERND | O |
| DE LA VIESCA | FERNANDO | A |
| SYMONS | BLANCHE | E |
| WONG | CASSIE | CHUI PING |
| ERHART | MARK | A |
| CHAN | ALICE | MEI KEI |
| MOULTON | SPENCER | J |
| SANDERSON. | | |
| DYER | JOHN | CHRISTOPHER |
| PARK | RO | WOONG |
| CHEN | EDWARD | SHI |
| STEARNS | JAMES | PATRICK |
| WILLIAMSON | DAWN | MARIE |
| HO | GERRAN | C |
| NILSSON | BENGT | O |
| SCOTT | DAVID | B |
| MELCHER | A | STEPHEN |
| GREEN | ALASTAIR | J |
| HANGARTNER | DORIS. | |
| ADAMS | JILL | BRIDGE |
| TAN | YA | CHING |
| BALTODANO | J | ANTONIO |
| SWIFT | NICOLA. | |
| SWIFT | ROBERT. | |
| SWIFT | MARTHA. | |
| LAPIDOTH | AMOS. | |
| CARVER | ANTON | PHILIP TRISTRAM |
| CARON | FRANCOISE. | |
| KENNEDY | LINDSAY | NICOLA |
| GAW | GOODWIN. | |

| Last name | First name | Middle name/initials |
|---|---|---|
| URAN | CAN. | |
| HUSSAIN | ALI. | |
| KOENIG | ROBERT | EDUARD |
| FENG | JANINE | JUNYUAN |
| HUSSAIN | SUKAINA | ALI |
| JENSEN | RONALD | L |
| DORMENT | RICHARD. | |
| TUNG | ANDREW | L |
| ROSKELLY | KATRIN | ALEXANDRA |
| CLAUSEN | KENNETH | CHRISTIAN |
| YEMSI | YVES | B |
| BOURKE | CAROL | A |
| SMITH | CECILE | F |
| HUTCHISON | GRAEME | LINTS |
| LU | YUE | WEI |
| LUCAS | RUTH | HELEN |
| DAVIS | MARION | BRIGETTE |
| CHAN | CHARLES | CHAM CHUEN |
| KORNICKER | PETER | H |
| BROWN | KATHERINE | KENT |
| SKEIE | ASTRID | CECILI |
| KIM | SOON. | |
| DAKU | CAROLYN | L |
| DUBNICKI | CEZARY. | |
| MANOUKYAN | HACHIK. | |
| YEH | YING. | |
| ALDER | HANS | URS |
| FINDLING | ROBERT | K |
| MATSUZAWA | MASAAKI. | |
| SCHREIBER | SALLY | B |
| RICH | CYNTHIA | ELIZABETH |
| THOMAS | ARTHUR | JOHN |
| YU | HOWARD | LAWRENCE |
| TONG | ANNA | SEEN MING |
| FERRO | PATRICIA. | |
| VAN DER MEER | JAN. | |
| BELTMAN | MARIEKE | A |
| FRITZ-DI VETTE | NIKKI. | |
| DAVIES | PEDRO | H |
| REEVES | CHRISTOPHER | WILLIAM |
| KANEB | STEPHANIE. | |
| RISCHARD | JEAN–FRANCOIS. | |
| VOON | DAVID | H |
| MARTEL | MICHEL | S |
| MARTEL | MICHAEL | R |
| MARTEL | ALLISON | E |
| BJELIC | MILONJA. | |

Dated: January 25, 2008.

**Angie Kaminski,**

*Manager Team 103, Examinations Operations, Philadelphia Compliance Services.*

[FR Doc. E8–2310 Filed 2–7–08; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974: Computer Matching Program

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice of Computer Match Program.

**SUMMARY:** Pursuant to 5 U.S.C. section 552a, the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a computer matching program with the Social Security Administration (SSA). Data from the proposed match will be used to verify the earned income of nonservice-connected veterans, and those veterans who are zero percent service-connected (noncompensable), whose eligibility for VA medical care is based on their inability to defray the cost of medical care. These veterans supply household income information that includes their spouses and dependents at the time of application for VA health care benefits.

**DATES:** *Effective Date:* This match will start no sooner than 30 days after publication in the **Federal Register**, unless comments dictate otherwise.

**ADDRESSES:** Written comments may be submitted by mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; e-mail to *VARegulations@mail.va.gov;* or, through www.Regulations.gov. All 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 (this is not a toll free number).

**FOR FURTHER INFORMATION CONTACT:** Lynne Harbin, Director, Health

Eligibility Center, (404) 235–1340 (this is not a toll free number).

**SUPPLEMENTARY INFORMATION:** The Department of Veterans Affairs has statutory authorization under 38 U.S.C. 5317, 38 U.S.C. section 5106, 26 U.S.C. section 6103(l)(7)(D)(viii) and 5 U.S.C. section 552a to establish matching agreements and request and use income information from other agencies for purposes of verification of income for determining eligibility for benefits. 38 U.S.C. 1710(a)(2)(G), 1720(a)(3), and 1710(b) identify those veterans whose basic eligibility for medical care benefits is dependent upon their financial status. Eligibility for nonservice-connected and zero percent noncompensable service-connected veterans is determined based on the veteran's inability to defray the expenses for necessary care as defined in 38 U.S.C. 1722. This determination can affect their responsibility to participate in the cost of their care through copayments and their assignment to an enrollment priority group.

The goal of this match is to obtain SSA earned income information data needed for the income verification process. The VA records involved in the match are ''Health Eligibility Center (HEC) Records'' (89VA19). The SSA records are from the Earnings Recording and Self-Employment Income System, SSA/OEEAS 09–60–0059 and Master Files of Social Security Number Holders and SSN Applications, SSA/OEEAS, 60–0058 (referred to as ''the Numident''). A copy of this notice has been sent to both Houses of Congress and OMB.

This matching agreement expires August 18, 2009. This match will not continue past the legislative authorized date to obtain this information.

Dated: January 25, 2008.

**Gordon H. Mansfield,**

*Deputy Secretary of Veterans Affairs.*

[FR Doc. E8–2316 Filed 2–7–08; 8:45 am]

**BILLING CODE 8320–01–P**

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 27843 (Sub-No. 1)]**

### Union Pacific Railroad Company—Trackage Rights Exemption (Modification)—Iowa, Chicago & Eastern Railroad Corp.

Iowa, Chicago & Eastern Railroad Corp. (ICE) has agreed to modify an existing overhead trackage rights agreement which permits Union Pacific Railroad Company (UP) to operate over ICE's rail line extending between milepost 192.83 at Emmetsburg, IA, and milepost 236.52 at Hartley, IA, a distance of 43.69 miles (the line).[1]

The transaction is scheduled to be consummated on February 22, 2008, the effective date of the exemption (30 days after the exemption was filed).

The purpose of this transaction is to modify (pursuant to an agreement dated May 22, 2007) the terms of the existing trackage rights agreement by granting UP the right to set out and pick up traffic at the VeraSun Hartley, LLC (VeraSun) facility at Hartley, IA, for so long as this facility is operated by VeraSun, its successors or assigns.

As a condition to this exemption, any employee affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by February 15, 2008 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, section 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 27843 (Sub-No. 1), must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Gabriel S. Meyer, Assistant General Attorney, 1400 Douglas Street, STOP 1580, Omaha, NE., 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: February 4, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Anne K. Quinlan,**

*Acting Secretary.*

[FR Doc. E8–2342 Filed 2–7–08; 8:45 am]

**BILLING CODE 4915–01–P**

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[1] ICE and UP are parties to an agreement dated November 19, 1974, as amended, by which ICE's predecessor in interest, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, granted to UP's predecessor in interest, Chicago, Rock Island and Pacific Railroad Company, overhead trackage rights over the line.

Federal Register

Friday,
February 8, 2008

# Part II

# Department of Labor

## Mine Safety and Health Administration

**30 CFR Parts 49 and 75**
**Mine Rescue Teams; Final Rule**

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**30 CFR Parts 49 and 75**

**RIN 1219–AB53**

## Mine Rescue Teams

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Final rule.

**SUMMARY:** The final rule revises MSHA's existing standards for mine rescue teams for underground coal mines. This final rule implements Section 4 of the Mine Improvement and New Emergency Response (MINER) Act of 2006 to improve overall mine rescue capability; to improve mine emergency response time and mine rescue team effectiveness; and to increase the quantity and quality of mine rescue team training.

**DATES:** *Effective date:* February 8, 2008.

*Compliance dates:* Each mine operator shall comply with the following sections by the dates listed below.

1. § 49.12(h) by May 8, 2008.
2. § 49.12(f) and § 75.1501(a)(2) by August 8, 2008.
3. § 49.40 by November 10, 2008.
4. §§ 49.18(b), 49.20(a), 49.20(b), 49.30, and 49.50 by February 9, 2009.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, at *silvey.patricia@dol.gov* (internet e-mail), 202–693–9440 (voice), or 202–693–9441 (facsimile).

**SUPPLEMENTARY INFORMATION:**

**Outline of the Preamble**

I. Introduction
II. Statutory and Rulemaking Background
III. Section-by-Section Analysis
  A. Technical Amendments to Existing Standards
  B. Subpart B—Mine Rescue Teams for Underground Coal Mines; Amendments to Existing Requirements
  C. Subpart B—Mine Rescue Teams for Underground Coal Mines; Additional MINER Act Provisions
IV. Regulatory Economic Analysis
  A. Executive Order 12866
  B. Population at Risk
  C. Costs
  D. Benefits
V. Feasibility
  A. Technological Feasibility
  B. Economic Feasibility
VI. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act
  A. Definition of a Small Mine
  B. Factual Basis for Certification
VII. Paperwork Reduction Act of 1995
VIII. Other Regulatory Considerations
  A. The Unfunded Mandates Reform Act of 1995
  B. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families
  C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights
  D. Executive Order 12988: Civil Justice Reform
  E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  F. Executive Order 13132: Federalism
  G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

## I. Introduction

This final rule implements Section 4 of the Mine Improvement and New Emergency Response (MINER) Act of 2006. MSHA's objective, consistent with the MINER Act, is to develop a final rule that fosters an environment that results in more preparation for mine rescue and mine emergency response. The final rule, like the proposal, retains all existing standards as subpart A applicable to underground metal and nonmetal mines. The MINER Act is not applicable to metal and nonmetal mines. The final rule creates a new, separate, subpart B containing existing standards and MINER Act provisions for underground coal mines. MSHA developed this final rule based on the provisions of the MINER Act, Agency data and experience, testimony at the public hearings, and the comments on the proposed rule.

MSHA is providing delayed compliance dates for some sections to give mine operators the time needed to comply with the stated requirements.

1. By May 8, 2008, each mine operator must send the District Manager a statement describing the mine's method of providing mine rescue coverage in accordance with § 49.12(h).

2. By August 8, 2008—

- Each mine must have a mine rescue station located no more than 1 hour ground travel time from the mine in accordance with § 49.12(f). If equipment is not readily available, the operator must have purchase orders for the required equipment.
- The mine operator must have a responsible person knowledgeable about mine emergency response, who has completed the course of instruction in mine emergency response prescribed by MSHA in accordance with § 75.1501(a)(2).

3. By November 10, 2008, each operator of a large mine must have either an individual mine-site team or a composite team as one of the mine's certified mine rescue teams in accordance with § 49.40.

4. By February 9, 2009—

- Mine rescue team members must have completed 96 hours of annual training, including participation in two local mine rescue contests and training at each covered mine in accordance with § 49.18(b).
- Each mine operator shall make available two certified mine rescue teams whose members are familiar with the operations of the mine and have participated in two local mine rescue contests in accordance with § 49.20(a).
- Each team providing coverage to a mine must be knowledgeable about the operations and ventilation of the mine in accordance with §§ 49.20(b) and 49.30.
- Each mine operator must certify to the District Manager that each team designated to provide mine rescue coverage to the mine meets the requirements for certification in accordance with § 49.50.

## II. Statutory and Rulemaking Background

In accordance with section 115(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act), MSHA issued standards in 30 CFR part 49 for mine rescue teams in underground coal and metal and nonmetal mines (45 FR 47002, July 11, 1980). Part 49 contains requirements addressing the three essential elements of effective mine rescue teams: (1) Ready availability; (2) proper equipment; and (3) basic levels of skills and training.

After several underground coal mine disasters in 2006, Congress passed and the President signed the Mine Improvement and New Emergency Response (MINER) Act of 2006, which became effective on June 15, 2006. The goal of the MINER Act is ''to improve the safety of mines and mining.'' Section 4 of the MINER Act requires that the Secretary issue regulations for mine rescue teams by December 2007. Because the mine rescue team provisions contained in section 4 of the MINER Act apply only to underground coal mines, the final rule affects those mines and the mine rescue teams that cover them.

MSHA published the proposed rule for Mine Rescue Teams in the **Federal Register** on September 6, 2007 (72 FR 51320). The Agency held four public

hearings on October 23, 2007, in Salt Lake City, Utah; on October 25, 2007, in Lexington, Kentucky; on October 30, 2007, in Charleston, West Virginia; and on November 1, 2007, in Birmingham, Alabama. In response to a request from the public, MSHA extended the comment period from November 9, 2007, to November 16, 2007. This action allowed commenters sufficient time to review the posted transcripts and submit comments.

**III. Section-by-Section Analysis**

MSHA developed this final rule based on the provisions of the MINER Act, Agency experience, testimony at the public hearings, and the comments on the proposed rule.

*A. Technical Amendments to Existing Standards*

This final rule makes no substantive change to requirements for mine rescue teams at underground metal and nonmetal mines; however, it makes the following non-substantive organizational changes to 30 CFR part 49.

- The final rule adds a heading designating the existing standards as *Subpart A—Mine Rescue Teams for Underground Metal and Nonmetal Mines;* but makes no changes to §§ 49.1 through 49.9.
- The final rule deletes *§ 49.10 Effective date,* which is obsolete.

*B. Subpart B*

Subpart B contains all the standards applicable to mine rescue teams for underground coal mines. The final rule revises existing standards to implement the provisions and achieve the goals of the MINER Act, and to address the unique conditions present in anthracite coal mines. The final rule also revises existing § 75.1501(a) in 30 CFR part 75 to implement a MINER Act requirement.

Subpart B contains the following five new standards:

§ 49.20 Requirements for all coal mines.

§ 49.30 Requirements for small coal mines.

§ 49.40 Requirements for large coal mines.

§ 49.50 Certification of coal mine rescue teams.

§ 49.60 Requirements for a local mine rescue contest.

1. New Subpart B and the Reorganization of Part 49

The final rule, like the proposal, retains all existing standards as subpart A applicable to underground metal and nonmetal mines and creates a new, separate, subpart B containing existing standards and the MINER Act provisions for underground coal mines. In the proposal, MSHA requested comments on the re-organization of 30 CFR part 49. Commenters supported the re-organization and thought that it was beneficial in eliminating confusion. A commenter expressed concern regarding use of separate standards for different industries and urged MSHA to be cautious of this approach. MSHA's approach in the final rule is consistent with the Agency's longstanding practice of having separate standards for different industries.

MSHA also requested comments on whether the proposal would result in different approaches to providing mine rescue services and, if so, what those approaches would be. Commenters expressed a variety of concerns, most related to team composition and training at each covered mine.

2. Section 49.11 Purpose and Scope

The final rule, like the proposal, adds the phrase, ''as amended by the Mine Improvement and New Emergency Response Act of 2006,'' to update *§ 49.11 Purpose and scope.* This change is a technical amendment. The final rule also designates the existing provision as paragraph (a) and adds a new paragraph (b). Paragraph (b) contains Table 49.11, which provides mine operators a summary of new MINER Act requirements. As noted following the table, state employees, whose primary job duties include (1) inspecting underground mines for compliance with state safety laws, (2) training mine rescue teams, or (3) other similar duties that would enhance their mine rescue knowledge, can substitute their regular job experience for 50 percent of the annual training requirements, including mine rescue contests and mine-site training.

MSHA requested comments on allowing State employees on mine rescue teams to substitute their job experience for 50 percent of the annual training requirements. Most commenters agreed that job duties can substitute for some of the required training. One commenter suggested that job experience should substitute for all training requirements. Some commenters stated that all mine rescue team members should be allowed to substitute job experience for training requirements. Several commenters stated that individual job duties should not be allowed to substitute for any mine rescue team training for any mine rescue team members.

State employees on mine rescue teams involved in full-time inspection and mine rescue training activities have developed an expertise that will enhance mine rescue team emergency response capabilities. They are dedicated professionals who are familiar with mines they cover and knowledgeable about mine rescue and other areas of mine safety and health training. On a daily basis, they are exposed to a variety of mining environments, complex conditions, different problems, and new issues. This affords them a broad perspective into the safety and health objectives pertaining to mine rescue and mine rescue training.

MSHA recognizes the knowledge and experience state employees on mine rescue teams gain in the performance of their jobs. MSHA agrees with the commenters supporting the note to Table 49.11. Under the final rule, full-time state employees on mine rescue teams must complete at least 48 hours of refresher training annually, including participation in at least one local mine rescue contest and training at each covered mine at least once every year.

3. Section 49.12 Availability of Mine Rescue Teams

(a) § 49.12(b) Alternative Composition Requirements for Mine Rescue Teams for Anthracite Coal Mines

The final rule, like the proposal, includes requirements for mine rescue teams serving underground anthracite coal mines with no electrical equipment at the working section. The final rule is derived from petitions for modification, which MSHA has historically granted under section 101(c) of the Mine Act, because mining methods and conditions in underground anthracite coal mines are unique. For these mines, MSHA requires mine rescue teams to be comprised of three members each and one alternate team member to serve both teams.

In support of these petitions, anthracite mine operators cited the following:

- Most anthracite mines are not highly mechanized. Production and maintenance work is done largely by hand, using simple hand tools and equipment. Anthracite mines may have no underground electric power or may have power only at the bottom of the hoist slope.
- Typically, extraction occurs in a single face or production area. Many anthracite mines are developed only short distances underground, rarely more than several thousand feet.
- Anthracite seams dip steeply and are often near vertical. Openings are narrow and constricted. Access between levels is by means of hardwood ladders

through small, steeply pitched openings.

- The hoist bucket, used to transport personnel, typically can accommodate no more than four persons.
- Rock dusting is not required because of the extremely low combustibility of anthracite coal, caused by its low volatile content.
- The average underground anthracite mine employs four miners.
- In the past 20 years, no more than one mine rescue team has been needed in the anthracite region for rescue and recovery activities. Further, no more than three rescue team members have entered a working place at the same time during such activities.

In accordance with section 101(c) of the Mine Act, MSHA investigated each petition of § 49.2(b) from these small, underground anthracite coal mines and made the following finding:

> Considering this confirmation and the narrow width and constricted openings, the limited capacity of hoist conveyances, the pitched seam, the short travel distance from the slope bottom to the working face, and the low combustibility of anthracite coal, petitioner's alternative method of two mine rescue teams with three members each is as safe as maintaining two teams of five members. As such, it achieves the result of the standard to ensure the availability of mine rescue capability for purposes of emergency rescue and recovery.

On the basis of the petitions and the findings of its investigations, MSHA granted 22 petitions for modification of § 49.2(b) that allow anthracite coal mines to operate under the approved alternate method. Currently, 10 underground anthracite coal mines operate under this approved alternative method.

Most anthracite mines are small (average 5 employees) and could not have their own mine site teams, are located in the same geographical area, and belong to an association called ''Anthracite Underground Rescue'' (AUGR). AUGR and the Pennsylvania Bureau of Mine Safety (Bureau) have an agreement for mine rescue training. AUGR provides qualified miners to be trained in mine rescue and the State provides a mine rescue station, equipment, and a trainer. These teams cover all the anthracite mines.

Commenters supported this provision. One commenter stated that the proposed alternative does not benefit two small anthracite mines that have electrical face equipment and they can not realistically start their own company teams. This commenter urged MSHA to consider these teams as composite, but not require team members from each covered mine. The final rule does not expand the proposed provision to underground anthracite coal mines with electrical equipment at the face or working section. This final provision is consistent with MSHA's action on existing petitions for modification.

(b) § 49.12(c) Alternative Experience Requirement for Members of Contract Mine Rescue Teams

The final rule, like the proposal and consistent with the MINER Act, requires that members of contract mine rescue teams have ''a minimum of 3 years underground coal mine experience that shall have occurred within the 10-year period preceding their employment on the contract mine rescue team.'' The final rule retains the existing provision that requires mine rescue team members to have been employed in an underground mine for at least 1 year within the past 5 years. MSHA received no comments on this provision.

One commenter objected to allowing a surface employee who regularly works underground to claim such time to meet the experience requirement. The final rule retains this existing provision; the proposal did not address it.

Another commenter asked that MSHA clarify what it means to work underground ''regularly.'' For the purpose of this provision, MSHA considers ''regularly works'' to mean that the member has recurring job duties at each mine, exposing the member to the mine's underground operations, conditions, and environment. For example, this may include surveyors, engineers, safety personnel, electricians, and maintenance and service personnel.

Several commenters requested that MSHA waive this requirement for current mine rescue team members who are employed on the surface. Like the proposal, the final rule waives the underground experience requirement for those miners on a mine rescue team on February 8, 2008.

4. § 49.12(f) Available Within 1 Hour Ground Travel Time From the Mine Rescue Station

The final rule, like the proposal, includes the MINER Act requirement that no mine served by a mine rescue team shall be located more than 1 hour ground travel time from the mine rescue station with which the rescue team is associated. This provision will assure that a team will arrive at the mine more quickly in case of a mine emergency.

MSHA received numerous comments on this proposal. Commenters questioned whether this provision would improve safety in an actual emergency. Commenters noted that there have been no instances where a team's arrival delayed a rescue operation and stated that the provision is not justified. Several commenters indicated that the proposal is infeasible for some western coal mines, which are geographically isolated. Likewise, some commenters indicated that rugged terrain in Central Appalachia hinders ground travel, making compliance difficult. A few commenters stated that the proposal will cause the relocation of stations further from some mine sites, disrupt current team coverage, and may result in mine closures. Many commenters indicated that a sufficient number of volunteers may not be available to form additional teams needed for new mine rescue stations. Commenters stated that the establishment of new and relocation of existing rescue stations is an unnecessary, burdensome expense, with no benefit to mine safety.

Commenters suggested that MSHA grandfather existing mine rescue stations and current coverage arrangements. Commenters also suggested that MSHA allow the District Manager to grant waivers of the 1 hour ground travel time for existing teams and stations, but only up to 2 hours. Commenters also asked MSHA to consider alternatives, including the use of air transportation and emergency escorts.

One commenter did not believe the 1-hour provision would cause undue hardship. One commenter stated that more rescue stations would likely be created, resulting in teams getting to the mines sooner. Consistent with the MINER Act, the final rule includes the 1-hour requirement.

5. Section 49.13 Alternative Mine Rescue Capability for Small and Remote Mines

The final rule, like the proposal, retains the existing provision for alternative capability for small and remote mines. It requires that the operator's application include the total underground employment of any mines within 1 hour of the operator's mine, to be consistent with the 1-hour requirement of the MINER Act. It also requires that the operator include the location of the mine rescue station serving the mine. Commenters suggested alternatives that the District Manager should consider for small and remote mines. Other commenters stated that this provision should not be used to allow remote operations with large numbers of miners to circumvent the MINER Act requirement for two teams. For clarification, MSHA notes that this provision, which was in the existing standard, requires a mine to be both

small and remote before it can file an application.

6. Section 49.14 [Reserved]

The final rule, like the proposal, does not include this provision in subpart B because it is not applicable to underground coal mines. MSHA received no comments on this proposal.

7. Section 49.15(a) Mine Rescue Station

The final rule, like the proposal, removes the exception related to alternative compliance. The final rule makes no change from the proposal. This final rule is consistent with the goals of the MINER Act. MSHA received no comments on this proposal.

8. Section 49.16(a) Alternative Equipment Requirement for Anthracite Mines

The final rule, like the proposal, adds a provision to address underground anthracite coal mines that have no electrical equipment at the face or working section. Through the petition for modification (PFM) process, MSHA allows mine rescue teams for underground anthracite coal mines, which have no electrical equipment at the face or working section, to have three members for each team and one alternate to serve both teams. These operators have submitted petitions for modification to allow the mine rescue station to maintain eight self-contained oxygen breathing apparatus and eight cap lamps and a charging station, rather than twelve of each as required by the existing standard.

On the basis of these petitions and the findings of its investigation, MSHA granted 17 petitions for modification of § 49.6(a)(1) and (5) that allow each mine rescue station for anthracite coal mines to have eight self-contained oxygen breathing apparatus, eight cap lamps, and a charging rack, as the approved alternative method. Currently, 10 underground anthracite coal mines operate under this approved alternative method.

The final rule requires that mine rescue stations covering anthracite coal mines that have no electrical equipment at the face or working section have at least the amount of equipment appropriate for the number of mine rescue team members, consistent with the action taken in existing petitions for modification. For three-person teams and one alternate, this would mean seven self-contained oxygen breathing apparatus and seven cap lamps. Under the final rule, equipment required per team, such as gas detectors, may not be reduced. No commenters objected to this provision, so long as it is consistent with the provisions in the petitions for modification.

9. Section 49.17 Physical requirements for Mine Rescue Team

Like the proposed rule, the final rule maintains the existing physical requirements for mine rescue teams. Commenters suggested that MSHA modify the rule to allow the use of corrective glasses in determining distant visual acuity. Although MSHA considered this suggestion, it is beyond the scope of the rulemaking.

10. Section 49.18 Training for Mine Rescue Teams

The final rule, like the proposed rule, retains the existing requirements. In the final rule, MSHA has removed obsolete language in § 49.18(a) related to waiver of initial training. All existing teams meet the initial training requirement, making it unnecessary to waive.

Like the proposal, the final rule adds paragraph (b)(6), which requires all mine rescue team members, at least once during each 12-month period, to participate in training that includes wearing mine rescue apparatus while in smoke, simulated smoke, or an equivalent environment. Commenters agreed that training in smoke afforded teams skills that would be useful in an actual mine emergency and that several mine rescue teams already perform this training. Although some mine operators or training facilities use actual smoke, operators can use a nontoxic theatrical smoke, which is harmless. For the purposes of this provision, an equivalent environment could include training with glasses or face shields that reduce vision and simulate smoke. This requirement assures that mine rescue team members train in realistic conditions.

The final rule increases the 40-hour annual refresher training requirement to 96 hours from 64 hours in the proposed rule. This training must be provided at least 8 hours every 2 months. This increase is in response to comments and is consistent with the goals and objectives of the MINER Act and the recommendations of the Mine Safety Technology and Training Commission (Commission). Some commenters supported the existing requirement of 40 hours of annual training. These commenters generally were concerned that small mines do not have the resources to allow training during work hours and that an increase in this training could affect the mine rescue teams' ability to attract volunteers. Other commenters suggested 48 hours of annual training was appropriate. They suggested 8 hours of training every 2 months, for a total of 48 hours. They indicated that the increased training time may conflict with mine-site duties, which might preclude experienced miners from participating on rescue teams.

Other commenters were not opposed to the proposed 64 hour training requirement. Several noted that their teams' annual training currently exceeds 64 hours. These commenters noted that the content and quality of this training is more important than the total number of training hours. They requested more flexibility in scheduling training, stating that some mine rescue training occurs irregularly, depending on weather conditions and contest schedules.

Other commenters recommended that the annual training requirement be increased to a minimum of 96 hours, given at 8 hours each month. In support of this recommendation, they cited the Commission's report on *Improving Mine Safety Technology and Training: Establishing U.S. Global Leadership* (2006). The Commission, composed of members from a cross-section of the mining community, industry, labor, academia, government, including mine rescue practitioners, recommended a minimum of 96 hours of annual training, at 8 hours each month. One commenter also stated that participating in mine rescue contests should not be considered as part of this 96 hours of annual training.

Based upon the comments, the Commission's report, and Agency data and experience, in the final rule MSHA has increased the amount of annual training to 96 hours. In making this decision, MSHA determined that additional annual refresher training is necessary to fully address all of the training requirements in the MINER Act. MSHA also agrees with commenters' suggestions and the Commission's report that additional training is necessary to adequately prepare for mine rescue team service. In addition, based on the Commission's recommendations and MSHA's experience, MSHA anticipates that this additional training will provide an incremental increase in safety for underground coal miners. Therefore, the final rule increases training from the proposed 64 to 96 hours.

In addition to existing requirements, the MINER Act requires that team members be familiar with operations of covered mines, have knowledge of the operation and ventilation of covered mines, and train at covered mines. Also, teams under paragraph (b)(6) need to train in smoke, simulated smoke, or an equivalent environment once annually.

In order to further improve their skills, teams may also participate in Mine Emergency Response Development (MERD) exercises or other practical simulation exercises, such as a fire or explosion drills. This type of training further enhances teams' skills in interacting with a command center. Recommended training could also include: first responder training, communications, mine gases, gas detectors, new technology, heat stress, and hazard training unique to the covered mines. In addition, skills training may include building temporary stoppings and seals, using a foam generator underground, and using an air lock to rescue survivors. This additional training will enhance teams' skills and abilities.

The MINER Act also requires mine rescue team members to participate in two local mine rescue contests each year. The final rule will allow up to 16 hours of credit for participation in the two required mine rescue contests. Some commenters objected to including mine rescue contests as a part of the annual training requirement, while others favored such a requirement. Commenters stated that mine rescue contests are designed to increase rescue team skill levels and to facilitate interaction between various rescue teams. MSHA agrees. MSHA believes that mine rescue contests serve a vital role in achieving the purpose of the MINER Act to improve the safety of mines and mining. Historically, they have served to assure that mine rescue teams are well-trained and capable of responding to mine emergencies. Under existing Agency policy, MSHA allows up to 8 hours credit for mine rescue contests toward the annual training requirement. In recognition of the critical need for the team to travel efficiently from the mine rescue station to the covered mine, under the final rule, travel time can be counted toward fulfilling the 96 hour requirement.

While the final rule increases the total amount of annual refresher training, it retains the requirement that the training occur at least 8 hours every 2 months. Taking into consideration comments that mine rescue training occurs irregularly, depending on weather conditions and contest schedules, MSHA decided not to reduce the flexibility of scheduling training. Based on MSHA data and experience, 8 hours of training every 2 months is necessary to avoid skills degradation. As the Commission's report states,

> The nation's mine rescue capability rests more heavily on training than on any other aspect of the mine emergency response system. Especially since emergency incidents are relatively rare, the predominant way teams keep their skills sharp, and develop cohesion, enthusiasm, and trust, is through training.

The final rule, like the proposed rule and the existing standard, requires that the training courses be conducted by instructors who have been employed in an underground mine and have had a minimum of 1 year experience as a mine rescue team member or mine rescue instructor within the past 5 years. A commenter suggested that MSHA allow experienced underground miners to become instructors even though they do not have 1 year experience as a mine rescue team member. MSHA has not included this suggestion in the final rule to assure that mine rescue team members are instructed by persons with practical mine rescue experience. Mine rescue team instructors who have received MSHA approval prior to the effective date of the final rule would not have to meet this requirement.

*C. Subpart B—Mine Rescue Teams for Underground Coal Mines; Additional MINER Act Provisions*

1. Section 75.1501(a) Person Knowledgeable in Mine Emergency Response

The final rule, like the proposal, requires that the responsible person be trained annually in a course of instruction in mine emergency response. This provision implements the MINER Act requirement that the operator have a person employed on each shift who is knowledgeable in mine emergency response. The final rule requires that the responsible person be trained in a course prescribed by MSHA's office of Educational Policy and Development.

The majority of commenters expressed concern that the proposal placed too much responsibility on one person. Some of these commenters thought that the proposal required the responsible person to conduct the activities listed in the proposal, rather than to be trained in those activities. Other commenters expressed concern that the proposal contained excessive training requirements and that the training areas listed were not sufficiently described. One commenter indicated that MSHA must establish and require a standard minimum curriculum along with recommended times for each topic.

In response to comments, MSHA has clarified the final rule to require that the responsible person be trained in a course which includes topics listed in the rule. The rule does not establish any new duties for the responsible person. Further, in response to comments, the course for the responsible person will be based on a curriculum prescribed by MSHA and placed on the Agency's Web site. MSHA is developing this course in mine emergency response to assure consistent and comprehensive training. Commenters further requested that the final rule include a recommended duration of time for this training. In light of the fact that MSHA is developing the curriculum for this course, MSHA does not believe that it is either necessary or appropriate to specify a duration for this training.

Consistent with other MSHA training requirements, the final rule, like the proposal, requires that the operator certify by signature and date after each responsible person has completed the training and that the certification be kept at the mine for 1 year. MSHA received no comments on this aspect of the proposal.

2. Section 49.20 Requirements for All Coal Mines

The final rule addresses MINER Act provisions that are the same for all underground coal mine rescue teams, regardless of the size of the operation. It requires the operator to make available two certified mine rescue teams whose members are familiar with the operations of each coal mine covered by the mine rescue team, participate annually in two local mine rescue contests, and train at the covered mines.

a. Section 49.20(a)(1) Familiarity With Operations of Covered Mines

This final rule, like the proposal, requires two certified mine rescue teams whose members are familiar with the operations of the mine and participate at least annually in two local mine rescue contests. One commenter stated that while MSHA's understanding of ''familiarity'' is acceptable for the knowledge a miner would posses in order to safely perform job duties, it does not adequately describe the level of knowledge a mine rescue team member should posses in order to carry out rescue and recovery duties. Commenters indicated that familiarity with the covered mine was necessary but did not agree with the frequency of training at the covered mine.

The final rule adopts the MINER Act requirement of ''familiarity'' with the operation of the coal mine. Under the final rule, MSHA considers ''familiarity'' with the operations of the covered mine as first-hand experience of the underground mining conditions and operations at a particular mine. Team members who do not work at the

covered mine become familiar with its operations by participating in mine rescue training at the mine. Training at the mine may include: Identifying the designated escapeways, intakes, returns, the ventilation system, locations and types of fire fighting equipment, the communication system, mine-wide monitoring system, and the type of transportation equipment used at the mine. Also, team members need to be familiar with the location of stored SCSRs, lifelines, breathable air, hardened rooms, and other emergency response equipment or supplies.

MSHA recognizes that the amount of time required to familiarize teams with a particular mine will vary, depending on mining conditions. For example, teams may need more time to become familiar with complex mines and newer team members may require more time to achieve this familiarity. For this reason, MSHA is not requiring a minimum amount of time for mine rescue team training underground at each covered mine. MSHA expects the operator to effectively evaluate each team member to determine the amount of training necessary for that person to become familiar with operations at the covered mine. MSHA expects that a portion of each required training session at the mine be conducted in the mine.

b. § 49.20(a)(2) Participation in Two Local Mine Rescue Contests

Like the proposal, the final rule includes the MINER Act requirement that mine rescue team members participate in two local mine rescue contests annually.

Commenters expressed concern with the criteria for, and quality of, mine rescue contests. They were concerned about the availability of acceptable contests. MSHA addresses commenters' concerns with criteria for mine rescue contests in the discussion of § 49.60, which addresses requirements for a local mine rescue contest.

Mine rescue contests are designed to sharpen skills and test the knowledge of team members who would be called on to respond to a mine emergency. Historically, mine rescue contests have provided individuals with practical, hands-on experience and are one of the most effective forms of training. Some team members who are regular participants in contests have been called on in recent years to perform actual mine rescue and recovery work. They have done so successfully and training exercises, such as mine rescue contests, were essential to maintaining a well-prepared team.

A commenter stated that participation in two back-to-back contests is counterproductive because the teams need time to analyze and discuss in depth their performance during the contest. Contest judges evaluate teams and provide a written evaluation and score after each contest. Contest judges will evaluate each team and judge if the team demonstrates acceptable skills to be certified. A copy of the judge's evaluation will be submitted to the District Manager. MSHA expects that teams learn from constructive feedback and their experiences during contests. In response to this comment, MSHA has changed the proposed criteria for a local mine rescue contest in the final rule to clarify that a contest consists of one or more problems on one or more days with a determined winner.

c. § 49.20(b) Requirements for Types of Mine Rescue Teams

The final rule, like the proposal, provides for four types of mine rescue teams, consistent with the MINER Act. In response to comments, MSHA has included clarifying changes in the final rule.

Commenters generally expressed concern that the description of teams in the MINER Act did not adequately encompass the variety of arrangements for mine rescue service or the composition of mine rescue teams that are currently available to the mining community. Commenters indicated that this provision would disrupt existing mine rescue service, which would be contrary to the goals of the MINER Act. They cautioned that the proposal could result in: Disbanding experienced mine rescue teams; replacing experienced team members with inexperienced ones; inability to attract volunteers to join mine rescue teams; mines losing current coverage arrangements, and possibly mine closures.

Commenters objected to the differences in training requirements for large and small mines. In particular, commenters expressed concern that the training differences between types of teams were illogical, requiring mine-site and state-sponsored teams to train more often at each covered small mine than at each covered large mine. Other commenters stated that mine size and complexity should determine the frequency of training at the covered mine, not the type of team.

Commenters objected to the proposed requirement that composite teams from small mines need to include two miners from each covered mine. They were concerned about the ability of small mines to generate two volunteers due to their employment. They indicated that small mines are less likely to be able to spare a miner to perform mine rescue training or service. A commenter, however, indicated that small mines should be required to have two team members on composite teams.

Several commenters suggested allowing a company team, composed of miners who work for an operator of multiple mines, to be considered a mine-site team so they would not need to have two team members from each covered mine. Commenters also expressed concern that requiring two members from each covered mine may result in teams with too many members, creating logistical training problems and excessive costs.

With regard to state-sponsored teams, several commenters suggested that teams composed of non-state employees who use mine rescue equipment and stations provided by the state be considered a state-sponsored or composite team instead of a contract team. Some commenters stated that State-sponsored composite team members should be considered state employees to get credit for the time in training at the mine in which they work.

In response to commenters' concerns that the proposal did not effectively encourage the creation of new mine site teams, the final rule requires mine-site teams to train annually at each covered small mine. MSHA expects this change to encourage more mine-site teams. The final rule also requires state-sponsored teams to train annually instead of semi-annually at each covered small mine. Additionally, at small mines only, the final rule allows composite teams to have one member from each covered small mine. Also in response to comments, for the purpose of mine rescue team membership, a member employed by an operator of multiple mines is considered to be an employee of each mine at which the member regularly works. In this section, MSHA considers ''regularly works'' to mean that the member has recurring job duties at each mine, exposing the member to the mine's underground operations, ventilation, conditions, and environment. For example, these employees may include surveyors, engineers, safety personnel, electricians, and maintenance and service personnel.

One commenter questioned the use of ''a'' covered mine in the proposal, believing that MSHA meant ''each'' covered mine. In response to this comment, the final rule includes the term ''each'' covered mine.

d. Knowledge of Operations and Ventilation at the Covered Mine

The final rule, like the proposal, requires members of mine rescue teams to have knowledge of the operations and

ventilation at each covered mine. Generally, this would require each team to review the mine's ventilation maps, roof or ground control methods, emergency response plan, transportation, and communication system.

e. Mine Rescue Team Training at Each Covered Mine

The final rule, like the proposal, requires that members of mine rescue teams must participate in training at each covered mine, consistent with the MINER Act, MSHA interprets the intent of the MINER Act to require that at least a portion of the training at each covered mine must be conducted underground.

Commenters objected to the requirement that teams train at each covered mine. They stated that this training is impractical, overly burdensome, unnecessary, and may negatively affect the ability to attract new team members. In particular, commenters indicated that travel and training time is excessive for contract teams. Several commenters suggested that, to alleviate this burden, team members be allowed to rotate training at each covered mine so that each team member trains at each covered mine at least annually. Some commenters suggested that only two members of each team be required to train at each covered mine and they would brief the team. A commenter suggested that, if the team does not complete training at each covered mine, the team should not be used as a first responder.

Under the final rule, the number of training sessions required at the covered mine depends on the mine size and type of mine rescue team. The following chart illustrates the required number of training sessions at each covered mine.

TABLE 1.—FREQUENCY OF TRAINING FOR MINE RESCUE TEAM MEMBERS AT EACH COVERED UNDERGROUND COAL MINE EACH YEAR

| Type of team | Mine size | |
|---|---|---|
| | Large (more than 36) | Small (36 or fewer) |
| Mine Site | 1 (annually) | 1 (annually). |
| Composite | 2 (semi-annually) | 2 (semi-annually). |
| Contract | 4 (quarterly) | 2 (semi-annually). |
| State-sponsored | 1 (annually) | 1 (annually). |

In response to comments, the final rule includes § 49.20(d) to clarify that a portion of the training at each covered mine must be conducted underground.

f. Integration of Mine Rescue Team Training Requirements

The two new categories of training for mine rescue team members, participation in mine rescue contests and participation in training at the covered mines, complement the existing training. The final rule retains existing requirements for training sessions underground every 6 months; and the wearing of breathing apparatus for a minimum of 2 hours every 2 months. MSHA expects operators to integrate the new requirements, including mine rescue training at the covered mines, with the existing requirements.

g. Section 49.20(c) Employee of Multiple Mines

The final rule adds this paragraph in response to comments. Commenters requested that the Agency clarify, for mine rescue team purposes only, the employment status of an employee who works at multiple mines for a single operator. For the purpose of mine rescue team membership, this new provision allows a team member employed by an operator of multiple mines to be considered an employee of each mine at which the member regularly works. In this section, MSHA considers ''regularly works'' to mean that the member has recurring job duties at each mine, exposing the member to the mine's underground operations, conditions, and environment. For example, this may include surveyors, engineers, safety personnel, electricians, and maintenance and service personnel.

3. Section 49.30 Requirements for Small Coal Mines

The final rule, like the proposal, requires that members of mine rescue teams covering a small mine know the operations and ventilation of the mine. In response to comments, MSHA clarifies that small coal mines applies to mines with 36 or fewer underground employees. Commenters asked MSHA to clarify how the Agency would determine employment for purposes of the rule. MSHA recognizes that a small mine's employment may fluctuate from time to time. MSHA expects operators to use data reported to MSHA for the quarterly employment and coal production report required in § 50.30 to determine the number of underground employees working at a mine.

4. Section 49.40 Requirements for Large Coal Mines

The final rule, like the proposal, requires that the mine operator of a large mine designate either an individual mine-site team or a composite team as one of the two mine rescue teams, consistent with the MINER Act. The second mine rescue team can be a mine-site, composite, contract, or State-sponsored team. MSHA clarifies that large coal mines applies to mines that have more than 36 underground employees. MSHA recognizes that a large mine's employment may fluctuate from time to time. MSHA expects operators to use the data reported to MSHA for the quarterly employment and coal production report required in § 50.30 to determine the number of underground employees working at a mine.

5. Section 49.50 Certification of Mine Rescue Teams

The final rule establishes criteria to certify the qualifications of mine rescue teams, consistent with the MINER Act.

a. § 49.50(a) Certification Criteria

The final rule, like the proposal, requires that a mine operator certify that each of the mine's two designated mine rescue teams meet the requirements of this subpart. The certification criteria include a certification statement, equipment and training requirements, and the frequency of certification. As in the proposed rule, to be certified, the mine rescue team must be available when miners are underground and within 1 hour ground travel time from the mine rescue station to the mine; team members must be physically fit, experienced working in an underground mine, and properly trained; and the mine rescue station must be adequately equipped. The criteria for these qualifications are contained in the final rule.

A commenter asked MSHA to clarify whether a mine rescue team member may complete an annual certification statement. Like the proposal, the final rule does not address who completes the annual certification statement. To comply with this requirement, the mine operator must certify and submit the annual certification statement to the District Manager.

One commenter objected to operator certification of mine rescue teams because it does not provide for an objective review of a team's abilities. This commenter also expressed concern about MSHA's ''lifetime certification'' of mine rescue instructors and suggested that MSHA require instructors to demonstrate routinely their skill and understanding of mine rescue. The final rule provides that a local mine rescue contest is training that provides an objective evaluation of demonstrated mine rescue team skills. MSHA considers the evaluations of team performance at the two required local mine rescue contests to be an objective test and evaluation of a mine rescue team's abilities.

In response to comments, MSHA has added a requirement in the certification table that judges must certify the results of the two local contests. This will serve to provide further evidence of an objective evaluation of a team's abilities. The final rule requires that contest judges complete annual training for mine rescue contest judges. As required by the final rule, a local mine rescue contest must use the National Mine Rescue Contest rules, or other rules recognized by MSHA. Contest judges receive comprehensive training on contest rules. At each contest, each mine rescue team has a problem. In general, judges use the following criteria to evaluate team performance: (1) Communication with team members; (2) Time taken to solve problem; (3) Accuracy of markings, e.g. on maps; (4) Team effectiveness in solving problem; (5) Team effectiveness in handling first responder activities, e.g. first-aid; and (6) Team's use of technology, e.g. testing for methane and other gasses. Teams receive discounts for mistakes, and an overall score. Periodically, MSHA will monitor mine rescue team instructor activities. When a judge finds that a team does not meet minimum skills, MSHA will audit the training and notify the District Manager. Based on this audit, MSHA may revoke the instructor's approval.

For further ease of understanding, MSHA divided the proposed Table on Certification into two tables in the final rule. Table 49.50–A lists the initial criteria to certify the qualifications of mine rescue teams. Table 49.50–B lists the annual criteria to maintain mine rescue team certification. New teams will have to meet these requirements.

In response to comments, this final rule includes an optional certification form that operators may use to assist them in complying with this section. This optional form is attached as an appendix to this rule. The form is posted on MSHA's Web site. MSHA will accept certification statements in all formats, both electronic and paper.

(b) § 49.50(b) District Manager Notification

The final rule includes a new requirement that an operator must notify the District Manager within 60 days of any change in team membership. Commenters stated that the membership of each team is subject to change and questioned the impact of changes on team certification. MSHA clarifies that a team does not automatically lose its certification when a team replaces a member. Under the final rule, the operator has 60 days in which to notify the District Manager of any change so that MSHA can assure continued compliance.

6. Section49.60 Requirements for a Local Mine Rescue Contest

The final rule, like the proposal, includes criteria for a local mine rescue contest. It also requires that, when requested, the mine operator must provide information to the District Manager concerning each designated team's schedule of participation in upcoming local mine rescue contests.

Paragraph (a) of this section in the final rule requires that a local mine rescue contest is: conducted in the United States; uses MSHA recognized rules; has a minimum of 3 teams; and has one or more problems conducted on one or more days with a determined winner.

With respect to the requirement that contests use MSHA-recognized rules, commenters stated that all contests should use MSHA National Contest rules; others indicated that contests should concentrate on the practical aspects of mine rescue and not focus on compliance with rules. Some said the contest rules may be too restrictive. Like the proposal, the final rule does not require contest organizers to use the National Mine Rescue Contest Rules; it allows other rules recognized by MSHA.

Commenters wanted MSHA to clarify the term ''participate,'' as used in the proposal. As is existing practice, MSHA recognizes a team as participating when the team is present and competes. Also, in response to comments, MSHA will consider State-sponsored teams, whose members are full-time state employees, as participating in a local mine rescue contest when performing duties as contest judges or officials.

One commenter supported the proposed requirement stating that this would allow companies to put on their own mine rescue contests and have intra-company training. Another commenter questioned whether permitting competitions with as few as three participating teams is adequate. As stated in the proposal, MSHA intends that requiring a minimum of three teams for a local mine rescue contest will encourage more contests among teams in close geographic proximity. Therefore, the final rule requires a minimum of three competing teams in a local mine rescue contest.

Commenters indicated that participation in a mine rescue contest is an opportunity to demonstrate the results of training. Teams spend a lot of time preparing for contests. As stated in the proposal, teams must prepare to compete as if the contest were an actual mine emergency. MSHA agrees that preparation for a contest is a vital component of team training, along with the interaction with other teams and the evaluation provided by judges. Competing while being timed, observed, and judged creates a stressful environment that provides an effective forum for evaluating and testing the team's level of knowledge and skill under simulated mine emergency conditions. The ability to make effective decisions quickly, while under stress and wearing breathing apparatus, is a vital skill for each mine rescue team member to develop.

Most commenters agreed that, in order for judges to administer the mine rescue contest fairly and provide appropriate and meaningful evaluations, judges should have a strong background in mine rescue. In addition, most commenters agreed that there should be prescribed areas of annual training for contest judges, but did not want a minimum required amount of time. Some stated that judges' training on the rules should address changes in the rules only. MSHA disagrees because training should always be comprehensive. This strengthens existing skills and knowledge and accommodates new judges. Some commenters indicated that persons with knowledge of mine rescue principles and practices and experienced in mine rescue should be allowed to serve as judges for local contests. Some said that only MSHA or State personnel should judge contests. A few commenters stated that judges should have actual mine

rescue experience, preferably experience in an actual emergency. MSHA believes that the annual rules training is sufficient to adequately train judges.

Paragraph (b) of this section in the final rule clarifies that a local mine rescue contest provides an objective evaluation of demonstrated mine rescue team skills. A number of commenters indicated that there are other simulated mine rescue team exercises that also enhance mine rescue skills and provide an evaluation of the team's performance. A few commenters expressed concern that MSHA proposed other simulated mine rescue team exercises as a substitute for a local mine rescue contest. A local mine rescue contest provides an objective evaluation of demonstrated mine rescue team skills. In response to these comments, the final rule clarifies that a MERD exercise or practical simulation exercise, such as a fire or explosion response exercise, can be a local mine rescue contest for purposes of this provision. MSHA recognizes that the benefit of preparing for a contest is as valuable as competing.

Some commenters said that scheduling issues may preclude some mines from participating in two local mine rescue contests and that additional opportunities to participate in other types of simulated mine rescue exercises allows teams to satisfy this requirement.

Two commenters stated that MSHA cannot allow substitution of other training for participation in local mine rescue contests because the MINER Act mandates that teams must participate at least annually in two local mine rescue contests. As stated previously, MSHA considers that participation in simulated mine rescue team exercises, where the members wear breathing apparatus, demonstrate mine rescue team skills, and receive an evaluation of team performance fosters an environment conducive to increased preparation for mine rescue and mine emergency response.

As stated in the preamble to the proposed rule, MSHA considers actual underground participation in a rescue or recovery operation as a substitute for participation in a local mine rescue contest.

The final rule requires mine operators to notify the appropriate District Manager, on request, when and where their designated teams plan to participate in mine rescue contests. This notice allows MSHA time to prepare for attending the contest and to provide assistance as necessary. This notice also allows MSHA to verify that the contest meets the requirements of this final rule.

## IV. Regulatory Economic Analysis

### *A. Executive Order 12866*

Executive Order (E.O.) 12866 as amended by E.O. 13258 (Amending Executive Order 12866 on Regulatory Planning and Review) requires that regulatory agencies assess both the costs and benefits of regulations. To comply with E.O. 12866, MSHA has prepared a Regulatory Economic Analysis (REA) for the final rule. The REA contains supporting data and explanation for the summary materials presented in this preamble, including the covered mining industry, costs and benefits, feasibility, small business impacts, and paperwork. The REA is located on MSHA's Web site at *http://www.msha.gov/REGSINFO.HTM.* A copy of the REA can be obtained from MSHA's Office of Standards, Regulations, and Variances at the address in the **ADDRESSES** section of this preamble.

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of significant regulatory actions. Under the Executive Order, a ''significant regulatory action'' is one meeting any of a number of specified conditions, including the following: Having an annual effect on the economy of $100 million or more, creating a serious inconsistency or interfering with an action of another, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. Based on the REA, MSHA has determined that the final rule does not have an annual effect of $100 million or more on the economy and that, therefore, it is not an economically ''significant regulatory action'' pursuant to section 3(f) of E.O. 12866. MSHA, however, has concluded that the final rule is otherwise significant under Executive Order 12866 because it raises novel legal or policy issues.

### *B. Population at Risk*

The rule applies to 653 underground coal mines covering 42,597 miners and 8,250 (non-office) contractors. Table 2 shows summary data for underground coal mines.

TABLE 2.—SUMMARY DATA FOR UNDERGROUND COAL MINES

| Mine size [a] | Number of mines | Total number of miners [b] | Number of employees underground [b] | Annual revenue (billions) | Annual cost (millions) | Cost per mine |
|---|---|---|---|---|---|---|
| 1–19 | 220 | 2,255 | 1,952 | $0.3 | $1.1 | $5,200 |
| 20–500 | 420 | 32,852 | 29,742 | 10.3 | 3.4 | 8,200 |
| >500 | 13 | 7,490 | 6,503 | 3.1 | 0.2 | 13,400 |
| All Mines | 653 | 42,597 | 38,197 | 13.7 | 4.8 | 7,400 |

[a] Size based on total mine employment.
[b] Does not include 1,188 office workers or 8,250 (non-office) contractor employees, 4,096 of which work underground.

### *C. Costs*

Table 3 shows a summary of the total yearly cost of this rule for mine operators. MSHA estimates that the rule will result in total yearly costs for the underground coal mining industry of approximately $4.8 million. Disaggregated by mine size, yearly costs will be $1.1 million (or approximately $5,200 per mine) for mine operators with fewer than 20 employees; $3.4 million (or about $8,200 per mine) for mine operators with 20–500 employees; and $0.2 million (or about $13,400 per mine) for mine operators with more than 500 employees. All cost estimates are presented in 2006 dollars.

TABLE 3.—SUMMARY OF TOTAL YEARLY COST OF THE RULE FOR UNDERGROUND COAL MINE OPERATORS

| Section | Mine size | | | Total yearly cost |
|---|---|---|---|---|
| | 1–19 | 20–500 | 501+ | |
| One Hour from Mine Rescue Station to Mine [a] | $559,407 | $292,982 | $7,000 | $859,390 |
| Mine Rescue Team Training [b] | 379,967 | 2,225,222 | 119,768 | 2,724,956 |
| Mine Rescue Contests [c] | 91,915 | 552,810 | 30,037 | 674,762 |
| Certification of Mine Rescue Teams [d] | 8,161 | 15,580 | 482 | 24,223 |
| Responsible Person Training & Certification [e] | 95,047 | 362,906 | 16,849 | 474,803 |
| Total | 1,134,497 | 3,449,500 | 174,137 | 4,758,134 |

For purposes of the mine rescue team final rule, MSHA has broken down total compliance costs for mines with 1–36 employees and mines with 37 or more employees. Of the $4.8 million total yearly cost of the final rule, underground coal mines with 1–36 employees will incur costs of approximately $2.0 million per year and underground coal mines with 37 or more employees will incur costs of approximately $2.8 million per year.

In addition, the final rule will impose costs on State-sponsored mine rescue teams. As shown in Table 4, the total yearly cost of the final rule for State-sponsored mine rescue teams will be about $66,000. Of this, $57,000 will be for training and $8,000 will be for participation in one local mine rescue contests.

TABLE 4.—SUMMARY OF TOTAL YEARLY COST OF THE FINAL RULE FOR STATE MINE RESCUE TEAMS

| Section | Mine size | | | Total yearly cost |
|---|---|---|---|---|
| | 1–19 | 20–500 | 501+ | |
| Mine Rescue Team Training [a] | $24,905 | $31,869 | $708 | $57,482 |
| Mine Rescue Contests [b] | 6,466 | 8,486 | 159 | 15,111 |
| Total | 31,371 | 40,355 | 867 | 72,593 |

These cost estimates reflect the new requirements in the final rule that no mine served by a mine rescue team be more that one hour ground travel time from the mine rescue station with which the rescue team is associated. The costs are also related to final rule requirements that each mine rescue team, except for qualified State teams, participate in at least two local mine rescue contests annually and that teams train at the mines serviced by the team. To fully address all of the training requirements in the MINER Act, mine rescue team members must have at least 96 hours of refresher training annually, which can include travel time from the mine rescue station to the covered mine and up to 16 hours of participation in mine rescue contests. MSHA estimates that the additional cost attributable to training, relative to the proposed rule, is approximately $600,000. Also, the final rule requires that all underground coal mine operators certify that each of the mine's designated rescue teams meet the requirements of § 49.50, that the operator have a person employed on each shift who is knowledgeable in mine emergency response, and that the responsible person be trained in a course prescribed by MSHA's Office of Educational Policy and Development.

These cost estimates are based on a number of assumptions, informed by public comments on the proposed rule, that MSHA made with respect to anticipated industry and State responses to the final rule: (1) 28 mine rescue stations will be added to the 92 stations currently serving underground coal mines and 5 mine rescue stations will be relocated; (2) an additional 68 mine rescue teams will be formed; and (3) none of the existing 145 mine rescue teams will disband. In addition, although MSHA is aware that the requirements in the final rule may cause States to increase the number of State-sponsored mine rescue teams and stations, the Agency assumed no change in the existing level of these services in response to the final rule. MSHA also made various changes to its cost estimates in response to public comments on the proposed rule. These changes are discussed in detail in the REA.

*D. Benefits*

The purpose of this rule is to enhance the availability and effectiveness of mine rescue teams in the event of an emergency situation at an underground coal mine. Mine operators often rely on mine rescue teams to save miners during an underground emergency such as an explosion, fire, roof fall, or water inundation. In such a situation, the timely arrival of a properly-trained mine rescue team can sometimes mean the difference between life and death. In most instances, other types of rescue units, e.g., a rescue squad from the local fire department, are unlikely to have the specialized training and equipment to respond effectively to an emergency due to the hazardous nature of the underground coal mine environment.

A good mine rescue team will have knowledge and familiarity with the mine layout, including the designated escapeways, intakes, returns, locations and types of fire fighting equipment, the communication system, mine-wide monitoring system, the type of transportation equipment used at the mine, the location of stored SCSRs, lifelines, breathable air, hardened rooms, and other emergency response equipment or supplies; know the mine's roof conditions and ventilation system; and have an established working relationship with mine management and among the team members. These factors provide for more efficient decision-making during an emergency and increased confidence in the personnel who implement these decisions.

MSHA has qualitatively determined that the final rule will make coal mine rescue teams better able to respond to emergencies when a quick response by rescue teams is vital to miners. The final

rule will improve overall mine rescue service in three areas:

- It will improve mine emergency response time by requiring that mine rescue team members be available at the mine within 1 hour ground travel time from the mine rescue station.
- It will increase the quality and effectiveness of training by requiring team members to be familiar with the covered mines' operations, participate in training at the covered mines, and participate in two local mine rescue contests. A portion of the training must be conducted underground. This training will enhance the team's knowledge of the underground environment and provide firsthand experience of the underground mining conditions.
- It will strengthen the requirements for knowledge and experience of mine rescue team members by requiring them to have knowledge of the operations and ventilation of the covered mines and by requiring contract team members to have at least 3 years underground coal mine experience within the 10-year period preceding their employment on the contract team.

The final rule will also increase awareness of the mine operator by requiring the operator to provide two certified mine rescue teams and to have a responsible person knowledgeable in mine emergency response on each shift. The final rule includes criteria for certifying mine rescue teams and clarifies training requirements for the knowledgeable person.

Team members employed at a mine must be knowledgeable in mine gases, ventilation, first aid, and other health and safety subjects as they apply generally and at the covered mine. Their level of mine rescue training, combined with their everyday presence during the normal work cycle, provides an added measure of safety for each worker at the mine.

The final rule increases the 40-hour annual refresher training requirement to 96 hours from 64 hours in the proposed rule. This additional annual refresher training is necessary to fully address all of the training requirements in the MINER Act and the recommendations of the Mine Safety Training and Technology Commission. It will allow teams to adequately prepare for mine rescue team service. The additional training enhances teams' skills in interacting with a command center. The additional training could include: first responder training, communications, mine gases, gas detectors, new technology, heat stress, and hazard training unique to the covered mines. Additional skills training may include building temporary stoppings and seals, using a foam generator underground, and using an air lock to rescue survivors. Based on the Commission's recommendations and MSHA's experience, this additional training will enhance teams' skills and abilities. In addition, MSHA anticipates that the additional hours of training will provide an incremental increase in safety for underground coal miners.

The final rule also requires mine rescue team members to participate in two local mine rescue contests each year. Mine rescue contests serve a vital role in achieving the purpose of the MINER Act to improve the safety of mines and mining. Historically, they have served to assure that mine rescue teams are well-trained and capable of responding to mine emergencies. They provide a practical forum to objectively evaluate a team's skills and abilities. The final rule will allow up to 16 hours of credit for participation in the two required mine rescue contests.

## V. Feasibility

MSHA has concluded that the requirements of the final rule are technologically and economically feasible.

### *A. Technological Feasibility*

This final rule is not a technology-forcing standard and does not involve new scientific knowledge. The requirements of the rule involve training and purchase of equipment and a requirement that the mine rescue station be located closer, within 1 hour (rather than 2 hours) ground travel time to the covered mines. MSHA estimates that this requirement will necessitate additional mine rescue stations and mine rescue teams. MSHA has concluded that the final rule is technologically feasible.

### *B. Economic Feasibility*

The total cost of the final rule is approximately $4.8 million annually for all underground coal mine operators. These compliance costs are under one percent of the yearly revenues of $13.7 billion for these underground coal mine operators. MSHA concludes that the final rule is economically feasible.

## VI. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

Pursuant to the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA analyzed the impact of the final rule on small entities. Based on that analysis, MSHA notified the Chief Council for Advocacy, Small Business Administration (SBA), and made the certification under the Regulatory Flexibility Act at 5 U.S.C. 605(b) that the final rule does not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is presented in full in Chapter V of the REA and in summary form below.

### *A. Definition of a Small Mine*

Under the RFA, in analyzing the impact of a rule on small entities, MSHA must use the Small Business Administration's (SBA's) definition for a small entity, or after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not established an alternate definition and is required to use the SBA definition. The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees.

MSHA has also examined the impact of this rule on underground coal mines with fewer than 20 employees, which MSHA has traditionally referred to as ''small mines.'' These small mines differ from larger mines not only in the number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, the cost of complying with MSHA's final rule and the impact of the final rule on small mines will also be different.

In addition, MSHA has examined the cost of compliance for underground coal mines with 36 or fewer employees, consistent with the requirements of the MINER Act. The detailed factual basis below also shows the economic impact on underground coal mines with 36 or fewer employees.

### *B. Factual Basis for Certification*

MSHA initially evaluates the economic impact of a rule on ''small entities'' by comparing the estimated costs of the rule for small entities to their estimated revenues. When estimated costs are less than one percent of estimated revenues for the size categories considered, MSHA believes it is generally appropriate to conclude that there is not a significant economic impact on a substantial number of small entities. If the estimated costs are equal to or exceed one percent of revenues, MSHA will investigate whether a further analysis is required. For this final rule, MSHA has determined that the estimated costs are less than one percent of the estimated revenues. Therefore, MSHA certifies that this final

rule does not have a significant economic impact on a substantial number of small entities.

Coal mining revenues are derived from data on the price of coal and total coal production. Total underground coal production in 2006 was 359 million tons. The price of underground coal in 2006 was $38.28 per ton.[1] Thus, based on the total amount of coal production and the cost of coal per ton, the total estimated revenue in 2006 for underground coal production was $13.7 billion. Using the same approach, the estimated 2006 underground coal revenue by employment size category is approximately $0.3 billion for 220 mines with 1–19 employees, $1.4 billion for 399 mines with 1–36 employees, and $10.6 billion for 640 mines with 1–500 employees.

The final rule results in an average yearly cost per underground coal mine of $5,157 for mines with 1–19 employees; $4,908 for mines with 1–36 employees; and $7,162 for mines with 1–500 employees. The average yearly cost per mine for all underground coal mines is $7,287. When dividing the yearly compliance costs by the annual revenues in each mine size category, the cost of the rule for underground coal mines is 0.38% of revenues for mines with 1–19 employees, 0.14% of revenues for mines with 1–36 employees, and 0.04% of revenues for mines with 1–500 employees. The cost as a percentage of revenues for all underground coal mines will be approximately 0.03%.

When applying MSHA's and SBA's definition of small entities, the annual cost of the final rule for small mines is substantially less than one percent of their estimated annual revenues. MSHA has certified that the final rule does not have a significant economic impact on a substantial number of small entities that are covered by the final rule.

## VII. Paperwork Reduction Act of 1995

### *A. Summary*

The mine rescue team final rule retains the existing paperwork burden requirements and imposes several new paperwork burden requirements. Final § 49.16 requires certification of inspection and testing of breathing apparatus, as well as a record of any corrective action taken for breathing apparatus. Final § 49.18 requires preparation of training materials for new mine rescue team members and a record of each new mine rescue team member's training. The Office of Management and Budget (OMB) has approved these requirements, which are in existing §§ 49.6 and 49.8, under OMB control number 1219–0078. Final § 49.50 contains a new annual paperwork requirement for mine operators to certify that each designated mine rescue team meets the requirements of this part. Final § 75.1501 also requires mine operators to certify that each responsible person has completed the required mine emergency response training.

Overall, the underground coal industry will incur approximately 1,387 paperwork burden hours annually with associated paperwork burden costs of approximately $61,587.

MSHA estimates that the final rule will require additional mine rescue teams and equipment. Existing standards require information collection for mine rescue teams and equipment. MSHA will add the information collection burden for additional teams and equipment to that approved under existing Office of Management and Budget (OMB) control number 1219–0078.

For a detailed explanation of how the burden hours and related costs were calculated, see the Paperwork Section of the Regulatory Economic Analysis (REA) accompanying this final rule. The REA is posted on MSHA's Web site at *http://www.msha.gov/REGSINFO.HTM*. A copy of the REA can be obtained from MSHA's Office of Standards, Regulations, and Variances at the address provided in the **ADDRESSES** section of this preamble.

### *B. Procedural Details*

The information collection package was submitted to OMB with the proposed rule for review under 44 U.S.C. 3504, paragraph (h) of the Paperwork Reduction Act of 1995, as amended. A copy of the information collection package can be obtained from the Department of Labor by electronic mail request to *king.darrin@dol.gov* or by phone request to 202–693–4129.

Since the proposed rule was published, MSHA has not received any substantive comments on the paperwork collection.

## VIII. Other Regulatory Considerations

### *A. The Unfunded Mandates Reform Act of 1995*

MSHA has reviewed the final rule under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). The final rule will not increase private sector expenditures by more than $100 million annually; nor will it significantly or uniquely affect small governments. The final rule may result in increased expenditures by State, local, or tribal governments, however, because it places new requirements on underground coal mine operators in providing and training mine rescue teams. These changes will not directly affect States or their relationships with the national government; however, some States sponsor mine rescue teams.

### *B. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families*

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires agencies to assess the impact of agency actions on family well-being. MSHA has determined that this final rule will have no effect on family stability or safety, marital commitment, parental rights and authority, or income or poverty of families and children. Accordingly, MSHA certifies that this final rule will not impact family well-being.

### *C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights*

This final rule will not implement a policy with takings implications. Accordingly, E.O. 12630 requires no further Agency action or analysis.

### *D. Executive Order 12988: Civil Justice Reform*

This final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. Accordingly, this final rule meets the applicable standards provided in Section 3 of E.O. 12988.

### *E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

This final rule will have no adverse impact on children. Accordingly, E.O. 13045 requires no further Agency action or analysis.

### *F. Executive Order 13132: Federalism*

Executive Order (E.O.) 13132 requires MSHA to develop an accountability process to ensure a meaningful and timely input by State and local officials in the development of regulatory policies that have ''federalism implications.'' Policies that have federalism implications are defined as having ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

[1] U.S. Dept. of Energy, Energy Information Administration, ''Annual Coal Report 2006,'' Table 28, October 2007.

responsibilities among the various levels of government.'' The final rule places new requirements on underground coal mine operators in providing and training mine rescue teams. These changes will not directly affect States or their relationships with the Federal government. Although the final rule does not directly affect States, some States sponsor mine rescue teams.

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This final rule does not have ''tribal implications,'' because it will not ''have substantial direct effects 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.'' Accordingly, E.O. 13175 requires no further Agency action or analysis.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

Executive Order 13211 requires agencies to publish a statement of energy effect when a rule has a significant energy action that adversely affects energy supply, distribution, or use. MSHA has reviewed the final rule for its impact on the supply, distribution, and use of energy because it applies to the underground coal mining industry. Because this final rule results in yearly costs of approximately $4.8 million to the underground coal mining industry, relative to annual revenues of $13.1 billion in 2006, it is not a significant energy action because it will not be likely to have a significant adverse effect on the supply, distribution, or use of energy. Accordingly, E.O. 13211 requires no further Agency action.

*I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking*

MSHA has thoroughly reviewed the final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. MSHA has determined and certified that the final rule does not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 30 CFR Parts 49 and 75**

Education and training, Mine safety and health, Reporting and recordkeeping requirements.

Dated: February 1, 2008.

**Richard E. Stickler,**

*Acting Assistant Secretary for Mine Safety and Health.*

■ For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977 as amended by the Mine Improvement and New Emergency Response Act of 2006, MSHA amends chapter I of title 30 of the Code of Federal Regulations as follows.

## PART 49—MINE RESCUE TEAMS

■ 1. The authority citation for part 49 is revised to read as follows:

**Authority:** 30 U.S.C. 811, 825(e).

## Subpart A—Mine Rescue Teams for Underground Metal and Nonmetal Mines

■ 2. Add a new subpart A with the heading as shown above consisting of existing §§ 49.1 through 49.9.

**§ 49.10 [Removed]**

■ 3. Remove § 49.10.

■ 4. Add new subpart B to read as follows:

**Subpart B—Mine Rescue Teams for Underground Coal Mines**

Sec.
49.11 Purpose and scope.
49.12 Availability of mine rescue teams.
49.13 Alternative mine rescue capability for small and remote mines.
49.14 Reserved.
49.15 Mine rescue station.
49.16 Equipment and maintenance requirements.
49.17 Physical requirements for mine rescue team.
49.18 Training for mine rescue teams.
49.19 Mine emergency notification plan.
49.20 Requirements for all coal mines.
49.30 Requirements for small coal mines.
49.40 Requirements for large coal mines.
49.50 Certification of coal mine rescue teams.
49.60 Requirements for a local mine rescue contest.
Appendix to Subpart B—Optional Form for Certifying Mine Rescue Teams

## Subpart B—Mine Rescue Teams for Underground Coal Mines

**§ 49.11 Purpose and scope.**

(a) This subpart implements the provisions of section 115(e) of the Federal Mine Safety and Health Act of 1977, as amended by the Mine Improvement and New Emergency Response (MINER) Act of 2006. Every operator of an underground coal mine shall assure the availability of mine rescue capability for purposes of emergency rescue and recovery.

(b) The following Table 49.11 summarizes the new requirements for mine rescue teams contained in section 4 of the MINER Act.

TABLE 49.11.—SUMMARY OF NEW MINER ACT REQUIREMENTS FOR UNDERGROUND COAL MINE OPERATORS AND MINE RESCUE TEAMS

| Requirement | Type of mine rescue team | | | |
|---|---|---|---|---|
| | Mine-site | Composite | Contract | State-sponsored * |
| Team members must participate at least annually in two local mine rescue contests. | YES | YES | YES | YES. |
| Team members must participate in mine rescue training at each mine covered by the mine rescue team. A portion of the training must be conducted underground. | Annually | Semi-annually | Quarterly at Large Mines; Semi-annually at Small Mines. | Annually. |
| Team must be available at the mine within 1 hour ground travel time from the mine rescue station. | YES | YES | YES | YES. |
| Team members must be knowledgeable about the operations and ventilation of each covered mine. | YES | YES | YES | YES. |
| Team must include at least two active employees from each covered large mine and at least one active employee from each covered small mine. | | YES | | |

TABLE 49.11.—SUMMARY OF NEW MINER ACT REQUIREMENTS FOR UNDERGROUND COAL MINE OPERATORS AND MINE RESCUE TEAMS—Continued

| Requirement | Type of mine rescue team | | | |
|---|---|---|---|---|
| | Mine-site | Composite | Contract | State-sponsored * |
| Team must be comprised of persons with a minimum of 3 years underground coal mine experience that shall have occurred within the 10-year period preceding their employment on the contract mine rescue team. | ..... | ..... | YES ..... | |
| All mine operators must provide for two certified mine rescue teams. Large mine operators shall provide one team that is either an individual mine-site mine rescue team or a composite team. | | | | |

* Note: Team members of State-sponsored teams who are full-time State employees whose primary job duties include (1) inspecting underground mines for compliance with State safety laws or (2) training mine rescue teams or (3) other similar duties that would enhance their mine rescue knowledge may substitute their regular job experience for 50 percent of the training requirements (annual training which includes mine rescue contests and mine-site training) for non-State employee mine rescue team members.

**§ 49.12 Availability of mine rescue teams.**

(a) Except where alternative compliance is permitted for small and remote mines (§ 49.13), every operator of an underground mine shall:

(1) Establish at least two mine rescue teams which are available at all times when miners are underground; or

(2) Enter into an arrangement for mine rescue services which assures that at least two mine rescue teams are available at all times when miners are underground.

(b) Each mine rescue team shall consist of five members and one alternate who are fully qualified, trained, and equipped for providing emergency mine rescue service. Mine rescue teams for anthracite coal mines, which have no electrical equipment at the face or working section, shall consist of at least three members per team and one alternate that may be shared between both teams.

(c) To be considered for membership on a mine rescue team, each person must have been employed in an underground mine for a minimum of 1 year within the past 5 years, except that members of contract mine rescue teams shall have a minimum of 3 years underground coal mine experience that shall have occurred within the 10-year period preceding their employment on the contract mine rescue team. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground shall meet the experience requirement. The underground experience requirement is waived for those miners on a mine rescue team on February 8, 2008.

(d) Each operator shall arrange, in advance, ground transportation for rescue teams and equipment to the mine or mines served.

(e) The required rescue capability shall be present at all existing underground mines, upon initial excavation of a new underground mine entrance, or the re-opening of an existing underground mine.

(f) No mine served by a mine rescue team shall be located more than 1 hour ground travel time from the mine rescue station with which the rescue team is associated.

(g) As used in this subpart, mine rescue teams shall be considered available where teams are capable of presenting themselves at the mine site(s) within a reasonable time after notification of an occurrence which might require their services. Rescue team members will be considered available even though performing regular work duties or in an off-duty capacity. The requirement that mine rescue teams be available shall not apply when teams are participating in mine rescue contests or providing services to another mine.

(h) Each operator of an underground mine who provides rescue teams under this section shall send the District Manager a statement describing the mine's method of compliance with this subpart. The statement shall disclose whether the operator has independently provided mine rescue teams or entered into an agreement for the services of mine rescue teams. The name of the provider and the location of the services shall be included in the statement. A copy of the statement shall be posted at the mine for the miners' information. Where a miners' representative has been designated, the operator shall also provide the representative with a copy of the statement.

**§ 49.13 Alternative mine rescue capability for small and remote mines.**

(a) If an underground mine is small and remote, an operator may provide for an alternative mine rescue capability consistent with statutory requirements. For the purposes of this subpart only, consideration for small and remote shall be given where the total underground employment of the operator's mine and any surrounding mine(s) within 1 hour ground travel time of the operator's mine is less than 36.

(b) An application for alternative mine rescue capability shall be submitted to the District Manager for the district in which the mine is located for review and approval.

(c) Each application for an alternative mine rescue capability shall contain:

(1) The number of miners employed underground at the mine on each shift;

(2) The location of the designated mine rescue station serving the mine;

(3) The total underground employment of mines within 1 hour ground travel time of the operator's mine;

(4) The operator's mine fire, ground, and roof control history;

(5) The operator's established escape and evacuation plan;

(6) A statement by the operator evaluating the usefulness of additional refuge chambers to supplement those which may exist;

(7) A statement by the operator as to the number of miners willing to serve on a mine rescue team;

(8) The operator's alternative plan for assuring that a suitable mine rescue capability is provided at all times when miners are underground; and

(9) Other relevant information about the operator's mine which may be requested by the District Manager.

(d) A copy of the operator's application shall be posted at the mine. Where a miners' representative has been designated, the operator shall also provide the representative with a copy of the application.

(e) In determining whether to approve an application for alternative compliance, the District Manager shall consider:

(1) The individual circumstances of the small and remote mine;

(2) Comments submitted by, or on behalf of, any affected miner; and

(3) Whether the alternative mine rescue plan provides a suitable rescue capability at the operator's mine.

(f) Where alternative compliance is approved by MSHA, the operator shall adopt the alternative plan and post a copy of the approved plan (with appropriate MSHA mine emergency telephone numbers) at the mine for the miners' information. Where a miners' representative has been designated, the operator shall also provide the representative with a copy of the approved plan.

(g) The operator shall notify the District Manager of any changed condition or factor materially affecting information submitted in the application for alternative mine rescue capability.

(h)(1) An approved plan for alternative mine rescue capability shall be subject to revocation or modification for cause by MSHA, where it is determined that a condition or factor has changed which would materially alter the operator's mine rescue capability. If such action is contemplated, the operator will be notified, and given an opportunity to be heard before the appropriate District Manager.

(2) If an application for alternative compliance is denied or revoked, the District Manager shall provide the reason for such denial or revocation in writing to the operator. The operator may appeal this decision in writing to the Administrator for Coal Mine Safety and Health.

**§ 49.14 [Reserved]**

**§ 49.15 Mine rescue station.**

(a) Every operator of an underground mine shall designate, in advance, the location of the mine rescue station serving the mine.

(b) Mine rescue stations are to provide a centralized storage location for rescue equipment. This centralized storage location may be either at the mine site, affiliated mines, or a separate mine rescue structure.

(c) Mine rescue stations shall provide a proper storage environment to assure equipment readiness for immediate use.

(d) Authorized representatives of the Secretary shall have the right of entry to inspect any designated mine rescue station.

**§ 49.16 Equipment and maintenance requirements.**

(a) Each mine rescue station shall be provided with at least the following equipment. Mine rescue stations serving underground anthracite coal mines, which have no electrical equipment at the face or working section, shall have at least the amount of equipment appropriate for the number of mine rescue team members.

(1) Twelve self-contained oxygen breathing apparatus, each with a minimum of 2 hours capacity (approved by MSHA and NIOSH under 42 CFR part 84, subpart H), and any necessary equipment for testing such breathing apparatus;

(2) A portable supply of liquid air, liquid oxygen, pressurized oxygen, oxygen generating or carbon dioxide absorbent chemicals, as applicable to the supplied breathing apparatus and sufficient to sustain each team for 6 hours while using the breathing apparatus during rescue operations;

(3) One extra oxygen bottle (fully charged) for every six self-contained compressed oxygen breathing apparatus;

(4) One oxygen pump or a cascading system, compatible with the supplied breathing apparatus;

(5) Twelve permissible cap lamps and a charging rack;

(6) Two gas detectors appropriate for each type of gas which may be encountered at the mines served;

(7) Two oxygen indicators or two flame safety lamps;

(8) One portable mine rescue communication system (approved under part 23 of this chapter) or a sound-powered communication system. The wires or cable to the communication system shall be of sufficient tensile strength to be used as a manual communication system. These communication systems shall be at least 1,000 feet in length; and

(9) Necessary spare parts and tools for repairing the breathing apparatus and communication system.

(b) Mine rescue apparatus and equipment shall be maintained in a manner that will assure readiness for immediate use. A person trained in the use and care of breathing apparatus shall inspect and test the apparatus at intervals not exceeding 30 days and shall certify by signature and date that the inspections and tests were done. When the inspection indicates that a corrective action is necessary, the corrective action shall be made and the person shall record the corrective action taken. The certification and the record of corrective action shall be maintained at the mine rescue station for a period of 1 year and made available on request to an authorized representative of the Secretary.

**§ 49.17 Physical requirements for mine rescue team.**

(a) Each member of a mine rescue team shall be examined annually by a physician who shall certify that each person is physically fit to perform mine rescue and recovery work for prolonged periods under strenuous conditions. The first such physical examination shall be completed within 60 days prior to scheduled initial training. A team member requiring corrective eyeglasses will not be disqualified provided the eyeglasses can be worn securely within an approved facepiece.

(b) In determining whether a miner is physically capable of performing mine rescue duties, the physician shall take the following conditions into consideration:

(1) Seizure disorder;

(2) Perforated eardrum;

(3) Hearing loss without a hearing aid greater than 40 decibels at 400, 1000, and 2000 Hz;

(4) Repeated blood pressure (controlled or uncontrolled by medication) reading which exceeds 160 systolic, or 100 diastolic, or which is less than 105 systolic, or 60 diastolic;

(5) Distant visual acuity (without glasses) less than 20/50 Snellen scale in one eye, and 20/70 in the other;

(6) Heart disease;

(7) Hernia;

(8) Absence of a limb or hand; or

(9) Any other condition which the examining physician determines is relevant to the question of whether the miner is fit for rescue team service.

(c) The operator shall have MSHA Form 5000–3 (available at *http://www.msha.gov*) certifying medical fitness completed and signed by the examining physician for each member of a mine rescue team. These forms shall be kept on file at the mine rescue station for a period of 1 year.

**§ 49.18 Training for mine rescue teams.**

(a) Prior to serving on a mine rescue team each member shall complete, at a minimum, an initial 20-hour course of instruction as prescribed by MSHA's Office of Educational Policy and Development, in the use, care, and maintenance of the type of breathing apparatus which will be used by the mine rescue team.

(b) Upon completion of the initial training, all team members shall receive at least 96 hours of refresher training annually, which shall include participation in local mine rescue contests and training at the covered mine. Training shall be given at least 8 hours every 2 months and shall consist of:

(1) Sessions underground at least once each 6 months;

(2) The wearing and use of the breathing apparatus by team members for a period of at least 2 hours while under oxygen every 2 months;

(3) Where applicable, the use, care, capabilities, and limitations of auxiliary mine rescue equipment, or a different breathing apparatus;

(4) Advanced mine rescue training and procedures, as prescribed by MSHA's Office of Educational Policy and Development;

(5) Mine map training and ventilation procedures; and

(6) The wearing of mine rescue apparatus while in smoke, simulated smoke, or an equivalent environment at least once during each 12-month period.

(c) A mine rescue team member will be ineligible to serve on a team if more than 8 hours of training is missed during 1 year, unless additional training is received to make up for the time missed.

(d) The training courses required by this section shall be conducted by instructors who have been employed in an underground mine and have had a minimum of 1 year experience as a mine rescue team member or a mine rescue instructor within the past 5 years, and who have received MSHA approval through:

(1) Completion of an MSHA or State approved instructor's training course and the program of instruction in the subject matter to be taught.

(2) Designation by the District Manager as approved instructors to teach specific courses, based on their qualifications and teaching experience outlined above. Previously approved instructors need not be re-designated to teach the approved courses as long as they have taught those courses within the 24 months prior to the effective date of this part.

(e) The District Manager may revoke an instructor's approval for good cause. A written statement revoking the approval together with reasons for revocation shall be provided the instructor. The affected instructor may appeal the decision of the District Manager by writing to the Administrator for Coal Safety and Health. The Administrator shall issue a decision on the appeal.

(f) Upon request from the District Manager, the operator shall provide information concerning the schedule of upcoming training.

(g) A record of training of each team member shall be on file at the mine rescue station for a period of 1 year.

**§ 49.19 Mine emergency notification plan.**

(a) Each underground mine shall have a mine rescue notification plan outlining the procedures to follow in notifying the mine rescue teams when there is an emergency that requires their services.

(b) A copy of the mine rescue notification plan shall be posted at the mine for the miners' information. Where a miners' representative has been designated, the operator shall also provide the representative with a copy of the plan.

**§ 49.20 Requirements for all coal mines.**

(a) The operator of each underground coal mine shall make available two certified mine rescue teams whose members—

(1) Are familiar with the operations of the mine, and

(2) Participate at least annually in two local mine rescue contests.

(b) Team members shall meet the following:

(1) *Mine-site team.* Members who work at the mine and participate in mine rescue training at the mine at least annually.

(2) *Composite team.* A mine rescue team that covers multiple mines and whose members—

(i) Include at least two members from each covered large mine and at least one member from each covered small mine,

(ii) Are knowledgeable about the operations and ventilation of each covered underground coal mine, and

(iii) Participate in mine rescue training at each covered mine at least semi-annually.

(3) *Contract team.* A mine rescue team that is provided by an arrangement with another coal mine or with a third party and whose members—

(i) Are knowledgeable about the operations and ventilation of each covered underground coal mine, and

(ii) Participate in mine rescue training at each covered large mine at least quarterly and at each covered small mine at least semi-annually.

(4) *State-sponsored team.* Members who are State employees and participate in mine rescue training at each covered mine at least annually.

(c) For the purpose of mine rescue team membership, a member employed by an operator of multiple mines is considered to be an employee of each mine at which the member regularly works.

(d) For the purpose of mine rescue team training at each covered mine, a portion of the training must be conducted underground.

**§ 49.30 Requirements for small coal mines.**

At mines with 36 or fewer underground employees, mine rescue team members shall be knowledgeable about the operations and ventilation of each covered mine.

**§ 49.40 Requirements for large coal mines.**

At mines with more than 36 underground employees, one of the two certified mine rescue teams shall be an individual mine-site team or a composite team.

**§ 49.50 Certification of coal mine rescue teams.**

(a) For each mine rescue team designated to provide mine rescue coverage at an underground coal mine, the mine operator shall send the District Manager an annual statement certifying that each team meets the requirements of this subpart as listed in the following Table 49.50–A and Table 49.50–B.

(b) The operator shall notify the District Manager within 60 days of any change in team membership.

TABLE 49.50–A.—INITIAL CRITERIA TO CERTIFY THE QUALIFICATIONS OF MINE RESCUE TEAMS

| Qualification | Criteria (30 CFR) |
|---|---|
| (1) Team is available at all times when miners are underground | 49.12(a); 49.12(g) |
| (2) Except where alternative compliance is permitted, team has five members and one alternate | 49.12(b) |
| (3) Members have experience working in an underground coal mine | 49.12(c) |
| (4) Team is available within 1-hour ground travel time from the mine rescue station to the mine | 49.12(f) |
| (5) Appropriate mine rescue equipment is provided, inspected, tested, and maintained | 49.16 |
| (6) Members are physically fit | 49.17 |
| (7) Members have completed initial training | 49.18(a) |

TABLE 49.50–B.—ANNUAL CRITERIA TO MAINTAIN MINE RESCUE TEAM CERTIFICATION

| Qualification | Criteria (30 CFR) |
|---|---|
| (1) Members are properly trained annually | 49.18(b) |
| (2) Members are familiar with the operations of each covered mine | 49.20(a)(1) |
| (3) Members participate in at least two local mine rescue contests annually. Judges certify results | 49.20(a)(2) |
| (4) Members participate in mine rescue training at each covered mine | 49.20(b)(1); 49.20(b)(2)(iii); 49.20(b)(3)(ii); 49.20(b)(4) |
| (5) Members are knowledgeable about the operations and ventilation of each covered mine | 49.20(b)(2)(ii); 49.20(b)(3)(i); 49.30 |

**§ 49.60 Requirements for a local mine rescue contest.**

(a) A local mine rescue contest is one that—

(1) Is conducted in the United States;

(2) Uses MSHA-recognized rules;

(3) Has a minimum of three mine rescue teams competing;

(4) Has one or more problems conducted on one or more days with a determined winner;

(5) Includes team members who—

(i) Have the necessary equipment to participate in a simulated mine rescue team exercise,

(ii) Participate in a simulated mine rescue team exercise while being timed and observed by trained judges who evaluate the performance of each team and provide written feedback, and

(iii) Wear oxygen breathing apparatus while participating in a simulated mine rescue team exercise; and

(6) Includes contest judges who have completed annual training for mine rescue contest judges.

(b) A local mine rescue contest is training that provides an objective evaluation of demonstrated mine rescue team skills and can be a Mine Emergency Response Development (MERD) exercise or a practical simulation exercise, such as a fire or explosion drill, where the team participates in simulated mine rescue team exercises and wears breathing apparatus.

(c) Upon request from the District Manager, the operator shall provide information concerning each designated team's schedule of participation in upcoming local mine rescue contests.

## Appendix to Subpart B—Optional Form for Certifying Mine Rescue Teams

BILLING CODE 4510–43–P

# Operator's Annual Certification of Mine Rescue Team Qualifications

| | | |
|---|---|---|
| MSHA Mine ID No.: | Contractor ID No.: | Company Name: |
| Mine Name: | Mine size: O Large O Small | O Team is available at all times when miners are underground |
| Team Name: | Type of Team: O Mine-site O Composite O Contract O State-sponsored | |
| O Mine Rescue Team is available within 1-hour ground travel time from the Mine Rescue Station<br>Address of Mine Rescue Station: | | O Appropriate mine rescue equipment is provided, inspected, tested, & maintained |

| Member's name | 1 | 2 | 3 | 4 | 5 | Alternate |
|---|---|---|---|---|---|---|
| Employer's name | | | | | | |
| Experience working in underground coal mine | O | O | O | O | O | O |
| Physically fit | O | O | O | O | O | O |
| New member training | O Initial 20 hr | O Initial 20 hr | O Initial 20 hr | O Initial 20 hr | O Initial 20 hr | O Initial 20 hr |
| Annual training | O Refresher training totals 96 hr or more | O Refresher training totals 96 hr or more | O Refresher training totals 96 hr or more | O Refresher training totals 96 hr or more | O Refresher training totals 96 hr or more | O Refresher training totals 96 hr or more |
| 8 hr training every 2 mos; includes wearing apparatus for 2 hr | O Jan-Feb<br>O Mar-Apr<br>O May-Jun<br>O Jul-Aug<br>O Sep-Oct<br>O Nov-Dec | O Jan-Feb<br>O Mar-Apr<br>O May-Jun<br>O Jul-Aug<br>O Sep-Oct<br>O Nov-Dec | O Jan-Feb<br>O Mar-Apr<br>O May-Jun<br>O Jul-Aug<br>O Sep-Oct<br>O Nov-Dec | O Jan-Feb<br>O Mar-Apr<br>O May-Jun<br>O Jul-Aug<br>O Sep-Oct<br>O Nov-Dec | O Jan-Feb<br>O Mar-Apr<br>O May-Jun<br>O Jul-Aug<br>O Sep-Oct<br>O Nov-Dec | O Jan-Feb<br>O Mar-Apr<br>O May-Jun<br>O Jul-Aug<br>O Sep-Oct<br>O Nov-Dec |
| Trains underground every 6 mos | O Jan-Jun<br>O Jul-Dec | O Jan-Jun<br>O Jul-Dec | O Jan-Jun<br>O Jul-Dec | O Jan-Jun<br>O Jul-Dec | O Jan-Jun<br>O Jul-Dec | O Jan-Jun<br>O Jul-Dec |
| Wears apparatus in smoke annually | O | O | O | O | O | O |

| | | | | | | |
|---|---|---|---|---|---|---|
| Familiar with operations of mine | O | O | O | O | O | O |
| Knowledge of operations & ventilation of mine | O | O | O | O | O | O |
| Participates in two local mine rescue contests (Insert dates) | | | | | | |
| Trains at this mine (Insert dates) | | | | | | |

MSHA Form No. _____ OMB Control No. _____

I certify the information above is true and accurate to the best of my knowledge.

Printed Name & Signature:

Position held at the mine:
Date:

Use of this form is optional.

An underground coal mine operator may file a copy of this form with the appropriate District Manager for each of the two designated mine rescue teams, that provide coverage for this mine, to certify that each team meets the requirements of 30 CFR Part 49 Subpart B.

## PART 75—[AMENDED]

■ 5. The authority citation for part 75 continues to read as follows:

**Authority:** 30 U.S.C. 811.

■ 6. Amend § 75.1501 by revising paragraph (a) to read as follows:

**§ 75.1501 Emergency evacuations.**

(a) For each shift that miners work underground, there shall be in attendance a responsible person designated by the mine operator to take charge during mine emergencies involving a fire, explosion, or gas or water inundation.

(1) The responsible person shall have current knowledge of the assigned location and expected movements of miners underground, the operation of the mine ventilation system, the location of the mine escapeways, the mine communications system, any mine monitoring system if used, locations of firefighting equipment, the mine's Emergency Response Plan, the Mine Rescue Notification Plan, and the Mine Emergency Evacuation and Firefighting Program of Instruction.

(2) The responsible person shall be trained annually in a course of instruction in mine emergency response, as prescribed by MSHA's Office of Educational Policy and Development. The course will include topics such as the following:

(i) Organizing a command center;

(ii) Coordinating firefighting personnel;

(iii) Deploying firefighting equipment;

(iv) Coordinating mine rescue personnel;

(v) Establishing fresh air base;

(vi) Deploying mine rescue teams;

(vii) Providing for mine gas sampling and analysis;

(viii) Establishing security;

(ix) Initiating an emergency mine evacuation;

(x) Contacting emergency personnel; and

(xi) Communicating appropriate information related to the emergency.

(3) The operator shall certify by signature and date after each responsible person has completed the training and keep the certification at the mine for 1 year.

* * * * *

[FR Doc. 08–551 Filed 2–5–08; 2:40 pm]

BILLING CODE 4510–43–C

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## LIST OF PUBLIC LAWS

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**S. 2110/P.L. 110–184**

To designate the facility of the United States Postal Service located at 427 North Street in Taft, California, as the ''Larry S. Pierce Post Office''. (Feb. 6, 2008; 122 Stat. 612)

**Last List February 7, 2008**

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