



# Federal Register

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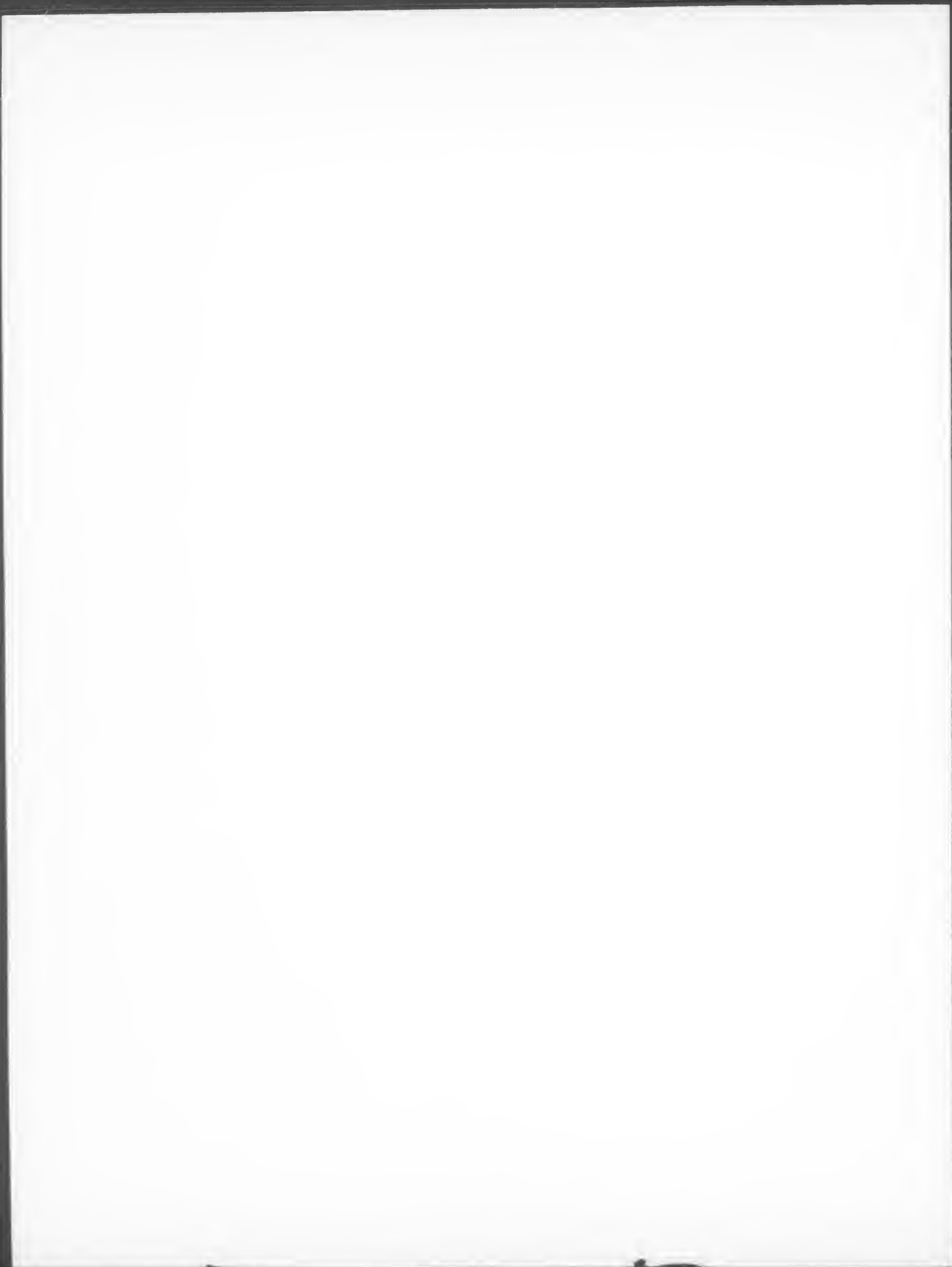
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2006-25174; Directorate Identifier 2005-NM-007-AD; Amendment 39-15328; AD 2008-01-03]

RIN 2120-AA64

#### Airworthiness Directives; Learjet Model 45 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Learjet Model 45 airplanes. This AD requires revising the Airworthiness Limitations section of the airplane maintenance manual to incorporate certain inspections and compliance times to detect fatigue cracking of certain principal structural elements (PSEs). This AD results from new and more restrictive life limits and inspection intervals for certain PSEs. We are issuing this AD to ensure that fatigue cracking of various PSEs is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

**DATES:** This AD becomes effective February 14, 2008.

**ADDRESSES:** For service information identified in this AD, contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209-2942.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory

evaluation, any comments received, and other information. The address for the Docket Office (telephone 800-647-5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

#### FOR FURTHER INFORMATION CONTACT:

Steve Litke, Aerospace Engineer, Airframe and Services Branch, ACE-118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4127; fax (316) 946-4107.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Learjet Model 45 airplanes. That supplemental NPRM was published in the *Federal Register* on June 18, 2007 (72 FR 33415). That supplemental NPRM proposed to require revising the Airworthiness Limitations section (ALS) of the airplane maintenance manual to incorporate certain inspections and compliance times to detect fatigue cracking of certain principal structural elements (PSEs).

##### Comments

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

#### Request To Clarify Paragraph (f) of the Supplemental NPRM

Averitt Air states that the supplemental NPRM lists Chapter 4 of the Learjet 45 Maintenance Manual, Revision 38, dated April 24, 2006, as a means of compliance with the supplemental NPRM. Averitt points out that the maintenance manual is currently at Revision 39, with Revision 40 coming soon. Averitt states that as the supplemental NPRM is currently worded, with each revision to the maintenance manual the operator will have to review Chapter 4 of the maintenance manual to ensure no changes have been made. Averitt also points out that each operator is required by Federal Aviation Regulations (FARs)

to comply with the latest revision of the airworthiness limitations for his aircraft. Averitt questions the issuance of the AD at this time. Averitt states that the manufacturer of Learjet Model 45 airplanes is proactive in advising the operator of revisions to the maintenance manual.

We infer that Averitt would like us to put words in the AD that allow for the use of later revisions of the maintenance manual. As Averitt notes, operators must comply with the terms of the ALS, as specified in sections 43.16 (for persons maintaining products) and 91.403 (for operators) of the Federal Aviation Regulations (14 CFR 43.16 and 14 CFR 91.403). However, for the FAA to require compliance with any new or more restrictive life limits and inspections that the manufacturer or the FAA might impose in the ALS, we must engage in rulemaking; if we do not engage in rulemaking, the revised limitations in the maintenance manual cannot be made mandatory. We do, however, agree with Averitt's request to allow accomplishing the AWL revision in accordance with later revisions. We have revised paragraph (f) of this AD to allow later revisions of the maintenance manuals as acceptable methods of compliance if they are approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA.

#### Conclusion

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

#### Costs of Compliance

There are about 347 airplanes of the affected design in the worldwide fleet. This AD affects about 258 airplanes of U.S. registry. The actions take about 1 work hour per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of this AD for U.S. operators is \$20,640, or \$80 per airplane.

#### Authority for This Rulemaking

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

the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

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

#### Regulatory Findings

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

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

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

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

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

Air transportation, Aircraft, Aviation safety, Safety.

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

##### § 39.13 [Amended]

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

**2008-01-03 Learjet:** Amendment 39-15328. Docket No. FAA-2006-25174; Directorate Identifier 2005-NM-007-AD.

#### Effective Date

- (a) This AD becomes effective February 14, 2008.

#### Affected ADs

- (b) None.

#### Applicability

(c) This AD applies to Learjet Model 45 airplanes, certificated in any category; serial numbers (S/Ns) 45-002 through 45-302 inclusive, and S/Ns 45-2001 through 45-2049 inclusive.

#### Unsafe Condition

(d) This AD results from new and more restrictive life limits and inspection intervals for certain principal structural elements (PSEs). We are issuing this AD to ensure that fatigue cracking of various PSEs is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

#### Compliance

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

**Note 1:** This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (g) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25.1529-1.

#### Revise the Airworthiness Limitations Section (ALS)

(f) Within 30 days after the effective date of this AD, revise the ALS of the airplane maintenance manual (AMM) to include new life limits and inspection intervals according to a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA. Incorporating the applicable chapters specified in paragraph (f)(1) or (f)(2) of this AD in the AMM is one approved method for doing the revision. Accomplishing the revision in accordance with a later approved revision of the applicable maintenance manual is an acceptable method of compliance if the revision is approved by the Manager, Wichita ACO, FAA. Thereafter, no alternative life limits or inspection intervals may be used for the affected PSEs, unless the limit or interval is part of a later approved AMM revision or the limit or interval is approved as an alternative method of compliance (AMOC) in accordance with the

procedures specified in paragraph (g) of this AD.

(1) For Learjet Model 45 airplanes, S/Ns 45-002 through 45-302 inclusive: Chapter 4 of the Learjet 45 Maintenance Manual, Revision 38, dated April 24, 2006.

(2) For Learjet Model 45 airplanes, S/Ns 45-2001 through 45-2049 inclusive: Chapter 4 of the Learjet 40 Maintenance Manual, Revision 6, dated April 24, 2006.

**Note 2:** After-an operator complies with the requirements of paragraph (f) of this AD, that paragraph does not require that operators subsequently record accomplishment of those requirements each time an action is accomplished according to that operator's FAA-approved maintenance inspection program.

#### AMOCs

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

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

#### Material Incorporated by Reference

- (h) None.

Issued in Renton, Washington, on December 21, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-163 Filed 1-9-08; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-28828; Directorate Identifier 2007-NM-010-AD; Amendment 39-15258; AD 2007-23-12]

RIN 2120-AA64

#### Airworthiness Directives; Boeing Model 707 Airplanes and Model 720 and 720B Series Airplanes

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

**ACTION:** Final rule; correction.

**SUMMARY:** The FAA is correcting an error in an existing airworthiness directive (AD) that was published in the *Federal Register* on November 13, 2007 (72 FR 63800). The error resulted in the wrong appendix information. This AD applies to all Boeing Model 707 airplanes and Model 720 and 720B



series airplanes. This AD requires accomplishing an airplane survey to define the configuration of certain system installations, and repair of any discrepancy found. This AD also requires modifying the fuel system by installing lightning protection for the fuel quantity indication system (FQIS), ground fault relays for the fuel boost pumps, and additional power relays for the center tank fuel pumps and uncommanded on-indication lights at the flight engineer's panel.

**DATES:** *Effective Date:* January 10, 2008.

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

**FOR FURTHER INFORMATION CONTACT:** Kathrine Rask, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone (425) 917-6505; fax (425) 917-6590.

**SUPPLEMENTARY INFORMATION:** On October 12, 2007, the FAA issued AD 2007-23-12, amendment 39-15258 (72 FR 63800, November 13, 2007), for all Boeing Model 707 airplanes and Model 720 and 720B series airplanes. The AD requires accomplishing an airplane survey to define the configuration of certain system installations, and repair of any discrepancy found. The AD also requires modifying the fuel system by installing lightning protection for the fuel quantity indication system (FQIS), ground fault relays for the fuel boost pumps, and additional power relays for the center tank fuel pumps and uncommanded on-indication lights at the flight engineer's panel.

As published, the AD included Appendix 1. That appendix, as published, contained information not intended for the AD. The correct appendix appears below as Appendix 1.

Appendix 1 of the AD, as corrected, contains the Model 707 SFAR 88 survey areas. The appendix is for informational use and provides highlights of the general content of the required survey to assist operators in developing an acceptable survey plan. Operators may

wish to use the appendix as an aid to implementing the airplane survey.

No other part of the regulatory information has been changed; therefore, the final rule is not republished in the *Federal Register*.

The effective date of this AD remains December 18, 2007.

#### § 39.13 [Corrected]

■ In the *Federal Register* of November 13, 2007, on pages 63803 and 63804, Appendix 1 of AD 2007-23-12 is corrected to read as follows:

\* \* \* \* \*

#### Appendix 1. Model 707 SFAR 88 Survey Areas

##### Model 707 SFAR-88 Survey

To support the development of the modifications required by this AD, a survey of the airplane is required to identify the current systems configuration, potential locations for new components, and potential wiring routes. The survey should examine the following areas of the airplane: flight deck, electrical equipment (E/E) bay, mix bay, left and right wing-to-body areas, left and right wing leading edges, and inside the fuel tanks. The report should consist of part numbers of the fuel quantity indication system (FQIS) components and fuel pumps, schematics for the FQIS and fuel pump control systems, and photos with dimensions and body and/or wing stations identified depicting the information below. Video, sketches or marked up drawings may also be acceptable.

##### (1) Flight Deck

- Places for new circuit breakers that may be installed on the P1, P2, P3, P4 and/or P5 panels.
- Places for new indication lights that may be installed in the lower P11 panel.
- Photos of the flight deck area above and below the engineer's panel and on the opposite side showing the existing wire bundle routing with the ceiling and side panels removed. This could be used to route additional wire bundles to the E/E bay.
- Part number(s) of the FQIS indicators installed in the P11 panel.
- Verify if a remote trimmer is installed for this indicator.

##### (2) E/E Bay

- Photos of any location within the E/E bay where there is enough space to install an electrical junction box, up to a 22 x 12 x 4.0 inch area. Possible locations are along the body structure and beneath the cabin floor.

##### (3) Mix Bay

- Photos showing the tubing and duct routing from the wing section.
- Photos of the current wire bundles in the mix bay.
- Photos for the installation of an electrical junction box, up to a 9 x 6 x 6 inch area.
- Photos from both inside the aircraft fuselage showing the wire routing and pressure vessel penetration.

##### (4) Leading Edge

- Photos of the FQIS connectors on the front spar for all fuel tanks.
- Photos of the front spar from the reserve tank to the center tank. Photos should show tubing installations, existing wire harnesses, pneumatic ducts, etc.
- Photos of areas between the engine struts, outboard of engine 1 and 4, and between the inboard strut and side of body with a free 9 x 3 x 5 inch accessible area. New FQIS wire routing should have a minimum of 2 inch separation from existing wires, a new location for FQIS spar penetration connectors may be necessary.
- Photos of the front spar and seal ribs with in the strut area with the access panels removed.

##### (5) Wing to Body (Un-Pressurized Wire Penetrations)

- Photos of the existing wire bundle penetrations through the pressure vessel and a 3 foot radius area around the existing wire bundle penetrations in the wing to body fairing (view from the front spar looking inboard).

##### (6) Fuel Tanks (Non-Explosion Proof Equipment Is Generally Not Allowed Inside Fuel Tanks)

- Photos of the FQIS probes and the wiring for the probes.
- Photos along the wiring to the spar penetration.
- Photos of the internal tank structure and plumbing.

If, while accomplishing the survey, any discrepancy with the structure, fuel system, or other systems is found, repairs must be accomplished prior to further flight in accordance with this AD.

\* \* \* \* \*

Issued in Renton, Washington, on December 19, 2007.

**Ali Bahrami,**

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

[FR Doc. E7-25504 Filed 1-9-08; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

#### 31 CFR Part 1.

#### Privacy Act; Implementation

**AGENCY:** Office of the Secretary, Treasury.

**ACTION:** Interim rule.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury amends this part to exempt a new Internal Revenue Service (IRS) system of records entitled "IRS 42.005—Whistleblower Office Records" from certain provisions of the Privacy Act.

**DATES:** *Effective Date:* January 10, 2008. Comments must be received no later than February 11, 2008. You may also submit comments through the Federal rulemaking portal at <http://www.regulations.gov> (follow the instructions for submitting comments).

**ADDRESSES:** Please submit comments to the Director, Whistleblower Office, SE:WO, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Comments will be made available for inspection at the IRS Freedom of Information Reading Room (Room 1621), at the above address. The telephone number for the Reading Room is (202) 622-5164.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitlock, Director, (202) 622-0351, Whistleblower Office, SE:WO, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:** Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system is investigatory material compiled for law enforcement purposes. The IRS is hereby giving notice of an interim rule to exempt "Treasury/IRS 42.005 Whistleblower Office Records" from certain provisions of the Privacy Act of 1974, pursuant to 5 U.S.C. 552a(k)(2).

The proposed exemption pursuant to 5 U.S.C. 552a(k)(2) is from provisions (c)(3), (d)(1)-(4), (e)(1), (e)(4)(G)-(I), and (f) because the system contains investigatory material compiled for law enforcement purposes. The following are the reasons why this system of records maintained by the IRS is exempt pursuant to 5 U.S.C. 552a(k)(2) of the Privacy Act of 1974:

(1) 5 U.S.C. 552a(c)(3). These provisions of the Privacy Act provide for the release of the disclosure accounting required by 5 U.S.C. 552a(c)(1) and (2) to the individual named in the record at his/her request. The reasons for exempting this system of records from the foregoing provisions are:

(i) The release of disclosure accounting would put the subject of an investigation on notice that an investigation exists and that such person is the subject of that investigation.

(ii) Such release would provide the subject of an investigation with an accurate accounting of the date, nature, and purpose of each disclosure and the name and address of the person or agency to which disclosure was made. The release of such information to the subject of an investigation would

provide the subject with significant information concerning the nature of the investigation and could result in the alteration or destruction of documentary evidence, the improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(iii) Release to the individual of the disclosure accounting would alert the individual as to which agencies were investigating the subject and the scope of the investigation and could aid the individual in impeding or compromising investigations by those agencies.

(2) 5 U.S.C. 552a(d)(1)-(4), (e)(4)(G), (e)(4)(H), and (f). These provisions of the Privacy Act relate to an individual's right to be notified of:

(i) The existence of records pertaining to such individual,

(ii) Requirements for identifying an individual, who requested access to records,

(iii) The agency procedures relating to access to and amendment of records,

(iv) The content of the information contained in such records, and

(v) The civil remedies available to the individual in the event of an adverse determination by an agency concerning access to or amendment of information contained in record systems.

The reasons for exempting this system of records from the foregoing provisions are that notifying an individual (at the individual's request) of the existence of an investigatory file pertaining to such individual or to granting access to an investigatory file pertaining to such individual could:

(i) Interfere with investigative and enforcement proceedings,

(ii) Deprive co-defendants of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of the personal privacy of others,

(iv) Disclose the identity of confidential sources and reveal confidential information supplied by such sources. Disclose investigative techniques and procedures

(3) 5 U.S.C. 552a(e)(1). This provision of the Privacy Act requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The reasons for exempting this system of records from the foregoing are as follows:

(i) The IRS will limit the system to those records that are needed for compliance with the provisions of Title 26. However, an exemption from the foregoing is needed because,

particularly in the early stages of an investigation, it is not possible to determine the relevance or necessity of specific information.

(ii) Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when first received may subsequently be determined to be irrelevant or unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established with certainty.

(4) 5 U.S.C. 552a(e)(4)(I). This provision of the Privacy Act requires the publication of the categories of sources of records in each system of records. The reasons an exemption from this provision has been claimed, are as follows:

(i) Revealing categories of sources of information could disclose investigative techniques and procedures.

(ii) Revealing categories of sources of information could cause sources who supply information to investigators to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality.

These regulations are being published as an interim final rule because the amendments do not impose any requirements on any member of the public. These amendments are the most efficient means for the Treasury Department to implement its internal requirements for complying with the Privacy Act.

Accordingly, pursuant to 5 U.S.C. 553(b)(B) and (d)(3), the Department of the Treasury finds good cause that prior notice and other public procedures with respect to this rule are unnecessary, and good cause for making this interim final rule effective 30 days after publication in the **Federal Register**.

Pursuant to Executive Order 12866, it has been determined that this interim final rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-612, do not apply.

#### List of Subjects in 31 CFR Part 1

Privacy.

■ Part 1, subpart C of title 31 of the Code of Federal Regulations is amended as follows:

#### PART 1—[AMENDED]

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



**Authority:** 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

■ 2. Section 1.36 paragraph (g)(1)(viii) is amended by adding the following text to the table in numerical order.

**§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 552a and this part.**

- \* \* \* \*
- (g) \* \* \*
- (1) \* \* \*
- (viii) \* \* \*

Number	Name of system
IRS 42.005 .....	Whistleblower Offices Records:

\* \* \* \*

Dated: December 21, 2007.

**Peter B. McCarthy,**  
*Assistant Secretary for Management and Chief Financial Officer.*  
 [FR Doc. E8-130 Filed 1-9-08; 8:45 am]  
 BILLING CODE 4830-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2007-1104; FRL-8512-7]

**Revisions to the California State Implementation Plan, San Joaquin Valley Air Pollution Control District and Sacramento Metropolitan Air Quality Management District**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the San Joaquin Valley Air Pollution Control

District (SJVAPCD) and Sacramento Metropolitan Air Quality Management District (SMAQMD) portions of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO<sub>x</sub>) emissions from internal combustion engines and stationary gas turbines. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on March 10, 2008 without further notice, unless EPA receives adverse comments by February 11, 2008. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2007-1104, by one of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.

2. *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or e-mail. [www.regulations.gov](http://www.regulations.gov) is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment.

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

**FOR FURTHER INFORMATION CONTACT:** Francisco Dóñez, EPA Region IX, (415) 972-3956, [Donez.Francisco@epa.gov](mailto:Donez.Francisco@epa.gov).

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

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**I. The State's Submittal**

*A. What rules did the State submit?*

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board.

**TABLE 1.—SUBMITTED RULES**

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVAPCD .....	4702	Internal Combustion Engines—Phase 2 .....	01/18/07	05/08/07
SMAQMD .....	413	Stationary Gas Turbines .....	03/24/05	09/05/07

On July 23, 2007 and October 16, 2007, respectively, EPA determined that these rule submittals met the completeness criteria in 40 CFR part 51, Appendix V, which must be met before formal EPA review.

*B. Are there other versions of these rules?*

The SJVAPCD first adopted Rule 4702 on August 21, 2003. That version was submitted to EPA on October 9, 2003, and approved on May 18, 2004 (69 FR 28061). The SJVAPCD adopted revisions

to the SIP-approved version on June 13, 2005 and April 20, 2006, and CARB submitted them to us on October 20, 2005 and October 5, 2006. The SMAQMD first adopted Rule 413 on May 6, 1995, and EPA approved the rule into the SIP on March 1, 1996 (61 FR

7992). The SMAQMD adopted revisions to Rule 413 on May 1, 1997 and CARB submitted them to us on May 18, 1998. We approved those revisions into the SIP on February 11, 1999 (64 FR 6803). While we can act on only the most recently submitted version of each rule, we have reviewed materials provided with previous submittals.

*C. What is the purpose of the submitted rule revisions?*

NO<sub>x</sub> helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control NO<sub>x</sub> emissions. SJVAPCD Rule 4702 limits emissions of NO<sub>x</sub>, carbon monoxide (CO), and volatile organic compounds (VOC) from internal combustion engines. Changes from the SIP-approved version include the following:

- Rule 4702 now applies to compression-ignited engines, transportable engines, and engines in agricultural operations. The compliance date for agricultural engines is January 1, 2009.
- The amended rule contains new exemptions for engines used to propel instruments of husbandry, engines used exclusively to power mobile agricultural equipment, engines used to power wind machines for crop protection, and certain de-rated engines.
- The amended rule establishes requirements for District certification of exhaust control systems. These changes are meant to reduce the overall number of source tests required for Rule 4702 compliance, without affecting emission reductions.
- The amended rule allows the use of a portable NO<sub>x</sub> analyzer for agricultural spark-ignited engines, to show initial compliance with Rule 4702 emissions standards until a source test can be arranged.
- The amended rule allows representative testing for spark-ignited engines, and specifies requirements for that testing.

SMAQMD Rule 413 limits emissions of NO<sub>x</sub> from stationary gas turbines. Amended Rule 413 extends the startup exemption for turbines with a rated output greater than or equal to 160 MW, and which are part of a combined cycle process, to up to 4 hours following a shutdown of the associated steam turbine of 72 hours or more; and up to 3 hours following a shutdown of the associated steam turbine of between 8 and 72 hours. It also allows a 6-hour averaging period for compliance with NO<sub>x</sub> limits for gas turbines with a rated output greater than 100 MW, and which

are part of a combined cycle process, during a transient increase in emissions. EPA's technical support documents (TSDs) have more information about these rules.

**II. EPA's Evaluation and Action**

*A. How is EPA evaluating the rules?*

Generally, SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). The SJVAPCD and the SMAQMD both regulate serious ozone nonattainment areas (see 40 CFR part 81.305), so Rule 4702 and Rule 413 must implement Reasonably Available Control Technology (RACT) for control of NO<sub>x</sub> emissions (see CAA 182(b)(2), (c) and 182(f)). Both areas also regulate PM-10 nonattainment areas (see 40 CFR 81.305). The SJVAPCD is a serious PM-10 nonattainment area, so Rule 4702 must implement Best Available Control Measures (BACM), including Best Available Control Technology (BACT), for control of NO<sub>x</sub> emissions (see CAA 189(b)(1)(B) and 189(e)). The SMAQMD is a moderate PM-10 nonattainment area, so Rule 413 must implement Reasonably Available Control Measures (RACM), including RACT, for control of NO<sub>x</sub> emissions (see CAA 189(a)(1)(C) and 189(e)).

Guidance and policy documents that we use to help evaluate enforceability, BACM/BACT and RACM/RACT requirements consistently include the following:

1. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO<sub>x</sub> Supplement), 57 FR 55620, November 25, 1992.
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. EPA Memorandum to Regional Administrators from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation: "State Implementation Plans: Policy Regarding Excess Emissions during Malfunctions, Startup, and Shutdown," September 20, 1999.
5. "Clean Air Act National Testing Guidance," EPA, September 30, 2005.
6. "Alternative Control Techniques Document—NO<sub>x</sub> Emissions from

Stationary Reciprocating Internal Combustion Engines," EPA, EPA-453/R-93-032, July 1993.

7. "Alternative Control Techniques Document—NO<sub>x</sub> Emissions from Stationary Gas Turbines," EPA, EPA-453/R-93-007, January 1993.

8. State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 FR 13498 (April 16, 1992).

9. State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 59 FR 41998 (August 16, 1994).

*B. Do the rules meet the evaluation criteria?*

We believe these rules are consistent with the CAA, EPA regulations, and relevant policy and guidance regarding enforceability, BACM/BACT, RACM/RACT, and SIP relaxations. The inclusion of agricultural, transportable, and compression-ignited engines in SJVAPCD Rule 4702 clearly strengthens the rule, and the added exemptions are supported by District staff analysis. The representative testing provisions in Rule 4702 are based on EPA's "Clean Air Act National Testing Guidance," and contain appropriate requirements to assure the achievement of emissions limits. The use of portable NO<sub>x</sub> analyzers allowed in Rule 4702 is a reasonable manner of checking compliance before the required performance of a full source test. The Rule 4702 requirements for certification of exhaust control systems are adequate to ensure control of emissions while simplifying rule compliance and enforcement.

In our prior action to approve Rule 4702 into the SIP, we concluded that Rule 4702 implemented BACM/BACT as required for serious PM-10 nonattainment areas under CAA sections 189(b)(1)(B) and 189(e) for NO<sub>x</sub> emissions from non-agricultural stationary internal combustion engines. See 69 FR 7098, 7102 (February 12, 2004) (proposed rule); 69 FR 28061 (May 18, 2004) (final rule). Revised Rule 4702 continues to implement BACM/BACT for these engines. In addition, these revisions satisfy SJVAPCD's commitment to apply BACT-level controls to agricultural engines, consistent with its Amended 2003 PM-10 Plan. (The "Amended 2003 PM-10 Plan" is the San Joaquin Valley Plan to Attain Federal Standards for Particulate Matter 10 Microns and Smaller, as

revised and supplemented by the plan amendments SJVAPCD adopted and submitted to EPA in December 2003. See 69 FR 30006, May 26, 2004, for the final rule approving these plan amendments into the California SIP.)

As to SMAQMD Rule 413, while the extension of allowable startup periods and the provision for short-term excursions appear to relax the rule, these changes apply to only a small subset of the permitted plants in the District that cannot feasibly meet the current SIP rule's requirements during these limited periods. All of these sources have installed BACT-level NO<sub>x</sub> emission controls in accordance with SMAQMD's New Source Review (NSR) requirements. New turbines covered by the revised exemptions (i.e., combined-cycle turbines with capacities exceeding 100 MW) will also be subject to BACT for control of NO<sub>x</sub> emissions. These revisions to Rule 413 only provide limited flexibility to address operational necessities at large turbines during narrowly defined periods, and do not alter the control technology requirements that apply to these sources.

In our prior actions to approve Rule 413 into the SIP, we concluded that this rule implemented RACT for NO<sub>x</sub> control as required for serious ozone nonattainment areas under CAA sections 182(b)(2) and 182(f). See 61 FR 7992 (March 1, 1996); 64 FR 6803 (February 11, 1999). Revised Rule 413 continues to implement RACT for control of NO<sub>x</sub> emissions, as a precursor to both ozone and PM-10, from stationary gas turbines.

The TSDs have more information on our evaluation of these rules.

#### *C. EPA Recommendations To Further Improve the Rules*

EPA has no recommendations to further improve these rules.

#### *D. Public Comment and Final Action*

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by February 11, 2008, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not

receive timely adverse comments, the direct final approval will be effective without further notice on March 10, 2008. This will incorporate these rules into the federally enforceable SIP.

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.

### **III. 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

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 March 10, 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 in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by

reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 5, 2007.

Jane Diamond,

Acting Regional Administrator, Region IX.

■ Part 52, 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 F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(350)(i)(C) and (c)(352) to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(350) \* \* \*

(i) \* \* \*

(C) San Joaquin Valley Unified Air Pollution Control District.

(1) Rule 4702, adopted on August 21, 2003 and amended on January 18, 2007.

\* \* \* \* \*

(352) New and amended regulations were submitted on September 5, 2007, by the governor's designee.

(i) Incorporation by reference.

(A) Sacramento Metropolitan Air Quality Management District.

(1) Rule 413, adopted on April 6, 1995 and amended on March 24, 2005.

[FR Doc. E8-171 Filed 1-9-08; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 204, 212, and 252

RIN 0750-AF55

#### Defense Federal Acquisition Regulation Supplement; DoD Representations and Certifications in the Online Representations and Certifications Application (DFARS Case 2006-D032)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement

(DFARS) to address the DFARS provisions included in the Online Representations and Certifications Application (ORCA). Use of ORCA eliminates the need for offerors to repetitively submit the same information in response to Government solicitations.

**DATES:** *Effective Date:* January 10, 2008.

**FOR FURTHER INFORMATION CONTACT:** Ms. Felisha Hitt, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-0310; facsimile 703-602-7887. Please cite DFARS Case 2006-D032.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Subpart 4.12 of the Federal Acquisition Regulation (FAR) requires prospective contractors to complete electronic annual representations and certifications in ORCA, in conjunction with required registration in the Central Contractor Registration database. FAR 4.1202 prescribes use of the solicitation provision at 52.204-8, Annual Representations and Certifications; provides a list of the FAR representations and certifications in ORCA; and provides direction to the contracting officer to exclude those representations and certifications from solicitations that contain the clause at FAR 52.204-7, Central Contractor Registration.

Similarly, this DFARS rule contains a list of the DFARS representations and certifications in ORCA, and provides direction to the contracting officer to exclude those representations and certifications when using the provision at FAR 52.204-8. In addition, the DFARS rule contains a substitute paragraph (c) for use with the provision at FAR 52.204-8 to permit inclusion of information relating to both the FAR and the DFARS. An offeror must include information in paragraph (c) only if changes to the offeror's annual representations and certifications apply to a particular solicitation.

DoD published a proposed rule at 72 FR 6515 on February 12, 2007. DoD received comments from one respondent. A discussion of the comments is provided below.

1. *Comment:* The respondent suggested administrative changes to the organization of the contents of ORCA to enhance the certification process.

*DoD Response:* The comment is outside the scope of this DFARS case. However, the comment has been forwarded to the Government officials

responsible for managing the ORCA system.

2. *Comment:* The respondent recommended revision of the introductory statement at 204.1202(2), from "Do not include the following representations and certifications" to "Do not include the following representations and certifications in solicitations and contracts."

*DoD Response:* DoD believes that the direction in the introductory statement is clear as written, and that the additional phrase is unnecessary.

3. *Comment:* The respondent recommended amendment of the second sentence in the introductory text at 212.301(f) pertaining to commercial item solicitations, to change "may" to "shall" with regard to direction to the contracting officer to consider the information in ORCA.

*DoD Response:* DoD has retained "may" in this sentence to provide flexibility to the contracting officer in the review of representations and certifications.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

##### B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of the rule is to maintain a centralized location for the representation and certification information required by the DFARS, thereby eliminating the need for offerors to submit the same information to various DoD offices in response to individual solicitations. The rule will apply to prospective DoD contractors registered in the Central Contractor Registration database. FAR 4.1102 requires that prospective contractors be registered in the database before the award of a contract or agreement, with certain exceptions. Administrative personnel that have general knowledge of the contractor's business should be able to enter the applicable representation and certification information into ORCA. The rule is expected to have a positive impact on small business concerns by reducing administrative burdens.

##### C. Paperwork Reduction Act

The information collection requirements of the representations and certifications addressed in this rule that require offerors to provide specific fill-in information have been approved by

the Office of Management and Budget under Control Numbers 0704-0229, 0704-0245, and 0704-0259. This rule does not impose information collection requirements beyond those already required by existing DFARS representations and certifications.

**List of Subjects in 48 CFR Parts 204, 212, and 252**

Government procurement.

Michele P. Peterson,  
Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 212, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 204, 212, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 204—ADMINISTRATIVE MATTERS**

2. Subpart 204.12 is added to read as follows:

**Subpart 204.12—Annual Representations and Certifications**

**204.1202 Solicitation provision and contract clause.**

When using the provision at FAR 52.204-8, Annual Representations and Certifications—

(1) Use the provision with 252.204-7007, Alternate A, Annual Representations and Certifications; and

(2) Do not include the following representations and certifications:

(i) 252.209-7005, Reserve Officer Training Corps and Military Recruiting on Campus.

(ii) 252.212-7000, Offeror Representations and Certifications—Commercial Items.

(iii) 252.216-7003, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government.

(iv) 252.225-7000, Buy American Act—Balance of Payments Program Certificate.

(v) 252.225-7020, Trade Agreements Certificate.

(vi) 252.225-7031, Secondary Arab Boycott of Israel.

(vii) 252.225-7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.

(viii) 252.225-7042, Authorization to Perform.

(ix) 252.229-7003, Tax Exemptions (Italy).

(x) 252.229-7005, Tax Exemptions (Spain).

(xi) 252.239-7011, Special Construction and Equipment Charges.

(xii) 252.247-7022, Representation of Extent of Transportation by Sea.

**PART 212—ACQUISITION OF COMMERCIAL ITEMS**

3. Section 212.301 is amended by adding paragraph (f) introductory text to read as follows:

**212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

(f) The following additional provisions and clauses apply to DoD solicitations and contracts for the acquisition of commercial items. If the offeror has completed the provisions listed in paragraph (f)(i) or (ii) of this section electronically as part of its annual representations and certifications at <https://orca.bpn.gov>, the contracting officer may consider this information instead of requiring the

offeror to complete these provisions for a particular solicitation.

\* \* \* \* \*

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

4. Section 252.204-7007 is added to read as follows:

**252.204-7007 Alternate A, Annual Representations and Certifications.**

Alternate A, Annual Representations and Certifications (JAN 2008)

As prescribed in 204.1202, substitute the following paragraph (c) for paragraph (c) of the provision at FAR 52.204-8:

(c) The offeror has completed the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) Web site at <https://orca.bpn.gov/>. After reviewing the ORCA database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer, and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [offeror to insert changes, identifying change by clause number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR/DFARS clause No.	Title	Date	Change

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.

[FR Doc. E8-177 Filed 1-9-08; 8:45 am]

BILLING CODE 5001-08-P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 207, 209, 234, 235, and 252**

**RIN 0750-AF80**

**Defense Federal Acquisition Regulation Supplement; Lead System Integrators (DFARS Case 2006-D051)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

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

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 807 of the National Defense Authorization Act for Fiscal Year 2007. Section 807 places limitations on contractors acting as lead system integrators in the acquisition of major DoD systems. Such contractors may have no direct financial interest in the development or construction of any individual system or element of any



system of systems unless an exception applies.

**DATES:** *Effective date:* January 10, 2008.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before March 10, 2008, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2006–D051, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2006–D051 in the subject line of the message.

- *Fax:* 703–602–7887.

- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Michael Benavides, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Benavides, 703–602–1302.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This interim rule implements Section 807 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). Section 807 provides that, with certain exceptions, no entity performing lead system integrator functions in the acquisition of a major system by DoD may have any direct financial interest in the development or construction of any individual system or element of any system of systems. The interim rule adds DFARS policy, and a corresponding solicitation provision and contract clause, to implement the requirements of Section 807 of Public Law 109–364.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

##### B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because application of the rule is limited to contractors performing lead system integrator functions for major DoD systems. Therefore, DoD has not

performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006–D051.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

##### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 807 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). Section 807 places limitations on contractors acting as lead system integrators in the acquisition of major DoD systems. Such contractors may have no direct financial interest in the development or construction of any individual system or element of any system of systems unless an exception applies. Section 807 requires DoD to update the acquisition regulations to address these limitations. Comments received in response to this interim rule will be considered in the formation of the final rule.

##### List of Subjects in 48 CFR Parts 207, 209, 234, 235, and 252

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 207, 209, 234, 235, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 207, 209, 234, 235, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

##### PART 207—ACQUISITION PLANNING

■ 2. Section 207.106 is amended by adding paragraph (S–71) to read as follows:

##### 207.106 Additional requirements for major systems.

\* \* \* \* \*

(S–71) See 209.570 for policy applicable to acquisition strategies that

consider the use of lead system integrators.

##### PART 209—CONTRACTOR QUALIFICATIONS

■ 3. Subpart 209.5 is added to read as follows:

##### Subpart 209.5—Organizational and Consultant Conflicts of Interest

Sec.

209.570 Limitations on contractors acting as lead system integrators.

209.570–1 Definitions.

209.570–2 Policy.

209.570–3 Procedures.

209.570–4 Solicitation provision and contract clause.

##### Subpart 209.5—Organizational and Consultant Conflicts of Interest

**209.570 Limitations on contractors acting as lead system integrators.**

##### 209.570–1 Definitions.

*Lead system integrator*, as used in this section, is defined in the clause at 252.209–7007, Prohibited Financial Interests for Lead System Integrators. See PGI 209.570–1 for additional information.

##### 209.570–2 Policy.

(a) Except as provided in paragraph (b) of this subsection, 10 U.S.C. 2410p prohibits any entity performing lead system integrator functions in the acquisition of a major system by DoD from having any direct financial interest in the development or construction of any individual system or element of any system of systems.

(b) The prohibition in paragraph (a) of this subsection does not apply if—

(1) The Secretary of Defense certifies to the Committees on Armed Services of the Senate and the House of Representatives that—

(i) The entity was selected by DoD as a contractor to develop or construct the system or element concerned through the use of competitive procedures; and

(ii) DoD took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(2) The entity was selected by a subcontractor to serve as a lower-tier subcontractor, through a process over which the entity exercised no control.

##### 209.570–3 Procedures.

In making a responsibility determination before awarding a contract for the acquisition of a major system, the contracting officer shall—

(a) Determine whether the prospective contractor meets the definition of “lead system integrator”;

(b) Consider all information regarding the prospective contractor’s direct

financial interests in view of the prohibition at 209.570-2(a); and

(c) Follow the procedures at PGI 209.570-3.

**209.570-4 Solicitation provision and contract clause.**

(a) Use the provision at 252.209-7006, Limitations on Contractors Acting as Lead System Integrators, in solicitations for the acquisition of a major system when the acquisition strategy envisions the use of a lead system integrator.

(b) Use the clause at 252.209-7007, Prohibited Financial Interests for Lead System Integrators—

(1) In solicitations that include the provision at 252.209-7006; and

(2) In contracts when the contractor will fill the role of a lead system integrator for the acquisition of a major system.

**PART 234—MAJOR SYSTEM ACQUISITION**

■ 4. Section 234.004 is added to read as follows:

**234.004 Acquisition strategy.**

See 209.570 for policy applicable to acquisition strategies that consider the use of lead system integrators.

**PART 235—RESEARCH AND DEVELOPMENT CONTRACTING**

■ 5. Section 235.008 is added to read as follows:

**235.008 Evaluation for award.**

See 209.570 for limitations on the award of contracts to contractors acting as lead system integrators.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 6. Sections 252.209-7006 and 252.209-7007 are added to read as follows:

**252.209-7006 Limitations on Contractors Acting as Lead System Integrators.**

As prescribed in 209.570-4(a), use the following provision:

Limitations on Contractors Acting as Lead System Integrators (JAN 2008)

(a) *Definitions.* *Lead system integrator, lead system integrator with system responsibility, and lead system integrator without system responsibility,* as used in this provision, have the meanings given in the clause of this solicitation entitled "Prohibited Financial Interests for Lead System Integrators" (DFARS 252.209-7007).

(b) *General.* Unless an exception is granted, no contractor performing lead

system integrator functions in the acquisition of a major system by the Department of Defense may have any direct financial interest in the development or construction of any individual system or element of any system of systems.

(c) *Representations.* (1) The offeror represents that it does

[ ] does not [ ] propose to perform this contract as a lead system integrator with system responsibility.

(2) The offeror represents that it does [ ] does not [ ] propose to perform this contract as a lead system integrator without system responsibility.

(3) If the offeror answered in the affirmative in paragraph (c)(1) or (2) of this provision, the offeror represents that it does [ ] does not [ ] have any direct financial interest as described in paragraph (b) of this provision with respect to the system(s), subsystem(s), system of systems, or services described in this solicitation.

(d) If the offeror answered in the affirmative in paragraph (c)(3) of this provision, the offeror should contact the Contracting Officer for guidance on the possibility of submitting a mitigation plan and/or requesting an exception.

(e) If the offeror does have a direct financial interest, the offeror may be prohibited from receiving an award under this solicitation, unless the offeror submits to the Contracting Officer appropriate evidence that the offeror was selected by a subcontractor to serve as a lower-tier subcontractor through a process over which the offeror exercised no control.

(f) This provision implements the requirements of 10 U.S.C. 2410p, as added by section 807 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364).

(End of provision)

**252.209-7007 Prohibited Financial Interests for Lead System Integrators.**

As prescribed in 209.570-4(b), use the following clause:

Prohibited Financial Interests for Lead System Integrators (JAN 2008)

(a) *Definitions.* As used in this clause—

(1) *Lead system integrator* includes *lead system integrator with system responsibility* and *lead system integrator without system responsibility.*

(2) *Lead system integrator with system responsibility* means a prime contractor for the development or production of a major system if the prime contractor is not expected at the time of award, as determined by the Contracting Officer, to perform a substantial portion of the

work on the system and the major subsystems.

(3) *Lead system integrator without system responsibility* means a contractor under a contract for the procurement of services whose primary purpose is to perform acquisition functions closely associated with inherently governmental functions (see section 7.503(d) of the Federal Acquisition Regulation) with regard to the development or production of a major system.

(b) *Limitations.* The Contracting Officer has determined that the Contractor meets the definition of lead system integrator with [ ] without [ ] system responsibility. Unless an exception is granted, the Contractor shall not have any direct financial interest in the development or construction of any individual system or element of any system of systems while performing lead system integrator functions in the acquisition of a major system by the Department of Defense under this contract.

(c) *Agreement.* The Contractor agrees that during performance of this contract it will not acquire any direct financial interest as described in paragraph (b) of this clause, or, if it does acquire or plan to acquire such interest, it will immediately notify the Contracting Officer. The Contractor further agrees to provide to the Contracting Officer all relevant information regarding the change in financial interests so that the Contracting Officer can determine whether an exception applies or whether the Contractor will be allowed to continue performance on this contract. If a direct financial interest cannot be avoided, eliminated, or mitigated to the Contracting Officer's satisfaction, the Contracting Officer may terminate this contract for default for the Contractor's material failure to comply with the terms and conditions of award or may take other remedial measures as appropriate in the Contracting Officer's sole discretion.

(d) Notwithstanding any other clause of this contract, if the Contracting Officer determines that the Contractor misrepresented its financial interests at the time of award or has violated the agreement in paragraph (c) of this clause, the Government may terminate this contract for default for the Contractor's material failure to comply with the terms and conditions of award or may take other remedial measures as appropriate in the Contracting Officer's sole discretion.

(e) This clause implements the requirements of 10 U.S.C. 2410p, as added by section 807 of the National

Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364).

(End of clause)

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 207 and 237

RIN 0750-AF87

#### Defense Federal Acquisition Regulation Supplement; Functions Exempt From Private Sector Performance (DFARS Case 2007-D019)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address procedures for preparation of the written determination required by the Federal Acquisition Regulation (FAR), that none of the functions to be performed by contract are inherently governmental.

**DATES:** *Effective Date:* January 10, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Benavides, Defense Acquisition Regulations System, OUSD (AT&L) DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-1302; facsimile 703-602-7887. Please cite DFARS Case 2007-D019.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule amends the DFARS to address procedures for preparation of the written determination required by FAR 7.503(e), that none of the functions to be performed by contract are inherently governmental. The rule requires DoD personnel to prepare the determination using DoD Instruction 1100.22, Guidance for Determining Workforce Mix, and to also include a determination that none of the functions to be performed are exempt from private sector performance, as addressed in DoD Instruction 1100.22.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

##### B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on

contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2007-D019.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

##### List of Subjects in 48 CFR Parts 207 and 237

Government procurement.

**Michele P. Peterson,**  
*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 207 and 237 are amended as follows:

■ 1. The authority citation for 48 CFR parts 207 and 237 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

##### PART 207—ACQUISITION PLANNING

■ 2. Section 207.503 is amended by adding paragraph (e) to read as follows:

###### 207.503 Policy.

(e) The written determination required by FAR 7.503(e), that none of the functions to be performed by contract are inherently governmental—

(i) Shall be prepared using DoD Instruction 1100.22, Guidance for Determining Workforce Mix; and

(ii) Shall include a determination that none of the functions to be performed are exempt from private sector performance, as addressed in DoD Instruction 1100.22.

\* \* \* \* \*

##### PART 237—SERVICE CONTRACTING

■ 3. Section 237.102 is added to read as follows:

###### 237.102 Policy.

(c) In addition to the prohibition on award of contracts for the performance of inherently governmental functions, contracting officers shall not award contracts for functions that are exempt from private sector performance. See 207.503(e) for the associated documentation requirement.

[FR Doc. E8-195 Filed 1-9-08; 8:45 am]

BILLING CODE 5001-08-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 209, 217, and 246

RIN 0750-AF86

#### Defense Federal Acquisition Regulation Supplement; Ship Critical Safety Items (DFARS Case 2007-D016)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

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

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 130 of the National Defense Authorization Act for Fiscal Year 2007. Section 130 requires DoD to establish a quality control policy for the procurement, modification, repair, and overhaul of ship critical safety items.

**DATES:** *Effective date:* January 10, 2008.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before March 10, 2008, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2007-D016, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2007-D016 in the subject line of the message.
- *Fax:* 703-602-7887.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Michael Benavides, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Benavides, 703-602-1302.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This interim rule implements Section 130 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364). Section 130 requires DoD to prescribe in regulations a quality



control policy for the procurement of ship critical safety items and the modification, repair, and overhaul of those items.

Section 802 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) contained a similar requirement applicable to aviation critical safety items, which is implemented in DFARS 209.270-1 through 209.270-4. This interim rule amends DFARS 209.270-1 through 209.270-4 and related text to address ship critical safety items as well as aviation critical safety items. The rule identifies the responsibilities of the head of the design control activity with regard to quality control of critical safety items and related services.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule primarily relates to internal DoD responsibilities for ensuring quality control of ship critical safety items. In addition, the Navy already has implemented stringent quality control programs with regard to such items. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2007-D016.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 130 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364). Section 130 requires DoD to prescribe in regulations a quality control policy for the procurement of

ship critical safety items and the modification, repair, and overhaul of those items. Comments received in response to this interim rule will be considered in the formation of the final rule.

### List of Subjects in 48 CFR Parts 209, 217, and 246

Government procurement.

**Michele P. Peterson,**  
Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 209, 217, and 246 are amended as follows:

■ 1. The authority citation for 48 CFR parts 209, 217, and 246 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

### PART 209—CONTRACTOR QUALIFICATIONS

■ 2. Sections 209.202, 209.270, and 209.270-1 are revised to read as follows:

#### 209.202 Policy.

(a)(1) Except for aviation or ship critical safety items, obtain approval in accordance with PGI 209.202(a)(1) when establishing qualification requirements. See 209.270 for approval of qualification requirements for aviation or ship critical safety items.

#### 209.270 Aviation and ship critical safety items.

##### 209.270-1 Scope.

This section—

(a) Implements—

(1) Section 802 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136); and

(2) Section 130 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364); and

(b) Prescribes policy and procedures for qualification requirements in the procurement of aviation and ship critical safety items and the modification, repair, and overhaul of those items.

■ 3. Section 209.270-2 is amended by revising the definition of "Design control activity" and adding a definition of "Ship critical safety item" to read as follows:

#### 209.270-2 Definitions.

\* \* \* \* \*

*Design control activity*—(1) With respect to an aviation critical safety item, means the systems command of a military department that is specifically responsible for ensuring the air worthiness of an aviation system or equipment in which an aviation critical safety item is to be used; and

(2) With respect to a ship critical safety item, means the systems command of a military department that is specifically responsible for ensuring the seaworthiness of a ship or ship equipment in which a ship critical safety item is to be used.

*Ship critical safety item* means any ship part, assembly, or support equipment containing a characteristic the failure, malfunction, or absence of which could cause—

(1) A catastrophic or critical failure resulting in loss of or serious damage to the ship; or

(2) An unacceptable risk of personal injury or loss of life.

■ 4. Section 209.270-3 is revised to read as follows:

#### 209.270-3 Policy.

(a) The head of the contracting activity responsible for procuring an aviation or ship critical safety item may enter into a contract for the procurement, modification, repair, or overhaul of such an item only with a source approved by the head of the design control activity.

(b) The approval authorities specified in this section apply instead of those otherwise specified in FAR 9.202(a)(1), 9.202(c), or 9.206-1(c), for the procurement, modification, repair, and overhaul of aviation or ship critical safety items.

■ 5. Section 209.270-4 is amended by revising paragraph (a) to read as follows:

#### 209.270-4 Procedures.

(a) The head of the design control activity shall—

(1) Identify items that meet the criteria for designation as aviation or ship critical safety items. See additional information at PGI 209.270-4;

(2) Approve qualification requirements in accordance with procedures established by the design control activity; and

(3) Qualify and identify aviation and ship critical safety item suppliers and products.

\* \* \* \* \*

### PART 217—SPECIAL CONTRACTING METHODS

■ 6. Section 217.7502 is amended in paragraph (b)(2) by revising the last sentence to read as follows:

#### 217.7502 General.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \* See 209.270 for requirements applicable to replenishment parts for aviation or ship critical safety items.

\* \* \* \* \*

**PART 246—QUALITY ASSURANCE**

■ 7. Section 246.407 is amended by revising paragraph (S-70) to read as follows:

**246.407 Nonconforming supplies or services.**

\* \* \* \* \*

(S-70) The head of the design control activity is the approval authority for acceptance of any nonconforming aviation or ship critical safety items or nonconforming modification, repair, or overhaul of such items (see 209.270). Authority for acceptance of minor nonconformances in aviation or ship critical safety items may be delegated as determined appropriate by the design control activity. See additional information at PGI 246.407.

■ 8. Section 246.504 is revised to read as follows:

**246.504 Certificate of conformance.**

Before authorizing a certificate of conformance for aviation or ship critical safety items, obtain the concurrence of the head of the design control activity (see 209.270).

[FR Doc. E8-173 Filed 1-9-08; 8:45 am]

BILLING CODE 5001-08-P

**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Parts 239 and 252**

RIN 0750-AF52

**Defense Federal Acquisition Regulation Supplement; Information Assurance Contractor Training and Certification (DFARS Case 2006-D023)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address training requirements that apply to contractor personnel who perform information assurance functions for DoD. Contractor personnel accessing information systems must meet applicable training and certification requirements.

**DATES:** *Effective Date:* January 10, 2008.

**FOR FURTHER INFORMATION CONTACT:** Ms. Felisha Hitt, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-0310;

facsimile 703-602-7887. Please cite DFARS Case 2006-D023.

**SUPPLEMENTARY INFORMATION:****A. Background**

This final rule implements requirements of the Federal Information Security Management Act of 2002 (44 U.S.C. 3541, *et seq.*); DoD Directive 8570.1, Information Assurance Training, Certification, and Workforce Management; and DoD Manual 8570.01-M, Information Assurance Workforce Improvement Program. The rule contains a clause for use in contracts involving contractor performance of information assurance functions. The clause requires the contractor to ensure that personnel accessing information systems are properly trained and certified.

DoD published a proposed rule at 71 FR 2644 on January 22, 2007. Seven sources submitted comments on the proposed rule. A discussion of the comments is provided below:

1. *Comment:* One respondent recommended a change to DFARS 239.7102-3(b) to allow contractors to meet information assurance training certification requirements in a manner suitable to the service or agency chief information officer.

*DoD Response:* Basic information assurance training certification requirements have been established by the Assistant Secretary of Defense for Networks and Information Integration/DoD Chief Information Officer. These requirements are applicable DoD-wide. However, in accordance with 44 U.S.C. 3541, *et seq.*, and DoD policy, departments and agencies may establish additional requirements as needed.

2. *Comment:* One respondent stated that DoD Manual 8570.01-M, Information Assurance Workforce Improvement Program, already requires contractors to comply with DoD Directive 8570.1, Information Assurance Training, Certification, and Workforce Management.

*DoD Response:* DoD Directive 8570.1 requires the development of DFARS clauses to reflect the requirements of the Directive relating to contracts and contractors. This DFARS rule provides a uniform means of specifying the training and certification requirements in DoD contracts.

3. *Comment:* One respondent suggested that DoD address some of the information assurance training restrictions encountered by capable contractors attempting to gain compliance with the new training and certification requirements.

*DoD Response:* DoD is not aware of any information assurance training

restrictions. DoD training is provided by the National Defense University and other training sources such as the Defense Information Systems Agency computer-based training module. Training is also available in multiple commercial venues outside of the DoD training structure.

4. *Comment:* One respondent expressed concern as to how the new training and certification requirements will affect competition of future service contracts, specifically when the contractor already has its personnel trained and certified on unique programs and systems and other competitors have not worked on those systems. The respondent further questioned whether the Government will fund and provide training and certification to contractors who wish to compete for follow-on service contracts.

*DoD Response:* Having an appropriately trained workforce is one of many ways prospective contractors can become competitive for any acquisition. Information assurance training is available through a variety of sources and is available to all prospective contractors. In accordance with FAR 31.205-44, the costs of training and education that are related to the field in which the employee is working or may reasonably be expected to work are allowable (with exceptions).

5. *Comment:* One respondent questioned how the new certification requirements reconcile with Section 813 of the National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106-398).

*DoD Response:* Section 813 of Public Law 106-398 discusses the appropriate use of requirements for experience and education of contractor personnel in the procurement of information technology services. DoD needs the assurance that a contractor is qualified to perform the information system security functions required to protect DoD networks, as permitted by Section 813(b). The training certifications required by this DFARS rule provide that assurance to DoD.

6. *Comment:* One respondent suggested that DFARS 239.7103(b) be clarified to identify any thresholds, breadth of coverage, and applicability, and include examples of when to use the clause.

*DoD Response:* DFARS 239.7103(b) specifies that the clause at 252.239-7001 must be used in solicitations and contracts involving performance of information assurance functions as described in DoD 8570.01-M. The contracting officer will rely on the requiring activity to identify information assurance requirements and

to ensure that the certification status of all contractor personnel complies with DoD 8570.01-M.

7. *Comment:* One respondent suggested that the effective date of the rule allow a period of time for contractor and DoD training certification in order to effectively implement the requirements.

*DoD Response:* The rule is effective upon publication, and will apply to solicitations issued on or after the effective date, consistent with the implementation plan in DoD 8570.01-M.

8. *Comment:* One respondent suggested that the rule include guidance on requirements of DoD 8570.01-M relating to modification of existing contracts, the designated approving authority, waivers, and reporting requirements.

*DoD Response:* A paragraph has been added to the DFARS companion resource, Procedures, Guidance, and Information (PGI), to inform contracting officers of the phased implementation plan in DoD 8570.01-M, which addresses modification of existing contracts. The other issues raised by the respondent apply primarily to requirements personnel and need not be addressed in the DFARS or PGI.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This final rule amends the DFARS to implement DoD Directive 8570.1, Information Assurance Training, Certification, and Workforce Management, and DoD Manual 8570.01-M, Information Assurance Workforce Improvement Program, with regard to DoD contractor personnel. The DoD Directive and Manual are based on the provisions of the Federal Information Security Management Act of 2002 (44 U.S.C. 3541, *et seq.*), which requires proper training and oversight of personnel with information security responsibilities. The objective of the rule is to ensure that contractor personnel who have access to DoD information systems are properly trained and managed. The rule will apply to entities that perform information assurance functions for DoD. Approximately 83 small business concerns fall into this category annually. DoD contractors performing

information assurance functions will be required to ensure that personnel accessing information systems have the proper and current information assurance certification to perform information assurance functions, in accordance with DoD 8570.01-M.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Parts 239 and 252

Government procurement.

**Michele P. Peterson,**  
*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 239 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 239 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

### PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

■ 2. Section 239.7102-1 is amended by revising paragraphs (a)(5) and (6) and adding paragraphs (a)(7) and (8) to read as follows:

#### 239.7102-1 General.

(a) \* \* \*

(5) DoD Directive 8500.1, Information Assurance;

(6) DoD Instruction 8500.2,

Information Assurance Implementation;

(7) DoD Directive 8570.1, Information

Assurance Training, Certification, and

Workforce Management; and

(8) DoD Manual 8570.01-M,

Information Assurance Workforce Improvement Program.

\* \* \* \* \*

■ 3. Section 239.7102-3 is added to read as follows:

#### 239.7102-3 Information assurance contractor training and certification.

(a) For acquisitions that include information assurance functional services for DoD information systems, or that require any appropriately cleared contractor personnel to access a DoD information system to perform contract duties, the requiring activity is responsible for providing to the contracting officer—(1) A list of information assurance functional responsibilities for DoD information systems by category (e.g., technical or management) and level (e.g., computing

environment, network environment, or enclave); and

(2) The information assurance training, certification, certification maintenance, and continuing education or sustainment training required for the information assurance functional responsibilities.

(b) After contract award, the requiring activity is responsible for ensuring that the certifications and certification status of all contractor personnel performing information assurance functions as described in DoD 8570.01-M, Information Assurance Workforce Improvement Program, are in compliance with the manual and are identified, documented, and tracked.

(c) The responsibilities specified in paragraphs (a) and (b) of this section apply to all DoD information assurance duties supported by a contractor, whether performed full-time or part-time as additional or embedded duties, and when using a DoD contract, or a contract or agreement administered by another agency (e.g., under an interagency agreement).

(d) See PGI 239.7102-3 for guidance on documenting and tracking certification status of contractor personnel, and for additional information regarding the requirements of DoD 8570.01-M.

■ 4. Section 239.7103 is revised to read as follows:

#### 239.7103 Contract clauses.

(a) Use the clause at 252.239-7000, Protection Against Compromising Emanations, in solicitations and contracts involving information technology that requires protection against compromising emanations.

(b) Use the clause at 252.239-7001, Information Assurance Contractor Training and Certification, in solicitations and contracts involving contractor performance of information assurance functions as described in DoD 8570.01-M.

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### 252.239-7000 [Amended]

■ 5. Section 252.239-7000 is amended in the introductory text by removing "239.7103" and adding in its place "239.7103(a)".

■ 6. Section 252.239-7001 is added to read as follows:

#### 252.239-7001 Information Assurance Contractor Training and Certification.

As prescribed in 239.7103(b), use the following clause:

Information Assurance Contractor Training and Certification (JAN 2008)

(a) The Contractor shall ensure that personnel accessing information systems have the proper and current information assurance certification to perform information assurance functions in accordance with DoD 8570.01-M, Information Assurance Workforce Improvement Program. The Contractor shall meet the applicable information assurance certification requirements, including—

(1) DoD-approved information assurance workforce certifications appropriate for each category and level as listed in the current version of DoD 8570.01-M; and

(2) Appropriate operating system certification for information assurance technical positions as required by DoD 8570.01-M.

(b) Upon request by the Government, the Contractor shall provide documentation supporting the information assurance certification status of personnel performing information assurance functions.

(c) Contractor personnel who do not have proper and current certifications shall be denied access to DoD information systems for the purpose of performing information assurance functions.

(End of clause)

[FR Doc. E8-193 Filed 1-9-08; 8:45 am]

BILLING CODE 5001-08-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 252

RIN 0750-AF57

#### Defense Federal Acquisition Regulation Supplement; New Designated Countries (DFARS Case 2006-D062)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the Dominican Republic-Central America-United States Free Trade Agreement with respect to the Dominican Republic. The rule also includes Bulgaria and Romania on the list of countries covered by the World Trade Organization Government Procurement Agreement.

**DATES:** *Effective Date:* January 10, 2008.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-0328; facsimile 703-602-7887. Please cite DFARS Case 2006-D062.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD published an interim rule at 72 FR 14242 on March 27, 2007, to implement the Dominican Republic-Central America-United States Free Trade Agreement with respect to the Dominican Republic, and to add Bulgaria and Romania to the list of countries covered by the World Trade Organization Government Procurement Agreement.

DoD received no comments on the interim rule. Therefore, DoD has adopted the interim rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

##### B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the rule opens up DoD procurement to the products of Bulgaria, the Dominican Republic, and Romania, there will be no significant impact on U.S. small businesses. DoD applies the trade agreements to only those non-defense items listed at DFARS 225.401-70, and procurements that are set aside for small businesses are exempt from application of the trade agreements.

##### C. Paperwork Reduction Act

This rule affects the certification and information collection requirements in the provisions at DFARS 252.225-7020 and 252.225-7035, currently approved under Office of Management and Budget Control Number 0704-0229. The impact, however, is negligible.

##### List of Subjects in 48 CFR Part 252

Government procurement.

**Michele P. Peterson,**  
*Editor, Defense Acquisition Regulations System.*

#### Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR Part 252, which was published at 72 FR 14242 on March 27,

2007, is adopted as a final rule without change.

[FR Doc. E8-201 Filed 1-9-08; 8:45 am]

BILLING CODE 5001-08-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 252 and Appendix F to Chapter 2

RIN 0750-AF53

#### Defense Federal Acquisition Regulation Supplement; Receiving Reports for Shipments (DFARS Case 2006-D024)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address requirements for the distribution of material inspection and receiving reports under DoD contracts. The rule clarifies that two copies of the receiving report must be distributed with each shipment.

**DATES:** *Effective Date:* January 10, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Benavides, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-1302; facsimile 703-602-7887. Please cite DFARS Case 2006-D024.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The clause at DFARS 252.246-7000, Material Inspection and Receiving Report, contains requirements for preparing and furnishing material inspection and receiving reports to the Government. Contractors can satisfy material inspection and receiving report requirements by using DD Form 250, in a manner and to the extent required by DFARS Appendix F, or by using the Wide Area WorkFlow-Receipt and Acceptance (WAWF-RA) electronic form. This rule clarifies that two copies of the receiving report (paper copies of either the DD Form 250 or the WAWF-RA report) must be distributed with the shipment in accordance with DFARS Appendix F. Such clarification is needed to ensure proper identification of all shipments.

DoD published a proposed rule at 71 FR 65769 on November 9, 2006. Three

sources submitted comments on the proposed rule. A discussion of the comments is provided below.

1. *Comment:* One respondent stated that the rule would increase administrative costs by significantly increasing paperwork creation, administration, and coordination. The respondent recommended that, at a minimum, alternative language be added to allow the use of contractor format DD Form 250 material inspection and receiving reports instead of WAWF-RA report printing.

*DoD Response:* Contractors presently are responsible for distributing DD Form 250 in accordance with DFARS Appendix F, Part 4, F-401, using the instructions in Tables 1 and 2, which require distribution of two copies with each shipment. Therefore, the requirement for contractors to print copies of the WAWF-RA report instead of the DD Form 250 will not significantly increase the cost or effort of preparing shipping documents. Only the forms already in WAWF-RA must be printed; thus this should not be a significant administrative burden. However, to allow flexibility, DoD has amended the rule to incorporate the respondent's recommendation that contractors be allowed to use the DD Form 250 instead of a printed WAWF-RA form.

2. *Comment:* One respondent stated that the requirement for two paper copies to be distributed with shipments would create unnecessary costs and additional administrative burdens for many vendors and would unnecessarily duplicate the electronic process, thwarting the goal of the WAWF-RA being a paperless system. The respondent further suggested that this and similar issues be addressed through the DFARS Procedures, Guidance, and Information (PGI) web page rather than as a change to the DFARS.

*DoD Response:* Printed copies of the receiving report are needed for each shipment to eliminate costly stocking, payment, and frustrated cargo issues now affecting both DoD and contractors. As noted in the response to Comment 1, contractors already are responsible for distributing copies of DD Form 250 with the shipment. Therefore, this rule will not significantly increase the cost or effort of preparing shipping documents. The respondent's recommendation to address this issue through PGI is not a feasible solution, since this issue relates to contractor requirements, whereas PGI addresses internal DoD procedures and guidance.

3. *Comment:* One respondent stated that the WAWF-RA receiving report does not include the unique

identification (UID) tab, where the contractor lists UIDs and serial numbers for items requiring them.

*DoD Response:* The respondent's comment has been noted; however, the content of the WAWF-RA receiving report is outside the scope of this DFARS rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

#### B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule makes no significant change to DoD policy for preparation and use of material inspection and receiving reports.

#### C. Paperwork Reduction Act

The information collection requirements for DoD material inspection and receiving reports have been approved by the Office of Management and Budget, under Control Number 0704-0248, for use through March 31, 2008.

#### List of Subjects in 48 CFR Part 252

Government procurement.

**Michele P. Peterson,**  
*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR part 252 and Appendix F to chapter 2 are amended as follows:

■ 1. The authority citation for 48 CFR part 252 and Appendix F to subchapter I continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

#### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 2. Section 252.246-7000 is amended by revising the clause date and paragraph (b) to read as follows:

##### 252.246-7000 Material Inspection and Receiving Report.

\* \* \* \* \*

Material Inspection and Receiving Report (JAN 2008)

\* \* \* \* \*

(b) Contractor submission of the material inspection and receiving information required by Appendix F of the Defense FAR Supplement by using the Wide Area WorkFlow-Receipt and Acceptance (WAWF-RA) electronic form (see paragraph (b)(1) of the clause

at 252.232-7003) fulfills the requirement for a material inspection and receiving report (DD Form 250). Two copies of the receiving report (paper copies of either the DD Form 250 or the WAWF-RA report) shall be distributed with the shipment, in accordance with Appendix F, Part 4, F-401, Table 1, of the Defense FAR Supplement.

■ 3. Appendix F to chapter 2 is amended in Part 4, Section F-401, by revising paragraph (a) to read as follows:

#### Appendix F—Material Inspection and Receiving Report

\* \* \* \* \*

#### F-401 Distribution

(a) The contractor is responsible for distributing the DD Form 250, including mailing and payment of postage. Use of the Wide Area WorkFlow-Receipt and Acceptance (WAWF-RA) electronic form satisfies the distribution requirements of this section, except for the copies required to accompany shipment.

\* \* \* \* \*

[FR Doc. E8-178 Filed 1-9-08; 8:45 am]

BILLING CODE 5001-08-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 070213032-7032-01]

RIN 0648-XE84

#### Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2008 Gulf of Alaska Pollock Total Allowable Catch Amount

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

**ACTION:** Temporary rule; inseason adjustment; request for comments.

**SUMMARY:** NMFS is adjusting the 2008 total allowable catch (TAC) amounts for pollock in the Gulf of Alaska (GOA). This action is necessary because NMFS has determined these TACs are incorrectly specified. This action will ensure the GOA pollock TACs do not exceed the appropriate amount based on the best available scientific information for pollock in the GOA. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska Area (FMP).

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), January 7, 2008, until the



effective date of the 2008 and 2009 final harvest specifications for GOA groundfish, unless otherwise modified or superceded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 22, 2008.

**ADDRESSES:** You may submit comments, identified by RIN0648-XE84, by any one of the following methods:

- Mail to: P.O. Box 21668, Juneau, AK 99802

- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>

- FAX to 907-586-7557, Attn: Ellen Sebastian

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the Gulf of Alaska (GOA) according to the

FMP prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 TAC of pollock in the GOA was set at 81,467 metric tons (mt) by the 2007 and 2008 harvest specification for groundfish in the GOA (72 FR 9676, March 5, 2007). The 2008 pollock TAC in Statistical Area 610 in the GOA was set at 30,308 mt. The 2008 pollock TAC in Statistical Area 620 in the GOA was set at 25,313 mt. The 2008 pollock TAC in Statistical Area 630 in the GOA was set at 17,995 mt. The 2008 pollock TAC in the West Yakutat District was set at 1,694 mt.

In December 2007, the Council recommended a 2008 pollock TAC of 60,180 mt for the GOA. The Council recommended the following apportionments by area for the 2008 pollock TAC: 17,602 mt for Statistical Area 610, 19,181 mt for Statistical Area 620, 13,640 mt for Statistical Area 630, and 1,517 mt for the West Yakutat District. These amounts are less than the pollock TACs as established by the 2007 and 2008 harvest specification for groundfish in the GOA (72 FR 9676, March 5, 2007). The TACs recommended by the Council are based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2007, which NMFS has determined is the best available scientific information for this fishery.

Steller sea lions occur in the same location as the pollock fishery and are

listed as endangered under the Endangered Species Act (ESA). Pollock is a principal prey species for Steller sea lions in the GOA. The seasonal apportionment of pollock harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. The regulations at § 679.20(a)(5)(iv) specifies how the pollock TAC shall be apportioned.

In accordance with § 679.25(a)(2)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2007 SAFE report for this fishery, the current GOA pollock TACs are incorrectly specified. Consequently, the Regional Administrator is adjusting the 2008 pollock TAC to 60,180 mt in the GOA. The Regional Administrator is also adjusting the 2008 pollock TAC to 17,602 mt in Statistical Area 610, to 19,181 mt in Statistical Area 620, to 13,640 mt in Statistical Area 630, and to 1,517 mt in the West Yakutat District.

Pursuant to § 679.20(a)(5)(iv), Tables 2, 6, 14, and 17 of the 2007 and 2008 final harvest specifications for groundfish in the GOA (72 FR 9676, March 5, 2007) are revised for the 2008 pollock TACs consistent with this adjustment. Pursuant to § 679.92(b), Table 17 of the 2008 final harvest specifications for groundfish in the GOA (72 FR 71802, December 19, 2007) is revised for the 2008 annual pollock TACs in the GOA consistent with this adjustment.

**BILLING CODE 3510-22-S**

Table 2 - Final 2008 ABCs, TACs, and OFLs of Groundfish for the Western/Central/West Yakutat (W/C/WYK), Western (W), Central (C), Eastern (E) Regulatory Areas, and in the West Yakutat (WYK), Southeast Outside (SEO), and Gulfwide (GW) Districts of the Gulf of Alaska (values are rounded to the nearest metric ton)

Species	Area <sup>1</sup>	ABC	TAC	OFL
Pollock <sup>2</sup>				
	Shumagin (610)	30,308	17,602	n/a
	Chirikof (620)	25,313	19,181	n/a
	Kodiak (630)	17,995	13,640	n/a
	WYK (640)	1,694	1,517	n/a
	Subtotal	W/C/WYK	75,310	51,940
	SEO (650)	6,157	8,240	8,209
Total		81,467	60,180	8,209
Pacific cod <sup>3</sup>	W	27,846	20,885	n/a
	C	39,270	29,453	n/a
	E	4,284	3,856	n/a
	Total		71,400	54,194
Flatfish <sup>4</sup> (deep-water)	W	430	430	n/a
	C	4,296	4,296	n/a
	WYK	2,763	2,763	n/a
	SEO	1,494	1,494	n/a
	Total		8,983	8,983
Rex sole	W	1,122	1,122	n/a
	C	5,327	5,327	n/a
	WYK	1,014	1,014	n/a
	SEO	1,437	1,437	n/a
	Total		8,900	8,900
Flathead sole	W	11,464	2,000	n/a
	C	27,382	5,000	n/a
	WYK	2,198	2,198	n/a
	SEO	60	60	n/a
	Total		41,104	9,258
Flatfish <sup>5</sup> (shallow-water)	W	24,720	4,500	n/a

	C	24,258	13,000	n/a
	WYK	628	628	n/a
	SEO	1,844	1,844	n/a
Total		51,450	19,972	0
Arrowtooth flounder	W	21,164	8,000	n/a
	C	141,673	30,000	n/a
	WYK	16,754	2,500	n/a
	SEO	7,172	2,500	n/a
Total		186,763	43,000	0
Sablefish <sup>6</sup>	W	2,458	2,458	n/a
	C	6,159	6,159	n/a
	WYK	2,269	2,269	n/a
	SEO	3,353	3,353	n/a
Subtotal	E (WYK and SEO)	5,622	5,622	0
Total		14,239	14,239	0
Pacific ocean perch <sup>7</sup>	W	4,291	4,291	5,030
	C	7,694	7,694	9,019
	WYK	1,153	1,153	n/a
	SEO	1,659	1,659	n/a
Subtotal	E (WYK and SEO)	2,812	2,812	0
Total		14,797	14,797	14,049
Shortraker rockfish <sup>8</sup>	W	153	153	n/a
	C	353	353	n/a
	E	337	337	n/a
Total		843	843	0
Rougeye rockfish <sup>9</sup>	W	137	137	n/a
	C	614	614	n/a
	E	242	242	n/a
Total		993	993	0
Other rockfish <sup>10,11</sup>	W	577	577	n/a
	C	386	386	n/a



	WYK	319	319	n/a
	SEO	2,872	200	n/a
Total		4,154	1,482	0
Northern rockfish <sup>11,12</sup>	W	1,383	1,383	n/a
	C	3,365	3,365	n/a
	E	0	0	n/a
Total		4,748	4,748	0
Pelagic shelf rockfish <sup>13</sup>	W	1,752	1,752	n/a
	C	3,973	3,973	n/a
	WYK	366	366	n/a
	SEO	531	531	n/a
Total		6,622	6,622	0
Thornyhead rockfish	W	513	513	n/a
	C	989	989	n/a
	E	707	707	n/a
Total		2,209	2,209	0
Big skates <sup>14</sup>	W	695	695	n/a
	C	2,250	2,250	n/a
	E	599	599	n/a
Total		3,544	3,544	0
Longnose skates <sup>15</sup>	W	65	65	n/a
	C	1,969	1,969	n/a
	E	861	861	n/a
Total		2,895	2,895	0
Other skates <sup>16</sup>	GW	1,617	1,617	2,156
Demersal shelf rockfish <sup>17</sup>	SEO	410	410	650
Atka mackerel	GW	4,700	1,500	6,200
Other species <sup>18</sup>	GW	n/a	4,500	n/a
Total <sup>19</sup>		511,838	264,886	31,264

<sup>1</sup> Regulatory areas and districts are defined at § 679.2.

<sup>2</sup> Pollock is apportioned in the Western/Central Regulatory Areas among three statistical areas. During the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass of

approximately 30 percent, 48 percent, and 22 percent in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 30 percent, 59 percent, and 11 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 53 percent, 15 percent, and 32 percent in Statistical Areas 610, 620, and 630, respectively. Tables 5 and 6 list the seasonal apportionments. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

<sup>3</sup> The annual Pacific cod TAC is apportioned 60 percent to an A season and 40 percent to a B season in the Western and Central Regulatory Areas of the GOA. Pacific cod is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Tables 7 and 8 list the seasonal apportionments and component allocations of TAC.

<sup>4</sup> "Deep water flatfish" means Dover sole, Greenland turbot, and deepsea sole.

<sup>5</sup> "Shallow water flatfish" means flatfish not including "deep water flatfish," flathead sole, rex sole, or arrowtooth flounder.

<sup>6</sup> Sablefish is allocated to trawl and hook-and-line gears for 2006 and to trawl gear in 2007. Tables 3 and 4 list these amounts.

<sup>7</sup> "Pacific ocean perch" means *Sebastes alutus*.

<sup>8</sup> "Shortraker rockfish" means *Sebastes borealis*.

<sup>9</sup> "Rougheye rockfish" means *Sebastes aleutianus*.

<sup>10</sup> "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the SEO District means slope rockfish.

<sup>11</sup> "Slope rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), and *S. reedi* (yellowmouth). In the Eastern Regulatory Area only, slope rockfish also includes northern rockfish, *S. polyspinis*.

<sup>12</sup> "Northern rockfish" means *Sebastes polyspinis*. The 2 mt ABC for northern rockfish in the Eastern Regulatory Area has been combined with the ABC for slope rockfish in the West Yakutat District.

<sup>13</sup> "Pelagic shelf rockfish" means *Sebastes ciliatus* (dark), *S. variabilis* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

<sup>14</sup> Big skate means *Raja binoculata*.

<sup>15</sup> Longnose skate means *Raja rhina*.

<sup>16</sup> Other skates means *Bathyraja* spp.

<sup>17</sup> "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

<sup>18</sup> "Other species" means sculpins, sharks, squid, and octopus. There is no OFL or ABC for "other species," the TAC for "other species" is set at less than or equal to 5 percent of the TACs for assessed target species.

<sup>19</sup> The total ABC and OFL is the sum of the ABCs and OFLs for assessed target species.

Table 6 - Final 2008 Distribution of Pollock in the Central and Western Regulatory Areas of the Gulf of Alaska; Seasonal Biomass Distribution, Area Apportionments; and Seasonal Allowances of Annual TAC (values are rounded to the nearest metric ton)

Season	Shumagin (Area 610)		Chirikof (Area 620)		Kodiak (Area 630)		Total <sup>1</sup>	
A	3,322	(26.35%)	6,215	(49.30%)	3,069	(24.35%)	12,606	(100%)
B	3,321	(26.35%)	7,576	(60.09%)	1,709	(13.56%)	12,606	(100%)
C	5,480	(43.47%)	2,695	(21.38%)	4,431	(35.15%)	12,606	(100%)
D	5,479	(43.47%)	2,695	(21.38%)	4,431	(35.15%)	12,605	(100%)
Annual Total	17,602		19,181		13,640		50,423	

<sup>1</sup> The WYK and SEO District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

Note: As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 to March 10, March 10 to May 31, August 25 to October 1, and October 1 to November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.

Table 14 - Final 2008 GOA Non-Exempt American Fisheries Act Catcher Vessel (CV) Groundfish Harvest Sideboard Limitations  
(values are in metric tons)

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995-1997 non-exempt AFA CV catch to 1995-1997 TAC	2008 TAC	2008 non-exempt AFA catcher vessel sideboard
Pollock	A Season (W/C areas only) January 20 - February 25			
	Shumagin (610)	0.6112	3,322	2,030
	Chirikof (620)	0.1427	6,215	887
	Kodiak (630)	0.2438	3,069	748
	B Season (W/C areas only) March 10 - May 31			
	Shumagin (610)	0.6112	3,321	2,030
	Chirikof (620)	0.1427	7,576	1,081
	Kodiak (630)	0.2438	1,709	417
	C Season (W/C areas only) August 25 - September 15			
	Shumagin (610)	0.6112	5,480	3,349
	Chirikof (620)	0.1427	2,695	385
	Kodiak (630)	0.2438	4,431	1,080
	D Season (W/C areas only) October 1 - November 1			
	Shumagin (610)	0.6112	5,479	3,349
	Chirikof (620)	0.1427	2,695	385
Kodiak (630)	0.2438	4,431	1,080	
Annual				
WYK (640)	0.3499	1,517	531	
SEO (650)	0.3499	8,240	2,883	
Pacific cod	A Season <sup>1</sup> January 1 - June 10			
	W inshore	0.1423	11,278	1,605
	W offshore	0.1026	1,253	129
	C inshore	0.0722	15,905	1,148
	C offshore	0.0721	1,767	127
	B Season <sup>2</sup> September 1 - December 31			
	W inshore	0.1423	7,519	1,070
	W offshore	0.1026	835	86
	C inshore	0.0722	10,603	766
	C offshore	0.0721	1,178	85
	Annual			
E inshore	0.0079	3,470	27	
E offshore	0.0078	386	3	
Flatfish deep-water	W	0	430	0
	C	0.0670	4,296	288
	E	0.0171	4,257	73

Rex sole	W	0.0010	1,122	1
	C	0.0402	5,327	214
	E	0.0153	2,451	38
Flathead sole	W	0.0036	2,000	7
	C	0.0261	5,000	131
	E	0.0048	2,258	11
Flatfish shallow-water	W	0.0156	4,500	70
	C	0.0598	13,000	777
	E	0.0126	2,472	31
Arrowtooth flounder	W	0.0021	8,000	17
	C	0.0309	30,000	927
	E	0.0020	5,000	10
Sablefish	W trawl gear	0	492	0
	C trawl gear	0.0720	1,232	89
	E trawl gear	0.0488	281	14
Pacific ocean perch	W	0.0623	4,291	267
	C	0.0866	7,694	666
	E	0.0466	2,812	131
Shortraker rockfish	W	0	153	0
	C	0.0237	353	8
	E	0.0124	337	4
Rougheye rockfish	W	0	137	0
	C	0.0237	614	15
	E	0.0124	242	3
Other rockfish	W	0.0034	577	2
	C	0.2065	386	80
	E	0	519	0
Northern rockfish	W	0.0003	1,383	0
	C	0.0336	3,365	113
Pelagic shelf rockfish	W	0.0001	1,752	0
	C	0	3,973	0
	E	0.0067	897	6
Thornyhead rockfish	W	0.0308	513	16
	C	0.0308	989	30
	E	0.0308	707	22
Big skates	W	0.0090	695	6
	C	0.0090	2,250	20
	E	0.0090	599	5
Longnose skates	W	0.0090	65	1
	C	0.0090	1,969	18
	E	0.0090	861	8
Other skates	GW	0.0090	1,617	15
DSR	SEO	0.0020	410	1
Atka mackerel	Gulfwide	0.0309	1,500	46
Other species	Gulfwide	0.0090	4,500	41

<sup>1</sup> The Pacific cod A season for trawl gear does not open until January 20.

<sup>2</sup> The Pacific cod B season for trawl gear closes November 1.

Table 17- Final 2008 GOA Non-American Fisheries Act Crab Vessel Groundfish Harvest Sideboard Limitations (values are rounded to nearest metric ton)

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1996-2000 non AFA crab vessel catch to 1996-2000 total harvest	2008 TAC	2008 non-AFA crab vessel sideboard limit	
Pollock	A Season (W/C areas only) January 20 - March 10				
	Shumagin (610)	0.0098	3,322	33	
	Chirikof (620)	0.0031	6,215	19	
	Kodiak (630)	0.0002	3,069	1	
	B Season (W/C areas only) March 10 - May 31				
	Shumagin (610)	0.0098	3,321	33	
	Chirikof (620)	0.0031	7,576	23	
	Kodiak (630)	0.0002	1,709	0	
	C Season (W/C areas only) August 25 - October 1				
	Shumagin (610)	0.0098	5,480	54	
	Chirikof (620)	0.0031	2,695	8	
	Kodiak (630)	0.0002	4,431	1	
	D Season (W/C areas only) October 1 - November 1				
	Shumagin (610)	0.0098	5,479	54	
Chirikof (620)	0.0031	2,695	8		
Kodiak (630)	0.0002	4,431	1		
Annual	WYK (640)	0	1,517	0	
	SEO (650)	0	8,240	0	
Pacific cod	A Season <sup>1</sup> January 1 - June 10				
	W inshore	0.0902	11,278	1,017	
	W offshore	0.2046	1,253	256	
	C inshore	0.0383	15,905	609	
	C offshore	0.2074	1,767	366	
	B Season <sup>2</sup> September 1 - December 31				
	W inshore	0.0902	7,519	678	
	W offshore	0.2046	835	171	
	C inshore	0.0383	10,603	406	
	C offshore	0.2074	1,178	244	
	Annual	E inshore	0.0110	3,470	38
		E offshore	0	386	0
Flatfish deep-water	W	0.0035	430	2	
	C	0	4,296	0	

	E	0	4,257	0
Rex sole	W	0	1,122	0
	C	0	5,327	0
	E	0	2,551	0
Flathead sole	W	0.0002	2,000	0
	C	0.0004	5,000	2
	E	0	2,258	0
Flatfish shallow-water	W	0.0059	4,500	27
	C	0.0001	13,000	1
	E	0	2,472	0
Arrowtooth flounder	W	0.0004	8,000	3
	C	0.0001	30,000	3
	E	0	5,000	0
Sablefish	W trawl gear	0	492	0
	C trawl gear	0	1,232	0
	E trawl gear	0	281	0
Pacific ocean perch	W	0	4,291	0
	C	0	7,694	0
	E	0	2,812	0
Shortraker rockfish	W	0.0013	153	0
	C	0.0012	353	0
	E	0.0009	337	0
Rougheye rockfish	W	0.0067	137	1
	C	0.0047	614	3
	E	0.0008	242	0
Other rockfish	W	0.0035	577	2
	C	0.0033	386	1
	E	0	519	0
Northern rockfish	W	0.0005	1,383	1
	C	0	3,365	0
Pelagic shelf rockfish	W	0.0017	1,752	3
	C	0	3,973	0
	E	0	897	0
Thornyhead rockfish	W	0.0047	513	2
	C	0.0066	989	7
	E	0.0045	707	3
Big skate	W	0.0392	695	27
	C	0.0159	2,250	36
	E	0	599	0
Longnose skate	W	0.0392	65	3
	C	0.0159	1,969	31
	E	0	861	0
Other skates	GW	0.0176	1,617	28
DSR	SEO	0	410	0
Atka mackerel	Gulfwide	0	1,500	0
Other species	Gulfwide	0.0176	4,500	79

<sup>1</sup> The Pacific cod A season for trawl gear does not open until January 20.

<sup>2</sup> The Pacific cod B season for trawl gear closes November 1.

Table 17 - 2008 and GOA Amendment 80 Program Vessel Sideboard Limits for Groundfish Program Vessels

Species	Area	Apportionments and allocations by area/season/processor/gear	Ratio of Amendment 80 sector vessels 1998 - 2004 catch to TAC	2008 TAC (mt)	2008 Amendment 80 vessel sideboards (mt)
Pollock	Shumagin (610)	A Season	0.003	3,322	10
	Chirikof (620)	January 20 - February 25	0.002	6,215	12
	Kodiak (630)		0.002	3,069	6
	Shumagin (610)	B season	0.003	3,321	10
	Chirikof (620)	March 10 - May 31	0.002	7,576	15
	Kodiak (630)		0.002	1,709	3
	Shumagin (610)	C season	0.003	5,480	16
	Chirikof (620)	August 25 - September 15	0.002	2,695	5
	Kodiak (630)		0.002	4,431	9
	Shumagin (610)	D season	0.003	5,479	16
	Chirikof (620)	October 1 - November 1	0.002	2,695	5
	Kodiak (630)		0.002	4,431	9
	WYK (640)	Annual	0.002	1,517	3
Pacific cod	W	A season <sup>1</sup>	0.020	12,531	251
	C	January 1 - June 10	0.044	17,672	778
	W	B season <sup>2</sup>	0.020	8,354	167
	C	September 1 - December 31	0.044	11,781	518
	WYK	Annual	0.034	3,856	131
Pacific ocean perch	W	Annual	0.994	4,291	4,265
	WYK		0.961	1,153	1,108
Northern rockfish	W	Annual	1.000	1,383	1,383
Pelagic shelf rockfish	W	Annual	0.764	1,752	1,339
	WYK		0.896	366	328

<sup>1</sup> The Pacific cod A season for trawl gear does not open until January 20.

<sup>2</sup> The Pacific cod B season for trawl gear closes November 1.

#### 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

allow for harvests that exceed the appropriate allocations for pollock based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 13, 2007, and additional time for prior public comment would result in conservation concerns for the ESA-listed Stellersea lions.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of

prior notice and opportunity for public comment.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 22, 2008.

This action is required by § 679.22 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: January 4, 2008.

**Alan D. Risenhoover,**  
Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.

[FR Doc. 08-63 Filed 1-7-08; 2:11 pm]

BILLING CODE 3510-22-C



# Proposed Rules

Federal Register

Vol. 73, No. 7

Thursday, January 10, 2008

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-0396; Directorate Identifier 2007-NM-282-AD]

RIN 2120-AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

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

\* \* \* \* \*

The unsafe condition is reduced control of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by February 11, 2008.

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

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

- **Fax:** (202) 493-2251.

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

- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

#### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1138; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2007-0396; Directorate Identifier 2007-NM-282-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

#### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007-0246, dated September 5, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

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

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

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

#### Relevant Service Information

Airbus has issued Service Bulletins A330-27-3157 and A340-27-4156, both dated August 8, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

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

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

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

We have reviewed the MCAI and related service information and, in general, agree with their substance. But



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

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

#### Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 8 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Labor costs may be covered under warranty as described in the service information. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$3,840, or \$480 per product.

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

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

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

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

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

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**Airbus:** Docket No. FAA-2007-0396; Directorate Identifier 2007-NM-282-AD.

#### Comments Due Date

- (a) We must receive comments by February 11, 2008.

#### Affected ADs

- (b) None.

#### Applicability

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

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

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

#### Subject

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

#### Reason

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

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

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

The unsafe condition is reduced control of the airplane.

#### Actions and Compliance

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

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

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

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

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

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

(i) For any rudder control rod having P/N 22205-08 and S/N 1000094651: Within 600

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

(ii) For all rudder control rods not identified in paragraph (f)(5)(i) of this AD: Within 6 months after the identification required by paragraph (f)(1) of this AD, replace the rudder control rods with new rudder control rods, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330-27-3157 or A340-27-4156, both dated August 8, 2007, as applicable.

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

#### FAA AD Differences

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

#### Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1138; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

#### Related Information

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

Issued in Renton, Washington, on December 21, 2007.

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

[FR Doc. E8-250 Filed 1-9-08; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-0393; Directorate Identifier 2007-NM-183-AD]

RIN 2120-AA64

#### Airworthiness Directives; Boeing Model 777 Airplanes

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

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

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 777 airplanes. This proposed AD would require an inspection to determine the manufacturer and manufacture date of the oxygen masks in the center and outboard passenger service units (PSUs), crew rests, and lavatory and flight attendant oxygen boxes, as applicable. This proposed AD would also require related investigative/corrective actions if necessary. This proposed AD results from a report that several passenger masks with broken in-line flow indicators were found following a mask deployment. We are proposing this AD to prevent the in-line flow indicators of the passenger oxygen masks from fracturing and separating, which could inhibit oxygen flow to the masks and consequently result in exposure of the passengers and cabin attendants to hypoxia following a depressurization event.

**DATES:** We must receive comments on this proposed AD by February 25, 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:** Susan Letcher, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM-150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6474; fax (425) 917-6590.

#### SUPPLEMENTARY INFORMATION:

#### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2007-0393; Directorate Identifier 2007-NM-183-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 indicating that several passenger masks with broken in-line flow indicators were found following a mask deployment on a Boeing Model 777-200 series airplane. Operators subsequently found several more broken in-line flow indicators after examining the oxygen mask assemblies on other Model 777 series airplanes and on Model 747-400 series airplanes.

Investigation revealed that certain flow indicators are weaker and can fracture because of internal residual stresses caused by the flow indicator joint design and manufacturing processes. Fractures cause the in-line flow indicator to separate and consequently prevent oxygen flow to the mask during an emergency. This condition, if not corrected, could result in exposure of the passengers and cabin attendants to hypoxia following a depressurization event.

#### Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 777-35-0019, dated March 9, 2006. The service bulletin describes procedures for doing a general visual inspection to determine the manufacturer and manufacture date of the oxygen masks in the center and outboard passenger service units (PSUs), crew rests, and lavatory and flight attendant oxygen boxes, as applicable. The service bulletin also describes procedures for doing related investigative and corrective actions. The related investigative action is a general visual inspection of the flow indicator to determine the color of the flow direction mark and the word "flow" on the flow indicator, if the identification (ID) label shows that the manufacturer is B/E Aerospace and the manufacture date is between January 1, 2002, and March 1, 2006. The corrective action is the installation of a new oxygen mask assembly having an improved flow indicator, if the existing oxygen mask is found to be one of the discrepant masks.

Boeing Special Attention Service Bulletin 777-35-0019 refers to B/E Aerospace Service Bulletin 174080-35-01, dated February 6, 2006; and Revision 1, dated May 1, 2006; as additional sources of service information for getting a new oxygen mask having an improved flow indicator. B/E Aerospace Service Bulletin 174080-35-01 describes procedures for modifying the oxygen mask assembly by replacing the flow indicator, part number (P/N) 118023-02, with an improved flow indicator, P/N 118023-12. B/E Aerospace Service Bulletin 174080-35-01 also specifies that, as an alternative to modifying the oxygen mask, operators may replace the oxygen mask with a new oxygen mask having the improved flow indicator.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

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

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

#### Clarification Between the Proposed AD and Service Bulletin

Although Boeing Special Attention Service Bulletin 777-35-0019 specifies to install a new oxygen mask having an improved flow indicator, the intent of the service bulletin is to replace it with either a new or modified oxygen mask having an improved flow indicator. Therefore, this proposed AD would require replacing the oxygen mask assembly with a new or modified oxygen mask assembly having an improved flow indicator.

#### Costs of Compliance

There are about 433 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 123 airplanes of U.S. registry. The proposed actions would take about 70 work hours per airplane, with an average of 480 oxygen masks per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is \$688,800, or \$5,600 per airplane.

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

We have determined that this proposed AD would not have federalism

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

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

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

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

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**Boeing:** Docket No. FAA-2007-0393; Directorate Identifier 2007-NM-183-AD.

#### Comments Due Date

(a) The FAA must receive comments on this AD action by February 25, 2008.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Boeing Model 777-200, -200LR, -300, and -300ER series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 777-35-0019, dated March 9, 2006.

#### Unsafe Condition

(d) This AD results from a report that several passenger masks with broken in-line flow indicators were found following a mask deployment. We are issuing this AD to

prevent the in-line flow indicators of the passenger oxygen masks from fracturing and separating, which could inhibit oxygen flow to the masks and consequently result in exposure of the passengers and cabin attendants to hypoxia following a depressurization event.

#### Compliance

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

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

(f) Within 60 months after the effective date of this AD, do a general visual inspection to determine the manufacturer and manufacture date of the oxygen masks in the center and outboard passenger service units (PSUs), crew rests, and lavatory and flight attendant oxygen boxes, as applicable, and do the applicable related investigative and corrective actions, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777-35-0019, dated March 9, 2006; except where the service bulletin specifies installing a new oxygen mask, replace the oxygen mask with a new or modified oxygen mask having an improved flow indicator. The related investigative and corrective actions must be done before further flight.

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

#### Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on December 26, 2007.

#### Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-271 Filed 1-9-08; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-0395; Directorate Identifier 2007-NM-157-AD]

RIN 2120-AA64

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

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

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

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737-300 and -400 series airplanes. This proposed AD would require testing and inspecting a certain web panel of the main wheel well pressure deck to determine the material type and thickness; and related investigative and corrective actions if necessary. This proposed AD results from several reports indicating that cracks ranging from 0.8 to 8.0 inches long were found on a certain web panel of the main wheel well pressure deck. We are proposing this AD to prevent fatigue cracking in the web panel of the main wheel well pressure deck, which could result in venting and consequent rapid decompression of the airplane.

**DATES:** We must receive comments on this proposed AD by February 25, 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:** Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6447; fax (425) 917-6590.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2007-0395; Directorate Identifier 2007-NM-157-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 several reports indicating that cracks ranging from 0.8 to 8.0 inches long were found on a certain web panel of the main wheel well pressure deck. These cracks were found on certain Boeing Model 737-300 and -400 series airplanes. Boeing analyzed pieces of the cracked web sections on three airplanes and found that in each case, the webs were made of the wrong material type and thickness. According to design, the web should be 0.050 inch thick 2024-T42 bare sheet. The webs were found to be 7075 Clad material, with thicknesses of 0.040 inches nominal. (Webs made from this material and thickness are more likely to crack.) The flight cycles on the airplanes when the cracking was found ranged from 13,332 to 22,849 total flight cycles. Cracking in the web panel, if not corrected, could result in venting and consequent rapid decompression of the airplane.



### Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 737-57-1289, dated June 13, 2007. The service bulletin describes procedures for testing and inspecting a certain web panel of the main wheel well pressure deck to determine if the material type and thickness are discrepant, and performing related investigative and corrective actions if necessary.

The testing and inspection procedures include performing either a one-time chemical spot test or a one-time evaluation with a Scanning Electron Microscope (SEM) of the web material of the main wheel well pressure deck to determine the type of web material, and performing a one-time ultrasonic inspection to determine the material thickness. For airplanes on which the web thickness is discrepant (the thickness is less than 0.047 inches, or if the web material is 7000 series aluminum), the procedures for the related investigative and corrective actions include the following:

- For airplanes on which the web thickness is less than 0.037 inches, replace the web panel before further flight.
- For airplanes on which the web thickness is greater than or equal to 0.037 inches and less than 0.047 inches, or the web material is 7000 series aluminum: Perform a detailed inspection for any crack and a general visual inspection for any corrosion before further flight. If no crack or corrosion is found, repeat the inspections until the web panel is replaced. Accomplishing the replacement eliminates the need for the repetitive inspections.

If any crack or corrosion is found during any inspection, replace the web panel or contact Boeing for repair instructions and repair before further flight.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

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

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Difference Between the Proposed AD and Service Information."

### Difference Between the Proposed AD and Service Information

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

### Costs of Compliance

There are about 31 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 1 airplane of U.S. registry. The proposed tests and inspections would take about 3 work hours per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the proposed AD for this U.S. operator is \$240.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**Boeing:** Docket No. FAA-2007-0395; Directorate Identifier 2007-NM-157-AD.

#### Comments Due Date

- (a) The FAA must receive comments on this AD action by February 25, 2008.

#### Affected ADs

- (b) None.

#### Applicability

- (c) This AD applies to Boeing Model 737-300 and -400 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 737-57-1289, dated June 13, 2007.

#### Unsafe Condition

- (d) This AD results from several reports indicating that cracks ranging from 0.8 to 8.0 inches long were found on a certain web panel of the main wheel well pressure deck. We are issuing this AD to prevent fatigue cracking in the web panel of the main wheel well pressure deck, which could result in venting and consequent rapid decompression of the airplane.

#### Compliance

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

### Testing/Inspecting/Investigative and Corrective Actions

(f) Within 6 months after the effective date of this AD: Do a test of the web panel of the main wheel well pressure deck to determine the material type, and do an ultrasonic inspection to determine material thickness, by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737-57-1289, dated June 13, 2007.

(g) For airplanes on which the web thickness or material is found to be discrepant during the test and inspection required by paragraph (f) of this AD, accomplish the applicable actions specified in paragraphs (g)(1) and (g)(2) of this AD at the time specified, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737-57-1289, dated June 13, 2007.

(1) Do all applicable related investigative and corrective actions (including detailed and general visual inspections) before further flight, by doing all the actions specified in the Accomplishment Instructions of the service bulletin; except as provided by paragraph (h) of this AD. Repeat the inspections thereafter at intervals not to exceed 1,000 flight cycles until paragraph (g)(2) of this AD has been done.

(2) Within 30 months or 6,000 flight cycles after accomplishing the actions required by paragraph (g)(1) of this AD, whichever is later, replace the web panel in accordance with the Accomplishment Instructions of the service bulletin. Doing this replacement ends the repetitive inspections required by paragraph (g)(1) of this AD.

### Corrective Actions

(h) If any crack or corrosion is found during any inspection required by paragraph (g)(1) of this AD, and Boeing Special Attention Service Bulletin 737-57-1289, dated June 13, 2007, specifies to contact Boeing for repair instructions: Before further flight, repair according to 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 ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, 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 December 21, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-251 Filed 1-9-08; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-0394; Directorate Identifier 2007-NM-252-AD]

RIN 2120-AA64

#### Airworthiness Directives; Fokker Model F27 Mark 050 and Model F.28 Mark 0100 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

Recently, a Fokker 100 (F28 Mark 0100) operator noted that the electrical connectors of the PSUs (Passenger Service Units) did not lock properly during installation in the aircraft. The PSU panels installed in Fokker 50 (F27 Mark 050 and Mark 0502) aircraft are similar to those installed in the Fokker 100. Investigation revealed that the lack of locking is caused by the tolerance in thickness of the gaskets (seals) inside the PSU connectors. This condition, if not corrected, may cause the connector to overheat, leading to electrical arcing and subsequent failure of the PSU Panels. In such instances, smoke is likely to be emitted. \* \* \*

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by February 11, 2008.

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

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

- *Fax:* (202) 493-2251.

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

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-

30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### Examining the AD Docket

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

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

### SUPPLEMENTARY INFORMATION:

#### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2007-0394; Directorate Identifier 2007-NM-252-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

### Discussion

The Civil Aviation Authority—The Netherlands (CAA-NL), which is the aviation authority for the Netherlands, has issued Dutch Airworthiness Directive NL-2006-008, dated July 14, 2006 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Recently, a Fokker 100 (F28 Mark 0100) operator noted that the electrical connectors of the PSUs (Passenger Service Units) did not lock properly during installation in the aircraft. The PSU panels installed in Fokker 50 (F27 Mark 050 and Mark 0502) aircraft are



similar to those installed in the Fokker 100. Investigation revealed that the lack of locking is caused by the tolerance in thickness of the gaskets (seals) inside the PSU connectors. This condition, if not corrected, may cause the connector to overheat, leading to electrical arcing and subsequent failure of the PSU Panels. In such instances, smoke is likely to be emitted. To remedy and prevent these problems, the PSU manufacturer Honeywell International Aerospace Electronic Systems (formerly known as Grimes Aerospace Company), has narrowed the tolerances of these gaskets. Since an unsafe condition has been identified that is likely to exist or develop on aircraft of these type designs, this Airworthiness Directive requires inspection [to verify if the J1/P1 and J2/P2 interface connectors can be properly locked and gaskets are present] and, where necessary, replacement of the affected PSU Panel 11 and 12 Interface Connector gaskets.

Corrective actions include installing a gasket, verifying that the J1 and J2 receptacle locking tabs are not deformed, replacing the receptacle, and installing a new PSU panel. You may obtain further information by examining the MCAI in the AD docket.

#### Relevant Service Information

Fokker Services B.V has issued Fokker Service Bulletins SBF50-25-061 and SBF100-25-108, both dated March 31, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

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

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

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

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

We might also have proposed different actions in this AD from those

in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

#### Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 9 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$2,880, or \$320 per product.

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with

this proposed AD and placed it in the AD docket.

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**Fokker Services B.V:** Docket No. FAA-2007-0394; Directorate Identifier 2007-NM-252-AD.

#### Comments Due Date

(a) We must receive comments by February 11, 2008.

#### Affected ADs

(b) None.

#### Applicability

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

(1) Fokker Model F27 Mark 050 airplanes, equipped with Honeywell International (Grimes Aerospace) Passenger Service Units (PSUs), part number 10-1178-XX series.

(2) Fokker Model F28 Mark 0100 airplanes, equipped with Honeywell International (Grimes Aerospace) PSUs, part number 10-1178-XX series or 10-1571-XX series, unless modified in accordance with Fokker Service Bulletin SBF100-25-070.

#### Subject

(d) Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

#### Reason

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

Recently, a Fokker 100 (F28 Mark 0100) operator noted that the electrical connectors of the PSUs (Passenger Service Units) did not lock properly during installation in the aircraft. The PSU panels installed in Fokker 50 (F27 Mark 050 and Mark 0502) aircraft are similar to those installed in the Fokker 100. Investigation revealed that the lack of locking is caused by the tolerance in thickness of the gaskets (seals) inside the PSU connectors. This condition, if not corrected, may cause the connector to overheat, leading to electrical arcing and subsequent failure of the PSU Panels. In such instances, smoke is likely to be emitted. To remedy and prevent these problems, the PSU manufacturer Honeywell International Aerospace Electronic Systems (formerly known as Grimes Aerospace Company), has narrowed

the tolerances of these gaskets. Since an unsafe condition has been identified that is likely to exist or develop on aircraft of these type designs, this Airworthiness Directive requires inspection [to verify if the J1/P1 and J2/P2 interface connectors can be properly locked and gaskets are present] and, when necessary, replacement of the affected PSU Panel 11 and 12 Interface Connector gaskets. Corrective actions include installing a gasket, verifying that the J1 and J2 receptacle locking tabs are not deformed, replacing the receptacle, and installing a new PSU panel.

#### Actions and Compliance

(f) Within 36 months after the effective date of this AD unless already done, do the following actions.

(1) Inspect the affected Honeywell International (Grimes Aerospace) PSU Panel Interface Connectors for proper locking of the connectors and to verify that gaskets are installed, in accordance with Part 3. Accomplishment Instructions of Fokker Service Bulletin SBF50-25-061 or SBF100-25-108, both dated March 31, 2006, as applicable.

(2) When discrepancies are found, before next flight, do all applicable corrective actions as detailed in Part 3. Accomplishment Instructions of Fokker Service Bulletin SBF50-25-061 or SBF100-25-108, both dated March 31, 2006, as applicable.

#### FAA AD Differences

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

#### Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM-116, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1137; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

#### Related Information

(h) Refer to MCAI CAA-NL, Dutch Airworthiness Directive NL-2006-008, dated July 14, 2006, and Fokker Service Bulletin SBF50-25-061 or SBF100-25-108, both dated March 31, 2006, for related information.

Issued in Renton, Washington, on December 21, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-252 Filed 1-9-08; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-118886-06]

RIN 1545-BF65

#### Clarification to Section 6411 Regulations; Hearing

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

**ACTION:** Notice of public hearing on proposed rulemaking.

**SUMMARY:** This document provides notice of a public hearing on a notice of proposed rulemaking under section 6411 of the Internal Revenue Code relating to the computation and allowance of the tentative carryback adjustment. These regulations clarify that for purposes of allowing the tentative adjustment, the IRS may credit or reduce the tentative adjustment by an assessed tax liability, whether or not that tax liability was assessed before the date the application for tentative carryback is filed, and other unassessed liabilities in certain other circumstances.

**DATES:** The public hearing is being held on Tuesday, February 5, 2008, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by Tuesday, January 22, 2008.

**ADDRESSES:** The public hearing is being held in the room 2140, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC: PA: LPD: PR (REG-118886-06), room 5203, Internal Revenue Service, P.O. 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-118886-06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue,

NW., Washington, DC. Alternatively, taxpayers may submit electronic outlines of oral comments via the Federal eRulemaking Portal at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Cynthia McGreevy, (202) 622-4910; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard A. Hurst at [Richard.A.Hurst@irs.counsel.treas.gov](mailto:Richard.A.Hurst@irs.counsel.treas.gov) or (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

The subject of the public hearing is the notice of proposed rulemaking (REG-118886-06) that was published in the *Federal Register* on Monday, August 27, 2007 (72 FR 48952).

Persons who wish to present oral comments at the hearing that submitted written comments by November 26, 2007, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by January 22, 2008.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue, NW., entrance, 1111 Constitution Avenue, NW., Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Cynthia Grigsby,

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

[FR Doc. E8-220 Filed 1-9-08; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Parts 1 and 301

[REG-129916-07]

RIN 1545-BG76

## Patented Transactions; Hearing

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

**ACTION:** Notice of public hearing on proposed rulemaking.

**SUMMARY:** This document provides notice of a public hearing on a notice of proposed rulemaking relating to the disclosure of reportable transactions under sections 6011 and 6111 of the Internal Revenue Code. These regulations propose to add the patented transactions category of reportable transaction to the regulations under § 1.6011-4 of the Income Tax Regulations. The regulations also include conforming changes to the rules relating to the disclosure of reportable transactions by material advisors under section 6111.

**DATES:** The public hearing is being held on Thursday, February 21, 2008, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by Thursday, January 31, 2008.

**ADDRESSES:** The public hearing is being held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC: PA: LPD: PR (REG-129916-07), room 5203, Internal Revenue Service, P.O. 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-129916-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic outlines of oral comments via the Federal eRulemaking Portal at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Michael H. Beker or Charles D. Wien, (202) 622-3070; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard A. Hurst at [Richard.A.Hurst@irs.counsel.treas.gov](mailto:Richard.A.Hurst@irs.counsel.treas.gov) or (202) 622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is the notice of proposed rulemaking (REG-129916-07) that was published in the

Federal Register on Wednesday, September 26, 2007 (72 FR 54615).

Persons who wish to present oral comments at the hearing that submitted written comments by December 26, 2007, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by January 31, 2008.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue, NW., entrance, 1111 Constitution Avenue, NW., Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

**Cynthia Grigsby,**

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

[FR Doc. E8-219 Filed 1-9-08; 8:45 am]

BILLING CODE 4830-01-P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

[EPA-R03-OAR-2007-1001; FRL-8515-3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; NO<sub>x</sub> and SO<sub>2</sub> Emissions Limitations for Fifteen Coal-Fired Electric Generating Units

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Maryland Department of the Environment (MDE). This revision pertains to regulations for emission limitations at 15 Maryland power plants. The State requested that regulations establishing statewide tonnage caps for emissions of NO<sub>x</sub> and SO<sub>2</sub> from 15 coal-fired electric generating units in Maryland be

approved. These regulations also establish monitoring and reporting requirements, and authorize the MDE to reduce or waive penalties for non-compliance under certain conditions and provide for judicial review of decisions by the MDE to grant a reduction or waiver of penalties. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before February 11, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2007-1001, by one of the following methods:

A. [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.

B. E-mail:

[fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).

C. Mail: EPA-R03-OAR-2007-1001, Cristina Fernandez, Branch Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R03-OAR-2007-1001. 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](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the 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](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 [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland, 21230.

**FOR FURTHER INFORMATION CONTACT:** Irene Shandruk, (215) 814-2166, or by e-mail at [shandruk.irene@epa.gov](mailto:shandruk.irene@epa.gov).

**SUPPLEMENTARY INFORMATION:** On July 12, 2007, the Maryland Department of the Environment (MDE) submitted a revision to its State Implementation Plan (SIP) for approval of emission limitations and related requirements for nitrogen oxides (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) at 15 coal-fired electric generating units in Maryland.

### I. Background

On April 6, 2006, Maryland signed into law the Healthy Air Act (Ch. 23, Acts of 2006), which requires MDE to adopt certain regulations. One such requirement under the Act is to establish caps on the amount of NO<sub>x</sub> and SO<sub>2</sub> emissions that certain affected facilities can emit. These proposed regulations are more stringent than the Clean Air Interstate Rule (CAIR), which was published by EPA on May 12, 2005 (70 FR 25162).

In the CAIR rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the NAAQS for fine particles (PM<sub>2.5</sub>) and/or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their State Implementation Plans (SIPs) to include control measures that reduce emissions of SO<sub>2</sub>, which is a precursor to PM<sub>2.5</sub> formation, and/or NO<sub>x</sub>, which is a precursor to both ozone and PM<sub>2.5</sub>

formation. Under CAIR, States may implement these reduction requirements by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

Maryland's proposed regulations are more restrictive than the CAIR rules in that they establish specific emission limitations for certain Maryland sources and, unlike the CAIR rules, do not permit surrender of allowances to achieve compliance. While these regulations modify some of the flexibility of CAIR by requiring the installation of on-site pollution controls at the 15 Maryland power plants, they ensure that appropriate local emissions reductions will occur where they are needed in order to attain the NAAQS by 2010.

### II. Summary of SIP Revision

The MDE is requesting that regulations (under COMAR 26.11.27) establishing tonnage caps for emissions of NO<sub>x</sub> and SO<sub>2</sub> from 15 coal-fired electric generating units (EGUs) in Maryland be approved. The purpose of these regulations is to help bring Maryland into attainment with the NAAQS for ozone and fine particulate matter by the 2010 attainment deadline. The 15 affected units are as follows:

Electric generating unit	Jurisdiction
Constellation Energy Group System: Brandon Shores 1 & 2.	Anne Arundel County.
H. A. Wagner 2 & 3 C. P. Crane 1 & 2	Anne Arundel County. Baltimore County.
Mirant System: Chalk Point 1 & 2 ..	Prince George's County.
Dickerson 1, 2, & 3 Morgantown 1 & 2	Montgomery County. Charles County.
Allegheny Energy: R. Paul Smith 3 & 4.	Washington County.

### III. Proposed Action

Maryland has met the requirements for submitting a SIP revision for limiting NO<sub>x</sub> and SO<sub>2</sub> emissions from certain Maryland power plants. EPA is proposing to approve the Maryland SIP revision for limiting NO<sub>x</sub> and SO<sub>2</sub> emissions at 15 coal-fired EGUs, which was submitted on July 12, 2007. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this 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 proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Because this rule proposes to approve pre-existing requirements under 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 proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 (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 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This action proposing approval of Maryland's SIP revision concerning emission limitations for NO<sub>x</sub> and SO<sub>2</sub> at 15 coal-fired EGUs does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: December 27, 2007.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. E8-276 Filed 1-9-08; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2007-1104; FRL-8512-8]

#### Revisions to the California State Implementation Plan, San Joaquin Valley Air Pollution Control District and Sacramento Metropolitan Air Quality Management District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the San Joaquin Valley Air Pollution Control District (SJVAPCD) and Sacramento Metropolitan Air Quality Management District (SMAQMD) portions of the California State Implementation Plan (SIP). These

revisions concern oxides of nitrogen (NO<sub>x</sub>) emissions from internal combustion engines and stationary gas turbines. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by *February 11, 2008*.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2007-1104, by one of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.
2. *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

**Instructions:** All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or e-mail.

[www.regulations.gov](http://www.regulations.gov) is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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:** The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Francisco Dóñez, EPA Region IX, (415) 972-3956, [Donez.Francisco@epa.gov](mailto:Donez.Francisco@epa.gov).

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following local rules: SJVAPCD Rule 4702 and SMAQMD Rule 413. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: December 5, 2007.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. E8-174 Filed 1-9-08; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 252

RIN 0750-AF82

#### Defense Federal Acquisition Regulation Supplement; DoD Law of War Program (DFARS Case 2006-D035)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

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

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address requirements for DoD contractors to institute effective programs to prevent violations of law of war by contractor personnel authorized to accompany U.S. Armed Forces deployed outside the United States.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before March 10, 2008 to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2006-D035, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2006-D035 in the subject line of the message.
- *Fax:* 703-602-7887.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

• *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, 703-602-0328.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This proposed rule amends the clause at DFARS 252.225-7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, to address requirements for DoD contractors to institute effective programs to prevent law of war violations by contractor personnel. The proposed rule requires that deploying contractor personnel receive appropriate law of war training, and that contractor personnel report any violations of the law of war to the appropriate authorities. The proposed rule is consistent with the policy in DoD Directive 2311.01E, DoD Law of War Program, dated May 9, 2006.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the requirement to institute an effective program to prevent law of war violations need not be a costly endeavor, and can be tailored to the size of the company. Additionally, the required law of war training will be provided by the Government or through a web-based source. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will

consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006-D035.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 252**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR part 252 as follows:

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

1. The authority citation for 48 CFR part 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 252.225-7040 is amended as follows:

- a. By revising the clause date;
- b. In paragraph (a), by adding a definition of "Law of war";
- c. By revising paragraph (d); and
- d. By adding paragraphs (e)(1)(vii) and (h)(3) to read as follows:

**252.225-7040 Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States.**

\* \* \* \* \*

Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States (XXX 2008)

(a) \* \* \*

*Law of war* means that part of international law that regulates the conduct of armed hostilities. The law of war encompasses all international law for the conduct of hostilities binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, and applicable customary international law.

\* \* \* \* \*

(d) *Compliance with laws and regulations.* (1) The Contractor shall comply with, and shall ensure that its personnel authorized to accompany U.S. Armed Forces deployed outside the United States as specified in paragraph (b)(1) of this clause are familiar with and comply with, all applicable—

(i) United States, host country, and third country national laws;

(ii) Treaties, international agreements, and law of war;

(iii) United States regulations, directives, instructions, policies, and procedures; and

(iv) Orders, directives, and instructions issued by the Combatant Commander, including those relating to force protection, security, health, safety, or relations and interaction with local nationals.

(2) The Contractor shall institute and implement an effective program to prevent violations of the law of war by its employees and subcontractors, to include law of war training in accordance with paragraph (e)(1)(vii) of this clause.

(e) \* \* \*

(1) \* \* \*

(vii) Personnel have received law of war training as follows:

(A) Basic training is required for all deploying personnel. The basic training will be provided through—

(1) A military-run training center; or

(2) A web-based source, if specified in the contract or approved by the Contracting Officer.

(B) Advanced training, commensurate with their duties and responsibilities, may be required for some Contractor personnel as specified in the contract. All advanced training will be conducted by Service Judge Advocates, and training content will be coordinated with the servicing legal advisor in the operational chain of command, within the appropriate geographic combatant command.

\* \* \* \* \*

(h) \* \* \*

(3) Contractor personnel shall report to the commander of the unit they are accompanying or the installation to which they are assigned, or to the Combatant Commander, any suspected or alleged conduct for which there is credible information that—

(i) Constitutes violation of the law of war; or

(ii) Occurs during military operations other than war and would constitute a violation of the law of war if it occurred during an armed conflict.

\* \* \* \* \*

[FR Doc. E8-176 Filed 1-9-08; 8:45 am]

BILLING CODE 5001-08-P



## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

[FWS-R8-ES-2007-0023; 1111 FY07 MO; ABC Code B2]

**Endangered and Threatened Wildlife and Plants; 90-Day Finding on Petition To List the Amargosa River Population of the Mojave Fringe-Toed Lizard (*Uma scoparia*) as Threatened or Endangered With Critical Habitat****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Amargosa River population of the Mojave fringe-toed lizard (*Uma scoparia*) in the State of California as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing this population may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the Amargosa River population of the Mojave fringe-toed lizard, and we will issue a 12-month finding on our determination as to if the petitioned action is warranted. To ensure that the status review of the Amargosa River population of the Mojave fringe-toed lizard is comprehensive, we are soliciting scientific and commercial data regarding this species. We will make a determination on critical habitat for this species if, and when, we initiate a listing action.

**DATES:** We made the finding announced in this document on January 10, 2008. To be considered in the 12-month finding for this petition, comments and information must reach us by March 10, 2008.

**ADDRESSES:** You may submit comments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: RIN 1018-AV02; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally

means that we will post any personal information you provide us (see the Public Information Solicited section below for more information).

**FOR FURTHER INFORMATION CONTACT:**

Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003; telephone 805-644-1766 ext. 319; facsimile 805-644-3958. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:****Public Information Solicited**

When we make a finding that a petition presents substantial information to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information concerning the status of the Amargosa River population of the Mojave fringe-toed lizard. We are seeking information regarding the species' historical and current status and distribution, its biology and ecology, ongoing conservation measures for the species and its habitat, and threats to the species and its habitat. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties.

Please note that comments merely stating support or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species shall be made "solely on the basis of the best scientific and commercial data available." At the conclusion of the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act (16 U.S.C. 1533(b)(3)(B)).

If we determine that listing the Amargosa River population of the Mojave fringe-toed lizard is warranted, it is our intent to propose critical habitat to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, with regard to areas within the geographical area currently occupied by the species, we

also request data and information on what may constitute physical or biological features essential to the conservation of the species, where these features are currently found, and whether any of these features may require special management considerations or protection. In addition, we request data and information regarding whether there are areas outside of the geographical area occupied by the species that are essential to the conservation of the species. Please provide specific comments and information, as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of the Act.

You may submit your comments and materials concerning this finding by one of the methods listed in the **ADDRESSES** section. We will not accept comments you send by e-mail or fax. Please note that we may not consider comments we receive after the date specified in the **DATES** section in our final determination.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that we will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Background**

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Such findings are based on information contained in the petition, supporting information submitted with the petition, and information otherwise readily available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information, as defined by the Code of Federal Regulations (CFR), with regards to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that the petition

presents substantial scientific or commercial information, we are required to promptly commence a status review of the species.

We received a petition dated April 10, 2006, from the Center for Biological Diversity and Ms. Sylvia Papadakos-Morafka requesting that the Mojave fringe-toed lizard (*Uma scoparia*) occurring in the Amargosa River area of San Bernardino County, California, be listed as a threatened or endangered distinct population segment (DPS) under the Act. Additionally, the petition requested that critical habitat be designated concurrent with listing. The petition clearly identified itself as such and included the identification information for the petitioners, as required in 50 CFR 424.14(a). In response to the petitioners' request, we sent a letter to the petitioners dated June 21, 2006, explaining that we would not be able to address their petition at that time. The reason for this delay was that responding to existing court orders and settlement agreements for other listing actions required nearly all of our listing funding. We also concluded in our June 21, 2006, letter that emergency listing of the Amargosa River population of the Mojave fringe-toed lizard was not indicated. Delays in responding to the petition continued due to the high priority of responding to court orders and settlement agreements, until funding recently became available to respond to this petition.

In making this finding, we based our decision on information provided by the petitioners that we determined to be reliable after reviewing sources referenced in the petition, as well as information readily available in our files at the time of the petition review. We evaluated the information in accordance with 50 CFR 424.14(b). Our process for making this 90-day finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the "substantial scientific and commercial information" threshold (as mentioned above).

#### Species Information

The Mojave fringe-toed lizard (*Uma scoparia*) is in the family Phrynosomatidae, the family of the North American spiny lizards. Fringe-toed lizards are medium-sized lizards and seem to be completely restricted to a sand-dwelling existence (Norris 1958, p. 253). The Mojave fringe-toed lizard may reach a snout to vent length of 4.5 inches (112 millimeters), with a dorsoventrally (top to bottom) compressed body and tail

(Hollingsworth et al. 1999, p. 1). The Mojave fringe-toed lizard has smooth skin and a fine pattern of small black circles and flecks. Both sides of the belly have a conspicuous black spot, and the underside of the tail has black bars. The Mojave fringe-toed lizard is distinguished from other fringe-toed lizards by the dark black spot on each side of the belly and the crescent-shaped markings present on the sides of the throat.

The concealing coloration of fringe-toed lizards is striking, being one of the best examples of this phenomenon among North American vertebrates. Adults of the species have a yellow-green wash on the belly and pink on the sides during breeding periods, but during other times of year, the Mojave fringe-toed lizard's color mimics the sand dunes on which they dwell (Norris 1958, p. 253).

The Mojave fringe-toed lizard is omnivorous throughout its life. They primarily feed on insects, but will also eat seeds and flowers (Stebbins 1944, p. 329). Annual plant species provide important forage during the springtime, though the reliance on vegetative plant species may diminish during the summer with increased arthropod availability (Stebbins 1944, p. 329). The Mojave fringe-toed lizard derives most of its water from arthropod and plant food.

The Mojave fringe-toed lizard generally reaches sexual maturity during the second summer following hatching. Reproductive activity in both sexes is annually variable, in accordance with seasonal rainfall patterns (Mayhew 1966, pp. 119–120). Breeding colors and testis size indicate the male breeding period, which occurs between April and late June. Female breeding colors are displayed between April and September, with maximized colors during May through July (Mayhew 1966, pp. 115–117). Ovarian egg counts also fluctuate in response to rainfall and food availability; reduced egg counts and fewer juveniles were observed following dry winters. There is also evidence to suggest that female lizards may have more than one brood per year (Mayhew 1966, p. 118).

Fringe-toed lizards likely select unstabilized areas with intermediate grain sand because it eases self-burying and facilitates respiration (Pough 1970, p. 154). Self-burial by the fringe-toed lizard is presumed to be defensive, as there is no evidence to suggest that it is thermoregulatory or used for subsurface hunting as exhibited by other genera of sand lizards (Pough 1970, p. 153). Fringe-toed lizards are highly dependent on desert vegetation as a

source of cover, for thermoregulation and as habitat for primary prey (Pough 1970, pp. 152–153). Mojave fringe-toed lizards spend their inactive periods and hibernation cycle (November to February) beneath the sand (Mayhew 1966, pp. 120–121). It is believed that their flattened body form, skin surface scales, and wedge-shaped head with well-developed eye and ear flaps are all useful for the burrowing behavior exhibited by this genus (Pough 1970, p. 145).

The Mojave fringe-toed lizard is endemic to the deserts of southern California and a small area of western Arizona. The Mojave fringe-toed lizard occurs in the lower Sonoran life zones of the Mojave Desert and the northwestern reaches of the Sonoran Desert. Fringe-toed lizard distribution is discontinuous throughout the range since the animals are restricted to deposits of fine, loose sand (Stebbins 1944, p. 313). The Amargosa River population of the Mojave fringe-toed lizard consists of individuals occurring at Dumont Dunes, Ibox Dunes, and Coyote Holes (Murphy et al. 2006, pp. 239–241). Dumont Dunes' main dune area is approximately 9,600 acres (ac) (3,885 hectares (ha)). Dumont Dunes began to form approximately 18,000 years ago when Lake Manley in Death Valley and Lake Dumont in the Silurian Valley began to dry, leaving behind sand to be blown and deposited forming the dunes. Ibox Dunes is about 1,700 ac (688 ha) and is the northern limit for the Amargosa River population of the Mojave fringe-toed lizard. Coyote Holes is a 50-ac (20-ha) sand blow-out located approximately 12 miles (mi) (20 kilometers (km)) southeast of the eastern end of Dumont Dunes. The nearest population of Mojave fringe-toed lizards is known from Silver Lake located approximately 20 mi (32 km) southeast of Dumont Dunes.

Dispersal of Mojave fringe-toed lizards between populations is poorly studied, but based on observed movements and limited ability of the species to cross unsuitable habitat, it is unlikely that isolated populations interact. No specimen of *Uma* has been captured more than a very short distance 148 feet (ft) (45 meters (m)) from wind-blown sand deposits (Norris 1958, p. 257). Population status and relative density data for the Mojave fringe-toed lizard is not currently available. To estimate the amount of habitat rangewide for the Mojave fringe-toed lizard, we used distribution data from Murphy et al. (2006, p. 230), Hollingsworth et al. (1999, p. 1), and Norris (1958, pp. 265–266) to develop maps showing the amount of potential

Mojave fringe-toed lizard habitat. Based on our habitat analysis, the Amargosa population of the Mojave fringe-toed lizard comprises approximately 3 to 5 percent of the species' range.

#### *Distinct Population Segment*

We consider a species for listing under the Act if available information indicates such an action might be warranted. "Species" is defined in section 3 of the Act to include any subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532 (16)). We, along with the National Marine Fisheries Service (now the National Oceanic and Atmospheric Administration—Fisheries), developed the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS Policy) (February 7, 1996; 61 FR 4722) to help us in determining what constitutes a DPS. The policy identifies three elements that we are to consider in making a DPS determination. These elements include: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing. If we determine that a population segment meets the discreteness and significance standards, then the level of threat to that population segment is evaluated based on the five listing factors established by the Act to determine whether listing the DPS as either threatened or endangered is warranted.

#### **Discreteness**

Citing the Services' DPS policy (61 FR 4722), the April 2006 petition asserts that the Amargosa River population of the Mojave fringe-toed lizard qualifies as a DPS based on discreteness. The DPS policy states that a population may be considered discrete if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

The petitioners assert that the Amargosa River population of Mojave

fringe-toed lizards is restricted to dunes with fine, loose sand. The petitioners also assert that the Amargosa River population of Mojave fringe-toed lizards of Coyote Holes and Dumont and Ibex Dunes are isolated and discrete from other dunes and other populations by the presence of intervening, unsuitable habitat, due to the fact that Mojave fringe-toed lizards are not known to disperse across long distances of unsuitable habitat (Norris 1958, p. 257).

The petitioners provided the following quote from Murphy et al. (2006, p. 241) to support their assertion that the Amargosa River population of the Mojave fringe-toed lizard is discrete: "Natural geographic barriers, including the absence of sand and presence of mountains, separate populations from one another. Each Dune is a discrete entity and it is extremely unlikely that gene flow is occurring among the isolated dunes, and especially among dune systems not connected by a recent hydrogeologic system. Ecologically, dispersal is virtually impossible because of the absence of intervening sand dunes." The petitioners assert that Dumont Dunes, Ibex Dunes, and Coyote Holes are thus isolated from other suitable habitat, making dispersal highly improbable. The petitioners also assert that the physical isolation of the Amargosa River population of the Mojave fringe-toed lizard further indicates genetic differences between this population and others of the species. The April 2006 petition cites the genetic work of Murphy et al. (2006, pp. 231–238), which determined that the Amargosa River population of the Mojave fringe-toed lizard contains unique haplotypes [The petitioners are referring to differences in mitochondrial DNA sequenced from maternal haplotypes. A haplotype is a set of closely linked genetic markers present on one chromosome, which tend to be inherited together.] not found elsewhere within the range of the species.

The Services' DPS policy requires that only one of the discreteness criteria be satisfied in order for a population of a vertebrate species to be considered discrete. After reviewing the information provided (e.g., Murphy et al. 2006, pp. 226–247) in the petition and in our files, we believe that the Amargosa River population may be physically isolated from other populations and may also be genetically distinct from other populations. We based this on a preliminary review of maps of the Mojave Desert in our files, the position of the three dune locations, the petitioners' information on the Amargosa River population, and the research of Murphy et al. (2006, pp.

242–247) cited in the petition on dunes occupied by Mojave fringe-toed lizards and the genetics of this species. From our review of this information, we find that there is substantial information indicating the Amargosa River population of the Mojave fringe-toed lizard may satisfy the discreteness element of the DPS policy.

#### **Significance**

If we determine that a population meets the DPS discreteness element, we then consider if it also meets the DPS significance element. The DPS policy (61 FR 4722) states that if a population segment is considered discrete under one or more of the discreteness criteria, its biological and ecological significance will be considered in light of Congressional guidance that the authority to list DPSs be used "sparingly" while encouraging the conservation of genetic diversity. In making this determination, we consider available scientific evidence of the discrete population's importance to the taxon to which it belongs. Since precise circumstances are likely to vary considerably from case to case, the DPS policy does not describe all the classes of information that might be used in determining the biological and ecological importance of a discrete population. However, the DPS policy does provide four possible reasons why a discrete population may be significant. As specified in the DPS policy (61 FR 4722), this consideration of the significance may include, but is not limited to, the following:

- (1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon;
- (2) Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon;
- (3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or
- (4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

The April 2006 petition asserts that the Amargosa River population of the Mojave fringe-toed lizard, being discrete from other populations, also meets the significance element of the DPS policy for three of the four reasons above: (1) Persistence in an ecological setting unusual or unique to the taxon; (2) loss of the population would create a significant gap in the range of a taxon; and (3) the population differs markedly

from other populations in its genetic characteristics.

The April 2006 petition asserts that the loss of the Amargosa River population of the Mojave fringe-toed lizard would result in the species disappearing from a unique ecological setting. The petitioners state that populations at Coyote Holes, Ibex Dunes, and Dumont Dunes represent the northernmost extension of the species' range and are the only populations in the Amargosa River drainage. The petitioners also assert that the loss of the Amargosa River population would result in a significant gap in the range of the Mojave fringe-toed lizard. The petition further asserts that the Amargosa River population of the Mojave fringe-toed lizard differs markedly from other Mojave fringe-toed lizard populations in genetic characteristics. These populations contain unique haplotypes that very likely represent adaptation to unique regional characteristics, such as differences in climate, vegetation, and substrate. The petition cites the research of Murphy *et al.* (2006, pp. 236–238), which identified the Amargosa River population of the Mojave fringe-toed lizard as one of two distinct maternal lineages that have been isolated since likely the mid-Pleistocene (about 500,000 years ago). The Amargosa River population was found to have the greatest amount of DNA sequence divergence (Murphy *et al.* 2006, p. 232). This lineage includes individuals from Coyote Holes and Ibex and Dumont Dunes, which are closely related and likely had recent contact during more mesic (moderately moist) periods of the late Pleistocene and Holocene (i.e., <125,000 years ago) (Murphy *et al.* 2006, pp. 237–238). In regards to the significance of genetic differences observed in the Amargosa River population, Murphy *et al.* (2006, p. 241) concluded: "The Amargosa River lineage is genetically distinct. The presence of unique haplotypes gives credence to the possibility of regional adaptations and incipient speciation. The Amargosa River lineage represents a significant historical component and it deserves recognition as a DPS."

The Mojave fringe-toed lizard is widespread geographically across the Mojave and northern Sonoran deserts. Although it is true that the Amargosa River population is at the northern extent of the species' range, this population is separated by only about 20 mi (32 km) from another population at Silver Lake. The petitioners do not provide any information supporting the view that either the climate or the habitat where the Amargosa River

population occurs is different from that of their nearest neighbor at Silver Lake. Although the genetic differences observed in the Amargosa River population may have resulted from adaptation to the environment, the differences may also have resulted from random genetic drift. Therefore, based on the information provided by the petitioners and in our files, we do not agree that the Amargosa River population of the Mojave fringe-toed lizard occurs in an ecological setting that is unique for the taxon.

We also do not agree that the loss of the Amargosa River population of the Mojave fringe-toed lizard would result in a significant gap in the range of the species. We estimated total extant range of the Mojave fringe-toed lizard to be approximately 600 sq mi (1540 sq km), and the total area that comprises the Amargosa River area is 18 sq mi (46 sq km). Therefore, the total area comprised by the Amargosa River population represents at most 3 to 5 percent of the total extant range of Mojave fringe-toed lizard, and the loss of this population may not result in a significant gap in the range of the species. However, we will further evaluate the contribution of the Amargosa River population to the taxon as a whole during our status review.

However, based on our preliminary review of the research of Murphy *et al.* (2006, pp. 231–238) cited in the petition, the genetic characteristics of the Amargosa River population differ from those of other populations of Mojave fringe-toed lizards, thus meeting the fourth criteria for significance identified above. Murphy *et al.* 2006 analyzed the mitochondrial DNA genes ATPase 6 and cytochrome b. Their statistical analysis indicates that the Amargosa River population is significantly different ( $p < 0.01$ ) from other populations. Therefore, we find that there is substantial information indicating the Amargosa River population of the Mojave fringe-toed lizard may satisfy the significance element of the DPS policy.

#### DPS Conclusion

We have reviewed the information presented in the petition, and have evaluated the information in accordance with 50 CFR 424.14(b). In a 90-day finding, the question is whether a petition presents substantial information that the petitioned action may be warranted. We do not make final determinations regarding DPSs at this stage; rather, we determine whether a petition presents substantial information that a population may be a DPS. Based on our review, we find that the April 2006 petition, and the

information in our files, do present substantial scientific or commercial information to indicate that the Amargosa River population of the Mojave fringe-toed lizard may be a DPS based on genetic evidence, which may meet both the discreteness and significance criteria of the DPS policy, and thus may be a listable entity under the Act. To meet the third element of the DPS policy, we evaluate the level of threat to the DPS based on the five listing factors established by the Act. We thus proceeded with an evaluation of information presented in the petition, as well as information in our files, to determine whether there is substantial scientific or commercial information indicating that listing this population may be warranted. Our threats analysis and conclusion follow.

#### Threats Analysis

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal List of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) Present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In making this 90-day finding, we evaluated whether information on threats to the Amargosa River population of the Mojave fringe-toed lizard in our files and those presented in the April 2006 petition constitute substantial scientific or commercial information such that listing under the Act may be warranted. The Act identifies the five factors to be considered, either singly or in combination, to determine whether a species may be threatened or endangered. Our evaluation of this information is presented below.

##### *A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range*

The petitioners assert that a significant portion of the range of this population has suffered severe habitat destruction and modification by extensive OHV traffic. The petitioners are concerned that extensive Off-Highway Vehicle (OHV) traffic at Dumont Dunes, and to a lesser extent



Ibex Dunes and Coyote Holes, poses a substantial threat to the continued existence of the Amargosa River population of the Mojave fringe-toed lizard. Dumont Dunes and Ibex Dunes represent more than 98 percent of the known range of the Amargosa River population of the Mojave fringe-toed lizard. The petitioners assert that OHV use at Dumont Dunes and elsewhere in the range of the Amargosa River population results in compression fatalities, destruction of habitat by compaction of soils, and elimination of native vegetation and prey sources critical to the Mojave fringe-toed lizard's survival.

The petitioners cite a 2002 study at Dumont Dunes that found low densities of Mojave fringe-toed lizards and significant habitat destruction by OHV use at Dumont Dunes. Stratified sampling studies at Dumont Dunes found Mojave fringe-toed lizard frequencies per 3281-ft (1000-m) transect were 0.583 (SD: 0.900), 0.250 (SD: 0.463), 0.500 (SD: 0.674) at low, moderate, and high OHV use areas, respectively. Similar studies were conducted under the same protocols at Bitter Springs and Red Pass dunes in 1998, where anthropomorphic impacts were low to absent. Mojave fringe-toed lizard frequencies per 3281-ft (1000-m) transect were 6.714 (SD: 2.059) at Bitter Springs Dune and 6.156 (SD: 2.825) at Red Pass Dune (Morafka 2002, p. 4).

Petitioners assert that the significant increase in OHV use at Dumont Dunes fuels an increase of illegal OHV use at both Ibex Dunes and Coyote Holes. Petitioners cite the following statement by Murphy *et al.* (2006, pp. 242); "Disruption of dune ecosystems by off-road vehicles poses a major threat." Habitat photographs of Dumont Dunes included in the petition show areas heavily affected by OHV use.

A comprehensive study cited by the petitioners demonstrated that OHV activities at nearby Algodones Dunes were detrimental to dune biota (Luckenbach and Bury 1983, p. 280). At Algodones Dunes, herbaceous and shrubby perennial vegetation is greatly reduced in habitats where OHVs operate. The same study showed that the closely-related fringe-toed lizard (*Uma notata*) abundance is lower in areas frequently used by OHVs. Control areas had nearly 5 times more lizards than OHV areas. Control areas had 2.4 times more plant species, 10 times greater plant density, and 9.4 times greater cover than OHV areas. The Mojave fringe-toed lizard is dependent on native vegetation for forage, prey forage, cover, thermoregulation, and predator avoidance. The petitioners

assert that, given the similar vegetation and OHV use between the Algodones Dunes and Dumont Dunes, similar impacts can be expected.

The Service acknowledges that OHV use poses a threat to dune habitat. However, a preliminary study conducted by Morafka (2002) at Dumont Dunes does not show a statistically significant correlation between intensity of OHV use in an area and fewer numbers of Mojave fringe-toed lizards in that area. Yet, study results may have been inconclusive for the following reasons: The studies were conducted in a year of extreme drought, performed late in the species activity season, and used an inadequate system to quantify stratification in OHV use areas.

The study at nearby Algodones Dunes supports the petitioners' assertion that OHV use decreases fringe-toed lizard numbers, prey insects, forage vegetation, and critical cover sites (Luckenbach and Bury 1983, pp. 271-273). Evidence does exist to indicate that the compaction of soils near the base of vegetation can result in the destruction of many desert plants by destroying shallow root systems (Luckenbach and Bury 1983, p. 275). Dumont Dunes is a designated open area; Ibex Dunes and Coyote Holes are not open to OHV use. No specific data were provided showing OHV use at Ibex Dunes. However, the petitioners cited a recent National Park Service (NPS) environmental assessment report, in which the NPS acknowledges that some OHV visitation occasionally spills over from Dumont Dunes into Death Valley's Ibex Dunes, increasing unauthorized OHV vehicular visitations to mines in the area (NPS 2004, p. 3). Mojave fringe-toed lizard densities at Ibex dunes are low despite the low incidence of trespass OHV use. Possibly Mojave fringe-toed lizard densities are low because this is the northern range limit for the species.

Studies provided by the petitioners indicate OHV use may cause direct harm to Mojave fringe-toed lizards. Hearing loss associated with OHV use may compromise prey acquisition and predator avoidance (Brattstrom 1979, p. 22). The shallow-buried Mojave fringe-toed lizard is susceptible to tail loss, maiming, and crushing by OHV (Luckenbach and Bury 1983, p. 277). Intense OHV activities of the spring and summer months coincide with the reproductive season of the Mojave fringe-toed lizard. During the most critical phase of their life cycle, the breeding season, their habitat is subjected to the most intense degree of OHV impact (Brattstrom 1979, p. 22). Petitioners cited Luckenbach and Bury (1983, p. 277) stating that there is no

doubt OHVs contribute to the maiming and crushing death of shallow-buried Mojave fringe-toed lizards.

We acknowledge that the petitioners present information indicating that tail loss, maiming, and hearing loss may compromise prey acquisition, predator avoidance, and reproduction. Natural predators of the Mojave fringe-toed lizard may be responsible for a significant percentage of maiming and tail loss occurrences. The petitioners present substantial information to indicate that a significant segment of the Amargosa River population of the Mojave fringe-toed lizard may be threatened by OHV-related compression fatalities.

In summary, we find that the information provided in the petition, as well as other information in our files present substantial scientific or commercial information indicating that the petitioned action may be warranted due to the present or threatened destruction, modification, or curtailment of the habitat or range of the Amargosa River population of the Mojave fringe-toed lizard. We base this finding in part by extrapolating from studies at Algodones Dunes, which found that OHV use resulted in lower numbers of fringe-toed lizard (*Uma notata*). The Service concurs with the parallel drawn in the petition comparing Dumont Dunes with Algodones Dunes (Luckenbach and Bury 1983, pp. 265-272).

#### *B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The petition and our files provided no information to document current or future threats from overutilization for commercial, recreational, scientific, or educational purposes to Mojave fringe-toed lizards in the Amargosa River area. Therefore, we conclude that there is not substantial scientific or commercial information to indicate that listing of the Amargosa River population of the Mojave fringe-toed lizard may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes.

#### *C. Disease or Predation*

The petitioners omitted this section in the discussion of factors affecting the species. The petition and our files provided no information to document the extent or magnitude of the present or future threat of disease or predation to Mojave fringe-toed lizards in the Amargosa River area. Therefore, we conclude that there is not substantial scientific or commercial information to indicate that listing of the Amargosa

River population of the Mojave fringe-toed lizard may be warranted due to disease or predation.

#### *D. Inadequacy of Existing Regulatory Mechanisms*

The petition asserts that no management plan has been drafted to include adequate regulatory mechanisms to prevent declines of the Amargosa River population of the Mojave fringe-toed lizard and avoid listing the species as threatened or endangered. The petitioners contend that Federal laws such as the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA), as amended, and others do not provide for Mojave fringe-toed lizard conservation.

The petitioners reviewed management plans of Dumont Dunes and Coyote Holes, both of which are managed by BLM, concluding that NEPA and BLM regulations have provided few protections for the Mojave fringe-toed lizard. The petitioners noted that NEPA "governs management of BLM lands", including those occupied by the Mojave fringe-toed lizard. While NEPA does require BLM to analyze the impacts its action will have on the environment, NEPA does not require BLM to choose the alternative action that would best conserve the species. BLM lists the Mojave fringe-toed lizard as a sensitive species. The petitioners cite relevant sections of the BLM manual. The BLM manual section 6840.06E states: "The protection provided by the policy for candidate species shall be used as the minimum level of protection for BLM sensitive species." The BLM manual section 6840.06C states: "Consistent with existing laws, the BLM shall implement management plans that conserve candidate species and their habitats and shall ensure that actions authorized, funded, or carried out by BLM do not contribute to the need for the species to become listed." However, the petition points out that the BLM has no management plan for the lizard and no areas have been closed to OHV traffic or other uses in order to protect the lizard's habitat.

The National Park Service (NPS) manages Ibex Dunes. The petitioners note that the NPS prohibits OHV use at Ibex Dunes, which does provide some protection to the Amargosa River population of the Mojave fringe-toed lizard. However, the petitioners cite a report by the NPS that acknowledges OHV visitation occasionally spills over from Dumont Dunes into Ibex Dunes (NPS 2004, p. 3). The petitioners further assert that field studies by a former Death Valley National Park ecologist show low densities of the Mojave fringe-

toed lizard at Ibex Dunes, suggesting that small amounts of mortality may be sufficient to decimate the population (CBD 2006, p. 13).

We acknowledge that BLM has designated Dumont Dunes as an area open to OHV use (Seehafer 2007, p. 1). The OHV area management plan for Dumont Dunes does not identify any actions to manage OHV impacts to the Mojave fringe-toed lizard within its boundaries (BLM 1990). BLM has not developed a management plan to prevent declines or listing of the Amargosa River population of the Mojave fringe-toed lizard. BLM does not include specific actions to manage the Mojave fringe-toed lizard in the Northern and Eastern Mojave Management Plan. Consequently, we acknowledge that the lack of BLM regulatory mechanisms to protect the Mojave fringe-toed lizard at Dumont Dunes may reduce the likelihood of conserving the species at this site.

Coyote Holes is designated wilderness and closed to OHV use. A BLM staff biologist asserts that vehicle access to Coyote Holes is effectively prohibited by a bluff and remains in near pristine condition (LaPre 2007, p. 1). Due to the wilderness restrictions in place at this location and the topographic barriers to human use, the lack of regulatory protection does not likely reduce the potential for conserving Mojave fringe-toed lizards at this location in the near future.

The National Environmental Policy Act (NEPA) requires all Federal agencies to formally document and publicly disclose the environmental impacts of their actions and management decisions. However, NEPA does not require Federal agencies to take particular actions in response to environmental documentation. NEPA documentation is provided in an environmental impact statement (EIS), an environmental assessment, or a categorical exclusion, and may be subject to administrative or judicial appeal.

The California Department of Fish and Game (CDFG) designated the Mojave fringe-toed lizard as a Species of Special Concern. A Species of Special Concern is broadly defined as wildlife species that are of concern to CDFG because of population declines and restricted distributions, and/or they are associated with habitats that are declining in California (CDFG 2007). CDFG staff should consider Species of Special Concern during: (1) The environmental review process; (2) the conservation planning process; (3) the preparation of management plans for Department lands; and (4) inventories,

surveys, and monitoring. Impacts to Species of Special Concern are considered significant in the California Environmental Quality Act documents. However, compared to listing under the Act, the designation of the Mojave fringe-toed lizard as a Species of Special Concern designation provides minimal protection for the species or its habitat.

We acknowledge that illegal OHV trespass onto Ibex Dunes could pose a threat to that population of the Mojave fringe-toed lizard. However, regulations do exist to prohibit OHV use at Ibex Dunes. The NPS report cited by the petitioners also notes that the former OHV access road to Ibex Dunes is designated as wilderness and was closed off by the Desert Protection Act of 1994 (NPS 2004, p.3). The Desert Protection Act of 1994 designated approximately 95 percent of Death Valley National Park as wilderness. The access road closure should deter illegal OHV trespass.

In summary, we acknowledge that the petitioners have presented information that State and Federal regulations listed above may be inadequate to conserve the Dumont Dunes population of the Mojave fringe-toed lizard. BLM has designated Dumont Dunes as open to OHV use. BLM does not have an OHV area management plan for Coyote Holes; however, unless future access to Coyote Holes is made available, the current regulations should be sufficient for this area. However, we believe that current regulations are sufficient to protect fringe-toed lizards at Ibex Dunes. We find that the petition, supporting information, and information readily available to us does present substantial information for this factor indicating that the petitioned action may be warranted.

#### *E. Other Natural or Manmade Factors Affecting the Species' Continued Existence*

The petitioners cite other natural or manmade factors that could affect the continued existence of the Amargosa River population of the Mojave fringe-toed lizard. The listed threats include population isolation, small population size, air pollution, invasive non-native vegetation, global climate change, residual pesticides, blocking of sand sources, and effects of environmental toxins from nearby military operations.

The Amargosa River population of Mojave fringe-toed lizard occupies the following fine sand habitats: Dumont Dunes, Ibex Dunes, and the small sand blow-out of Coyote Holes. Dumont Dunes contains the largest area of habitat, approximately 9,600 ac (3,885 ha), and is open to OHV use. The



smaller fine sand habitats of Ilex Dunes and Coyote Holes are not open to OHV use. Studies provided by the petitioners indicate that low densities of Mojave fringe-toed lizards occur over the majority of the Amargosa River population's range. We agree with the petitioners that species such as the Mojave fringe-toed lizard, that are restricted to fine sand habitats, are vulnerable to extinction. However, we do not base the decision to list a species as endangered or threatened on its restriction to an area or on its rarity, but rather on whether its existence is currently or in the future, threatened by one or more of the five listing factors.

The petition cited sources to support the contentions that residual pesticides, air pollution, invasive non-native vegetation, global climate change, blocking of sand sources, and environmental toxins pose threats to the Amargosa River population of the Mojave fringe-toed lizard. We found the information cited to be generic in nature and not specific to the Amargosa River population of the Mojave fringe-toed lizard. These threats cited by the petition are speculative in nature. The petition does not provide information that documents the extent, magnitude, or immediacy of these other threats to the Amargosa River population of the Mojave fringe-toed lizard.

In summary, we find the other natural or manmade factors cited in the petition to be generic in nature and not specific to the Amargosa River population of the Mojave fringe-toed lizard. We reviewed the petition, supporting information, and the information readily available to the Service and find the petition does not present substantial information for this factor indicating that the petitioned action may be warranted.

#### Finding

We reviewed the petition, supporting information provided by the petitioners, and information in our files and evaluated that information to determine whether the sources cited support the claims made in the petition. The petitioners presented substantial information indicating that the Mojave fringe-toed lizard may be threatened by Factor A and D at Dumont Dunes; as much as 85 percent of the Amargosa River population of the Mojave fringe-toed lizard may be at Dumont Dunes. The petitioners did not assert that Factors B and C are currently, or in the future, considered a threat to this species in any area of the Amargosa River population's range, nor did the petitioners present substantial information to indicate that Factor E is currently, or in the future considered a threat to this species. Based on this review and evaluation, we find that the petition presents substantial scientific or commercial information such that listing the Amargosa River population of the Mojave fringe-toed lizard as threatened or endangered may be warranted due to current and future threats under Factor A. As part of our status review of the Amargosa River population of the Mojave fringe-toed lizard, we will examine the available genetic information for the species in greater detail, and make a final determination as to whether or not the Amargosa River population is a DPS under the Service's DPS policy. Our status review will also include an evaluation as to whether significant portions of the Amargosa River population warrant listing as threatened or endangered; the petitioners assert that a significant portion of the range of the Amargosa River population has suffered severe habitat destruction and

modification by extensive OHV traffic. We will issue a 12-month finding as to whether the petitioned action is warranted.

We encourage interested parties to continue gathering data that will assist with the conservation and monitoring of the Mojave fringe-toed lizard in the Amargosa River area. You may submit information regarding the Amargosa River population of the Mojave fringe-toed lizard by one of the methods listed in the **ADDRESSES** section, at any time.

The petitioners requested that critical habitat be designated for this species. We always consider the need for critical habitat designation when listing species. If we determine in our 12-month finding that listing the Amargosa River population of the Mojave fringe-toed lizard is warranted, we will address the designation of critical habitat at the time of the proposed rulemaking.

#### References Cited

A complete list of all references cited herein is available upon request from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

#### Author

The primary author of this notice is the staff of the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 13, 2007.

#### Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

[FR Doc. E8-28 Filed 1-9-08; 8:45 am]

**BILLING CODE 4310-55-P**

## Notices

Federal Register

Vol. 73, No. 7

Thursday, January 10, 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

#### Forest Service

#### Oregon Coast Provincial Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Meeting.

**SUMMARY:** The Oregon Coast Province Advisory Committee will meet at Siuslaw National Forest Headquarters, Siuslaw River Room. The theme of the meeting is 2008 overview. The agenda includes: Brief WOPR Public involvement, Recreation Facility Assessment, WOPR Progress, Monitoring Field Trip and Public comments.

**DATES:** The meeting will be held January 17, 2008, beginning at 9 a.m.

**ADDRESSES:** The meeting will be held at 4077 SW Research Way, Corvallis Oregon 97333.

**FOR FURTHER INFORMATION CONTACT:** Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest, 541-750-7075, or write to Siuslaw National Forest Supervisor, 4077 SW Research Way, Corvallis, OR 97339.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Council Discussion is limited to Forest Service/BLM staff and Council Members. Lunch will be on your own. A public input session will be at 11 a.m. for fifteen minutes. The meeting is expected to adjourn around 3:30 p.m.

Dated: January 4, 2008.

Joni Quarnstrom,

Public Affairs Specialist.

[FR Doc. 08-60 Filed 1-9-08; 8:45 am]

BILLING CODE 3410-11-M

### DEPARTMENT OF AGRICULTURE

#### Natural Resources Conservation Service

**Southeast Supply Header Project; Southeast Supply Header, LLC; Federal Energy Regulatory Commission (FERC), Docket Nos. CP07-44-000, CP07-45-000, PF06-28-000, FERC EIS 0211; August 2007**

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of Availability of the Record of Decision.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, has decided to subordinate its rights, acquired under the Wetland Reserve Program (WRP), to allow the Southeast Supply Header, LLC to cross NRCS held conservations easements associated with the Southeast Supply Header Project in Madison Parish, LA.

On December 18, 2006, SESH filed, in Docket No. CP07-446-000, an application with the Commission pursuant to section 7(c) of the *Natural Gas Act* and Part 157 of the Commission's regulations for a Certificate to construct, operate, and maintain an interstate natural gas pipeline and associated ancillary and aboveground facilities.

The Federal Energy Regulatory Commission (FERC) has prepared a final environmental impact statement (EIS) to fulfill requirements of the National Environmental Policy Act (NEPA). The purpose of this document was to make public the analysis of the environmental impacts that would likely result from the construction and operation of the proposed Project. The NRCS participated as a cooperating agency in the preparation of the EIS.

The project will affect approximately 7 NRCS held Wetlands Reserve Program (WRP) easements by creating a 50 ft. permanent right of way (within a 100 ft. construction right-of-way) that extends for approximately 269 miles of which 6.7 miles is over lands encumbered under WRP easements located in

Madison Parish, Louisiana. Of the 34,584 acres encumbered by WRP easements in Madison Parish, Louisiana 73.93 acres will be affected.

**FOR FURTHER INFORMATION CONTACT:**

Kevin D. Norton, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302; telephone (318) 473-7751.

A limited number of copies of the ROD are available to fill single copy requests at the above address. Basic data evaluated for the ROD are on file and may be reviewed by contacting Kevin D. Norton.

Dated: January 3, 2008.

Kevin D. Norton,

State Conservationist.

[FR Doc. E8-298 Filed 1-9-08; 8:45 am]

BILLING CODE 3410-16-P

### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

[Docket No. 0612242708-7825-01]

#### Ernest F. Hollings Undergraduate Scholarship Program

**AGENCY:** Office of Education (OE), Office of the Undersecretary of Commerce for Oceans and Atmosphere (USEC), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of Scholarship Opportunity.

**SUMMARY:** NOAA announces the Ernest F. Hollings Scholarship Program for FY 2008, and sets forth eligibility criteria and selection guidelines for the program. The Ernest F. Hollings Scholarship Program was established through the Consolidated Appropriations Act, 2005 (Pub. L. 108-447). This Scholarship Program will provide approximately 100 undergraduate applicants selected for the program with scholarships to participate in oceanic and atmospheric science, research, technology, and education. There is no guarantee that funds will be available to make awards to all qualified applicants.

**DATES:** Completed applications must be received by February 8, 2008, at 5 p.m. eastern daylight time.

**ADDRESSES:** Applications for the Ernest F. Hollings Scholarship Program will be available through NOAA at [http://www.oesd.noaa.gov/Hollings\\_info.html](http://www.oesd.noaa.gov/Hollings_info.html). If an applicant does not have Internet access; hardcopy applications may be requested by contacting NOAA Office of Education, Hollings Scholarship Program, 1315 East-West Highway, Room 10703, Silver Spring, Maryland 20910.

**FOR FURTHER INFORMATION CONTACT:** NOAA Hollings Scholarship at [StudentScholarshipPrograms@noaa.gov](mailto:StudentScholarshipPrograms@noaa.gov) or call 301-713-9437 x150.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Ernest F. Hollings Scholarship Program was established through the Consolidated Appropriations Act, 2005 (Pub. L. 108-447). The purposes of the program include: (1) To increase undergraduate training in oceanic and atmospheric sciences, research, technology, and education and to foster multidisciplinary training opportunities; (2) to increase public understanding and support for stewardship of the ocean and atmosphere and to improve environmental literacy; (3) to recruit and prepare students for public service careers with the National Oceanic and Atmospheric Administration and other natural resource and science agencies at the Federal, state and local and tribal levels of government; and, (4) to recruit and prepare students for careers as teachers and educators in oceanic and atmospheric sciences and to improve scientific and environmental education in the United States.

The Hollings Scholarship Program will provide successful undergraduate applicants with awards that include academic assistance (up to \$8,000 per year) for full-time study during the 9-month academic year; a 10-week, full-time internship position (\$650/week) during the summer at a NOAA facility; and, if reappointed, academic assistance (up to \$8,000) for full-time study during a second 9-month academic year. The internship between the first and second years of the award provides the scholars with "hands-on" practical educational training experience in NOAA-related scientific, research, technology, policy, management, and education activities. Awards will also include travel expenses to attend a mandatory Hollings Scholarship Program orientation, approved conferences where students present a paper or poster, and a housing subsidy for scholars who do not reside at home during the summer internship.

**Authority**

The Ernest F. Hollings Undergraduate Scholarship Program is established by the Administrator of the National Oceanic and Atmospheric Administration under authority of the Consolidated Appropriations Act, 2005 (Pub. L. 108-447).

**Funding Availability**

Approximately \$3.5 million may be available for the award of two-year scholarships, subject to the availability of appropriations. There is no guarantee that funds will be available to provide scholarships for all qualified students.

**Eligibility**

Any undergraduate student who is a U.S. citizen; enrolled as a full-time student in the Fall 2008 as a junior, at an accredited college or university within the United States or U.S. Territories; possesses at least a 3.0 grade point average per semester/quarter and cumulative on a 4.0 scale (or equivalent on other identified scale) in all completed undergraduate courses and in their major field of study; and has declared a major in a NOAA-related discipline, including, but not limited to, oceanic, environmental, and atmospheric sciences, mathematics, engineering, remote sensing technology, marine policy, physical and social sciences including, geography, physics, hydrology, meteorology, oceanography or teacher education that support NOAA's programs and mission may apply to this notification.

The Hollings Scholarship Program will consider applications from all students that meet the above eligibility requirements.

**Evaluation Criteria**

Application will be evaluated based on the following criteria:

1. Relevant coursework (30%).
2. Education plan and statement of career interest (40%).
3. Recommendations and/or endorsements (reference forms) (20%).
4. Additional relevant experience related to diversity of education; extracurricular activities; honors and awards; non-academic and volunteer work; written and oral communications skills (10%).

**Selection Process**

An initial administrative review of applications is conducted to determine compliance with requirements and completeness of applications. Only complete applications in compliance with the requirements will be considered for review. Applications identified as incomplete or not in

compliance with the requirements will not be reviewed and will be destroyed. All applications that meet the requirements and are complete will be evaluated and scored individually in accordance with the assigned weights of the evaluation criteria by an independent peer review panel, comprised of Federal and nonfederal employees. No consensus advice or recommendations will be given. A numerical ranking will be assigned to each application based on the average of the panelist's ratings. The Program Officer will conduct a review of the rank order and make recommendations to the Selecting Official based on the panel ratings and the selection factors listed below. The Selecting Official, the Director of NOAA Education, will consider merit reviews and recommendations and award in rank order unless the application is justified to be selected out of rank order based on one or more of the following selection factors:

**Selection Factors**

In determining final awards, the selecting official reserves the right to consider the following selection factors:

1. Availability of funds.
2. Balance/distribution of funds:
  - a. Geographically.
  - b. By type of institutions.
  - c. Across academic disciplines.
3. Program-specific objectives.
4. Degree in scientific area and type of degree sought.

**Repayment Requirement**

A Hollings Scholarship recipient shall be required to repay the full amount of the scholarship to the National Oceanic and Atmospheric Administration if it is determined that the individual, in obtaining or using the scholarship, engaged in fraudulent conduct or failed to comply with any term or condition of the scholarship.

**Cost Sharing Requirements**

There are no cost-sharing requirements.

**Intergovernmental Review**

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

**Limitation of Liability**

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this program is cancelled because of other agency priorities. Publication of this notice does not oblige NOAA to award any specific project or to obligate any

available funds. Applicants are hereby given notice that funding for the Fiscal Year 2008 program is contingent upon the availability of Fiscal Year 2008 appropriations.

#### National Environmental Policy Act (NEPA)

As defined in sections 5.05 and Administrative or Programmatic Functions of NAO 216-6, 6.03.c.3, this is an undergraduate scholarship and internship program for which there are no cumulative effects. Thus, it has been categorically excluded from the need to prepare an Environmental Assessment.

#### Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid Office of Management and Budget (OMB) control number. The Hollings Undergraduate Scholarship application form has been approved under OMB Control No. 0648-0568.

#### Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

#### Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

#### Administrative Procedure Act/Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements for the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: January 7, 2008.

Louisa Koch,

Director, NOAA Education, U.S. Department of Commerce.

[FR Doc. E8-272 Filed 1-9-08; 8:45 am]

BILLING CODE 3510-12-P

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

[Docket No. 071214850-7851-01]

#### Public Telecommunications Facilities Program: Closing Date

**AGENCY:** National Telecommunications and Information Administration (NTIA), Commerce.

**ACTION:** Notice of Availability of Funds.

**SUMMARY:** Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110-161, 121 Stat. 1844 (2007), the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the solicitation of applications for planning and construction grants for public telecommunications facilities under the Public Telecommunications Facilities Program (PTFP). The PTFP assists, through matching grants, in the planning and construction of public telecommunications facilities in order to: (1) Extend delivery of services to as many citizens as possible by the most cost-effective means, including use of broadcast and non-broadcast technologies; (2) increase public telecommunications services and facilities available to, operated by, and controlled by minorities and women; (3) strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public.

**DATES:** Applications must be received prior to 5 p.m. Eastern Time (Closing Time), February 22, 2008, (Closing Date). Applications submitted by facsimile are not acceptable. If an application is received after the Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date and Closing Time, (2) significant weather delays or natural disasters, or (3) delays due to national security issues, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline. NTIA will not accept applications posted on the Closing Date or later and received after this deadline.

**ADDRESSES:** To obtain a printed application package, submit completed applications, or send any other correspondence, write to PTFP at the following address (please note the new room number): NTIA/PTFP, Room H-4812, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230. Application

materials may be obtained electronically via the Internet at <http://www.ntia.doc.gov/ptfp> or <http://www.Grants.gov>.

#### FOR FURTHER INFORMATION CONTACT:

William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482-5802; fax: (202) 482-2156.

Information about the PTFP can also be obtained electronically via the Internet at <http://www.ntia.doc.gov/ptfp>.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

The full funding opportunity announcement for the PTFP fiscal year (FY) 2008 grant cycle is available through <http://www.Grants.gov> or by contacting the PTFP office at the address noted above.

##### Funding Availability

The Congress has appropriated \$16.8 million for FY 2008 PTFP awards. For FY 2007, NTIA awarded \$22 million in PTFP funds to 117 projects, including 57 radio awards, 56 television awards and 4 nonbroadcast awards. The radio awards ranged from \$6,787 to \$393,099. The television awards ranged from \$24,091 to \$1,189,250. The nonbroadcast awards ranged from \$60,560 to \$86,079.

##### Statutory and Regulatory Authority

The Public Telecommunications Facilities Program is authorized by the Communications Act of 1934, as amended, 47 U.S.C. 390-393, 397-399(b). The PTFP operates pursuant to rules (1996 Rules) which were published on November 8, 1996 (61 FR 57966). Copies of the 1996 Rules (15 CFR Part 2301) are posted on the NTIA internet site at <http://www.ntia.doc.gov/Rules/currentrules.htm> and NTIA will make printed copies available to applicants upon request.

##### Supplemental Policies

The following supplemental policies will also be in effect:

A) Applicants may file emergency applications at any time.

B) Applicants may file requests for Federal Communications Commission (FCC) authorizations with the FCC after the PTFP Closing Date. Grant applicants for Ku-band satellite uplinks may submit FCC applications after a PTFP award is made. NTIA may accept FCC authorizations that are in the name of an organization other than the PTFP applicant.

C) PTFP applicants are not required to submit copies of their PTFP applications to the FCC, nor are they required to submit copies of the FCC

transmittal cover letters as part of their PTFP applications. PTFP applicants for distance learning projects must notify the state telecommunications agencies in the states in which they are located, but they are not required to notify every state telecommunications agency in a potential service area.

D) For digital television conversion projects, NTIA has created two new Subpriorities in the Broadcast Other category.

E) For digital radio conversion projects, NTIA has created a new Subpriority in the Broadcast Other category.

Catalog of Domestic Federal Assistance: 11.550, Public Telecommunications Facilities Program.

#### Eligibility

To apply for and receive a PTFP Construction Grant or Planning Grant, an applicant must be: (a) A public or noncommercial educational broadcast station; (b) a noncommercial telecommunications entity; (c) a system of public telecommunications entities; (d) a non-profit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or (e) a state, local, or Indian tribal government (or agency thereof), or a political or special purpose subdivision of a state.

#### Evaluation and Selection Process

See 15 CFR 2301.16 for a description of the Technical Evaluation and 15 CFR 2301.18 for the Selection Process.

#### Evaluation Criteria

See 15 CFR 2301.17 for a full description of the Evaluation Criteria. The six evaluation criteria are (1) Applicant Qualifications, (2) Financial Qualifications, (3) Project Objectives, (4) Urgency, (5) Technical Qualifications (construction applicants only) or Planning Qualifications (planning applicants only), and (6) Special Consideration.

#### Funding Priorities and Selection Factors

See 15 CFR 2301.4 and the supplemental policies above for a description of the PTFP Priorities and 15 CFR 2301.18 for the Selection Factors.

#### Cost Sharing Requirements

PTFP requires cost sharing. By statute, PTFP cannot fund a construction project for more than 75 per cent of the eligible project costs. NTIA has established a policy of funding most new public broadcasting station activation projects at a 75 per cent federal share, and most

other television, radio and nonbroadcast projects at a 50 per cent federal share. NTIA can fund planning applications up to 100 per cent of the eligible project costs, but has established a policy of funding planning applications at a 75 per cent. Any applicant can request federal funding greater than PTFP's policy, up to the statutory maximum, and provide justification for the request.

#### Intergovernmental Review

PTFP applications are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," if the state in which the applicant organization is located participates in the process. Usually submission to the State Single Point of Contact (SPOC) needs to be only the SF 424 and PTFP-2 pages of the application, but applicants should contact their own SPOC offices to find out about and comply with its requirements. The PTFP Internet site has a link to the Office of Management and Budget (OMB) home page which has the names and addresses of the SPOC offices. Applicants may directly access the OMB Internet site at (<http://www.whitehouse.gov/omb/grants/spoc.html>). Printed copies of the SPOC list are available from PTFP.

#### Universal Identifier

All applicants (nonprofit, state, local government, universities, and tribal organizations) will be required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 (67 FR 66177) and April 8, 2003 (68 FR 17000) **Federal Register** notices for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line 1-866-705-5711 or via the Internet (<http://www.dunandbradstreet.com>).

#### The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004, (69 FR 78389) is applicable to this solicitation.

#### Limitation of Liability

In no event will the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. Publication of this announcement does not obligate the

agency to award any specific project or to obligate any available funds.

#### Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid Office of Management and Budget (OMB) control number. The PTFP application form has been cleared under OMB Control No. 0660-0003.

#### Executive Order 13132

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

#### Administrative Procedure Act/Regulatory Flexibility Act

Prior notice and opportunity for public comment are not required by the Administrative Procedure Act or any other law for this rule concerning 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.

**Bernadette McGuire-Rivera**,  
Associate Administrator, Office of  
Telecommunications and Information  
Applications.  
[FR Doc. E8-278 Filed 1-9-08; 8:45 am]  
BILLING CODE 3510-60-P

#### COMMODITY FUTURES TRADING COMMISSION

##### Notice of Sunshine Act Meetings

##### AGENCY HOLDING THE MEETING:

Commodity Futures Trading Commission.

##### Sunshine Act Meetings

**TIME AND DATE:** 12 p.m., Wednesday, January 16, 2008.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** The notice previously published on Friday, December 28, 2007 (72 FR 73777) is corrected under the heading "*Matters to be Considered*" to read "Enforcement Matters".



**CONTACT PERSON FOR MORE INFORMATION:**  
Sauntia S. Warfield, 202-418-5084.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. 08-78 Filed 1-8-08; 12:13 pm]

**BILLING CODE 6351-01-P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Transportation (OMB Control Number 0704-0245)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Notice and request for comments regarding a proposed extension of an approved information collection requirement.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through March 31, 2008. DoD proposes that OMB extend its approval for use for three additional years.

**DATES:** DoD will consider all comments received by March 10, 2008.

**ADDRESSES:** You may submit comments, identified by OMB Control Number 0704-0245, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include OMB Control Number 0704-0245 in the subject line of the message.
- *Fax:* 703-602-7887.

- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Dustin Pitsch, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dustin Pitsch, 703-602-8387. The information collection requirements addressed in this notice are available on the World Wide Web at: <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>. Paper copies are available from Mr. Dustin Pitsch, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

**SUPPLEMENTARY INFORMATION:** *Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 247, Transportation, and related clauses at DFARS 252.247; OMB Control Number 0704-0245.

*Needs and Uses:* DoD contracting officers use this information to verify that prospective contractors have adequate insurance prior to award of stevedoring contracts; to provide appropriate price adjustments to stevedoring contracts; and to assist the Maritime Administration in monitoring compliance with requirements for use of U.S.-flag vessels in accordance with the Cargo Preference Act of 1904 (10 U.S.C. 2631).

*Affected Public:* Businesses or other for-profit and not-for-profit institutions.

*Annual Burden Hours:* 150,114.

*Number of Respondents:* 60,400.

*Responses per Respondent:* Approximately 8.

*Annual Responses:* 465,842.

*Average Burden per Response:* .32 hours.

*Frequency:* On occasion.

#### Summary of Information Collection

The clause at DFARS 252.247-7000, Hardship Conditions, is prescribed at DFARS 247.270-6(a) for use in all solicitations and contracts for the acquisition of stevedoring services. Paragraph (a) of the clause requires the contractor to notify the contracting officer of unusual conditions associated with loading or unloading a particular cargo, for potential adjustment of contract labor rates; and to submit any associated request for price adjustment to the contracting officer within 10 working days of the vessel sailing time.

The clause at DFARS 252.247-7001, Price Adjustment, is prescribed at DFARS 247.270-6(b) for use in solicitations and contracts when using sealed bidding to acquire stevedoring services. Paragraphs (b) and (c) of the clause require the contractor to notify the contracting officer of certain changes in the wage rates or benefits that apply to its direct labor employees. Paragraph (g) of the clause requires the contractor to include with its final invoice a statement that the contractor has experienced no decreases in rates of pay for labor or has notified the contracting officer of all such decreases.

The clause at DFARS 252.247-7002, Revision of Prices, is prescribed at DFARS 247.270-6(c) for use in solicitations and contracts when using negotiation to acquire stevedoring services. Paragraph (c) of the clause provides that, at any time, either the contracting officer or the contractor may deliver to the other a written demand that the parties negotiate to revise the prices under the contract. Paragraph (d) of the clause requires that, if either party makes such a demand, the contractor must submit relevant data upon which to base negotiations.

The clause at DFARS 252.247-7007, Liability and Insurance, is prescribed at DFARS 247.270-6(g) for use in all solicitations and contracts for the acquisition of stevedoring services. Paragraph (f) of the clause requires the contractor to furnish the contracting officer with satisfactory evidence of insurance.

The provision at DFARS 252.247-7022, Representation of Extent of Transportation by Sea, is prescribed at DFARS 247.574(a) for use in all solicitations except those for direct purchase of ocean transportation services or those with an anticipated value at or below the simplified acquisition threshold. Paragraph (b) of the provision requires the offeror to represent whether or not it anticipates that supplies will be transported by sea in the performance of any contract or subcontract resulting from the solicitation.

The clause at DFARS 252.247-7023, Transportation of Supplies by Sea, is prescribed at DFARS 247.574(b) for use in all solicitations and contracts except those for direct purchase of ocean transportation services. The clause is used with its Alternate III in solicitations and contracts with an anticipated value at or below the simplified acquisition threshold. Paragraph (d) of the clause requires the contractor to submit any requests for use of other than U.S.-flag vessels in writing to the contracting officer. Paragraph (e)



of the clause requires the contractor to submit one copy of the rated on board vessel operating carrier's ocean bill of lading. Paragraph (f) of the clause requires the contractor to represent, with its final invoice, that: (1) No ocean transportation was used in the performance of the contract; (2) only U.S.-flag vessels were used for all ocean shipments under the contract; (3) the contractor had the written consent of the contracting officer for all non-U.S.-flag ocean transportation; or (4) shipments were made on non-U.S.-flag vessels without the written consent of the contracting officer. Contractors must flow down these requirements to noncommercial subcontracts and certain types of commercial subcontracts. Subcontracts at or below the simplified acquisition threshold are excluded from the requirements of paragraph (f) stated above.

The clause at DFARS 252.247-7024, Notification of Transportation of Supplies by Sea, is prescribed at DFARS 247.574(c) for use in all contracts for which the offeror represented, by completion of the provision at DFARS 252.247-7022, that it did not anticipate transporting any supplies by sea in performance of the contract. Paragraph (a) of the clause requires the contractor to notify the contracting officer if the contractor learns after award of the contract that supplies will be transported by sea.

**Michele P. Peterson,**  
Editor, Defense Acquisition Regulations System.

[FR Doc. E8-194 Filed 1-9-08; 8:45 am]

BILLING CODE 5001-08-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP08-32-000]

#### Natural Gas Pipeline Company of America; Notice of Application

January 3, 2008.

Take notice that on December 7, 2007, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148-5072, filed in Docket No. CP08-32-000, an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Subpart A of Part 157 of the Commission's Regulations, for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities at Natural's Herscher Galesville storage field in Kankakee County, Illinois, (Herscher Galesville) to

enable Natural to provide 10 Bcf of firm incremental storage service for certain expansion shippers, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at

[FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov)

or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Natural proposes to (a) drill and operate 15 new water withdrawal wells with 230 horsepower downhole submersible pumps, and up to 11 new water disposal wells at up to 11 new well pads; (b) install and operate surface water booster pumps on 3 existing water injection wells; (c) drill and operate horizontal lateral recompletions of up to 4 existing water injection wells, which, if successful, will reduce the number of new water injection wells required to be drilled; (d) upgrade and operate the existing water disposal system by replacing, looping or extending 12 water lines totaling 25,825 feet (made up of 8-, 10- and 12-inch diameter plastic pipe); (e) rework (via underreaming and deepening) and operate 5 existing gas injection/withdrawal wells; (f) purchase 2.0 Bcf of additional cushion gas; (g) install and operate one 8,180 hp natural gas compressor unit; (h) construct and operate miscellaneous appurtenant facilities as necessary to develop the proposed project, all at the Herscher Galesville storage field.

Natural also seeks approval of the negotiated rates as contained in the precedent agreements supporting the proposed project; approval of the recourse rates and tariff provisions necessary to effectuate such rates; and approval of an increase in Herscher Galesville's certificated peak day withdrawal level from 1,000 MMcf up to 1,100 MMcf. There would be no increase in Natural's currently certificated total maximum inventory level at Herscher Galesville. Natural estimates its construction cost for the Herscher Galesville storage field project at \$75,349,207.

Any questions concerning the application should be directed to Bruce H. Newsome, Vice President, Natural Gas Pipeline Company of America, 747 East 22nd Street, Lombard, Illinois 60148-5072, telephone: (630) 691-3526, e-mail:

[bruce\\_newsome@kindermorgan.com](mailto:bruce_newsome@kindermorgan.com).

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceeding for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFT 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to the project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests,

and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.  
*Comment Date:* January 24, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8-223 Filed 1-9-08; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP08-43-000]

#### Northern Natural Gas Company, PVR Midstream LLC; Notice of Application

January 3, 2008.

Take notice that on December 21, 2007, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, and PVR Midstream LLC (PVR), TownCenter One, 1450 Lake Robbins Drive, The Woodlands, Texas 77380-3258, filed a joint application in Docket No. CP08-43-000. Included in that filing is an application by Northern pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, and sections 157.7 and 157.18 of the Commission's Regulations, requesting permission and approval to abandon by sale to Saleco, a new yet to be named Delaware limited liability company, certain pipeline, compression, dehydration, and delivery and receipt point facilities (Hemphill System), with appurtenances facilities located in Ochiltree, Roberts and Hemphill Counties, Texas, and Roger Mills County, Oklahoma. Northern also requests Commission approval to abandon the services it provides with respect to primary receipt and/or delivery points located on the facilities proposed for abandonment. Northern and PVR state that once Saleco is assigned to PVR, the Hemphill System will be operated by PVR as part of its non-jurisdictional gathering system. Northern and PVR also request in the application a determination that, upon transfer to PVR, the facilities in question will be classified as gathering under section 1(b) of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site

that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Any questions regarding this application should be directed to Michael T. Loeffler, Director, Certificates and Government Affairs for Northern Natural Gas Company, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398-7103.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentators will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's

environmental review process. Environmental commentators will not be required to serve copies of filed documents on all other parties. However, the non-party commentators will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link at <http://www.ferc.gov>. The Commission strongly encourages intervenors to file electronically. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

*Comment Date:* January 24, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8-225 Filed 1-9-08; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP08-42-000]

#### Northern Natural Gas Company; Notice of Request Under Blanket Authorization

January 3, 2008.

Take notice that on December 21, 2007, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP08-42-000 a prior notice request pursuant to sections 157.205 and 157.210 of the Commission's regulations under the Natural Gas Act (NGA) and Northern's blanket certificate issued September 1, 1982 in Docket No. CP82-401-000, for authorization to up-rate the maximum allowable operating pressure (MAOP) on approximately twenty-four miles of 26-inch pipeline in Yoakum and Gaines Counties, Texas, and Lea County, New Mexico, and operate such segment of pipeline at the higher MAOP, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the

last three digits in the docket number field to access the document. For assistance, contact FERC at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208-3676 or TTY (202) 502-8659.

The estimated cost of constructing the proposed facilities is \$1,015,000.

Any questions regarding the application should be directed to Michael T. Loeffler, Senior Director of Certificates and External Affairs, 1111 South 103rd Street, Omaha, Nebraska 68124, Northern Natural Gas Company, phone (402) 398-7103.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E8-224 Filed 1-9-08; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. EG07-80-000; EG07-81-000; EG07-82-000; EG07-83-000; EG07-84-000; EG07-85-000; EG07-86-000; EG07-87-000; EG07-88-000; EG07-89-000; FC07-54-000; FC07-55-000; FC07-56-000; FC07-57-000; FC07-58-000; FC07-59-000]

**NRG Cedar Bayou Development Company, LLC; EnergyCo Cedar Bayou 4, LLC; Hackberry Wind, LLC; Smoky Hills Wind Farm, LLC; Cloud County Wind Farm, LLC; Pioneer Prairie Wind Farm I, LLC; Sagebrush Power Partners, LLC; Tatanka Wind Power, LLC; Snyder Wind Farm, LLC; FPL Energy Point Beach, LLC; Enbridge Gas New Brunswick Inc.; Enbridge Wind Power Inc.; Gazifere Inc.; Inuvik Gas Ltd.; NRGreen Power Limited Partnership; Wirebury Connections Inc.; Notice of Effectiveness of Exempt Wholesale Generator or Foreign Utility Company Status**

December 26, 2007.

Take notice that during the month of November 2007, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E8-240 Filed 1-9-08; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP08-29-000]

**Vector Pipeline L.P.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Athens Compressor Expansion Project and Request for Comments on Environmental Issues**

January 3, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Athens Compressor Expansion Project involving construction and operation of natural gas transmission system facilities by Vector Pipeline L.P. (Vector) in Calhoun and Oakland County, Michigan and LaPorte County, Indiana. The EA will be used by the

Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help determine which issues need to be evaluated in the EA. Please note that the scoping period will close on February 4, 2008. Details on how to submit comments are provided in the Public Participation section of this notice.

This notice is being sent to affected landowners; federal, state, and local government agencies; elected officials; Native American tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this proposed project and to encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (<http://www.ferc.gov>).

### Summary of the Proposed Project

Vector proposes to:

- Construct the Athens Compressor Station, a new 15,000-horsepower compressor station along Vector's existing pipeline system in Calhoun County, Michigan; and
- Complete modifications at Vector's existing Springville and Highland Compressor Stations, which are located along Vector's existing pipeline system in LaPorte County, Indiana and Oakland County, Michigan, respectively.

Vector purchased a 20-acre parcel of land for construction of the Athens Compressor Station. Approximately 6.3 acres within the site would be used for operation of the compressor station. An additional 2.2 acres of land would be disturbed by construction of an access road to Athens Compressor Station. The remainder of the 20 acre site would be maintained as a buffer area.

Construction of the proposed modifications at the existing Springville and Highland Compressor Stations would disturb up to 2 acres of land at each station. The land affected by construction and operation of the modifications would occur within previously disturbed areas that are inside buildings or in graveled areas

within the existing fence lines of the stations.

The general location of the proposed facilities is shown in Appendix 1.<sup>1</sup>

#### The EA Process

We<sup>2</sup> are preparing this EA to comply with the National Environmental Policy Act (NEPA) which requires the Commission to take into account the environmental impact that could result if it authorizes Vector's proposal. By this notice, we are also asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

NEPA also requires the FERC to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, we are requesting public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use and visual quality
- Cultural resources
- Vegetation and wildlife (including threatened and endangered species)
- Air quality and noise
- Reliability and safety

We will also evaluate possible alternatives to the proposed project or portions of the project, where necessary, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state,

<sup>1</sup> The appendices referenced in this notice are not being printed in the *Federal Register*. Copies of all appendices are available on the Commission's website at the "eLibrary" link or from the Commission's Public Reference Room, 888 First Street, NE, Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary refer to the "Additional Information" section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to Vector.

<sup>2</sup> "We," "us," and "our" refer to the environmental staff of the FERC's Office of Energy Projects.

and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are received and considered, please carefully follow the instructions in the Public Participation section below.

#### Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal and alternatives to the proposal, including alternative compressor station sites and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 1, PJ-11.1;
- Reference Docket No. CP08-29-000; and
- Mail your comments so that they will be received in Washington, DC on or before February 4, 2008.

The Commission encourages electronic filing of comments. See 18 Code of Federal Regulations 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at <http://www.ferc.gov> under the "eFiling" link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on "Login to File" and then "New User Account." You will be asked to select the type of filing you are making. This filing is considered a "Comment on Filing."

As described above, we may publish and distribute the EA for comment. If you are interested in receiving an EA for review and/or comment, please return the Environmental Mailing List Form (Appendix 3). If you do not return the

Environmental Mailing List Form, you will be taken off the mailing list.

#### Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenor play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding.

If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see Appendix 2).<sup>3</sup> Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

#### Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site (<http://www.ferc.gov>) using the "eLibrary" link. Click on the eLibrary link, then on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov) or toll free at 1-866-208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching

<sup>3</sup> Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.



proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to <http://www.ferc.gov/esubscribenow.htm>.

Finally, public meetings or site visits will be posted on the Commission's calendar located at <http://www.ferc.gov/EventCalendar/EventsList.aspx> along with other related information.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E8-222 Filed 1-9-08; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER05-849-000]

#### California Independent System Operator Corporation; Notice of Extension of Time

December 27, 2007.

On December 26, 2007, the Western Power Trading Forum (WPTF) filed a request for an extension of time to file an answer to the Public Utilities of the State of California's (CPUC) Motion to Supplement Request for Rehearing or, in the Alternative, to Supplement the CPUC's Response to the Motion For Clarification of the California Generators filed December 21, 2007, in the above-docketed proceeding (December 21 Motion). WPTF states that because of the intervening holidays and vacation schedules involving WPTF counsel and personnel, additional time is needed to coordinate and prepare a responsive filing.

Upon consideration, notice is hereby given that an extension of time for filing answers to the CPUC's December 21 Motion is granted and including January 14, 2008.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E8-238 Filed 1-9-08; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. ER08-25-000, ER08-25-001]

#### Ocean State Power, Ocean State Power II; Notice of Issuance of Order

December 27, 2007.

Ocean State Power and Ocean State Power II (collectively, Ocean State) filed an application for market-based rate

authority, with an accompanying rate tariff. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Ocean State also requested waivers of various Commission regulations. In particular, Ocean State requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Ocean State.

On December 18, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Ocean State, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is January 18, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Ocean State is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Ocean State, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Ocean State's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document.

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E8-237 Filed 1-9-08; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. ER08-200-000; ER08-200-001]

#### Waterbury Generation, LLC; Notice of Issuance of Order

December 27, 2007.

Waterbury Generation, LLC (Waterbury) filed an application for market-based rate authority, with an accompanying market-based rate tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Waterbury also requested waivers of various Commission regulations. In particular, Waterbury requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Waterbury.

On December 26, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Waterbury, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2007).

Notice is hereby given that the deadline for filing protests is January 28, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Waterbury is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Waterbury, compatible with the public

interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Waterbury's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E8-239 Filed 1-9-08; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. ER08-274-000, ER08-274-001]

#### Citadel Energy Strategies, LLC; Notice of Issuance of Order

January 3, 2008.

Citadel Energy Strategies, LLC (Citadel) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Citadel also requested waivers of various Commission regulations. In particular, Citadel requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Citadel.

On December 27, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of

securities or assumptions of liability by Citadel, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2007).

Notice is hereby given that the deadline for filing protests is January 28, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Citadel is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Citadel, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Citadel's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E8-227 Filed 1-9-08; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. ER08-293-000; ER08-293-001; ER08-297-000; ER08-297-001]

#### Lookout Windpower, LLC; Forward Windpower, LLC; Notice of Issuance of Order

January 3, 2008.

Lookout Windpower, LLC (Lookout) and Forward Windpower, LLC (Forward) filed applications for market-

based rate authority, with accompanying market-based rate tariffs. The proposed market-based rate tariffs provide for the sale of energy, capacity and ancillary services at market-based rates. Lookout and Forward also requested waivers of various Commission regulations. In particular, Lookout and Forward requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Lookout and Forward.

On January 2, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests.

Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Lookout and Forward, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2007).

Notice is hereby given that the deadline for filing protests is February 1, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Lookout and Forward are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Lookout and Forward, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Lookout and Forward's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions



may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E8-228 Filed 1-9-08; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. ER08-74-000; ER08-74-001]

#### North American Energy Credit and Clearing—Finance LLC; Notice of Issuance of Order

January 3, 2008.

North American Energy Credit and Clearing—Finance LLC (Finance) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Finance also requested waivers of various Commission regulations. In particular, Finance requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Finance.

On December 27, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Finance, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2007).

Notice is hereby given that the deadline for filing protests is January 28, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Finance is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or

assumption is for some lawful object within the corporate purposes of Finance, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Finance's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E8-221 Filed 1-9-08; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER08-203-000]

#### Primary Energy of North Carolina, LLC; Notice of Issuance of Order

January 3, 2008.

Primary Energy of North Carolina, LLC (Primary Energy) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Primary Energy also requested waivers of various Commission regulations. In particular, Primary Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Primary Energy.

On January 2, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for

the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Primary Energy, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2007).

Notice is hereby given that the deadline for filing protests is February 1, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Primary Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Primary Energy, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Primary Energy's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E8-226 Filed 1-9-08; 8:45 am]  
BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket Nos. CP07-62-000, CP07-63-000, CP07-64-000, CP07-65-000]

**AES Sparrows Point LNG, L.C.C., Mid-Atlantic Express, L.L.C.; Notice of Technical Conference**

January 3, 2008.

On Tuesday, January 15, 2008, staff of the Office of Energy Projects will convene a technical conference regarding the proposed Sparrows Point Import Terminal and Pipeline Project. The technical conference will be held at the Commission Headquarters in Washington, DC, room 3M-3.

The conference will be held in two sessions, morning and afternoon. The morning session will commence at 10 a.m. (EDT) and discuss issues related to Mid-Atlantic Express's proposal to construct some of its proposed pipeline in Baltimore Gas & Electric's right of way. The afternoon session will commence at 1 p.m. (EDT) and discuss liquefied natural gas (LNG) technical issues.

The morning session is open to the public. Due to the nature of critical energy infrastructure information (CEII) and security issues to be explored discussing LNG issues, the afternoon session is not open to the public. Attendance to the afternoon session will be limited to existing parties to the above-referenced proceeding (anyone who has specifically requested to intervene as a party) and to representatives of interested federal, state, and local agencies. Any person planning to attend the January 15th technical conference must register by close of business on Monday, January 14, 2008. Registration may be submitted either online at <https://www.ferc.gov/whats-new/registration/tech-conf-01-15-form.asp> or by faxing a copy of the form (found at the referenced online link) to 202-208-0353. Attendees to the afternoon session must sign a non-disclosure statement prior to entering that session. For additional information regarding the technical conference, please contact Joanne Wachholder at 202-502-8056.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E8-229 Filed 1-9-08; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. EL08-23-000]

**PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Notice of Filing**

December 31, 2007.

Take notice that on December 21, 2007, pursuant to Rule 207 of the Rules of Practices and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.207, section 219 of the Federal Power Act, 16 U.S.C. 824s (2007), and Order No. 679, PPL Electric Utilities Corporation (PPL Electric) and Public Service Electric and Gas Company (PSE&G) filed a petition for declaratory order requesting the Commission to authorize specific rate incentives described below for a new 500 kV transmission line that will connect PPL Electric's Susquehanna 500 kV switchyard in Pennsylvania to PSE&G's Roseland substation in New Jersey.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call

(866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on January 22, 2008.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E8-231 Filed 1-9-08; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. EL08-24-000]

**Pacific Gas and Electric Company; Notice of Filing**

December 31, 2007.

Take notice that on December 21, 2007, pursuant to Rule 207 of the Rules of Practices and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.207, section 1241 of the Energy Policy Act of 2005, EAct of 2005 which includes the new section 219 of the Federal Power Act, 16 U.S.C. 824s (2007), and Order No. 679, Pacific Gas and Electric Company (PG&E) filed a petition for declaratory order seeking the Commission to authorize transmission rate incentives for a new bulk power transmission project in which PG&E is planning to be a major participant.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public

Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m., Eastern Time on January 22, 2008.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E8-232 Filed 1-9-08; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL08-25-000]

#### City of Anaheim, CA; Notice of Filing

December 31, 2007.

Take notice that on December 21, 2007, the City of Anaheim, California filed its fifth annual revision to its Transmission Revenue Balancing Account Adjustment, to become effective January 1, 2008.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to

receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m., Eastern Time on January 22, 2008.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E8-233 Filed 1-9-08; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL08-26-000]

#### City of Riverside, CA; Notice of Filing

December 31, 2007.

Take notice that on December 21, 2007, the City of Riverside, California filed its fifth annual revision to its Transmission Revenue Balancing Account Adjustment, to become effective January 1, 2008.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on January 22, 2008.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E8-234 Filed 1-9-08; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL08-27-000]

#### City of Banning, CA; Notice of Filing

December 31, 2007.

Take notice that on December 21, 2007, the City of Banning, California filed its fifth annual revision to its Transmission Revenue Balancing Account Adjustment, to become effective January 1, 2008.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call

(866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on January 22, 2008.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E8-235 Filed 1-9-08; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL08-22-000]

#### Missouri River Energy Services; Western Minnesota Municipal Power Agency; Notice of Filing

December 31, 2007.

Take notice that on December 20, 2007, pursuant to Rule 207(a)(2) and Rule 2004 of the Rules of Practices and Procedure of the Federal Energy Regulatory Commission, 18 CFR 385.207(a)(2) and 385.2004 (2006), Missouri River Energy Services (MRES) and Western Minnesota Municipal Power Agency (Western Minnesota) filed a petition for declaratory order permitting MRES and Western Minnesota to combine their financial information for purposes of the variances being sought by MRES to the Attachment O transmission formula under the Midwest Independent Transmission System Operator, Inc.'s Open Access Transmission and Energy Markets Tariff. MRES and Western Minnesota also submit an exemption of the application fee, pursuant to section 381.108 of the Commission's Rules and Regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies

of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on January 22, 2008.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E8-236 Filed 1-9-08; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL08-28-000]

#### City of Pasadena, CA; Notice of Filing

December 31, 2007.

Take notice that on December 21, 2007, the City of Pasadena, California, filed its third annual revision to its Transmission Revenue Balancing Account Adjustment, to become effective January 1, 2008.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on January 22, 2008.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E8-230 Filed 1-9-08; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RM01-8-007]

#### Revised Public Utility Filing Requirements for Electric Quarterly Reports

December 21, 2007.

**AGENCY:** Federal Energy Regulatory Commission, Department of Energy.

**ACTION:** Order No. 2001-H; Order on Rehearing and Clarification.

**SUMMARY:** In this order, the Federal Energy Regulatory Commission (Commission) grants in part, and denies in part, rehearing and clarifies the information to be reported in the Electric Quarterly Report's (EQR'S) fields for Contract Execution Date (Field No. 21), Contract Commencement Date (Field No. 22) and Rate Description (Field No. 37). In addition, the order corrects an error relating to Increment Name (Field Nos. 28 and 60).

**DATES:** This order becomes effective upon issuance. The revised definitions adopted in this order shall be applied to EQR filings beginning with the Q1 2008 EQR (due on April 30, 2008) and in subsequent EQR filings due thereafter.

#### FOR FURTHER INFORMATION CONTACT:

Michelle Veloso (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8363.

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888

First Street, NE., Washington, DC 20426, (202) 502-8321.

#### SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

1. On October 24, 2007, Edison Electric Institute (EEI) filed a request for rehearing or clarification in response to the Commission's order adopting an Electric Quarterly Report (EQR) Data Dictionary.<sup>1</sup> Order No. 2001-G collected in one document the definitions of certain terms and values used in filing EQR data (previously provided in Commission orders and in guidance materials posted at the Commission's website) and issued formal definitions for fields that were previously undefined.<sup>2</sup> In this order, the Commission grants in part, and denies in part, rehearing and clarifies the information to be reported in Contract Execution Date (Field No. 21), Contract Commencement Date (Field No. 22) and Rate Description (Field No. 37). In addition, we correct an error that we made in Order No. 2001-G relating to Increment Name (Field Nos. 28 and 60).

#### I. Background

2. On April 25, 2002, the Commission issued Order No. 2001, a Final Rule establishing revised public utility filing requirements.<sup>3</sup> This rule revised the Commission's filing requirements to require companies subject to the Commission's regulations under section 205 of the Federal Power Act to file quarterly reports that: (1) Provide data identifying the utility on whose behalf the report is being filed (ID Data); (2) summarize pertinent data about the utility's currently effective contracts (Contract Data); and (3) summarize data about wholesale power sales the utility made during the reporting period (Transaction Data). The requirement to file EQRs replaced the requirement to file quarterly transaction reports summarizing a utility's market-based rate transactions and sales agreements that conformed to the utility's tariff.

<sup>1</sup> Revised Public Utility Filing Requirements for Electric Quarterly Reports, Order No. 2001-G, 120 FERC ¶ 61,270 (Sep. 24, 2007), 72 FR 56735 (Oct. 4, 2007).

<sup>2</sup> *Id.*

<sup>3</sup> Revised Public Utility Filing Requirements for Order No. 2001, 67 FR 31043, FERC Stats. & Regs. ¶ 31,127 (2002), *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reconsideration and clarification denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filings*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filings*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *clarification order*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004).

3. In Order No. 2001, the Commission also adopted a new section in its regulations, 18 CFR 35.10b, which requires that the EQRs are to be prepared in conformance with the Commission's software and guidance posted and available from the Commission website. This obviates the need to revise section 35.10b to implement revisions to the software and guidance. Since the issuance of Order No. 2001, as need has arisen, the Commission has issued orders to resolve questions raised by EQR users and has directed Staff to issue additional guidance.<sup>4</sup>

4. On September 24, 2007, the Commission issued Order No. 2001-G, providing a data dictionary to clarify the information to be reported in EQR data. EEI filed a request for rehearing or clarification requesting clarification of a few specific items. In addition, on December 4, 2007, TransAlta filed comments alerting the Commission to a filing problem it was experiencing relating to Increment Name (Field Nos. 28 and 60). The discussion below addresses EEI's rehearing request and TransAlta's comments.

#### II. Discussion

##### A. Field No. 21—Contract Execution Date

5. The EQR Notice<sup>5</sup> proposed only a slight change to the Order No. 2001 definition for Contract Execution Date: "The date the contract was signed. If the parties signed on different dates, or there are contract amendments, use the most recent date signed."

6. In response to the EQR Notice, Reliant and EEI suggested that the Contract Execution Date should not change because of a minor amendment to the contract. Both commenters noted that, frequently, contract amendments are minor changes, such as changes in an address or in payment terms, that do not affect the key operational parameters of the agreement.

7. Based on these comments, the Commission found in Order No. 2001-G that the usefulness of the data may be increased with a single execution date for each contract across all periods. However, the order explained that, if there are material amendments to the contract, then the Contract Execution Date must be changed.

8. In EEI's request for rehearing, it argues that the Commission's instruction that the Contract Execution Date must be changed when there are

material amendments to the contract is confusing and burdensome. It suggests that the original execution date should be reported for the duration of the contract and argues that changes in the contract will be reflected in the descriptions of revised contract provisions, such as in the Rate (Field No. 34), Begin Date (Field No. 43) and End Date fields (Field No. 44).

##### Commission Conclusion

9. In Order No. 2001-G, the Commission agreed with EEI and Reliant that it need not change the Contract Execution Date each time there is a minor revision to the contract and, accordingly, modified the instructions on what information should be reported in this field. The Commission reduced the burden and confusion by clarifying that minor, non-material changes may be omitted for the purpose of identifying the Contract Execution Date. EEI argues that the Contract Execution Date should not be revised, even in instances where there has been a material amendment to the contract.

10. The Commission recognizes the benefits of classifying a contractual relationship based on when it originated and will revise the definition of Contract Execution Date as EEI suggests to require companies to report the original date the contract was executed, without regard to any subsequent revisions to the contract. For the purposes of the EQR Data Dictionary, the definition will read: "The date the contract was signed. If the parties signed on different dates, use the most recent date signed." However, this change will not be incorporated at the cost of obscuring information that would alert EQR users that key terms in the contract have been revised. Thus, the Commission will revise the definition of Contract Commencement Date as described below.

##### B. Field No. 22—Contract Commencement Date

11. In order to alert EQR users that a contract has been revised, the Commission will revise the definition of Contract Commencement Date to refer to the date that service commenced under the current terms and conditions of the contract. The Commission will further clarify that the terms deemed relevant for determining or changing the Contract Commencement Date are those that are reported in the Contract Data section of the EQR.<sup>6</sup> Any amendment

<sup>4</sup> Examples cited in EQR Notice at P 3.

<sup>5</sup> Notice Seeking Comments on Proposed Electric Quarterly Report Data Dictionary, FERC Stats. & Regs. ¶ 35,050 (2007), 72 FR 26091 (May 8, 2007).

<sup>6</sup> In developing the EQR, the Commission identified a number of key terms associated with the products and services offered under any given jurisdictional contract. These terms include: Class



that would cause a change in these required data elements would require a change in the Contract Commencement Date.

12. The Commission recognizes EEI's concern regarding potential inconsistency between the EQR and eTariff in identifying an original execution date. However, there is a very real public interest in identifying when key terms of the contract were determined. As market conditions change over time, it is imperative to be able to sort the deals that occurred years ago from those that were confirmed more recently. To better understand the market conditions at the time a contract was put in place, it is necessary to document the date that key terms were established.

13. The Commission will define Contract Commencement Date as "The date the terms of the contract reported in the EQR were effective. If the terms reported in the Contract Data section of the EQR became effective or if service under those terms began on multiple dates (i.e.: due to an amendment), the date to be reported as the Commencement Date is the date when service began pursuant to the most recent amendment to the terms reported in the Contract Data section of the EQR." In this way, the Commission and the public will continue to be able to determine when the contract terms reported in the EQR were determined.

#### C. Field Nos. 28 and 60—Increment Name

14. In the EQR Notice,<sup>7</sup> the Commission proposed to revise Field Nos. 28 and 60 to, among other matters, create an Increment Name covering "Seasonal" sales to characterize power sales made for longer than one month, but less than a year.<sup>8</sup> This proposal was opposed in comments filed by EEI, Reliant and Occidental. In Order No.

Name, Term Name, Increment Name, Increment Peaking Name, Increment Peaking Name, Product Type Name, Product Name, Rate (actual, maximum, minimum or description), and Time Zone. The Commission requires that Class Name, Term Name, Increment Name, Increment Peaking Name, Product Type Name, Product Name, and Time Zone be reported in the EQR for every product offered under every jurisdictional contract. Additionally, the Commission requires a definition of the rate for every product either as a Rate, a Rate Minimum, a Rate Maximum or a Rate Description. Finally, the Commission requires that companies report, when specified in the contract for a given product, Quantity, Units, Rate Units, Point of Receipt, Control Area, Point of Receipt Specific Location, Point of Delivery Control Area, Point of Delivery Specific Location, Begin Date, and End Date.

<sup>7</sup> Revised Public Utility Filing Requirements for Electric Quarterly Reports, 72 Fed. Reg. 26091 (May 8, 2007), FERC Stats. & Regs. ¶ 35,050 (2007) (EQR Notice).

<sup>8</sup> EQR Notice at P. 18.

2001-G, the Commission agreed with the commenters that the term "S—Seasonal" should not be included in the options available for the Increment Name fields. However, in the issued Order No. 2001-G, when the term "Seasonal" was dropped from the Data Dictionary, the interval to be included in "Monthly" should have been adjusted in the attached Data Dictionary, so there would be no gap between "Monthly" and "Annual." Unfortunately, this correction was inadvertently omitted.

15. On December 4, 2007, TransAlta filed comments alerting the Commission to this problem.

#### Commission Conclusion

16. We will take this opportunity to correct the inadvertent error in Order No. 2001-G involving Increment Name, so that filers can accurately report their sales covering a period of more than 168 consecutive hours up to one year as M-Monthly (>168 consecutive hours and < 1 year).

#### D. Field No. 37—Rate Description

17. The EQR Notice proposed defining Rate Description as a "[t]ext description of rate. May reference FERC tariff, or, if a discounted or negotiated rate, include algorithm." EEI filed comments in response to the EQR Notice requesting that filers be allowed to enter the tariff location into the Rate Description field in lieu of a detailed description of the rate itself. EEI supported this request by citing the difficulty of putting complex rates into the 150 character field. In Order No. 2001-G, the Commission stated that the EQR fulfills the Commission's statutory obligation under the Federal Power Act (FPA) to have companies' rates on file. We further stated that the Commission relies on the EQR to satisfy the FPA requirement that rates provided in a contract be publicly disclosed and on file. Thus, we concluded that it is imperative that the information reported in EQRs provide an adequate level of detail and transparency.

18. The Commission also stated in Order No. 2001-G that a tariff reference alone, instead of the actual rate description, does not meet the FPA standard. Allowing filers to substitute a tariff reference in place of an actual rate description would force EQR users seeking this information to conduct further research to track down the contents of the tariff on file. This is clearly less transparent than a rate description that actually describes the rate. We also explained that, if the tariff reference is coupled with a descriptive summary of the rate, where the rate is

the function of a complex algorithm, the standard is met. Further, we explained that rate information will continue to be available to the public at a level sufficient to explain the bases and methods of calculation with additional detail available upon request to interested persons.

19. On rehearing, EEI argues that, in the case of cost-based rates, the FPA requirement that rates be on file is satisfied by separate on-the-record Commission filings, so it is not necessary to provide a rate description in the EQR to satisfy the FPA. Thus, it argues, a reference to the rate schedule number and page is sufficient for EQR purposes, without any text description of the rate.

#### Commission Conclusion

20. Prior to the adoption of Order No. 2001, public utilities satisfied the FPA requirement to have their rates on file with the Commission without filing EQRs (which had not yet been established). Thus, EEI is correct that the EQR filings are not the sole means by which this legal requirement can be met. However, section 205(c) provides the Commission with wide discretion on how companies are to file their rates and, in Order No. 2001, the Commission established the EQR as a means to ensure compliance with the FPA, and to provide a mechanism for the public to inspect and review the pertinent terms and conditions of public utilities' contracts and transactions in an electronic format that afforded greater transparency and accessibility to this information.<sup>9</sup>

21. When this issue first was considered in Order No. 2001-G, it centered on the question of whether 150 characters would be sufficient to provide all the information needed to accurately describe a public utility's rates. After consideration of EEI's arguments and the problem of fitting an accurate rate description into 150 characters without sacrificing transparency, we are persuaded to revise the definition for Rate Description to include a provision that relates to a rate that is currently on file with the Commission. The Commission will define Rate Description as "[t]ext description of rate. If the rate is currently available on the FERC Web site, a citation of the FERC Accession Number and the relevant FERC tariff including page number or section may be included instead of providing the entire rate algorithm. If the rate is not available on the FERC Web site, include the rate algorithm, if rate is calculated.

<sup>9</sup> See, for example, Order No. 2001 at P. 95.

If the algorithm would exceed the 150 character field limit, it may be provided in a descriptive summary (including bases and methods of calculations) with a detailed citation of the relevant FERC tariff including page number and section. If more than 150 characters are required, the contract product may be repeated in subsequent lines of data until the rate is adequately described." With this revision of Rate Description, EQR filers may provide the necessary information without sacrificing transparency.

### III. Document Availability

22. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the

Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

23. From the Commission's Home Page on the Internet, this information is available in the eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type "RM01-8" in the docket number field. User assistance is available for eLibrary and the Commission's website during the Commission's normal business hours. For assistance contact the Commission's Online Support services at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-

free at (866) 208-3676, or for TTY, contact (202) 502-8659.

#### The Commission orders:

(A) EEI's request for rehearing or clarification is hereby granted in part, and denied in part, as discussed in the body of this order.

(B) TransAlta's request for clarification is hereby granted, as discussed in the body of this order.

(C) The revised definitions adopted in this order shall be applied to EQR filings beginning with the Q1 2008 EQR (due on April 30, 2008) and in subsequent EQR filings due thereafter.

By the Commission.

**Kimberly D. Bose,**  
Secretary.

#### Attachment

*Electric Quarterly Report Data Dictionary Version 1.0 (Issued —)*

### EQR DATA DICTIONARY

Field No.	Field	Required	Value	Definition
<b>ID Data</b>				
1 .....	Filer Unique Identifier.	✓ .....	FR1 .....	(Respondent)—An identifier (i.e., "FR1") used to designate a record containing Respondent identification information in a comma-delimited (csv) file that is imported into the EQR filing. Only one record with the FR1 identifier may be imported into an EQR for a given quarter.
1 .....	Filer Unique Identifier.	✓ .....	FS# (where "#" is an integer).	(Seller)—An identifier (e.g., "FS1", "FS2") used to designate a record containing Seller identification information in a comma-delimited (csv) file that is imported into the EQR filing. One record for each seller company may be imported into an EQR for a given quarter.
1 .....	Filer Unique Identifier.	✓ .....	FA1 .....	(Agent)—An identifier (i.e., "FA1") used to designate a record containing Agent identification information in a comma-delimited (csv) file that is imported into the EQR filing. Only one record with the FA1 identifier may be imported into an EQR for a given quarter.
2 .....	Company Name .....	✓ .....	Unrestricted text (100 characters).	(Respondent)—The name of the company taking responsibility for complying with the Commission's regulations related to the EQR.
2 .....	Company Name .....	✓ .....	Unrestricted text (100 characters).	(Seller)—The name of the company that is authorized to make sales as indicated in the company's FERC tariff(s). This name may be the same as the Company Name of the Respondent.
2 .....	Company Name .....	✓ .....	Unrestricted text (100 characters).	(Agent)—The name of the entity completing the EQR filing. The Agent's Company Name need not be the name of the company under Commission jurisdiction.
3 .....	Company DUNS Number.	for Respondent and Seller.	Nine digit number ..	The unique nine digit number assigned by Dun and Bradstreet to the company identified in Field Number 2.
4 .....	Contact Name .....	✓ .....	Unrestricted text (50 characters).	(Respondent)—Name of the person at the Respondent's company taking responsibility for compliance with the Commission's EQR regulations.
4 .....	Contact Name .....	✓ .....	Unrestricted text (50 characters).	(Seller)—The name of the contact for the company authorized to make sales as indicated in the company's FERC tariff(s). This name may be the same as the Contact Name of the Respondent.
4 .....	Contact Name .....	✓ .....	Unrestricted text (50 characters).	(Agent)—Name of the contact for the Agent, usually the person who prepares the filing.
5 .....	Contact Title .....	✓ .....	Unrestricted text (50 characters).	Title of contact identified in Field Number 4.
6 .....	Contact Address .....	✓ .....	Unrestricted text .....	Street address for contact identified in Field Number 4.
7 .....	Contact City .....	✓ .....	Unrestricted text (30 characters).	City for the contact identified in Field Number 4.
8 .....	Contact State .....	✓ .....	Unrestricted text (2 characters).	Two character state or province abbreviations for the contact identified in Field Number 4.

## EQR DATA DICTIONARY—Continued

Field No.	Field	Required	Value	Definition
9 .....	Contact Zip .....	✓ .....	Unrestricted text (10 characters).	Zip code for the contact identified in Field Number 4.
10 .....	Contact Country Name.	✓ .....	CA—Canada ..... MX—Mexico US—United States UK—United Kingdom.	Country (USA, Canada, Mexico, or United Kingdom) for contact address identified in Field Number 4.
11 .....	Contact Phone .....	✓ .....	Unrestricted text (20 characters).	Phone number of contact identified in Field Number 4.
12 .....	Contact E-Mail .....	✓ .....	Unrestricted text .....	E-mail address of contact identified in Field Number 4.
13 .....	Filing Quarter .....	✓ .....	YYYYMM .....	A six digit reference number used by the EQR software to indicate the quarter and year of the filing for the purpose of importing data from csv files: The first 4 numbers represent the year (e.g., 2007). The last 2 numbers represent the last month of the quarter (e.g., 03 = 1st quarter; 06 = 2nd quarter, 09 = 3rd quarter, 12 = 4th quarter).

## Contract Data

14 .....	Contract Unique ID	✓ .....	An integer preceded by the letter "C" (only used when importing contract data)	An identifier beginning with the letter "C" and followed by a number (e.g., "C1", "C2") used to designate a record containing contract information in a comma-delimited (csv) file that is imported into the EQR filing. One record for each contract product may be imported into an EQR for a given quarter.
15 .....	Seller Company Name.	✓ .....	Unrestricted text (100 characters).	The name of the company that is authorized to make sales as indicated in the company's FERC tariff(s). This name must match the name provided as a Seller's "Company Name" in Field Number 2 of the ID Data (Seller Data).
16 .....	Customer Company Name.	✓ .....	Unrestricted text (70 characters).	The name of the counterparty.
17 .....	Customer DUNS Number.	✓ .....	Nine digit number ..	The unique nine digit number assigned by Dun and Bradstreet to the company identified in Field Number 16.
18 .....	Contract Affiliate ...	✓ .....	Y (Yes) ..... N (No) .....	The customer is an affiliate if it controls, is controlled by or is under common control with the seller. This includes a division that operates as a functional unit. A customer of a seller who is an Exempt Wholesale Generator may be defined as an affiliate under the Public Utility Holding Company Act and the FPA.
19 .....	FERC Tariff Reference.	✓ .....	Unrestricted text (60 characters).	The FERC tariff reference cites the document that specifies the terms and conditions under which a Seller is authorized to make transmission sales, power sales or sales of related jurisdictional services at cost-based rates or at market-based rates. If the sales are market-based, the tariff that is specified in the FERC order granting the Seller Market Based Rate Authority must be listed.
20 .....	Contract Service Agreement ID.	✓ .....	Unrestricted text (30 characters).	Unique identifier given to each service agreement that can be used by the filing company to produce the agreement, if requested. The identifier may be the number assigned by FERC for those service agreements that have been filed with and accepted by the Commission, or it may be generated as part of an internal identification system.
21 .....	Contract Execution Date.	✓ .....	YYYYMMDD .....	The date the contract was signed. If the parties signed on different dates, use the most recent date signed.
22 .....	Contract Commencement Date.	✓ .....	YYYYMMDD .....	The date the terms of the contract reported in the EQR were effective. If the terms reported in the Contract Data section of the EQR became effective or if service under those terms began on multiple dates (i.e.: due to an amendment), the date to be reported as the Commencement Date is the date when service began pursuant to the most recent amendment to the terms reported in the Contract Data section of the EQR.
23 .....	Contract Termination Date.	If specified in the contract.	YYYYMMDD .....	The date that the contract expires.
24 .....	Actual Termination Date.	If contract terminated.	YYYYMMDD .....	The date the contract actually terminates.
25 .....	Extension Provision Description.	✓ .....	Unrestricted text .....	Description of terms that provide for the continuation of the contract.
26 .....	Class Name .....	✓ .....	.....	See definitions of each class name below.
26 .....	Class Name .....	✓ .....	F—Firm .....	For transmission sales, a service or product that always has priority over non-firm service. For power sales, a service or product that is not interruptible for economic reasons.

## EQR DATA DICTIONARY—Continued

Field No.	Field	Required	Value	Definition
26 .....	Class Name .....	✓ .....	NF—Non-firm .....	For transmission sales, a service that is reserved and/or scheduled on an as-available basis and is subject to curtailment or interruption at a lesser priority compared to Firm service. For an energy sale, a service or product for which delivery or receipt of the energy may be interrupted for any reason or no reason, without liability on the part of either the buyer or seller.
26 .....	Class Name .....	✓ .....	UP—Unit Power Sale.	Designates a dedicated sale of energy and capacity from one or more than one specified generation unit(s).
26 .....	Class Name .....	✓ .....	N/A—Not Applicable.	To be used only when the other available Class Names do not apply.
27 .....	Term Name .....	✓ .....	LT—Long Term ..... ST—Short Term ..... N/A—Not Applicable.	Contracts with durations of one year or greater are long-term. Contracts with shorter durations are short-term.
28 .....	Increment Name ....	✓ .....	.....	See definitions for each increment below.
28 .....	Increment Name ....	✓ .....	H—Hourly .....	Terms of the contract (if specifically noted in the contract) set for up to 6 consecutive hours ( $\leq 6$ consecutive hours).
28 .....	Increment Name ....	✓ .....	D—Daily .....	Terms of the contract (if specifically noted in the contract) set for more than 6 and up to 60 consecutive hours ( $> 6$ and $\leq 60$ consecutive hours).
28 .....	Increment Name ....	✓ .....	W—Weekly .....	Terms of the contract (if specifically noted in the contract) set for over 60 consecutive hours and up to 168 consecutive hours ( $> 60$ and $\leq 168$ consecutive hours).
28 .....	Increment Name ....	✓ .....	M—Monthly .....	Terms of the contract (if specifically noted in the contract) set for more than 168 consecutive hours up to, but not including, one year ( $> 168$ consecutive hours and $< 1$ year).
28 .....	Increment Name ....	✓ .....	Y—Yearly .....	Terms of the contract (if specifically noted in the contract) set for one year or more ( $\geq 1$ year).
28 .....	Increment Name ....	✓ .....	N/A—Not Applicable.	Terms of the contract do not specify an increment.
29 .....	Increment Peaking Name.	✓ .....	.....	See definitions for each increment peaking name below.
29 .....	Increment Peaking Name.	✓ .....	FP—Full Period ....	The product described may be sold during those hours designated as on-peak and off-peak in the NERC region of the point of delivery.
29 .....	Increment Peaking Name.	✓ .....	OP—Off-Peak .....	The product described may be sold only during those hours designated as off-peak in the NERC region of the point of delivery.
29 .....	Increment Peaking Name.	✓ .....	P—Peak .....	The product described may be sold only during those hours designated as on-peak in the NERC region of the point of delivery.
29 .....	Increment Peaking Name.	✓ .....	N/A—Not Applicable.	To be used only when the increment peaking name is not specified in the contract.
30 .....	Product Type Name	✓ .....	.....	See definitions for each product type below.
30 .....	Product Type Name	✓ .....	CB—Cost Based ....	Energy or capacity sold under a FERC-approved cost-based rate tariff.
30 .....	Product Type Name	✓ .....	CR—Capacity Reassignment.	An agreement under which a transmission provider sells, assigns or transfers all or portion of its rights to an eligible customer.
30 .....	Product Type Name	✓ .....	MB—Market Based	Energy or capacity sold under the seller's FERC-approved market-based rate tariff.
30 .....	Product Type Name	✓ .....	T—Transmission ....	The product is sold under a FERC-approved transmission tariff.
30 .....	Product Type Name	✓ .....	Other .....	The product cannot be characterized by the other product type names.
31 .....	Product Name .....	✓ .....	See Product Name Table, Appendix A.	Description of product being offered.
32 .....	Quantity .....	If specified in the contract.	Number with up to 4 decimals.	Quantity for the contract product identified.
33 .....	Units .....	If specified in the contract.	See Units Table, Appendix E.	Measure stated in the contract for the product sold.
34 .....	Rate .....	.....	Number with up to 4 decimals.	The charge for the product per unit as stated in the contract.
35 .....	Rate Minimum .....	One of four rate fields (34, 35, 36, or 37) must be included.	Number with up to 4 decimals.	Maximum rate to be charged per the contract, if a range is specified.
36 .....	Rate Maximum .....	.....	Number with up to 4 decimals.	Maximum rate to be charged per the contract, if a range is specified.

## EQR DATA DICTIONARY—Continued

Field No.	Field	Required	Value	Definition
37 .....	Rate Description ....		Unrestricted text .....	Text description of rate. If the rate is currently available on the FERC Web site, a citation of the FERC Accession Number and the relevant FERC tariff including page number or section may be included instead of providing the entire rate algorithm. If the rate is not available on the FERC Web site, include the rate algorithm, if rate is calculated. If the algorithm would exceed the 150 character field limit, it may be provided in a descriptive summary (including bases and methods of calculations) with a detailed citation of the relevant FERC tariff including page number and section. If more than 150 characters are required, the contract product may be repeated in a subsequent line of data until the rate is adequately described.
38 .....	Rate Units .....	If specified in the contract.	See Rate Units Table, Appendix F.	Measure stated in the contract for the product sold.
39 .....	Point of Receipt Balancing Authority (PORBA).	If specified in the contract.	See Balancing Authority Table, Appendix B.	The registered NERC Balancing Authority (formerly called NERC Control Area) where service begins for a transmission or transmission-related jurisdictional sale. The Balancing Authority will be identified with the abbreviation used in OASIS applications. If receipt occurs at a trading hub specified in the EQR software, the term "Hub" should be used.
40 .....	Point of Receipt Specific Location (PORSL).	If specified in the contract.	Unrestricted text (50 characters). If "HUB" is selected for PORCA, see Hub Table, Appendix C.	The specific location at which the product is received if designated in the contract. If receipt occurs at a trading hub, a standardized hub name must be used. If more points of receipt are listed in the contract than can fit into the 50 character space, a description of the collection of points may be used. "Various," alone, is unacceptable unless the contract itself uses that terminology.
41 .....	Point of Delivery Balancing Authority (PODBA).	If specified in the contract.	See Balancing Authority Table, Appendix B.	The registered NERC Balancing Authority (formerly called NERC Control Area) where a jurisdictional product is delivered and/or service ends for a transmission or transmission-related jurisdictional sale. The Balancing Authority will be identified with the abbreviation used in OASIS applications. If delivery occurs at the interconnection of two control areas, the control area that the product is entering should be used. If delivery occurs at a trading hub specified in the EQR software, the term "Hub" should be used.
42 .....	Point of Delivery Specific Location (PODSL).	If specified in the contract.	Unrestricted text (50 characters). If "HUB" is selected for PODCA, see Hub Table, Appendix C.	The specific location at which the product is delivered if designated in the contract. If receipt occurs at a trading hub, a standardized hub name must be used.
43 .....	Begin Date .....	If specified in the contract.	YYYYMMDDHHMM	First date for the sale of the product at the rate specified.
44 .....	End Date .....	If specified in the contract.	YYYYMMDDHHMM	Last date for the sale of the product at the rate specified.
45 .....	Time Zone .....	✓ .....	See Time Zone Table, Appendix D.	The time zone in which the sales will be made under the contract.

## Transaction Data

46 .....	Transaction Unique ID.	✓ .....	An integer preceded by the letter "T" (only used when importing transaction data).	An identifier beginning with the letter "T" and followed by a number (e.g., "T1", "T2") used to designate a record containing transaction information in a comma-delimited (csv) file that is imported into the EQR filing. One record for each transaction record may be imported into an EQR for a given quarter. A new transaction record must be used every time a price changes in a sale.
47 .....	Seller Company Name.	✓ .....	Unrestricted text (100 Characters).	The name of the company that is authorized to make sales as indicated in the company's FERC tariff(s). This name must match the name provided as a Seller's "Company Name" in Field 2 of the ID Data (Seller Data).
48 .....	Customer Company Name.	✓ .....	Unrestricted text (70 Characters).	The name of the counterparty.
49 .....	Customer DUNS Number.	✓ .....	Nine digit number ..	The unique nine digit number assigned by Dun and Bradstreet to the counterparty to the contract.



## EQR DATA DICTIONARY—Continued

Field No.	Field	Required	Value	Definition
50 .....	FERC Tariff Reference.	✓ .....	Unrestricted text (60 Characters).	The FERC tariff reference cites the document that specifies the terms and conditions under which a Seller is authorized to make transmission sales, power sales or sales of related jurisdictional services at cost-based rates or at market-based rates. If the sales are market-based, the tariff that is specified in the FERC order granting the Seller Market Based Rate Authority must be listed.
51 .....	Contract Service Agreement ID.	✓ .....	Unrestricted text (30 Characters).	Unique identifier given to each service agreement that can be used by the filing company to produce the agreement, if requested. The identifier may be the number assigned by FERC for those service agreements that have been filed and approved by the Commission, or it may be generated as part of an internal identification system.
52 .....	Transaction Unique Identifier.	✓ .....	Unrestricted text (24 Characters).	Unique reference number assigned by the seller for each transaction.
53 .....	Transaction Begin Date.	✓ .....	YYYYMMDDHHMM (csv import). MMDDYYYYHHMM (manual entry).	First date and time the product is sold during the quarter.
54 .....	Transaction End Date.	✓ .....	YYYYMMDDHHMM (csv import). MMDDYYYYHHMM (manual entry).	Last date and time the product is sold during the quarter.
55 .....	Time Zone .....	✓ .....	See Time Zone Table, Appendix D.	The time zone in which the sales will be made under the contract.
56 .....	Point of Delivery Balancing Authority (PODBA).	✓ .....	See Balancing Authority Table, Appendix B.	The registered NERC Balancing Authority (formerly called NERC Control Area) abbreviation used in OASIS applications.
57 .....	Point of Delivery Specific Location (PODSL).	✓ .....	Unrestricted text (50 characters). If "HUB" is selected for PODBA, see Hub Table, Appendix C.	The specific location at which the product is delivered. If receipt occurs at a trading hub, a standardized hub name must be used.
58 .....	Class Name .....	✓ .....	.....	See class name definitions below.
58 .....	Class Name .....	✓ .....	F—Firm .....	A sale, service or product that is not interruptible for economic reasons.
58 .....	Class Name .....	✓ .....	NF—Non-firm .....	A sale for which delivery or receipt of the energy may be interrupted for any reason or no reason, without liability on the part of either the buyer or seller.
58 .....	Class Name .....	✓ .....	UP—Unit Power Sale.	Designates a dedicated sale of energy and capacity from one or more than one specified generation unit(s).
58 .....	Class Name .....	✓ .....	BA—Billing Adjustment.	Designates an incremental material change to one or more transactions due to a change in settlement results. "BA" may be used in a refile after the next quarter's filing is due to reflect the receipt of new information. It may not be used to correct an inaccurate filing.
58 .....	Class Name .....	✓ .....	N/A—Not Applicable.	To be used only when the other available class names do not apply.
59 .....	Term Name .....	✓ .....	LT—Long Term .....	Power sales transactions with durations of one year or greater are long-term. Transactions with shorter durations are short-term.
			ST—Short Term .....	
			N/A—Not Applicable.	
60 .....	Increment Name .....	✓ .....	.....	See increment name definitions below.
60 .....	Increment Name .....	✓ .....	H—Hourly .....	Terms of the particular sale set for up to 6 consecutive hours (≤ 6 consecutive hours) Includes LMP based sales in ISO/RTO markets.
60 .....	Increment Name .....	✓ .....	D—Daily .....	Terms of the particular sale set for more than 6 and up to 60 consecutive hours (> 6 and ≤ 60 consecutive hours) Includes sales over a peak or off-peak block during a single day.
60 .....	Increment Name .....	✓ .....	W—Weekly .....	Terms of the particular sale set for over 60 consecutive hours and up to 168 consecutive hours (> 60 and ≤ 168 consecutive hours). Includes sales for a full week and sales for peak and off-peak blocks over a particular week.
60 .....	Increment Name .....	✓ .....	M—Monthly .....	Terms of the particular sale set for set for more than 168 consecutive hours up to, but not including, one year (>168 consecutive hours and < 1 year). Includes sales for full month or multi-week sales during a given month.

## EQR DATA DICTIONARY—Continued

Field No.	Field	Required	Value	Definition
60 .....	Increment Name ....	✓ .....	Y—Yearly .....	Terms of the particular sale set for one year or more ( $\geq 1$ year). Includes all long-term contracts with defined pricing terms (fixed-price, formula, or index).
60 .....	Increment Name ....	✓ .....	DN/A—Not Applicable.	To be used only when other available increment names do not apply.
61 .....	Increment Peaking Name.	✓ .....	See definitions for increment peaking below.	
61 .....	Increment Peaking Name.	✓ .....	FP—Full Period ....	The product described was sold during Peak and Off-Peak hours.
61 .....	Increment Peaking Name.	✓ .....	OP—Off-Peak .....	The product described was sold only during those hours designated as off-peak in the NERC region of the point of delivery.
61 .....	Increment Peaking Name.	✓ .....	P—Peak .....	The product described was sold only during those hours designated as on-peak in the NERC region of the point of delivery.
61 .....	Increment Peaking Name.	✓ .....	N/A—Not Applicable.	To be used only when the other available increment peaking names do not apply.
62 .....	Product Name .....	✓ .....	See Product Names Table, Appendix A.	Description of product being offered.
63 .....	Transaction Quantity.	✓ .....	Number with up to 4 decimals.	The quantity of the product in this transaction.
64 .....	Price .....	✓ .....	Number with up to 6 decimals.	Actual price charged for the product per unit. The price reported cannot be averaged or otherwise aggregated.
65 .....	Rate Units .....	✓ .....	See Rate Units Table, Appendix F.	Measure appropriate to the price of the product sold.
66 .....	Total Transmission Charge.	✓ .....	Number with up to 2 decimals.	Payments received for transmission services when explicitly identified.
67 .....	Total Transaction Charge.	✓ .....	Number with up to 2 decimals.	Transaction Quantity (Field 63) times Price (Field 64) plus Total Transmission Charge (Field 66).

## EQR DATA DICTIONARY—APPENDIX A. PRODUCT NAMES

Product name	Contract product	Transaction product	Definition
BLACK START SERVICE .....	✓	✓	Service available after a system-wide blackout where a generator participates in system restoration activities without the availability of an outside electric supply (Ancillary Service).
BOOKED OUT POWER .....		✓	Energy or capacity contractually committed bilaterally for delivery but not actually delivered due to some offsetting or countervailing trade (Transaction only).
CAPACITY .....	✓	✓	A quantity of demand that is charged on a \$/KW or \$/MW basis.
CUSTOMER CHARGE .....	✓	✓	Fixed contractual charges assessed on a per customer basis that could include billing service.
DIRECT ASSIGNMENT FACILITIES CHARGE.	✓		Charges for facilities or portions of facilities that are constructed or used for the sole use/benefit of a particular customer.
EMERGENCY ENERGY .....	✓		Contractual provisions to supply energy or capacity to another entity during critical situations.
ENERGY .....	✓	✓	A quantity of electricity that is sold or transmitted over a period of time.
ENERGY IMBALANCE .....	✓	✓	Service provided when a difference occurs between the scheduled and the actual delivery of energy to a load obligation.
EXCHANGE .....	✓	✓	Transaction whereby the receiver accepts delivery of energy for a supplier's account and returns energy at times, rates, and in amounts as mutually agreed if the receiver is not an RTO/ISO.
FUEL CHARGE .....	✓	✓	Charge based on the cost or amount of fuel used for generation.
GRANDFATHERED BUNDLED .....	✓	✓	Services provided for bundled transmission, ancillary services and energy under contracts effective prior to Order No. 888's OATTs.
INTERCONNECTION AGREEMENT .....	✓		Contract that provides the terms and conditions for a generator, distribution system owner, transmission owner, transmission provider, or transmission system to physically connect to a transmission system or distribution system.
MEMBERSHIP AGREEMENT .....	✓		Agreement to participate and be subject to rules of a system operator.
MUST RUN AGREEMENT .....	✓		An agreement that requires a unit to run.

## EQR DATA DICTIONARY—APPENDIX A. PRODUCT NAMES—Continued

Product name	Contract product	Transaction product	Definition
NEGOTIATED-RATE TRANSMISSION .....	✓	✓	Transmission performed under a negotiated rate contract (applies only to merchant transmission companies).
NETWORK .....	✓		Transmission service under contract providing network service.
NETWORK OPERATING AGREEMENT ....	✓		An executed agreement that contains the terms and conditions under which a network customer operates its facilities and the technical and operational matters associated with the implementation of network integration transmission service.
OTHER:.....	✓	✓	Product name not otherwise included.
POINT-TO-POINT AGREEMENT .....	✓		Transmission service under contract between specified Points of Receipt and Delivery.
REACTIVE SUPPLY & VOLTAGE CONTROL	✓	✓	Production or absorption of reactive power to maintain voltage levels on transmission systems (Ancillary Service).
REAL POWER TRANSMISSION LOSS .....	✓	✓	The loss of energy, resulting from transporting power over a transmission system.
REGULATION & FREQUENCY RESPONSE.	✓	✓	Service providing for continuous balancing of resources (generation and interchange) with load, and for maintaining scheduled interconnection frequency by committing on-line generation where output is raised or lowered and by other non-generation resources capable of providing this service as necessary to follow the moment-by-moment changes in load (Ancillary Service).
REQUIREMENTS SERVICE .....	✓	✓	Firm, load-following power supply necessary to serve a specified share of customer's aggregate load during the term of the agreement. Requirements service may include some or all of the energy, capacity and ancillary service products. (If the components of the requirements service are priced separately, they should be reported separately in the transactions tab.)
SCHEDULE SYSTEM CONTROL & DISPATCH.	✓	✓	Scheduling, confirming and implementing an interchange schedule with other Balancing Authorities, including intermediary Balancing Authorities providing transmission service, and ensuring operational security during the interchange transaction (Ancillary Service).
SPINNING RESERVE .....	✓	✓	Unloaded synchronized generating capacity that is immediately responsive to system frequency and that is capable of being loaded in a short time period or non-generation resources capable of providing this service (Ancillary Service).
SUPPLEMENTAL RESERVE .....	✓	✓	Service needed to serve load in the event of a system contingency, available with greater delay than SPINNING RESERVE. This service may be provided by generating units that are on-line but unloaded, by quick-start generation, or by interruptible load or other non-generation resources capable of providing this service (Ancillary Service).
SYSTEM OPERATING AGREEMENTS .....	✓		An executed agreement that contains the terms and conditions under which a system or network customer shall operate its facilities and the technical and operational matters associated with the implementation of network.
TOLLING ENERGY .....	✓	✓	Energy sold from a plant whereby the buyer provides fuel to a generator (seller) and receives power in return for pre-established fees.
TRANSMISSION OWNERS AGREEMENT	✓		The agreement that establishes the terms and conditions under which a transmission owner transfers operational control over designated transmission facilities.
UPLIFT .....	✓	✓	A make-whole payment by an RTO/ISO to a utility.

## EQR DATA DICTIONARY—APPENDIX B. BALANCING AUTHORITY

Balancing authority	Abbreviation	Outside US *
AESC, LLC—Wheatland CIN .....	AEWC	.....
Alabama Electric Cooperative, Inc .....	AEC	.....
Alberta Electric System Operator .....	AESO	✓
Alliant Energy Corporate Services, LLC—East .....	ALTE	.....
Alliant Energy Corporate Services, LLC—West .....	ALTW	.....
Ameren Transmission .....	AMRN	.....
Ameren Transmission, Illinois .....	AMIL	.....
Ameren Transmission, Missouri .....	AMMO	.....
American Transmission Systems, Inc .....	FE	.....
Aquila Networks—Kansas .....	WPEK	.....
Aquila Networks—Missouri Public Service .....	MPS	.....

## EQR DATA DICTIONARY—APPENDIX B. BALANCING AUTHORITY—Continued

Balancing authority	Abbreviation	Outside US*
Aquila Networks—West Plains Dispatch	WPEC	
Arizona Public Service Company	AZPS	
Associated Electric Cooperative, Inc	AECI	
Avista Corp	AVA	
Batesville Balancing Authority	BBA	
Big Rivers Electric Corp	BREC	
Board of Public Utilities	KACY	
Bonneville Power Administration Transmission	BPAT	
British Columbia Transmission Corporation	BCTC	✓
California Independent System Operator	CISO	
Carolina Power & Light Company—CPLW	CPLW	
Carolina Power and Light Company—East	CPLE	
Central and Southwest	CSWS	
Central Illinois Light Co	CILC	
Chelan County PUD	CHPD	
Cinergy Corporation	CIN	
City of Homestead	HST	
City of Independence P&L Dept	INDN	
City of Tallahassee	TAL	
City Water Light & Power	CWLP	
Cleco Power LLC	CLEC	
Columbia Water & Light	CWLD	
Comision Federal de Electricidad	CFE	✓
Constellation Energy Control and Dispatch—Arkansas	PUPP	
Constellation Energy Control and Dispatch—City of Benton, AR	BUBA	
Constellation Energy Control and Dispatch—City of Ruston, LA	DERS	
Constellation Energy Control and Dispatch—Conway, Arkansas	CNWW	
Constellation Energy Control and Dispatch—Gila River	GRMA	
Constellation Energy Control and Dispatch—Harquehala	HGMA	
Constellation Energy Control and Dispatch—North Little Rock, AR	DENL	
Constellation Energy Control and Dispatch—West Memphis, Arkansas	WMUC	
Dairyland Power Cooperative	DPC	
DECA, LLC—Arlington Valley	DEAA	
Duke Energy Corporation	DUK	
East Kentucky Power Cooperative, Inc	EKPC	
El Paso Electric	EPE	
Electric Energy, Inc	EEI	
Empire District Electric Co., The	EDE	
Entergy	EES	
ERCOT ISO	ERCO	
Florida Municipal Power Pool	FMPP	
Florida Power & Light	FPL	
Florida Power Corporation	FPC	
Gainesville Regional Utilities	GVL	
Georgia System Operations Corporation	GSOC	
Georgia Transmission Corporation	GTC	
Grand River Dam Authority	GRDA	
Grant County PUD No. 2	GCPD	
Great River Energy	GRE	
Great River Energy	GREC	
Great River Energy	GREN	
Great River Energy	GRES	
GridAmerica	GA	
Hoosier Energy	HE	
Hydro-Quebec, TransEnergie	HQT	✓
Idaho Power Company	IPCO	
Illinois Power Co	IP	
Illinois Power Co	IPRV	
Imperial Irrigation District	ID	
Indianapolis Power & Light Company	IPL	
ISO New England Inc	ISNE	
JEA	JEA	
Kansas City Power & Light, Co	KCPL	
Lafayette Utilities System	LAFA	
LG&E Energy Transmission Services	LGEE	
Lincoln Electric System	LES	
Los Angeles Department of Water and Power	LDWP	
Louisiana Energy & Power Authority	LEPA	
Louisiana Generating, LLC	LAGN	
Madison Gas and Electric Company	MGE	
Manitoba Hydro Electric Board, Transmission Services	MHEB	✓
Michigan Electric Coordinated System	MECS	

## EQR DATA DICTIONARY—APPENDIX B. BALANCING AUTHORITY—Continued

Balancing authority	Abbreviation	Outside US *
Michigan Electric Coordinated System—CONS	CONS	
Michigan Electric Coordinated System—DECO	DECO	
MidAmerican Energy Company	MEC	
Midwest ISO	MISO	
Minnesota Power, Inc	MP	
Montana-Dakota Utilities Co	MDU	
Muscatine Power and Water	MPW	
Nebraska Public Power District	NPPD	
Nevada Power Company	NEVP	
New Brunswick Power Corporation	NBPC	✓
New Horizons Electric Cooperative	NHC1	
New York Independent System Operator	NYIS	
North American Electric Reliability Council	TEST	
Northern Indiana Public Service Company	NIPS	
Northern States Power Company	NSP	
NorthWestern Energy	NWMT	
Ohio Valley Electric Corporation	OVEC	
Oklahoma Gas and Electric	OKGE	
Ontario—Independent Electricity Market Operator	IMO	✓
OPPD CA/TP	OPPD	
Otter Tail Power Company	OTP	
P.U.D. No. 1 of Douglas County	DOPD	
PacifiCorp-East	PACE	
PacifiCorp-West	PACW	
PJM Interconnection	PJM	
Portland General Electric	PGE	
Public Service Company of Colorado	PSCO	
Public Service Company of New Mexico	PNM	
Puget Sound Energy Transmission	PSEI	
Reedy Creek Improvement District	RC	
Sacramento Municipal Utility District	SMUD	
Salt River Project	SRP	
Santee Cooper	SC	
SaskPower Grid Control Centre	SPC	✓
Seattle City Light	SCL	
Seminole Electric Cooperative	SEC	
Sierra Pacific Power Co.—Transmission	SPPC	
South Carolina Electric & Gas Company	SCEG	
South Mississippi Electric Power Association	SME	
South Mississippi Electric Power Association	SMEE	
Southeastern Power Administration—Hartwell	SEHA	
Southeastern Power Administration—Russell	SERU	
Southeastern Power Administration—Thurmond	SETH	
Southern Company Services, Inc	SOCO	
Southern Illinois Power Cooperative	SIPC	
Southern Indiana Gas & Electric Co	SIGE	
Southern Minnesota Municipal Power Agency	SMP	
Southwest Power Pool	SWPP	
Southwestern Power Administration	SPA	
Southwestern Public Service Company	SPS	
Sunflower Electric Power Corporation	SECI	
Tacoma Power	TPWR	
Tampa Electric Company	TEC	
Tennessee Valley Authority ESO	TVA	
Trading Hub	HUB	
TRANSLink Management Company	TLKN	
Tucson Electric Power Company	TEPC	
Turlock Irrigation District	TIDC	
Upper Peninsula Power Co	UPPC	
Utilities Commission, City of New Smyrna Beach	NSB	
Westar Energy—MoPEP Cities	MOWR	
Western Area Power Administration—Colorado—Missouri	WACM	
Western Area Power Administration—Lower Colorado	WALC	
Western Area Power Administration—Upper Great Plains East	WAUE	
Western Area Power Administration—Upper Great Plains West	WAUW	
Western Farmers Electric Cooperative	WFEC	
Western Resources dba Westar Energy	WR	
Wisconsin Energy Corporation	WEC	
Wisconsin Public Service Corporation	WPS	
Yadkin, Inc	YAD	

\* Balancing authorities outside the United States may only be used in the Contract Data section to identify specified receipt/delivery points in jurisdictional transmission contracts.



EQR DATA DICTIONARY—APPENDIX C. HUB

HUB	Definition
ADHUB .....	The aggregated Locational Marginal Price ("LMP") nodes defined by PJM Interconnection, LLC as the AEP/Dayton Hub.
AEPGenHub .....	The aggregated Locational Marginal Price ("LMP") nodes defined by PJM Interconnection, LLC as the AEPGenHub.
COB .....	The set of delivery points along the California-Oregon border commonly identified as and agreed to by the counterparties to constitute the COB Hub.
Cinergy (into) .....	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Cinergy balancing authority.
Cinergy Hub (MISO) .....	The aggregated Elemental Pricing nodes ("Epnodes") nodes defined by the Midwest Independent Transmission System Operator, Inc., as Cinergy Hub (MISO).
Entergy (into) .....	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Entergy balancing authority.
FE Hub .....	The aggregated Elemental Pricing nodes ("Epnodes") nodes defined by the Midwest Independent Transmission System Operator, Inc., as FE Hub (MISO).
Four Corners .....	The set of delivery points at the Four Corners power plant commonly identified as and agreed to by the counterparties to constitute the Four Corners Hub.
Illinois Hub (MISO) .....	The aggregated Elemental Pricing nodes ("Epnodes") nodes defined by the Midwest Independent Transmission System Operator, Inc., as Illinois Hub (MISO).
Mead .....	The set of delivery points at or near Hoover Dam commonly identified as and agreed to by the counterparties to constitute the Mead Hub.
Michigan Hub (MISO) .....	The aggregated Elemental Pricing nodes ("Epnodes") nodes defined by the Midwest Independent Transmission System Operator, Inc., as Michigan Hub (MISO).
Mid-Columbia (Mid-C) .....	The set of delivery points along the Columbia River commonly identified as and agreed to by the counterparties to constitute the Mid-Columbia Hub.
Minnesota Hub (MISO) .....	The aggregated Elemental Pricing nodes ("Epnodes") nodes defined by the Midwest Independent Transmission System Operator, Inc., as Minnesota Hub (MISO).
NEPOOL (Mass Hub) .....	The aggregated Locational Marginal Price ("LMP") nodes defined by ISO New England Inc., as Mass Hub.
NIHUB .....	The aggregated Locational Marginal Price ("LMP") nodes defined by PJM Interconnection, LLC as the Northern Illinois Hub.
NOB .....	The set of delivery points along the Nevada-Oregon border commonly identified as and agreed to by the counterparties to constitute the NOB Hub.
NP15 .....	The set of delivery points north of Path 15 on the California transmission grid commonly identified as and agreed to by the counterparties to constitute the NP15 Hub.
NWMT .....	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Northwestern Energy Montana balancing authority.
PJM East Hub .....	The aggregated Locational Marginal Price nodes ("LMP") defined by PJM Interconnection, LLC as the PJM East Hub.
PJM South Hub .....	The aggregated Locational Marginal Price ("LMP") nodes defined by PJM Interconnection, LLC as the PJM South Hub.
PJM West Hub .....	The aggregated Locational Marginal Price ("LMP") nodes defined by PJM Interconnection, LLC as the PJM Western Hub.
Palo Verde .....	The switch yard at the Palo Verde nuclear power station west of Phoenix in Arizona. Palo Verde Hub includes the Hassayampa switchyard 2 miles south of Palo Verde.
SOCO (into) .....	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Southern Company balancing authority.
SP15 .....	The set of delivery points south of Path 15 on the California transmission grid commonly identified as and agreed to by the counterparties to constitute the SP15 Hub.
TVA (into) .....	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Tennessee Valley Authority balancing authority.
ZP26 .....	The set of delivery points associated with Path 26 on the California transmission grid commonly identified as and agreed to by the counterparties to constitute the ZP26 Hub.

EQR DATA DICTIONARY—APPENDIX D. TIME ZONE

Time zone	Definition
AD .....	Atlantic Daylight.
AP .....	Atlantic Prevailing.
AS .....	Atlantic Standard.
CD .....	Central Daylight.
CP .....	Central Prevailing.
CS .....	Central Standard.
ED .....	Eastern Daylight.
EP .....	Eastern Prevailing.
ES .....	Eastern Standard.
MD .....	Mountain Daylight.
MP .....	Mountain Prevailing.
MS .....	Mountain Standard.
NA .....	Not Applicable.
PD .....	Pacific Daylight.

EQR DATA DICTIONARY—APPENDIX D. TIME ZONE—Continued

Time zone	Definition
PP .....	Pacific Prevailing.
PS .....	Pacific Standard.
UT .....	Universal Time.

EQR DATA DICTIONARY—APPENDIX E. UNITS

Units	Definition
KV .....	Kilovolt.
KVA .....	Kilovolt Amperes.
KVR .....	Kilovar.
KW .....	Kilowatt.

EQR DATA DICTIONARY—APPENDIX E. UNITS—Continued

Units	Definition
KWH .....	Kilowatt Hour.
KW-DAY .....	Kilowatt Day.
KW-MO .....	Kilowatt Month.
KW-WK .....	Kilowatt Week.
KW-YR .....	Kilowatt Year.
MVAR-YR .....	Megavar Year.
MW .....	Megawatt.
MWH .....	Megawatt Hour.
MW-DAY .....	Megawatt Day.
MW-MO .....	Megawatt Month.
MW-WK .....	Megawatt Week.
MW-YR .....	Megawatt Year.
RKVA .....	Reactive Kilovolt Amperes.
FLAT RATE	Flat Rate.

EQR DATA DICTIONARY—APPENDIX F.  
RATE UNITS

Rate units	Definition
\$/KV .....	dollars per kilovolt.
\$/KVA .....	dollars per kilovolt amperes.
\$/KVR .....	dollars per kilovar.
\$/KW .....	dollars per kilowatt.
\$/KWH .....	dollars per kilowatt hour.
\$/KW-DAY .....	dollars per kilowatt day.
\$/KW-MO .....	dollars per kilowatt month.
\$/KW-WK .....	dollars per kilowatt week.
\$/KW-YR .....	dollars per kilowatt year.
\$/MW .....	dollars per megawatt.
\$/MWH .....	dollars per megawatt hour.
\$/MW-DAY .....	dollars per megawatt day.
\$/MW-MO .....	dollars per megawatt month.
\$/MW-WK .....	dollars per megawatt week.
\$/MW-YR .....	dollars per megawatt year.
\$/MVAR-YR .....	dollars per megavar year.
\$/RKVA .....	dollars per reactive kilovar amperes.
CENTS .....	cents.
CENTS/KVR .....	cents per kilovolt amperes.
CENTS/KWH .....	cents per kilowatt hour.
FLAT RATE .....	rate not specified in any other units.

[FR Doc. E8-184 Filed 1-9-08; 8:45 am]

BILLING CODE 6717-01-P

## FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice;  
Announcing a Partially Open Meeting  
of the Board of Directors

**TIME AND DATE:** The open meeting of the Board of Directors is scheduled to begin at 10 am on Tuesday, January 15, 2008. The closed portion of the meeting will follow immediately the open portion of the meeting.

**PLACE:** Board Room, First Floor, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

**STATUS:** The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

**MATTER TO BE CONSIDERED AT THE OPEN PORTION:** Federal Home Loan Bank of San Francisco—Waiver of Certain AHP Regulations to Permit Refinancing/Modification of Subprime Mortgage Loans.

**MATTER TO BE CONSIDERED AT THE CLOSED PORTION:** Periodic Update of Examination Program Development and Supervisory Findings.

**CONTACT PERSON FOR MORE INFORMATION:** Shelia Willis, Paralegal Specialist, Office of General Counsel, at 202-408-2876 or [williss@fhfb.gov](mailto:williss@fhfb.gov).

Dated: January 8, 2008.

By the Federal Housing Finance Board.  
Neil R. Crowley,  
Acting General Counsel.

[FR Doc. 08-85 Filed 1-8-08; 3:59 pm]

BILLING CODE 6725-01-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 application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 5, 2008.

**A. Federal Reserve Bank of Kansas City** (Todd Offerbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Young Partners, L.P., and its general partner, Young Corporation, and Citizens Bancshares Company, all of Chillicothe, Missouri, and First Community Bancshares, Inc., and FCB Acquisition Corp., both of Overland Park, Kansas;* to acquire NKC Bancshares, Inc., and thereby indirectly acquire Norbank, both of North Kansas City, Missouri. In connection with this application, FCB Acquisition Corp, has

applied to become a bank holding company by merging with NKC Bancshares Inc.

Board of Governors of the Federal Reserve System, January 7, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8-262 Filed 1-9-08; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND  
HUMAN SERVICESCenters for Disease Control and  
Prevention

[60Day-08-0008]

Proposed Data Collections Submitted  
for Public Comment and  
Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov).

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

## Proposed Project

Hazardous Substances Emergency Events Surveillance (HSEES)—Extension—(0923-0008), Agency for Toxic Substances and Disease Registry (ATSDR), Centers for Disease Control and Prevention (CDC).

## Background and Brief Description

The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated

pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances into the environment. The primary purpose of this activity, which ATSDR has supported since 1992, is to develop, implement, and maintain a state-based surveillance system for hazardous substances emergency events which can be used to (1) describe the distribution of the hazardous substances releases; (2) describe the public health consequences (morbidity, mortality, and evacuations) associated with the events; (3) develop strategies to reduce future public health consequences. The study population will consist of all hazardous substance non permitted acute releases within the 14 states (Colorado, Florida, Iowa,

Louisiana, Michigan, Minnesota, New Jersey, New York, North Carolina, Oregon, Texas, Utah, Washington, and Wisconsin) participating in the surveillance system.

Until this system was developed and implemented, there was no national public health-based surveillance system to coordinate the collation, analysis, and distribution of hazardous substances emergency release data to public health practitioners. It was necessary to establish this national surveillance system which describes the public health impact of hazardous substances emergencies on the health of the population of the United States. The data collection form will be completed by the state health department Hazardous Substances Emergency Events Surveillance (HSEES) coordinator using a variety of sources including written and oral reports from environmental protection agencies, police, firefighters, emergency response

personnel; or researched by the HSEES coordinator using material safety data sheets, and chemical handbooks. There is a reduction in the annual burden hours per response because of the reduction in number of states from 15 to 14 and because of a change in the case definition of an HSEES event in 2005, which excludes stack emissions of oxides of nitrogen (NO<sub>x</sub>), oxides of sulfur (SO<sub>x</sub>), and carbon monoxide (CO) when they are not mixed with another hazardous substance.

The HSEES public use data set is available on the ATSDR HSEES Web site. Interested parties complete a brief description of who will be using the data and for what purpose in order to download the data. This allows ATSDR to widely distribute the data and track its usefulness.

There is no cost to the respondents other than their time.

#### ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Participating State Health Department HSEES Coordinators .....	14	536	45/60	5,628
Persons interested in HSEES data through Web site .....	500	1	6/60	50
Total .....	514			5,678

Dated: January 4, 2008.

**Marilyn S. Radke,**

*Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E8-270 Filed 1-9-08; 8:45 am]

BILLING CODE 4163-18-P

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Food and Drug Administration

[Docket No. 2007D-0493]

##### International Conference on Harmonisation; Draft Guidance on Q8(R1) Pharmaceutical Development; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Q8(R1) Pharmaceutical Development Revision 1." The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of

Pharmaceuticals for Human Use (ICH).

The draft guidance is an annex to the parent ICH guidance entitled "Q8 Pharmaceutical Development" (71 FR 29344, May 22, 2006) (ICH Q8). It provides further clarification of key concepts outlined in ICH Q8 and describes the principles of quality by design (QbD). The draft guidance is intended to show how concepts and tools (e.g., design space) outlined in ICH Q8 could be put into practice by the applicant for all dosage forms.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by April 9, 2008.

**ADDRESSES:** Submit written comments on the draft guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to either <http://www.fda.gov/dockets/ecomments> or <http://www.regulations.gov>. Submit written requests for single copies of the draft guidance to the Division of Drug

Information (HFD-240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM-40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448. The draft guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 301-827-1800. Send two self-addressed adhesive labels to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance and other guidances mentioned in this document.

##### FOR FURTHER INFORMATION CONTACT:

*Regarding the guidance:* Moheb Nasr, Center for Drug Evaluation and Research (HFD-800), Food and Drug Administration, 10903 New Hampshire Ave., bldg. 21, rm. 2630, Silver Spring, MD 20993-0002, 301-796-1900; or Christopher Joneckis, Center for Biologics Evaluation and Research (HFM-20), Food and Drug Administration, 1401 Rockville Pike,

Rockville, MD 20852-1448, 301-435-5681.

*Regarding the ICH:* Michelle Limoli, Office of International Programs (HFG-1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4480.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH steering committee includes representatives from each of the ICH sponsors and IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In November 2007, the ICH steering committee agreed that a draft guidance entitled "Q8(R1) Pharmaceutical Development Revision 1" should be made available for public comment. The draft guidance is the product of the Quality Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Quality Expert Working Group.

The draft guidance is an annex to the parent guidance ICH Q8. It provides further clarification of key concepts outlined in ICH Q8 and describes the principles of QbD. The annex is not intended to establish new standards or increase regulatory expectations. It is intended to show how concepts and tools (e.g., design space) outlined in ICH Q8 could be put into practice by the applicant for all dosage forms. Where a company chooses to apply QbD and quality risk management (see ICH "Q9 Quality Risk Management"), linked to an appropriate pharmaceutical quality system (see ICH "Q10 Pharmaceutical Quality Systems"), then opportunities arise to enhance science- and risk-based regulatory approaches.

The draft guidance outlines the elements that should be included in pharmaceutical development and additional elements when QbD principles are applied. It elaborates, by means of description and example, possible approaches to gaining a more systematic, enhanced understanding of the product and process under development. The draft guidance also provides recommendations on the placement of pharmaceutical development and other related information in module 3 of a regulatory submission in the common technical document format.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

##### II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. 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 in January 2008, the FDA Web site is expected to transition to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. After the transition

date, electronic submissions will be accepted by FDA through the FDMS only. When the exact date of the transition to FDMS is known, FDA will publish a **Federal Register** notice announcing that date.

##### III. Electronic Access

Persons with access to the Internet may obtain the document at <http://www.fda.gov/ohrms/dockets/default.htm>, <http://www.fda.gov/cder/guidance/index.htm>, or <http://www.fda.gov/cber/publications.htm>.

Dated: January 2, 2008.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E8-213 Filed 1-9-08; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[USCG-2007-29070]

#### Collection of Information Under Review by Office of Management and Budget: OMB Control Number 1625-0108

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) requesting an extension of their approval for the following collection of information: 1625-0108, Standard Numbering System for Undocumented Vessels. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Please submit comments on or before February 11, 2008.

**ADDRESSES:** To make sure your comments and related material do not enter the Coast Guard docket [USCG-2007-29070] or are received by OIRA more than once, please submit them by only one of the following means:

(1) *Electronic submission.* (a) To Coast Guard docket at <http://www.regulations.gov>. (b) To OIRA by e-mail to: [nlesser@omb.eop.gov](mailto:nlesser@omb.eop.gov).

(2) *Mail or hand delivery.* (a) To Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329. (b) To OIRA, 725 17th Street, NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(3) *Fax.* (a) To Docket Management Facility at 202-493-2251. (b) To OIRA at 202-395-6566. To ensure your comments are received in time, mark the fax to the attention of Mr. Nathan Lesser, Desk Officer for the Coast Guard.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://www.regulations.gov>.

A copy of the complete ICR is available through this docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from Commandant (CG-611), U.S. Coast Guard Headquarters, (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593-0001. The telephone number is 202-475-3523.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arthur Requina, Office of Information Management, telephone 202-475-3523 or fax 202-475-3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202-366-9826, for questions on the docket.

**SUPPLEMENTARY INFORMATION:** The Coast Guard invites comments on whether this information collection request should be granted based on it being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of information subject to the collection; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques

or other forms of information technology.

Comments to the Coast Guard or OIRA must contain the OMB Control Number of the ICR. Comments to the Coast Guard must contain the docket number [USCG-2007-29070]. For your comments to OIRA to be considered, it is best if OIRA receives them on or before February 11, 2008.

**Public participation and request for comments:** We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to <http://www.regulations.gov>. They will include any personal information you provide. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's "Privacy Act Policy" below.

**Submitting comments:** If you submit a comment, please include the docket number [USCG-2007-29070], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

The Coast Guard and OIRA will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

**Viewing comments and documents:** Go to <http://www.regulations.gov> to view documents mentioned in this notice as being available in the docket. Click on "Search for Dockets," and enter the docket number (USCG-2007-29070) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in room W12-140

on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Privacy Act:** Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the *Federal Register* published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

#### Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (72 FR 51826, September 11, 2007) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments.

#### Information Collection Request

**Title:** Standard Numbering System (SNS) for Undocumented Vessels.

**OMB Control Number:** 1625-0108.

**Type of Request:** Extension of a currently approved collection.

**Affected Public:** Owners of all undocumented vessels propelled by machinery are required by Federal law to apply for a number from the issuing authority of the State in which they are to be principally operated. In addition, States may require other vessels, such as sailboats, canoes, and kayaks, to be numbered. Owners may include individuals or households, non-profit organizations, and small businesses (e.g., liveries offering recreational vessels for rental by the public) or other for-profit organizations.

**Abstract:** Paragraph (a) of 46 U.S.C. 12301 requires undocumented vessels equipped with propulsion machinery of any kind to be numbered in the State where they are principally operated. In 46 U.S.C. 12302(a), Congress authorized the Secretary to prescribe, by regulation, a SNS, directing approval of a State numbering system if it is consistent therewith. In DHS Delegation No. 0170.1 section 2 (92)(h), the Secretary has delegated his authority under 46 U.S.C. 12301 and 12302 to the Commandant of the Coast Guard. Regulations requiring the numbering of undocumented vessels are in 33 CFR part 173; those applicable to the States for approval of their systems are contained in 33 CFR part 174.

In order to have an approved state numbering system, a State must collect and report annually to the Coast Guard information on its numbered vessels (number, size, construction, etc.). We



need this information for the following reasons: (1) To provide Federal, State, and local law enforcement personnel information for enforcement of boating laws and for theft/fraud investigations; (2) To increase officers' safety by assisting boarding officers in determining how best to approach a vessel suspected of illegal activity; (3) To publish annual Boating Statistics reports required by 46 U.S.C. 6102(b); and (4) To determine proper allocation of Federal funds to assist States in carrying out the National Recreational Boating Safety Program established by 46 U.S.C. chapter 131.

**Burden Estimate:** The estimated burden has increased from 15,507 hours to 286,458 hours a year.

Dated: December 21, 2007.

**D.T. Glenn,**

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E8-212 Filed 1-9-08; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

#### Agency Information Collection Activities: Form I-601, Revision of a Currently Approved Information Collection; Comment Request

**ACTION:** 30-Day Notice of Information Collection Under Review: I-601, Application for Waiver of Grounds of Inadmissibility; OMB Control Number 1615-0029.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 31, 2007, at 72 FR 41771. The notice allowed for a 60-day public comment period. USCIS received two comments from the public on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 11, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this

notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202-272-8352 or via e-mail at [rfs.regs@dhs.gov](mailto:rfs.regs@dhs.gov), and to the OMB USCIS Desk Officer via facsimile at 202-395-6974 or via e-mail at [kastrich@omb.eop.gov](mailto:kastrich@omb.eop.gov).

When submitting comments by e-mail please make sure to add OMB Control Number 1615-0029 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Inadmissibility.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-601. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected on this form is used by U.S. Citizenship and Immigration Services (USCIS) to determine whether the applicant is eligible for a waiver of excludability under section 212 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 15,500 responses at 1 1/2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 23,250 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: <http://www.regulations.gov/fdmspublic/component/main>. We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., 3rd floor, Suite 3008, Washington, DC 20529, telephone number 202-272-8377.

Dated: January 7, 2008.

**Richard Sloan,**

Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8-282 Filed 1-9-08; 8:45 am]

BILLING CODE 4410-10-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R1-ES-2007-N0005]

#### Proposed Safe Harbor Agreement for the Guam Rail on Cocos Island, Guam

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Receipt of application; notice of availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), have received applications for enhancement of survival permits pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA), from Cocos Island Resort and the Guam Department of Agriculture (Applicants). The permit applications include a proposed Safe Harbor Agreement (SHA) among the Applicants and the Service. Implementation of the proposed SHA provides for voluntary habitat restoration, maintenance, enhancement, or the creation of activities to enhance the habitat and recovery of the Guam rail (*Gallirallus owstonii*) ("Covered Species") on 83.1 acres of non-Federal lands on Cocos Island, Guam. The proposed duration of both the SHA and permits is 10 years.

The Service has made a preliminary determination that the proposed SHA and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). The basis for this determination

is contained in an Environmental Action Statement which also is available for public review.

**DATES:** All comments from interested parties must be received on or before February 11, 2008.

**ADDRESSES:** Please address written comments to Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room #3-122, Honolulu, HI 96850. You may also send comments by facsimile at (808) 792-9580.

**FOR FURTHER INFORMATION CONTACT:** Jeff Newman, Assistant Field Supervisor (see **ADDRESSES**), telephone (808) 792-9400.

**SUPPLEMENTARY INFORMATION:**

**Availability of Documents**

Copies of the draft documents and permit applications are available for public inspection, by appointment between the hours of 8 a.m. and 5 p.m. at the Pacific Islands Fish and Wildlife Office (see **ADDRESSES**). You may also request copies of the documents by contacting the Service's Pacific Island Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). We are furnishing this notice to provide the public, other state and Federal agencies, and tribes an opportunity to review and comment on these documents. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Background**

A SHA encourages private landowners to conduct voluntary conservation activities and assures them that they will not be subjected to increased listed species restrictions should their beneficial stewardship efforts result in increased numbers of listed species. As long as enrolled landowners maintain agreed-upon baseline responsibilities, they may make any other lawful use of the enrolled property during the permit term, even if such use results in the take of individuals of the Federally listed species named within the permit. Application requirements and issuance criteria for enhancement of survival permits and SHAs are found in 50 CFR 17.22(c). The primary objective of this proposed SHA is to establish a breeding

population of Guam rails on Cocos Island by providing a predator-controlled habitat.

The private lands subject to this proposed SHA and permit consist of 83.1 acres of mixed forest and beach strand habitat on Cocos Island, Guam. Current land use practices include the operation of a day resort for tourists and overnight camping. Habitat conditions vary from manicured lawn surrounding the buildings to mixed native forest with invasive vines. The Guam rail was last observed in the wild on Northern Guam in the mid-1980s; therefore, the baseline for the species is zero, and there are no prohibitions on the use of the property or responsibilities for protecting existing individuals of the Guam rail or its habitat. However, management activities by the Applicants and other cooperators to encourage the establishment and survival of Guam rails on the enrolled lands during the term of the proposed SHA and the permit include: (1) Eradicating rats and mice and control monitor lizard population on Cocos Island prior to release of Guam rail; (2) reducing likelihood of reintroduction of rats, mice, and the introduction of the brown treesnake; (3) developing and implementing a forest enhancement plan to reduce invasive plant species and increase native plant species on Cocos Island; (4) releasing Guam rails and monitoring survivorship, breeding behavior, habitat preference, and nesting success; and (5) creating materials to promote understanding of wildlife recovery and invasive species issues for Cocos Island staff and visitors.

Based upon the probable species' response, we estimate it will take 10 years of implementing the planned conservation measures to fully reach a net conservation benefit for the Guam rail; some level of benefit is expected within a shorter period of time as a result of predator control and habitat restoration effort. The duration of the SHA and permits will be for a term of 10 years, although both may be renewed upon approval by the Service.

We believe that approval of the proposed SHA may qualify for a categorical exclusion under NEPA, as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1) Based on the following criteria: (1) Implementation of the SHA would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the SHA would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the SHA, considered together with the impacts of

other past, present and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. This is more fully explained in our draft EAS. We will consider public comments in making its final determination on whether to prepare such additional NEPA documentation.

This notice is provided pursuant to section 10(c) of the ESA and NEPA regulations (40 CFR 1506.6). The Service will evaluate the permit application, associated documents, and comments submitted thereon to determine whether the proposed Agreement and permit application meets the requirements of section 10(a) of the ESA and NEPA regulations. The final NEPA and permit determinations will not be completed until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

Dated: December 31, 2007.

**Jeff Newman,**

*Acting Field Supervisor, Pacific Islands Fish and Wildlife Office, Honolulu, Hawaii.*

[FR Doc. E8-254 Filed 1-9-08; 8:45 am]

BILLING CODE 4310-55-P

**DEPARTMENT OF THE INTERIOR**

**Minerals Management Service**

**Record of Decision for the Final "Programmatic Environmental Impact Statement for Alternative Energy Development and Production and Alternate Use of Facilities on the Outer Continental Shelf"**

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of Availability of a Record of Decision (ROD).

**SUMMARY:** MMS prepared the ROD for the establishment of an alternative energy and alternate use (AEAU) program on the Outer Continental Shelf (OCS), as authorized by Section 388 of the Energy Policy Act of 2005 (EPAct), and codified in subsection 8(p) of the OCS Lands Act. In accordance with the regulations implementing the National Environmental Policy Act (NEPA), the MMS is announcing the availability of this ROD. The decision is to select the Preferred Alternative described in the Final Programmatic Environmental Impact Statement (EIS). This decision establishes an AEAU program for the issuance of leases, easements and rights-of-way (ROW) for alternative energy activities and the alternate use of

structures on the OCS and the promulgation of regulations to govern the program. Selection of the Preferred Alternative also provides MMS the option to authorize individual projects on a case-by-case basis before promulgation of the final rule. The Director, MMS signed the ROD on December 21, 2007.

**Authority:** This NOA is published pursuant to the regulations (40 CFR 1506.6) implementing the provisions of the NEPA of 1969 (42 U.S.C. 4321, *et seq.*).

**SUPPLEMENTARY INFORMATION:** This ROD was developed through the preparation of the final *Programmatic Environmental Impact Statement Alternative Energy Development and Production and Alternate Use of Facilities on the Outer Continental Shelf* (Final Programmatic EIS). The environmental impacts from potential activities that may arise from the AEAU program in the reasonably foreseeable future are assessed in the Final Programmatic EIS, which was prepared in accordance with the NEPA. Section 388 of the EPCA grants the Secretary of the Interior (Secretary) discretionary authority to issue leases, easements, or ROWs for activities on the OCS that produce or support production, transportation, or transmission of energy from sources other than oil and gas, and are not otherwise authorized by law. Examples of the general types of alternative energy project activities that MMS has the discretion to authorize may include, but are not limited to: Wind energy, wave energy, ocean current energy, solar energy, and hydrogen production. The Secretary delegated this authority to MMS.

Section 388 of the EPCA also grants the Secretary authority to issue leases, easements, or ROWs for other OCS project activities that make alternate use of existing OCS facilities for "energy-related purposes or for other authorized marine-related purposes," to the extent such activities are not otherwise authorized by law. Such activities may include, but are not limited to: Offshore aquaculture, research, education, recreation, and support for operations and facilities authorized under the OCS Lands Act. The Secretary delegated this authority to MMS as well.

The MMS selected the Preferred Alternative that establishes an AEAU program for the issuance of leases, easements, and ROWs on the OCS for alternative energy activities and the alternate use of structures on the OCS. Selection of the Preferred Alternative also provides MMS the option to authorize, on a case-by-case basis, individual AEAU projects that are in the

national interest prior to promulgation of the final rule. At the same time, the MMS will vigorously pursue its efforts to complete a comprehensive program with regulations for authorizing and managing AEAU activities on the OCS. Upon promulgation of the final rule, MMS leases, easements, and ROWs for AEAU activities on the OCS would be issued subject to the rule's provisions.

As initial mitigation measures, this decision also adopts the interim policies provided in Attachment A of the ROD and initial best management practices (BMPs) in Attachment B of the ROD. Two of the proposed BMPs were not adopted as explained in the ROD. The interim policies will guide and inform MMS' decision-making when considering any proposal for an AEAU project on the OCS. In addition, the MMS will consider and, on a case-by-case basis, may select one or more of the BMPs as appropriate to be included as a binding stipulation in any lease, easement or ROW for AEAU activities that it issues. MMS will employ and act by these policies when considering projects submitted under the AEAU program.

**ROD Availability:** To obtain a single printed copy of the ROD, you may contact the Minerals Management Service, Alternative Energy and Alternate Use Program (MS 4080), 381 Elden Street, Herndon, Virginia 20170. An electronic copy of the ROD is available at MMS's EIS Web site at: [ocsenergy.onl.gov](http://ocsenergy.onl.gov).

**FOR FURTHER INFORMATION CONTACT:** Minerals Management Service, Ms. Maureen Bornholdt, Alternative Energy and Alternate Use Program (MS 4080), 381 Elden Street, Herndon, Virginia 20170, or by phone at (703) 787-1300.

Dated: January 4, 2008.

**Chris C. Oynes,**

*Associate Director for Offshore Minerals Management.*

[FR Doc. E8-210 Filed 1-9-08; 8:45 am]

**BILLING CODE 4310-MR-P**

## DEPARTMENT OF LABOR

### Office of Job Corps; Advisory Committee on Job Corps; Meeting

**AGENCY:** Office of Job Corps.

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** On August 22, 2006, the Advisory Committee on Job Corps (ACJC) was established in accordance with the provisions of the Workforce Investment Act and the Federal Advisory Committee Act. The

Committee was established to advance Job Corps' new vision for student achievement aimed at 21st century high-growth employment. This Committee will also evaluate Job Corps program characteristics, including its purpose, goals, and effectiveness, efficiency, and performance measures in order to address the critical issues facing the provision of job training and education to the youth population that it serves. The Committee may provide other advice and recommendations with regard to identifying and overcoming problems, planning program or center development or strengthening relations between Job Corps and agencies, institutions, or groups engaged in related activities.

**DATES:** The meeting will be held on January 23-24, 2008 from 8 a.m. to 4 p.m.

**ADDRESSES:** The Advisory Committee meeting will be held at the Omni Austin Hotel at Southpark, 4140 Governor's Row, Austin, Texas 78744. Telephone: (512) 448-2222.

**FOR FURTHER INFORMATION CONTACT:** Crystal Woodard, Office of Job Corps, 202-693-3000 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** On August 22, 2006 the Advisory Committee on Job Corps (71 FR 48949) was established in accordance with the provisions of the Workforce Investment Act, and the Federal Advisory Committee Act. The Committee was established to advance Job Corps' new vision for student achievement aimed at 21st century high-growth employment. This Committee will also evaluate Job Corps program characteristics, including its purpose, goals, and effectiveness, efficiency, and performance measures in order to address the critical issues facing the provision of job training and education to the youth population that it serves. The Committee may provide other advice and recommendations with regard to identifying and overcoming problems, planning program or center development or strengthening relations between Job Corps and agencies, institutions, or groups engaged in related activities.

**Agenda:** The agenda for the meeting will be the full committee voting on draft recommendations of the three subcommittees.

**Public Participation:** The meeting will be open to the public. Seating will be available to the public on a first-come first-served basis. Seats will be reserved for the media. Individuals with disabilities should contact the Job Corps official listed above, if special accommodations are needed.

Signed at Washington, DC, this 3rd day of January 2008.

**Esther R. Johnson,**

*National Director, Office of Job Corps.*

[FR Doc. E8-253 Filed 1-9-08; 8:45 am]

BILLING CODE 4510-23-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions,

the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment

Assistance, at the address shown below, not later than January 22, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 22, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C-5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 2nd day of January 2008.

**Ralph Dibattista,**

*Director, Division of Trade Adjustment Assistance.*

## APPENDIX

[TAA petitions instituted between 12/26/07 and 12/28/07]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
62601	H and H Tube (Comp)	Vanderbilt, MI	12/26/07	12/20/07
62602	Runnerless Knits, Inc. (Wkrs)	Milton, PA	12/26/07	12/20/07
62603	Coyne and Delany Co. (Comp)	Charlottesville, VA	12/26/07	12/17/07
62604	Sintec Keramik USA, Inc. (State)	Bridgeport, CT	12/26/07	12/21/07
62605	Tyco Electronics (Comp)	Fuquay-Varina, NC	12/26/07	12/20/07
62606	Fantech, Inc. (Comp)	Sarasota, FL	12/26/07	12/20/07
62607	Chrysler LLC (UAW)	Belvidere, IL	12/26/07	12/21/07
62608	Precision Materials (Wkrs)	Wayne, NJ	12/27/07	12/26/07
62609	Standard Motor Products (Wkrs)	Long Island City, NY	12/27/07	12/24/07
62610	Robert Bosch Tool Co. (State)	Heber Springs, AR	12/27/07	12/26/07
62611	G. Leblanc (Comp)	Kenosha, WI	12/27/07	12/26/07
62612	Buckborn, Inc. (Wkrs)	Dawson Springs, KY	12/28/07	12/21/07

[FR Doc. E8-257 Filed 1-9-08; 8:45 am]

BILLING CODE 4510-FN-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-62,052]

#### Freescale Semiconductor, Inc., New Product Introduction (NPI), Compound Semiconductor 1 (CS1) Factory, Tempe, AZ; Notice of Affirmative Determination Regarding Application for Reconsideration

On December 12, 2007, the Department of Labor (Department) received a request for administrative reconsideration of the Department's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm. The negative determination was issued on

November 13, 2007. The Department's Notice of determination was published in the *Federal Register* on December 10, 2007 (72 FR 69711). Subject workers are engaged in activities related to the production of gallium arsenide (GaAs) semiconductors for the purposes of the design and development of new automotive and cellular technologies.

The determination was based on the Department's findings that the group eligibility requirements under section 222(a) of the Trade Act of 1974, as amended, was not met.

In the request for reconsideration, the workers alleged that the subject workers are engaged in activities related to the production of not only GaAs semiconductors but also related to the production of non-GaAs semiconductors.

The Department has carefully reviewed the workers' request for reconsideration and has determined that the Department will conduct further investigation regarding the production

of both GaAs semiconductors and non-GaAs semiconductors.

### Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 3rd day of January 2008.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8-258 Filed 1-9-08; 8:45 am]

BILLING CODE 4510-FN-P

**DEPARTMENT OF LABOR****Employment and Training Administration**

[TA-W-62,355]

**Hawley Products Incorporated, Paducah, Kentucky; Notice of Affirmative Determination Regarding Application for Reconsideration**

By application dated December 12, 2007, a company official requested administrative reconsideration of the Department's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance applicable to workers and former workers of the subject firm. The negative determination was issued on November 8, 2007, and the Department's Notice of negative determination was published in the **Federal Register** on November 21, 2007 (72 FR 65607). The subject workers are engaged in the production of loudspeaker cones.

The determination was based on the Department's findings that subject firm sales and production of loudspeaker cones increased from January through September 2007 compared with the same period in 2006. During the relevant period, the subject firm did not import loudspeaker cones or shift production of loudspeaker cones abroad.

In the request for reconsideration, the company official stated that subject firm production had decreased during the relevant period and is closing.

The Department has carefully reviewed the request for reconsideration and has determined that the Department will conduct further investigation.

**Conclusion**

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 3rd day of January 2008.

**Elliott S. Kushner,**  
*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8-260 Filed 1-9-08; 8:45 am]

BILLING CODE 4510-FN-P

**DEPARTMENT OF LABOR****Employment and Training Administration**

[TA-W-62,243]

**Electric Mobility Corporation, Sewell, NJ; Notice of Negative Determination on Reconsideration**

On November 26, 2007, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on December 3, 2007 (72 FR 67965-67966).

The TAA petition, which was filed on behalf of workers at Electric Mobility Corporation, Sewell, New Jersey, engaged in the production of mobility chairs was denied based on the findings that during the relevant time period, the subject company did not separate or threaten to separate a significant number or proportion of workers, as required by section 222 of the Trade Act of 1974.

In the request for reconsideration, the petitioner states that there were sixteen workers laid off from the subject firm in May, 2007.

In determining whether there were a significant proportion of workers separated or threatened with separations at the subject company during the relevant time period, the Department contacted the subject firm's company official and requested employment figures for the relevant employment data (for one year prior to the date of the petition and any imminent layoffs).

After careful review of the information provided on reconsideration, it was revealed that workers were laid off from the subject firm during the relevant time period. However, overall employment at the

subject firm has increased from October 2006 to September 2007.

As employment levels at the subject facility did not decline and there was no threat of separations during the relevant period. Therefore, criterion (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) have not been met.

Should conditions change in the future, the petitioner is encouraged to file a new petition on behalf of the worker group which will encompass an investigative period that will include these changing conditions.

**Conclusion**

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Electric Mobility Corporation, Sewell, New Jersey.

Signed at Washington, DC, this 19th day of December, 2007.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8-259 Filed 1-9-08; 8:45 am]

BILLING CODE 4510-FN-P

**DEPARTMENT OF LABOR****Employment and Training Administration**

[TA-W-62,592]

**J.H.L. Fashion Inc., New York, NY; Notice of Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 20, 2007 in response to a petition filed by workers of J.H.L. Fashion Inc., New York, New York.

The petition does not contain three valid worker signatures; therefore, the petition itself is invalid. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 31st day of December 2007.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8-256 Filed 1-9-08; 8:45 am]

BILLING CODE 4510-FN-P



## DEPARTMENT OF LABOR

Employment and Training  
Administration

[TA-W-62,357; TA-W-62,357A; TA-W-62,357B; TA-W-62,357C; TA-W-62,357D; TA-W-62,357E; TA-W-62,357F; TA-W-62,357G; TA-W-62,357H; TA-W-62,357I; TA-W-62,357J; TA-W-62,357K; TA-W-62,357L; TA-W-62,357M; TA-W-62,357N; TA-W-62,357O; TA-W-62,357P; TA-W-62,357Q; TA-W-62,357R; TA-W-62,357S; TA-W-62,357T; TA-W-62,357U; TA-W-62,357V; TA-W-62,357W; TA-W-62,357X; TA-W-62,357Y; TA-W-62,357Z; TA-W-62,357AA; TA-W-62,357BB; TA-W-62,357CC]

Westpoint Home, Inc., Stores Division, Valley, Alabama; Westpoint Home, Inc., Stores Division, Albertville, Minnesota; Westpoint Home, Inc., Stores Division, Allen, Texas; Westpoint Home, Inc., Stores Division, Birch Run, Michigan; Westpoint Home, Inc., Stores Division, Birmingham, Alabama; Westpoint Home, Inc., Stores Division, Boaz, Alabama; Westpoint Home, Inc., Stores Division, Burlington, North Carolina; Westpoint Home, Inc., Stores Division, Cabazon, California; Westpoint Home, Inc., Stores Division, Clinton, Connecticut; Westpoint Home, Inc., Stores Division, Columbus, Georgia; Westpoint Home, Inc., Stores Division, Commerce, Georgia; Westpoint Home, Inc., Stores Division, Dalton, Georgia; Westpoint Home, Inc., Stores Division, Dawsonville, Georgia; Westpoint Home, Inc., Stores Division, Destin, Florida; Westpoint Home, Inc., Stores Division, Edinburg, Indiana; Westpoint Home, Inc., Stores Division, Ellenton, Florida; Westpoint Home, Inc., Stores Division, Fairburn, Georgia; Westpoint Home, Inc., Stores Division, Foley, Alabama; Westpoint Home, Inc., Stores Division, Howell, Michigan; Westpoint Home, Inc., Stores Division, Lamarque, Texas; Westpoint Home, Inc., Stores Division, Lumberton, North Carolina; Westpoint Home, Inc., Stores Division, New Braunfels, Texas; Westpoint Home, Inc., Stores Division, Park City, Utah; Westpoint Home, Inc., Stores Division, Pigeon Forge, Tennessee; Westpoint Home, Inc., Stores Division, San Marcos, Texas; Westpoint Home, Inc., Stores Division, Sarasota, Florida; Westpoint Home, Inc., Stores Division, St. Augustine, Florida; Westpoint Home, Inc., Stores Division, Valdosta, Georgia; Westpoint Home, Inc., Stores Division, Williamsburg, Va; Westpoint Home, Inc., Stores Division, Wrentham, Massachusetts; Notice of Negative Determination Regarding Application for Reconsideration

By application dated December 17, 2007, the company official requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on October 29, 2007 and published in the *Federal Register* on December 11, 2007 (72 FR 70346).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The negative TAA determination issued by the Department for workers of WestPoint Home, Inc., Stores Division, Valley, Alabama (TA-W-62,357), WestPoint Home, Inc., Stores Division, Albertville, Minnesota (TA-W-62,357A), WestPoint Home, Inc., Stores Division, Allen, Texas (TA-W-62,357B), WestPoint Home, Inc., Stores Division, Birch Run, Michigan (TA-W-62,357C), WestPoint Home, Inc., Stores Division, Birmingham, Alabama (TA-W-62,357D), WestPoint Home, Inc., Stores Division, Boaz, Alabama (TA-W-62,357E), WestPoint Home, Inc., Stores Division, Burlington, North Carolina (TA-W-62,357F), WestPoint Home, Inc., Stores Division, Cabazon, California (TA-W-62,357G), WestPoint Home, Inc., Stores Division, Clinton, Connecticut (TA-W-62,357H), WestPoint Home, Inc., Stores Division, Columbus, Georgia (TA-W-62,357I), WestPoint Home, Inc., Stores Division, Commerce, Georgia (TA-W-62,357J), WestPoint Home, Inc., Stores Division, Dalton, Georgia (TA-W-62,357K), WestPoint Home, Inc., Stores Division, Dawsonville, Georgia (TA-W-62,357L), WestPoint Home, Inc., Stores Division, Destin, Florida (TA-W-62,357M), WestPoint Home, Inc., Stores Division, Edinburg, Indiana (TA-W-62,357N), WestPoint Home, Inc., Stores Division, Ellenton, Florida (TA-W-62,357O), WestPoint Home, Inc., Stores Division, Fairburn, Georgia (TA-W-62,357P), WestPoint Home, Inc., Stores Division, Foley, Alabama (TA-W-62,357Q), WestPoint Home, Inc., Stores Division, Howell, Michigan (TA-W-62,357R), WestPoint Home, Inc., Stores Division, LaMarque, Texas (TA-W-62,357S),

WestPoint Home, Inc., Stores Division, Lumberton, North Carolina (TA-W-62,357T), WestPoint Home, Inc., Stores Division, New Braunfels, Texas (TA-W-62,357U), WestPoint Home, Inc., Stores Division, Park City, Utah (TA-W-62,357V), WestPoint Home, Inc., Stores Division, Pigeon Forge, Tennessee (TA-W-62,357W), WestPoint Home, Inc., Stores Division, San Marcos, Texas (TA-W-62,357X), WestPoint Home, Inc., Stores Division, Sarasota, Florida (TA-W-62,357Y), WestPoint Home, Inc., Stores Division, St. Augustine, Florida (TA-W-62,357Z), WestPoint Home, Inc., Stores Division, Valdosta, Georgia (TA-W-62,357AA), WestPoint Home, Inc., Stores Division, Williamsburg, Virginia (TA-W-62,357BB), and WestPoint Home, Inc., Stores Division, Wrentham, Massachusetts (TA-W-62,357CC) was based on the finding that the worker group does not produce an article within the meaning of Section 222 of the Trade Act of 1974.

The petitioner states that the workers of the subject firm "assured the manufacturing facilities could continue operations with consistent running of shifts avoiding expenses involved with start up and shut down of the plants including costs incurred for unemployment". The petitioner further states that the subject firm's primary business was selling WestPoint Home's home fashions bed and bath products manufactured in the United States. The petitioner alleges that because domestic manufacturing of fashion bed and bath products has been import impacted, workers of the subject firm who retail these products should be certified eligible for TAA.

The investigation revealed that workers of WestPoint Home, Inc., Stores Division are engaged in activities at retail factory outlet stores that include stocking merchandise, customer service, sales transactions, managerial staff, human resources and distribution services. These functions, as described above, are not considered production of an article within the meaning of section 222 of the Trade Act.

The petitioner also alleges that WestPoint Home began operations in Bahrain and Pakistan and that multiple production facilities of WestPoint Home have been certified eligible for TAA.

The allegation of a shift to another country might be relevant if it was determined that workers of the subject firm produced an article. However, the investigation determined that workers of WestPoint Home, Inc., Stores Division do not produce an article within the meaning of section 222 of the Trade Act of 1974.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 3rd day of January 2008.

**Elliott S. Kushner,**  
Certifying Officer, Division of Trade  
Adjustment Assistance.

[FR Doc. E8-261 Filed 1-9-08; 8:45 am]

BILLING CODE 4510-FN-P

**NEIGHBORHOOD REINVESTMENT CORPORATION****Neighborworks® America Regular Board of Directors Meeting; Sunshine Act**

**TIME AND DATE:** 10 a.m., Thursday, January 10, 2008.

**PLACE:** 1325 G Street, NW., Suite 800, Boardroom, Washington, DC 20005.

**STATUS:** Open.

**CONTACT PERSON FOR MORE INFORMATION:**

Erica Hall, Assistant Corporate Secretary, (202) 220-2376; [ehall@nw.org](mailto:ehall@nw.org).

**AGENDA:**

- I. Call To Order.
- II. Approval of the Minutes.
- III. Summary Report of the Finance, Budget and Program Committee.
- IV. Summary Report of the Audit Committee.
- V. Summary Report of the Audit Committee.
- VI. Summary Report of the Corporate Administration Committee.
- VII. Summary Report of the Finance, Budget and Program Committee.
- VIII. Summary Report of the Corporate Administration Committee.
- IX. Summary Report of the Audit Committee.
- X. Financial Report.
- XI. Corporate Socrecard.
- XII. Chief Executive Officer's Quarterly Management Report.
- XIII. Appropriations Update.
- XIV. Additional Appropriations—Mortgage Foreclosure Mitigation.
- XV. Field Operations Presentation.
- XVI. Adjournment.

**Erica Hall,**  
Assistant Corporate Secretary.  
[FR Doc. 08-73 Filed 1-8-08; 11:56 am]

BILLING CODE 7570-02-M

**NUCLEAR REGULATORY COMMISSION****Notice of Availability of Interim Staff Guidance Documents for Spent Fuel Storage Casks**

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Notice of Availability.

**FOR FURTHER INFORMATION CONTACT:**

Matthew Gordon, Structural Mechanics and Materials Branch, Division of Spent Fuel Storage and Transportation Division, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005-0001. Telephone: (301) 492-3331; fax number: (301) 492-3342; e-mail: [mxg9@nrc.gov](mailto:mxg9@nrc.gov).

**SUPPLEMENTARY INFORMATION:****I. Introduction**

The Nuclear Regulatory Commission (NRC) is preparing and issuing Revision 1 to the Interim Staff Guidance (ISG)-18 document for "The Design and Testing of Lid Welds on Austenitic Stainless Steel Canisters as Confinement Boundary for Spent Fuel Storage." This ISG document provides clarifying guidance to the NRC staff when reviewing licensee integrated safety analyses, license applications or amendment requests, or other related licensing activities for dry cask storage systems under 10 CFR Part 72. The NRC is soliciting public comments on the Draft of ISG-18, Revision 1, which will be considered in the final version or subsequent revisions.

**II. Summary**

The purpose of this notice is to provide the public with an opportunity to review and comment on the Draft of ISG-18, Revision 1, "The Design and Testing of Lid Welds on Austenitic Stainless Steel Canisters as Confinement Boundary for Spent Fuel Storage."

**III. Further Information**

Documents related to this action are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are provided in the following table. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference

staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Interim staff guidance documents	ADAMS Accession No.
Draft of Interim Staff Guidance-18, Revision 1.	ML072410351
Draft of Interim Staff Guidance-18, Revision 1 Enclosed Sketches A&B.	ML072410352

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O-1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Comments and questions on ISG-18, Revision 1, should be directed to Matthew Gordon, Structural Mechanics and Materials Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005-0001 by February 25, 2008. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Comments can also be submitted by telephone, fax, or e-mail to the following: Telephone: (301) 492-3331; fax number: (301) 492-3331; e-mail: [mxg9@nrc.gov](mailto:mxg9@nrc.gov).

Dated at Rockville, Maryland this 3rd day of January, 2008.

For the U.S. Nuclear Regulatory Commission.

**Christopher M. Regan,**

Chief, Structural Mechanics and Materials Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. E8-269 Filed 1-9-08; 8:45 am]

BILLING CODE 7590-01-P

**OFFICE OF PERSONNEL MANAGEMENT****Submission for OMB Review; Comment Request for Review of a Revised Information Collection: RI 94-7**

**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) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 94-7, Death

Benefit Payment Rollover Election for Federal Employees Retirement System (FERS), provides FERS surviving spouses and former spouses with the means to elect payment of FERS rollover-eligible benefits directly or to an Individual Retirement Arrangement.

Approximately 3,444 RI 94-7 forms will be completed annually. The form takes approximately 60 minutes to complete. The annual burden is 3,444 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](mailto:MaryBeth.Smith-Toomey@opm.gov). Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 30 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 and Brenda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

For Information Regarding Administrative Coordination—

Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606-0623.

U.S. Office of Personnel Management.

**Howard Weizmann,**

*Deputy Director.*

[FR Doc. E8-215 Filed 1-9-08; 8:45 am]

BILLING CODE 6325-38-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57089; File No. SR-CBOE-2007-143]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Pertaining to the Imposition of Fines for Minor Rule Violations

January 3, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December

27, 2007, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 17.50, “Imposition of Fines for Minor Rule Violations,” to revise the provisions of CBOE Rule 17.50(g)(8) “Violations of Exercise and Exercise Advice Rules for Noncash-Settled Equity Options.” The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal>), at the CBOE's principal office, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to increase and strengthen the sanctions imposed by its Minor Rule Violation Plan (“MRVP”) on any member who fails to submit to the Exchange in a timely manner pursuant to CBOE Rule 11.1 (or a Regulatory Circular issued pursuant to CBOE Rule 11.1) “Advice Cancel” or exercise instruction relating to the exercise or nonexercise of a noncash-settled equity option. The Exchange believes that increasing the fine levels specified with respect to both individual members and member organizations, and lengthening the surveillance period from a 12-month period to a rolling 24-month period will

serve as an effective deterrent to such violative conduct.

In addition, the Exchange, as a member of the Intermarket Surveillance Group, as well as certain other self-regulatory organizations (“SROs”) executed and filed on October 29, 2007 with the Commission, a final version of an Agreement pursuant to section 17(d) of the Act (the “17d-2 Agreement”).<sup>3</sup> As set forth in the 17d-2 Agreement, the SROs have agreed that their respective rules concerning the filing of Expiring Exercise Declarations, also referred to as Contrary Exercise Advices, of options contracts, are common rules. As a result, the proposal to amend the CBOE's MRVP will further result in consistency in sanctions among the SROs that are signatories to the 17d-2 Agreement concerning Contrary Exercise Advice violations.<sup>4</sup> In addition, the proposed rule change replaces the term “infraction” with the term “violation” to provide greater consistency among the signatories to the 17d-2 Agreement concerning Contrary Exercise Advice violations.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed to promote just and equitable principles of trade, facilitate transactions in securities, 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. Specifically, the Exchange believes that the proposed rule change will strengthen its ability to carry out its oversight responsibilities as an SRO and reinforce its surveillance and enforcement functions. Additionally, the Exchange believes that the proposed rule change will promote consistency in minor rule violations and respective SRO reporting obligations as set forth pursuant to Rule 19d-1(c)(2) under the Act,<sup>7</sup> which governs minor rule violation plans.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any

<sup>3</sup> See letter to Richard Holley, Senior Special Counsel, Division of Trading and Markets, Commission, from Nyeri Nazarian, Assistant General Counsel, American Stock Exchange LLC (“Amex”), dated October 29, 2007.

<sup>4</sup> See Amex Rule 590.

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 17 CFR 240.19d-1(c)(2).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposal.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2007-143 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2007-143. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2007-143 and should be submitted on or before January 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E8-188 Filed 1-9-08; 8:45 am]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57099; File No. SR-NASDAQ-2008-002]

**Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Nasdaq Stockholders' Agreement Between the Nasdaq Stock Market, Inc. and Borse Dubai Limited**

January 4, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 2, 2008, the NASDAQ Stock Market LLC (the "Nasdaq 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 substantially by the Nasdaq Exchange. The Nasdaq Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the

Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Nasdaq Exchange's parent corporation, The Nasdaq Stock Market, Inc. ("Nasdaq"),<sup>5</sup> proposes to enter into a Nasdaq Stockholders' Agreement (the "Agreement") with Borse Dubai Limited ("Borse Dubai"). There is no proposed rule text.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Nasdaq Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Nasdaq Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

On November 15, 2007, Nasdaq entered into definitive agreements with Borse Dubai and BD Stockholm AB, and with Borse Dubai and Dubai International Financial Exchange ("DIFX") (the "Definitive Agreements") pursuant to which (i) Borse Dubai will acquire up to 100% of the outstanding share capital of OMX AB ("OMX") by means of a public tender offer, (ii) Borse Dubai will acquire shares of common stock of Nasdaq representing approximately 28% of its outstanding share capital, with the shares in excess of 19.9% held in a trust subject to an obligation to sell under certain conditions, (iii) Nasdaq will acquire 33.3% of the outstanding share capital of DIFX, an exchange subsidiary of Borse Dubai, and (iv) Nasdaq will acquire up to 100% of the outstanding share capital of OMX from Borse Dubai (collectively, the "Transactions").<sup>6</sup> The

<sup>5</sup> On December 12, 2007, Nasdaq's stockholders voted to approve a change in its name from The Nasdaq Stock Market, Inc. to The NASDAQ OMX Group, Inc. The change will become effective upon the closing of the Transactions (as defined below).

<sup>6</sup> Copies of the Definitive Agreements and a description of their terms were filed by Nasdaq on

Continued

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).



shares held by Borse Dubai directly and in the trust will be subject to Article Fourth of Nasdaq's Restated Certificate of Incorporation,<sup>7</sup> which provides that no person who is the beneficial owner of voting securities of Nasdaq in excess of 5% of the then-outstanding shares of stock generally entitled to vote ("Excess Securities") may vote such Excess Securities.

At the time of the closing of the Transactions, Nasdaq and Borse Dubai will enter into the Agreement, under which, among other things, Borse Dubai will have the right to recommend two persons reasonably acceptable to the Nasdaq Nominating Committee (the "Board Designees") to serve as directors of Nasdaq. Under the Agreement, Nasdaq will: (i) Include the Board Designees on each slate of nominees proposed by management of Nasdaq; (ii) recommend the election of the Board Designees to the stockholders of Nasdaq; and (iii) otherwise use reasonable best efforts to cause the Board Designees to be elected to the Board of Directors. Nasdaq has also agreed to use reasonable best efforts to cause the appointment of one of the Board Designees to the Audit, Executive, Finance, and Management Compensation committees of the Board of Directors, and to cause the appointment of another person designated by Borse Dubai to serve on the Nominating Committee (the "Nominating Committee Designee", and together with the Board Designees, the "Borse Dubai Designees"), but in each case only if such person meets the requirements for service on the committee.<sup>8</sup>

The Agreement relates solely to the Board of Directors of Nasdaq, and not to the boards of any of its subsidiaries, including the Board of Directors of the Nasdaq Exchange. Nevertheless, the provisions of the Agreement described above could be considered a proposed rule change of the Nasdaq Exchange, if they were viewed as affecting the influence that a significant stockholder of Nasdaq might be seen as exercising over the business and affairs of the Nasdaq Exchange in its capacity as a wholly owned subsidiary of Nasdaq.

Form 8-K on November 16, 2007 and are available at <http://www.sec.gov/Archives/edgar/data/1120193/000119312507249279/d8k.htm>.

<sup>7</sup> As amended most recently on July 31, 2006. See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

<sup>8</sup> These provisions relating to the Borse Dubai Designees remain in effect as long as Borse Dubai maintains at least 50% of its initial 19.9% direct investment in Nasdaq. As long as Borse Dubai maintains at least 25% of this investment, it will be entitled to propose one director for nomination, but will have no rights with regard to committees.

In general, directors of Nasdaq, including the Board Designees, must be nominated by a Nominating Committee,<sup>9</sup> the composition of which is subject to the requirements of the Nasdaq By-Laws and Nasdaq Exchange Rule 4350,<sup>10</sup> and must then be elected by the stockholders of Nasdaq. The Nasdaq Board is currently composed of 13 members, but will be expanded to 16 members at the time of the closing of the Transactions. Thus, the Board Designees would represent 12.5% of the Nasdaq Board.

The committees that are the subject of the Agreement are subject to compositional requirements established by the Nasdaq By-Laws; moreover, the Audit, Management Compensation, and Nominating Committees are subject to independence requirements established by Nasdaq Exchange Rule 4350 and, in the case of the Audit Committee, by 10A-3 under the Act.<sup>11</sup> Thus, depending on the affiliations of the Borse Dubai Designees and the judgment of the Nasdaq Board with regard to their independence, they would not be eligible for service on these three committees. Each of these committees currently has between four and seven members. Upon the closing of the Transactions, the size of each committee would remain the same or grow to reflect the increased size of the whole Board. Thus, each of the committees on which a Borse Dubai Designee serves will include at least five directors.

## 2. Statutory Basis

The Nasdaq Exchange believes that the proposed rule change is consistent with the provisions of section 6 of the Act,<sup>12</sup> in general, and with sections 6(b)(1) and (b)(5) of the Act,<sup>13</sup> in

<sup>9</sup> An exception to the requirement of nomination by the Nominating Committee exists for nominations by a stockholder who is conducting a proxy contest and who complies with the strict requirements of the Nasdaq By-Laws governing direct stockholder nomination. The Board Designees would not be nominated by Borse Dubai under these provisions.

<sup>10</sup> Currently, the Nasdaq By-Laws provide that the Nominating Committee must be composed of directors in their final year of service on the Nasdaq Board or other persons who are not officers or employees of Nasdaq. Rule 4350, which governs Nasdaq as a company whose securities are listed on the Nasdaq Exchange, requires Nominating Committee members to satisfy the definition of "independence" in Nasdaq Exchange Rule 4200 and IM-4200 and to otherwise be deemed independent by the Nasdaq Board. In the future, Nasdaq may propose a by-law amendment to require all Nominating Committee members to be directors (with no limitation as to length of service), but Rule 4350 would continue to apply in that event.

<sup>11</sup> 17 CFR 240.10A-3.

<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b)(1), (5).

particular, in that the proposal enables the Nasdaq Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and self-regulatory organization ("SRO") rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

## B. Self-Regulatory Organization's Statement on Burden on Competition

The Nasdaq Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing 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 public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed under 19b-4(f)(6) may not become operative prior to 30 days after the date of filing unless the Commission designates a shorter time if such action is consistent with the protection of investors and the public interest.<sup>16</sup> The Nasdaq Exchange

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a SRO submit to the



has requested that the Commission waive the 30-day operative delay set forth in Rule 19b-4(f)(6)(iii) under the Act<sup>17</sup> to ensure that the filing is effective and therefore does not delay the commencement of the offer or the closing of the Transactions. The parties to the Transactions expect all regulatory actions necessary for the closing of the Transactions to be completed prior to Börse Dubai commencing its offer for OMX shares. The Commission believes that the earlier operative date is consistent with the protection of investors and the public interest.

Accordingly, the Commission designates the proposal to be operative upon filing with the Commission.<sup>18</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2008-002 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-NASDAQ-2008-002. This file number should be included on the subject line if e-mail is used. To help 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 the Nasdaq Exchange has satisfied the five-day pre-filing notice requirement.

<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>18</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Nasdaq Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2008-002 and should be submitted on or before January 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-187 Filed 1-9-08; 8:45 am]

BILLING CODE 8011-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57103; File No. SR-NYSEArca-2007-115]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Rule 6.87—Obvious Error

January 4, 2008.

On November 8, 2007, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend NYSE Arca Rule 6.87 governing obvious errors to revise the review procedure for contesting

decisions made pursuant to the rule. The proposed rule change was published for comment in the *Federal Register* on November 27, 2007.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

Currently, NYSE Arca Rule 6.87 provides that the Exchange will determine whether a transaction resulted from an "Obvious Error"<sup>4</sup> after it receives notification within the prescribed time frame. If the Exchange believes that an Obvious Error has occurred, the Exchange will adjust the price of the trade, with or without an adjustment penalty, or will nullify the trade, depending on the status of the parties to the trade. Currently, a party may appeal the Exchange's decision to the Exchange's Board of Directors ("Board") pursuant to NYSE Arca Rule 10.14.

The Exchange proposes to eliminate a party's right to appeal to the Board and instead allow a party to appeal to an Obvious Error Panel ("OE Panel"). The OE Panel would be composed of the Exchange's Chief Regulatory Officer ("CRO"), or a designee of the CRO,<sup>5</sup> and representatives from two options trading permit firms ("OTP Firms").<sup>6</sup> One OE Panel representative would be from an OTP Firm directly engaged in market making activities and one OE Panel representative would be from an OTP Firm directly engaged in the handling of options orders for public customers.

In addition, requests for an appeal would have to be made via facsimile or e-mail within thirty minutes after the party requesting the appeal is given notification of the initial determination. Thereafter, the OE Panel would review the information and may overturn or modify the action previously taken by the Exchange. Such determination by the OE Panel would be considered a final action by the Exchange on the matter at issue. All final determinations made by the OE Panel would be rendered, without prejudice, as to the rights of the parties to the transaction to submit their dispute to arbitration. The

<sup>3</sup> Securities Exchange Act Release No. 56819 (November 19, 2007), 72 FR 66214.

<sup>4</sup> "Obvious Error" is defined in NYSE Arca Rule 6.87(a)(1).

<sup>5</sup> The Exchange represents that a designee of the CRO would be an employee of the Exchange, working closely with and reporting directly to, the CRO, such as one of the Directors of Options Regulation.

<sup>6</sup> The Exchange proposes to designate at least ten OTP Firm representatives to be called upon to serve on the OE Panel. In no case would the OE Panel include a person related to a party to the trade in question. To the extent reasonably possible, the Exchange proposes to call upon the designated representatives to participate on an OE Panel on an equally frequent basis.

<sup>19</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

revised process is intended to provide for a quicker resolution of appeal requests than the Board process currently governed by Rule 10.14.

Further, if the OE Panel upholds the Exchange's decision made pursuant to Rule 6.87(a)(4) to nullify or adjust a trade, the Exchange would assess a \$500.00 fee against the party or parties who initiated the request for appeal.

The Exchange also proposes to amend Rule 10.14 to remove the reference to Rule 6.87 and amend Rule 6.87 to remove Commentary .02.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>7</sup> and, in particular, the requirements of section 6(b) of the Act<sup>8</sup> and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,<sup>9</sup> in that the proposal is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

The Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price of the executed trade indicates an "obvious error" may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, the determination of whether an "obvious error" has occurred and the process for reviewing such a determination should be based on specific and objective criteria and subject to specific and objective procedures.

The Commission believes that the Exchange's proposal to create the OE Panel to review obvious error determinations of the Exchange, and to eliminate Board review of such determinations, is appropriate. The Commission believes that the OE Panel's review procedures are clear and objective and that the composition of the OE Panel is designed to be balanced and fair.

<sup>7</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-NYSEArca-2007-115), as amended, is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Florence E. Harmon,  
Deputy Secretary.

[FR Doc. E8-255 Filed 1-9-08; 8:45 am]

BILLING CODE 8011-01-P

**SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration #11142 and #11143]

**Massachusetts Disaster Number MA-00012**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the Commonwealth of Massachusetts dated 12/27/2007.

*Incident:* Apartment Fire.  
*Incident Period:* 12/14/2007.  
*Effective Date:* 12/27/2007.  
*Physical Loan Application Deadline Date:* 02/25/2008.

*Economic Injury (EIDL) Loan Application Deadline Date:* 09/27/2008.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Essex.  
*Contiguous Counties:* Massachusetts, Middlesex, Suffolk, New Hampshire, Hillsborough, Rockingham.

*The Interest Rates are:*

	Percent
Homeowners With Credit Available Elsewhere .....	5.875.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

	Percent
Homeowners Without Credit Available Elsewhere .....	2.937.
Businesses With Credit Available Elsewhere .....	8.000.
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere .....	4.000.
Other (Including Non-Profit Organizations) With Credit Available Elsewhere .....	5.250.
Businesses And Non-Profit Organizations Without Credit Available Elsewhere .....	4.000.

The number assigned to this disaster for physical damage is 11142 5 and for economic injury is 11143 0. The States which received an EIDL Declaration # are: Massachusetts, New Hampshire.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: December 27, 2007.

Steven C. Preston,  
Administrator.

[FR Doc. E8-283 Filed 1-9-08; 8:45 am]

BILLING CODE 8025-01-P

**SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration #11122 and #11123]

**Oregon Disaster Number OR-00023**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 4.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Oregon (FEMA-1733-DR), dated 12/09/2007.

*Incident:* Severe Storms, Flooding, Landslides, And Mudslides.  
*Incident Period:* 12/01/2007 Through 12/17/2007.

*Effective Date:* 12/21/2007.  
*Physical Loan Application Deadline Date:* 02/07/2008.

*EIDL Loan Application Deadline Date:* 09/09/2008.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration for the State of Oregon, dated 12/09/2007 is hereby amended to include the following areas as adversely affected by the disaster:

*Primary Counties:* Washington.

All other counties contiguous to the above named primary county have previously been declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E8-284 Filed 1-9-08; 8:45 am]

BILLING CODE 8025-01-P

### SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11122 and #11123]

#### Oregon Disaster Number OR-00023

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 3.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Oregon (FEMA-1733-DR), dated 12/09/2007.

*Incident:* Severe Storms, Flooding, Landslides, And Mudslides.

*Incident Period:* 12/01/2007 And Continuing Through 12/17/2007.

*Effective Date:* 12/17/2007.

*Physical Loan Application Deadline Date:* 02/07/2008.

*EIDL Loan Application Deadline Date:* 09/09/2008.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the State of Oregon, dated 12/09/2007 is hereby amended to establish the incident period for this disaster as beginning 12/01/2007 and continuing through 12/17/2007.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

**James E. Rivera,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E8-285 Filed 1-9-08; 8:45 am]

BILLING CODE 8025-01-P

### SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11124 and #11125]

#### Washington Disaster Number WA-00015

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 4.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Washington (FEMA-1734-DR), dated 12/09/2007.

*Incident:* Severe Storms, Flooding, Landslides, and Mudslides.

*Incident Period:* 12/01/2007 Through 12/17/2007.

*Effective Date:* 12/21/2007.

*Physical Loan Application Deadline Date:* 02/07/2008.

*EIDL Loan Application Deadline Date:* 09/09/2008.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration for the State of Washington, dated 12/09/2007 is hereby amended to include the following areas as adversely affected by the disaster:

*Primary Counties:* King, Snohomish, Contiguous Counties: Washington, Chelan, Island, Kittitas, Skagit.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E8-289 Filed 1-9-08; 8:45 am]

BILLING CODE 8025-01-P

### SMALL BUSINESS ADMINISTRATION

#### Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 4.750 (4¾) percent for the January-March quarter of FY 2008.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

**Walter C. Intlekofer,**

*Acting Director, Office of Financial Assistance.*

[FR Doc. E8-291 Filed 1-9-08; 8:45 am]

BILLING CODE 8025-01-P

### SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11145]

#### Missouri Disaster Number MO-00019

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Missouri (FEMA-1736-DR), dated 12/27/2007.

*Incident:* Severe Winter Storms.

*Incident Period:* 12/06/2007 and Continuing.

*Effective Date:* 12/27/2007.

*Physical Loan Application Deadline Date:* 2/25/2008.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 12/27/2007, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Adair, Andrew, Atchison, Audrain, Barton, Benton, Boone, Buchanan, Caldwell, Callaway, Camden, Cedar, Clinton, Cole, Dade, Daviess, Dekalb, Gentry, Grundy, Harrison, Hickory, Holt,

Jasper, Lincoln, Linn, McDonald, Mercer, Miller, Moniteau, Montgomery, Morgan, Newton, Nodaway, Osage, Pike, Putnam, Saint Clair, Schuyler, Scotland, Sullivan, Warren, Worth.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere .....	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere .....	4.000

The number assigned to this disaster for physical damage is 11145.

(Catalog of Federal Domestic Assistance Number 59008).

**James E. Rivera,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E8-286 Filed 1-9-08; 8:45 am]

BILLING CODE 8025-01-P

## DEPARTMENT OF STATE

[Public Notice 6057]

### Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to the Designation of the Teyrebazen Azadiya Kurdistan aka TAK aka Kurdistan Freedom Hawks aka The Freedom Hawks of Kurdistan

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the organization known as Teyrebazen Azadiya Kurdistan (aka TAK, aka Kurdistan Freedom Hawks, aka The Freedom Hawks of Kurdistan) has committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render

ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

**Condoleezza Rice,**

*Secretary of State, Department of State.*

[FR Doc. E8-274 Filed 1-9-08; 8:45 am]

BILLING CODE 4710-10-P

## DEPARTMENT OF STATE

[Public Notice 6054]

### Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Chilean English as a Foreign Language (EFL) Student Teacher Program

*Announcement Type:* New Cooperative Agreement.

*Funding Opportunity Number:* ECA/A/L-08-01.

*Catalog of Federal Domestic Assistance Number:* 00.000.

*Key Dates:* (Pending availability of funds)

*Anticipated Grant Start Date:* May 5, 2008.

*Anticipated Program Start Date:* August 2008.

*Anticipated Grant End Date:* February 28, 2009.

*Application Deadline:* March 13, 2008.

*Executive Summary:* The Office of English Language Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the Chilean English as a Foreign Language (EFL) Student Teacher Program. Accredited, U.S. post-secondary educational institutions meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to administer this semester-long program for Chilean pre-service teachers. Post-secondary educational institutions may apply independently or in a consortium with other post-secondary institutions. The program will include academic coursework and practicum/student teaching for Chilean EFL student teachers in their penultimate year of undergraduate study. ECA plans to award two grants for the administration of this program under which a total of approximately thirty EFL student teachers will be placed in two groups at two different U.S. universities. The program will take place during the fall semester of 2008 and will, in addition to teaching participants about student-centered methodology, give them an in-depth experience of U.S. life and culture and contribute to mutual understanding between Chile and the United States.

The program should include both a theoretical component, provided through courses and professional development seminars in an academic setting, and a practical component, provided through practice teaching under the guidance of experienced mentor teachers in local school districts. Interested post-secondary educational institutions should indicate strong contacts with local U.S. school districts in order to provide the practical student-teaching component, as well as a demonstrated ability to conduct a substantive academic program. Host schools for student teaching may be public, magnet or charter schools, and should exemplify best practices. The total funding available for program and administrative purposes is anticipated to be approximately \$450,000, and will be awarded in two separate grants of \$225,000. This exchange program will be funded in FY-2008 pending the availability of funds.

## I. Funding Opportunity Description

### Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries \* \* \* to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations \* \* \* and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

### Purpose

The Chilean EFL Student Teacher Program is designed to assist Chile in its goal of becoming a bilingual society. The people of the United States and Chile enjoy a particularly close relationship, nurtured by longstanding and strong cultural, diplomatic and commercial ties. As leading members of the Organization of American States (OAS) and the Asian-Pacific Economic Cooperation (APEC) inter-governmental forum, the governments of the U.S. and Chile share a common commitment to democracy and sustainable economic growth, and work together to the mutual benefit of their citizens and neighbors.



The Chilean educators participating in this exchange program will prepare their future students to live in an increasingly interdependent world, and the exchange experience will provide a basis for the educators' continuing contact with U.S. counterparts in order to promote mutual understanding between the U.S. and Chile.

The program will bring a total of approximately thirty EFL student teachers in their penultimate year of undergraduate study at Chilean universities and place them in two clusters at different U.S. universities. The student teachers will be selected by a panel of U.S. and Chilean members in Chile to create a diverse group in terms of their home regions in Chile, gender, and socio-economic background. The semester-long program will take place from August 2008 to December 2008. During the program, participants will learn about student-centered English teaching through special seminars, enrollment in regular university courses and practice teaching. The program will prepare the student teachers to teach in the subject field of English as a Foreign Language. Following their program, the students will return to their home institutions for additional study before starting careers as high school English teachers in Chile.

The program should encompass the following elements:

(1) Grantee organization participation in the pre-departure orientation in Chile organized by the Chilean Government;

(2) Orientation upon arrival at university;

(3) Instruction in English language as needed;

(4) Intensive education in relevant subjects and teaching methodologies through a variety of courses within the host university's school of education or other departments (participants will select courses based on their individual goals and interests);

(5) Enrollment in a specially designed group seminar on teaching strategies for their home environments and educational leadership;

(6) Participation in a substantial three-week practice teaching component to engage participants actively with the American classroom environment.

a. Host universities should recruit school districts to host groups for internships based on brief proposals from the school districts, outlining their interest, their understanding of the program goals, examples of their best practices, and a commitment to mentoring.

b. School districts should be within easy driving distance of the host university, and should be capable of

introducing participants to more than one approach to teaching (for example, inquiry, active classroom, group projects, etc.).

(7) Cultural and community service activities to encourage interaction and mutual understanding between Chileans and U.S. peers and citizens;

(8) Travel to Washington, DC during the second half of the program for a three- to four-day workshop including visits to the Department of State, cultural sites, and relevant educational organizations.

Applicants should outline how host school districts will be selected and how teachers will collaborate with schools and local communities.

Applicant organizations should submit a narrative outlining a comprehensive strategy for the administration and implementation of the program. The narrative should include a design for the program, and a plan for monitoring the student teachers' academic and professional programs.

The comprehensive program strategy should reflect a vision for the initiative as a whole, interpreting the goals of the Chilean EFL Student Teacher Program with creativity, as well as providing innovative ideas for the program. The strategy should include a description of how the various components of the program will be integrated to build upon and reinforce one another.

## II. Award Information

*Type of Award:* Cooperative Agreement.

*Fiscal Year Funds:* 2008.

*Approximate Total Funding:* \$450,000 (pending availability of funds).

*Approximate Number of Awards:* 2.

*Approximate Average Award:* \$225,000.

*Anticipated Award Date:* Pending availability of funds, April 7, 2008.

*Anticipated Project Completion Date:* December 2008.

## Additional Information

Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this cooperative agreement for two additional fiscal years, before openly competing it again.

## III. Eligibility Information

*III.1. Eligible applicants:* Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

*III.2. Cost Sharing or Matching Funds:* There is no minimum or maximum

percentage required for this competition. However, the Bureau encourages applicants to provide the highest possible levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, the grantee must maintain written records to support all costs which are claimed as its contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A-110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event the grantee does not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

## III.3. Other Eligibility Requirements:

(a) Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs are limited to \$60,000. ECA anticipates awarding two grants, in an amount up to \$225,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

## IV. Application and Submission Information

**Note:** Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

*IV.1 Contact Information to Request an Application Package:* Please contact the Eran Williams, Branch Chief for Programs in the Office of English Language Programs, ECA/A/L, room 304, U.S. Department of State, SA-44, 301 4th Street, SW., Washington, DC 20547, telephone (202) 453-8843, or fax (202) 453-8858 to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/L-08-1 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained



from *grants.gov*. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Eran Williams and refer to the Funding Opportunity Number ECA/A/L-08-01 located at the top of this announcement on all other inquiries and correspondence.

**IV.2. To Download a Solicitation Package Via Internet:** The entire Solicitation Package may be downloaded from the Bureau's Web site at <http://exchanges.state.gov/education/rfgps/menu.htm>, or from the Grants.gov Web site at <http://www.grants.gov>.

Please read all information before downloading.

**IV.3. Content and Form of Submission:** Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

**IV.3a.** You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access <http://www.dunandbradstreet.com> or call 1-866-705-5711. Please ensure that your DUNS number is included in the appropriate box of the SF-424 which is part of the formal application package.

**IV.3b.** All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, and the Goals and Implementation (POGI) document for additional formatting and technical requirements.

**IV.3c.** You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status

as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

**IV.3d.** Please take into consideration the following information when preparing your proposal narrative:

**IV.3d.1 Adherence to All Regulations Governing the J Visa.**

The Bureau of Educational and Cultural Affairs places critically important emphases on the security and proper administration of the Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa.

Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The Grantee will be responsible for issuing DS-2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at <http://exchanges.state.gov> or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD-SA-44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203-5029, FAX: (202) 453-8640.

Please refer to Solicitation Package for further information.

**IV.3d.2 Diversity, Freedom and Democracy Guidelines.**

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of U.S. political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the proposal. Public Law 104-319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take

appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106-113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

**IV.3d.3. Program Monitoring and Evaluation.**

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that each proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. The evaluation plan should include a description of the project's objectives, anticipated project outcomes, and how and when the applicant will measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

The monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage applicants to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.
2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

**Please note:** Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of the monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

*Describe your plans for:* i.e. sustainability, overall program management, staffing, coordination with ECA and PAS or any other requirements etc.

**IV.3e.** Applicants should take the following information into consideration when preparing their budgets:

**IV.3e.1.** Applicants must submit a comprehensive budget for the entire program. There must be a summary

budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

**IV.3e.2.** Allowable costs for the program include the following:

- (1) Practice teaching host schools administrative costs
- (2) Seminars and debriefing costs
- (3) Cultural activities
- (4) Book allowance/shipping
- (5) Grantee administrative costs
- (6) Tuition (Please explain how you will ensure cost-effective arrangements based on non-credit enrollment and/or other methods according to formulas that can be protected from increases in tuition rates).

The Chilean government will provide a student maintenance package that will cover housing, meals and incidentals as well as international transportation to the host universities and from Washington, DC.

**IV.3f.** Application Deadline and Methods of Submission.

**Application Deadline Date:** Thursday, March 13, 2008.

**Reference Number:** ECA/A/L-08-01.

**Methods of Submission:**

Applications may be submitted in one of two ways:

- (1) In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or
- (2) Electronically through <http://www.grants.gov>.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF-424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

**IV.3f.1** Submitting Printed Applications. Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify an applicant upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible

tracking number and to monitor/confirm delivery to ECA via the Internet.

Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

**Important note:** When preparing your submission please make sure to include one extra copy of the completed SF-424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and 4 copies of the application should be sent to: U.S. Department of State, SA-44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/L-08-01, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants submitting hard-copy applications must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) or Microsoft Word format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy for its review.

**IV.3f.2—Submitting Electronic Applications.** Applicants have the option of submitting proposals electronically through Grants.gov (<http://www.grants.gov>). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system. Please follow the instructions available in the "Get Started" portion of the site (<http://www.grants.gov/GetStarted>).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, 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 an applicant's internet connection. Therefore, we strongly recommend that an applicant not wait until the application deadline to begin the submission process through Grants.gov.

Direct all questions regarding Grants.gov registration and submission to:

Grants.gov Customer Support  
**Contact Center Phone:** 800-518-4726  
**Business Hours:** Monday-Friday, 7 a.m.-9 p.m. Eastern Time  
**E-mail:** [support@grants.gov](mailto:support@grants.gov)  
 Applicants have until midnight (12 a.m.), Washington, DC time of the

closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will not notify an applicant upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Optional—IV.3f.3 An applicant may also state here any limitations on the number of applications that an applicant may submit and make it clear whether the limitation is on the submitting organization, individual program director or both.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

## V. Application Review Information

### V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards grants resides with the Bureau's Grants Officer.

### Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as

institutional direct funding contributions.

12. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by the U.S. Department of State's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

## VI. Award Administration Information

### VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

### VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A-122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A-21, "Cost Principles for Educational Institutions."

OMB Circular A-87, "Cost Principles for State, Local and Indian Governments".

OMB Circular No. A-110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A-102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A-133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information: <http://www.whitehouse.gov/omb/grants>.  
<http://exchanges.state.gov/education/grantsdiv/terms.htm#article1>.

VI.3. Reporting Requirements: The grantee must provide ECA with a hard

copy original plus one copy of a final program and financial report no more than 90 days after the expiration of the award;

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

**Optional Program Data Requirements:** Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

#### VII. Agency Contacts

For questions about this announcement, contact: Eran Williams Office of English Language Programs, ECA/A/L, room 304, U.S. Department of State, SA-44, 301 4th Street, SW., Washington, DC 20547, (202) 453-8843 and fax (202) 453-8858, [WilliamsEM2@state.gov](mailto:WilliamsEM2@state.gov).

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/L-08-01.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

#### VIII. Other Information

##### Notice

The terms and conditions published in this RFGP are binding and may not

be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: December 20, 2007.

**C. Miller Crouch,**

*Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. E8-299 Filed 1-9-08; 8:45 am]

BILLING CODE 4710-05-P

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### Transfer of Federally Assisted Land or Facility

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

**ACTION:** Notice of intent to transfer Federally assisted land or facility.

**SUMMARY:** Section 5334(h) of the Federal Transit Laws, as codified, 49 U.S.C. 5301, *et seq.*, permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that the City of Kenosha (City) intends to transfer a facility located at 3735 65th Street, Kenosha, Wisconsin, to the Public Works Department of the City of Kenosha (Public Works) for the operation of their Street Department Division of Public Works. The City owns the land that the facility sits on and the land purchase was funded with local money. Therefore, FTA has no interest in the land. There is no access to the facility except through the City's property. Any other public agency other than those under the City would have to acquire access to the facility which would prove costly. They would also have to negotiate a lease with the City for the use or possible purchase of the land. The facility is a single story, light industrial/municipal building.

**DATES:** *Effective Date:* Any Federal agency interested in acquiring the facility must notify the FTA Region V Office of its interest by February 15, 2008.

**ADDRESSES:** Interested parties should notify the Regional Office by writing to Marisol Simón, Regional Administrator, Federal Transit Administration, 200 West Adams, Suite 320, Chicago, IL 60606.

**FOR FURTHER INFORMATION CONTACT:** Rhonda Reed, Deputy Regional Administrator at 312/353-2789.

#### SUPPLEMENTARY INFORMATION:

##### Background

49 U.S.C. 5334(h) provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance decides an asset acquired under this chapter at least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government. 49 U.S.C. 5334(h)(1)

##### *Determinations:*

The Secretary may authorize a transfer for a public purpose other than mass transportation only if the Secretary decides:

(A) The asset will remain in public use for at least 5 years after the date the asset is transferred;

(B) There is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) The overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) Through an appropriate screening or survey process, that there is no interest in acquiring the asset for Government use if the asset is a facility or land.

#### Federal Interest in Acquiring Land or Facility

This document implements the requirements of 49 U.S.C. 5334(h)(1)(D) of the Federal Transit Laws. Accordingly, FTA hereby provides notice of the availability of the land or facility further described below. Any Federal agency interested in acquiring the affected facility should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing facility, FTA will make certain that the other requirements specified in 49 U.S.C. Section



5334(h)(1)(A) through (C) are met before permitting the asset to be transferred.

#### Additional Description of Facility

The facility is a single story light industrial/municipal building which is part of a small municipal owner facility that is located just east of 39th Avenue and just south of 65th Street. It is an industrial zoned parcel that has access from 65th Street. It abuts the southern Pacific Railroad track along its southern lot line but does not have direct access to the rail. The facility is situated within the western portion of Kenosha County, adjacent to the southwestern limits of the City. The general neighborhood is mainly single-family residential sites. It also includes some urban properties, as the township-city boundary meanders through the area. The immediate area is more suburban in nature and centers around the intersection of 60th Street (County Trunk Highway K) and State Trunk Highway 31. These two streets provide excellent access to the City of Kenosha and good access to the City of Racine, located six miles north, Interstate 94 which is three miles west and to the State of Illinois which is five miles south. The facility has municipal water, sanitary sewer, curb gutter, gas and electric. Cable and phone service are also available to the site. The facility consists of three parts, the main building, a small wash-bay and a rear-addition. Each is of masonry exterior with steel interior supports, steel decking and concrete slab foundation. It is rectangular in shape with dimensions of 135-feet by 120-feet. The rear addition is 39-feet by 100-feet with the wash-bay being 22-feet by 127-feet. The main portion of the facility is a light industrial space that was used as a municipal storage garage. The garage has seven overhead truck doors off the eastern elevation and five off the west. The southern wash-bay has one overhead door on the east and one on the west. The majority of the building is the garage and shop area that is unfinished with concrete flooring and open steel-beams. The southwestern corner of the facility houses a small office area and employee locker room and lunchroom. The office area is roughly 3,665-square feet of modest finished area with the wash-bay being 2,794-feet. The gross building area is approximately 23,934-square feet.

The facility is heated with suspended gas-fired forced air heaters. The office and employee areas have central air conditioning. Electric service is a 600 amp main with step down circuit breakers. 40-gallon Rheem gas water heaters provide hot water. The entire

facility is covered with an interior sprinkler system.

Issued on: January 7, 2008.

**Rhonda Reed,**

*Deputy Regional Administrator.*

[FR Doc. E8-281 Filed 1-9-08; 8:45 am]

BILLING CODE 4910-57-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

#### Assistance to Small Shipyards Grant Program

**AGENCY:** Maritime Administration, Department of Transportation, Office of Shipyards and Marine Financing.

**ACTION:** Notice of Establishment of New Grant Program.

*Catalog of Federal Domestic Assistance Number:* 20.814.

**FOR FURTHER INFORMATION CONTACT:** Jean E. McKeever, Associate Administrator for Business and Workforce Development, Maritime Administration, 1200 New Jersey Ave., SE., Washington, DC 20590; phone: (202) 366-5737; fax: (202) 366-3511; or e-mail: [jean.mckeever@dot.gov](mailto:jean.mckeever@dot.gov).

**Key Dates:** The period for submitting grant applications, as mandated by statute, commenced on December 27, 2007, and will terminate on February 25, 2008. The applications must be received by the Maritime Administration by 5 p.m. EST on February 25, 2008. Applications received later than this time will not be considered. The Maritime Administrator intends to award grants no later than April 24, 2008.

**Funding Opportunity:** Section 3506 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163) and the section entitled "Assistance to Small Shipyards" in the Consolidated Appropriations Act, 2008, provides that the Maritime Administration shall establish an assistance program for small shipyards. Under this program, there is currently an aggregate of \$10,000,000 available for grants for capital improvements, and related infrastructure improvements at qualified shipyards that will facilitate the efficiency, cost-effectiveness, and quality of domestic ship construction for commercial and Federal Government use. Such grants may not be used to construct buildings or other physical facilities or to acquire land unless such use is specifically approved by the Administrator as being consistent with and supplemental to capital and related infrastructure improvements.

**Award Information:** The Maritime Administration intends to award the full amount of the available funding through grants to the extent that there are worthy applications. There is no dollar limitation on the amount of a grant for which application may be made; however, the Maritime Administration will seek to obtain the maximum benefit from the available funding by awarding grants for as many of the most worthy projects as possible. The start date and period of performance for each award will depend on the specific project and must be agreed to by the Maritime Administration.

#### *Eligibility Information:*

1. **Eligible Applicants**—The statutes referenced in "Funding Opportunity" above, when read together, provide that either shipyards or State or local governments on behalf of shipyards can apply for grants. The shipyard for which a grant is sought must be one in a single geographical location, located in or near a maritime community, that (1) is a small business concern (within the meaning of section 3 of the Small Business Act (15 U.S.C. 632); and (2) does not have more than 600 production employees.

2. **Other Considerations in Making Awards**—In providing grants, the Administrator shall take into account (a) the economic circumstances and conditions of the maritime community near to which a shipyard is located; and (b) the local, State and regional economy in which such community is located.

#### *Matching Requirements:*

(1) Except as provided in paragraph (2) below, Federal funds for any eligible project shall not exceed 75 percent of the total cost of such project. The remaining portion of the cost shall be paid in funds from or on behalf of the awardee. The applicant will be required to submit detailed financial statements and any necessary supporting documentation demonstrating how and when such matching requirement is proposed to be funded.

#### (2) Exceptions—

(A) **Small Projects.**—Paragraph (1) shall not apply to grants for stand-alone projects costing not more than \$26,075. The amount under this subparagraph shall be indexed to the consumer price index and modified each fiscal year after the annual publication of the consumer price index.

(B) **Reduction in Matching Requirement.**—If the Administrator determines that a proposed project merits support and cannot be undertaken without a higher percentage of Federal financial assistance, the Administrator may award a grant for



such project with a lesser matching requirement than is described in paragraph (1).

*Application:* An application should be filed on Form SF-424 which can be found on the internet at *Grants.gov*. (Although the form is available electronically, we request that the application be filed in hard copy as indicated below due to the amount of information requested.) In order to allow us to evaluate whether an applicant meets the statutory criteria, the application for a grant should also provide the following information as an addendum to Form SF-424—

1. Unique identifier of entity's parent company (when applicable): Data Universal Numbering System (DUNS) (when applicable).

2. Shipyard company officer's certification or certification by an appropriate State or local government official, as applicable, as to shipyard's compliance with the following requirements:

(a) The shipyard for which a grant is sought is located in a single geographical location in or near a maritime community;

(b) The shipyard is a small business concern (within the meaning of section 3 of the Small Business Act (15 U.S.C. 632); and

(c) The shipyard has no more than 600 production employees.

3. A comprehensive description of the project.

4. A comprehensive description of the need for the project and how the project will facilitate the efficiency, cost-effectiveness, and quality of domestic ship construction for commercial and Federal Government use.

5. A detailed itemization of the cost of the project together with any supporting documentation.

6. If a matching requirement is necessary for the requested grant, detailed financial statements together with any supporting documentation demonstrating how and when such matching requirement is proposed to be funded.

7. Most recent audited financial statements.

8. Detailed methodology and timeline for implementing the project.

9. Shipyard company officer's certification or certification by an appropriate State or local government official, as applicable, that the grant recipient has the authority to carry out the proposed project.

10. Any existing programs or arrangements that can be used to supplement or leverage the federal grant assistance.

11. Information concerning (a) the economic circumstances and conditions of the maritime community near to which the shipyard is located; and (b) the local, State, and regional economy in which such community is located.

12. Applicant must submit a certification in accordance with the Department of Transportation's regulation restricting lobbying, 49 CFR Part 20, that the applicant has not, and will not, make any prohibited payments out of the requested grant.

Additional information may be requested as deemed necessary by the Maritime Administration in order to facilitate and complete its review of the application. If such information is not provided, the Maritime Administration may deem the application incomplete and cease processing it.

*Where To File Application:* An original copy of the application together with six additional copies shall be submitted to Jean E. McKeever, Associate Administrator for Business and Workforce Development, Room W21-318, Maritime Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

*Evaluation of Applications:* The Administrator will evaluate the applications on the basis of the economic information provided and in terms of how well the project for which a grant is requested will facilitate the efficiency, cost-effectiveness, and quality of domestic ship construction for commercial and Federal Government use. The Administrator will award grants in his sole discretion in such amounts and under such conditions for those projects he determines will best further the statutory purposes of the small shipyard program.

*Conditions Attached To Awards:* The grant agreement will set out the records to be maintained by the awardee which must be available for review and audit by the Administrator, as well as any other conditions and requirements.

(Authority: 49 CFR 1.66)

Dated: January 2, 2008.

By Order of the Maritime Administrator.

**Murray A. Bloom,**

*Acting Secretary, Maritime Administration.*

[FR Doc. E8-216 Filed 1-9-08; 8:45 am]

BILLING CODE 4910-81-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### Release of Waybill Data

The Surface Transportation Board has received a request from Baker & Miller PLLC on behalf of the Kansas City

Southern (WB595-5-1/3/2008) for permission to use certain data from the Board's 2006 Carload Waybill Sample. A copy of the requests may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

*Contact:* Mac Frampton, (202) 245-0317.

**Anne K. Quinlan,**

*Acting Secretary.*

[FR Doc. E8-209 Filed 1-9-08; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### Release of Waybill Data

The Surface Transportation Board has received a request from Covington & Burling on behalf of Union Pacific Corporation (WB468-9-1/3/08), for permission to use certain data from the Board's 2006 Carload Waybill Sample. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

*Contact:* Mac Frampton, (202) 245-0317.

**Anne K. Quinlan,**

*Acting Secretary.*

[FR Doc. E8-218 Filed 1-9-08; 8:45 am]

BILLING CODE 4915-01-P

**DEPARTMENT OF THE TREASURY****Bureau of the Public Debt****Proposed Collection: Comment Request**

**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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Disclaimer and Consent with Respect to United States Savings Bonds/Notes.

**DATES:** Written comments should be received on or before March 12, 2008, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Brian Lallemond, 200 Third Street, Avery 4-A, Parkersburg, WV 26106-5312, or e-mail to [Brian.Lallemond@bpd.treas.gov](mailto:Brian.Lallemond@bpd.treas.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Brian Lallemond, Bureau of the Public Debt, 200 Third Street, Avery 4-A, Parkersburg, WV 26106-5312, (304) 480-8108.

**SUPPLEMENTARY INFORMATION:**

*Title:* Disclaimer and Consent With Respect to United States Savings Bonds/Notes.

*OMB Number:* 1535-0113.

*Form Number:* PD F 1849.

*Abstract:* The information is requested when the requested savings bonds/notes transaction would appear to affect the right, title or interest of some other person.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 7,000.

*Estimated Time per Respondent:* 6 minutes.

*Estimated Total Annual Burden Hours:* 700.

*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 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.

Dated: January 3, 2008.

**Brian Lallemond,**

*Records Management Program Manager.*

[FR Doc. 08-58 Filed 1-9-08; 8:45 am]

BILLING CODE 4810-39-M

**DEPARTMENT OF VETERANS AFFAIRS****Copayment for Medication**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Department of Veterans Affairs (VA) is hereby giving notice that there is no change in the medication copayment rate for calendar year 2008 and the rate will remain at \$8.00. The total amount of copayments in a calendar year for a veteran enrolled in one of the Priority Groups 2 through 6 shall not exceed the cap of \$960.00. These rates are based on the Prescription Drug component of the Medical Consumer Price Index as cited in title 38, Code of Federal Regulations, part 17, § 17.110.

**FOR FURTHER INFORMATION CONTACT:** Tony Guagliardo, Director, Business

Policy (163), Veterans Health Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 254-0406. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** VA is required by law to charge certain veterans a copayment for each 30-day or less supply of medication provided on an outpatient basis (other than medication administered during treatment) for treatment of a non-service connected condition. Public Law 106-117, the Veterans' Millennium Health Care and Benefits Act, gives the Secretary of Veterans Affairs authority to increase the medication copayment amount and to establish a calendar year cap on the amount of medication copayments charged to veterans enrolled in Priority Groups 2 through 6. When veterans reach the calendar year cap, they will continue to receive medications without additional copayments for that calendar year.

**Formula for Calculating the Medication Copayment Amount**

Each calendar year beginning after December 31, 2002, the Prescription Drug component of the Medical Consumer Price Index of the previous September 30 is divided by the Index as of September 30, 2001. The ratio is then multiplied by the original copayment amount of \$7.00. The copayment amount of the new calendar year is then rounded down to the whole dollar amount.

**Computation of Calendar Year 2008 Medication Copayment Amount**

a. Prescription Drug Medical Consumer Price Index as of September 30, 2007 = 370.9.

b. Prescription Drug Medical Consumer Price Index as of September 30, 2001 = 304.8.

c. Index = 370.9 divided by 304.8 = 1.2168.

d. (INDEX) × \$7 = \$8.52.

e. Copayment amount = \$8.00.

Dated: January 3, 2008.

**James B. Peake,**

*Secretary of Veterans Affairs.*

[FR Doc. E8-211 Filed 1-9-08; 8:45 am]

BILLING CODE 8320-01-P



# Federal Register

Thursday,  
January 10, 2008

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## Part II

### Environmental Protection Agency

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40 CFR Part 63

National Emission Standards for  
Hazardous Air Pollutants for Source  
Categories: Gasoline Distribution Bulk  
Terminals, Bulk Plants, and Pipeline  
Facilities; and Gasoline Dispensing  
Facilities; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

[EPA-HQ-OAR-2006-0406, FRL-8512-3]

RIN 2060-AM74

**National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities**

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

**ACTION:** Final rule.

**SUMMARY:** This action promulgates national emission standards for hazardous air pollutants for the facilities in the gasoline distribution (Stage I) area source category. We are promulgating these emission standards for hazardous air pollutants pursuant to Clean Air Act section 112(c)(3) and 112(d)(5). We are adding two regulations that address the facilities contained in this area source category. The first includes requirements for bulk distribution facilities, i.e., gasoline distribution bulk terminals, bulk plants, and pipeline facilities. The second includes requirements for loading of storage tanks at gasoline dispensing facilities. We are also incorporating by reference four test methods. This action also finalizes our decision not to regulate the above noted facilities under Clean Air Act section 112(c)(6).

**DATES:** These final rules are effective on January 10, 2008. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 10, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2006-0406. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information 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 through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744. The Air and Radiation Docket and Information Center's Web site is: <http://www.epa.gov/oar/docket.html>. The electronic mail (e-mail) address for the Air and Radiation Docket is: [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov), the telephone number is (202) 566-1742, and the Fax number is (202) 566-9744.

**FOR FURTHER INFORMATION CONTACT:** General and Technical Information: Mr. Stephen Shedd, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143-01), EPA, Research Triangle Park, NC 27711, telephone: (919) 541-5397, facsimile number: (919) 685-3195, e-mail address: [shedd.steve@epa.gov](mailto:shedd.steve@epa.gov).

**Economic Analysis Information:** Mr. Tom Walton, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Air Benefit and Cost Group (C339-01), EPA, Research Triangle Park, NC 27711, telephone: (919) 541-5311, facsimile number: (919) 541-0242, e-mail address: [walton.tom@epa.gov](mailto:walton.tom@epa.gov).

**Compliance Information:** Ms. Maria Malave, Office of Compliance, Air Compliance Branch (2223A), EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone: (202) 564-7027, facsimile number: (202) 564-0050, e-mail address: [malave.maria@epa.gov](mailto:malave.maria@epa.gov).

**SUPPLEMENTARY INFORMATION:** *Outline.* The information presented in this preamble is organized as follows:

- I. General Information
  - A. Does this action apply to me?
  - B. Where can I get a copy of this document?
  - C. Judicial Review

- II. Background Information
- III. Summary of Final Rules and Changes Since Proposal
  - A. Applicability and Compliance Dates
  - B. Summary of Emission Limits and Management Practices
  - C. What are the testing and initial compliance requirements?
  - D. What are the notification, recordkeeping, and reporting requirements?
  - E. Summary of Major Changes Since Proposal
- IV. Additional Actions
  - A. Title V Permitting Requirements
  - B. Not Regulating This Source Category Under CAA Section 112(c)(6)
- V. Summary of Comments and Responses
  - A. Applicability
  - B. Selection of Regulatory Alternative
  - C. Bulk Terminals
  - D. Testing and Monitoring
  - E. Control Costs and Cost Analyses Performed
  - F. Notifications, Reporting, and Recordkeeping
- VI. Summary of Environmental, Energy, Cost, and Economic Impacts
  - A. What are the air impacts?
  - B. What are the cost impacts?
  - C. What are the economic impacts?
  - D. What are the non-air environmental and energy impacts?
- VII. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act
  - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  - K. Congressional Review Act

**I. General Information**

*A. Does this action apply to me?*

The regulated categories and entities affected by these final rules include:

Category	NAICS <sup>a</sup>	Examples of regulated entities
Industry .....	324110 493190 486910 424710 447110 447190	Operations at area sources that transfer and store gasoline, including bulk terminals, bulk plants, pipeline facilities, and gasoline dispensing facilities.
Federal/State/local/tribal governments.		

<sup>a</sup> North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the national emission standards. To determine whether your facility will be affected by the national emission standards, you should examine the applicability criteria in these final rules. If you have any questions regarding the applicability of the national emission standards to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13.

#### *B. Where can I get a copy of this document?*

In addition to being available in the docket, an electronic copy of these final rules is also available on the World Wide Web through the Technology Transfer Network (TTN). Following signature, a copy of these final rules will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: <http://www.epa.gov/ttn/oarpg/>. The TTN provides information and technology exchange in various areas of air pollution control.

#### *C. Judicial Review*

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of these final rules is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by March 10, 2008. Under section 307(b)(2) of the CAA, the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for us to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania

Ave., NW., Washington, DC 20460, with a copy to both the persons(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

#### **II. Background Information**

On December 14, 1994 (59 FR 64303), we promulgated national emission standards for hazardous air pollutants (NESHAP) for major source facilities within the gasoline distribution source category (see 40 CFR part 63, subpart R (Major Source NESHAP)). The Major Source NESHAP imposed control requirements on sources within the source category that met the definition of major sources, e.g., a source that emits 10 tons per year or more of any individual hazardous air pollutant (HAP) or 25 tons per year or more of any combination of HAP. Gasoline vapors normally contain nine HAP: benzene, ethylbenzene, hexane, toluene, xylenes, isooctane, naphthalene, cumene, and methyl tert-butyl ether. Some gasoline distribution terminals and pipeline facilities were found to be major sources by themselves or to be located at major sources. Gasoline storage tanks at bulk terminals and pipeline breakout stations, loading racks at bulk terminals, vapor leaks from gasoline cargo tanks, and equipment components in gasoline service were emission sources that were regulated under the Major Source NESHAP. Area sources of HAP emissions within the source category (many bulk terminals and pipeline breakout stations and all pipeline pumping stations, bulk plants, and gasoline dispensing facilities (GDF) (service stations, convenience stores, and other retail outlets)) are not subject to the Major Source NESHAP.

Section 112(k)(3)(B) of the CAA requires EPA to identify at least 30 HAP which, as the result of emissions from area sources,<sup>1</sup> pose the greatest threat to public health in urban areas. Consistent with this provision, in 1999, in the Integrated Urban Air Toxics Strategy (Strategy), EPA identified the 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the "urban HAP." See 64 FR 38706, 38715-716, July 19, 1999. Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to

regulation. EPA listed the source categories that account for 90 percent of the urban HAP emissions in the Strategy.<sup>2</sup>

CAA Section 112(d) standards include new and existing source maximum achievable control technology (MACT) standards, health threshold standards, and generally available control technology or management practices (GACT) standards for area sources. The standards that are the subject of these final rules are based on GACT pursuant to CAA section 112(d)(5).

Gasoline vapors contain two HAP (benzene and ethylene dichloride (EDC)) included among the 30 area source HAP listed under the Strategy. The gasoline distribution (Stage I) area source category was listed in the Strategy because the facilities in this category contributed approximately 36 percent of the national emissions of benzene and 2 percent of the EDC emissions from stationary area sources. We are adding two subparts to 40 CFR part 63 to address the benzene emissions from the facilities in this area source category. As explained in the proposed rule, EDC emissions are no longer emitted from facilities in this area source category as a result of the lead phase-down provisions of section 218 of the CAA. We received no comments on this matter; therefore, we are taking no further action regarding EDC emissions in this rulemaking.

#### **III. Summary of Final Rules and Changes Since Proposal**

This section summarizes the final rules and identifies and discusses changes since proposal. For changes that were made as a result of public comments, we have provided explanations of the changes and the rationale in the responses to comments in section V of this preamble.

##### *A. Applicability and Compliance Dates*

These final rules apply to any existing or new gasoline distribution facility that is an area source. 40 CFR part 63, subpart BBBBBB applies to bulk gasoline terminals, pipeline facilities, and bulk gasoline plants. 40 CFR part 63, subpart CCCCCC applies to GDF. The owner or operator of an existing area source must comply with all the requirements of these final rules by January 10, 2011. The owner or operator of a new area source must comply with these final rules by January 10, 2008 or upon initial startup, whichever is later.

<sup>1</sup> An area source is a stationary source of HAP emissions that is not a major source.

<sup>2</sup> Since its publication in the Integrated Urban Air Toxics Strategy in 1999, the area source category list has undergone several amendments.



### B. Summary of Emission Limits and Management Practices

40 CFR part 63, subpart BBBBBB requires that area source bulk gasoline terminals and pipeline breakout stations<sup>3</sup> that meet the applicability criteria in 40 CFR 63.11081 control emissions from large storage tanks (those at or above 20,000 gallons capacity) by using either specified floating roofs and seals or a closed vent system and control device to reduce emissions by 95 percent. Small storage tanks (those below 20,000 gallons capacity) must be covered.

40 CFR part 63, subpart BBBBBB also requires that cargo tank loading rack emissions located at bulk gasoline terminals with gasoline throughputs above 250,000 gallons per day be reduced to a level of 80 milligrams (mg), or less, per liter of gasoline loaded into cargo tanks. Those bulk terminals with gasoline throughputs below 250,000 gallons per day must use submerged filling for the loading of cargo tanks.

Additionally, bulk terminal owners or operators with gasoline throughputs above 250,000 gallons per day must not allow the loading of cargo tanks that do not have the appropriate vapor tightness testing documentation. Before loading at an affected bulk terminal, the owner or operator of a cargo tank must present documentation of passing the vapor tightness test to demonstrate, using EPA Reference Method 27, or equivalent, that they meet a maximum pressure or vacuum decay rate of 3 inches of water, or less, during a 5-minute test period.

At bulk plants, 40 CFR part 63, subpart BBBBBB requires the use of submerged filling of gasoline storage tanks and cargo tanks.

40 CFR part 63, subpart BBBBBB also requires the implementation of a monthly equipment leak inspection at bulk terminals, bulk plants, pipeline breakout stations, and pipeline pumping stations. The standards allow a sight, sound, and smell inspection of all equipment components in gasoline liquid or vapor service. In the final rule, all leaking equipment components must be repaired within a specified time period.

40 CFR part 63, subpart CCCCCC requires controls at GDF nationwide depending on the GDF's monthly gasoline throughput. All GDF must perform specified good management practices to check for and minimize evaporation of gasoline. All those GDF above 10,000 gallons per month throughput must also employ submerged filling of gasoline storage

tanks. The submerged filling requirement is met by either bottom filling the storage tank or by using a fill pipe to load the storage tank that extends to no more than 12 inches from the bottom of the storage tank for fill pipes installed on or before November 9, 2006, and no more than 6 inches from the bottom of the storage tank for fill pipes installed after November 9, 2006. Additionally, those GDF with a monthly throughput of 100,000 gallons, or more, must also use vapor balancing when filling their gasoline storage tanks.

Additionally, under the final rule, GDF that have tanks with a 250 gallon capacity or less, regardless of monthly throughput, are only required to perform the good management practices to check for and minimize evaporation of gasoline described in section 63.11116(a); these tanks are not required to comply with either the submerged fill or vapor balancing requirements of the final rule.

### C. What are the testing and initial compliance requirements?

40 CFR part 63, subpart BBBBBB requires that control devices being used to reduce emissions from loading racks at bulk terminals be tested to demonstrate that they comply with the emission limit. Closed vent systems and control devices used to reduce emissions from storage tanks also have to be tested to demonstrate that they comply with the emission limit. Other options for demonstrating compliance with the rule include using recent performance tests or providing documentation that the devices are complying with enforceable State, local, or tribal rules or operating permits that contain requirements at least as stringent as this final rule.

Affected facilities that use control devices (vapor processors) to comply with the emission limits for storage tanks or loading racks at bulk terminals are required to monitor operating parameters to demonstrate continuous compliance with the emission limits. The monitored operating parameter values must be determined during a performance test or by engineering assessment. An operating parameter monitoring approach approved by the Administrator and included in an enforceable operating permit is allowed as an alternative.

Annual inspections of storage tank roofs and seals are required for bulk terminals and pipeline breakout stations. Such inspections must be conducted using either the procedures required in 40 CFR part 60, subpart Kb, Standards of Performance for Volatile Organic Liquid Storage Vessels (Storage

Vessels New Source Performance Standards (NSPS)) or the procedures required in 40 CFR part 63, subpart WW (National Emission Standards for Storage Vessels (Tanks)—Control Level 2).

In addition, each owner or operator of a bulk gasoline terminal is required to monitor the loading of gasoline into gasoline cargo tanks to limit the loading to vapor-tight gasoline cargo tanks. The owner or operator of each gasoline cargo tank loading at an affected bulk terminal is required to perform vapor tightness testing on each cargo tank to demonstrate compliance with the maximum allowable pressure and vacuum change of 3 inches of water, or less, in 5 minutes. Vapor tightness testing must be performed using EPA Reference Method 27. Railcar cargo tanks may also use the "Railcar Bubble Leak Test Procedures" specified in the rule.

40 CFR part 63, Subpart CCCCCC requires that the owner or operator of GDF meeting the applicability criteria for vapor balancing demonstrate initial compliance with this emission limit by conducting an initial performance test on the vapor balance system. The rule also contains other options for demonstrating compliance with this emission limit, such as using recent performance tests or providing documentation that the vapor balance systems are complying with enforceable State, local, or tribal rules or operating permits that contain requirements at least as stringent as this final rule.

Each owner or operator must also determine, at the time of installation and every 3 years thereafter, the leak rate and cracking pressure of pressure-vacuum vent valves installed on gasoline storage tanks and must conduct a static pressure test on gasoline storage tanks.

### D. What are the notification, recordkeeping, and reporting requirements?

Affected sources that are subject to the control requirements under these final rules are required to submit four types of notifications or reports as set forth in the General Provisions: (1) Initial Notification; (2) Notification of Compliance Status; (3) periodic reports; and (4) other reports. The Initial Notification alerts the regulatory authority of applicability for existing sources or of construction for new sources. This notification also includes a statement as to whether the facility can achieve compliance by the required compliance date. The Notification of Compliance Status demonstrates that compliance has been achieved. This

<sup>3</sup> See 40 CFR 63.11100 for the definitions of the specific facilities regulated under subpart BBBBBB.

notification contains the results of initial performance tests and a list of equipment subject to the standard. Periodic reports are required on a semi-annual basis. The semi-annual compliance report informs the regulatory authority of the results of required inspections or additional testing results. An excess emissions report, if applicable, must be submitted with the semi-annual compliance report and is required if excess emission events occur. Excess emission events include events such as the loading of a cargo tank that does not have documentation of vapor tightness testing, deviations from acceptable operating parameter values, or equipment leaks that are not repaired within the required time.

Other reports are also required under the General Provisions, generally on a one-time basis, for events such as a notification before a performance test or a storage vessel inspection. Reporting these events allows the regulatory authority the opportunity to have an observer present.

Reporting requirements for owners or operators of bulk plants and GDF are limited in most cases to the Initial Notification and the Notification of Compliance Status. Those bulk plants that are located in States that require the use of submerged fill would not be required to submit these notifications. The same is true for GDF located in States or counties that already require submerged fill or submerged fill plus vapor balancing.

Records required under these final rules must be kept for 5 years. These include records of cargo tank vapor tightness test certifications, records of storage tank and equipment component inspections, and records of monthly throughput.

#### *E. Summary of Major Changes Since Proposal*

As a result of the public comments received in response to the November 9, 2006 proposal, we have made several changes in the final rules for this source category. This section presents a summary of the major changes since proposal. Additional discussion of the details of the changes and the rationale for making these changes is presented in section V of this preamble.

As proposed, 40 CFR part 63, subpart BBBBBB applied to both bulk facilities nationwide and GDF in Urban 1 and Urban 2 areas. We also requested comment on whether to require vapor balancing at GDF in Urban 1 areas and provided rule text in the docket. In order to simplify the final rules, we have included the requirements for bulk

facilities in subpart BBBBBB and have included all requirements for GDF in a separate subpart (40 CFR part 63, subpart CCCCCC).

We have made some changes to the requirements for bulk facilities. Internal floating roof storage tanks at bulk terminals and pipeline breakout stations will not have to be equipped with secondary rim seals (as proposed) if they have vapor mounted primary seals. Also, we are clarifying that storage tanks below 20,000 gallons in capacity require a cover, and those at or above 20,000 gallons in capacity require the controls as proposed and mentioned above.

We have also made some changes to the requirements for loading racks at bulk terminals. We proposed a requirement that all bulk terminals meet an 80 mg per liter (mg/l) emission standard for loading racks. Based on comments received, however, the type of control required in the final rule depends on the daily gasoline throughput of the bulk terminal. Loading racks at bulk terminals with daily gasoline throughputs of less than 250,000 gallons are required to use submerged filling; those at or above a daily gasoline throughput of 250,000 gallons are required to meet the 80 mg/l standard.

Additionally, we requested comment and supporting information on alternative parameter monitoring approaches for vapor processors used to meet the 80 mg/l standard for bulk terminal loading racks. After consideration of the public comments, we have decided to include presence of flame monitoring (as was proposed) for thermal oxidizers, and vacuum level monitoring for carbon adsorbers, as alternatives for monitoring the performance of vapor processors. We also took comments and requested data on additional requirements for these alternative monitoring approaches. We have incorporated these additional periodic equipment and maintenance inspections of the vapor processor systems into the final rule.

No major changes since proposal have been made to the requirements for pipeline facilities or bulk plants.

For GDF (40 CFR part 63, subpart CCCCCC), we have incorporated changes to the submerged fill requirements and the vapor balance requirements on which we requested comments. The final rule contains specific requirements for GDF nationwide depending on the GDF's monthly gasoline throughput. All GDF, regardless of size, must implement management practices that will minimize vapor releases to the atmosphere. GDF with a monthly

gasoline throughput of 10,000 gallons or more must also use submerged fill when loading their storage tanks. In addition to the requirements described above, GDF with a monthly gasoline throughput of 100,000 gallons or more must use vapor balancing when loading the storage tank. Subpart CCCCCC also contains requirements applicable to gasoline cargo tanks.

#### **IV. Additional Actions**

In today's final rulemaking, we are also finalizing two additional actions that were announced at proposal. These final actions address title V permit requirements and our decision not to regulate the gasoline distribution (Stage I) area source category under CAA section 112(c)(6).

##### *A. Title V Permitting Requirements*

Section 502(a) of the CAA provides that EPA may exempt one or more area source categories from the requirements of title V if the Administrator finds that compliance with such requirements is "impracticable, infeasible, or unnecessarily burdensome" on such categories. EPA must determine whether to exempt an area source from title V at the time we issue the relevant CAA section 112 standard (40 CFR 70.3(b)(2)). In this action, we are finalizing the proposed exemption of gasoline distribution area sources from the requirement to apply for and obtain a title V permit as a result of being subject to these final rules. We justified this finding at proposal and did not receive any negative comments during the public comment period regarding this issue. In fact, we received two positive comments supporting the exemption. As a result, gasoline distribution area sources are not required to obtain title V permits because of being subject to these final rules. However, if such sources are otherwise required to obtain title V permits, e.g., due to being part of a major source defined under title V (40 CFR 70.2, 40 CFR 71.2, and 40 CFR 63.2), they must apply for and obtain title V permits. The applicability criteria for title V are in 40 CFR 70.3(a) and (b) and 40 CFR 71.3(a) and (b). We are adding additional regulatory text to this rule to clarify the above.

##### *B. Not Regulating This Source Category Under CAA Section 112(c)(6)*

On November 8, 2002 (67 FR 68124), the Gasoline Distribution (Stage I) Area Source category was added to the list of source categories for development of standards under CAA section 112(c)(6) toward the 90-percent requirement for polycyclic organic matter (POM). One

surrogate for POM is the sum of 16 polynuclear aromatic hydrocarbon compounds (16-PAH) measured in EPA Test Method 610. Naphthalene is the only 16-PAH estimated and reported in the 1990 inventory that is emitted from gasoline distribution facilities. As explained in the proposal preamble, we have revised the 1990 inventory of naphthalene from this source category downward based on additional data received. Based on that information, we have concluded that gasoline distribution facilities (area sources) contribute only 0.02 percent of the total 16-PAH (1.73 tons out of 8,051 tons) and are not needed to meet the 90-percent requirement for POM in CAA section 112(c)(6). This action finalizes our decision not to regulate this source category under CAA section 112(c)(6) since we fully justified this conclusion at proposal and did not receive any negative comments at proposal.

#### V. Summary of Comments and Responses

The gasoline distribution area source rules were proposed on November 9, 2006 (71 FR 66064). The 60-day public comment period ended on January 8, 2007, and we received 36 comment letters. Comments were received from industry representatives, trade associations, State and local air pollution control agencies, environmental groups, air pollution control device vendors, and private citizens. The final rules reflect our consideration of all of the comments received on the proposed action. This section summarizes the significant comments and those that resulted in changes in the final rules. Our responses to comments not specifically addressed in this preamble are presented in the Response to Comments Document, which is available in Docket No. EPA-HQ-OAR-2006-0406.

#### A. Applicability

##### 1. Area Sources

*Comment:* One commenter questioned whether EPA intended the area source rules to apply to facilities that are major sources and that have GDF on site for refueling of their vehicles (fleet vehicle refueling centers). Another commenter stated that EPA should clarify that the proposed rule does not apply to gasoline distribution major sources.

*Response:* The gasoline distribution (Stage I) area source rules apply to those gasoline distribution facilities that qualify as area sources. Facilities that are major sources (emit  $\geq 10$  tons per year of one HAP or emit  $\geq 25$  tons per year of any combination of HAP) as a

result of their gasoline distribution activities, or as a result of any other activities, would not be subject to these final area source rules. We have clarified in the final rules that these rules only apply to area sources.

##### 2. GACT Versus MACT Approach

*Comment:* One commenter stated that EPA's own interpretation of CAA section 112(d)(5) allowed it to set GACT standards "when the imposition of MACT is determined to be unreasonable," (60 FR 4948, 4953, January 25, 1995) and that because EPA did not offer any technological or economic reasons why MACT was unreasonable for this source category, the selection of GACT rather than MACT was arbitrary and capricious.

*Response:* EPA disagrees with the commenter's assertion. The commenter has taken the phrase cited above in a prior **Federal Register** notice out of context and erroneously asserts that EPA must first justify why it is not setting a MACT standard before it can issue a GACT standard for a particular area source category.

In the **Federal Register** notice cited above, EPA promulgated final rules limiting the discharge of chromium compound emissions from both major sources and area sources in the hard chromium electroplating, decorative chromium electroplating and chromium anodizing tanks source categories. In developing that rulemaking, we first established the MACT standards for the major sources in each source category. Once we determined the standards for major sources, which must be based on MACT, we then evaluated what the standards should be for area sources. At that time, EPA recognized that it had authority to issue GACT standards for area sources. In determining what was GACT for those area sources, EPA considered the standards it had just set for the major sources and evaluated the technical feasibility of imposing the major source requirements on the area sources.

Additionally, since EPA could consider cost in setting a GACT standard, EPA also evaluated whether the cost of imposing the major source standards on the area sources in those source categories would be reasonable. The statements in the prior **Federal Register** notice concerning CAA section 112(d)(5) were focused on the factual circumstances of that rule, which involved the simultaneous promulgation of major and area source standards. We did not, in that rulemaking, conduct a thorough analysis of the requirements for setting

a GACT standard under CAA section 112(d)(5).

As recognized in the **Federal Register** notice cited above, and in this final rule, Congress gave EPA explicit authority to issue alternative emission standards for area sources in section 112(d)(5) of the CAA. Specifically, CAA section 112(d)(5), which is entitled "Alternative standard for area sources," provides:

With respect *only* to categories and subcategories of area sources listed pursuant to subsection (c) of this section, the Administrator *may, in lieu of* the authorities provided in paragraph (2) and subsection (f) of this section, elect to promulgate standards or requirements applicable to sources in such categories or subcategories which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants. (*Emphasis added.*)

There are two critical aspects to CAA section 112(d)(5). First, CAA section 112(d)(5) applies only to those categories and subcategories of area sources listed pursuant to CAA section 112(c). The commenter does not dispute that EPA listed the Gasoline Distribution (Stage I) Area Source category pursuant to CAA section 112(c)(3). Second, CAA section 112(d)(5) provides that for area sources listed pursuant to CAA section 112(c), EPA "*may, in lieu of*" the authorities provided in CAA section 112(d)(2) and 112(f), elect to promulgate standards pursuant to CAA section 112(d)(5). CAA Section 112(d)(2) provides that emission standards established under that provision "require the maximum degree of reduction in emissions" of HAP (also known as MACT). CAA Section 112(d)(3), in turn, defines what constitutes the "maximum degree of reduction in emissions" for new and existing sources. See CAA section 112(d)(3).<sup>4</sup> Webster's dictionary defines the phrase "in lieu of" to mean "in the place of" or "instead of." See Webster's II New Riverside University (1994). Thus, CAA section 112(d)(5) authorizes EPA to promulgate standards under CAA section 112(d)(5) that provide for the use of generally available control

<sup>4</sup> Specifically, section 112(d)(3) sets the minimum degree of emission reduction that MACT standards must achieve, which is known as the MACT floor. For new sources, the degree of emission reduction shall not be less stringent than the emission control that is achieved in practice by the best-controlled similar source, and for existing sources, the degree of emission reduction shall not be less stringent than the average emission limitation achieved by the best-performing 12 percent of the existing sources for which the Administrator has emissions information. CAA section 112(d)(2) directs EPA to consider whether more stringent—so called beyond-the-floor limits—are technologically achievable considering, among other things, the cost of achieving the emission reduction.

technologies or management practices (GACT), *instead of* issuing MACT standards pursuant to CAA section 112(d)(2) and (d)(3). The statute does not set any condition precedent for issuing standards under section 112(d)(5) other than that the area source category or subcategory at issue must be one that EPA listed pursuant to CAA section 112(c), which is the case here.<sup>5</sup>

The commenter argues that EPA must provide a rationale for why issuing MACT standards for this area source category is "unreasonable" before it can issue GACT standards under CAA section 112(d)(5). The commenter is incorrect, however. Had Congress intended that EPA first conduct a MACT analysis for each area source category, and only if cost or some other reason made applying the MACT standard "unreasonable" for the category would EPA be able to issue a standard under CAA section 112(d)(5), Congress would have stated so expressly in CAA section 112(d)(5). Congress did not require EPA to conduct any MACT analysis, floor analysis, or beyond-the-floor analysis before the Agency could issue a CAA section 112(d)(5) standard. Rather, Congress authorized EPA to issue GACT standards for area source categories listed under CAA section 112(c)(3), and that is precisely what EPA has done in this rulemaking.

Although EPA has no obligation to justify why it is issuing a GACT standard for an area source category as opposed to a MACT standard, EPA must set a GACT standard that is consistent with the requirements of CAA section 112(d)(5) and have a reasoned basis for its GACT determination. In determining what constitutes GACT for a particular area source category, EPA evaluates the control technologies and management practices that reduce HAP emissions that are generally available for the area source category.<sup>6</sup> The legislative history supporting CAA section 112(d)(5) provides that EPA may consider costs in determining what constitutes GACT for the area source category.<sup>7</sup> EPA cannot

consider cost in setting MACT floors, pursuant to CAA section 112(d)(3). Area sources differ from major sources, which is why Congress permitted EPA to consider costs in setting GACT standards for area sources under CAA section 112(d)(5), but did not permit that consideration in setting MACT floors for major sources. This important dichotomy between CAA section 112(d)(3) and CAA section 112(d)(5) provides further evidence that Congress sought to do precisely what the title of CAA section 112(d)(5) states—provide EPA the authority to issue "[a]lternative standards for area sources." EPA properly issued standards for this area source category under CAA section 112(d)(5), and as demonstrated below, EPA has a reasoned basis for each of its GACT determinations.

Finally, even accepting, for arguments sake, the commenter's assertion that EPA must provide a rational basis for setting a GACT standard as opposed to a MACT standard, we did so in the proposed rule. In the proposal, we explained that we can and do consider costs and economic impacts in determining GACT. We also explained that the facilities in the source categories at issue here are already well controlled for the Urban HAP for which the source category was listed pursuant to CAA section 112(c)(3). We believe the consideration of costs and economic impacts is especially important for the well-controlled facilities in this area source category because, given current well-controlled levels, a MACT floor determination, where costs cannot be considered, could result in only marginal reductions in emissions at very high costs for modest incremental improvement in control for this area source category.

*Comment:* One commenter encouraged EPA to reevaluate GACT based on the cost-effectiveness of controls for volatile organic compounds (VOC) as a function of the source's throughput instead of using the cost-effectiveness of controls for benzene. The commenter believes doing so would demonstrate that more stringent emission standards and monitoring requirements (similar to the MACT) are warranted for all but the smallest of facilities. The commenter pointed out that in 1980, when EPA developed the

Control Technique Guidelines (CTG) for VOC control in ozone non-attainment areas, \$2,000 per ton was considered reasonably available control technology (RACT). With inflation over the past 26 years, it should be in the range of \$6,000 per ton. According to the commenter, since benzene constitutes only about 1 percent of the VOC emissions, the cost-effectiveness of these controls for VOC will be about 100 times better. The commenter prefers applicability thresholds based on throughput, rather than geographical boundaries, as proposed. The commenter believes that the proposed GACT neglects consideration of the risk posed by individual sources to the local communities. The commenter also encouraged EPA to consider more stringent requirements for "new sources."

Another commenter pointed out that, in addition to benzene exposure, VOC from gasoline fueling play a role in the formation of ground level ozone (smog). The commenter stated that EPA should consider the full scope of air pollution concerns that are affected by emissions from gasoline distribution and should design its Stage I regulations to maximize the amount of reductions achieved for both air toxics and ozone precursor emissions.

*Response:* We understand the commenters' desires for achieving greater VOC emission reductions in this rulemaking. We agree that VOC emissions contribute to other air pollution concerns and appreciate the State and local agencies' efforts in addressing these emissions through their regulatory programs. We also agree that an analysis of the impacts of this rule based strictly on the control of VOC would yield different cost-effectiveness values and potentially support requiring more stringent control technologies for these facilities. In fact, we did calculate VOC impacts during our analysis of the proposed and final regulatory alternatives and these values are presented in the supporting documentation. But, as explained in other sections of this preamble, the primary focus of these area source rules is fulfilling our obligations under CAA section 112(c)(3) for regulating stationary sources of benzene. While the controls finalized today will achieve reductions in both HAP and VOC emissions, we appropriately focused on the HAP cost-effectiveness values in determining what is GACT for facilities in this area source category.

Based on comments received, we have reconsidered the use of gasoline throughput for determining what is GACT for these facilities and have

<sup>5</sup> CAA section 112(d)(5) also references CAA section 112(f). See CAA section 112(f)(5) (entitled "Area Sources" and providing that EPA is not required to conduct a review or promulgate standards under CAA section 112(f) for any area source category or subcategory listed pursuant to CAA section 112(c)(3) and for which an emission standard is issued pursuant to CAA section 112(d)(5)).

<sup>6</sup> As explained above, in developing GACT for the area sources subject to this rule, EPA analyzed both the control technologies and management practices used by area sources in the category to reduce HAP and the control approaches employed by the major sources in this category to reduce HAP.

<sup>7</sup> Additional information on the definition of "generally available control technology or management practices" (GACT) is found in the

Senate report on the 1990 amendments to the CAA (S. Rep. No. 101-228, 101st Cong. 1st session, 171-172). That report states that GACT is to encompass:

\* \* \* Methods, practices, and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.



incorporated multiple throughputs into the final rules. The final rules require controls at affected facilities nationwide, thus, addressing the impacts of benzene emissions from this area source category regardless of geographical boundaries.

In the final rules we distinguish between new and existing sources for the submerged fill requirements applicable to bulk gasoline plants and GDF. See 40 CFR 63.11086, 40 CFR 63.11117, and 40 CFR 63.11118 for the specific requirements. Control requirements at the remaining facilities (bulk gasoline terminals, pipeline breakout stations, and pipeline pumping stations) apply equally to both new and existing sources.

### 3. Proposed Exemptions

*Comment:* One commenter stated that CAA section 112(d)(5) does not authorize EPA to base GACT decisions on whether it believes that control technologies are or are not cost-effective but, rather, intended EPA to consider "economic impacts." Therefore, EPA's decision not to require a control level of 35 mg/l for loading racks, 1-inch pressure drop testing for cargo tanks, and vapor balancing of storage tanks at bulk plants and GDF, based on cost-effectiveness rather than technological or economic impact issues, is unlawful.

*Response:* We disagree with the commenter's interpretation that CAA section 112(d)(5) does not authorize EPA to consider cost-effectiveness as well as economic impacts in determining what is GACT for the affected facilities in an area source category. The legislative history supporting CAA section 112(d)(5) provides that EPA may consider costs in determining what constitutes GACT for the area source category (see footnote 7). Area sources differ from major sources, which is why Congress permitted EPA to consider costs, including cost-effectiveness, in setting GACT standards for area sources under CAA section 112(d)(5), but did not permit that consideration in setting MACT floors for major sources. The commenter did not cite any specific language in the CAA that prevents us from considering cost-effectiveness as well as other economic impacts in determining the level of control that constitutes GACT for an area source category. We believe EPA properly considered cost-effectiveness in each of its GACT determinations for this area source category under CAA section 112(d)(5). See also *Husqvarna AB v. EPA*, 349 U.S. App. D.C. 118, 254 F.3d 195, 201 (DC Cir. 2001) (finding EPA's decision to consider costs on a per ton of emissions removed basis

reasonable because CAA section 213 did not mandate a specific method of cost analysis).

*Comment:* One commenter stated that because the CAA requires standards for all sources in a category, EPA's refusal to set standards for storage tanks with a capacity less than 20,000 gallons is unlawful. The commenter stated that EPA does not claim that no control technology is generally available for storage tanks with a capacity less than 20,000 gallons or provide any reason that they cannot employ the same technology that is used by larger storage tanks.

*Response:* In response to this comment, EPA reexamined its GACT determination for storage tanks with a capacity less than 20,000 gallons. As explained above, determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the facilities in the area source category. We also consider standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices are transferable and generally available to area sources. We further consider the costs and economic impacts of available control technologies and management practices on that source category.

In the proposed and final rule, we distinguished storage tanks based on size and developed a 20,000 gallon capacity threshold. This size threshold is similar to the threshold used in several other standards that apply to storage tanks, including 40 CFR part 60, subpart Kb and the Gasoline Distribution Major Source NESHAP. As explained in the 1994 "Alternative Control Techniques Document: Volatile Organic Liquid Storage in Floating and Fixed Roof Tanks" (EPA-453/R-94-001), 20,000 gallons is generally considered to be the breakpoint between horizontal and vertical tanks. The document reports that most storage tanks below 20,000 gallons are horizontal rather than vertical and a large percentage of these tanks are also underground tanks.

In the final rule, we are requiring storage tanks with a capacity of 20,000 gallons or more to have floating roof and seal technologies. In response to this comment, we re-evaluated the application of these same controls on tanks with a capacity less than 20,000 gallons and determined that these control approaches do not represent GACT for tanks with a capacity less than 20,000 gallons. First, for horizontal tanks, which are generally tanks with a capacity below 20,000 gallons, the

floating roof technology is not technically feasible. Horizontal tanks do not have perpendicular sides; this precludes the application of floating roof technology to these tanks. Second, our analysis shows that the cost-effectiveness of requiring the application of floating roof technology to vertical storage tanks below the 20,000 gallon size is, at best, about \$8,000 per ton of HAP.

Instead, in the final rule, we are requiring that facilities using storage tanks with a capacity below 20,000 gallons follow certain management practices for controlling emissions. See 40 CFR 63.11087 for those specific requirements.

*Comment:* One commenter believes it is not necessary to regulate GDF that are already using submerged fill, especially when required by an enforceable State, local, or tribal rule or permit. The commenter believes that facilities already have safety, economic, and environmental reasons to minimize spills, clean them up quickly, and prevent gasoline from remaining in the environment; thus, according to the commenter, additional emission reductions achieved by including these management practices in the final rule might not be significant. The commenter recommends that EPA evaluate the potential for emission reductions achievable by requiring these management practices and, if minimal emission reductions would result, EPA could either entirely exclude tanks already equipped with a submerged fill system, or exclude tanks covered by a submerged fill requirement in an enforceable State, local, or tribal rule or permit. In either case, the commenter suggests that the provision in the proposed 40 CFR 63.11085(f) would become an exclusion in the proposed 40 CFR 63.11081.

Another commenter believes that GDF should be excluded from any and all proposed and final regulatory alternatives because most States/regions with unacceptable levels of VOC and HAP already require Stage 1 controls which include submerged filling of underground storage tanks. The commenter believes that including GDF in the applicability of the proposed rule will inordinately increase the amount of paperwork (requiring the submittal of Initial Notifications and Notification of Compliance Status to dozens of States and local agencies) with little to no environmental benefit. The commenter believes that GDF should be regulated at the State and local level as they are today.

*Response:* By suggesting that we should not set Federal emission



standards, the commenters ignore the language of the statute. The CAA requires that EPA set Federal emission standards under CAA section 112(d) for source categories listed under CAA section 112(c)(3), and that is precisely what we are doing here. GDF are affected facilities within the gasoline distribution (Stage I) area source category. These facilities formed part of the basis for listing this area source category; hence, EPA is promulgating rules regulating emissions from these facilities. As summarized in section III.B of this preamble, 40 CFR part 63, subpart CCCCCC requires controls at GDF nationwide depending on their monthly gasoline throughput. All GDF must employ certain management practices. GDF with monthly throughput of 10,000 gallons or more must use submerged fill when loading their storage tanks. GDF with a monthly throughput of 100,000 gallons or more must also install a vapor balance system. These controls are GACT for these facilities in this area source category.

We agree with the concept of reducing the reporting and recordkeeping burden on affected facilities. We have taken steps in the proposed and final rules to minimize these burdens by not requiring notifications or reports from facilities that are already operating in compliance with enforceable State, local, or tribal rules and permits that include requirements that are at least as stringent as those contained in these final rules.

*Comment:* Two commenters support exempting bulk plants and pipeline pumping facilities because emissions from pipeline pumping stations are insignificant and because the recordkeeping and reporting would represent a burden with no benefit. The commenters stated that if EPA does not agree to fully exempt bulk plants and pipeline pumping stations, at the very least, those facilities that do not have a storage tank or loading rack subject to controls should be exempted from the equipment leak requirements.

*Response:* As explained above, by suggesting that we should not set Federal emission standards for these facilities, the commenters ignore the language of the statute. The CAA requires that EPA set Federal emission standards under CAA section 112(d) for source categories listed under CAA section 112(c)(3), and that is precisely what we are doing here. Bulk plants and pipeline pumping stations are affected facilities within the Gasoline Distribution (Stage I) Area Source category. These facilities formed part of the basis for listing this area source

category; hence, EPA is promulgating rules regulating emissions from these facilities. As such, 40 CFR part 63, subpart BBBBBB includes requirements for controls at these facilities based on what EPA determined was GACT for each facility.

We have, however, taken steps to reduce the reporting and recordkeeping burden on these facilities. The requirement to submit a combined Initial Notification/Notification of Compliance Status is the only routine reporting requirement imposed on these facilities. No periodic reports are required as part of the equipment leak inspection program as long as leaks are repaired in a timely manner. We believe that the potential safety and environmental benefits of an equipment leak inspection program justify the minimal expense involved.

#### 4. Nationwide Coverage Versus Urban Area Coverage for Standards

*Comment:* Several commenters stated that they were strongly opposed to EPA's intended approach to narrow the application of CAA section 112(d) area source rules to urban areas, while other commenters were opposed to broadening the applicability of the rules to all areas.

One commenter stated that because CAA section 112 does not authorize EPA to decline to set standards for any sources within a category of sources that it has listed pursuant to CAA section 112(c), the threshold for sources that are not in urban areas (as well as those below the proposed size applicability thresholds) would be unlawful.

One commenter stated that there is little justification apparent in the proposed rule for mandating submerged fill for loading of storage tanks in non-urban areas. The commenter claimed that to do so would result in additional costs to GDF, while achieving minimal reductions in emissions. The commenter stated that, as a matter of law, the Agency's discretion is limited to imposing area source controls to area sources located within urban areas.

One commenter believes that EPA should apply the rule in accordance with the expressed intent of Congress, which was to reduce "risks to public health in urban areas." Therefore, according to this commenter, the rule should apply only to facilities that are located in or near urban areas. The commenter also stated that health risk should be taken into account in evaluating cost-effectiveness, and risk-distance issues should be considered. The commenter provided an analysis of their recommended use of a risk-

distance look-up table to determine applicability of the rule.

Other commenters stated that regardless of whether residential populations are urban or rural, individuals living in close proximity to GDF are subjected to elevated exposures to HAP and, given the trend of building very high volume throughput GDF, the level of exposure is likely to remain high and even increase.

One commenter urged EPA to follow conventional approaches in determining the scope of controls, and, in so doing, apply proposed Regulatory Alternatives (RA) 2 and 3 to all counties nationwide. The commenter urges EPA in this rulemaking, and in future area source rulemakings, to apply area source standards uniformly in all counties nationwide, particularly in circumstances where the area source category is ubiquitous, as is the case with gasoline distribution.

Another commenter stressed that the impacts of emissions from gasoline distribution and dispensing facilities are localized and would be similar for most urban and rural areas. The commenter stated that the cost of controlling these facilities would be the same in rural or urban settings as well; therefore, because the costs and environmental impacts are the same, there does not appear to be any rationale for treating rural and urban facilities differently.

One commenter stated that the fact that some State and local agencies already regulate these sources does not relieve EPA of its obligation to reduce emissions under CAA section 112. According to another commenter, many State and local agencies cannot be more stringent than the Federal government. The commenter further stated that once a Federal rule is promulgated, some agencies must change their regulations to make them consistent with those of the Federal government, which could result in backsliding if the State or local rule was more stringent to begin with.

Two comments expressed opposition to limiting the geographic scope of the proposed regulatory alternatives to reduce the "overall cost of the rule."

*Response:* After consideration of all comments related to the issue of nationwide versus urban applicability of the proposed standards for submerged fill and vapor balancing at GDF (proposed RA 2 and 3), we believe a nationwide approach is appropriate given the facts and circumstances of this particular area source category. As suggested by commenters, the final rule requires GDFs nationwide to control HAP emissions, and those control requirements differ depending on the monthly throughput of the GDF, which

is a reasonable factor for distinguishing between GDF. As explained in other responses and sections of this preamble, the final rule requires all GDF, regardless of size, to implement certain management practices to reduce vapor evaporation. Additionally, GDF with a monthly throughput of 10,000 gallons or more must use submerged fill, while GDF with a monthly throughput of 100,000 gallons or more must install vapor balance systems.

As proposed, the rule would have only required controls at GDF located in Urban 1 and Urban 2 areas. Some commenters suggested further narrowing the applicability of the rule to GDF based on the health risks and distance to the population of individual facilities. However, facilities located in Urban 1 and Urban 2 areas were the basis for listing area source categories pursuant to section 112(c)(3) of the CAA. We are currently under court-ordered deadlines to complete issuing standards for all listed area source categories. Changing our focus would mean recreating an area source category list which may differ significantly from the current list, greatly hindering our effort to complete our obligation by the court-ordered deadlines. Therefore, we believe that revisiting the basis for listing the area source categories is inappropriate at this time. And, as further explained below, we believe the particular facts for this area source category indicate that GDF nationwide should implement controls based on their monthly gasoline throughput.

We believe that the CAA provides the Agency with the authority to regulate area sources nationwide. As explained in the Strategy and the proposed rule, we interpret these provisions as providing EPA authority to regulate listed area source categories on a nationwide basis. Indeed, in several other area source rules, EPA has exercised this discretion and issued rules of nationwide applicability, as it has done here. See, e.g., 72 FR 26 (January 3, 2007); 72 FR 2930 (January 23, 2007); 72 FR 38864 (July 16, 2007).

A rule of nationwide applicability is particularly appropriate here because control costs are not expected to differ in rural vs. urban settings, so the control's cost-effectiveness is the same, and economic impacts are equally distributed. In addition, after reviewing the public comments and the additional analyses presented in support of those comments, we determined that the controls discussed above are commercially available as they are being used by many bulk facilities and GDF, and they are cost-effective (considering

the source type and size thresholds noted above) for bulk facilities and GDF.

Therefore, consistent with CAA section 112(d)(5), the final rule establishes standards that reflect the application of generally available control technology or management practices, and we properly considered cost-effectiveness and other economic impacts in determining what constitutes GACT for this area source category.

The commenter also suggested that we should consider health risks in making our GACT determination for each facility. In the 1990 CAA Amendments, Congress established a two-phase approach for setting HAP emission standards. *Sierra Club v. EPA*, 353 F.3d 976, 980 (DC Cir. 2004). The first phase is the initial standard setting phase, which is the phase at issue in this rulemaking.<sup>8</sup> In this phase, the standards are technology-based, and this is true regardless of whether we issue MACT standards under CAA section 112(d)(2) and (d)(3), or GACT standards under CAA section 112(d)(5).<sup>9</sup> See Senate Report at 148 (1989); *Sierra Club v. EPA*, 353 F.3d at 980.

In this final rule, EPA is establishing emissions standards for this area source category under CAA section 112(d)(5), which authorizes EPA to set emissions standards based on GACT for a listed area source category. The legislative history describes GACT as "methods, practices, and techniques which are commercially available and appropriate for application by sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems." S. Rep. No. 101-228, at 171 (1989) (Senate Report). Consistent with the statute and the legislative history, in determining GACT, we evaluated the control technologies and management practices that reduce benzene emissions from the Gasoline Distribution (Stage I) Area Source category, and we assessed the costs of implementing such approaches. We did not consider health impacts or

<sup>8</sup> The second phase of standard setting involves a risk-based analysis. Specifically, CAA section 112(f)(2) requires EPA to determine—8 years after issuance of the initial MACT standard—whether residual risks remain that warrant more stringent standards than achieved through MACT. CAA section 112(f)(5) provides that the Agency shall not be required to conduct a residual risk for area sources for which EPA has issued a GACT standard.

<sup>9</sup> CAA section 112(d)(4) does provide, however, that with respect to pollutants for which the EPA Administrator has established a health threshold, EPA can consider such threshold in setting standards under CAA section 112(d). Benzene is a carcinogen and is, thus, not a pollutant for which the Administrator has established a health threshold, and, therefore, CAA section 112(d)(4) is not relevant to this category.

risks in determining GACT for the facilities in this area source category, as the commenter recommended, nor were we required by statute to do so.

However, we note that health risk did play a role in this process in that the determination of which pollutants to regulate and from which categories was governed by the statutory requirement to regulate sources accounting for 90 percent or more of the 30 HAP that present the greatest health threat in urban areas.

Regarding the comment concerning whether State and local regulations may be more stringent than Federal regulations, we recognize that this could be an issue in a few States. As an initial matter, however, for the reasons described herein, we believe the record for this final rule fully supports the GACT determinations that we made for the affected facilities. A survey conducted by STAPPA-ALAPCO in 2002 showed that only two States, Idaho and South Dakota, were precluded from issuing State regulations more stringent than Federal rules. Twenty four other States have similar restrictions but include a variety of exceptions such as: (1) Pre-existing rules; (2) when significant benefits can be achieved; or (3) when the requirements are needed to meet State Implementation Plan (SIP) commitments. We believe that most States that have elected to implement standards more stringent than the GACT standards finalized today for the gasoline distribution (Stage I) area source category will be able to justify maintaining their standards based on VOC reduction benefits or ozone non-attainment requirements.

#### B. Selection of Regulatory Alternative

*Comment:* Two commenters recommended that if proposed RA 2 or RA 3 are considered, that the throughput volume of the GDF storage tanks be taken into consideration and explicitly expressed in the regulatory text. In the commenters' view, GDF should be re-defined to address commercial or commercial-like operations only. The commenters further asserted that facilities with storage tanks between 250 and 2,000 gallons that do not have high volume throughputs should not be regulated as the reduction in emissions will not be significant if the facility is filling the tanks only once or twice a year. One commenter stated that, using AP-42 emission factors, a rough estimate of the cost-effectiveness for a throughput of 1,000 gallons per year over the 15-year life of the tank is \$79,000 dollars per ton of VOC and \$1,100,000 dollars per ton of HAP.

Two of the commenters stated that if EPA adopts either proposed RA 2 or RA 3, it would pose unnecessary regulatory burdens, conflict with most State RACT requirements, and likely prove to be ineffective in controlling ozone-causing vapors. One commenter stated that if EPA adopts either proposed RA 2 or RA 3, the NESHAP should be limited to GDF with storage tanks of greater than 1,000 gallons capacity.

One commenter stated that, with very few exceptions, State/local RACT rules set tank capacity thresholds much higher than 250 gallons. In objecting to proposed RA 2 and 3, the commenters stated: (1) The 250 gallon NESHAP applicability threshold under proposed RA 2 and 3 for GDF is lower than all but two State RACT regulatory applicability thresholds; (2) establishing a NESHAP threshold lower than most RACT regulations will lead to confusion on the part of small owners of small tanks who would be subject to the NESHAP, but not the RACT requirements in most urban areas; (3) many manufacturing facilities operate numerous small-capacity gasoline dispensing units to fuel a variety of fire protection, maintenance, fleet and pool vehicles, as well as small non-road equipment such as forklifts, landscaping/mowing equipment, portable generators, and portable pumps. The commenter explained that these fueling operations should be exempt from the NESHAP because the proposed rule would conflict with State and local RACT requirements under SIP for the ozone National Ambient Air Quality Standards, and thus would require retrofits to the fueling areas.

*Response:* These commenters raise several issues related to the application of the proposed rule to GDF, and especially to small GDF. First, we believe that the preamble to the proposed rule is clear that EPA intended for the proposed rule to cover both public and private GDF. The types of storage tanks found at private refueling facilities are the same as those found at large and small retail GDF. Likewise, the potential for emissions and emission reductions and the control technology is the same.

Second, as proposed, the rule required submerged fill on storage tanks of greater than 250 gallons capacity. This threshold level for control was based on a review of applicable State and local rules and is believed to be consistent with existing requirements that cover a large portion of the country. For the final rule, we considered the comments above by analyzing the costs and cost-effectiveness at these small tanks. Under CAA section 112(d)(1), we

can distinguish among classes, types, and sizes of sources within a source category. We have finalized different requirements for the smallest of storage tanks because the HAP cost-effectiveness of submerged fill climbs significantly as the throughput of a tank becomes very small. If you assume a 250 gallon capacity tank is loaded once a week (1,000 gallons a month), which is an unusually high number of loadings, the resulting cost-effectiveness for submerged fill would be well above \$36,000 per ton of HAP reduced. Using the threshold in many State VOC rules for vapor balancing (10,000 gallons per month) the cost-effectiveness is \$12,000 per ton of HAP reduced. Therefore, we agree with the commenters' concern and the final rule distinguishes between GDF based on the monthly throughput of the facility. Specifically, we are adopting a facility-wide threshold that distinguishes between GDF with a monthly throughput of 10,000 gallons per month or more and those below this threshold. In addition, we are retaining from the proposal that submerged fill is not required for individual tanks with a 250-gallon capacity independent of monthly throughput. However, under the final rule, all GDF, including those with throughput less than 10,000 gallons per month and tanks with a 250-gallon capacity or less, are required to perform the management practices to minimize evaporation.

The submerged fill and management practices requirements reduce nationally 150 tons of HAP annually, including 5 tons of benzene emissions. The cost of both the submerged fill for larger GDF and management practices for all GDF is a capital cost of \$3 million nationally, but an annual cost credit of almost \$500,000 nationally because the value of the recovered gasoline (\$1.73 million) is higher than the annual control costs (\$1.26 million). In addition to establishing these monthly throughput levels, we have maintained the reduced requirements for notifications, reporting, and recordkeeping that were proposed for GDF.

*Comment:* Many commenters expressed their preference for proposed RA 3 and several offered recommendations on variations of the Stage I vapor balancing requirements for GDF. One commenter suggested an annual throughput threshold of 200,000 gallons for Stage I vapor balancing applicability. The commenter further suggested that this applicability threshold should be on a calendar year basis with onsite records of monthly throughput required for all GDF, even those below the 200,000 gallon

threshold. Two commenters stated that any requirement for Stage I vapor balancing should specify that, unless otherwise approved by the air pollution control agency having jurisdiction, only California Air Resources Board (CARB) certified Stage I vapor balancing equipment should be allowed at GDF.

One commenter recommended that Stage I vapor balancing be universally required within 2 years of adoption of 40 CFR part 63, subpart BBBBBB for tanks above a specified size and throughput and that all new GDF storage tanks and all new delivery trucks be equipped with Stage I vapor balancing equipment. Another commenter believes that all GDF (urban and rural) with throughputs greater than 10,000 gallons per month should be required to install and operate a vapor balance system.

Two other commenters expressed opposition to proposed RA 3 and stated that they believe that vapor balancing is not cost-effective and is substantially more difficult to implement than submerged fill. The commenters claim that proposed RA 3 would impose significant costs on GDF to achieve only marginal gains over submerged filling.

Two additional commenters stated that proposed RA 3 would cover a high percentage of above-ground tanks that are not easily retrofitted with Stage I vapor recovery. Specifically, the commenter stated that retrofitting small above-ground tanks with vapor recovery poses two practical difficulties. First, most small above-ground tanks were not designed with fittings that will accommodate a vapor recovery line. According to the commenter, for these tanks, vapor recovery retrofit would require either cutting and welding to install new fittings or tank replacement. Second, because the fittings in above-ground tanks are elevated above grade, any fuel that enters the vapor recovery line does not drain readily. The commenter noted that this would cause vapor blockage and ineffective vapor recovery. The commenter further indicated that many States do not approve vapor recovery systems for any above-ground tanks for this reason.

*Response:* After considering all of the comments, we have concluded that GDF vapor balancing at GDF is cost-effective and should be required for GDF with throughputs greater than or equal to 100,000 gallons per month. We have not made any significant changes since the proposal on how we implement the vapor balancing requirements. Also, we believe our unit costs are representative of the installed control costs.

As indicated by the proposal preamble and several commenters,

vapor balancing is required by many State and local agencies and is, therefore, already generally available and in widespread use. About 62 percent of the national volume of gasoline is vapor balanced at GDF.<sup>10</sup> Given that most of these vapor balance systems were installed to control VOC instead of HAP (nearly 100 percent of gasoline vapor versus about 5 percent, respectively), we analyzed the HAP emissions reduction and costs for different sized GDF. We concluded that a monthly throughput could be developed to reasonably estimate the size of the GDF, thereby enabling us to better determine what is GACT for the different sizes of GDF. In our evaluation, some emission and cost parameters changed (HAP content and interest rate, see section VI of this preamble). We concluded from our cost and emission reduction analysis that when vapor balancing is applied to facilities with throughput levels above 100,000 gallons per month, the HAP cost-effectiveness is about \$3,700 per ton of HAP reduced as opposed to the cost-effectiveness of the 10,000 gallon per month threshold analyzed at proposal (about \$9,000 per ton). The national emission reductions and costs just for vapor balancing are about 2,600 tons of HAP reduced, at a capital cost of \$44 million and an annualized cost of \$9.3 million per year. In total, for all bulk facilities and all GDF requirements, the total national impacts of today's final rules are 4,900 tons of HAP reduced, at a capital cost of \$75 million. The annualized capital, operating and maintenance, and compliance costs are \$20 million; however, there is a \$26.5 million per year credit for the recovered gasoline, resulting in a total annualized cost credit of \$6.5 million per year for these final rules.

As described in the proposal preamble (71 FR 66073, November 9, 2006), we evaluated various vapor balancing requirements and selected an implementation approach for the proposed and final rules that included management practices rather than requiring each owner or operator to test the efficiency of installed vapor balance systems. We also proposed, and included in the final rules, that owners or operators may use other equipment configurations if they successfully demonstrate to the Administrator through performance testing, as

specified in the final rules, that their system is capable of reducing emissions from the loading of their storage tanks by 95 percent. We also allow owners or operators to demonstrate compliance with the requirements of the final rule by informing EPA that the facility has installed CARB or other State certified vapor balance systems. We do not, however, require that only CARB certified systems be allowed as suggested by the commenter. This approach of allowing owners or operators to demonstrate that their chosen vapor balance systems are effective is used by many State and local agencies and we believe that the added flexibility is beneficial, and, therefore, have not made implementation changes to what was proposed.

We believe that vapor balancing is GACT for these GDF. The technology of vapor balancing has been effectively applied to storage tanks at bulk plants (nearly all having above-ground tanks) and GDF for many years. The commenter who claimed that vapor balancing would be difficult or costly for many facilities, especially those with above-ground tanks, did not provide any supporting data or cost estimates, and we do not have any information that supports these claims. Our analysis of the cost of installing a vapor balance system was based on an average cost that included about \$2,000 in labor costs plus \$2,500 in capital costs, based on estimates obtained from the States of California and Texas. While it is possible that some facilities may incur costs greater than these, we believe that they represent the upper end of the range of "typical" costs for installing a vapor balance system. In fact, one State agency submitted a vendor's cost estimate of \$1,044 plus labor for a submerged fill and vapor balance system. Thus, we believe that not only is vapor balance technology available, but that the cost we analyzed is a reasonable estimate.

### C. Bulk Terminals

#### 1. Alternative To Comply With 40 CFR Part 63, Subpart WW

*Comment:* Two commenters stated that EPA should modify the rule to allow for facilities to comply with either NSPS subpart Kb<sup>11</sup> of 40 CFR part 60 or NESHAP subpart WW<sup>12</sup> of 40 CFR part 63 for both internal and external

floating roof tanks. In addition, the commenters stated that the rule language and Table 2 should be revised to allow for compliance with subpart WW in lieu of subpart Kb for those tanks subject to subpart Kb and to provide facilities the option to switch from subpart Kb to subpart WW. The commenters also suggested that the regulation should be clarified to reflect that a facility may choose to comply with subpart WW in lieu of subpart Kb for tanks subject to controls only under the proposed area source rule (with deck fitting controls waived if the tank is subject to controls only under the area source rule). The commenters explained that the ability to comply with either rule is important because subpart WW provides clarity in areas where subpart Kb is unclear. The commenters stated that these clarifications are particularly important with respect to ladder/guidepole combinations on internal floating roof tanks. According to the commenters, these devices are commonly used with internal floating roof tanks, yet were not addressed in prior rulemakings. The commenters claim that while subpart WW allows for an equivalency demonstration on the basis of emission factors and specifies test methods for determining emission factors, subpart Kb is unclear on equivalency demonstration.

*Response:* The final rule for these storage tanks was based on portions of 40 CFR part 60, subpart Kb, which applies to storage tanks installed after 1984. EPA determined that these requirements are GACT for the storage tanks in this area source category and have, therefore, included them in the final rule. Alternatively, the final rule allows affected facilities the option of complying with applicable provisions in 40 CFR part 63, subpart WW, as EPA believes these requirements are equivalent to the applicable provisions in subpart Kb. See Table 1 in 40 CFR part 63, subpart BBBB for the specific requirements from these subparts that storage tanks at bulk facilities must implement as GACT under this area source rule.

Additionally, recognizing that certain facilities may be simultaneously subject to 40 CFR part 60, subpart Kb and this area source rule, the final rule specifies that owners or operators of facilities that are subject to both subparts, and who are currently operating in compliance with all applicable requirements in subpart Kb, will be deemed in compliance with this area source rule.

However, we are not incorporating the commenter's recommendation that facilities subject to subpart Kb should instead be allowed to comply with 40

<sup>10</sup> As reported at proposal, vapor balancing is already used at GDF in areas where about 68 percent of the gasoline is consumed. However, some smaller facilities are exempted from this requirement, thus, about 62 percent of the gasoline delivered to GDF is actually controlled with vapor balancing.

<sup>11</sup> 40 CFR part 60, subpart Kb, Standards of Performance for Volatile Organic Liquid Storage Vessels (Storage Vessels New Source Performance Standards (NSPS)).

<sup>12</sup> 40 CFR part 63, subpart WW, National Emission Standards for Storage Vessels (Tanks)—Control Level 2.



CFR part 63, subpart WW. We do not have the authority to allow owners or operators subject to standards under different CAA provisions (section 111 and section 112) to choose which regulations will apply to their facilities. Facilities must comply with all applicable regulations.

In addition, we disagree with the commenters claim that the requirements of 40 CFR part 60, subpart Kb are unclear. We believe, and industry agreed in the Storage Tank Emission Reduction Partnership Program agreement (65 FR 19891, April 13, 2000), that the subpart Kb wording of "no visible gap" means that the slotted guidepoles are required to be controlled.

## 2. Control of Guidepoles

*Comment:* One commenter recommended that the final rule require that rim seals and guidepoles be controlled on all external floating roof tanks (EFRT) and that no other deck fitting controls be required. The commenter presented emissions and emissions reduction estimates that they believe supports their position that EFRT guidepoles are the primary source of deck fitting emissions. In their example case of a tank equipped with a slotted guidepole, 99 percent of the potential emission reductions from the control of deck fittings are attributable to control of the slotted guidepole. The commenter also presented information to support their conclusion that the control of guidepoles is a cost-effective measure, whereas the control of other deck fittings is not cost-effective.

*Response:* We evaluated the commenter's recommendation, and the supporting materials they provided, and decided not to revise the final rule as requested. We believe that the commenter is correct that guidepoles are the largest single source of emissions from deck fittings, based on typical emission factors presented by the commenter, and that controls are available and required by many rules. Thus, we agree that they should be controlled under this rule. We also agree that, in most typical cases, the emissions from all other deck fittings are lower. However, we do not agree that all of the other deck fittings should be allowed to remain uncontrolled.

The primary reason for our position on the control of deck fittings is the difficulty in determining the point at which an "opening" in the deck becomes large enough to be a serious concern. For example, a loose-fitting cover on an access hatch may not be a significant source of emissions if the openings or gaps around the cover are small. However, if the same cover had

a gap twice as large, the emissions would be much greater and would probably warrant controls. The process of determining when a gap around a cover actually becomes equivalent to an opening in the deck would be very difficult, not only for facility personnel, but also for enforcement personnel.

Another factor that we considered in making the decision to require deck fitting controls is the variable nature of the emissions from EFRT. While the emission factors used to estimate emissions from EFRT are believed to provide reliable estimates for the typical tank, there may be case-by-case factors that have a significant impact on emissions. For example, the relative locations of two or more gaps or openings in the deck may lead to the "channeling" of air currents that significantly increase the emission rate. The position of a gap or opening relative to the prevailing wind direction (whether the opening is normally shielded or exposed) may also influence the emission rate.

As mentioned earlier, and for the reasons discussed above, we believe that the final rule should require control of all deck fittings. Because the cost of installing fitting controls on all deck fittings is low, and, as proposed, we are allowing up to 10 years for the installation of these controls so that the fittings can be installed at a time when the tank is out of service and appropriate service staff are on site, we believe that this requirement is reasonable.

## D. Testing and Monitoring

### 1. Continuous Monitoring and CEMS on Vapor Processors

*Comment:* One commenter recommended that EPA consider allowing Continuous Parameter Monitoring Systems in cases where the facility owner or operator can demonstrate that the monitored parameter is sufficient to ensure compliance with the standards. The commenter stated that parameter monitoring is already in place at most, if not all, of these facilities in their State. Several other commenters support alternative monitoring options for vapor combustion and carbon adsorption units. The commenters claim that these alternatives, coupled with comprehensive annual inspections and adequate maintenance programs and the more frequent compliance testing requirements in the proposal, should be reasonable to assure compliance with the proposed emission limits. The commenters provided emissions testing data to support their claims that the

alternative monitoring options were an effective means of ensuring continuing compliance. They also provided specific recommendations on inspection and maintenance requirements that they believe should be included in the alternative monitoring option.

*Response:* We have reviewed the data provided by the commenters and believe that the alternative monitoring options will be acceptable for ensuring compliance with the final rule. The devices used to control gasoline vapors emitted from loading racks at bulk terminals are almost exclusively thermal systems or carbon adsorbers. Thermal systems achieve very high removal efficiencies in this source category because the vapor stream being controlled is extremely combustible. The data provided by the commenters show that as long as a pilot flame is present to ignite the vapors, these systems consistently achieve controlled emission levels far below the level required by the final rule. The performance of carbon adsorbers has, likewise, been shown by the commenter's data to remain sufficiently high when the system vacuum levels are maintained at the appropriate levels.

The commenters also recommended that numerous specific components of the control systems be inspected periodically (daily, for most items) and maintained as necessary as a means of assuring that the devices continue to perform as designed. Most of the commenter's recommendations have been incorporated into the final rule. The commenters did, however, recommend that the daily inspections occur during each "manned day of operation." We did not limit the inspections to manned days of operation, but require them for each day of operation. We believe that at least the routine daily inspections should be conducted during each day that the facility is in operation, regardless of whether the facility has operators on site, to assure continuous compliance. For those facilities with no on-site personnel, the owner or operator can choose not to use this alternative monitoring approach, they can choose to have someone visit the site daily, or they can install monitoring equipment necessary to record the specified parameters on a daily basis.

The proposed rule specified in 40 CFR 63.11092(d) that operation of the vapor processing system in a manner exceeding or going below the monitored operating parameter value constituted a violation of the emission standard for the applicable loading rack. As with the major source MACT standard for this source category, we continue to require



that operation of the system at times when specific monitored parameters exceed or go below the applicable monitored parameter value be reported as a violation of the emission standard. However, we did consider what the continuous compliance status should be if the additional (to parameter monitoring) periodic maintenance and inspection procedures reveal operational problems. The commenters stated that problems discovered during maintenance and inspections should trigger corrective actions, but should not be considered violations of the emission standard. Because we have no data to support a direct relationship between the maintenance and inspection procedures and the actual emission rates, we agree with the commenters and believe that the results of these procedures should be viewed as indicators of proper operation rather than violations of the emission standard.

To ensure that proper maintenance and inspection procedures are followed, we have included in the final rule a requirement that owners or operators prepare a monitoring and inspection plan. The plan must contain a description of each item to be included in the periodic inspections and must define the normal operation of each item. The plan must also specify conditions that would be considered malfunctions, describe the corrective actions to be taken to correct any malfunction, and define what the owner or operator considers to be a timely repair for each potential malfunction. For the timing of necessary corrective actions, we have used the corrective action timing from the recently proposed NESHAP for Iron and Steel Foundries (72 FR 52984, September 17, 2007). We are requiring that facilities initiate corrective action to determine the cause of a problem within 1 hour, initiate corrective action to fix the problem within 24 hours, and complete all corrective actions to fix the problem as soon as practicable (and as specified in the monitoring and inspection plan). Thus, problems discovered during inspections will be monitored and recorded by being subject to corrective actions according to a monitoring and inspection plan that the owner or operator is required to develop. Owners or operators will be required to maintain a record of all corrective actions and report them semi-annually.

We believe that, when combined with the periodic maintenance and inspection requirements, the monitoring for the presence of a flame in a thermal system and vacuum level in a carbon adsorber will provide adequate

assurance of continuing compliance with the final rule. We have, therefore, incorporated the commenter's recommended options for alternative parameter monitoring and periodic inspections (and associated corrective action) into the final rule.

## 2. Past Performance Tests

*Comment:* One commenter supports EPA's willingness to accept past performance tests, but requests that performance tests completed within the 5 previous years be accepted. Many States require permit updates on a 5-year cycle, so some facilities may have performance tests only every 5 years.

*Response:* When we proposed to accept performance tests conducted within the past 3 years, we considered that time period to be representative of typical permit cycles. After consideration of the commenter's request, we agree with the commenter that 5 years is a more typical permit cycle and we have revised the provision in the final rule to more accurately correspond to the typical 5-year cycle for most State permits. In the final rule, we specify that we will accept performance testing completed up to 5 years prior to submittal under 40 CFR 63.11092 rather than the 3 years that was proposed.

## E. Control Costs and Cost Analyses Performed

### 1. Loading Racks

*Comment:* Two commenters stated that the costs of installing control devices at loading racks is significantly more than was estimated in EPA's cost analysis of the 80 mg/l control level. One of the commenters stated that there were currently about 20 small uncontrolled loading racks in use and submitted estimates of the costs to convert these uncontrolled loading racks to bottom loading and to add a vapor processor system. The commenter also stated that the HAP cost-effectiveness for converting these uncontrolled loading racks was very poor and suggested that a throughput threshold of 2 million barrels per year was justified based on HAP cost-effectiveness. Three commenters support the requirement of submerged fill for "small" bulk gasoline terminals rather than routing vapors from the loading rack to a vapor control device. The commenters claim that this level of control is appropriate because these smaller facilities are typically located in rural areas as designated by the urbanized area plus offset and urban cluster definition (40 CFR 63.761), and, as such, do not pose an unacceptable

health risk to urban areas. One of these commenters also presented data and concluded that the cost and cost-effectiveness of converting uncontrolled splash loading facilities to submerged, top-loading facilities was very reasonable.

*Response:* In the proposed rule, all bulk terminals would have been required to control loading rack emissions to 80 mg/l, or less, with a vapor processor. We reviewed both the cost data provided by the commenter and the data we used to develop the proposal and then considered the appropriateness of establishing a daily throughput for bulk terminals in the final rule. We have placed a memorandum documenting our analysis in the docket (Docket No. EPA-HQ-OAR-2006-0406).

Based on our review of the information provided by the commenter, and our analysis of their recommendation to include a daily throughput for bulk terminals required to meet the 80 mg/l loading rack standard, we have decided to revise the final rule. Because of the large capital investment required for installing these controls (over \$3 million per facility), the resulting HAP cost-effectiveness is greater than \$10,000 per ton for facilities with a gasoline throughput of less than 250,000 gallons per day. We are, therefore, including in the final rule a different requirement for those terminals with an average gasoline throughput less than 250,000 gallons per day (about 2 million barrels per year).

Specifically, we determined that GACT for these low throughput facilities is submerged fill systems for outgoing loads. We believe that both the initial capital investment and the HAP cost-effectiveness of this requirement are reasonable. The capital investment is about \$25,000 per facility and the annualized cost of the capital investment is about \$2,400. However, because the value of the recovered product is about \$75,700 per year, the net annualized cost of control is a credit of about \$73,000 per year. The resulting HAP cost-effectiveness is a credit of almost \$11,000 per ton. The requirement to use submerged fill will result in greater than 50 percent reduction in emissions compared to the splash fill base case. The impacts of controls on bulk terminals (submerged fill for terminals below 250,000 gallons per day throughput, 80 mg/l vapor processors terminals above 250,000 gallons per day, and leak testing of vapor recovery tank trucks loaded at terminal) in the final rule is a reduction of 190 tons of HAP per year at a capital

cost of \$500,000 and a cost credit of \$1.4 million in annualized cost (because of the value of the gasoline vapor recovered (about \$1.5 million)).

Although the commenters claim that these sources are located in rural areas, the decision to include this level of control for small bulk terminals was based on our re-analysis of the costs of control rather than on location. As was discussed in the response to an earlier comment, we believe that the development of area source standards that apply nationwide in all areas is appropriate given the facts and circumstances of this particular source category.

## 2. Internal Floating Roof Tanks

*Comment:* One commenter submitted facility data used to develop estimates of the cost, HAP reductions, and HAP cost-effectiveness of adding a secondary seal to internal floating roof tanks (IFRT) that have vapor mounted primary seals. The commenter provided capacity and throughput data for nine storage tanks. The commenter did not provide any specific recommendations for changes to the proposed rule, but stated that the cost-effectiveness for this control measure was very poor.

*Response:* As a result of our review of the data provided by the commenter, and a re-evaluation of the costs we estimated during the development of the proposal, we have decided to revise the final rule. In our examination of the impacts of storage tank controls prior to proposal, we combined the estimated impacts for IFRT and EFRT and considered the combined impacts. The impacts of the proposed rule, when all storage tank types are combined, were considered to be reasonable. However, the commenter is correct that the cost-effectiveness of adding secondary rim seals to an IFRT with an existing vapor mounted primary rim seal, when considered separately from the other tank types, is estimated to be greater than \$150,000 per ton of HAP reduced. The final rule will, therefore, require that IFRT have a primary seal but will not require a secondary seal.

## F. Notifications, Reporting, and Recordkeeping

*Comment:* One commenter supported the proposal to waive the requirements for submission of Initial Notification and Notification of Compliance Status for bulk plants and GDF and suggests this waiver be expanded to include pipeline breakout stations and pipeline pumping stations.

The commenter also suggests that all facilities be allowed to submit reports only when there are deviations to report

rather than being required to submit semi-annual reports even if there are no deviations during the period. The commenter stated that if there were no deviations, there would be no report. The commenter noted that EPA wrote in the preamble to the proposed rule "there are approximately 1,800 pipeline breakout stations nationwide." The commenter points out that this would result in 3,600 new semi-annual reports to agencies each year, placing undue burden on facilities and agencies. The commenter suggested that, as an alternative, only terminals and bulk plants should be required to submit semi-annual reports. The commenter stated that the regulatory requirements proposed for pipeline breakout stations, pipeline pumping stations, and GDF are easily auditable (e.g., log of equipment leak inspections, installation of submerged fill) and should not require semi-annual reporting. The commenter also stated that EPA should clarify that delay of repair is allowed with proper documentation and that the Administrator's approval is not required.

*Response:* Our intent in not requiring the submission of Initial Notification and Notification of Compliance Status for bulk plants and GDF was to reduce the burden on small businesses. We also believe this provision is appropriate because of the relative ease with which an inspector can determine if these facilities are meeting either submerged fill or vapor balancing requirements of the rule. However, it is more difficult to determine compliance with the storage tank requirements and equipment leak inspection requirements for pipeline breakout stations and pipeline pumping stations. We believe that it is reasonable to require these larger facilities to submit notifications certifying their status. These facilities are also typically not small businesses, the commenter did not provide data to support their position, and the reporting burden is not expected to be a significant burden.

With regard to the commenter's position that only reports of deviations be required rather than semi-annual reporting, we agree that for some source types these reports may not be necessary. Thus, we have revised the periodic reporting requirements in the final rule to require that pipeline pumping stations and bulk plants must only submit, on a semi-annual basis, any occurrences of an equipment leak for which no repair attempt was made within 5 days or for which repair was not completed within 15 days after detection. If there are no such occurrences, no semi-annual report is required. However, the monthly

equipment leak inspections must be performed and a record of the inspections must be kept. We have made this revision because, other than monthly equipment leak inspections, the only control measure typically required at these facilities is the use of submerged fill at bulk plants. Because submerged fill equipment is not expected to deteriorate significantly over time and is not subject to operating variables that impact emissions, we do not believe that semi-annual reporting is necessary. Likewise, as the commenter pointed out, the monthly equipment leak requirements include the maintenance (recording of the inspection event) of an inspection log which is required to be readily accessible to an inspector. We also considered that there are a large number of these facilities and that a significant number of the semi-annual reports would only be reporting that no delays in repair occurred. Therefore, as long as the equipment leak inspections are performed and documented, and as long as there are no delays in needed repairs, we do not believe that any reporting is necessary.

We have not, however, changed the requirement for semi-annual reporting by bulk terminals and pipeline breakout stations because we view these reports as necessary to ensure that facilities operate and maintain their storage tanks (and loading racks at bulk terminals) according to the provisions of the rule.

Finally, in response to the commenter's suggestion, we have clarified in the final rule that Administrator approval is not necessary for a facility to utilize the delay of repair provisions in the rule. Instead, the facility must document why repair within 15 days was not feasible, and provide that explanation in its next semi-annual report. We would point out, however, that this requirement may be implemented by a delegated authority under 40 CFR 63.11099 and that the reasons for a delay in repairs must be properly documented and must be acceptable to the delegated authority. If the documentation is not acceptable to the delegated authority, the delay in repair may be considered a violation of the standards.

## VI. Summary of Environmental, Energy, Cost, and Economic Impacts

As discussed earlier, gasoline distribution activities are carried out at several different types of facilities. These include bulk terminals, pipeline breakout stations, pipeline pumping stations, bulk plants, and GDF. Our analysis of the gasoline distribution industry led us to estimate that there

were approximately the following numbers of affected area sources incurring costs (and emission reductions) within each type of facility: 20 bulk terminals, 1,600 cargo tanks, 400 pipeline breakout stations, 1,800 pipeline pumping stations, 390 bulk plants, and 9,900 GDF. The following paragraphs present our estimates of the impacts that these final rules would have on these facilities.

#### A. What are the air impacts?

Nationwide, gasoline distribution facilities emit annually an estimated 475,000 tons of VOC and 22,800 tons of HAP (including 800 tons of benzene). As discussed earlier, gasoline no longer contains EDC so there are no longer any emissions of EDC from this source category. We estimate that, after the final rules are implemented, annual HAP emissions will be reduced by 4,900 tons, which includes 175 tons of benzene, from about 14,000 facilities. The final rules will also reduce VOC emissions by 103,000 tons per year, which represents about a 22 percent reduction in emissions of these pollutants, compared to the baseline. At proposal, we did a separate analysis of the impacts of the proposed Mobile Source Air Toxics Rule (MSAT), but since the MSAT rule is now final, it is considered as part of the baseline. Instead of the total HAP content of gasoline vapor, including 0.27 percent benzene (as used in our analysis at proposal), the MSAT rule will reduce it to about 0.17 percent. Also, we assume that MTBE will be completely phased out of the gasoline pool. The net effect is that the HAP content will be reduced from about 7.3 percent (estimated at proposal) to about 4.8 percent in gasoline vapor. Thus, all impact estimates reported in this notice reflect the impacts after full implementation of the MSAT rule and the elimination of MTBE in gasoline.

We project that any adverse air impacts associated with this rule will be insignificant. Using national data from all stationary benzene emission sources in the 1999 National Air Toxic Assessment (NATA) and ratiating them to the national benzene emissions from this source category, we approximate that this rule will reduce about 22 percent of the current benzene emissions from these sources, resulting in a reduction of incidences of cancer from benzene exposure by 0.08 cases per year. These cancer incidence reduction approximations are considered a very rough estimate because no exposure analysis was performed for this source category and the 1999 NATA data should be used

cautiously, as the overall quality and uncertainties of the NATA results will vary from location to location, as well as from pollutant to pollutant. In addition, EPA's Scientific Advisory Board has cautioned the Agency against using the results of the NATA assessment for regulatory purposes. Further information on the limitations of NATA is discussed at the following Web site: <http://www.epa.gov/ttn/atw/nata1999/index.html>.

#### B. What are the cost impacts?

The cost of implementing the final rules for gasoline distribution area source facilities would include the capital and annualized costs to control storage tanks, loading racks, equipment leaks, and cargo tanks, as well as the costs of complying with the testing, monitoring, reporting, and recordkeeping requirements. Since proposal we changed the interest rate used in our cost analysis to amortize the initial costs. The annualized cost estimates presented in the proposal are based on a 10 percent interest rate. As we reported in the proposed rule, cost documentation, the interest rate that the Agency uses for cost analyses such as these should have been 7 percent. We committed to correct that over-estimate in the final analyses. We have also corrected the cost analysis to incorporate the changes discussed in section III of this preamble and to incorporate the simplified monitoring, reporting, and recordkeeping requirement costs discussed in the proposal cost documentation. Thus, the cost analyses reported below and elsewhere in this notice includes these changes.

The final rules are estimated to result in capital expenditures of approximately \$75 million. The annualized cost of the capital expenditures is estimated to be about \$7.5 million. Annual operating and maintenance costs are estimated at about \$4.1 million. We have estimated the annual costs of testing, monitoring, reporting, and recordkeeping to be about \$8.4 million. Because of the value (\$26.5 million) of the product that is either recovered or prevented from evaporating, however, we estimate that the annualized cost of the final rules is a credit of about \$6.5 million.

#### C. What are the economic impacts?

These final rules affect area sources from pipeline transportation, bulk stations and terminals, local and long-haul trucking, and gasoline stations which make up the gasoline distribution industry. We performed an economic impact analysis with methodology

based on a single-market partial-equilibrium analysis of the national gasoline market. The analysis estimates changes in gasoline prices and outputs for affected sources under the control requirements in the final rules. The results of our analyses are stated below.

The compliance cost results in an insignificant increase in gasoline prices. This price increase is less than 1 cent per gallon (less than 0.001 percent).

Given these small increase in prices, the corresponding reductions in gasoline consumption are also minor. The estimated annual reduction is less than 3 million gallons per year.

The overall total annual surplus changes (social costs/gains), which reflect changes in consumer and producer behavior in response to the compliance costs of the final rule, is a net gain of \$6.5 million.

For more information, please refer to the Economic Impact Analysis report that is in the public docket for these rules.

#### D. What are the non-air environmental and energy impacts?

Water quality would not be affected by implementation of these rules. These final rules do not contain any requirements related to water discharges or wastewater collection, and no additional gasoline is expected to enter these areas as a result of these rules. We project that the implementation of the required management practices will result in a decrease in the release of gasoline to the environment, but we have not quantified this reduction.

We also project that there will be no significant solid waste impact. Neither thermal oxidizers nor condensers generate any solid waste as a by-product of their operation. When carbon adsorption systems are used, the spent activated carbon that cannot be further regenerated may be disposed of in a landfill, which would contribute a small amount of solid waste.

The control devices used to control emissions from loading racks and some storage tanks use electric motor-driven blowers, dampers, or pumps, depending on the type of system, in addition to electronic control and monitoring systems. The installation of these devices would have a small negative energy impact. We believe, however, that there will be very few, if any, new installations of these control devices as a result of these rules. Also, because the liquid being controlled by these systems is gasoline, and some of the applied control measures would keep this fuel in the distribution system, they would have a positive impact on this form of energy. We estimate that these rules

would prevent a total of approximately 35 million gallons of gasoline from being lost to evaporation annually.

## VII. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may "raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order." Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

### B. Paperwork Reduction Act

The information collection requirements in these final rules have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection Request (ICR) document has been prepared by EPA and has been assigned EPA ICR number 2237.02. A copy may be obtained from Susan Auby, Collection Strategies Division (2822T), EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, or by calling (202) 566-1672. A copy may also be downloaded from the public docket for this action (Docket ID number EPA-HQ-OAR-2006-0406), which can be found in <http://www.regulations.gov>. The information collection requirements are not enforceable until OMB approves them.

The information to be collected for the final area source rules are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions in 40 CFR part 63, subpart A, which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

These final rules require performance testing of control devices used to control emissions from loading racks at bulk terminals and from some storage tanks

at bulk terminals and pipeline breakout stations. They also require annual inspections of storage tanks at bulk terminals and pipeline breakout stations and collection of cargo tank vapor tightness documentation by bulk terminals. In addition, the rules require periodic pressure testing of vapor balance equipment at GDF. Finally, monthly equipment leak inspections at bulk terminals, pipeline breakout stations, pipeline pumping stations, and bulk plants are required. These final rules do not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance. We have taken steps to minimize the reporting and recordkeeping requirements for the smaller facilities (bulk plants and GDF) that are affected by these final rules.

The annual monitoring, reporting, and recordkeeping burden to affected sources for this collection (averaged over the first three years after the effective date of the promulgated rule) is estimated to be about 129,700 labor hours per year, with a total annual cost of \$8.4 million per year. Most of this burden will be spread over approximately 14,000 facilities that will be required to keep records and file reports. Of this total burden, however, about 68,500 labor hours (and \$4.5 million) will be incurred by about 4,200 of the larger, bulk distribution facilities. Depending on the facility type, these estimates include two one-time notifications, a one-time performance test and report for control devices, periodic equipment inspections, and semi-annual compliance reporting. We did not receive any comments on the proposed ICR, therefore, the ICR has only been updated to reflect any changes in affected sources and reporting and recordkeeping discussed earlier in this notice. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions as well as the time to develop, acquire, install, and use technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in these final rules.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purposes of assessing the impacts of these final rules on small entities, small entity is defined as: (1) A small business whose parent company has less than \$25 million in revenue (NAICS 447110, Gasoline Stations with Convenience Stores), less than \$23.5 million in revenue (NAICS 484220 and 484230, Hazardous Materials Trucking [except waste], local and long-distance), and less than \$8.0 million in revenue (NAICS 447190, Other Gasoline Stations), and fewer than 100 employees (NAICS 424710, Petroleum Bulk Stations and Terminals), and 1,500 employees (NAICS 486910, Pipeline Transportation of Refined Petroleum Products) based on Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Under these definitions, approximately 60,000 gasoline distribution firms are considered small entities. For more information, refer to <http://www.sba.gov/size/sizetable2002.html>. The economic impacts of the regulatory alternatives are analyzed based on the consumption of gasoline. However, for the small business impact analysis, these impacts are described in terms of comparing the compliance costs to sales



revenues for representative entities. For more detail, see the current Economic Impact Analysis in the public docket.

After considering the economic impacts of these final rules on small entities, I certify that the final rules will not have a significant economic impact on a substantial number of small entities. This certification is based on the economic impact of the final rules to affected small entities in the entire gasoline distribution industry. The small entities directly regulated by these final rules are industries within the NAICS codes 424710, 447110, 447190, 484220, and 484230. We have determined that Pipeline Transportation of Refined Petroleum Products (NAICS 486910) does not contain any small business entities and, therefore, is not included in the small business impact analysis. For the regulatory alternatives analyzed, all gasoline distribution industry categories that contain small business entities are expected to have an average annual cost to sales ratio of less than one percent with cost impacts for all regulated small entities ranging from a cost savings to less than 0.61 percent of sales. In addition, no other adverse impacts are expected to occur to these affected small businesses.

For more information on the small entity economic impacts associated with the final decisions for gasoline distribution industries affected by this action, please refer to the Economic Impact and Small Business Analyses in the public docket.

Although these final rules will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of these final rules on small entities. When developing the standards, we took special steps to ensure that the burdens imposed on small entities were minimal. We conducted meetings with industry officials to discuss regulatory options and the corresponding burden on industry, such as recordkeeping and reporting.

#### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million

or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Based on the cost and economic impact analyses discussed in sections VI.B and C, and the paperwork analysis in section VII.B of this preamble, EPA has determined that these final rules do not contain a Federal mandate that may result in expenditures of \$100 million or more to State, local, and tribal governments in the aggregate, or to the private sector in any one year. Thus, these final rules are not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined, for the same reason as above for all governments, that these final rules contain no regulatory requirements that might significantly or uniquely affect small governments.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government."

These final rules do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These final rules impose requirements on owners and operators of specified area sources and not State and local governments. Thus, Executive Order 13132 does not apply to these final rules.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

These final rules do not have tribal implications, as specified in Executive Order 13175. They 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. Thus, Executive Order 13175 does not apply to these final rules.

#### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. These final rules are not subject to Executive Order 13045 because they are based on technology



performance and not on health or safety risks.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

These final rules are not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that these final rules are not likely to have any adverse energy effects.

*I. National Technology Transfer and Advancement Act*

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104-113, 12(d), (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This rule involves technical standards. EPA has decided to use the following methods: EPA Methods 9, 21, 22, and 27 (40 CFR part 60, appendix A); American Society of Testing Materials (ASTM) Standard D 5228-92, "Standard Test Method for Determination of Butane Working Capacity of Activated Carbon"; CARB Vapor Recovery Test Procedure TP-201.1, "Volumetric Efficiency for Phase I Vapor Recovery Systems"; CARB Vapor Recovery Test Procedure TP-201.1E, "Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves"; and CARB Vapor Recovery Test Procedure TP-201.3, "Determination of 2-Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities."

The standard ASTM D 5228-92, "Standard Test Method for Determination of Butane Working Capacity of Activated Carbon," is also a VCS. This standard will be incorporated by reference into 40 CFR 63.14.

Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these methods. No

applicable VCS were identified for EPA Methods 9, 21, 22, 27, ASTM D5228-92, or CARB methods TP-201.1, TP-201.1E, and TP-201.3. The search and review results are in the docket for this rule.

Under 40 CFR 63.7(f) and 40 CFR 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that these final rules will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because they increase the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. These final rules establish national standards.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these final rules and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final rules 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). These final rules will be effective on January 10, 2008.

**List of Subjects for 40 CFR Part 63**

Environmental protection, Administrative practice and procedures, Air pollution control, Incorporations by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 20, 2007.

**Stephen L. Johnson,**  
*Administrator.*

■ For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

**PART 63—[AMENDED]**

■ 1. The authority citation for part 63 continues to read as follows:

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

■ 2. Section 63.14 is amended by adding new paragraphs (b)(63) and (l) to read as follows:

**§ 63.14 Incorporation by reference.**

\* \* \* \* \*

(b) \* \* \*

(63) ASTM D 5228-92—"Standard Test Method for Determination of Butane Working Capacity of Activated Carbon," reapproved 2005, IBR approved for § 63.11092(b)(1)(i)(B)(1)(ii).

\* \* \* \* \*

(l) The following materials are available from the California Air Resources Board, Engineering and Certification Branch, 1001 I Street, P.O. Box 2815, Sacramento, CA 95812-2815, Telephone (916) 327-0900 and are also available at the following Web site: <http://www.arb.ca.gov/vapor/vapor.htm>.

(1) California Air Resources Board Vapor Recovery Test Procedure TP-201.1—"Volumetric Efficiency for Phase I Vapor Recovery Systems," adopted April 12, 1996, and amended February 1, 2001 and October 8, 2003, IBR approved for § 63.11120(b)(1).

(2) California Air Resources Board Vapor Recovery Test Procedure TP-201.1E—"Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves," adopted October 8, 2003, IBR approved for § 63.11120(a)(1)(i).

(3) California Air Resources Board Vapor Recovery Test Procedure TP-201.3—"Determination of 2-Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities," adopted April 12, 1996 and amended March 17, 1999, IBR approved for § 63.11120(a)(2)(i).

■ 3. Part 63 is amended by adding a new subpart BBBB to read as follows:

**Subpart BBBBBB—National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities**

Sec.

**What This Subpart Covers**

- 63.11080 What is the purpose of this subpart?  
 63.11081 Am I subject to the requirements in this subpart?  
 63.11082 What parts of my affected source does this subpart cover?  
 63.11083 When do I have to comply with this subpart?

**Emission Limitations and Management Practices**

- 63.11086 What requirements must I meet if my facility is a bulk gasoline plant?  
 63.11087 What requirements must I meet for gasoline storage tanks if my facility is a bulk gasoline terminal, pipeline breakout station, or pipeline pumping station?  
 63.11088 What requirements must I meet for gasoline loading racks if my facility is a bulk gasoline terminal, pipeline breakout station, or pipeline pumping station?  
 63.11089 What requirements must I meet for equipment leak inspections if my facility is a bulk gasoline terminal, pipeline breakout station, or pipeline pumping station?

**Testing and Monitoring Requirements**

- 63.11092 What testing and monitoring requirements must I meet?

**Notification, Records, and Reports**

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**Subpart BBBBBB—National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities**

**What This Subpart Covers**

**§ 63.11080 What is the purpose of this subpart?**

This subpart establishes national emission limitations and management practices for hazardous air pollutants (HAP) emitted from area source gasoline distribution bulk terminals, bulk plants, and pipeline facilities. This subpart also establishes requirements to demonstrate compliance with the emission limitations and management practices.

**§ 63.11081 Am I subject to the requirements in this subpart?**

(a) The affected source to which this subpart applies is each area source bulk gasoline terminal, pipeline breakout station, pipeline pumping station, and bulk gasoline plant identified in paragraphs (a)(1) through (4) of this section. You are subject to the requirements in this subpart if you own or operate one or more of the affected area sources identified in paragraphs (a)(1) through (4) of this section.

(1) A bulk gasoline terminal that is not subject to the control requirements of 40 CFR part 63, subpart R (§§ 63.422, 63.423, and 63.424) or 40 CFR part 63, subpart CC (§§ 63.646, 63.648, 63.649, and 63.650).

(2) A pipeline breakout station that is not subject to the control requirements of 40 CFR part 63, subpart R (§§ 63.423 and 63.424).

(3) A pipeline pumping station.

(4) A bulk gasoline plant.

(b) If you are an owner or operator of affected sources, as defined in (a)(1) through (4) of this section, you are not required to meet the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71 as a result of being subject to this subpart. However, you are still subject to the requirement to apply for and obtain a permit under 40 CFR part 70 or 40 CFR part 71 if you meet one or more of the applicability criteria found in 40 CFR 70.3(a) and (b) or 40 CFR part 71.3(a) and (b).

**§ 63.11082 What parts of my affected source does this subpart cover?**

(a) The emission sources to which this subpart applies are gasoline storage tanks, gasoline loading racks, vapor collection-equipped gasoline cargo tanks, and equipment components in vapor or liquid gasoline service that meet the criteria specified in Tables 1 through 3 to this subpart.

(b) An affected source is a new affected source if you commenced construction on the affected source after November 9, 2006, and you meet the applicability criteria in § 63.11081 at the time you commenced operation.

(c) An affected source is reconstructed if you meet the criteria for reconstruction as defined in § 63.2.

(d) An affected source is an existing affected source if it is not new or reconstructed.

**§ 63.11083 When do I have to comply with this subpart?**

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section.

(1) If you start up your affected source before January 10, 2008, you must comply with the standards in this subpart no later than January 10, 2008.

(2) If you start up your affected source after January 10, 2008, you must comply with the standards in this subpart upon startup of your affected source.

(b) If you have an existing affected source, you must comply with the standards in this subpart no later than January 10, 2011.

(c) If you have an existing affected source that becomes subject to the control requirements in this subpart because of an increase in the average daily throughput, as specified in option 1 of Table 2 to this subpart, you must comply with the standards in this subpart no later than 3 years after the affected source becomes subject to the control requirements in this subpart.

**Emission Limitations and Management Practices**

**§ 63.11086 What requirements must I meet if my facility is a bulk gasoline plant?**

Each owner or operator of an affected bulk gasoline plant, as defined in § 63.11100, must comply with the requirements of paragraphs (a) through (i) of this section.

(a) Except as specified in paragraph (b), you must only load gasoline into storage tanks and cargo tanks at your facility by utilizing submerged filling, as defined in § 63.11100, and, as specified in paragraph (a)(1) or paragraph (a)(2) of this section.

(1) Submerged fill pipes installed on or before November 9, 2006, must be no more than 12 inches from the bottom of the tank.

(2) Submerged fill pipes installed after November 9, 2006, must be no more than 6 inches from the bottom of the tank.

(b) The emission sources listed in paragraphs (b)(1) through (2) of this section are not required to comply with

the control requirements in paragraph (a) of this section, but must comply only with the requirements in paragraph (d) of this section.

(1) Gasoline storage tanks with a capacity of less than 250 gallons.

(2) Gasoline storage tanks that are subject to subpart CCCCCC of this part.

(c) You must perform a monthly leak inspection of all equipment in gasoline service according to the requirements specified in § 63.11089(a) through (d).

(d) You must not allow gasoline to be handled in a manner that would result in vapor releases to the atmosphere for extended periods of time. Measures to be taken include, but are not limited to, the following:

(1) Minimize gasoline spills;

(2) Clean up spills as expeditiously as practicable;

(3) Cover all open gasoline containers and all gasoline storage tank fill-pipes with a gasketed seal when not in use;

(4) Minimize gasoline sent to open waste collection systems that collect and transport gasoline to reclamation and recycling devices, such as oil/water separators.

(e) You must submit an Initial Notification that you are subject to this subpart by May 9, 2008 unless you meet the requirements in paragraph (g) of this section. The Initial Notification must contain the information specified in paragraphs (e)(1) through (4) of this section. The notification must be submitted to the applicable EPA Regional Office and the delegated State authority, as specified in § 63.13.

(1) The name and address of the owner and the operator.

(2) The address (*i.e.*, physical location) of the bulk plant.

(3) A statement that the notification is being submitted in response to this subpart and identifying the requirements in paragraphs (a), (b), (c), and (d) of this section that apply to you.

(4) A brief description of the bulk plant, including the number of storage tanks in gasoline service, the capacity of each storage tank in gasoline service, and the average monthly gasoline throughput at the affected source.

(f) You must submit a Notification of Compliance Status to the applicable EPA Regional Office and the delegated State authority, as specified in § 63.13, by the compliance date specified in § 63.11083 unless you meet the requirements in paragraph (g) of this section. The Notification of Compliance Status must be signed by a responsible official who must certify its accuracy and must indicate whether the source has complied with the requirements of this subpart. If your facility is in compliance with the requirements of

this subpart at the time the Initial Notification required under paragraph (e) of this section is due, the Notification of Compliance Status may be submitted in lieu of the Initial Notification provided it contains the information required under paragraph (e) of this section.

(g) If, prior to January 10, 2008, you are operating in compliance with an enforceable State, local, or tribal rule or permit that requires submerged fill as specified in § 63.11086(a), you are not required to submit an Initial Notification or a Notification of Compliance Status under paragraph (e) or paragraph (f) of this section.

(h) You must comply with the requirements of this subpart by the applicable dates specified in § 63.11083.

(i) You must keep applicable records and submit reports as specified in § 63.11094(d) and (e) and § 63.11095(c).

**§ 63.11087 What requirements must I meet for gasoline storage tanks if my facility is a bulk gasoline terminal, pipeline breakout station, or pipeline pumping station?**

(a) You must meet each emission limit and management practice in Table 1 to this subpart that applies to your gasoline storage tank.

(b) You must comply with the requirements of this subpart by the applicable dates specified in § 63.11083, except that storage vessels equipped with floating roofs and not meeting the requirements of paragraph (a) of this section must be in compliance at the first degassing and cleaning activity after January 10, 2011 or by January 10, 2018, whichever is first.

(c) You must comply with the applicable testing and monitoring requirements specified in § 63.11092(e).

(d) You must submit the applicable notifications as required under § 63.11093.

(e) You must keep records and submit reports as specified in §§ 63.11094 and 63.11095.

(f) If your gasoline storage tank is subject to, and complies with, the control requirements of 40 CFR part 60, subpart Kb of this chapter, your storage tank will be deemed in compliance with this section. You must report this determination in the Notification of Compliance Status report under § 63.11093(b).

**§ 63.11088 What requirements must I meet for gasoline loading racks if my facility is a bulk gasoline terminal, pipeline breakout station, or pipeline pumping station?**

(a) You must meet each emission limit and management practice in Table 2 to this subpart that applies to you.

(b) As an alternative for railcar cargo tanks to the requirements specified in

Table 2 to this subpart, you may comply with the requirements specified in § 63.422(e).

(c) You must comply with the requirements of this subpart by the applicable dates specified in § 63.11083.

(d) You must comply with the applicable testing and monitoring requirements specified in § 63.11092.

(e) You must submit the applicable notifications as required under § 63.11093.

(f) You must keep records and submit reports as specified in §§ 63.11094 and 63.11095.

**§ 63.11089 What requirements must I meet for equipment leak inspections if my facility is a bulk gasoline terminal, bulk plant, pipeline breakout station, or pipeline pumping station?**

(a) Each owner or operator of a bulk gasoline terminal, bulk plant, pipeline breakout station, or pipeline pumping station subject to the provisions of this subpart shall perform a monthly leak inspection of all equipment in gasoline service, as defined in § 63.11100. For this inspection, detection methods incorporating sight, sound, and smell are acceptable.

(b) A log book shall be used and shall be signed by the owner or operator at the completion of each inspection. A section of the log book shall contain a list, summary description, or diagram(s) showing the location of all equipment in gasoline service at the facility.

(c) Each detection of a liquid or vapor leak shall be recorded in the log book. When a leak is detected, an initial attempt at repair shall be made as soon as practicable, but no later than 5 calendar days after the leak is detected. Repair or replacement of leaking equipment shall be completed within 15 calendar days after detection of each leak, except as provided in paragraph (d) of this section.

(d) Delay of repair of leaking equipment will be allowed if the repair is not feasible within 15 days. The owner or operator shall provide in the semiannual report specified in § 63.11095(b), the reason(s) why the repair was not feasible and the date each repair was completed.

(e) You must comply with the requirements of this subpart by the applicable dates specified in § 63.11083.

(f) You must submit the applicable notifications as required under § 63.11093.

(g) You must keep records and submit reports as specified in §§ 63.11094 and 63.11095.

## Testing and Monitoring Requirements

### § 63.11092 What testing and monitoring requirements must I meet?

(a) Each owner or operator subject to the emission standard in § 63.11088 for gasoline loading racks must comply with the requirements in paragraphs (a) through (d) of this section.

(1) Conduct a performance test on the vapor processing and collection systems according to either paragraph (a)(1)(i) or paragraph (a)(1)(ii) of this section.

(i) Use the test methods and procedures in § 60.503 of this chapter, except a reading of 500 parts per million shall be used to determine the level of leaks to be repaired under § 60.503(b) of this chapter.

(ii) Use alternative test methods and procedures in accordance with the alternative test method requirements in § 63.7(f).

(2) If you are operating your gasoline loading rack in compliance with an enforceable State, local, or tribal rule or permit that requires your loading rack to meet an emission limit of 80 milligrams (mg), or less, per liter of gasoline loaded (mg/l), you may submit a statement by a responsible official of your facility certifying the compliance status of your loading rack in lieu of the test required under paragraph (a)(1) of this section.

(3) If you have conducted performance testing on the vapor processing and collection systems within 5 years prior to January 10, 2008, and the test is for the affected facility and is representative of current or anticipated operating processes and conditions, you may submit the results of such testing in lieu of the test required under paragraph (a)(1) of this section, provided the testing was conducted using the test methods and procedures in § 60.503 of this chapter. Should the Administrator deem the prior test data unacceptable, the facility is still required to meet the requirement to conduct an initial performance test within 180 days of the rule promulgation; thus, previous test reports should be submitted as soon as possible after January 10, 2008.

(4) The performance test requirements of § 63.11092(a) do not apply to flares defined in § 63.11100 and meeting the flare requirements in § 63.11(b). The owner or operator shall demonstrate that the flare and associated vapor collection system is in compliance with the requirements in § 63.11(b) and 40 CFR 60.503(a), (b), and (d).

(b) For each performance test conducted under paragraph (a)(1) of this section, the owner or operator shall determine a monitored operating parameter value for the vapor

processing system using the procedures specified in paragraphs (b)(1) through (5) of this section.

(1) Each owner or operator of a bulk gasoline terminal subject to the provisions of this subpart shall install, calibrate, certify, operate, and maintain, according to the manufacturer's specifications, a continuous monitoring system (CMS) while gasoline vapors are displaced to the vapor processor systems specified in paragraphs (b)(1)(i) through (iv) of this section. During the performance test, continuously record the operating parameter as specified under paragraphs (b)(1)(i) through (iv) of this section.

(i) Where a carbon adsorption system is used, the owner or operator shall monitor the operation of the system as specified in paragraphs (b)(1)(i)(A) or (B) of this section.

(A) A continuous emissions monitoring system (CEMS) capable of measuring organic compound concentration shall be installed in the exhaust air stream.

(B) As an alternative to paragraph (b)(1)(i)(A) of this section, you may choose to meet the requirements listed in paragraph (b)(1)(i)(B)(1) and (2) of this section.

(1) Carbon adsorption devices shall be monitored as specified in paragraphs (b)(1)(i)(B)(1)(i), (ii), and (iii) of this section.

(i) Vacuum level shall be monitored using a pressure transmitter installed in the vacuum pump suction line, with the measurements displayed on a gauge that can be visually observed. Each carbon bed shall be observed during one complete regeneration cycle on each day of operation of the loading rack to determine the maximum vacuum level achieved.

(ii) Conduct annual testing of the carbon activity for the carbon in each carbon bed. Carbon activity shall be tested in accordance with the butane working capacity test of the American Society for Testing and Materials (ASTM) Method D 5228-92 (incorporated by reference, see § 63.14), or by another suitable procedure as recommended by the manufacturer.

(iii) Conduct monthly measurements of the carbon bed outlet volatile organic compounds (VOC) concentration over the last 5 minutes of an adsorption cycle for each carbon bed, documenting the highest measured VOC concentration. Measurements shall be made using a portable analyzer, in accordance with 40 CFR part 60, Appendix A-7, EPA Method 21 for open-ended lines.

(2) Develop and submit to the Administrator a monitoring and inspection plan that describes the owner

or operator's approach for meeting the requirements in paragraphs (b)(1)(i)(B)(2)(i) through (v) of this section.

(i) The lowest maximum required vacuum level and duration needed to assure regeneration of the carbon beds shall be determined by an engineering analysis or from the manufacturer's recommendation and shall be documented in the monitoring and inspection plan.

(ii) The owner or operator shall verify, during each day of operation of the loading rack, the proper valve sequencing, cycle time, gasoline flow, purge air flow, and operating temperatures. Verification shall be through visual observation or through an automated alarm or shutdown system that monitors and records system operation.

(iii) The owner or operator shall perform semi-annual preventive maintenance inspections of the carbon adsorption system according to the recommendations of the manufacturer of the system.

(iv) The monitoring plan developed under paragraph (2) of this section shall specify conditions that would be considered malfunctions of the carbon adsorption system during the inspections or automated monitoring performed under paragraphs (b)(1)(i)(B)(2)(i) through (iii) of this section, describe specific corrective actions that will be taken to correct any malfunction, and define what the owner or operator would consider to be a timely repair for each potential malfunction.

(v) The owner or operator shall document the maximum vacuum level observed on each carbon bed from each daily inspection and the maximum VOC concentration observed from each carbon bed on each monthly inspection as well as any system malfunction, as defined in the monitoring and inspection plan, and any activation of the automated alarm or shutdown system with a written entry into a log book or other permanent form of record. Such record shall also include a description of the corrective action taken and whether such corrective actions were taken in a timely manner, as defined in the monitoring and inspection plan, as well as an estimate of the amount of gasoline loaded during the period of the malfunction.

(ii) Where a refrigeration condenser system is used, a continuous parameter monitoring system (CPMS) capable of measuring temperature shall be installed immediately downstream from the outlet to the condenser section. Alternatively, a CEMS capable of



measuring organic compound concentration may be installed in the exhaust air stream.

(iii) Where a thermal oxidation system other than a flare is used, the owner or operator shall monitor the operation of the system as specified in paragraphs (b)(1)(iii)(A) or (B) of this section.

(A) A CPMS capable of measuring temperature shall be installed in the firebox or in the ductwork immediately downstream from the firebox in a position before any substantial heat exchange occurs.

(B) As an alternative to paragraph (b)(1)(iii)(A) of this section, you may choose to meet the requirements listed in paragraphs (b)(1)(iii)(B)(1) and (2) of this section.

(1) The presence of a thermal oxidation system pilot flame shall be monitored using a heat-sensing device, such as an ultraviolet beam sensor or a thermocouple, installed in proximity to the pilot light to indicate the presence of a flame.

(2) Develop and submit to the Administrator a monitoring and inspection plan that describes the owner or operator's approach for meeting the requirements in paragraphs (b)(1)(iii)(B)(2)(i) through (v) of this section.

(i) The thermal oxidation system shall be equipped to automatically prevent gasoline loading operations from beginning at any time that the pilot flame is absent.

(ii) The owner or operator shall verify, during each day of operation of the loading rack, the proper operation of the assist-air blower, the vapor line valve, and the emergency shutdown system. Verification shall be through visual observation or through an automated alarm or shutdown system that monitors and records system operation.

(iii) The owner or operator shall perform semi-annual preventive maintenance inspections of the thermal oxidation system according to the recommendations of the manufacturer of the system.

(iv) The monitoring plan developed under paragraph (2) of this section shall specify conditions that would be considered malfunctions of the thermal oxidation system during the inspections or automated monitoring performed under paragraphs (b)(1)(iii)(B)(2)(ii) and (iii) of this section, describe specific corrective actions that will be taken to correct any malfunction, and define what the owner or operator would consider to be a timely repair for each potential malfunction.

(v) The owner or operator shall document any system malfunction, as defined in the monitoring and

inspection plan, and any activation of the automated alarm or shutdown system with a written entry into a log book or other permanent form of record. Such record shall also include a description of the corrective action taken and whether such corrective actions were taken in a timely manner, as defined in the monitoring and inspection plan, as well as an estimate of the amount of gasoline loaded during the period of the malfunction.

(iv) Monitoring an alternative operating parameter or a parameter of a vapor processing system other than those listed in paragraphs (b)(1)(i) through (iii) of this section will be allowed upon demonstrating to the Administrator's satisfaction that the alternative parameter demonstrates continuous compliance with the emission standard in § 63.11088(a).

(2) Where a flare meeting the requirements in § 63.11(b) is used, a heat-sensing device, such as an ultraviolet beam sensor or a thermocouple, must be installed in proximity to the pilot light to indicate the presence of a flame.

(3) Determine an operating parameter value based on the parameter data monitored during the performance test, supplemented by engineering assessments and the manufacturer's recommendations,

(4) Provide for the Administrator's approval the rationale for the selected operating parameter value, monitoring frequency, and averaging time, including data and calculations used to develop the value and a description of why the value, monitoring frequency, and averaging time demonstrate continuous compliance with the emission standard in § 63.11088(a).

(5) If you have chosen to comply with the performance testing alternatives provided under paragraph (a)(2) or paragraph (a)(3) of this section, the monitored operating parameter value may be determined according to the provisions in paragraph (b)(5)(i) or paragraph (b)(5)(ii) of this section.

(i) Monitor an operating parameter that has been approved by the Administrator and is specified in your facility's current enforceable operating permit. At the time that the Administrator requires a new performance test, you must determine the monitored operating parameter value according to the requirements specified in paragraph (b) of this section.

(ii) Determine an operating parameter value based on engineering assessment and the manufacturer's recommendation and submit the information specified in paragraph (b)(4) of this section for

approval by the Administrator. At the time that the Administrator requires a new performance test, you must determine the monitored operating parameter value according to the requirements specified in paragraph (b) of this section.

(c) For performance tests performed after the initial test required under paragraph (a) of this section, the owner or operator shall document the reasons for any change in the operating parameter value since the previous performance test.

(d) Each owner or operator of a bulk gasoline terminal subject to the provisions of this subpart shall comply with the requirements in paragraphs (d)(1) through (4) of this section.

(1) Operate the vapor processing system in a manner not to exceed or not to go below, as appropriate, the operating parameter value for the parameters described in paragraph (b)(1) of this section.

(2) In cases where an alternative parameter pursuant to paragraph (b)(1)(iv) or paragraph (b)(5)(i) of this section is approved, each owner or operator shall operate the vapor processing system in a manner not to exceed or not to go below, as appropriate, the alternative operating parameter value.

(3) Operation of the vapor processing system in a manner exceeding or going below the operating parameter value, as appropriate, shall constitute a violation of the emission standard in § 63.11088(a), except as specified in paragraph (d)(4) of this section.

(4) For the monitoring and inspection, as required under paragraphs (b)(1)(i)(B)(2) and (b)(1)(iii)(B)(2) of this section, malfunctions that are discovered shall not constitute a violation of the emission standard in § 63.11088(a) if corrective actions as described in the monitoring and inspection plan are followed. The owner or operator must:

(i) Initiate corrective action to determine the cause of the problem within 1 hour;

(ii) Initiate corrective action to fix the problem within 24 hours;

(iii) Complete all corrective actions needed to fix the problem as soon as practicable consistent with good air pollution control practices for minimizing emissions;

(iv) Minimize periods of start-up, shutdown, or malfunction; and

(v) Take any necessary corrective actions to restore normal operation and prevent the recurrence of the cause of the problem.

(e) Each owner or operator subject to the emission standard in § 63.11087 for



gasoline storage tanks shall comply with the requirements in paragraphs (e)(1) through (3) of this section.

(1) If your gasoline storage tank is equipped with an internal floating roof, you must perform inspections of the floating roof system according to the requirements of § 60.113b(a) if you are complying with option 2(b) in Table 1 to this subpart, or according to the requirements of § 63.1063(c)(1) if you are complying with option 2(d) in Table 1 to this subpart.

(2) If your gasoline storage tank is equipped with an external floating roof, you must perform inspections of the floating roof system according to the requirements of § 60.113b(b) if you are complying with option 2(c) in Table 1 to this subpart, or according to the requirements of § 63.1063(c)(2) if you are complying with option 2(d) in Table 1 to this subpart.

(3) If your gasoline storage tank is equipped with a closed vent system and control device, you must conduct a performance test and determine a monitored operating parameter value in accordance with the requirements in paragraphs (a) through (d) of this section, except that the applicable level of control specified in paragraph (a)(2) of this section shall be a 95-percent reduction in inlet total organic compounds (TOC) levels rather than 80 mg/l of gasoline loaded.

(f) The annual certification test for gasoline cargo tanks shall consist of the test methods specified in paragraphs (f)(1) or (f)(2) of this section.

(1) *EPA Method 27, Appendix A-8, 40 CFR part 60.* Conduct the test using a time period (t) for the pressure and vacuum tests of 5 minutes. The initial pressure ( $P_i$ ) for the pressure test shall be 460 millimeters (mm) of water (18 inches of water), gauge. The initial vacuum ( $V_i$ ) for the vacuum test shall be 150 mm of water (6 inches of water), gauge. The maximum allowable pressure and vacuum changes ( $\Delta p$ ,  $\Delta v$ ) for all affected gasoline cargo tanks is 3 inches of water, or less, in 5 minutes.

(2) *Railcar bubble leak test procedures.* As an alternative to the annual certification test required under paragraph (1) of this section for certification leakage testing of gasoline cargo tanks, the owner or operator may comply with paragraphs (f)(2)(i) and (ii) of this section for railcar cargo tanks, provided the railcar cargo tank meets the requirement in paragraph (f)(2)(iii) of this section.

(i) Comply with the requirements of 49 CFR 173.31(d), 49 CFR 179.7, 49 CFR 180.509, and 49 CFR 180.511 for the periodic testing of railcar cargo tanks.

(ii) The leakage pressure test procedure required under 49 CFR 180.509(j) and used to show no indication of leakage under 49 CFR 180.511(f) shall be ASTM E 515-95, BS EN 1593:1999, or another bubble leak test procedure meeting the requirements in 49 CFR 179.7, 49 CFR 180.505, and 49 CFR 180.509.

(iii) The alternative requirements in this paragraph (f)(2) may not be used for any railcar cargo tank that collects gasoline vapors from a vapor balance system and the system complies with a Federal, State, local, or tribal rule or permit. A vapor balance system is a piping and collection system designed to collect gasoline vapors displaced from a storage vessel, barge, or other container being loaded, and routes the displaced gasoline vapors into the railcar cargo tank from which liquid gasoline is being unloaded.

#### Notifications, Records, and Reports

##### § 63.11093 What notifications must I submit and when?

(a) Each owner or operator of an affected source under this subpart must submit an Initial Notification as specified in § 63.9(b). If your facility is in compliance with the requirements of this subpart at the time the Initial Notification is due, the Notification of Compliance Status required under paragraph (b) of this section may be submitted in lieu of the Initial Notification.

(b) Each owner or operator of an affected source under this subpart must submit a Notification of Compliance Status as specified in § 63.9(h). The Notification of Compliance Status must specify which of the compliance options included in Table 1 to this subpart is used to comply with this subpart.

(c) Each owner or operator of an affected bulk gasoline terminal under this subpart must submit a Notification of Performance Test, as specified in § 63.9(e), prior to initiating testing required by § 63.11092(a) or § 63.11092(b).

(d) Each owner or operator of any affected source under this subpart must submit additional notifications specified in § 63.9, as applicable.

##### § 63.11094 What are my recordkeeping requirements?

(a) Each owner or operator of a bulk gasoline terminal or pipeline breakout station whose storage vessels are subject to the provisions of this subpart shall keep records as specified in § 60.115b of this chapter if you are complying with options 2(a), 2(b), or 2(c) in Table 1 to this subpart, except records shall be kept for at least 5 years. If you are

complying with the requirements of option 2(d) in Table 1 to this subpart, you shall keep records as specified in § 63.1065.

(b) Each owner or operator of a bulk gasoline terminal subject to the provisions of this subpart shall keep records of the test results for each gasoline cargo tank loading at the facility as specified in paragraphs (b)(1) through (3) of this section.

(1) Annual certification testing performed under § 63.11092(f)(1) and periodic railcar bubble leak testing performed under § 63.11092(f)(2).

(2) The documentation file shall be kept up-to-date for each gasoline cargo tank loading at the facility. The documentation for each test shall include, as a minimum, the following information:

(i) *Name of test:* Annual Certification Test—Method 27 or Periodic Railcar Bubble Leak Test Procedure.

(ii) Cargo tank owner's name and address.

(iii) Cargo tank identification number.

(iv) Test location and date.

(v) Tester name and signature.

(vi) *Witnessing inspector, if any:* Name, signature, and affiliation.

(vii) *Vapor tightness repair:* Nature of repair work and when performed in relation to vapor tightness testing.

(viii) *Test results:* Test pressure; pressure or vacuum change, mm of water; time period of test; number of leaks found with instrument; and leak definition.

(3) If you are complying with the alternative requirements in § 63.11088(b), you must keep records documenting that you have verified the vapor tightness testing according to the requirements of the Administrator.

(c) As an alternative to keeping records at the terminal of each gasoline cargo tank test result as required in paragraph (b) of this section, an owner or operator may comply with the requirements in either paragraph (c)(1) or paragraph (c)(2) of this section.

(1) An electronic copy of each record is instantly available at the terminal.

(i) The copy of each record in paragraph (c)(1) of this section is an exact duplicate image of the original paper record with certifying signatures.

(ii) The Administrator is notified in writing that each terminal using this alternative is in compliance with paragraph (c)(1) of this section.

(2) For facilities that use a terminal automation system to prevent gasoline cargo tanks that do not have valid cargo tank vapor tightness documentation from loading (e.g., via a card lock-out system), a copy of the documentation is made available (e.g., via facsimile) for

inspection by the Administrator's delegated representatives during the course of a site visit, or within a mutually agreeable time frame.

(i) The copy of each record in paragraph (c)(2) of this section is an exact duplicate image of the original paper record with certifying signatures.

(ii) The Administrator is notified in writing that each terminal using this alternative is in compliance with paragraph (c)(2) of this section.

(d) Each owner or operator subject to the equipment leak provisions of § 63.11089 shall prepare and maintain a record describing the types, identification numbers, and locations of all equipment in gasoline service. For facilities electing to implement an instrument program under § 63.11089, the record shall contain a full description of the program.

(e) Each owner or operator of an affected source subject to equipment leak inspections under § 63.11089 shall record in the log book for each leak that is detected the information specified in paragraphs (e)(1) through (7) of this section.

(1) The equipment type and identification number.

(2) The nature of the leak (i.e., vapor or liquid) and the method of detection (i.e., sight, sound, or smell).

(3) The date the leak was detected and the date of each attempt to repair the leak.

(4) Repair methods applied in each attempt to repair the leak.

(5) "Repair delayed" and the reason for the delay if the leak is not repaired within 15 calendar days after discovery of the leak.

(6) The expected date of successful repair of the leak if the leak is not repaired within 15 days.

(7) The date of successful repair of the leak.

(f) Each owner or operator of a bulk gasoline terminal subject to the provisions of this subpart shall:

(1) Keep an up-to-date, readily accessible record of the continuous monitoring data required under § 63.11092(b) or § 63.11092(e). This record shall indicate the time intervals during which loadings of gasoline cargo tanks have occurred or, alternatively, shall record the operating parameter data only during such loadings. The date and time of day shall also be indicated at reasonable intervals on this record.

(2) Record and report simultaneously with the Notification of Compliance Status required under § 63.11093(b):

(i) All data and calculations, engineering assessments, and manufacturer's recommendations used

in determining the operating parameter value under § 63.11092(b) or § 63.11092(e); and

(ii) The following information when using a flare under provisions of § 63.11092(b) to comply with § 63.11087(a):

(A) Flare design (i.e., steam-assisted, air-assisted, or non-assisted); and

(B) All visible emissions (VE) readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination required under § 63.11092(e)(3).

(3) Keep an up-to-date, readily accessible copy of the monitoring and inspection plan required under § 63.11092(b)(1)(i)(B)(2) or § 63.11092(b)(1)(iii)(B)(2).

(4) Keep an up-to-date, readily accessible record of all system malfunctions, as specified in § 63.11092(b)(1)(i)(B)(2)(v) or § 63.11092(b)(1)(iii)(B)(2)(v).

(5) If an owner or operator requests approval to use a vapor processing system or monitor an operating parameter other than those specified in § 63.11092(b), the owner or operator shall submit a description of planned reporting and recordkeeping procedures.

#### § 63.11095 What are my reporting requirements?

(a) Each owner or operator of a bulk terminal or a pipeline breakout station subject to the control requirements of this subpart shall include in a semiannual compliance report to the Administrator the following information, as applicable:

(1) For storage vessels, if you are complying with options 2(a), 2(b), or 2(c) in Table 1 to this subpart, the information specified in § 60.115b(a), § 60.115b(b), or § 60.115b(c) of this chapter, depending upon the control equipment installed, or, if you are complying with option 2(d) in Table 1 to this subpart, the information specified in § 63.1066.

(2) For loading racks, each loading of a gasoline cargo tank for which vapor tightness documentation had not been previously obtained by the facility.

(3) For equipment leak inspections, the number of equipment leaks not repaired within 15 days after detection.

(b) Each owner or operator of an affected source subject to the control requirements of this subpart shall submit an excess emissions report to the Administrator at the time the semiannual compliance report is submitted. Excess emissions events under this subpart, and the information to be included in the excess emissions

report, are specified in paragraphs (b)(1) through (5) of this section.

(1) Each instance of a non-vapor-tight gasoline cargo tank loading at the facility in which the owner or operator failed to take steps to assure that such cargo tank would not be reloaded at the facility before vapor tightness documentation for that cargo tank was obtained.

(2) Each reloading of a non-vapor-tight gasoline cargo tank at the facility before vapor tightness documentation for that cargo tank is obtained by the facility in accordance with § 63.11094(b).

(3) Each exceedance or failure to maintain, as appropriate, the monitored operating parameter value determined under § 63.11092(b). The report shall include the monitoring data for the days on which exceedances or failures to maintain have occurred, and a description and timing of the steps taken to repair or perform maintenance on the vapor collection and processing systems or the CMS.

(4) Each instance in which malfunctions discovered during the monitoring and inspections required under § 63.11092(b)(1)(i)(B)(2) and (b)(1)(iii)(B)(2) were not resolved according to the necessary corrective actions described in the monitoring and inspection plan. The report shall include a description of the malfunction and the timing of the steps taken to correct the malfunction.

(5) For each occurrence of an equipment leak for which no repair attempt was made within 5 days or for which repair was not completed within 15 days after detection:

(i) The date on which the leak was detected;

(ii) The date of each attempt to repair the leak;

(iii) The reasons for the delay of repair; and

(iv) The date of successful repair.

(c) Each owner or operator of a bulk gasoline plant or a pipeline pumping station shall submit a semiannual excess emissions report, including the information specified in paragraphs (a)(3) and (b)(4) of this section, only for a 6-month period during which an excess emission event has occurred. If no excess emission events have occurred during the previous 6-month period, no report is required.

#### Other Requirements and Information

##### § 63.11098 What parts of the General Provisions apply to me?

Table 3 to this subpart shows which parts of the General Provisions apply to you.

**§ 63.11099 Who implements and enforces this subpart?**

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities specified in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.11086 through 63.11088 and § 63.11092. Any owner or operator requesting to use an alternative means of emission limitation for storage vessels in Table 1 to this subpart must follow either the provisions in § 60.114b of this chapter if you are complying with options 2(a), 2(b), or 2(c) in Table 1 to this subpart, or the provisions in § 63.1064 if you are complying with option 2(d) in Table 1 to this subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

**§ 63.11100 What definitions apply to this subpart?**

As used in this subpart, all terms not defined herein shall have the meaning given them in the Clean Air Act (CAA),

in subparts A, K, Ka, Kb, and XX of part 60 of this chapter, or in subparts A, R, and WW of this part. All terms defined in both subpart A of part 60 of this chapter and subparts A, R, and WW of this part shall have the meaning given in subparts A, R, and WW of this part. For purposes of this subpart, definitions in this section supersede definitions in other parts or subparts.

*Administrator* means the Administrator of the United States Environmental Protection Agency or his or her authorized representative (e.g., a State that has been delegated the authority to implement the provisions of this subpart).

*Bulk gasoline plant* means any gasoline storage and distribution facility that receives gasoline by pipeline, ship or barge, or cargo tank and has a gasoline throughput of less than 20,000 gallons per day. Gasoline throughput shall be the maximum calculated design throughput as may be limited by compliance with an enforceable condition under Federal, State, or local law and discoverable by the Administrator and any other person.

*Bulk gasoline terminal* means any gasoline storage and distribution facility that receives gasoline by pipeline, ship or barge, or cargo tank and has a gasoline throughput of 20,000 gallons per day or greater. Gasoline throughput shall be the maximum calculated design throughput as may be limited by compliance with an enforceable condition under Federal, State, or local law and discoverable by the Administrator and any other person.

*Equipment* means each valve, pump, pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in the gasoline liquid transfer and vapor collection systems. This definition also includes the entire vapor processing system except the exhaust port(s) or stack(s).

*Flare* means a thermal oxidation system using an open (without enclosure) flame.

*Gasoline cargo tank* means a delivery tank truck or railcar which is loading gasoline or which has loaded gasoline on the immediately previous load.

*In gasoline service* means that a piece of equipment is used in a system that transfers gasoline or gasoline vapors.

*Monthly* means once per calendar month at regular intervals of no less than 28 days and no more than 35 days.

*Operating parameter value* means a value for an operating or emission parameter of the vapor processing system (e.g., temperature) which, if maintained continuously by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with the applicable emission standard. The operating parameter value is determined using the procedures specified in § 63.11092(b).

*Pipeline breakout station* means a facility along a pipeline containing storage vessels used to relieve surges or receive and store gasoline from the pipeline for re-injection and continued transportation by pipeline or to other facilities.

*Pipeline pumping station* means a facility along a pipeline containing pumps to maintain the desired pressure and flow of product through the pipeline and not containing storage vessels.

*Submerged filling* means, for the purposes of this subpart, the filling of a gasoline cargo tank or a stationary storage tank through a submerged fill pipe whose discharge is no more than the applicable distance specified in § 63.11086(a) from the bottom of the tank. Bottom filling of gasoline cargo tanks or storage tanks is included in this definition.

*Vapor collection-equipped gasoline cargo tank* means a gasoline cargo tank that is outfitted with the equipment necessary to transfer vapors, displaced during the loading of gasoline into the cargo tank, to a vapor processor system.

*Vapor-tight gasoline cargo tank* means the same as the definition of the term "vapor-tight gasoline tank truck" in § 60.501, except that for this subpart the term "gasoline tank truck" means "gasoline cargo tank," as defined in this section.

TABLE 1 TO SUBPART BBBB OF PART 63.—APPLICABILITY CRITERIA, EMISSION LIMITS, AND MANAGEMENT PRACTICES FOR STORAGE TANKS

If you own or operate	Then you must
1. A gasoline storage tank with a capacity of less than 75 cubic meters (m <sup>3</sup> ).	Equip each gasoline storage tank with a fixed roof that is mounted to the storage tank in a stationary manner, and maintain all openings in a closed position at all times when not in use.
2. A gasoline storage tank with a capacity of greater than or equal to 75 m <sup>3</sup> .	(a) Reduce emissions of total organic HAP or TOC by 95 weight-percent with a closed vent system and control device as specified in § 60.112b(a)(3) of this chapter; or

TABLE 1 TO SUBPART BBBB of PART 63.—APPLICABILITY CRITERIA, EMISSION LIMITS, AND MANAGEMENT PRACTICES FOR STORAGE TANKS—Continued

If you own or operate	Then you must
	<p>(b) Equip each internal floating roof gasoline storage tank according to the requirements in §60.112b(a)(1) of this chapter, except for the secondary seal requirements under §60.112b(a)(1)(ii)(B) and the requirements in §60.112b(a)(1)(iv) through (ix) of this chapter; and</p> <p>(c) Equip each external floating roof gasoline storage tank according to the requirements in §60.112b(a)(2) of this chapter, except that the requirements of §60.112b(a)(2)(ii) of this chapter shall only be required if such storage tank does not currently meet the requirements of §60.112b(a)(2)(i) of this chapter; or</p> <p>(d) Equip and operate each internal and external floating roof gasoline storage tank according to the applicable requirements in §63.1063(a)(1) and (b), and equip each external floating roof gasoline storage tank according to the requirements of §63.1063(a)(2) if such storage tank does not currently meet the requirements of §63.1063(a)(1).</p>

TABLE 2 TO SUBPART BBBB of PART 63.—APPLICABILITY CRITERIA, EMISSION LIMITS, AND MANAGEMENT PRACTICES FOR LOADING RACKS

If you own or operate	Then you must
1. A gasoline loading rack(s) at a bulk gasoline terminal with a gasoline throughput of 250,000 gallons per day, or greater.	<p>(a) Equip your loading rack(s) with a vapor collection system designed to collect the TOC vapors displaced from cargo tanks during product loading; and</p> <p>(b) Reduce emissions of TOC to less than or equal to 80 mg/l of gasoline loaded into gasoline cargo tanks at the loading rack; and</p> <p>(c) Design and operate the vapor collection system to prevent any TOC vapors collected at one loading rack from passing to another loading rack; and</p> <p>(d) Limit the loading of gasoline into gasoline cargo tanks that are vapor tight using the procedures specified in §60.502(e) through (j) of this chapter. For the purposes of this section, the term "tank truck" as used in §60.502(e) through (j) of this chapter means "cargo tank" as defined in §63.11100.</p>
2. A gasoline loading rack(s) at a bulk gasoline terminal with a gasoline throughput of less than 250,000 gallons per day.	<p>(a) Use submerged filling with a submerged fill pipe that is no more than 6 inches from the bottom of the cargo tank.</p> <p>(b) Make records available within 24 hours of a request by the Administrator to document your gasoline throughput.</p>

TABLE 3 TO SUBPART BBBB of PART 63.—APPLICABILITY OF GENERAL PROVISIONS

Citation	Subject	Brief description	Applies to subpart BBBB
§ 63.1	Applicability	Initial applicability determination; applicability after standard established; permit requirements; extensions, notifications.	Yes, specific requirements given in §63.11081.
§ 63.1(c)(2)	Title V permit	Requirements for obtaining a title V permit from the applicable permitting authority.	Yes, §63.11081(b) of subpart BBBB exempts identified area sources from the obligation to obtain title V operating permits.
§ 63.2	Definitions	Definitions for part 63 standards	Yes, additional definitions in §63.11100.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes.
§ 63.4	Prohibited Activities and Circumvention.	Prohibited activities; circumvention, severability	Yes.
§ 63.5	Construction/Reconstruction.	Applicability; applications; approvals	Yes.
§ 63.6(a)	Compliance with Standards/Operation & Maintenance Applicability.	General Provisions apply unless compliance extension; General Provisions apply to area sources that become major.	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for CAA section 112(f).	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§ 63.6(b)(6)	[Reserved].		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources that Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source.	No.

TABLE 3 TO SUBPART BBBB of PART 63.—APPLICABILITY OF GENERAL PROVISIONS—Continued

Citation	Subject	Brief description	Applies to subpart BBBB*
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Comply according to date in this subpart, which must be no later than 3 years after effective date; for CAA section 112(f) standards, comply within 90 days of effective date unless compliance extension.	No, § 63.11083 specifies the compliance dates.
§ 63.6(c)(3)–(4)	[Reserved].		
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources that Become Major.	Area sources that become major must comply with major source standards by date indicated in this subpart or by equivalent time period (e.g., 3 years).	No.
§ 63.6(d)	[Reserved].		
§ 63.6(e)(1)	Operation & Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; and operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.
§ 63.6(e)(2)	[Reserved].		
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction (SSM) plan.	Requirement for SSM plan; content of SSM plan; actions during SSM.	No.
§ 63.6(f)(1)	Compliance Except During SSM.	You must comply with emission standards at all times except during SSM.	No.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard	Yes.
§ 63.6(h)(1)	Compliance with Opacity/VE Standards.	You must comply with opacity/VE standards at all times except during SSM.	No.
§ 63.6(h)(2)(i)	Determining Compliance with Opacity/VE Standards.	If standard does not State test method, use EPA Method 9 for opacity in appendix A of part 60 of this chapter and EPA Method 22 for VE in appendix A of part 60 of this chapter.	No.
§ 63.6(h)(2)(ii)	[Reserved].		
§ 63.6(h)(2)(iii)	Using Previous Tests to Demonstrate Compliance with Opacity/VE Standards.	Criteria for when previous opacity/VE testing can be used to show compliance with this subpart.	No.
§ 63.6(h)(3)	[Reserved].		
§ 63.6(h)(4)	Notification of Opacity/VE Observation Date.	Must notify Administrator of anticipated date of observation.	No.
§ 63.6(h)(5)(i), (iii)–(v)	Conducting Opacity/VE Observations.	Dates and schedule for conducting opacity/VE observations.	No.
§ 63.6(h)(5)(ii)	Opacity Test Duration and Averaging Times.	Must have at least 3 hours of observation with 30 6-minute averages.	No.
§ 63.6(h)(6)	Records of Conditions During Opacity/VE Observations.	Must keep records available and allow Administrator to inspect.	No.
§ 63.6(h)(7)(i)	Report Continuous Opacity Monitoring System (COMS) Monitoring Data from Performance Test.	Must submit COMS data with other performance test data.	No.
§ 63.6(h)(7)(ii)	Using COMS Instead of EPA Method 9.	Can submit COMS data instead of EPA Method 9 results even if rule requires EPA Method 9 in appendix A of part 60 of this chapter, but must notify Administrator before performance test.	No.
§ 63.6(h)(7)(iii)	Averaging Time for COMS During Performance Test.	To determine compliance, must reduce COMS data to 6-minute averages.	No.
§ 63.6(h)(7)(iv)	COMS Requirements	Owner/operator must demonstrate that COMS performance evaluations are conducted according to § 63.8(e); COMS are properly maintained and operated according to § 63.8(c) and data quality as § 63.8(d).	No.
§ 63.6(h)(7)(v)	Determining Compliance with Opacity/VE Standards.	COMS is probable but not conclusive evidence of compliance with opacity standard, even if EPA Method 9 observation shows otherwise. Requirements for COMS to be probable evidence—proper maintenance, meeting Performance Specification 1 in appendix B of part 60 of this chapter, and data have not been altered.	No.
§ 63.6(h)(8)	Determining Compliance with Opacity/VE Standards.	Administrator will use all COMS, EPA Method 9 (in appendix A of part 60 of this chapter), and EPA Method 22 (in appendix A of part 60 of this chapter) results, as well as information about operation and maintenance to determine compliance.	No.



TABLE 3 TO SUBPART BBBB of PART 63.—APPLICABILITY OF GENERAL PROVISIONS—Continued

Citation	Subject	Brief description	Applies to subpart BBBB
§ 63.6(h)(9)	Adjusted Opacity Standard	Procedures for Administrator to adjust an opacity standard.	No.
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(j)	Presidential Compliance Exemption.	President may exempt any source from requirement to comply with this subpart.	Yes.
§ 63.7(a)(2)	Performance Test Dates	Dates for conducting initial performance testing; must conduct 180 days after compliance date.	Yes.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test.	Must notify Administrator 60 days before the test	Yes.
§ 63.7(b)(2)	Notification of Re-scheduling.	If have to reschedule performance test, must notify Administrator of rescheduled date as soon as practicable and without delay.	Yes.
§ 63.7(c)	Quality Assurance (QA)/ Test Plan.	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions; cannot conduct performance tests during SSM.	Yes.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to this subpart and EPA test methods unless Administrator approves alternative.	Yes.
§ 63.7(e)(3)	Test Run Duration	Must have three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; conditions when data from an additional test run can be used.	Yes.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an intermediate or major change, or alternative to a test method.	Yes.
§ 63.7(g)	Performance Test Data Analysis.	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the notification of compliance status; keep data for 5 years.	Yes.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance specifications in appendix B of 40 CFR part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved].		
§ 63.8(a)(4)	Monitoring of Flares	Monitoring requirements for flares in § 63.11 apply	Yes.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems; must install on each affected source or after combined with another affected source before it is released to the atmosphere provided the monitoring is sufficient to demonstrate compliance with the standard; if more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)–(iii)	Routine and Predictable SSM.	Follow the SSM plan for routine repairs; keep parts for routine repairs readily available; reporting requirements for SSM when action is described in SSM plan.	Yes.
§ 63.8(c)(2)–(8)	CMS Requirements	Must install to get representative emission or parameter measurements; must verify operational status before or at performance test.	Yes.
§ 63.8(d)	CMS Quality Control	Requirements for CMS quality control, including calibration, etc.; must keep quality control plan on record for 5 years; keep old versions for 5 years after revisions.	No.
§ 63.8(e)	CMS Performance Evaluation.	Notification, performance evaluation test plan, reports	Yes.

TABLE 3 TO SUBPART BBBB of PART 63.—APPLICABILITY OF GENERAL PROVISIONS—Continued

Citation	Subject	Brief description	Applies to subpart BBBB
§ 63.8(f) (1)–(5)	Alternative Monitoring Method.	Procedures for Administrator to approve alternative monitoring.	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Procedures for Administrator to approve alternative relative accuracy tests for CEMS.	Yes.
§ 63.8(g)	Data Reduction	COMS 6-minute averages calculated over at least 36 evenly spaced data points; CEMS 1 hour averages computed over at least 4 equally spaced data points; data that cannot be used in average.	Yes.
§ 63.9(a)	Notification Requirements	Applicability and State delegation	Yes.
§ 63.9(b) (1)–(2), (4)–(5)	Initial Notifications	Submit notification within 120 days after effective date; notification of intent to construct/reconstruct, notification of commencement of construction/reconstruction, notification of startup; contents of each.	Yes.
§ 63.9(c)	Request for Compliance Extension.	Can request if cannot comply by date or if installed best available control technology or lowest achievable emission rate.	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Sources.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test.	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test.	Notify Administrator 30 days prior	No.
§ 63.9(g)	Additional Notifications When Using CMS.	Notification of performance evaluation; notification about use of COMS data; notification that exceeded criterion for relative accuracy alternative.	Yes, however, there are no opacity standards.
§ 63.9(h) (1)–(6)	Notification of Compliance Status.	Contents due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes, however, there are no opacity standards.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Procedures for Administrator to approve change when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information.	Must submit within 15 days after the change	Yes.
§ 63.10(a)	Record-keeping/Reporting	Applies to all, unless compliance extension; when to submit to Federal vs. State authority; procedures for owners of more than one source.	Yes.
§ 63.10(b)(1)	Record-keeping/Reporting	General requirements; keep all records readily available; keep for 5 years.	Yes.
§ 63.10(b)(2)(i)–(iv)	Records Related to SSM	Occurrence of each for operations (process equipment); occurrence of each malfunction of air pollution control equipment; maintenance on air pollution control equipment; actions during SSM.	Yes.
§ 63.10(b)(2)(vi)–(xi)	CMS Records	Malfunctions, inoperative, out-of-control periods	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	Yes.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting initial notification and notification of compliance status.	Yes.
§ 63.10(b)(3)	Records	Applicability determinations	Yes.
§ 63.10(c)	Records	Additional records for CMS	No.
§ 63.10(d)(1)	General Reporting Requirements.	Requirement to report	Yes.
§ 63.10(d)(2)	Report of Performance Test Results.	When to submit to Federal or State authority	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.	What to report and when	No.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	SSM Reports	Contents and submission	Yes.
§ 63.10(e)(1)–(2)	Additional CMS Reports	Must report results for each CEMS on a unit; written copy of CMS performance evaluation; 2–3 copies of COMS performance evaluation.	No.
§ 63.10(e)(3)(i)–(iii)	Reports	Schedule for reporting excess emissions	Yes, note that § 63.11095 specifies excess emission events for this subpart.

TABLE 3 TO SUBPART BBBB of PART 63.—APPLICABILITY OF GENERAL PROVISIONS—Continued

Citation	Subject	Brief description	Applies to subpart BBBB
§ 63.10(e)(3)(iv)–(v) .....	Excess Emissions Reports	Requirement to revert to quarterly submission if there is an excess emissions and parameter monitor exceedances (now defined as deviations); provision to request semiannual reporting after compliance for 1 year; submit report by 30th day following end of quarter or calendar half; if there has not been an exceedance or excess emissions (now defined as deviations), report contents in a statement that there have been no deviations; must submit report containing all of the information in §§ 63.8(c)(7)–(8) and 63.10(c)(5)–(13).	Yes. § 63.11095 specifies excess emission events for this subpart.
§ 63.10(e)(3)(vi)–(viii) .....	Excess Emissions Report and Summary Report.	Requirements for reporting excess emissions for CMS; requires all of the information in §§ 63.8(c)(7)–(8) and 63.10(c)(5)–(13).	Yes.
§ 63.10(e)(4) .....	Reporting COMS Data .....	Must submit COMS data with performance test data ...	Yes.
§ 63.10(f) .....	Waiver for Recordkeeping/Reporting.	Procedures for Administrator to waive .....	Yes.
§ 63.11(b) .....	Flares .....	Requirements for flares .....	Yes, the section references § 63.11(b).
§ 63.12 .....	Delegation .....	State authority to enforce standards .....	Yes.
§ 63.13 .....	Addresses .....	Addresses where reports, notifications, and requests are sent.	Yes.
§ 63.14 .....	Incorporations by Reference.	Test methods incorporated by reference .....	Yes.
§ 63.15 .....	Availability of Information ..	Public and confidential information .....	Yes.

■ 4. Part 63 is amended by adding a new subpart CCCCCC to read as follows:

**Subpart CCCCCC—National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities**

Sec.

**What This Subpart Covers**

- 63.11110 What is the purpose of this subpart?  
 63.11111 Am I subject to the requirements in this subpart?  
 63.11112 What parts of my affected source does this subpart cover?  
 63.11113 When do I have to comply with this subpart?

**Emission Limitations and Management Practices**

- 63.11116 Requirements for facilities with monthly throughput of less than 10,000 gallons of gasoline.  
 63.11117 Requirements for facilities with monthly throughput of 10,000 gallons of gasoline or more.  
 63.11118 Requirements for facilities with monthly throughput of 100,000 gallons of gasoline or more.

**Testing and Monitoring Requirements**

- 63.11120 What testing and monitoring requirements must I meet?

**Notification, Records, and Reports**

- 63.11124 What notifications must I submit and when?  
 63.11125 What are my recordkeeping requirements?  
 63.11126 What are my reporting requirements?

**Other Requirements and Information**

- 63.11130 What parts of the General Provisions apply to me?  
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**Tables to Subpart CCCCCC of Part 63**

- Table 1 to Subpart CCCCCC of Part 63—Applicability Criteria and Management Practices for Gasoline Dispensing Facilities with Monthly Throughput of 100,000 Gallons of Gasoline or More  
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**Subpart CCCCCC—National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities**

**What This Subpart Covers**

**§ 63.11110 What is the purpose of this subpart?**

This subpart establishes national emission limitations and management practices for hazardous air pollutants (HAP) emitted from the loading of gasoline storage tanks at gasoline dispensing facilities (GDF). This subpart also establishes requirements to demonstrate compliance with the emission limitations and management practices.

**§ 63.11111 Am I subject to the requirements in this subpart?**

(a) The affected source to which this subpart applies is each GDF that is located at an area source. The affected source includes each gasoline cargo tank during the delivery of product to a GDF and also includes each storage tank.

(b) If your GDF has a monthly throughput of less than 10,000 gallons of gasoline, you must comply with the requirements in § 63.11116.

(c) If your GDF has a monthly throughput of 10,000 gallons of gasoline or more, you must comply with the requirements in § 63.11117.

(d) If your GDF has a monthly throughput of 100,000 gallons of gasoline or more, you must comply with the requirements in § 63.11118.

(e) An affected source shall, upon request by the Administrator, demonstrate that their average monthly throughput is less than the 10,000-gallon or the 100,000-gallon threshold level, as applicable.

(f) If you are an owner or operator of affected sources, as defined in paragraph (a) of this section, you are not required to obtain a permit under 40 CFR part 70 or 40 CFR part 71 as a result of being subject to this subpart. However, you must still apply for and obtain a permit under 40 CFR part 70 or 40 CFR part 71 if you meet one or more of the applicability criteria found in 40 CFR 70.3(a) and (b) or 40 CFR 71.3(a) and (b).

(g) The loading of aviation gasoline storage tanks at airports is not subject to this subpart and the aviation gasoline is not included in the gasoline throughput specified in paragraphs (b) through (e) of this section.

**§ 63.11112 What parts of my affected source does this subpart cover?**

(a) The emission sources to which this subpart applies are gasoline storage tanks and associated equipment components in vapor or liquid gasoline service at new, reconstructed, or existing GDF that meet the criteria specified in § 63.11111. Pressure/Vacuum vents on gasoline storage tanks and the equipment necessary to unload product from cargo tanks into the storage tanks at GDF are covered emission sources. The equipment used for the refueling of motor vehicles is not covered by this subpart.

(b) An affected source is a new affected source if you commenced construction on the affected source after November 9, 2006, and you meet the applicability criteria in § 63.11111 at the time you commenced operation.

(c) An affected source is reconstructed if you meet the criteria for reconstruction as defined in § 63.2.

(d) An affected source is an existing affected source if it is not new or reconstructed.

**§ 63.11113 When do I have to comply with this subpart?**

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section.

(1) If you start up your affected source before January 10, 2008, you must comply with the standards in this subpart no later than January 10, 2008.

(2) If you start up your affected source after January 10, 2008, you must comply with the standards in this subpart upon startup of your affected source.

(b) If you have an existing affected source, you must comply with the standards in this subpart no later than January 10, 2011.

(c) If you have an existing affected source that becomes subject to the control requirements in this subpart because of an increase in the average monthly throughput, as specified in § 63.11111(c) or § 63.11111(d), you must comply with the standards in this subpart no later than 3 years after the affected source becomes subject to the control requirements in this subpart.

**Emission Limitations and Management Practices**

**§ 63.11116 Requirements for facilities with monthly throughput of less than 10,000 gallons of gasoline.**

(a) You must not allow gasoline to be handled in a manner that would result in vapor releases to the atmosphere for extended periods of time. Measures to be taken include, but are not limited to, the following:

- (1) Minimize gasoline spills;
- (2) Clean up spills as expeditiously as practicable;
- (3) Cover all open gasoline containers and all gasoline storage tank fill-pipes with a gasketed seal when not in use;
- (4) Minimize gasoline sent to open waste collection systems that collect and transport gasoline to reclamation and recycling devices, such as oil/water separators.

(b) You are not required to submit notifications or reports, but you must have records available within 24 hours of a request by the Administrator to document your gasoline throughput.

(c) You must comply with the requirements of this subpart by the applicable dates specified in § 63.11113.

**§ 63.11117 Requirements for facilities with monthly throughput of 10,000 gallons of gasoline or more.**

(a) You must comply with the requirements in section § 63.11116(a).

(b) Except as specified in paragraph (c), you must only load gasoline into storage tanks at your facility by utilizing submerged filling, as defined in § 63.11132, and as specified in paragraph (b)(1) or paragraph (b)(2) of this section.

(1) Submerged fill pipes installed on or before November 9, 2006, must be no more than 12 inches from the bottom of the storage tank.

(2) Submerged fill pipes installed after November 9, 2006, must be no more than 6 inches from the bottom of the storage tank.

(c) Gasoline storage tanks with a capacity of less than 250 gallons are not required to comply with the submerged fill requirements in paragraph (b) of this section, but must comply only with all of the requirements in § 63.11116.

(d) You must have records available within 24 hours of a request by the Administrator to document your gasoline throughput.

(e) You must submit the applicable notifications as required under § 63.11124(b).

(f) You must comply with the requirements of this subpart by the applicable dates contained in § 63.11113.

**§ 63.11118 Requirements for facilities with monthly throughput of 100,000 gallons of gasoline or more.**

(a) You must comply with the requirements in §§ 63.11116(a) and 63.11117(b).

(b) Except as provided in paragraph (c) of this section, you must meet the requirements in either paragraph (b)(1) or paragraph (b)(2) of this section.

(1) Each management practice in Table 1 to this subpart that applies to your GDF.

(2) If, prior to January 10, 2008, you satisfy the requirements in both paragraphs (b)(2)(i) and (ii) of this section, you will be deemed in compliance with this subsection.

(i) You operate a vapor balance system at your GDF that meets the requirements of either paragraph (b)(2)(i)(A) or paragraph (b)(2)(i)(B) of this section.

(A) Achieves emissions reduction of at least 90 percent.

(B) Operates using management practices at least as stringent as those in Table 1 to this subpart.

(ii) Your gasoline dispensing facility is in compliance with an enforceable State, local, or tribal rule or permit that contains requirements of either paragraph (b)(2)(i)(A) or paragraph (b)(2)(i)(B) of this section.

(c) The emission sources listed in paragraphs (c)(1) through (3) of this section are not required to comply with the control requirements in paragraphs (a) and (b) of this section, but must comply with the requirements in § 63.11116.

(1) Gasoline storage tanks with a capacity of less than 250 gallons that are constructed after January 10, 2008.

(2) Gasoline storage tanks with a capacity of less than 2,000 gallons that were constructed before January 10, 2008.

(3) Gasoline storage tanks equipped with floating roofs, or the equivalent.

(d) Cargo tanks unloading at GDF must comply with the management practices in Table 2 to this subpart.

(e) You must comply with the applicable testing requirements contained in § 63.11120.

(f) You must submit the applicable notifications as required under § 63.11124.

(g) You must keep records and submit reports as specified in §§ 63.11125 and 63.11126.

(h) You must comply with the requirements of this subpart by the applicable dates contained in § 63.11113.

**Testing and Monitoring Requirements****§ 63.11120 What testing and monitoring requirements must I meet?**

(a) Each owner or operator, at the time of installation of a vapor balance system required under § 63.11118(b)(1), and every 3 years thereafter, must comply with the requirements in paragraphs (a)(1) and (2) of this section.

(1) You must demonstrate compliance with the leak rate and cracking pressure requirements, specified in item 1(g) of Table 1 to this subpart, for pressure-vacuum vent valves installed on your gasoline storage tanks using the test methods identified in paragraph (a)(1)(i) or paragraph (a)(1)(ii) of this section.

(i) California Air Resources Board Vapor Recovery Test Procedure TP-201.1E,—Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, adopted October 8, 2003 (incorporated by reference, see § 63.14).

(ii) Use alternative test methods and procedures in accordance with the alternative test method requirements in § 63.7(f).

(2) You must demonstrate compliance with the static pressure performance requirement, specified in item 1(h) of Table 1 to this subpart, for your vapor balance system by conducting a static pressure test on your gasoline storage tanks using the test methods identified in paragraph (a)(2)(i) or paragraph (a)(2)(ii) of this section.

(i) California Air Resources Board Vapor Recovery Test Procedure TP-201.3,—Determination of 2-Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, adopted April 12, 1996, and amended March 17, 1999 (incorporated by reference, see § 63.14).

(ii) Use alternative test methods and procedures in accordance with the alternative test method requirements in § 63.7(f).

(b) Each owner or operator choosing, under the provisions of § 63.6(g), to use a vapor balance system other than that described in Table 1 to this subpart must demonstrate to the Administrator or delegated authority under paragraph § 63.11131(a) of this subpart, the equivalency of their vapor balance system to that described in Table 1 to this subpart using the procedures specified in paragraphs (b)(1) through (3) of this section.

(1) You must demonstrate initial compliance by conducting an initial performance test on the vapor balance system to demonstrate that the vapor balance system achieves 95 percent reduction using the California Air Resources Board Vapor Recovery Test Procedure TP-201.1,—Volumetric

Efficiency for Phase I Vapor Recovery Systems, adopted April 12, 1996, and amended February 1, 2001, and October 8, 2003, (incorporated by reference, see § 63.14).

(2) You must, during the initial performance test required under paragraph (b)(1) of this section, determine and document alternative acceptable values for the leak rate and cracking pressure requirements specified in item 1(g) of Table 1 to this subpart and for the static pressure performance requirement in item 1(h) of Table 1 to this subpart.

(3) You must comply with the testing requirements specified in paragraph (a) of this section.

**Notifications, Records, and Reports****§ 63.11124 What notifications must I submit and when?**

(a) Each owner or operator subject to the control requirements in § 63.11117 must comply with paragraphs (a)(1) through (4) of this section.

(1) You must submit an Initial Notification that you are subject to this subpart by May 9, 2008, or at the time you become subject to the control requirements in § 63.11117, unless you meet the requirements in paragraph (a)(3) of this section. The Initial Notification must contain the information specified in paragraphs (a)(1)(i) through (iii) of this section. The notification must be submitted to the applicable EPA Regional Office and delegated State authority as specified in § 63.13.

(i) The name and address of the owner and the operator.

(ii) The address (i.e., physical location) of the GDF.

(iii) A statement that the notification is being submitted in response to this subpart and identifying the requirements in paragraphs (a), (b), and (c)(1) or paragraph (c)(2) of § 63.11117 that apply to you.

(2) You must submit a Notification of Compliance Status to the applicable EPA Regional Office and the delegated State authority, as specified in § 63.13, by the compliance date specified in § 63.11113 unless you meet the requirements in paragraph (a)(3) of this section. The Notification of Compliance Status must be signed by a responsible official who must certify its accuracy and must indicate whether the source has complied with the requirements of this subpart. If your facility is in compliance with the requirements of this subpart at the time the Initial Notification required under paragraph (a)(1) of this section is due, the Notification of Compliance Status may

be submitted in lieu of the Initial Notification provided it contains the information required under paragraph (a)(1) of this section.

(3) If, prior to January 10, 2008, you are operating in compliance with an enforceable State, local, or tribal rule or permit that requires submerged fill as specified in § 63.11117(b), you are not required to submit an Initial Notification or a Notification of Compliance Status under paragraph (a)(1) or paragraph (a)(2) of this section.

(b) Each owner or operator subject to the control requirements in § 63.11118 must comply with paragraphs (b)(1) through (5) of this section.

(1) You must submit an Initial Notification that you are subject to this subpart by May 9, 2008, or at the time you become subject to the control requirements in § 63.11118. The Initial Notification must contain the information specified in paragraphs (b)(1)(i) through (iii) of this section. The notification must be submitted to the applicable EPA Regional Office and the delegated State authority as specified in § 63.13.

(i) The name and address of the owner and the operator.

(ii) The address (i.e., physical location) of the GDF.

(iii) A statement that the notification is being submitted in response to this subpart and identifying the requirements in paragraphs (a) through (d) of § 63.11118 that apply to you.

(2) You must submit a Notification of Compliance Status to the applicable EPA Regional Office and the delegated State authority, as specified in § 63.13, by the compliance date specified in § 63.11113. The Notification of Compliance Status must be signed by a responsible official who must certify its accuracy and must indicate whether the source has complied with the requirements of this subpart. If your facility is in compliance with the requirements of this subpart at the time the Initial Notification required under paragraph (b)(1) of this section is due, the Notification of Compliance Status may be submitted in lieu of the Initial Notification provided it contains the information required under paragraph (b)(1) of this section.

(3) If, prior to January 10, 2008, you satisfy the requirements in both paragraphs (b)(3)(i) and (ii) of this section, you are not required to submit an Initial Notification or a Notification of Compliance Status under paragraph (b)(1) or paragraph (b)(2) of this subsection.

(i) You operate a vapor balance system at your gasoline dispensing facility that meets the requirements of



either paragraphs (b)(3)(i)(A) or (b)(3)(i)(B) of this section.

(A) Achieves emissions reduction of at least 90 percent.

(B) Operates using management practices at least as stringent as those in Table 1 to this subpart.

(ii) Your gasoline dispensing facility is in compliance with an enforceable State, local, or tribal rule or permit that contains requirements of either paragraphs (b)(3)(i)(A) or (b)(3)(i)(B) of this section.

(4) You must submit a Notification of Performance Test, as specified in § 63.9(e), prior to initiating testing required by § 63.11120(a) and (b).

(5) You must submit additional notifications specified in § 63.9, as applicable.

#### § 63.11125 What are my recordkeeping requirements?

(a) Each owner or operator subject to the management practices in § 63.11118 must keep records of all tests performed under § 63.11120(a) and (b).

(b) Records required under paragraph (a) of this section shall be kept for a period of 5 years and shall be made available for inspection by the Administrator's delegated representatives during the course of a site visit.

#### § 63.11126 What are my reporting requirements?

Each owner or operator subject to the management practices in § 63.11118 shall report to the Administrator the results of all volumetric efficiency tests required under § 63.11120(b). Reports submitted under this paragraph must be submitted within 180 days of the completion of the performance testing.

#### Other Requirements and Information

##### § 63.11130 What parts of the General Provisions apply to me?

Table 3 to this subpart shows which parts of the General Provisions apply to you.

#### § 63.11131 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (3) of this section.

(1) Approval of alternatives to the requirements in §§ 63.11116 through 63.11118 and 63.11120.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

#### § 63.11132 What definitions apply to this subpart?

As used in this subpart, all terms not defined herein shall have the meaning given them in the Clean Air Act (CAA), or in subparts A and BBBBBB of this part. For purposes of this subpart, definitions in this section supersede definitions in other parts or subparts.

*Dual-point vapor balance system* means a type of vapor balance system in which the storage tank is equipped with an entry port for a gasoline fill pipe and a separate exit port for a vapor connection.

*Gasoline cargo tank* means a delivery tank truck or railcar which is loading gasoline or which has loaded gasoline on the immediately previous load.

*Gasoline dispensing facility (GDF)* means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle.

*Monthly throughput* means the total volume of gasoline that is loaded into all gasoline storage tanks during a month, as calculated on a rolling 30-day average.

*Submerged filling* means, for the purposes of this subpart, the filling of a gasoline storage tank through a submerged fill pipe whose discharge is no more than the applicable distance specified in § 63.11117(b) from the bottom of the tank. Bottom filling of gasoline storage tanks is included in this definition.

*Vapor balance system* means a combination of pipes and hoses that create a closed system between the vapor spaces of an unloading gasoline cargo tank and a receiving storage tank such that vapors displaced from the storage tank are transferred to the gasoline cargo tank being unloaded.

*Vapor-tight* means equipment that allows no loss of vapors. Compliance with vapor-tight requirements can be determined by checking to ensure that the concentration at a potential leak source is not equal to or greater than 100 percent of the Lower Explosive Limit when measured with a combustible gas detector, calibrated with propane, at a distance of 1 inch from the source.

TABLE 1 TO SUBPART CCCCCC OF PART 63.—APPLICABILITY CRITERIA AND MANAGEMENT PRACTICES FOR GASOLINE DISPENSING FACILITIES WITH MONTHLY THROUGHPUT OF 100,000 GALLONS OF GASOLINE OR MORE

If you own or operate	Then you must
1. A new, reconstructed, or existing GDF subject to § 63.11118.	Install and operate a vapor balance system on your gasoline storage tanks that meets the design criteria in paragraphs (a) through (h). <ul style="list-style-type: none"> <li>(a) All vapor connections and lines on the storage tank shall be equipped with closures that seal upon disconnect.</li> <li>(b) The vapor line from the gasoline storage tank to the gasoline cargo tank shall be vapor-tight, as defined in § 63.11132.</li> <li>(c) The vapor balance system shall be designed such that the pressure in the tank truck does not exceed 18 inches water pressure or 5.9 inches water vacuum during product transfer.</li> <li>(d) The vapor recovery and product adaptors, and the method of connection with the delivery elbow, shall be designed so as to prevent the over-tightening or loosening of fittings during normal delivery operations.</li> </ul>

TABLE 1 TO SUBPART CCCCC OF PART 63.—APPLICABILITY CRITERIA AND MANAGEMENT PRACTICES FOR GASOLINE DISPENSING FACILITIES WITH MONTHLY THROUGHPUT OF 100,000 GALLONS OF GASOLINE OR MORE—Continued

If you own or operate	Then you must
<p>2. For new or reconstructed GDF, or new storage tank(s) at an existing affected facility subject to § 63.11118.</p>	<p>(e) If a gauge well separate from the fill tube is used, it shall be provided with a submerged drop tube that extends the same distance from the bottom of the storage tank as specified in § 63.11117(b).</p> <p>(f) Liquid fill connections for all systems shall be equipped with vapor-tight caps.</p> <p>(g) Pressure/vacuum vent valves shall be installed on the storage tank vent pipes. For systems where vapors from vehicle refueling operations are not recovered, the positive cracking pressure shall be 13.8 inches of water and the negative cracking pressure shall be 6.9 inches of water. For systems where vapors from vehicle refueling operations are recovered (Stage II controls), the positive cracking pressure shall be 3 inches of water and the negative cracking pressure shall be 8 inches of water. Deviations of within ± 0.5 inches of the specified positive cracking pressures and ± 2.0 inches of the negative pressure are acceptable. The leak rates for pressure/vacuum valves, including connections, shall be less than or equal to 0.17 cubic foot per hour at a pressure of 2.0 inches of water and 0.21 cubic foot per hour at a vacuum of 4 inches of water.</p> <p>(h) The vapor balance system shall be capable of meeting the static pressure performance requirement of the following equation:</p> $Pf = 2e^{-500.887/v}$ <p>Where:                      Pf = Minimum allowable final pressure, inches of water.                      v = Total ullage affected by the test, gallons.                      e = Dimensionless constant equal to approximately 2.718.                      2 = The initial pressure, inches water.</p> <p>Equip your gasoline storage tanks with a dual-point vapor balance system, as defined in § 63.11132, and comply with the requirements of item 1 in this Table.</p>

TABLE 2 TO SUBPART CCCCC OF PART 63.—APPLICABILITY CRITERIA AND MANAGEMENT PRACTICES FOR GASOLINE CARGO TANKS UNLOADING AT GASOLINE DISPENSING FACILITIES WITH MONTHLY THROUGHPUT OF 100,000 GALLONS OF GASOLINE OR MORE

If you own or operate	Then you must
<p>A gasoline cargo tank .....</p>	<p>Not unload gasoline into a storage tank at a GDF subject to the control requirements in this subpart unless the following conditions are met:</p> <p>(i) All hoses in the vapor balance system are properly connected,</p> <p>(ii) The adapters or couplers that attach to the vapor line on the storage tank have closures that seal upon disconnect,</p> <p>(iii) All vapor return hoses, couplers, and adapters used in the gasoline delivery are vapor-tight,</p> <p>(iv) All tank truck vapor return equipment is compatible in size and forms a vapor-tight connection with the vapor balance equipment on the GDF storage tank, and</p> <p>(v) All hatches on the tank truck are closed and securely fastened.</p> <p>(vi) The filling of storage tanks at GDF shall be limited to unloading by vapor-tight gasoline cargo tanks. Documentation that the cargo tank has met the specifications of EPA Method 27 shall be carried on the cargo tank.</p>

TABLE 3 TO SUBPART CCCCC OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS

Citation	Subject	Brief description	Applies to subpart CCCCC
§ 63.1 .....	Applicability .....	Initial applicability determination; applicability after standard established; permit requirements; extensions, notifications.	Yes, specific requirements given in § 63.11111.
§ 63.1(c)(2) .....	Title V Permit .....	Requirements for obtaining a title V permit from the applicable permitting authority.	Yes, § 63.11111(f) of subpart CCCCC exempts identified area sources from the obligation to obtain title V operating permits.
§ 63.2 .....	Definitions .....	Definitions for part 63 standards .....	Yes, additional definitions in § 63.11132.
§ 63.3 .....	Units and Abbreviations .....	Units and abbreviations for part 63 standards .....	Yes.
§ 63.4 .....	Prohibited Activities and Circumvention.	Prohibited activities; Circumvention, severability .....	Yes.
§ 63.5 .....	Construction/Reconstruction.	Applicability; applications; approvals .....	Yes.

TABLE 3 TO SUBPART CCCCCC OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS—Continued

Citation	Subject	Brief description	Applies to subpart CCCCCC
§ 63.6(a)	Compliance with Standards/Operation & Maintenance—Applicability.	General Provisions apply unless compliance extension; General Provisions apply to area sources that become major.	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for CAA section 112(f).	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§ 63.6(b)(6)	[Reserved].		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source.	No.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Comply according to date in this subpart, which must be no later than 3 years after effective date; for CAA section 112(f) standards, comply within 90 days of effective date unless compliance extension.	No, § 63.11113 specifies the compliance dates.
§ 63.6(c)(3)–(4)	[Reserved].		
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources That become major must comply with major source standards by date indicated in this subpart or by equivalent time period (e.g., 3 years).	No.
§ 63.6(d)	[Reserved].		
§ 63.6(e)(1)	Operation & Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; and operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.
§ 63.6(e)(2)	[Reserved].		
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction (SSM) Plan.	Requirement for SSM plan; content of SSM plan; actions during SSM.	No.
§ 63.6(f)(1)	Compliance Except During SSM.	You must comply with emission standards at all times except during SSM.	No.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard	Yes.
§ 63.6(h)(1)	Compliance with Opacity/Visible Emission (VE) Standards.	You must comply with opacity/VE standards at all times except during SSM.	No.
§ 63.6(h)(2)(i)	Determining Compliance with Opacity/VE Standards.	If standard does not State test method, use EPA Method 9 for opacity in appendix A of part 60 of this chapter and EPA Method 22 for VE in appendix A of part 60 of this chapter.	No.
§ 63.6(h)(2)(ii)	[Reserved].		
§ 63.6(h)(2)(iii)	Using Previous Tests To Demonstrate Compliance With Opacity/VE Standards.	Criteria for when previous opacity/VE testing can be used to show compliance with this subpart.	No.
§ 63.6(h)(3)	[Reserved].		
§ 63.6(h)(4)	Notification of Opacity/VE Observation Date.	Must notify Administrator of anticipated date of observation.	No.
§ 63.6(h)(5)(i), (iii)–(v)	Conducting Opacity/VE Observations.	Dates and schedule for conducting opacity/VE observations.	No.
§ 63.6(h)(5)(ii)	Opacity Test Duration and Averaging Times.	Must have at least 3 hours of observation with 30 6-minute averages.	No.
§ 63.6(h)(6)	Records of Conditions During Opacity/VE Observations.	Must keep records available and allow Administrator to inspect.	No.
§ 63.6(h)(7)(i)	Report Continuous Opacity Monitoring System (COMS) Monitoring Data From Performance Test.	Must submit COMS data with other performance test data.	No.
§ 63.6(h)(7)(ii)	Using COMS Instead of EPA Method 9.	Can submit COMS data instead of EPA Method 9 results even if rule requires EPA Method 9 in appendix A of part 60 of this chapter, but must notify Administrator before performance test.	No.
§ 63.6(h)(7)(iii)	Averaging Time for COMS During Performance Test.	To determine compliance, must reduce COMS data to 6-minute averages.	No.

TABLE 3 TO SUBPART CCCCCC OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS—Continued

Citation	Subject	Brief description	Applies to subpart CCCCCC
§ 63.6(h)(7)(iv)	COMS Requirements	Owner/operator must demonstrate that COMS performance evaluations are conducted according to § 63.8(e); COMS are properly maintained and operated according to § 63.8(c) and data quality as § 63.8(d).	No.
§ 63.6(h)(7)(v)	Determining Compliance with Opacity/VE Standards.	COMS is probable but not conclusive evidence of compliance with opacity standard, even if EPA Method 9 observation shows otherwise. Requirements for COMS to be probable evidence-proper maintenance, meeting Performance Specification 1 in appendix B of part 60 of this chapter, and data have not been altered.	No.
§ 63.6(h)(8)	Determining Compliance with Opacity/VE Standards.	Administrator will use all COMS, EPA Method 9 (in appendix A of part 60 of this chapter), and EPA Method 22 (in appendix A of part 60 of this chapter) results, as well as information about operation and maintenance to determine compliance.	No.
§ 63.6(h)(9)	Adjusted Opacity Standard	Procedures for Administrator to adjust an opacity standard.	No.
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(j)	Presidential Compliance Exemption.	President may exempt any source from requirement to comply with this subpart.	Yes.
§ 63.7(a)(2)	Performance Test Dates	Dates for conducting initial performance testing; must conduct 180 days after compliance date.	Yes.
§ 63.7(a)(3)	CAA Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test.	Must notify Administrator 60 days before the test	Yes.
§ 63.7(b)(2)	Notification of Re-scheduling.	If have to reschedule performance test, must notify Administrator of rescheduled date as soon as practicable and without delay.	Yes.
§ 63.7(c)	Quality Assurance (QA)/ Test Plan.	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions; cannot conduct performance tests during SSM.	Yes.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to this subpart and EPA test methods unless Administrator approves alternative.	Yes.
§ 63.7(e)(3)	Test Run Duration	Must have three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; conditions when data from an additional test run can be used.	Yes.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an intermediate or major change, or alternative to a test method.	Yes.
§ 63.7(g)	Performance Test Data Analysis.	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the Notification of Compliance Status; keep data for 5 years.	Yes.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of 40 CFR part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved].		
§ 63.8(a)(4)	Monitoring of Flares	Monitoring requirements for flares in § 63.11 apply	Yes.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.

TABLE 3 TO SUBPART CCCCCC OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS—Continued

Citation	Subject	Brief description	Applies to subpart CCCCCC
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems; must install on each affected source or after combined with another affected source before it is released to the atmosphere provided the monitoring is sufficient to demonstrate compliance with the standard; if more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	No.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	No.
§ 63.8(c)(1)(i)–(iii)	Routine and Predictable SSM.	Follow the SSM plan for routine repairs; keep parts for routine repairs readily available; reporting requirements for SSM when action is described in SSM plan.	No.
§ 63.8(c)(2)–(8)	Continuous Monitoring System (CMS) Requirements.	Must install to get representative emission or parameter measurements; must verify operational status before or at performance test.	No.
§ 63.8(d)	CMS Quality Control	Requirements for CMS quality control, including calibration, etc.; must keep quality control plan on record for 5 years; keep old versions for 5 years after revisions.	No.
§ 63.8(e)	CMS Performance Evaluation.	Notification, performance evaluation test plan, reports	No.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method.	Procedures for Administrator to approve alternative monitoring.	No.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Procedures for Administrator to approve alternative relative accuracy tests for continuous emissions monitoring system (CEMS).	No.
§ 63.8(g)	Data Reduction	COMS 6-minute averages calculated over at least 36 evenly spaced data points; CEMS 1 hour averages computed over at least 4 equally spaced data points; data that cannot be used in average.	No.
§ 63.9(a)	Notification Requirements	Applicability and State delegation	Yes.
§ 63.9(b)(1)–(2), (4)–(5)	Initial Notifications	Submit notification within 120 days after effective date; notification of intent to construct/reconstruct, notification of commencement of construction/reconstruction, notification of startup; contents of each.	Yes.
§ 63.9(c)	Request for Compliance Extension.	Can request if cannot comply by date or if installed best available control technology or lowest achievable emission rate.	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Sources.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test.	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test.	Notify Administrator 30 days prior	No.
§ 63.9(g)	Additional Notifications when Using CMS.	Notification of performance evaluation; notification about use of COMS data; notification that exceeded criterion for relative accuracy alternative.	Yes, however, there are no opacity standards.
§ 63.9(h)(1)–(6)	Notification of Compliance Status.	Contents due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes, however, there are no opacity standards.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Procedures for Administrator to approve change when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information.	Must submit within 15 days after the change	Yes.
§ 63.10(a)	Recordkeeping/Reporting	Applies to all, unless compliance extension; when to submit to Federal vs. State authority; procedures for owners of more than one source.	Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	General requirements; keep all records readily available; keep for 5 years.	Yes.
§ 63.10(b)(2)(i)–(iv)	Records Related to SSM	Occurrence of each for operations (process equipment); occurrence of each malfunction of air pollution control equipment; maintenance on air pollution control equipment; actions during SSM.	No.
§ 63.10(b)(2)(vi)–(xi)	CMS Records	Malfunctions, inoperative, out-of-control periods	No.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	Yes.

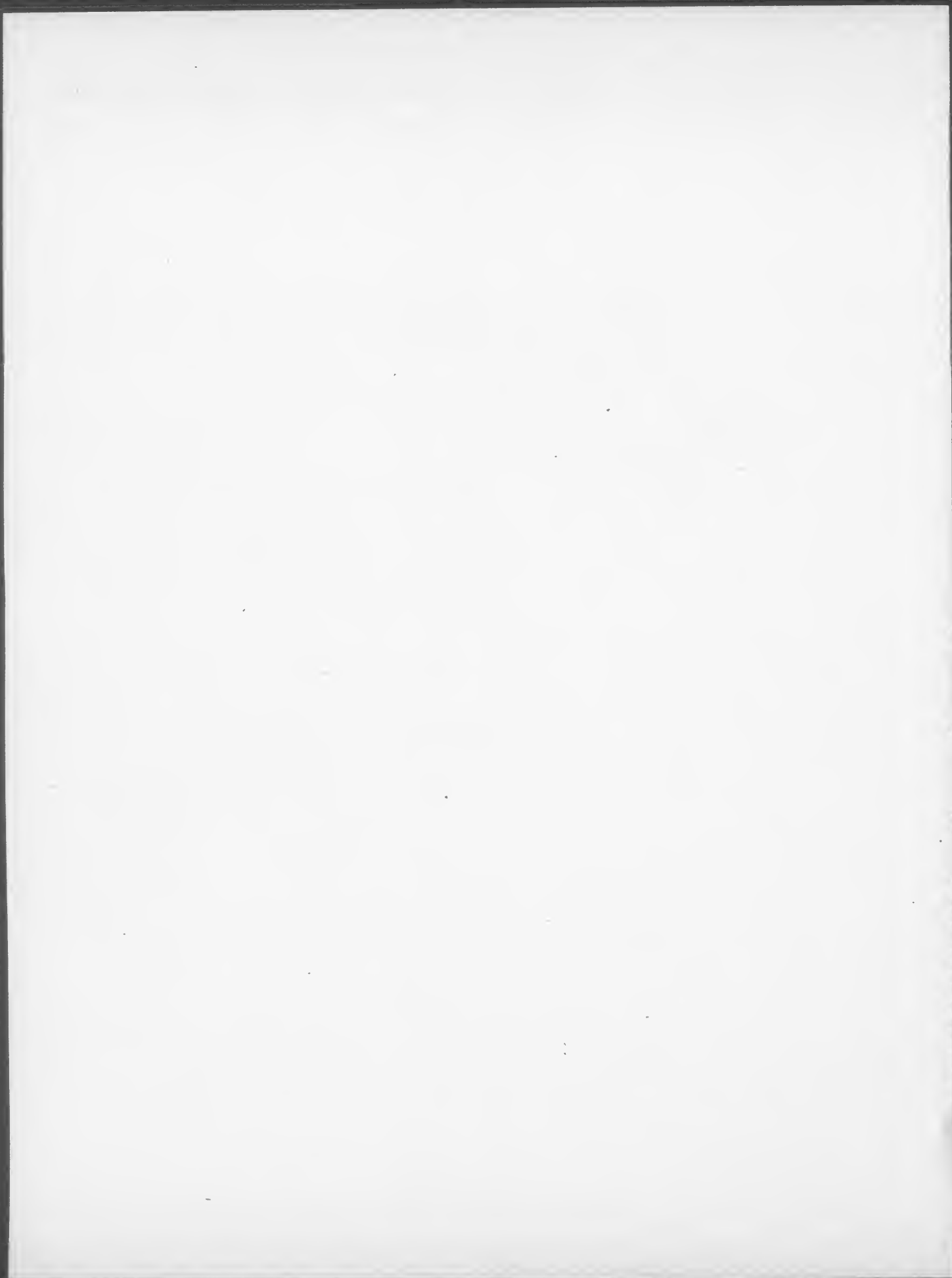


TABLE 3 TO SUBPART CCCCC OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS—Continued

Citation	Subject	Brief description	Applies to subpart CCCCC
§ 63.10(b)(2)(xiv) .....	Records .....	All documentation supporting Initial Notification and Notification of Compliance Status.	Yes.
§ 63.10(b)(3) .....	Records .....	Applicability determinations .....	Yes.
§ 63.10(c) .....	Records .....	Additional records for CMS .....	No.
§ 63.10(d)(1) .....	General Reporting Requirements.	Requirement to report .....	Yes.
§ 63.10(d)(2) .....	Report of Performance Test Results.	When to submit to Federal or State authority .....	Yes.
§ 63.10(d)(3) .....	Reporting Opacity or VE Observations.	What to report and when .....	No.
§ 63.10(d)(4) .....	Progress Reports .....	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5) .....	SSM Reports .....	Contents and submission .....	Yes.
§ 63.10(e)(1)–(2) .....	Additional CMS Reports .....	Must report results for each CEMS on a unit; written copy of CMS performance evaluation; two-three copies of COMS performance evaluation.	No.
§ 63.10(e)(3)(i)–(iii) .....	Reports .....	Schedule for reporting excess emissions .....	Yes, note that § 63.1130(K) specifies excess emission events for this subpart.
§ 63.10(e)(3)(iv)–(v) .....	Excess Emissions Reports	Requirement to revert to quarterly submission if there is an excess emissions and parameter monitor exceedances (now defined as deviations); provision to request semiannual reporting after compliance for 1 year; submit report by 30th day following end of quarter or calendar half; if there has not been an exceedance or excess emissions (now defined as deviations), report contents in a statement that there have been no deviations; must submit report containing all of the information in §§ 63.8(c)(7)–(8) and 63.10(c)(5)–(13).	No, § 63.1130(K) specifies excess emission events for this subpart.
§ 63.10(e)(3)(vi)–(viii) .....	Excess Emissions Report and Summary Report.	Requirements for reporting excess emissions for CMS; requires all of the information in §§ 63.10(c)(5)–(13) and 63.8(c)(7)–(8).	No.
§ 63.10(e)(4) .....	Reporting COMS Data .....	Must submit COMS data with performance test data ...	No.
§ 63.10(f) .....	Waiver for Recordkeeping/Reporting.	Procedures for Administrator to waive .....	Yes.
§ 63.11(b) .....	Flares .....	Requirements for flares .....	No.
§ 63.12 .....	Delegation .....	State authority to enforce standards .....	Yes.
§ 63.13 .....	Addresses .....	Addresses where reports, notifications, and requests are sent.	Yes.
§ 63.14 .....	Incorporations by Reference.	Test methods incorporated by reference .....	Yes.
§ 63.15 .....	Availability of Information ..	Public and confidential information .....	Yes.

[FR Doc. E7-25400 Filed 1-9-08; 8:45 am]

BILLING CODE 6560-50-P





# Federal Register

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Thursday,  
January 10, 2008

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Part III

## Department of Education

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Professional Development for Arts  
Educators (PDAE) Program; Inviting  
Applications for New Awards for Fiscal  
Year (FY) 2008; Notice

## DEPARTMENT OF EDUCATION

**Office of Innovation and Improvement;  
Overview Information; Professional  
Development for Arts Educators  
(PDAE) Program; Notice Inviting  
Applications for New Awards for Fiscal  
Year (FY) 2008**

Catalog of Federal Domestic Assistance  
(CFDA) Number: 84.351C.

*Dates:*

*Applications Available:* January 10, 2008.

*Deadline for Notice of Intent To  
Apply:* February 11, 2008.

*Deadline for Transmittal of  
Applications:* February 29, 2008.

*Deadline for Intergovernmental  
Review:* April 29, 2008.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* This program supports the implementation of high-quality professional development model programs in music, dance, drama, media arts, or visual arts, including folk arts, for arts educators and other instructional staff of kindergarten through grade 12 (K–12) students in high-poverty schools. Grants are intended to strengthen the capacity of teachers and schools to deliver standards-based arts education programs and to raise student academic achievement in the arts and ensure that all students meet challenging State academic content standards.

*Priority:* This priority is from the notice of final priority, requirements, and definitions for this program (NFP), published in the **Federal Register** on March 30, 2005 (70 FR 16242).

*Absolute Priority:* For FY 2008 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

This priority supports professional development programs for K–12 arts educators and other instructional staff that use innovative instructional methods and current knowledge from education research and focus on—

- (1) The development, enhancement, or expansion of standards-based arts education programs; or
- (2) The integration of standards-based arts instruction with other core academic area content.

In order to meet this priority, an applicant must demonstrate that the project for which it seeks funding is linked to State and national standards intended to enable all students to meet

challenging expectations, and to improve student and school performance.

*Note:* *National standards* refers to the arts standards developed by the Consortium of National Arts Education Association. The standards outline what students should know and be able to do in the arts. These are not Department standards.

*Application Requirement:* To be eligible for PDAE Program funds, applicants must propose to carry out professional development programs for arts educators and other instructional staff of K–12 low-income children and youth by implementing projects in schools in which 50 percent or more of the children enrolled are from low-income families (based on the poverty criteria in Title I, section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA)). (This requirement is from the NFP (see 70 FR 16242–16243)).

*Note:* Applicants will be required to provide evidence that they are serving such schools.

*Definitions:* As used in this notice—  
*Arts* includes music, dance, theater, media arts, or visual arts, including folk arts.

*Arts educator* means a teacher who works in music, dance, theater, media arts, or visual arts, including folk arts.

*Integrate* means to strengthen (i) the use of high-quality arts instruction within other academic content areas, and (ii) the place of the arts as a core academic subject in the school curriculum.

*Local educational agency (LEA)* means—

(a) A public board of education or other public authority legally constituted within a State for either administrative control of or direction of, or to perform service functions for, public elementary or secondary schools in—

(1) A city, county, township, school district, or other political subdivision of a State; or

(2) Such combination of school districts or counties a State recognizes as an administrative agency for its public elementary or secondary schools; or

(b) Any other public institution or agency that has administrative control and direction of a public elementary or secondary school.

(c) As used in 34 CFR parts 400, 408, 525, 526 and 527 (vocational education programs), the term also includes any other public institution or agency that has administrative control and direction of a vocational education program.

*Note:* The definitions for art, art educator and integrate are from the NFP (see 70 FR 16242, 16244). The definition for LEA is from 34 CFR 77.1.

*Program Authority:* 20 U.S.C. 7271.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98 and 99. (b) The notice of final priority, requirements, and definitions for this program, published in the **Federal Register** on March 30, 2005 (70 FR 16242).

*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 only.

**II. Award Information**

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* \$6,275,939.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2009 from the list of unfunded applicants from this competition.

*Estimated Range of Awards:* \$100,000–\$350,000 for the first year of the project. Funding for the second and third years is subject to the availability of funds and the approval of continuation awards (see 34 CFR 75.253).

*Estimated Average Size of Awards:* \$200,000.

*Estimated Number of Awards:* 30.

*Note:* The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months.

**III. Eligibility Information**

1. *Eligible Applicants:* An LEA, which may be a charter school that is considered an LEA under State law and regulations, that is acting on behalf of an individual school or schools that meets the poverty criterion with respect to children from low-income families that is specified in the application requirement section elsewhere in this notice, and that must work in partnership with one or more of the following—

- A State or local non-profit or governmental arts organization;
- A State educational agency (SEA) or regional educational service agency;
- An institution of higher education; or

• A public or private agency, institution, or organization, including a museum, an arts education association, a library, a theater, or a community- or faith-based organization.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement—Not-Supplant:* This program involves supplement-not-supplant funding requirements. Under section 5551(f)(2) of the ESEA, the Secretary requires that assistance provided under this program be used only to supplement, and not to supplant, any other assistance or funds made available from non-Federal sources for the activities assisted under the program. This restriction also has the effect of allowing projects to recover indirect costs only on the basis of a restricted indirect cost rate, according to the requirements in 34 CFR 75.563 and 34 CFR 76.564 through 76.569. As soon as they decide to apply, applicants are urged to contact the ED Indirect Cost Group at (202) 377-3833 for guidance about obtaining a restricted indirect cost rate to use on the Budget Information form (ED Form 524) included with the application package.

3. *Coordination Requirement:* Under section 5551(f)(1) of the ESEA, the Secretary requires that each entity funded under this program coordinate, to the extent practicable, each project or program carried out through its grant with appropriate activities of public or private cultural agencies, institutions, and organizations, including museums, arts education associations, libraries, and theaters.

#### 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](mailto: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 84.351C.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Alternative Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

*Notice of Intent To Apply:* The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department by sending a short e-mail message indicating the applicant's intent to submit an application for funding. The e-mail need not include information regarding the content of the proposed application, only the applicant's intent to submit it. The e-mail notification should be sent to Isadora Binder at [Isadora.Binder@ed.gov](mailto:Isadora.Binder@ed.gov).

Applicants that fail to provide this e-mail notification may still apply for funding.

*Page Limit:* The application narrative is, where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants are strongly encouraged to limit the application (Part III) to the equivalent of no more than 25 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- 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).

3. *Submission Dates and Times:* Applications Available: January 10, 2008.

*Deadline for Notice of Intent to Apply:* February 11, 2008.

*Deadline for Transmittal of Applications:* February 29, 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:* April 29, 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 PDAE Program, CFDA Number 84.351C, must be submitted electronically using the Governmentwide.Grants.gov Apply site at <http://www.Grants.gov>. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

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 PDAE Program 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 84.351, not 84.351C).

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](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 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: Isadora Binder, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W246A, Washington, DC 20202-5950.

Fax: (202) 502-5630.

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 84.351C), 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 84.351C), 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 84.351C), 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. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses. Each criterion also includes the factors that the reviewers will consider in determining how well an application meets the criterion. A note following a selection criterion is guidance to help applicants in preparing their applications, and is not required by statute or regulations. The criteria are as follows:

(1) *Significance* (20 points). The Secretary considers the significance of the proposed project by considering the following factors:

(a) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(b) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(2) *Quality of the project design* (20 points). The Secretary considers the quality of the design of the proposed project by considering the following factors:

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(b) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(c) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(3) *Quality of project services* (20 points). The Secretary considers the quality of the services to be provided by the proposed project by considering the following factors:

(a) The quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(b) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(c) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(4) *Quality of project personnel* (10 points). The Secretary considers the quality of the personnel who will carry out the proposed project by considering the following factors:

(a) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(b) The qualifications, including relevant training and experience, of key project personnel.

(c) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(5) *Quality of the management plan* (15 points). The Secretary considers the quality of the management plan for the proposed project by considering the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(6) *Quality of the project evaluation* (15 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project by considering the following factors:

(a) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(b) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

**Note:** A strong evaluation plan should be included in the application narrative and should be used, as appropriate, to shape the development of the project from the beginning of the grant period. The evaluation plan should include benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning, or other important outcomes for project participants. More specifically, the plan should identify the individual or organization that has agreed to serve as evaluator for the project and describe the qualifications of that evaluator. The plan should describe the evaluation design, indicating: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when these instruments will be developed; (5) how data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and about effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

**2. Review and Selection Process:** Additional factors we consider in selecting an application for an award are as follows: In accordance with 34 CFR 75.217(d)(3)(ii) and (iii), the Secretary may consider an applicant's past performance and compliance history when evaluating applications and in making funding decisions.

#### VI. Award Administration Information

**1. Award Notices:** If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

**2. Administrative and National Policy Requirements:** We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

**3. Reporting:** At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary 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:** We have established one performance measure for the PDAE Program. This measure is: The percentage of teachers participating in the PDAE Program who receive professional development that is sustained and intensive. In implementing this measure, the Department will collect from grantees data on the extent to which they provide professional development that occurs

over the course of the school year, which may include the summer, and that includes a sufficient number of hours of participation to make a significant difference in teaching and learning. Successful applicants will be expected to include professional development data in their annual performance reports to the Department.

#### VII. Agency Contacts

##### FOR FURTHER INFORMATION CONTACT:

Isadora Binder or Adrienne Dukes, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W246A, Washington, DC 20202-4260 or by e-mail: [PDAE@ed.gov](mailto:PDAE@ed.gov).

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 persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

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Dated: January 4, 2008.

**Morgan S. Brown,**  
Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. E8-217 Filed 1-9-08; 8:45 am]

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**LIST OF PUBLIC LAWS**

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**H.R. 660/P.L. 110-177**

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**S. 863/P.L. 110-179**

Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007 (Jan. 7, 2008; 121 Stat. 2556)

**H.R. 2640/P.L. 110-180**

NICS Improvement Amendments Act of 2007 (Jan. 8, 2008; 121 Stat. 2559)  
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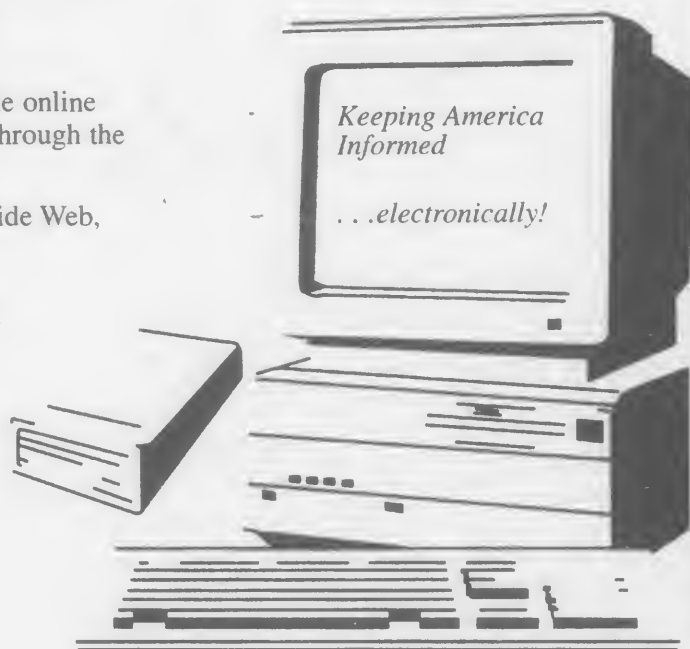
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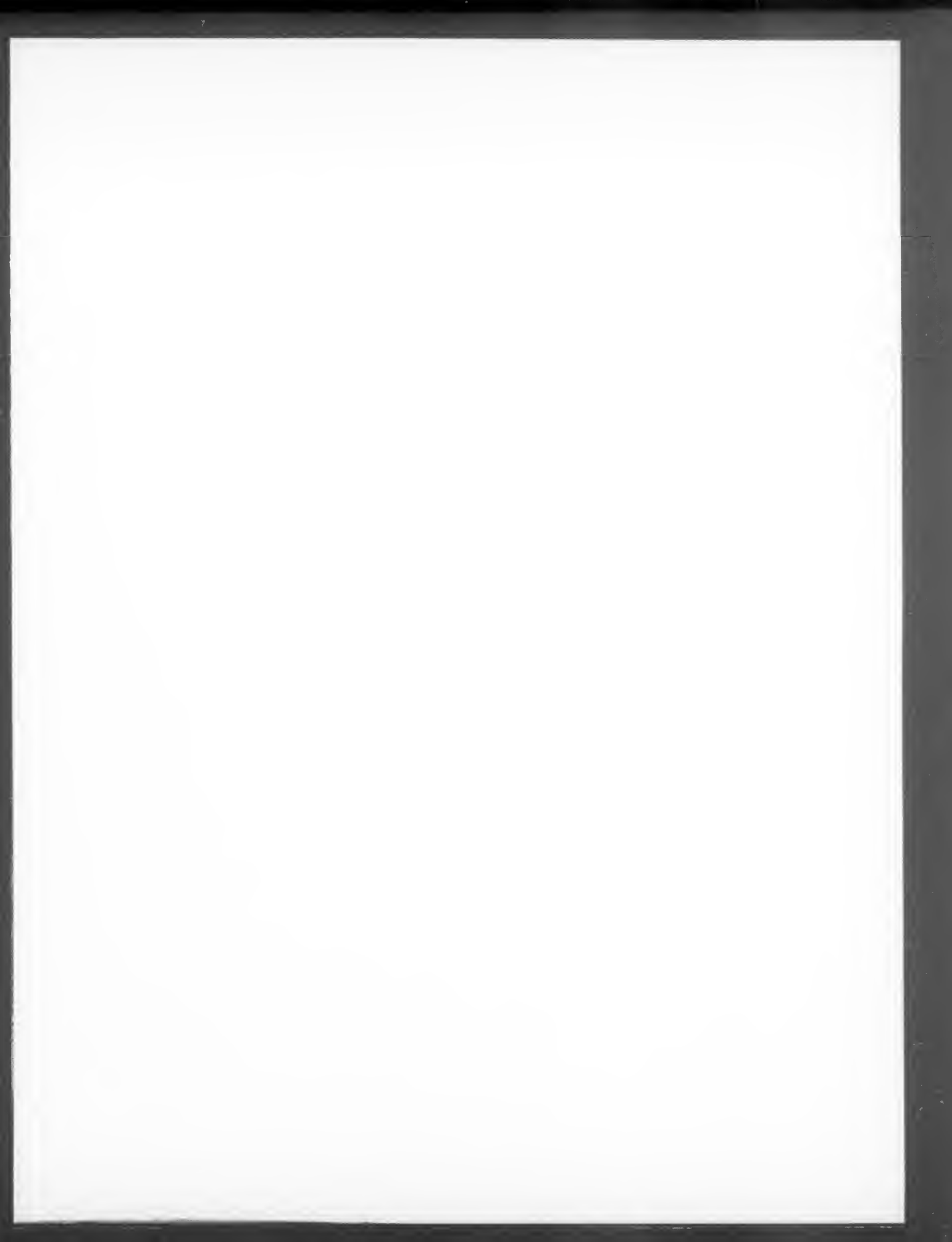


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